77TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 1860

CLEAVER KELLEY

MARCH 5, 1942.—Committed to the Committee of the Whole House and ordered to be printed

Mr. COFFEE of Washington, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 4153]

The Committee on Claims, to whom was referred the bill (H. R. 4153) for the relief of Cleaver Kelley, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

The amendments are as follows:

Page 1, line 5, strike out "and in full settlement against the Government".

Page 1, line 7, after the sum of "$5,000", insert "in full settlement of all claims against the United States".

Page 1, line 9, after the date "1940", insert "in Louisville, Kentucky."

The purpose of the proposed legislation is to pay the sum of $5,000 to Cleaver Kelley, of Louisville, Ky, in full settlement of all claims against the United States for the death of her husband, Wilbur H. Kelley, who died of injuries sustained in a collision with an Army truck near Fort Knox, on November 20, 1940.

STATEMENT OF FACTS

It appears that on November 20, 1940, at about 12:05 p. m., a United States Army truck on official business was proceeding southward on Taylor Boulevard, Louisville, Ky., at a speed of about 10 miles per hour and approaching the intersection of Taylor and Berry Boulevards. The weather was fair and the street was paved with concrete and was dry. At about the same time, Wilbur H. Kelley was riding a bicycle in the same direction on the right-hand side of the roadway or on the sidewalk of Taylor Boulevard, and, as it appears, beside the truck and somewhat to the rear of the cab of the same. Upon reaching the above-mentioned intersection, the Government driver made a right turn onto Berry Boulevard and Mr. Kelley,

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apparently believing that the truck was going to continue ahead on Taylor Boulevard, ran into the side of it when it turned across his path, and was thrown to the pavement, the right rear dual wheels of the truck passing over his body. He was taken to City Hospital, Louisville, where he died at about 6:25 p. m., of the same day.

From the evidence, the Army truck driver was a young man 19 years of age, who had only driven motor vehicles a total of 2 months prior to the accident.

This was a four-lane highway, and he noticed on his right a man riding a bicycle; as he approached the intersection, he overtook Mr. Kelley, who was riding close to the right-hand curb, and passed him. Then when he got to the intersection, he received a signal to make a right turn and he, in turn, signaled that he was making the turn, from the left side of the truck, and proceeded to do so, from the left traffic lane. After he had passed the bicyclist, he, of course, could not see him. In his own testimony the Government driver stated that he was following the sergeant who was in a small pick-up car ahead of him. The sergeant had instructed him before leaving Fort Knox, where the troop originated, that he was to follow him, and he would indicate the turns by hand signals. Additional testimony of the young man was to the effect that he had kept his eye on the sergeant and admitted that he was out a ways in the street and, while he gave the signal, he had to make a wide turn at the intersection. The Government driver was proceeding in the center lane and the bicyclist had reason to assume that he would have been in the right lane had he intended to turn to the right. Under the traffic laws of the city of Louisville, if you want to make a right turn, and you are in the center lane, you must edge over within 100 yards before you get to the turn. The Government driver admitted that he heard a bump and it seemed to jar the truck, and then he began to think about the man on the bicycle. He admitted that it was the first time he had thought about him. He said he gave a signal for the right-hand turn, but, of course, being on the left side of the cab, the bicyclist could not see it, and the result was that he ran into the side of the truck. The testimony is that the truck was only going 12 or 15 miles an hour. Probably that was true, but at the intersection, the bicyclist had a right to assume that he was going straight ahead, and when he ran into the side of the truck, he was caught and dragged under the wheels and the heavy wheels crushed and killed him.

There are statements in the case of the other witness besides the driver of the Government truck to the effect that if the driver of the Government truck had wanted to turn to the right he should have been in the right-hand lane. They say that the driver of the Government truck gave the bicyclist no reason to believe that he was going to turn to the right. However, the Secretary of War concludes his report on this case as follows:

> Under the circumstances, it would appear that the concurring, if not the proximate, cause of the accident was negligence on the part of Mr. Kelley, in that he was inattentive to traffic and continued into the intersection without assuring himself that such a course could be safely pursued.

