82D CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPORT No. 616

JAMES J. LIEBERMAN

JUNE 19, 1951.—Committed to the Committee of the Whole House and ordered to be printed

Mr. GOODWIN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1688]

The Committee on the Judiciary, to whom was referred the bill (H. R. 1688) for the relief of James J. Lieberman, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of the proposed legislation is to pay $1,700 to James J. Lieberman, of Detroit, Mich., in full settlement of all claims of said James J. Lieberman against the United States arising out of a collision on June 19, 1948, at Giessen, Germany, between his automobile and an Army vehicle driven by a member of the United States Army.

STATEMENT OF FACTS

On June 19, 1948, at about 9:10 p. m., James J. Lieberman, a warrant officer (j. g.), United States Army, was driving his personally-owned 1947 Chrysler sedan on Lichterstrasse in Giessen, Germany. It was raining and the road, of cobblestone construction, was slippery. Mr. Lieberman's automobile was proceeding in a lawful manner on its right side of the road and at a speed of about 20 miles an hour. An Army reconnaissance car, operated by T5g Moses C. Jackson, and carrying as passengers another soldier and two German girls, approached from the opposite direction at a speed estimated at from 35 to 40 miles an hour. As the two vehicles neared each other the driver of the Army car lost control of his vehicle, which thereupon skidded across the road to its left and crashed head-on into Mr. Lieberman's automobile, shoving it backward about 12 feet. As a result of the accident Mr. Lieberman sustained minor personal injuries and his automobile was extensively damaged. Mr. Lieberman received free medical treatment from the Army for the minor personal injuries

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sustained by him in this accident, which injuries appear to have resulted in no disability.

The Department of the Army, in its report, states:

The evidence in this case clearly establishes that the accident of June 19, 1948, and the resulting damage to Mr. Lieberman's automobile were caused solely by the negligence of the driver of the Army vehicle involved in said accident in operating his vehicle at an excessive speed and in a negligent manner.

This is a meritorious claim, and under the circumstances, and as the proposed award is fair and reasonable, the Department of the Army has no objection to the enactment of this bill.

Therefore, your committee concurs in the recommendation of the Department of the Army and recommends favorable consideration of the bill.

MARCH 12, 1951.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CELLER: The Department of the Army has no objection to the enactment of H. R. 1688, Eighty-second Congress, a bill for the relief of James J. Lieberman.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to James J. Lieberman, Detroit, Michigan, the sum of $1,700. The payment of such sum shall be in full settlement of all claims of the said James J. Lieberman against the United States arising out of a collision on June 19, 1948, at Giessen, Germany, between his automobile and an Army vehicle driven by a member of the United States Army. At the time of the collision, which was caused by the negligence of the driver of the Army vehicle, Mr. Lieberman was driving his automobile in line of duty as a member of the United States Army."

On June 19, 1948, at about 9:10 p. m., James J. Lieberman, a warrant officer (j.g.), United States Army, was driving his personally owned 1947 Chrysler sedan on Lichterstrasse in Giessen, Germany. It was raining and the road, of cobblestone construction, was slippery. Mr. Lieberman's automobile was proceeding in a lawful manner on its right side of the road and at a speed of about 20 miles an hour. An Army reconnaissance car, operated by T5g Moses C. Jackson, and carrying as passengers another soldier and two German girls, approached from the opposite direction at a speed estimated at from 35 to 40 miles an hour. As the two vehicles neared each other the driver of the Army car lost control of his vehicle, which thereupon skidded across the road to its left and crashed head-on into Mr. Lieberman's automobile, shoving it backward about 12 feet. As a result of the accident Mr. Lieberman sustained minor personal injuries and his automobile was extensively damaged. Mr. Lieberman received free medical treatment from the Army for the minor personal injuries sustained by him in this accident, which injuries appear to have resulted in no disability.

