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HEARINGS
BEFORE THE
SUBCOMMITTEE ON
EMPLOYMENT AND EMPLOYEE BENEFITS
OF THE
COMMITTEE ON
OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES
NINETY-FOURTH CONGRESS

FIRST SESSION
ON
H.R. 8094
A BILL TO AMEND TITLE 5, UNITED STATES CODE, TO GRANT
COURT LEAVE TO FEDERAL EMPLOYEES WHEN CALLED AS
WITNESSES IN CERTAIN PROCEEDINGS

SEPTEMBER 11 AND 18, 1975

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SUMMARY OF RECOMMENDATIONS

Arch A. Ramsay, Director, Bureau of Policies and Standards, U.S. Civil Service Commission:

Amend the bill to extend administrative leave in the situation where a Federal or District of Columbia employee is a witness in his capacity as a private citizen for a private party in a case involving the Federal or District of Columbia government.

George Tilton, associate general counsel, National Federation of Federal Employees:

Remove all restrictions in granting administrative leave to Federal employees when the Federal employee is subpoenaed to further the interest of justice.

(III)

H. R. 8094

IN THE HOUSE OF REPRESENTATIVES

JUNE 20, 1975

Mr. WHITE introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To amend title 5, United States Code, to grant court leave to Federal employees when called as witnesses in certain judicial proceedings.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 6322 (a) (2) of title 5, United States Code,
4 relating to leave for witness service, is amended to read
5 as follows:

6 “(2) as a witness on behalf of any party (other
7 than the United States or the District of Columbia) in
8 connection with any judicial proceeding to which a
9 State or local government is a party;”.

COURT LEAVE

THURSDAY, SEPTEMBER 11, 1975

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON RETIREMENT AND EMPLOYEE BENEFITS,
Washington, D.C.

The subcommittee met at 9:10 a.m. in room 2216, Rayburn House Office Building, Hon. Richard C. White (chairman of the subcommittee) presiding.

Mr. WHITE. The subcommittee will come to order.

This subcommittee has convened today to begin hearings and deliberations on H.R. 8094, a bill introduced by myself. Another hearing on this bill is scheduled for Thursday, the 18th of this month, to begin at 9 a.m. in room 2216 of the Rayburn House Office Building.

This bill, H.R. 8094, would amend the present law as outlined in section 6322(a)(2) of title 5, so as to entitle a Federal employee to leave, without loss of, or reduction in pay, leave to which he is otherwise entitled, during a period of absence with respect to which he is summoned, in connection with any judicial proceeding to which a State or local government is a party.

Under the present law, a Federal employee can only enjoy this privilege when he is summoned, in connection with a judicial proceeding, as a witness on behalf of a party other than the United States, the District of Columbia, or a private party.

I feel the passage of this bill would not only alleviate an inequity in our present leave system, but in a small way may help to better facilitate our system of justice.

Before calling our first witness, counsel has informed me that through inadvertence, H.R. 8094 as written, does not cover a Federal employee who is summoned to appear on behalf of a private party involved in a judicial proceeding with the United States or the District of Columbia. This oversight will be corrected and the appropriate language to do so has already been drafted.

To begin today's hearing we shall hear first from Mr. Arch S. Ramsay, Director of the Bureau of Policies and Standards, U.S. Civil Service Commission.

STATEMENT OF ARCH S. RAMSAY, DIRECTOR OF THE BUREAU OF POLICIES AND STANDARDS, U.S. CIVIL SERVICE COMMISSION, ACCOMPANIED BY THOMAS MOYER, LEGISLATIVE COUNSEL, CIVIL SERVICE COMMISSION; AND SEYMOUR GETTMAN, CHIEF, PAY AND LEAVE ADMINISTRATION SECTION, PAY POLICY DIVISION, BUREAU OF POLICIES AND STANDARDS, CIVIL SERVICE COMMISSION

Mr. RAMSAY. I am accompanied today by Mr. Thomas Moyer, on my left. He is the legislative counsel in the Office of General Counsel in the Civil Service Commission. On my right is Mr. Seymour Gettman who is Chief of the Pay and Leave Administration Section in the Pay Policy Division in the Bureau of Policies and Standards.