Now, there is question as to whether or not there was contributory negligence on the part of Mr. Kelley of such a character as to estop him from making any claim against the Government. Now, if the bicyclist had been behind the truck, it would have been his duty to

take all reasonable precautions, but he was not behind this truck, he was right over close to the curb.

The Secretary of War, in his statement, which is not supported by the facts, but is absolutely and categorically contradicted by the testimony of witnesses, has said that the truck had to get out in the middle lane because cars were parked right up to the curb, and so the truck had to be out in the street. Now the evidence was that for 100 feet from the intersection, all curb space was taken up by a filling station and no cars were parked there because the space is left open for cars entering and leaving the filling station, so that there were no cars parked there, and the Secretary's statement is not borne out by the facts. There are statements in the file to the effect that they considered the accident was due to the negligence of the Government driver on the ground that he had failed to drive with due care and caution, having admitted that he had seen the bicyclist, and being in the middle lane the bicyclist had every reason to assume that the Government truck would go straight along and cross the intersection. Mr. Kelley had every reason to assume that, the truck driver not having gone into the right hand lane as was required by the traffic code of the city of Louisville when making a right-hand turn.

Therefore, your committee feel that there was negligence on the part of the Government driver, and recommend that Mrs. Kelley be compensated in the amount of $5,000 for the death of her husband. Appended hereto is the report of the War Department, together with other pertinent evidence.

WAR DEPARTMENT,
Washington, June 24, 1941.

Hon. DAN R. MCGEHEE,
Chairman, Committee on Claims,
House of Representatives, Washington, D. C.

DEAR MR. MCGEHEE: The War Department is opposed to the enactment of H. R. 4153, Seventy-seventh Congress, which would pay to Cleaver Kelley, of Louisville, Ky., the sum of $5,000 on account of the death of her husband, Wilbur H. Kelley, who died of injuries sustained in a collision with an Army truck on November 20, 1940.

On November 20, 1940, at about 12:05 p. m., a United States Army truck, on official business, was proceeding southward on Taylor Boulevard, Louisville, Ky., at a speed of about 10 miles per hour and approaching the intersection of Taylor and Berry Boulevards. The weather was fair and the street was paved with concrete and was dry. At about the same time Wilbur H. Kelly, also referred to as Wilbur H. Kelley, of 1128 Camden Street, Louisville, was riding a bicycle in the same direction on the right-hand side of the roadway or on the sidewalk of Taylor Boulevard and, as it appears, beside the truck and somewhat to the rear of the cab of the same. Upon reaching the above-mentioned intersection, the Government driver made a right turn on to Berry Boulevard and Mr. Kelley, apparently believing that the truck was going to continue ahead on Taylor Boulevard, ran into the side of it when it turned across his path, and was thrown to the pavement, the right rear dual wheels of the truck passing over his body. He was taken to City Hospital, Louisville, where he died at about 6:25 p. m. of the same day from cerebral concussion and cerebral hemorrhage.

The Government driver testified he was driving "a little ways toward the center of Taylor Boulevard," when he started to turn, because he was driving a large truck and there were cars parked along the west side of the street (right, for the Government driver), and he did not want to be too close to them when turning. He further testified that before beginning the turn he saw a man riding a bicycle on the sidewalk on the west side of Taylor Boulevard; that he sounded his horn and signaled for a right turn to warn him of his intention to turn; and that after he had reached the corner and made the turn he heard something hit the side of his truck.

The Army truck involved in the accident was preceded by another Army truck, at an unstated distance, and this truck had made the right turn onto Berry Boulevard. The driver of this truck testified that after he had turned the corner he looked into his rear-view mirror and saw the driver of the second truck stop his vehicle and jump out. He then turned around and returned to the scene of the accident, where he found Mr. Kelly lying in the street.

The only eyewitness to the accident was the driver of a milk truck, who testified that as the second Army truck started to turn right into Berry Boulevard it collided with a man riding a bicycle south on Taylor Boulevard at the intersection; that he judged the truck was moving at a speed of only about 10 miles per hour; that the right front hub of the truck appeared to strike the man's left leg, throwing him off the bicycle onto the street; and that he was on his back when both sets of dual rear wheels passed over his legs and body.

