

MABEL BLANCHE ROCKWELL

APRIL 12, 1926.—Committed to the Committee of the Whole House and ordered to be printed

Mr. WALTERS, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 9089]

The Committee on Claims, to whom was referred the bill (H. R. 9089) for the relief of Mabel Blanche Rockwell, having considered the same, report thereon with a recommendation that it do pass with the following amendment:

In line 7, strike out the figures "\$6,471.80" and insert in lieu thereof "\$2,189.80."

STATEMENT OF FACTS

This bill gives compensation and reimbursement to a woman negligently shot by a United States soldier while on duty as a sentry. The shooting took place in broad daylight on a highway within Fort Rosecrans Reservation, which, under the United States Army regulations, was open to public travel. The only restriction on the use of the road by the public was that visitors should not take kodaks or firearms on the reservation. The sentry was stationed at the entrance to assist in carrying out this order. The word of the visitor that he had no kodak or firearms was always accepted as sufficient. The sentry had no orders to search automobiles and never did so. As a matter of fact, the general practice is, when entering in an automobile, to slow down, pull over near the sentry, and simply say in passing, "I have nothing" or "no kodaks" or words to that effect, whereupon the sentry by a wave of the hand or a nod, passes one through.

Pvt. George E. Sterrett was young, inexperienced, and new on that job. He had given the car no signal to stop, but, on the contrary, had nodded to them, which they took as permission to proceed. After the automobile had gone 50 or 75 yards, the sentry started

calling "Halt," which was not heard by the occupants, either on account of the conversation going on among themselves, or probably on account of the noise of the car, shifting gears, etc.

The sentry then drew his pistol, aimed it down the hard paved highway in direct line with the automobile and about half way to it at a spot where, when discharged, the bullet was bound to ricochet and strike the automobile.

There was no place else where the bullet—the pistol aimed as it was—could possibly go than where it did go, and that was through the back of the automobile, through the back of claimant, through her right lung, and fracturing one of her ribs, from which wound, over a year old, she has not yet recovered, it still continuing to discharge pus.

The sentry was negligent in this: First, he need not have shot at all. The visitors were on the reservation on a road that led nowhere, except to the end of Point Loma and directly back to where the sentry was. It was physically impossible for them to escape him; second, if the sentry thought the situation so critical as to require him to discharge his pistol he should have fired it in the air or into the unoccupied, uncultivated sagebrush on either side of the road, and not directly behind and directly in line with the automobile in which he knew there were women and children.

The War Department admits this. The report says:

It would appear that the sentry was at fault, due to his inexperience with firearms and his ignorance of the angle of ricochet to be expected.

The fact that the soldier was tried by court-martial and found not guilty has nothing whatever to do with the issue here. The charge of which he was found not guilty was that of shooting Mrs. Rockwell with intent to do her bodily harm. The fact that he was negligent in shooting where and when and under the circumstances that he did has never been questioned by any of the military authorities.

Your committee believes that claimant should be compensated for medical expenses and loss of services amounting to \$2,189.80. and so recommends.

WAR DEPARTMENT,
Washington, March 10, 1926.

HON. CHARLES L. UNDERHILL,
Chairman Committee on Claims, House of Representatives.

MY DEAR MR. UNDERHILL: I am in receipt of your letter of February 9, 1926, inclosing a copy of bill (H. R. 9089) for the relief of Mabel Blanche Rockwell in the sum of \$6,471.80 as compensation for injuries sustained through having been wounded by a soldier at Fort Rosecrans on January 4, 1925.

The undisputed facts of the case appear to be that there is a public paved road leading from the city of San Diego to the entrance of the Government reservation at Fort Rosecrans. From the entrance of the reservation the road proceeds to Point Loma. On Sunday, January 4, 1925, Mr. and Mrs. S. G. Cook were driving along this road with Mrs. Charles M. Rockwell and Mrs. A. G. Denton as passengers in their automobile. There is a signal prominently posted at the gate of the reservation, reading "Stop, stop, stop—Read, read, read." Said sign proceeded to give instructions with reference to entering the reservation. Pvt. George E. Starratt, Battery D, Third Coast Artillery, was posted as sentinel at the gate. His instructions, as testified to at his trial by court-martial by Lieut. Robert H. Krueger, Third Coast Artillery, were as follows:

"Fifth interrogatory. What orders were in effect concerning the duty the accused was performing on January 5, 1925?

