

**The original documents are located in Box 13, folder “1974/10/29 HR6624 Relief of Alvin V. Burt Junior and Two Others (vetoed) (1)” of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.**

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cancel  
8 init.*

THE WHITE HOUSE  
WASHINGTON

ACTION

Last Day - October 29

October 26, 1974

MEMORANDUM FOR: THE PRESIDENT  
FROM: KEN COLE  
SUBJECT: Enrolled Bill H.R. 6624  
For the relief of Alvin V. Burt  
Junior and two others  
(Sponsor - Rep. Fascell (D) Florida)

Background

Attached for your consideration is H.R. 6624 which would provide for payment, as a gratuity, of over \$81,000 to two newsmen shot in the Dominican Republic in 1965. The men were fired upon by U.S. Marines upon their return from "rebel" territory through a Marine check point. Additional information is provided in Roy Ash's enrolled bill report (Tab A).

Arguments for Veto

OMB recommends veto and maintains that the employer not the government should be responsible for awards based on "broad moral considerations," the basis in this case for the court's award. OMB points out that signing this bill would set a precedent for which the government might be liable for similar cases in the future.

Arguments for Signing

The Counsel's office maintains that this bill does not set a precedent because of the established procedure of Congressional referral of such cases to the Court of Claims ensures that they will be dealt with on a case by case basis. They stress that the bill should be signed since the Court of Claims and the Congress have acted favorably upon it.



The Department of Justice objects in principle to the enactment of such legislation but feels Congress has the right to grant gratuities and therefore there is no basis for a veto.

Recommendations

Ash and Timmons recommend veto and issuance of the veto statement (Tab C) which has been approved by Paul Theis.


NSC defers to OMB

The Counsel's office (Buchen) recommends signing

Navy defers to Justice

Decision

\_\_\_\_\_ Sign H.R. 6624 (Tab B)  
Buchen  
Cole  
Justice  
Navy defers to Justice

  
Veto H.R. 6624  
(Sign veto statement  
at Tab C)  
Ash  
Timmons



VETOED  
10/29/74



(Veto message delivered to  
Clerk of House of Representatives  
at 5:25 pm, 10/29/74)

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

OCT 24 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 6624 - For the relief of  
Alvin V. Burt, Junior and two others  
Sponsor - Rep. Fascell (D) Florida

Last Day for Action

October 29, 1974 - Tuesday

Purpose

Provides for payment, "as a gratuity," of \$45,482 to Alvin V. Burt, Junior, and for similar payments of \$36,750 each to the widow and son of Douglas E. Kennedy for injuries and other damages suffered by Mr. Burt and Mr. Kennedy as a result of wounds inflicted by U.S. military personnel in the Dominican Republic in 1965. The amounts in the bill were recommended in a congressional reference case opinion by a review panel of the Court of Claims.

Agency Recommendations

Office of Management and Budget

Disapproval (Veto Message Attached)

Department of Justice  
Department of the Navy

No objection  
Defers to Justice

Discussion

On May 6, 1965, Alvin Burt and Douglas Kennedy, two Miami Herald newspapermen who were covering the civil upheaval in the Dominican Republic and the peace-keeping mission



being performed in that country by U.S. military forces, were seriously injured by gunfire from a Marine checkpoint in Santo Domingo. The incident occurred as they were attempting to return from so-called "rebel" territory through the checkpoint. The Marines opened fire on their car when the men failed to get out of the car, as ordered, and when it accelerated violently in reverse at the same time that the Marines were fired upon by snipers from an area behind the car.

The extent of physical injury suffered by each man has been variously estimated at 30-40 percent permanent bodily disability. In addition, Mr. Kennedy suffered constant discomfort as a result of his wounds until his death in 1971 (which was not related to any injuries sustained in the Dominican Republic) and Mr. Burt's pain and discomfort will continue for the indefinite future.

After the incident, both men received, without charge, extensive medical care and treatment, initially from U.S. medical personnel in the field and later in U.S. facilities. No estimate has been made of the total value of these services. While unable to work, their employer, the Miami Herald paid their salaries and guaranteed continued employment provided they worked to the best of their ability. They also received workmen's compensation benefits during hospitalization, including lump-sum payments of \$2,200 for Mr. Burt, \$6,700 for Mr. Kennedy and other payments for medical care obtained from sources other than U.S. facilities.

In 1968, the House passed a resolution referring private legislation in behalf of Mr. Burt and Mr. Kennedy to the Chief Commissioner of the Court of Claims for his consideration under applicable law. In addition to the statutory criteria of "whether the demand is a legal or equitable claim," the House reference resolution prescribed that the Chief Commissioner should also consider the criterion of "good conscience" in evaluating the claims presented by the two men.

The report to the House, as set forth in the majority opinion of a review panel of the Court of Claims, held that the claimants had failed to establish either a "legal" or an "equitable" claim within the meaning of the reference statute. A legal claim was barred under several specific provisions of law which exclude the government from liability in these circumstances. With regard to an equitable basis for relief, the majority opinion stated, in effect, that the government was not liable because, under the circumstances, the Marines involved had not reacted "unreasonably" in firing upon the claimants' car. In fact, the opinion strongly suggested that the claimants' negligence had contributed to the injuries they sustained, and that in placing themselves in a position of known peril, the claimants had assumed the risk of personal injury.

Notwithstanding the above, the majority of the panel members concluded that the supplementary criterion of "good conscience" in the reference resolution "invokes a standard far more liberal than those defining a 'legal' or 'equitable' claim." Thus, they determined that the claimants were entitled to reasonable compensation on the basis of "broad moral considerations" stemming from the fact that the U.S. Government had encouraged independent news coverage of the events in the Dominican Republic to the point of providing transportation and other logistical support to many newsmen, including Mr. Burt and Mr. Kennedy. Accordingly, the majority of the panel recommended awards in the amounts contained in the current bill.

In a separate opinion, another member of the panel concurred with the payments recommended by the majority because he considered that the Marines had acted negligently, thus supporting an "equitable" award under the congressional reference statute. While admitting that the Marine guards' actions "may not meet the tests of actionable negligence as required in a court of law," he opined that the evidence in this case supported a moral obligation on the part of the Government which Congress could recognize.

Payment of awards under the enrolled bill would be made "as a gratuity." Apparently, Congress is also of the view that the claimants did not establish a "legal" or "equitable" claim



within the meaning of the congressional reference statute but that the facts establish an obligation on the part of the United States based on "broad moral considerations."