The Government driver was arrested on November 22, 1940, on a charge of manslaughter, the police report indicating that he had made an "improper turn—wide right turn," and "turned from wrong lane." A coroner's jury, however, at an inquisition taken on December 6, 1940, found that the "said Wilbur H. Kelley came to his death due to running his bicycle into side of truck, said accident being unavoidable."

From information in the files of the Department it appears that Mr. Kelley was 41 years of age at the time of his death. When information can be secured as to surviving dependents, it will be furnished to the committee.

No claim has been filed with the War Department arising out of this accident.

After a careful consideration of the evidence adduced in this case, it is the view of the War Department that while the Army vehicle may have unnecessarily negotiated the right turn from a wrong lane, it is apparent that the claimant propelled his bicycle into the intersection without assuring himself that the highway was free of endangering traffic. Under the circumstances it would appear that the concurring, if not the proximate, cause of the accident was negligence on the part of Mr. Kelley in that he was inattentive to traffic and continued into the intersection without assuring himself that such a course could be safely pursued.

While, therefore, the Department deeply regrets this tragic accident, it is constrained to recommend that the proposed legislation be not approved.

A copy of the report of the board of officers that investigated this accident is attached hereto for the information of the committee.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

WAR DEPARTMENT,
Washington, July 10, 1941.

Hon. DAN R. MCGEHEE,
Chairman, Committee on Claims,
House of Representatives, Washington, D. C.

DEAR MR. MCGEHEE: Reference is made to letter of this Department, dated June 24, 1941, reporting on H. R. 4153, Seventy-seventh Congress, a bill for the relief of Cleaver Kelley.

Supplemental details have now been received with respect to the ages of Wilbur H. Kelley and his dependents and the extent of their dependency, and are transmitted below for the information of the committee:

Wilbur H. Kelley was 41 years of age at the time of his death. His surviving dependents are his widow, Cleaver H. Kelley, age 35, and daughter, Dorothy H. Kelley, age 12. Mrs. Kelley has been employed at the State board of health since August 13, 1940, at a salary of $50 per month. She advises that she has been unable to pay the funeral expenses for Mr. Kelley or her living expenses, since her salary is not sufficient. She reports that she has no other income.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

OFFICIAL TRAFFIC CODE OF LOUISVILLE, KY., ORDINANCE NO. 94. SERIES 1935

ARTICLE V. OPERATION OF VEHICLES (CONTROLLING RIGHT HAND TURNS OF MOTOR VEHICLES)

SECTION F. Turning: It shall be unlawful for the operator of any vehicle to make turns on any street except in a manner and in accordance with the provisions hereinafter set forth in this subsection.

SEC. F–1. Right-hand turns: Right-hand turns may be made at all times at any intersection outside of the central traffic district, regardless of "Stop" and "Go" signals, but shall not be permitted within the central traffic district except from the north side of Main Street, also from the east side of First Street, and from the west side of Sixth Street between Main and Broadway: *Provided, however,* That before turning into a boulevard or at an intersection controlled by a "Stop" and "Go" signal, against the "Stop" signal, the vehicle shall be brought to a complete stop before turning, and it shall be in the lane nearest the right-hand curb as above provided, subject to the right-of-way of pedestrians as provided under section V, paragraph C.

LOUISVILLE, KY., *November 28, 1940.*

I, R. E. Creager, notary public in and for the county of Jefferson, State of Kentucky, do hereby certify that the above is a true copy of Ordinance No. 94, series of 1935, for the city of Louisville, State of Kentucky.