The Army reconnaissance car involved in this accident had been dispatched to Pfc Mitchell A. Wallace for official use, and thereafter, on the evening in question, he had improperly permitted Technician, Fifth Grade, Jackson to take the car and drive T5g Albert Tom and two German girls to the Verdun Kaserne Infantry Club. It was during this trip that the accident occurred, and as such trip had not been authorized Technician, Fifth Grade, Jackson was not at the time of the accident acting within the scope of his employment as a soldier.

On July 15, 1948, Mr. Lieberman filed a claim with United States Army Foreign Claims Commission No. 16 in the amount of $2,700 for the damages sustained by him as a result of this accident ($1,700 for the damage to his automobile and expenses incident thereto; and $1,000 for personal injury). The Commission found that Mr. Lieberman's automobile had been damaged in this accident in the amount of $1,296.70 (cost of repairs). In addition to this sum Mr. Lieberman contended that he sustained damages in the amount of $745 ($545, depreciation in value of his automobile due to the accident; $100 for transportation; and $100 for loss of and damage to clothing). The Commission determined that the claim could not be paid under the Foreign Claims Act (55 Stat. 880), as amended (57 Stat. 66), for the reason that Mr. Lieberman was not an inhabitant of the country in which the

accident occurred (Germany), a condition precedent to the approval of a claim under said statute. The Commission further determined that the claim was not payable under the act of July 3, 1943 (57 Stat. 372; 31 U. S. C. 223b), as amended, because the driver of the Army vehicle was not acting within the scope of his employment at the time the accident occurred, a condition precedent to the approval of a claim under that act. It was, however, the opinion of the Commission "that the sole proximate cause of the accident was the negligence of the driver of the United States vehicle in driving in a careless and inattentive manner and at such a high rate of speed that he was unable to retain control of his vehicle," and that "there was no contributory negligence on the part of the claimant."

Thereafter the claim of Mr. Lieberman was transmitted to the Office of the Judge Advocate General of the Army, which considered the same under the provisions of the act of July 3, 1943, supra, but on February 8, 1949, disapproved the claim on the ground that it was not payable under said act inasmuch as the driver of the Army vehicle was not acting within the scope of his employment at the time the accident occurred. The claimant thereupon appealed to the Assistant Secretary of the Army from the action taken in disapproving his claim. On May 6, 1949, the Assistant Secretary of the Army sustained the prior action of disapproval and denied the appeal therefrom on the same ground on which the claim had been disapproved by the Office of the Judge Advocate General.

This claimant has no remedy under the Federal Tort Claims Act (60 Stat. 843; 28 U. S. C. 931), as revised and codified by the act of June 25, 1948 (62 Stat. 933; 28 U. S. C. 1346 (b)), and as amended by the act of April 25, 1949 (Public Law 55, 81st Cong.), for the reason that his claim arose in a foreign country.

The evidence in this case clearly establishes that the accident of June 19, 1948, and the resulting damage to Mr. Lieberman's automobile were caused solely by the negligence of the driver of the Army vehicle involved in said accident in operating his vehicle at an excessive speed and in a negligent manner.

This is a meritorious claim, and under the circumstances, and as the proposed award is fair and reasonable, the Department of the Army has no objection to the enactment of this bill.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

FRANK PACE, Jr.,
Secretary of the Army.

DETROIT 26, MICH., *May 3, 1950.*

Hon. JOHN D. DINGELL,
House of Representatives, Washington, D. C.

DEAR CONGRESSMAN: I am directing this letter to your attention because I have exhausted every other possibility of securing relief for damages I suffered in the summer of 1948, while serving as a counterintelligence officer in Germany.