Although Justice agrees that there is no legal or equitable basis for the relief contemplated in H.R. 6624, the Department's enrolled bill letter states that it perceives no basis for a veto. This position appears to rest on the fact that, by characterizing the payment of these awards "as a gratuity," Congress validated the special criterion under which the case was referred to the Court of Claims, thereby obviating a precedent with respect to future referral cases.

We are unable to recommend approval of this bill. Equitable considerations have traditionally been the basis for private relief awards where the claimant has no legal remedy. In our judgment, an award in the absence of an equitable basis cannot be justified by invoking such terms as "gratuity" or "broad moral considerations."

The majority of the Court of Claims panel found no equities in favor of the claimants in this case, and we share that view. The newsmen took their chances in a combat area, and as the panel majority found, the Marines did not act unreasonably under the circumstances. We do not think that U.S. encouragement of newsmen to cover the Dominican operation and the furnishing of logistical assistance to them alter this conclusion.

Notwithstanding the absence of any Government responsibility, the claimants were given extensive medical care at Government expense, both in the field and, subsequently, in military hospitals. They also received workmen's compensation benefits appropriate under the system which covered them for the degrees of disabilities which they sustained.

It would appear that if any additional awards as a "gratuity" or on the basis of "broad moral considerations" are warranted, such awards are clearly the responsibility of their employer, the Miami Herald, in whose business they were engaged at the time of their injuries.

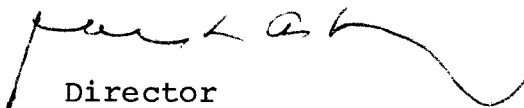
If private relief awards are to be approved simply by characterizing them as gratuities or invoking broad moral considerations, then the door to the Treasury could be opened to any person who has incurred a financial hardship for which



he can obtain no legal redress. The line against such cases has been held by insisting that relief be limited to cases where equitable considerations growing out of Governmental actions are present and where there is no other source of relief.

In conclusion, we would note that the Justice position does not deal with the merits of an award in this case but turns on the fact that enactment of this legislation will not prejudice litigation of future referral cases.

A proposed veto message is attached for your consideration.

  
Director

Enclosures







DEPARTMENT OF THE NAVY  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20350

October 22, 1974

Dear Mr. Ash:

Your transmittal sheet dated October 21, 1974, enclosing a facsimile of an enrolled bill of Congress, H.R. 6624, "For the relief of Alvin V. Burt, Junior, Eileen Wallace Kennedy Pope, and David Douglas Kennedy, a minor," and requesting comment of the Department of the Navy, has been received.

The purpose of H.R. 6624 is to pay the sum of \$45,482 to Mr. Alvin V. Burt, Jr., and \$36,750 each to the widow and the son of Mr. Douglas E. Kennedy for damages suffered by Mr. Burt and Mr. Kennedy on or about May 6, 1965, as a result of wounds received from gunfire from a check-point in the Dominican Republic manned by U.S. Marines.

Although neither the House nor the Senate Committees on the Judiciary requested the views of the Department of the Navy on H.R. 6624, this Department opposed enactment of H.R. 9752 and S. 1660, identical bills in the 90th Congress which were similar to H.R. 6624. After considering the Department of the Navy report on H.R. 9752, the House of Representatives enacted H. Res. 1110, 90th Congress, which referred H.R. 9752 to the Chief Commissioner of the Court of Claims. The Review Panel of Court of Claims Commissioners concluded that the United States has a moral obligation to compensate for the damages suffered by Mr. Burt and Mr. Kennedy [Burt v. United States, 199 Ct. Cl. 897 (1972)]. H.R. 6624 directs payment to Mr. Burt and the widow and the son of Mr. Kennedy in accordance with the Review Panel's findings as to the extent of the damages suffered by Mr. Burt and Mr. Kennedy.

The Department of the Navy has previously concurred in a Department of Justice proposed report to the Senate Judiciary Committee which opposed H.R. 6624 primarily on the grounds that the payments directed by the bill constitute a gratuity rather than recognition of a legal or equitable claim. The Department of Justice proposed report indicated that payment of a gratuity in this case would set an undesirable precedent.

In view of the foregoing, the Department of the Navy defers to the Department of Justice with regard to the approval of this enrolled enactment.

Sincerely yours,

D. S. Potter  
Acting Secretary of the Navy

Honorable Roy L. Ash  
Director, Office of Management  
and Budget  
Washington, D. C. 20503



Department of Justice  
Washington, D.C. 20530

OCT 23 1974

Honorable Roy L. Ash  
Director, Office of Management  
and Budget  
Washington, D. C. 20503

Dear Mr. Ash:

In compliance with your request, I have examined a facsimile copy of the enrolled bill H.R. 6624, "For the relief of Alvin V. Burt, Junior, Eileen Wallace Kennedy Pope, and David Douglas Kennedy, a minor."

H.R. 6624 would authorize and direct the Secretary of the Treasury to pay the sum of \$45,482 to Alvin V. Burt, Junior, the sum of \$36,750 to Eileen Wallace Kennedy Pope, widow of Douglas E. Kennedy, and the sum of \$36,750 to the legal guardian of David Douglas Kennedy, minor son of the late Mr. Kennedy, as provided in the opinion of Congressional Case Number 2968, filed November 16, 1972. Such amounts are to be paid "as a gratuity" and in full and final settlement of the claims of Mr. Burt and of Mr. Kennedy's heirs for injuries the two men suffered in May 1965 as a result of wounds caused by gunfire from a checkpoint in Santo Domingo, Dominican Republic manned by United States Marines.

This legislation results from a tragic incident in which Mr. Kennedy and Mr. Burt, newsmen from the Miami Herald, received seriously disabling wounds from gunfire from a Marine checkpoint which they were passing through on their return from rebel-held territory during the civil strife in that country in 1965. They had been invited, along with other American reporters, to cover the operations of the American military force dispatched to that country to guarantee the safety of American personnel and to assist the Organization of American States in its peacekeeping operations there. The Marines opened fire when a sudden and erratic maneuver by the Dominican driver of their rented car coincided with sniper shots coming from the direction of the car. Mr. Kennedy and Mr. Burt were given medical care at Government expense but remained painfully disabled despite such treatments.



The claimants sought a private relief bill in Congress, apparently recognizing that no legal remedy existed in view of an exception to the Tort Claims Act, 28 U.S.C. §2680(j). The House of Representatives referred the claim to the chief Commissioner of the Court of Claims for an advisory report under the Congressional Reference statute, 28 U.S.C. §2509(c), as to whether the claim was "a legal or equitable claim or a gratuity."