R. E. CREAGER,
Notary Public, Jefferson County, Ky.

My commission expires October 4, 1944.
Certified a true copy:

W. C. FARMER,
First Lieutenant, 19th Ordnance Battalion, Adjutant.

AFFIDAVIT OF THOMAS J. WOOD

STATE OF KENTUCKY,
County of Jefferson, ss:

Affiant, Thomas J. Wood, states that he is a resident of Louisville, Jefferson County, Ky., and is over 21 years of age. Affiant states further that he attended the inquest held by the coroner's jury in Louisville, Ky., on the 6th day of December 1940, upon the death of Wilbur H. Kelley, who was killed when the bicycle on which he was riding was struck by a United States Army truck on November 20, 1940, at Berry and Taylor Boulevards in Louisville. Affiant states that he discussed the circumstances surrounding the accident with Moody Collins, the soldier who was operating the truck which struck Mr. Kelley; that the said Collins advised affiant that he was only 19 years of age; that he had had very little experience in operating trucks and had only been driving a truck about 2 months prior to the time the accident occurred; that he had never driven a truck in the city of Louisville before and was unfamiliar with the streets and surroundings of Louisville.

THOMAS J. WOOD.

Subscribed and sworn to before me by Thomas J. Wood this March 1, 1941.

My commission expires March 2, 1942.

[SEAL] LILLY R. WARREN, *Notary Public.*

STATEMENT OF FLOYD L. SHORT

Age 34, and address 3706 Powell Avenue, Louisville, Ky. I am a furnace installer and work for myself.

On November 20, 1940, at about 12:10 p. m. I was driving my car east on Berry Boulevard and at Taylor Boulevard I brought my car to a stop, and as I did so I witnessed an accident at that intersection. I saw a United States Army truck going south on Taylor Boulevard and also saw a man I later learned was Mr. Wilbur H. Kelley riding a bicycle also going south on Taylor Boulevard. The truck was in the second lane from the west curb of Taylor Boulevard. When Mr. Kelley was at a point, to my best judgment, of about 10 to 12 feet across Berry Boulevard, or from the north side of Berry Boulevard, the driver of the truck made a turn to the right to go west on Berry Boulevard without giving any signal whatsoever, and the body of the Army truck to the rear of the cab struck Mr. Kelley and knocked him to the street. The wheels on the rear of the truck passed over his body. There are four wheels on each side of the truck at the rear. The driver of the truck did not make the turn from the proper lane and as stated above was in the second lane when it turned.

Mr. Kelley was riding his bicycle in a straight line and was riding about 5 to 6 feet east of the west curb of Taylor Boulevard and was riding about that far from the west curb of Taylor Boulevard if extended out into Berry Boulevard. The

Army truck was making a speed of not more than 10 miles per hour. The Army truck continued ahead about 10 to 12 feet before stopping. I was the first one to Mr. Kelley. It was evident to me that he was very badly hurt. The police came to the scene and took Mr. Kelley to the hospital.

In my opinion Mr. Kelley was in no way negligent for the accident, and I know of nothing he could have done to avoid same. The accident was brought about solely by the careless and negligent driving of the driver of the Army truck.

FLOYD L. SHORT.

Subscribed and sworn to before me by Floyd L. Short this 10th day of January 1941.

VERNON H. KELLEY,
Notary Public, Jefferson County, Ky.

My commission expires October 20, 1942.

STATEMENT OF RALPH STAHL

My name is Ralph Stahl, age 26 years; married and live with my wife and child at 524 Marshall Court, Louisville, Ky.; occupation, licensed chauffeur, and I am employed by the Plainview Dairy Farms as delivery man.

On Wednesday, November 20, 1940, at 12:15 p. m. (noon), I saw a man hit by an Army truck at the intersection of Taylor and Berry Boulevards, Louisville, Ky.

Just prior to seeing this accident I had parked my truck on the west side of Taylor Boulevard, headed west, with its rear end several feet west of the west curb of Taylor Boulevard and its left side some 40 or 50 feet north of the north curb line of the north curb of Berry Boulevard. After parking my truck in this manner, I crossed Taylor Boulevard to a store located on the east side of Taylor Boulevard, practically opposite from where my truck was standing. When I had completed my errand at this store, I crossed Taylor Boulevard to the west side going to my truck, when I noticed two Army trucks going south in Taylor Boulevard. These trucks were at this time a considerable distance north of Berry Boulevard.

I walked across Taylor Boulevard, put something in my truck, got into the driver's seat, but before starting my truck I looked around out in Taylor Boulevard to see if the Army trucks had passed in order to see if traffic was clear so that I could drive from the parking lot where my truck was standing out on Taylor Boulevard. While I was looking out in Taylor Boulevard, in the southeastern direction, looking at the intersection, I saw an Army truck traveling south on Taylor Boulevard and this truck was approximately 36 feet from the northwest corner curb line of the intersection.