I am a veteran of the Second World War, having served honorably for 3½ years before my first separation from the service. During this period of enlistment I fulfilled 35 missions in the ETO as a member of a combat crew on a B–17. After completion of this tour of duty I volunteered to serve as a special agent of the Counterintelligence Corps in Germany; and I remained in that capacity until my separation in October of 1945. In 1947 I was asked to return to Germany to serve again in the CIC. Being eager to contribute as much as possible to the purposes of the occupation, I accepted the appointment of warrant officer and went back to Germany, In order to facilitate the performance of the duties to which I was assigned I purchased an auto and brought it with me. Often the Government was unable to furnish a vehicle when needed, and the situation being urgent, I resorted to use of my private auto. It may be added that no expenses for maintenance or fuel for my auto was ever furnished by the Government.

During this second period of enlistment, while serving as a CIC agent, my automobile was wrecked by a soldier in the United States military police forces, who crashed into my car while he was driving a Government vehicle. He was found by a courts-martial proceeding to have been guilty of careless and reckless driving and was accorded proper punishment. The Government received complete reparations for their damaged jeep from the two soldiers held responsible for the accident. However, although it was found that I was not guilty of any contributory negligence, no recovery for my $1,700 loss was granted me. I received a copy of a paper in which part of the results of the courts-martial proceedings against the two soldiers was stated, and in which it was recommended that I

be reimbursed for my loss. This paper was forwarded to the claims office in Wiesbaden, Germany, to be filed with the records of my claim.

In spite of this, I received notice by letter from the JAGD office, dated March 11, 1949, that my claim was disapproved on the ground that the driver was not within the scope of his employment.

On appeal, the decision of the lower administrative office was sustained. After receiving this determination, I sought to enter suit in the Federal district court, but was informed that they could not entertain jurisdiction of the matter and the cases support this conclusion.

Consequently, I am left without a remedy. There is no Federal law permitting suit against the United States where the claim arises in a foreign country. My claim has been denied by an administrative body, which is a branch of the very department responsible for my damages, the United States Army. I have not been given an opportunity to be heard by an impartial tribunal because Congress has made no provision as yet giving Federal courts jurisdiction over these matters.

Furthermore, even though I should want to pursue my claim against the soldiers involved, all possibility is cut off because of their immunity to suit and garnishment given them by the Federal Government.

It is sincerely believed, given the opportunity, I could establish in the minds of an impartial tribunal, that the accident occurred while the driver was in the scope of Government business. However, being cut off by the Federal Government from all possibility of suit, it appears that my only recourse is a direct appeal to you as my Congressman. There has been severe damage suffered, for which no remedy is provided, except through a private bill. Not only the law, but the equities of the case require Congress to correct a situation that lets a wrong stand without offering a proper remedy.

I am certain your investigation of this matter will disclose a severe injustice and that my only means of procedure is through a private bill. Your early attention will be greatly appreciated.

Respectfully yours,

JAMES J. LIEBERMAN.

I. IT IS THE CONTENTION OF THIS CLAIMANT THAT THE DRIVER OF THE VEHICLE WAS ACTING WITHIN THE SCOPE OF HIS EMPLOYMENT AT THE TIME OF THE ACCIDENT WITHIN THE MEANING OF THE TERM AS DEFINED IN PARAGRAPH 4B OF AR 25–25, DATED 29 MAY 1945.

Paragraph 4b of AR 25–25 states, "Activities of military personnel civilian employees in the course of which such acts or omissions may occur are ordinarily within the scope of employment if the performance thereof is directed * * *."

(*a*) The answer to the question whether the performance was directed can be found in the statement by the driver of the Government vehicle, Moses Jackson, and in the statement made by the passenger, Albert Tom. In both statements it is admitted that Mitchell Wallace directed Jackson to perform the activity during which time the accident occurred. Furthermore, specific written evidence that the activity was directed by the government in the person of one of its representatives can be found on the trip ticket which was in possession of the driver when the accident occurred. This trip ticket was introduced in evidence at the courts martial of Jackson and Wallace. Wallace signed the jeep over to Jackson in the prescribed and customary manner of the Army. Jackson's name appears on the trip ticket in the handwriting of Wallace. It may also be added that when Jackson received his orders to take another soldier and his two companions to the Army base to attend an Army function it was his duty to obey the order of his superior.