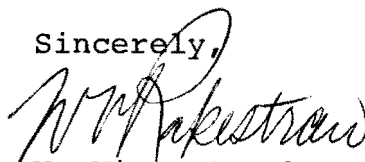
At the reference proceedings this Department took the position that the claims were neither legal nor equitable since claimants failed to show negligence by the Marines and in fact were themselves contributorily negligent. We contended that any relief would be a purely gratuitous payment of the sort not favored by Congress. The report to Congress by a review panel of Court of Claims Commissioners agreed that claimants had failed to establish a "legal or equitable claim" within the meaning of the reference statute, but stated that the more liberal standard of "good conscience" included in the referencing resolution would justify relief which would not be a disfavored "gratuity." During House Judiciary consideration of the bill after the report was received, however, the phrase "as a gratuity" was inserted in the bill to qualify the nature of the payment. No reason for such amendment is given in the report accompanying the bill (House Report No. 93-441).

In general, we oppose the enactment of such legislation, since it constitutes preferential treatment for some individuals although others similarly situated are denied relief. In the instant case, for example, newsmen injured covering combat operations of our troops are allowed to recover despite the Congressional policy of barring recovery for combat negligence, expressed both in the Tort Claims Act 28 U.S.C. 2680 and in 10 U.S.C. §2734(a) (no administrative payment for combat-caused injuries). Moreover, in the history of Congressional reference cases, there has been only one known instance in which Congress has approved a similar gratuity. In that case, Froman v. United States, 157 Ct. Cl. 661 (1962), Congress approved payment to singer Jane Froman who was injured in a commercial airline accident in Portugal while en route to a World War II concert tour of United States military bases overseas. See Bennett, Private Claims Acts and Congressional Reference, 9 A.F. JAG L. Rev. 8 (Nov. Dec. 1967).

Nevertheless, since Congress unquestionably has the prerogative to grant gratuities if it sees fit, however, ill-advised and discriminatory they may be, we perceive of no basis on which a veto could be recommended. Moreover, from the standpoint of the effect of this bill on our defense of subsequent Congressional reference cases, it is our opinion that the insertion of the words "as a gratuity" in the bill has overruled the unfortunate opinion of the Court of Claims Commissioners that language in a reference bill such as "in good conscience" could convert what would otherwise be neither a "legal" nor an "equitable" claim under the reference statute, but a "gratuity," into a nongratuitous claim upon which relief could be recommended. Such amendment by the Congress therefore effectively eliminates this case as an adverse precedent for future reference cases.

Accordingly, the Department of Justice has no objection to Executive approval of this bill.

Sincerely,



W. Vincent Rakestraw  
Assistant Attorney General



THE WHITE HOUSE

WASHINGTON

October 25, 1974

MEMORANDUM FOR: WARREN HENDRIKS

FROM: WILLIAM E. TIMMONS *WET*

SUBJECT: Action Memorandum - Log No. 714  
Enrolled Bill H.R. 6624 - For the Relief of  
Alvin W. Burt, Junior and two others

The Office of Legislative Affairs concurs with the OMB recommendation, but recommends removal of the seventh paragraph in the veto message. The President should veto this on the basis of the precedent it would set without having to draw conclusions about the merits of the case.



Date: October 25, 1974

Time: 9:30 a.m.

FOR ACTION: Geoff Shepard  
 NSC/S  
 Phil Buchen  
 ✓ Bill Timmons  
 Paul Theis

cc (for information): Warren K. Hendriks  
 Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Today, October 25, 1974

Time: 3:00 p.m.

SUBJECT: Enrolled Bill H.R. 6624 - For the relief of  
 Alvin V. Burt, Junior and two others

## ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

## REMARKS:

Please return to Kathy Tindle - West Wing

**PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.**

If you have any questions or if you anticipate a  
 delay in submitting the required material, please  
 telephone the Staff Secretary immediately.

Warren K. Hendriks  
 For the President

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 28, 1974

MEMORANDUM FOR: JERRY JONES

FROM: *R* JOHN RATCHFORD

There have been instances where a President has signed a bill and then cancelled his action. What the President has done in the past, as you can see from the attached, is draw a line through his name and write cancelled.

I believe that it would be advisable to appraise Mr. Buchen or Mr. Areeda of the action that is contemplated. In the previous cases the bills became Pocket Vetoes, but in this instance we will be returning the bill to the House of Representatives.

October 28, 1974

MEMORANDUM FOR: JERRY JONES

FROM: JOHN RATCHFORD

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I believe that it would be advisable to appraise Mr. Buchen or Mr. Areeda of the action that is contemplated. In the previous cases the bills became Pocket Vetoes, but in this instance we will be returning the bill to the House of Representatives.





H. R. 14424-4

any project under this section for which an initial staffing grant was made from appropriations under paragraph (1)(B) for the fiscal year ending June 30, 1973.

"TRAINING AND EVALUATION

"Sec. 282. The Secretary is authorized, during the period beginning July 1, 1972, and ending with the close of June 30, 1973, to make grants to public or nonprofit private agencies or organizations to cover part or all of the cost of (1) developing specialized training programs or materials relating to the provision of services for the mental health of the aged, or developing inservice training or short-term or refresher courses with respect to the provision of such services; (2) training personnel to operate, supervise, and administer such services; and (3) conducting surveys and field trials to evaluate the adequacy of the programs for the mental health of the aged within the United States with a view to determining ways and means of improving, extending, and expanding such programs."

*Carl Albert*

*Speaker of the House of Representatives.*

*Robert C. Byrd*

*Vice President of the United States and*

*President of the Senate.*

*Pro Tempore*

*Disapproval*

~~APPROVED~~

OCT 26 1972

*[Signature]*

*[Large Signature]*

# Eighty-third Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Wednesday, the sixth day of January,  
one thousand nine hundred and fifty-four*

## An Act

For the relief of Carl Piowaty and W. J. Piowaty.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Carl Piowaty and W. J. Piowaty, of Princeton, Florida, the sum of \$4,450, in full settlement of all claims of said Carl Piowaty and W. J. Piowaty against the United States, for war-crop advances made to them by the Regional Agricultural Credit Corporation prior to April 16, 1943, when their bean crop (on which such advances were made) was largely destroyed by frost. Said claimants have refunded such sum to the United States: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.*

*Joseph W. Martin*

*Speaker of the House of Representatives.*

*Richard B. Russell*

*Vice President of the United States and  
President of the Senate.*

*Conceded*

*~~August 1954~~*

*D.E.*



WHITE HOUSE

# Eighty-sixth Congress of the United States of America

AT THE FIRST SESSION

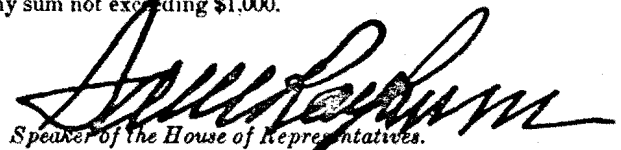
Begun and held at the City of Washington on Wednesday, the seventh day of January,  
one thousand nine hundred and fifty-nine