We have a very short statement which I would like to present as our opening remarks.

Mr. WHITE. That will be fine.

Mr. RAMSAY. I appreciate the opportunity to present the views of the Civil Service Commission on H.R. 8094, a bill to amend title 5, United States Code, to grant court leave to Federal employees when called as witnesses in certain judicial proceedings. The Commission strongly supports the enactment of this legislation.

You may recall that in 1969 the then General Counsel of the Commission, Anthony L. Mondello, testified before the Manpower and Civil Service Subcommittee in favor of H.R. 10247, the predecessor of Public Law 91-563, which contained the existing provisions on court leave for Federal employees. At that time he recommended that the bill be expanded to cover the situations covered by this bill.

I should like briefly to quote and endorse part of this statement as follows:

While we endorse H.R. 10247, we feel that it stops short of the Government's doing what it reasonably can do to promote the administration of justice. For example, H.R. 10247 would restrict leave to employees called as witnesses on behalf of State and local governments.

If a man steps forward as a witness in the interests of criminal justice but is called by the defense rather than the State, he would not be entitled to leave under the provisions of H.R. 10247. Knowing in advance that he alone would bear the cost of this civic burden might deter an employee from begin eager to step forward in the first place.

It is the very nature of justice that it be impartial. We think it would be inappropriate to make it more advantageous financially for the Government employee to appear as a witness for the State than for the other party to the proceeding.

Moreover, it is not always possible to know in advance that the testimony given by a particular witness will benefit the party who calls him. We think that consideration of what party will benefit from testimony is irrelevant to the Government's higher concerns for the proper administration of justice.

I have only one further comment to make with respect to the wording of H.R. 8094—and it is the point you mentioned, Mr. Chairman.

It would appear, perhaps through inadvertence, that the legislation would not extend administrative leave in the situation where a Federal or District of Columbia employee is a witness, in his capacity as a private citizen, for a private party in a case involving the Federal or District of Columbia government. We believe that the same rationale extends to these cases as to cases involving State and local governments and recommend that the bill be amended to extend administrative leave in these situations. This can be accomplished by inserting

in line 9 of the bill, after "local government" the following: "or the United States or the District of Columbia."

The cost to the Government of this proposed bill, and our revisions, is difficult to estimate; no statistics are available on the amount of annual leave or leave without pay taken by employees to appear in judicial proceedings. It would be reasonable, however, to assume that the cost would not be very great.

While we could expect that more employees would appear in court as witnesses, the proportion of employees absent from work for this purpose now is probably very small. While the cost of the legislation would be low, the resulting benefits, both to Government employees serving as witnesses and to efforts to improve law enforcement and the general administration of justice in the United States, would be significant.

Thank you for asking me to come this morning. I shall be pleased to try and answer any questions you may have about my testimony.

Mr. WHITE. Mr. Ramsay, do you envision any abuse arising from this legislation? Do you expect to have sufficient authority to prevent abuses or administrative court leave prohibitions to be sufficient to curtail any possible abuses?

Mr. RAMSAY. I'll talk first about the administration of this from the agency point of view and then I shall ask Mr. Moyer to address the matter of Commission regulations.

When an employee requests court leave from his employing agency, he will have to present the necessary documentation to his employing agency. And it would seem to me that if any particular employee were abusing this on any kind of recurring basis, it would become quickly apparent to his employing agency and they could take action on their own to correct the situation.

Tom, do you want to comment?

Mr. MOYER. As Mr. Ramsay was saying, we have no reason to believe that court leave would ever be a large segment of leave in the Government based on our experience under the law so far. And we have no reason to suspect that there would be abuse. In fact we noticed in the testimony back in 1969, Mr. Mondello stated at that time there are built-in protections in the legislation in that the person has to be summoned by the court authorities. And we understand the general procedure is for court authorities to look into the reason why a witness is being summoned and what he's expected to testify to. And that should be a brake on any mass use of summonses to summon unnecessary witnesses.