Wallace was officially and legitimately in the possession of the Government vehicle when he turned it over to Jackson. It was dispatched to Wallace at 0730 hours on June 19, 1948. The Army permitted him to retain the vehicle for the entire day, for it was neither checked in nor called in to the dispatch office after the completion of the initial use of the vehicle. It was the custom of the dispatch office to allow vehicles to be checked out for an entire day to be used for various purposes and duties and not limited to a specific trip as shown by examination of the used trip tickets and dispatch sheets. On the trip ticket used by Wallace on the day of accident were listed several destinations, although on the dispatch sheet only one place was noted; i.e., the initial trip for that day.

(*b*) Since it was the practice of this military police dispatch office to issue Government vehicles for an entire day as was done in the instant case, the Army

cannot alter this policy for the purpose of defeating this claim by now seeking to limit the use of a jeep to only the destination listed on the dispatch sheet. Wallace was issued the vehicle herein involved for the entire day of 19th of June 1948. The scope of the employment of the jeep was not limited to just one trip that day. Wallace's duty was merely to record on the trip ticket the initial destination and all subsequent ones for that particular day plus the mileage for each. This same practice was followed by other organizations such as the Counterintelligence Corps. When Wallace signed the jeep over to Jackson, he was in an authoritative position to do so. In doing this he followed the official procedure employed by his military police unit and other units in Germany. Hence, since the use of the jeep was not specifically limited and since it was the accepted practice to permit the use of the jeep for various purposes not listed on dispatch sheets, it cannot be held that Wallace deviated even slightly from the scope of his employment.

(*c*) Claimant further contends that the transportation by one soldier of another soldier to his post in a rainstorm to attend an Army affair is within the scope of his employment. Duties of a soldier are not so limited in variety to preclude activity herein described from falling within the scope of his employment by the Army. On the contrary, a soldier may be called upon to perform an almost unlimited variety of acts. Certainly this activity, especially since this was a directed duty should not so narrowly be construed as to place it outside of a soldier's duties.

(*d*) Damages were denied claimant on the ground that the driver of the Government vehicle whose act is alleged to have caused the accident, was not acting within the scope of his employment at the time of the occurrence of the accident. The true issue then boils down to this one point: Was Moses Jackson acting within the scope of his employment when the accident occurred? It has already been shown that Jackson was directed to perform the very activity in which the accident occurred. It has also been shown that it was his duty as a soldier to perform said act without questioning it and as a soldier his scope of employment cannot be so narrowly construed as to exclude this activity. How, then, can it be said that the driver of the Government vehicle, Moses Jackson, was not acting within the scope of his employment? In the face of these facts such an allegation cannot stand. Jackson certainly did not steal the jeep, nor did he use it without it first being officially signed over to him. On the contrary, it was legally in the possession of Wallace, when he directed Jackson to perform the activity above described. Jackson attempted to accomplish the specific task which he was directed to perform without deviation from duty. Hence, Jackson was at all times performing an act which was in the scope of his employment. Since this was the only grounds upon which claimant has been denied reimbursement for damages, and since such grounds cannot reasonably be sustained with any logical or practical argument, claimant requests a reversal of the decision in this action and that approval for his claim be granted.