## An Act

For the relief of Harold William Abbott and others.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Harold William Abbott, the sum of \$1,496.43; Max Anderson, the sum of \$7,071.85; Otto P. Hahn, the sum of \$359.96; Paul R. Hahn, the sum of \$404.60; Howard P. Holt, the sum of \$6,845.25; Arnold Loher, the sum of \$653.69; Harold Lyman, the sum of \$1,431.27; A. D. Smirch, the sum of \$2,025.60; George W. Davis, the sum of \$1,190.71; Mary Alma Knowles, the sum of \$1,160.48; Jack (John) H. Whiticar, trading as the Whiticar Fleet, the sum of \$687.77; representing the amounts reported by the United States Court of Claims to the Congress in response to H. Res. 323, Eighty-fifth Congress, first session (congressional number 5-57, decided July 13, 1959); in full settlement of their claims against the United States as a result of transportation taxes unlawfully collected prior to 1952 and subsequent to 1945: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

  
Speaker of the House of Representatives.

  
Vice President of the United States and  
President of the Senate.

~~Henry H. Thompson~~  
void.  
N3.



THE WHITE HOUSE

WASHINGTON

October 29, 1974

MEMORANDUM FOR THE RECORD

When the President signed this bill -- H.R. 6624 -- he had no intention of approving this legislation. As a result, he chose the course of action of drawing a line through his name as shown on the attached xerox copy, writing "Disapproved, G.R.F., 10/28/74".



JOHN J. RATCHFORD  
Executive Clerk



# Ninety-third Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-first day of January,  
one thousand nine hundred and seventy-four

## An Act

For the relief of Alvin V. Burt, Junior, Eileen Wallace Kennedy Pope, and David Douglas Kennedy, a minor.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of \$45,482 to Alvin V. Burt, Junior, and the sum of \$36,750 to Eileen Wallace Kennedy Pope, widow of Douglas E. Kennedy, deceased, and the sum of \$36,750 to the legal guardian of David Douglas Kennedy, a minor, son of Douglas E. Kennedy, deceased, for the use and benefit of the said David Douglas Kennedy, as provided in the opinion in Congressional Reference Case Numbered 2-68, Alvin V. Burt, Junior, and Eileen Wallace Kennedy, executrix of the estate of Douglas E. Kennedy, deceased against The United States, filed November 16, 1972, as a gratuity and in full and final settlement of the claims of the said Alvin V. Burt and of the said Eileen Wallace Kennedy Pope and the said David Douglas Kennedy for injuries and related disabilities and damages suffered by the said Alvin V. Burt and the late Douglas E. Kennedy on or about May 6, 1965, and thereafter as the result of wounds caused by gunfire from an United States checkpoint in Santo Domingo, Dominican Republic, manned by United States Marines.

Sec. 2. No part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

*Carl Albert*

Speaker of the House of Representatives.

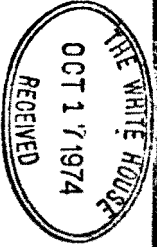
*James O. Eastland*

Vice President of the United States and  
President of the Senate *pro Tempore*

*Disapproved, H.R. 7.*

*Herold A. Ford*

*10/28/74*



Arceida

Further -

① - Describe signature  
as a clerical error -

② Agree that no meeting -

---

For the Record \_\_\_\_\_

The President had no  
intention to approve this  
legislation -

HR 6624



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OCT 24 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 6624 - For the relief of  
Alvin V. Burt, Junior and two others  
Sponsor - Rep. Fascell (D) Florida

Last Day for Action

October 29, 1974 - Tuesday

Purpose

Provides for payment, "as a gratuity," of \$45,482 to Alvin V. Burt, Junior, and for similar payments of \$36,750 each to the widow and son of Douglas E. Kennedy for injuries and other damages suffered by Mr. Burt and Mr. Kennedy as a result of wounds inflicted by U.S. military personnel in the Dominican Republic in 1965. The amounts in the bill were recommended in a congressional reference case opinion by a review panel of the Court of Claims.

Agency Recommendations

Office of Management and Budget

Disapproval (Veto Message Attached)

Department of Justice

No objection

Department of the Navy

Defers to Justice

Discussion

On May 6, 1965, Alvin Burt and Douglas Kennedy, two Miami Herald newspapermen who were covering the civil upheaval in the Dominican Republic and the peace-keeping mission



To  
Harrison Kennedy  
10-24-74  
7:30 p.m.



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 714

Date: October 25, 1974

Time: 9:30 a.m.

FOR ACTION:

Geoff Shepard

NSC/S

Phil Buchen

Bill Timmons

Paul Theis

cc (for information): Warren K. Hendriks  
Jerry Jones

*AS  
10/25/74  
P/office*

FROM THE STAFF SECRETARY

DUE: Date: Today, October 25, 1974

Time: 3:00 p.m.

SUBJECT: Enrolled Bill H.R. 6624 - For the relief of Alvin B. Burt, Junior and two others

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

*Kathy Cole*



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.  
For the President



Date: October 25, 1974

Time: 9:30 a.m.

FOR ACTION: Geoff Shepard  
N&C/S  
Phil Buchen  
Bill Timmons  
Paul Theiscc (for information): Warren K. Hendriks  
Jerry Jones

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SUBJECT: Enrolled Bill H.R. 6624 - For the relief of  
Alvin V. Burt, Junior and two others

## ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

## REMARKS:

Please return to Kathy Tindle - West Wing

*The bill should be signed. When Congress acts on  
a recommendation of the Court of claims in private  
relief cases ~~it should~~ that should suffice.  
Sign parcel to Chynoweth and Areeda.*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a  
delay in submitting the required material, please  
telephone the Staff Secretary immediately.

Warren K. Hendriks  
For the President



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

OCT 24 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 6624 - For the relief of  
Alvin V. Burt, Junior and two others  
Sponsor - Rep. Fascell (D) Florida

Last Day for Action

October 29, 1974 - Tuesday

Purpose

Provides for payment, "as a gratuity," of \$45,482 to Alvin V. Burt, Junior, and for similar payments of \$36,750 each to the widow and son of Douglas E. Kennedy for injuries and other damages suffered by Mr. Burt and Mr. Kennedy as a result of wounds inflicted by U.S. military personnel in the Dominican Republic in 1965. The amounts in the bill were recommended in a congressional reference case opinion by a review panel of the Court of Claims.