Mr. WHITE. I note that in your testimony you suppose that it would be fair to provide the same privilege to witnesses called for the defense in criminal cases, not those necessarily on behalf of the State or for governments. This has been the thought regarding this bill since its inception, when we introduced the bill. You extend this same idea in civil actions in the event that a witness is called for one of the civil parties. Do you think that might lead to abuses?

Mr. RAMSAY. Of course, as the bill is written, where one of the parties is a State or local government, our policy all along has been that when these witnesses are present there, they're all presenting testimony relating to the matter and it's all in the interest of justice and the ends of justice are served. When they are witnesses for a private party—

Mr. WHITE. I was asking in relation to civil actions where these parties are a State or local government. Do you feel we were correct in not including this area in which both parties are private parties?

Mr. MOYER. I don't think the Commission has considered that case where parties on both sides are private parties and we haven't expressed any view on that.

Mr. WHITE. Do you have any statistics concerning the practice of private industry?

Mr. RAMSAY. A study that was made in a 1963 survey showed that over 60 percent of the industries that were covered in that survey granted court leave to their employees.

Mr. WHITE. I beg your pardon.

Mr. RAMSAY. Over 60 percent of the companies covered in this survey granted court leave to their employees.

Mr. WHITE. Now you mentioned "no statistics are available on the amount of annual leave or leave without pay taken by Government employees to appear in judicial proceedings." Is this because few employees take such leave?

Mr. RAMSAY. No, sir. I think that the amount of such leave that is taken is small. That is the reading on this that we have been given by the various agencies and departments. However, the reason that we don't have the statistics is that, particularly on annual leave, the reason for taking the annual leave is not specifically noted. In other words, an employee would like to be on annual leave Friday and Monday; and if he has the leave available and if the work schedules permit, he can go. He doesn't have to document the reason for the annual leave.

Mr. WHITE. In the event that this were enacted into law, does the Commission have in mind to keep such statistics in order to determine whether this feature is being abused and how much leave is being taken for the purpose of appearing as witnesses?

Mr. RAMSAY. We do not have any plans for doing so at the present time.

Mr. MOYER. No, sir.

Mr. WHITE. You spoke of a 1963 study, could you supply that for the subcommittee?

Mr. RAMSAY. We can make that available.

Mr. WHITE. Thank you very much.

Mr. TAYLOR. I have no questions.

Mr. WHITE. Thank you very much for appearing here today.

Mr. Steve Koczak, who is appearing on behalf of Mr. Clyde Webber, national president, American Federation of Government Employees, is the next witness.

STATEMENT OF STEVE KOCZAK, RESEARCH DIRECTOR, ON BEHALF OF CLYDE M. WEBBER, NATIONAL PRESIDENT, ACCOMPANIED BY BERT KEYS, ASSISTANT RESEARCH DIRECTOR, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Mr. KOCZAK. On behalf of the 675,000 employees of the Federal Government whom the American Federation of Government Employees represents in exclusive recognition units throughout this country and overseas, I wish to express my appreciation to you,

Chairman White, for this opportunity to present our views in behalf of your most excellent bill, H.R. 8094.

This legislation gives Federal employees administrative leave to appear as witnesses on behalf of private parties in connection with any judicial proceeding to which a State or local government is a party.

Our organization members and other Federal employees work and live in every State of the Union and the District of Columbia and, consequently, are involved almost every day in the year in some judicial proceeding which requires them to attend as witnesses.

Existing law permits an employee to appear as a witness on behalf of the Federal Government or the District of Columbia, or in his official capacity, without charge of leave or loss of pay. There is, however, no such provision for an employee appearing as a witness either on behalf of a State or local government or a private party in a State or local judicial proceeding. This omission has caused hardships and countless inequities.

Certainly, the provisions of H.R. 8094 are needed now more than ever. Equal justice under the law demands that Congress follow your leadership, Mr. Chairman, and enact H.R. 8094 into law.