Just as I saw this truck, which gave no indication that it was going to make a right turn, I also saw a man riding a bicycle which was going south on Taylor Boulevard and almost reached the center of the intersection. The Army truck suddenly made a right turn and as it did the hub of the right front wheel struck the man on the bicycle, hitting him on his left leg. This knocked him off his bicycle and before the truck stopped one of its right rear dual wheels ran over the man's legs and body. The truck stopped then about a distance of its length. I immediately ran to the scene in order to do what I could for the injured man.

The spot where the injured man was run over by the right rear wheels, was approximately 36 feet from the curb line of the northwest corner of the intersection. I stepped off the distance after the accident.

The truck driver was not making a correct turn at the time of the accident. There were no parked cars or obstructions of any kind along Taylor Boulevard for a long distance north of Berry Boulevard. If the truck driver had driven his truck over on the right or west side of Taylor Boulevard (the proper place for him to have been to make a right turn) the accident would not have happened.

Just prior to the time of the accident I would judge the speed of the truck was about 10 miles per hour. While I did not see the man on the bicycle until just before he was struck, I would judge from the way both truck and bicycle were traveling, that both of them were headed south in Taylor Boulevard and had no intention of making a turn.

There was only one man on the Army truck; this man was the driver; he being on the left side of the truck and the way the truck cab is constructed it would have been difficult for the truck driver to have seen the man on the bicycle. Apparently the man on the bicycle had no idea the truck was going to make a right turn because it not only was too far out in the street but it passed a con-

siderable distance into the intersection before a sudden turn was attempted. This took the rider of the bicycle wholly by surprise.

The injured man when knocked off his bicycle and landed on his back, both sets of dual right rear wheels passed over his legs and body.

I did not know the driver of the Army truck or the man who was riding the bicycle. I gave the police my name as witness.

In summing up the facts of the accident, as I saw it, I would not hesitate to say that the accident was entirely caused by careless driving of the Army truck. The man riding the bicycle was in no way to blame, as there was nothing he could have done to have prevented the accident. I am attaching hereto a rough sketch of the way the accident happened.

I have read the above two-page statement, which is a true version of the accident as I saw it.

RALPH STAHL.

STATE OF KENTUCKY,
County of Jefferson, ss:

Subscribed and sworn to before me, a notary public within and for the State and county aforesaid, by Ralph Stahl this the 21st day of February 1941.

[SEAL] GOLDIE MEDDIS, *Notary Public.*

My commission expires November 19, 1944.

STATEMENT

LOUISVILLE, KY., *April 22, 1941.*

Mrs. Cleaver H. Kelley, to Lee E. Cralle Co., Dr., funeral directors and embalmers.

For Wilbur H. Kelley, deceased:

November 23, 1940:

Casket	$235.00
Concrete box	20.00
Shaving and embalming	30.00
Removing remains from hospital	5.00
Newspaper notices	3.00
Flowers for door	4.00
Flower car	5.00
Hearse	12.00
Two limousines	16.00
Cave Hill Cemetery charges	25.00
Total	355.00
Discount	12.75
Net	342.25

Received payment, December 27, 1940, by check of Mrs. Cleaver H. Kelley.

LEE E. CRALLE CO., INC.
By LEE E. CRALLE, JR., *President.*

STATEMENT OF LEE E. CRALLE CO., INC.

STATE OF KENTUCKY,
County of Jefferson, ss:

This is to certify that Mrs. Cleaver H. Kelley, widow of Wilbur H. Kelley, deceased, contracted and paid for the funeral expenses of Wilbur H. Kelley; net amount was $342.25.

LEE E. CRALLE CO., INC.
By LEE E. CRALLE, JR., *President.*

Subscribed and sworn to before me by Lee E. Cralle, Jr., this 22d day of April 1941.

[SEAL] ARTHUR W. GARRETT, *Notary Public.*

My commission expires December 13, 1941.

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