Agency Recommendations

Office of Management and Budget

Disapproval (Veto Message Attached)

Department of Justice  
Department of the Navy

No objection  
Defers to Justice

Discussion

On May 6, 1965, Alvin Burt and Douglas Kennedy, two Miami Herald newspapermen who were covering the civil upheaval in the Dominican Republic and the peace-keeping mission



being performed in that country by U.S. military forces, were seriously injured by gunfire from a Marine checkpoint in Santo Domingo. The incident occurred as they were attempting to return from so-called "rebel" territory through the checkpoint. The Marines opened fire on their car when the men failed to get out of the car, as ordered, and when it accelerated violently in reverse at the same time that the Marines were fired upon by snipers from an area behind the car.

The extent of physical injury suffered by each man has been variously estimated at 30-40 percent permanent bodily disability. In addition, Mr. Kennedy suffered constant discomfort as a result of his wounds until his death in 1971 (which was not related to any injuries sustained in the Dominican Republic) and Mr. Burt's pain and discomfort will continue for the indefinite future.

After the incident, both men received, without charge, extensive medical care and treatment, initially from U.S. medical personnel in the field and later in U.S. facilities. No estimate has been made of the total value of these services. While unable to work, their employer, the Miami Herald paid their salaries and guaranteed continued employment provided they worked to the best of their ability. They also received workmen's compensation benefits during hospitalization, including lump-sum payments of \$2,200 for Mr. Burt, \$6,700 for Mr. Kennedy and other payments for medical care obtained from sources other than U.S. facilities.

In 1968, the House passed a resolution referring private legislation in behalf of Mr. Burt and Mr. Kennedy to the Chief Commissioner of the Court of Claims for his consideration under applicable law. In addition to the statutory criteria of "whether the demand is a legal or equitable claim," the House reference resolution prescribed that the Chief Commissioner should also consider the criterion of "good conscience" in evaluating the claims presented by the two men.



The report to the House, as set forth in the majority opinion of a review panel of the Court of Claims, held that the claimants had failed to establish either a "legal" or an "equitable" claim within the meaning of the reference statute. A legal claim was barred under several specific provisions of law which exclude the government from liability in these circumstances. With regard to an equitable basis for relief, the majority opinion stated, in effect, that the government was not liable because, under the circumstances, the Marines involved had not reacted "unreasonably" in firing upon the claimants' car. In fact, the opinion strongly suggested that the claimants' negligence had contributed to the injuries they sustained, and that in placing themselves in a position of known peril, the claimants had assumed the risk of personal injury.

Notwithstanding the above, the majority of the panel members concluded that the supplementary criterion of "good conscience" in the reference resolution "invokes a standard far more liberal than those defining a 'legal' or 'equitable' claim." Thus, they determined that the claimants were entitled to reasonable compensation on the basis of "broad moral considerations" stemming from the fact that the U.S. Government had encouraged independent news coverage of the events in the Dominican Republic to the point of providing transportation and other logistical support to many newsmen, including Mr. Burt and Mr. Kennedy. Accordingly, the majority of the panel recommended awards in the amounts contained in the current bill.

In a separate opinion, another member of the panel concurred with the payments recommended by the majority because he considered that the Marines had acted negligently, thus supporting an "equitable" award under the congressional reference statute. While admitting that the Marine guards' actions "may not meet the tests of actionable negligence as required in a court of law," he opined that the evidence in this case supported a moral obligation on the part of the Government which Congress could recognize.

Payment of awards under the enrolled bill would be made "as a gratuity." Apparently, Congress is also of the view that the claimants did not establish a "legal" or "equitable" claim



within the meaning of the congressional reference statute but that the facts establish an obligation on the part of the United States based on "broad moral considerations."

Although Justice agrees that there is no legal or equitable basis for the relief contemplated in H.R. 6624, the Department's enrolled bill letter states that it perceives no basis for a veto. This position appears to rest on the fact that, by characterizing the payment of these awards "as a gratuity," Congress validated the special criterion under which the case was referred to the Court of Claims, thereby obviating a precedent with respect to future referral cases.

We are unable to recommend approval of this bill. Equitable considerations have traditionally been the basis for private relief awards where the claimant has no legal remedy. In our judgment, an award in the absence of an equitable basis cannot be justified by invoking such terms as "gratuity" or "broad moral considerations."

The majority of the Court of Claims panel found no equities in favor of the claimants in this case, and we share that view. The newsmen took their chances in a combat area, and as the panel majority found, the Marines did not act unreasonably under the circumstances. We do not think that U.S. encouragement of newsmen to cover the Dominican operation and the furnishing of logistical assistance to them alter this conclusion.

Notwithstanding the absence of any Government responsibility, the claimants were given extensive medical care at Government expense, both in the field and, subsequently, in military hospitals. They also received workmen's compensation benefits appropriate under the system which covered them for the degrees of disabilities which they sustained.

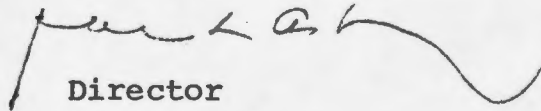
It would appear that if any additional awards as a "gratuity" or on the basis of "broad moral considerations" are warranted, such awards are clearly the responsibility of their employer, the Miami Herald, in whose business they were engaged at the time of their injuries.

If private relief awards are to be approved simply by characterizing them as gratuities or invoking broad moral considerations, then the door to the Treasury could be opened to any person who has incurred a financial hardship for which

he can obtain no legal redress. The line against such cases has been held by insisting that relief be limited to cases where equitable considerations growing out of Governmental actions are present and where there is no other source of relief.

In conclusion, we would note that the Justice position does not deal with the merits of an award in this case but turns on the fact that enactment of this legislation will not prejudice litigation of future referral cases.

A proposed veto message is attached for your consideration.

A handwritten signature in dark ink, appearing to read "Frank A. ...", with a long, sweeping underline that extends to the right.

Director

Enclosures



We assume that the form of this message including the title and the first paragraph, will be revised to conform with the approach taken in the veto message on H.R. 11541--the National Wildlife Refuge System, dated October 22, 1974.

TO THE HOUSE OF REPRESENTATIVES

I am returning herewith, without my approval, H.R. 6624 a bill "For the relief of Alvin V. Burt, Junior, Eileen Wallace Kennedy Pope, and David Douglas Kennedy, a minor."