The files of the personnel officers of the Federal departments and agencies are full of leave applications of Federal employees who have been placed under subpoena to appear in court as witnesses in cases of assault and battery, as well as in cases of robbery and murder. Similarly, employees have been required to appear as witnesses to traffic accidents which, as you know, number thousands.

As the members of this subcommittee are aware, there has been an ever-growing participation by Federal employees in the personnel interchange programs between Federal, State and local personnel systems. Recent legislation and recent events indicate that this participation will grow in the future at an even greater rate. Thus, individual Federal employees will find themselves increasingly in situations where they are working with even greater frequency with State and local employees in joint or in cooperative undertakings. This trend has already dramatically increased the number of Federal employee appearances in State and local courts as witnesses.

To see the trend, we should look at what the situation was yesterday, and what the projection for the future is. In 1945, there were only 3.3 million persons employed in State and local governments; 10 years later, their number was 4.7 million. The next 10 years saw this rise to 7.7 million. By 1973, the total number of State and local government employees had jumped to 11.4 million. State and local government work force figures between 1946 and 1976 (estimated) will have grown by 81 percent, while the Federal Government work force will have increased only 19 percent between 1945 and 1976 (estimated). Federal employees rose from 2.9 million in 1945 to 3.1 million in 1969, and declined in 1973 to 2.2 million. If we exclude those Postal Service figures and take into account the jobs performed previously by State and local government, such as the SSI program, and by military uniform personnel, the figures show an actual decline in Federal civilian employment. In 1973 there were 11.4 million total State and local government employees.

With the growing intermingling through assignment, detail, and temporary duty of an expanding percentage of the Federal work force

and of the more than 11 million State and local employees, it is obvious that the need for the appearance of Federal employees as witnesses in State and local court cases will most likely increase.

Chairman White's bill, H.R. 8094, happily serves two eminent purposes. First, it will bring equal emphasis and support to all court systems, State and local as well as Federal. Federal employees are made to feel under present conditions that the State and local court systems are considered by the Federal Government as being less important than the Federal courts.

Second, H.R. 8094 meets the criteria of being in the interest of good government at all levels and therefore contributes to expanding the role of Federal employees in developing their civic duties and responsibilities. This service of duty to the law can then be applied by Federal management to its own goals in serving the missions assigned under the Constitution and the statutes to Federal agencies.

In closing, I wish to thank again the distinguished chairman of this subcommittee both for introducing this sorely needed bill, H.R. 8094, and for affording our organization the opportunity today to endorse it and to urge its speedy passage.

Mr. WHITE. Well, Mr. Koczak, you've heard my preliminary statement that we would include witnesses appearing on behalf of the U.S. Government and the District of Columbia. Do you endorse that amendment?

Mr. KOCZAK. Yes, sir.

Mr. WHITE. Do you have any objection that this bill doesn't cover private parties; that is, suits involving private parties and not Federal Government or any other government?

Mr. KOCZAK. We didn't address that question. I think that from our point of view we might have preferred that the subject be discussed in these hearings because of the problems involved for example, the problems of some private parties being extremely litigious. And even the courts are concerned with suits which really have no merit.

So bearing in mind that the Federal Government as an employer should not pay the cost of nuisance suits, we do see it as a legitimate argument against their inclusion. On the other hand, if people are called as witnesses to private suits, often involving serious issues, especially in accidents, it's important that they appear. Otherwise, justice cannot be carried out in the case of malpractice suits, traffic accidents, and others.

And it does raise a question of how can one distinguish between nuisance and meritorious suits.

Really, if you're going to look at justice as the subject, does it really make any difference whether the justice involves the U.S. Government or does it involve a private person under our system?

This is a system in which great primacy is placed upon the rights of individual citizens. The Federal Government may not intrude in those rights.

If you start out from that premise, yet make a distinction in procedures here, what you are saying is the following: If the Government is involved in the suit, simply because it has an institutional self-interest, it will deal with its own employees one way. On the other hand, if General Motors, which is a private party, is involved, we're going to say, "You don't have the same status and the same

rights. We're not going to allow an employee of the Federal Government to participate." This is a discriminatory concept.