(*e*) Disapproval of claim may have been made for the reason that the jeep was also transporting civilians. Even if this was prohibited, it does not materially affect the present case. First, as already pointed out, Jackson was directed to perform an act which he was obliged as a soldier to carry out; and it must be kept in mind that it is only scope of employment that is being held in issue. Second, there was at least in part a Government service performed. Albert Tom, one of the passengers, was a soldier and therefore did not come under the restrictions as to the use of the jeep. According to paragraph 4b of AR 25–25 this is sufficient to bring the entire activity within the scope of the driver's employment. In said paragraph it states that an activity to be within the scope of employment need: "At least in part to serve the Government." Third, it has not been shown by the JAGD that the civilian companions of Tom were not also being legitimately transported. If this is the reason why the claim was disapproved, then it becomes the duty and the burden of the JAGD to substantiate this allegation with proofs. Here again claimant is unduly handicapped in submitting this appeal in that in the disapproval of this claim no issue of fact or law was presented him on which to base a direct rebuttal or answer. Claimant must therefore assume hypothetical grounds upon which denial might have been based, and attempt to discover upon which grounds it was reasoned that the activity of Jackson did not fall within the scope of his employment. This does not permit a fair and equitable contest of decision. Fourth, the transportation of a soldier to his post is "in furtherance of the general activity of the Government" and hence falls within the definition as stated in paragraph 4b of AR 25–25.

(f) Claimant bases his claim upon the statutory provisions found in paragraph 1 of AR 25–25 dated May 29, 1945. Claimant believes he has established the only

disputable issue under these laws by showing that Moses Jackson's activity at the time of the accident was within the scope of his employment. Jackson was driving the vehicle at the time of the accident. For final evidence on this issue it may be helpful to know that the courts-martial board considered the acts of Jackson within the scope of his employment when they recommended Government reimbursement to claimant for damages caused by Jackson. (See file for statement of board.) Jackson was court-martialed not for performing an illegal activity outside the scope of his employment, but for his negligent and reckless driving of a governmental vehicle.

II. Even if the Activity of Jackson Were Held Not To Be Within the Scope of His Employment, Recovery Must Be Allowed Under AR 25–80 (AW–105)

The commanding officer is empowered under AR 25–80 (AW–105) to direct stoppages against the pay of military personnel, until complete reimbursement for the assessed damages has been accomplished. Said provision makes it the duty of the commanding officer to see that reparations are made (pars. 1A, 1b, 2 and 3). Paragraph 2 (AW–89) of said act states that the purpose of the enactment is to protect persons from: "Disorderly conduct on the part of the military." Article of War 105 gives the administrative remedy for wrongs under AW–89.

Paragraph 3, in which the scope of the act is stated, lists as legitimate bases for claims any losses by "disorderly conduct," "willful misconduct," or "reckless disregard of property rights." The manner in which the Government vehicle was driven by Jackson is part of the record of this case. The attached statement made by the investigating officer assigned to this matter and other statements on file of witnesses to the accident along with the findings of the courts-martial board conclusively established that Jackson was driving in a manner which brings his activity within the meaning of paragraph 3 of AR 25–80. Driving a jeep on the wrong side of a wet, slippery, narrow, cobblestoned road during a rain-storm at an excessive rate of speed while embracing a girl constitutes at least "disorderly conduct" if not "willful misconduct" or "reckless disregard of property rights."

It is further maintained that proof that Jackson's conduct was disorderly does not vitiate the fact that he was still within the scope of his employment while engaged in such conduct, because his operation of the vehicle was within the scope of his employment and the "embracing" relates to willful misconduct, disorderly conduct, and reckless disregard for property rights. Attention is invited to this statement in order to prevent any misconceptions of the primary basis for recovery established under AR 25–25.

In conclusion it is contended that whether the activity of Jackson is held to be within the scope of his employment or not, claimant is entitled to recovery for the loss sustained not only because the law but also the equities of the matter lie with him.

It is sincerely hoped that a just and fair consideration of my claim will be given by the Assistant Secretary of War.

Respectfully yours,

James J. Lieberman.