This bill would provide for payment, "as a gratuity," of \$45,482 to Mr. Burt and for similar payments of \$36,750 each to the widow and son of Douglas E. Kennedy for injuries and other damages Mr. Burt and Mr. Kennedy sustained as a result of gunshot wounds inflicted by U.S. military personnel in the Dominican Republic in 1965. The amounts in the bill were recommended in a congressional reference case opinion by a review panel of the Court of Claims.

The claims presented in this bill arise from an admittedly tragic and unfortunate incident. On May 6, 1965, Mr. Burt and Mr. Kennedy, two newspapermen who were covering the civil upheaval in the Dominican Republic and the peace-keeping operation being performed in that country by U.S. military forces, attempted to drive through a U.S. checkpoint in Santo Domingo en route from rebel-held territory in the city. The Marines manning the checkpoint opened fire on their car when the men failed to get out as ordered and when it accelerated violently in reverse at the same time that the Marines were fired upon by snipers from an area behind the car. Both Mr. Burt and Mr. Kennedy were seriously injured as a result of the Marines' actions.

After the incident, both men received, without charge, extensive medical care and treatment from U.S. personnel in the field and later in U.S. military facilities. Their

employer, the Miami Herald, paid their salaries while they were hospitalized and guaranteed them continued employment. They also received workmen's compensation benefits during hospitalization, including prescribed lump-sum payments.

A majority of the members on a Court of Claims' review panel, which considered the present claims, held that the claimants had not established a "legal" or "equitable" claim within the meaning of the congressional reference statute. In fact, their opinion strongly suggests that the claimants' own negligence contributed to the injuries they received and further suggests that in pursuing their professions in the face of known hazards, the claimants assumed the risk of personal injury.

Notwithstanding these findings, however, the majority concluded that payment of reasonable compensation in this case was justified on "broad moral considerations" as a matter of "good conscience." Accordingly, they recommended awards in the amounts contained in the current bill.

I have considered carefully the merits of this case, and can find no reason to approve H.R. 6624. Equitable considerations growing out of Governmental actions have traditionally been the basis for private relief awards where no legal remedy is available. As brought out above, the record clearly establishes that no such considerations are present in this case.

Approval of H.R. 6624 cannot, in my view, be justified by invoking terms such as "gratuity," as the awards are characterized in the bill, or "broad moral considerations,"



the basis used by the Court of Claims panel. To adopt such an approach could easily set a precedent for the payment of a myriad of claims involving financial hardship to selected individuals simply on the grounds that they lack legal redress. Once we start down this road to the Treasury, it will be difficult, if not impossible, to turn back.

In conclusion, I earnestly urge that in the future Congress adhere to the traditional equity basis for awards, whether or not they have been recommended by the Court of Claims under congressional reference procedures.

THE WHITE HOUSE

October , 1974

Department of Justice  
Washington, D.C. 20530

OCT 23 1974

Honorable Roy L. Ash  
Director, Office of Management  
and Budget  
Washington, D. C. 20503

Dear Mr. Ash:

In compliance with your request, I have examined a facsimile copy of the enrolled bill H.R. 6624, "For the relief of Alvin V. Burt, Junior, Eileen Wallace Kennedy Pope, and David Douglas Kennedy, a minor."

H.R. 6624 would authorize and direct the Secretary of the Treasury to pay the sum of \$45,482 to Alvin V. Burt, Junior, the sum of \$36,750 to Eileen Wallace Kennedy Pope, widow of Douglas E. Kennedy, and the sum of \$36,750 to the legal guardian of David Douglas Kennedy, minor son of the late Mr. Kennedy, as provided in the opinion of Congressional Case Number 2-68, filed November 16, 1972. Such amounts are to be paid "as a gratuity" and in full and final settlement of the claims of Mr. Burt and of Mr. Kennedy's heirs for injuries the two men suffered in May 1965 as a result of wounds caused by gunfire from a checkpoint in Santo Domingo, Dominican Republic manned by United States Marines.

This legislation results from a tragic incident in which Mr. Kennedy and Mr. Burt, newsmen from the Miami Herald, received seriously disabling wounds from gunfire from a Marine checkpoint which they were passing through on their return from rebel-held territory during the civil strife in that country in 1965. They had been invited, along with other American reporters, to cover the operations of the American military force dispatched to that country to guarantee the safety of American personnel and to assist the Organization of American States in its peacekeeping operations there. The Marines opened fire when a sudden and erratic maneuver by the Dominican driver of their rented car coincided with sniper shots coming from the direction of the car. Mr. Kennedy and Mr. Burt were given medical care at Government expense but remained painfully disabled despite such treatments.

The claimants sought a private relief bill in Congress, apparently recognizing that no legal remedy existed in view of an exception to the Tort Claims Act, 28 U.S.C. §2680(j). The House of Representatives referred the claim to the chief Commissioner of the Court of Claims for an advisory report under the Congressional Reference statute, 28 U.S.C. §2509(c), as to whether the claim was "a legal or equitable claim or a gratuity."

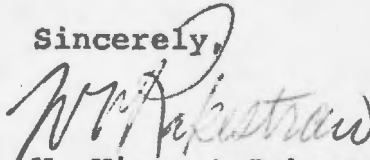
At the reference proceedings this Department took the position that the claims were neither legal nor equitable since claimants failed to show negligence by the Marines and in fact were themselves contributorily negligent. We contended that any relief would be a purely gratuitous payment of the sort not favored by Congress. The report to Congress by a review panel of Court of Claims Commissioners agreed that claimants had failed to establish a "legal or equitable claim" within the meaning of the reference statute, but stated that the more liberal standard of "good conscience" included in the referencing resolution would justify relief which would not be a disfavored "gratuity." During House Judiciary consideration of the bill after the report was received, however, the phrase "as a gratuity" was inserted in the bill to qualify the nature of the payment. No reason for such amendment is given in the report accompanying the bill (House Report No. 93-441).

In general, we oppose the enactment of such legislation, since it constitutes preferential treatment for some individuals although others similarly situated are denied relief. In the instant case, for example, newsmen injured covering combat operations of our troops are allowed to recover despite the Congressional policy of barring recovery for combat negligence, expressed both in the Tort Claims Act 28 U.S.C. 2680 and in 10 U.S.C. §2734(a) (no administrative payment for combat-caused injuries). Moreover, in the history of Congressional reference cases, there has been only one known instance in which Congress has approved a similar gratuity. In that case, Froman v. United States, 157 Ct. Cl. 661 (1962), Congress approved payment to singer Jane Froman who was injured in a commercial airline accident in Portugal while en route to a World War II concert tour of United States military bases overseas. See Bennett, Private Claims Acts and Congressional Reference, 9 A.F. JAG L. Rev. 8 (Nov. Dec. 1967).