Whether that consideration of unequal, discriminatory treatment is so important as to outweigh the other one that you've mentioned earlier—who should bear the cost of suits; and whether there should be some formula or requirement that these costs of salaries are shared—I don't know, Chairman White, that I can say yes or no, because I think here we'd first need to have an estimate of the costs involved. And as Mr. Ramsay said, they don't even have statistics on the amount of leave taken at all. And I think that, beyond abstractly stating philosophical considerations, which, I've already done—

Mr. WHITE. I would like to go further into a particular recommendation. On page 2 of Mr. Webber's prepared testimony, which you have presented for him, it states:

The files of the personnel officers of the Federal departments and agencies are full of leave applications of Federal employees who have been placed under subpoena to appear in court as witnesses in cases of assault and battery, as well as in cases of robbery and murder.

Does the union have any statistics whatever concerning the area of subpoenas for witnesses or those employees who have been called as witnesses?

Mr. KOCZAK. Chairman White, I think here we relied on what people tell us at our conventions and other places. And I think, on reflecting on that sentence, we should have said that, "it is said to us." We don't have any data. And I would like to amend that statement. I think it is not quite as precise as it would appear. We don't have any data.

Mr. WHITE. We are in the same situation.

Have you found that your membership have importuned you or your office to redress this problem as far as being called as witnesses and losing leave time, et cetera?

Mr. KOCZAK. Yes, sir, we do find that. Of course, it's selective. Some people never have to go to court even to serve on juries, and they're fortunate in not being involved in litigation. Other people, if they go to court, don't want anyone to know it. We have situations where under no condition would they even invoke the conditions of this bill. It may arise that they are involved as a witness, sometimes as a material witness. They testify, especially in criminal cases, where they themselves are so closely involved, or members of the family, that I think they would prefer not to call attention to it. Other times it would depend on the nature of the case where they would be called as witnesses in an embarrassing situation.

The importuning is selective. Some people don't need this bill simply because they will not be confronted with the situation. Others, as you mentioned, may often be called, frequently by reason of their duties or the locality where they reside or where their office is located.

Mr. WHITE. Thank you very much, sir.

Mr. Taylor?

Mr. TAYLOR. I can certainly understand the validity of this legislation and the need for it. There's one thing that bothers me—the possibility of passing legislation out before the Congress, which is known as Consumer Protection Agency which is an agency which will involve itself in bringing suit against Government agencies from time to time on behalf of the consumers. My only concern would be that perhaps

there would be such an increase in litigation if pieces of legislation should be passed by the Congress that Federal employees might be summoned in greater number than we have seen in the past should this proposed legislation become law.

But, Mr. Chairman, I certainly have no objection to it and I think the Commission's testimony and the testimony of the Government Employees' representative is convincing. Thank you.

Mr. WHITE. Do you have any questions, Counsel?

Mr. McCLUSKEY. No, sir.

Mr. WHITE. Mr. Koczak and Mr. Keys, we appreciate your appearing before us today.

There being no further business, the hearing is adjourned.

[Whereupon, the hearing was adjourned at 9:30 a.m. to reconvene at 9 a.m., Thursday, September 18.]

COURT LEAVE

THURSDAY, SEPTEMBER 18, 1975

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON RETIREMENT AND EMPLOYEE BENEFITS,
Washington, D.C.

The subcommittee met at 9 a.m., Rayburn House Office Building, room 2216, Hon. Herbert E. Harris, II (acting chairman) presiding.

Mr. HARRIS. The subcommittee will come to order.

This subcommittee has reconvened today to continue hearings on H.R. 8094, a bill introduced by Mr. White, chairman of this subcommittee.

This bill, H.R. 8094, would amend the present law set forth in section 6322(a)(2) of title 5, United States Code, to entitle a Federal employee to leave, without loss of, or reduction in, pay or leave to which he is otherwise entitled, during a period of absence with respect to which he is summoned, in connection with any judicial proceeding to which a State or local government is a party.

Under present law, a Federal employee can only enjoy this privilege when summoned, in connection with a judicial proceeding, as a witness on behalf of a party other than the United States, the District of Columbia, or a private party.