"Answer. General Orders, No. 4, April 18, 1924, these headquarters, covered the special orders for guard and watchmen at this station. The following extracted therefrom pertains to duty of guard at upper gate:

"(1) To stop all vehicles entering the Government reservation. To inquire for kodaks, cameras, firearms, and other contraband; if any are found to request that articles be turned over to the guard for safekeeping until party have concluded their visit, when articles will be returned."

"Sixth interrogatory. What further instructions, if any, had you given the accused relative to the carrying out of his orders while on that particular duty?"

"Answer. To always be courteous and polite to the people coming in the gate. He asked me what he should do if anyone failed to halt when asked to do so. I told him to yell "Halt" at them three times. Then, if they would not halt, if he deemed wise, he would draw his pistol and fire either into the air or the ground, but not to shoot at anyone."

"First cross-interrogatory. Were there instructions issued that the sentry should discharge his piece in case cars did not stop at that gate?"

"Answer. Yes."

"Second cross-interrogatory. Was this the only method that could have been used by the accused to stop the car?"

"Answer. Yes."

At the time the car which was being driven by Mrs. Cook approached the gate, Private Starratt was engaged in returning a kodak to Mrs. Angie Bussey, who was in her automobile, stopped at the gate as it was leaving the reservation. The automobile driven by Mrs. Cook slowed down, but did not stop on passing through the gate and picked up speed shortly thereafter. The sentry called "Halt" in a loud voice three times and then fired into the ground for the purpose of endeavoring to halt the car, which at that time was probably about 75 yards from the gate. The bullet struck at a point on the paved road about one-half way between the gate and the automobile, penetrated the rear of the automobile and struck Mrs. Rockwell in the back, inflicting a severe wound. The sentry and Mr. and Mrs. Bussey, the occupants of the automobile that was halted at the gate, are agreed that the sentry gave no signal to the automobile driven by Mrs. Cook to proceed. Mr. Cook states that the sentry nodded to him and that he took it for granted that they could go on. Mrs. Cook says that the sentry made no motion to her to stop, or any sign of any kind, so she just went on. The question as to whether or not there was any fault on the part of Mr. and Mrs. Cook is not considered, since in no case could any possible negligence on their part be imputed to Mrs. Rockwell. It would appear that the sentry was at fault due to his inexperience with firearms and his ignorance of the angle of ricochet to be expected.

It is a well-settled principle of law that the United States is not legally liable for the torts of its servants or agents. (*Bigby v. United States*, 188 U. S. 400.)

The relief proposed in bill H. R. 9089, therefore, presents no question of legal liability, and any relief granted will be an act of grace only and, as such, is within the exclusive jurisdiction of Congress.

Private Starratt was tried by court-martial under the ninety-third article of war and was found not guilty. Copy of the general court-martial order is inclosed.

Copies of statements made on the investigation of the case by Mrs. Angie Bussey, Mr. S. G. Cook, Dr. M. C. Harding, Mrs. Dorothy Cook, Mr. Allen Bussey, and Pvt. George E. Starratt are likewise inclosed. These statements are all substantially the same as those made by the same witnesses on the trial of Private Starratt.

Sincerely yours,

DWIGHT F. DAVIS, *Secretary of War.*

STATE OF CALIFORNIA,
County of San Diego, ss:

Dr. Vernon G. Clark, of 1831 Fourth Street, San Diego, Calif., deposes and says:

With regard to the present physical condition of Mrs. Mabel Blanche Rockwell, who was shot through the right lung by a sentry at Point Loma on January 4, last year, the bullet wound in her back is still open and draining. She is still under my care. On February 11 last I probed the open wound hoping to find the cause of the trouble, but without success.

As the wound has now been open for more than a year, it is my opinion that delay in healing is caused by a splinter of bone from the shattered rib which was smashed by the heavy, flat-nosed .45-caliber bullet on its way through the right lung.

Since she was shot Mrs. Rockwell has lost more than 30 pounds in weight. She still suffers pain at times and does not sleep well. Her right shoulder has sagged and she has not recovered full use of her right hand and arm.

I believe a further operation will be necessary before the open wound in her back will heal.

VERNON G. CLARK.

Subscribed and sworn to before me this 9th day of March, 1926.

[SEAL.]

E. C. BANGS,

*Notary Public in and for the County
of San Diego, State of California.*