Headquarters, Five Hundred and Tenth Military Police Service Platoon, APO 169, United States Army

STATEMENT OF T/5 MOSES C. JACKSON

I was in the Flamingo Club beteeen 8 p. m. and 8:30 p. m. when I heard Mitchell Wallace say he was going to the Random House to get some sandwiches, I asked him if I could go with him, he said yes. We went to the Random House, but before he left the jeep, a sergeant came up to the jeep and asked him if he would take him to the Verdun Kaserne Infantry Club, he (the Sergeant) said that he had two girls with him. It was raining very hard, so Wallace said yes, Mitchell Wallace then went into the snack bar and the sergeant and the girls came into the jeep. When he came from the snack bar he had his arms full of sandwiches, he came into the jeep on the right side and gave me the trip ticket and C card. He said that the trip ticket is straight with your name on it. He also said you drive me to the Flamingo Club, and then you take the sergeant to the Infantry Club. I drove the jeep from the club, and just when I tried to turn to go in the Verdun Kaserne the jeep went into a skid to the left, the reason for that was it was raining very hard and the steering wheel had too much play in it. I

tried to get the jeep under control by putting on my brakes and cutting my vehicle to the right. I looked ahead and saw an American automobile coming towards me. I was close to a hundred yards from the auto, so, I didn't think there was much danger. I was on the left side by this time, and when I thought that I had the jeep under control I looked up and the auto was on me and we crashed. Everyone got thrown from the jeep but me. I was still setting in the jeep when a staff sergeant told me to try and get out of the jeep. I got out of the jeep and laid down on my back in the grass. It was maybe 10 minutes before the MP came with investigator who asked me my name, rank, serial number and company number, and asked to see my trip ticket and C card. I gave them to him, he checked them and gave them back. I was brought to the hospital in a jeep and taken to the X-ray room. While I was in the X-ray room Pfc William J. Brown Five Hundred and Sixteenth Military Police Service Platoon said give me the trip ticket and C card, I gave them to Brown who left then with the other MP. I was brought to the ward where I am now.

MOSES C. JACKSON (ASN [redacted]),
Five Hundred and Tenth Military Police Service Platoon.

A certified true copy:

WILLIAM KING,
First Lieutenant CMP, Summary Court Officer.

HEADQUARTERS, FIVE HUNDRED AND TENTH MILITARY POLICE SERVICE PLATOON,
APO 169, UNITED STATES ARMY, JUNE 28, 1948

STATEMENT

On the 19th day of June 1948, approximately 2200 hours, I was on military police duty as a motor patrolman. The vehicle in which I was riding was dispatched to go to Licherstrasse in front of the Verdun Kaserne where an accident had occurred. Upon arriving at the scene of the accident I immediately took care of the persons who were seriously injured, after which I proceeded to direct traffic in the vicinity of the accident. Involved in the accident was a quarter-ton 4 by 4 jeep driven by T5g Moses C. Jackson of the Five Hundred and Tenth Military Police Service Platoon, and a Chrysler sedan, model 1941, license number C–02291, driven by Mr. James J. Lieberman, CIC agent, Frankfurt, Germany. After leaving the scene of the accident I returned to the MP booking station. Upon arrival at the MP station the desk sergeant asked about the trip ticket and C card for the jeep driven by Technician 5g Jackson. I replied I do not know. The desk sergeant then sent Sergeant Hoye and me to the hospital for the purpose of getting additional information. After arriving at the hospital, Sergeant Hoye and I went in the X-ray room where Technician 5g Jackson was. I asked Technician 5g Jackson for the C card and trip ticket. He gave it to me. I noticed that the trip ticket had two names on it, Moses C. Jackson and Mitchell A. Wallace. I then turned the C card and trip ticket over to Sergeant Hoye, SIS investigator, Five Hundred and Twenty-ninth Military Police Service Company. After he obtained all pertinent information from the trip ticket he returned it to me. On June 20, 1948, I gave the trip ticket and C card to Pfc. Mitchell A. Wallace.

Pfc. WILLIAM J. BROWN ([redacted]),
Five Hundred and Tenth Military Police Service Platoon.

Sworn to and subscribed to before me this 28th day of June 1948.

WILLIAM KING,
First Lieutenant CMP, Summary Court Officer.

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