The passage of this bill would not only alleviate an inequity in our present leave system, but would better facilitate our system of justice.

As noted in the opening statement at the commencement of these hearings last week, this bill has been redrafted to cover Federal employees who are summoned to appear on behalf of private parties in proceedings to which the United States and the District of Columbia are parties.

Mr. George Tilton, associate general counsel, National Federation of Federal Employees, will be our first witness today and I believe he will be our only witness.

I'd like to recognize Mr. George Tilton.

STATEMENT OF GEORGE TILTON, ASSOCIATE GENERAL COUNSEL, ON BEHALF OF NATHAN T. WOLKOMIR, PRESIDENT, NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Mr. TILTON. Thank you, Mr. Chairman.

We have a statement by Dr. Wolkomir, who is unable to attend.

Mr. HARRIS. You may present the entire statement.

Mr. TILTON. Mr. Chairman, the National Federation of Federal Employees wishes to thank the committee for the opportunity to present its views on H.R. 8094. We at the NFFE believe the bill is of utmost importance and deserves serious attention.

The NFFE supports the legislation under consideration today. You may recall that, in 1969, the NFFE testified on a similar bill, H.R. 10247. At that time, we stated that it was "manifestly unfair" that employees were not permitted administrative leave time when called for service as a witness on behalf of a State or local government in a judicial proceeding. We believe that it is equally unfair for both Federal employees, and private parties to whom they may be of assistance, to not allow court leave to testify on the behalf of any party when a State or local government is involved.

We believe this bill will help insure the fairness of judicial proceedings. No longer will State and local governments have easy access to Federal employees as witnesses who, for reasons of time and money, cannot afford to testify on the behalf of private parties, as they would have to use their annual leave.

We also support the recommendation of the Civil Service Commission that the bill be amended to allow for court leave when a Federal employee is a witness for a private party in a case involving the Federal or District of Columbia Government. We see no logical reason why there should, in this case, be any differentiation made between these governments.

We also recommend that the committee investigate the possibility of removing any restrictions on granting administrative leave to Federal employees in any suit when the Federal employee is subpoenaed. This bill would grant administrative leave to a Federal employee so he may assist a private party who is suing a State or local government. The Civil Service Commission recommends that this be extended to suing the Federal and the District of Columbia Governments. The NFFE feels that if it is important to assist private parties in the judicial process, it is appropriate to assist in the witness availability in any other litigation. The Federal Government has a stake in judicial proceedings throughout the Nation. It should be its aim to see that trials are carried out as equitably as possible. If one of its employees can help, then he or she should be there. If the Federal Government granted such leave, it would encourage State and local governments and private companies to follow suit.

SUMMARY

Mr. Chairman, I was pleased to hear that the bill had been drafted to include Federal employees. That would have been our main recommendation.

I will not burden the record with a lot of comments on this bill. We testified on it in 1969 as did a number of other organizations, and the Commission, I believe.

In 1969 I believe there was near unanimity that this was a good bill and should be passed. In 1969 it didn't make it somehow.

And it appears that this year there is near unanimity as to the desirability of the bill. And I would, therefore, just conclude my remarks by saying we think it's a good bill and we hope that the subcommittee will act favorably on it and that this time around we will get the legislation.

Mr. HARRIS. Thank you.

You suggested that the subcommittee remove all restrictions in granting administrative leave to Federal employees when the Federal

employee is subpoenaed. The law which currently permits court leave in certain instances permits such leave when an employee is summoned in connection with a judicial proceeding by a court or authority responsible for the conduct of a proceeding.

Do you think it is in the Government's interest to limit court leave to subpoena or do you think a broader standard is needed?

Mr. TILTON. Well, frankly, the broader standard would be better. The purpose of the bill, it appears to me, is to further the interests of justice. If we limit it to the person that's subpoenaed—granted you can always get a subpoena if you need one in a court proceeding—but it seems that the more responsible way would be just simply say that in any proceedings if a Federal employee is required to appear as a witness in any proceeding that he be granted administrative leave.