Nevertheless, since Congress unquestionably has the prerogative to grant gratuities if it sees fit, however, ill-advised and discriminatory they may be, we perceive of no basis on which a veto could be recommended. Moreover, from the standpoint of the effect of this bill on our defense of subsequent Congressional reference cases, it is our opinion that the insertion of the words "as a gratuity" in the bill has overruled the unfortunate opinion of the Court of Claims Commissioners that language in a reference bill such as "in good conscience" could convert what would otherwise be neither a "legal" nor an "equitable" claim under the reference statute, but a "gratuity," into a nongratuitous claim upon which relief could be recommended. Such amendment by the Congress therefore effectively eliminates this case as an adverse precedent for future reference cases.

Accordingly, the Department of Justice has no objection to Executive approval of this bill.

Sincerely,



W. Vincent Rakestraw  
Assistant Attorney General





DEPARTMENT OF THE NAVY  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20350

October 22, 1974

Dear Mr. Ash:

Your transmittal sheet dated October 21, 1974, enclosing a facsimile of an enrolled bill of Congress, H.R. 6624, "For the relief of Alvin V. Burt, Junior, Eileen Wallace Kennedy Pope, and David Douglas Kennedy, a minor," and requesting comment of the Department of the Navy, has been received.

The purpose of H.R. 6624 is to pay the sum of \$45,482 to Mr. Alvin V. Burt, Jr., and \$36,750 each to the widow and the son of Mr. Douglas E. Kennedy for damages suffered by Mr. Burt and Mr. Kennedy on or about May 6, 1965, as a result of wounds received from gunfire from a check-point in the Dominican Republic manned by U.S. Marines.

Although neither the House nor the Senate Committees on the Judiciary requested the views of the Department of the Navy on H.R. 6624, this Department opposed enactment of H.R. 9752 and S. 1660, identical bills in the 90th Congress which were similar to H.R. 6624. After considering the Department of the Navy report on H.R. 9752, the House of Representatives enacted H. Res. 1110, 90th Congress, which referred H.R. 9752 to the Chief Commissioner of the Court of Claims. The Review Panel of Court of Claims Commissioners concluded that the United States has a moral obligation to compensate for the damages suffered by Mr. Burt and Mr. Kennedy [Burt v. United States, 199 Ct. Cl. 897 (1972)]. H.R. 6624 directs payment to Mr. Burt and the widow and the son of Mr. Kennedy in accordance with the Review Panel's findings as to the extent of the damages suffered by Mr. Burt and Mr. Kennedy.

The Department of the Navy has previously concurred in a Department of Justice proposed report to the Senate Judiciary Committee which opposed H.R. 6624 primarily on the grounds that the payments directed by the bill constitute a gratuity rather than recognition of a legal or equitable claim. The Department of Justice proposed report indicated that payment of a gratuity in this case would set an undesirable precedent.

In view of the foregoing, the Department of the Navy defers to the Department of Justice with regard to the approval of this enrolled enactment.

Sincerely yours,

D. S. Potter  
Acting Secretary of the Navy

Honorable Roy L. Ash  
Director, Office of Management  
and Budget  
Washington, D. C. 20503



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 714

Date: October 25, 1974

Time: 9:30 a.m.

FOR ACTION: ✓ Geoff Shepard  
NSC/S  
Phil Buchen  
Bill Timmons  
Paul Theis

cc (for information): Warren K. Hendriks  
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Today, October 25, 1974

Time: 3:00 p.m.

SUBJECT: Enrolled Bill H.R. 6624 - For the relief of  
Alvin V. Burt, Junior and two others

ACTION REQUESTED:

\_\_\_ For Necessary Action

XX For Your Recommendations

\_\_\_ Prepare Agenda and Brief

\_\_\_ Draft Reply

\_\_\_ For Your Comments

\_\_\_ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

*no objection  
10/25  
jes*



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks  
For the President

Date: October 25, 1974

Time: 9:30 a.m.

FOR ACTION: Geoff Shepard  
NSC/S  
Phil Buchen  
Bill Timmons  
✓ Paul Theis *MT*

cc (for information): Warren K. Hendriks  
Jerry Jones

FROM THE STAFF SECRETARY

PLEASE RETURN TO  
RESEARCH  
ROOM 121 E. O. B.

SG

DUE: Date: Today, October 25, 1974

Time: 3:00 p.m.

SUBJECT: Enrolled Bill H.R. 6624 - For the relief of  
Alvin V. Burt, Junior and two others

ACTION REQUESTED:

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1974 OCT 25 AM 11 09



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Warren K. Hendriks  
For the President



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

OCT 24 1974

MEMORANDUM FOR THE PRESIDENT

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Sponsor - Rep. Fascell (D) Florida

Last Day for Action

October 29, 1974 - Tuesday

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Agency Recommendations

Office of Management and Budget

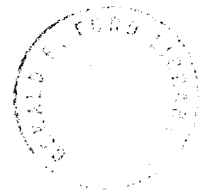
Disapproval (Veto Message Attached)

Department of Justice  
Department of the Navy

No objection  
Defers to Justice

Discussion

On May 6, 1965, Alvin Burt and Douglas Kennedy, two Miami Herald newspapermen who were covering the civil upheaval in the Dominican Republic and the peace-keeping mission





being performed in that country by U.S. military forces, were seriously injured by gunfire from a Marine checkpoint in Santo Domingo. The incident occurred as they were attempting to return from so-called "rebel" territory through the checkpoint. The Marines opened fire on their car when the men failed to get out of the car, as ordered, and when it accelerated violently in reverse at the same time that the Marines were fired upon by snipers from an area behind the car.

The extent of physical injury suffered by each man has been variously estimated at 30-40 percent permanent bodily disability. In addition, Mr. Kennedy suffered constant discomfort as a result of his wounds until his death in 1971 (which was not related to any injuries sustained in the Dominican Republic) and Mr. Burt's pain and discomfort will continue for the indefinite future.

After the incident, both men received, without charge, extensive medical care and treatment, initially from U.S. medical personnel in the field and later in U.S. facilities. No estimate has been made of the total value of these services. While unable to work, their employer, the Miami Herald paid their salaries and guaranteed continued employment provided they worked to the best of their ability. They also received workmen's compensation benefits during hospitalization, including lump-sum payments of \$2,200 for Mr. Burt, \$6,700 for Mr. Kennedy and other payments for medical care obtained from sources other than U.S. facilities.

