

Case No. 7,367.

{1. Wash. C. C. 47.}¹

EX PARTE JOHNSON.

Circuit Court, D. Pennsylvania.

April Term, 1803.

WITNESS FEES.

A witness recognised and attending the court on the part of the defendant, if sworn and sent before the grand jury on the part of the United States, is entitled to be paid by the United States for his attendance on the trial.

In the case of U. S. v. Coalter [unreported], who was indicted this term for murder committed on the high seas, and acquitted; it appeared that a Mr. Johnson, who had been recognised to appear as a witness for the defendants, had nevertheless been marked on the indictment, and sent up to the grand jury by the district attorney. It was now moved that the marshal should pay him for his attendance, as if he had been recognized on the part of the United States. The district attorney opposed the motion, and declared that he was not sent up as a witness on the part of the United States, but from a wish, on his part, that the jury should hear as well the witnesses for, as against the prisoners.

WASHINGTON, Circuit Justice. I have no doubt but that Johnson was sent to the grand jury from the best motives on the part of the attorney, but I cannot say that I approve of the practice, and would not have permitted it, had the subject been mentioned in court. As the indictment, when found, amounts to nothing more than calling upon the accused to answer, it is highly improper that the grand jury in their retirement, and without the legal aid of the court as to what is and what is not proper testimony, should in fact decide the cause, which they do if they through mistake of the law should not find the bill. The accused having the benefit of a speedy, candid, and open trial, under the direction of the court, where all his witnesses are heard, can suffer no inconvenience from this rule. If therefore the attorney chose to make use of the defendant's witness, and marked him on the indictment as a witness for the prosecution, he must be paid by the United States.

¹ [Originally published from the MSS. of Hon. Bushrod Washington, Associate Justice of the Supreme Court of the United States, under the supervision of Richard Peters, Jr., Esq.]