This will not open it up a lot. In fact I doubt that it will significantly expand it, but would make it easier and less burdensome on the employee as well as on the party, I think.

Mr. HARRIS. I think I know what it means for someone to be subpoenaed in court. What does "summoned" mean? What does it mean to you?

Mr. TILTON. Well, in my practice before the courts, I'm not certain there's any real difference frankly. A subpoena is a document issued—well, when in a court, the clerk of the court will issue a subpoena. I believe the difference would be a judicial summons which will be issued by the court itself.

But in point of fact they both have the same effect: requiring the party to appear at the proceeding.

Mr. HARRIS. Yes. I presume if we use the term "summons" we would require some sort of proof that the court has, in fact, expressed its interest in having the person appear in court?

Mr. TILTON. Yes; I believe that would be correct.

Mr. HARRIS. Has the National Federation of Federal Employees collected any data on the number of individuals who are adversely affected by the current legislation on court leave?

Mr. TILTON. No; frankly the number of cases we have come across are quite few. Maybe the reason the number of cases are few is because people simply don't come forward. I can remember only one case in the last 3 years where I think there was any real problem with this. And the facts of that case are, I believe, it was based on a misinterpretation of the present regulations. This new provision would not have changed it in any way.

Mr. HARRIS. You indicated in your testimony that if the Federal Government granted leave in this manner that it would encourage the private sector to follow suit.

Mr. TILTON. We would hope it would, sir.

Mr. HARRIS. Do you have any information with respect to what is the prevailing practice in the private sector now?

Mr. TILTON. My understanding is that this is a kind of mixed practice; that in some instances the employee is granted leave with pay and in other instances he must use his own leave. That is my understanding of the way it works in the private sector; that there is no prevailing practice as such.

Mr. HARRIS. Thank you very much.

The gentlewoman from Maryland.

Mrs. SPELLMAN. It is my own feeling, frankly, that the Federal employee is lagging behind in this. The local governments are way ahead in recognizing that leave should be granted in this. I see that you are supporting this legislation.

Mr. TILTON. Well, Mrs. Spellman, as mentioned before, we think it is a good bill. There appears to be near unanimity. We just hope that this time around the bill would be passed. There appears to be no major objection to it.

Mrs. SPELLMAN. If we expect people to serve as citizens of the United States then we ought to recognize that it is an important function.

Mr. TILTON. We're in complete agreement. The Federal Government ought to encourage participation in judicial proceedings.

Mrs. SPELLMAN. Thank you very much.

Mr. HARRIS. Do you think it's a good idea to have an amendment to get the courts more effective with respect to the use of their witnesses?

Mr. TILTON. No; Mr. Chairman.

Mr. HARRIS. I have no further questions. We thank you very much for appearing and for your testimony.

I'd like to announce, on behalf of the chairman, that we have scheduled a markup for this on September 29, at 2 p.m. in the Speaker's dining room.

Since there is no further business coming before this subcommittee, it will be adjourned.

[Whereupon, the hearing was adjourned at 9:10 a.m., subject to the call of the Chair.]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SEP 10 1975

Honorable David N. Henderson
Chairman, Committee on Post Office
and Civil Service
House of Representatives
Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

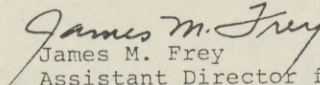
This is in reply to the Committee's request for the views of this Office on H.R. 8094, "To amend title 5, United States Code, to grant court leave to Federal employees when called as witnesses in certain judicial proceedings."

The purpose of H.R. 8094 is to grant court leave for witness service on behalf of private parties in litigation in which one of the parties is a State or local government.

In its report, the Civil Service Commission suggests that the bill be expanded to grant court leave for appearances on behalf of private parties where the Federal or District of Columbia governments are parties to the action.

We concur in the views expressed by the Civil Service Commission and, accordingly, recommend enactment of H.R. 8094, amended as suggested by the Commission.

Sincerely,


James M. Frey
Assistant Director for
Legislative Reference

UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

September 10, 1975

Honorable David N. Henderson
Chairman
Committee on Post Office
and Civil Service
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is in further response to your request for the Commission's views on H.R. 8094, a bill to entitle employees who serve as witnesses on behalf of any party (other than the United States or the District of Columbia) in connection with any judicial proceeding to which a State or local government is a party, to court leave.

The Commission supports enactment of the proposed legislation. In testifying for the Civil Service Commission on H.R. 10247, which was superseded by H.R. 12979 (PL 91-563), 91st Congress, Mr. Anthony L. Mondello, then General Counsel, stated as follows:

"While we endorse H.R. 10247, we feel that it stops short of the Government's doing what it reasonably can do to promote the administration of justice. For example, H.R. 10247 would restrict leave to employees called as witnesses on behalf of State and local governments. If a man steps forward as a witness in the interests of criminal justice but is called by the defense rather than the State, he would not be entitled to leave under the provisions of H.R. 10247. Knowing in advance that he alone would bear the cost of this civic burden might deter an employee from being eager to step forward in the first place.

"It is the very nature of justice that it be impartial. We think it would be inappropriate to make it more advantageous financially for the Government employee to appear as a witness for the State than for the other party to the proceeding. Moreover, it is not always possible to know in

advance that the testimony given by a particular witness will benefit the party who calls him. We think that considerations of what party will benefit from testimony is irrelevant to the Government's higher concerns for the proper administration of justice."

H.R. 8094 will provide the impartiality sought in the prior testimony. This proposed legislation will expand present court leave provisions by eliminating the inequities between employees who are eligible for court leave when they appear as witnesses on behalf of a State or local government and those employees who are required to take annual leave or leave without pay when they appear as witnesses on behalf of a private party in a judicial proceeding to which a State or local government is a party. Although the latter group of employees are allowed to keep court fees, the fees from State and local courts are such that they do not compensate for the loss of leave or pay.

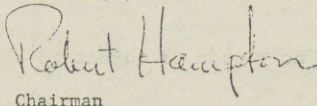
The Commission notes that the bill, perhaps through oversight, does not cover Federal employees and District of Columbia employees when serving as witnesses on behalf of private parties in cases involving the United States Government or the government of the District of Columbia. We believe that these situations should also be covered and recommend that the bill be amended by inserting in line 9, after "local government" the following: ", the United States, or the District of Columbia."

Statistics are not available for the purpose of estimating costs, but it appears reasonable to assume that the number of employees who are called as witnesses for private parties in judicial proceedings involving a State or local government or the Federal or District of Columbia government as a party, is negligible, and the additional costs incurred for court leave will be small. Offsetting benefits are foreseen in increased employee morale, and in the improvement of law enforcement and administration of justice by removal of some of the barriers to obtaining needed witnesses in judicial proceedings.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,



Chairman

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-143939

September 19, 1975

The Honorable David N. Henderson, Chairman
Committee on Post Office and Civil Service
House of Representatives

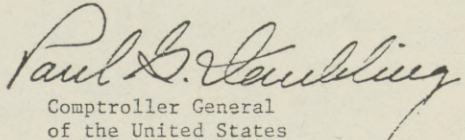
Dear Mr. Chairman:

We refer to your letter of August 7, 1975, requesting our views and comments on H.R. 8094, which, if enacted, would grant court leave to Federal employees when called as witnesses on behalf of any party other than the United States or the District of Columbia in connection with any judicial proceeding to which a State or local government is a party.

The bill would have the effect of permitting Federal employees, without loss of pay or leave, to serve as witnesses for any party in a court proceeding where one of the parties is a State or local government. Under existing law, Federal employees may not receive court leave when serving as witnesses on behalf of a private party. In certain cases, the current law could serve to place a private party at a relative disadvantage, vis-a-vis, a State or local government, because Federal employee witnesses would not be penalized for appearing on behalf of the State or local government while such witnesses would have to use annual leave to appear on behalf of a private party. The amendment proposed by H.R. 8094 would correct this inequity, and thereby promote justice.

We have no reason to object to the enactment of H.R. 8094.

Sincerely yours,


Comptroller General
of the United States