In 1968, the House passed a resolution referring private legislation in behalf of Mr. Burt and Mr. Kennedy to the Chief Commissioner of the Court of Claims for his consideration under applicable law. In addition to the statutory criteria of "whether the demand is a legal or equitable claim," the House reference resolution prescribed that the Chief Commissioner should also consider the criterion of "good conscience" in evaluating the claims presented by the two men.



The report to the House, as set forth in the majority opinion of a review panel of the Court of Claims, held that the claimants had failed to establish either a "legal" or an "equitable" claim within the meaning of the reference statute. A legal claim was barred under several specific provisions of law which exclude the government from liability in these circumstances. With regard to an equitable basis for relief, the majority opinion stated, in effect, that the government was not liable because, under the circumstances, the Marines involved had not reacted "unreasonably" in firing upon the claimants' car. In fact, the opinion strongly suggested that the claimants' negligence had contributed to the injuries they sustained, and that in placing themselves in a position of known peril, the claimants had assumed the risk of personal injury.

Notwithstanding the above, the majority of the panel members concluded that the supplementary criterion of "good conscience" in the reference resolution "invokes a standard far more liberal than those defining a 'legal' or 'equitable' claim." Thus, they determined that the claimants were entitled to reasonable compensation on the basis of "broad moral considerations" stemming from the fact that the U.S. Government had encouraged independent news coverage of the events in the Dominican Republic to the point of providing transportation and other logistical support to many newsmen, including Mr. Burt and Mr. Kennedy. Accordingly, the majority of the panel recommended awards in the amounts contained in the current bill.

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within the meaning of the congressional reference statute but that the facts establish an obligation on the part of the United States based on "broad moral considerations."

Although Justice agrees that there is no legal or equitable basis for the relief contemplated in H.R. 6624, the Department's enrolled bill letter states that it perceives no basis for a veto. This position appears to rest on the fact that, by characterizing the payment of these awards "as a gratuity," Congress validated the special criterion under which the case was referred to the Court of Claims, thereby obviating a precedent with respect to future referral cases.

We are unable to recommend approval of this bill. Equitable considerations have traditionally been the basis for private relief awards where the claimant has no legal remedy. In our judgment, an award in the absence of an equitable basis cannot be justified by invoking such terms as "gratuity" or "broad moral considerations."

The majority of the Court of Claims panel found no equities in favor of the claimants in this case, and we share that view. The newsmen took their chances in a combat area, and as the panel majority found, the Marines did not act unreasonably under the circumstances. We do not think that U.S. encouragement of newsmen to cover the Dominican operation and the furnishing of logistical assistance to them alter this conclusion.

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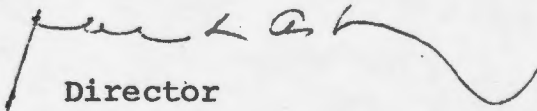
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he can obtain no legal redress. The line against such cases has been held by insisting that relief be limited to cases where equitable considerations growing out of Governmental actions are present and where there is no other source of relief.

In conclusion, we would note that the Justice position does not deal with the merits of an award in this case but turns on the fact that enactment of this legislation will not prejudice litigation of future referral cases.

A proposed veto message is attached for your consideration.

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Director

Enclosures



Department of Justice  
Washington, D.C. 20530

OCT 23 1974

Honorable Roy L. Ash  
Director, Office of Management  
and Budget  
Washington, D. C. 20503

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This legislation results from a tragic incident in which Mr. Kennedy and Mr. Burt, newsmen from the Miami Herald, received seriously disabling wounds from gunfire from a Marine checkpoint which they were passing through on their return from rebel-held territory during the civil strife in that country in 1965. They had been invited, along with other American reporters, to cover the operations of the American military force dispatched to that country to guarantee the safety of American personnel and to assist the Organization of American States in its peacekeeping operations there. The Marines opened fire when a sudden and erratic maneuver by the Dominican driver of their rented car coincided with sniper shots coming from the direction of the car. Mr. Kennedy and Mr. Burt were given medical care at Government expense but remained painfully disabled despite such treatments.



The claimants sought a private relief bill in Congress, apparently recognizing that no legal remedy existed in view of an exception to the Tort Claims Act, 28 U.S.C. §2680(j). The House of Representatives referred the claim to the chief Commissioner of the Court of Claims for an advisory report under the Congressional Reference statute, 28 U.S.C. §2509(c), as to whether the claim was "a legal or equitable claim or a gratuity."

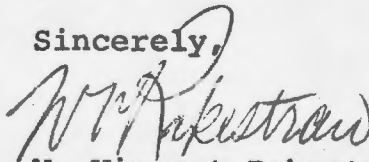
At the reference proceedings this Department took the position that the claims were neither legal nor equitable since claimants failed to show negligence by the Marines and in fact were themselves contributorily negligent. We contended that any relief would be a purely gratuitous payment of the sort not favored by Congress. The report to Congress by a review panel of Court of Claims Commissioners agreed that claimants had failed to establish a "legal or equitable claim" within the meaning of the reference statute, but stated that the more liberal standard of "good conscience" included in the referencing resolution would justify relief which would not be a disfavored "gratuity." During House Judiciary consideration of the bill after the report was received, however, the phrase "as a gratuity" was inserted in the bill to qualify the nature of the payment. No reason for such amendment is given in the report accompanying the bill (House Report No. 93-441).

In general, we oppose the enactment of such legislation, since it constitutes preferential treatment for some individuals although others similarly situated are denied relief. In the instant case, for example, newsmen injured covering combat operations of our troops are allowed to recover despite the Congressional policy of barring recovery for combat negligence, expressed both in the Tort Claims Act 28 U.S.C. 2680 and in 10 U.S.C. §2734(a) (no administrative payment for combat-caused injuries). Moreover, in the history of Congressional reference cases, there has been only one known instance in which Congress has approved a similar gratuity. In that case, Froman v. United States, 157 Ct. Cl. 661 (1962), Congress approved payment to singer Jane Froman who was injured in a commercial airline accident in Portugal while en route to a World War II concert tour of United States military bases overseas. See Bennett, Private Claims Acts and Congressional Reference, 9 A.F. JAG L. Rev. 8 (Nov. Dec. 1967).

Nevertheless, since Congress unquestionably has the prerogative to grant gratuities if it sees fit, however, ill-advised and discriminatory they may be, we perceive of no basis on which a veto could be recommended. Moreover, from the standpoint of the effect of this bill on our defense of subsequent Congressional reference cases, it is our opinion that the insertion of the words "as a gratuity" in the bill has overruled the unfortunate opinion of the Court of Claims Commissioners that language in a reference bill such as "in good conscience" could convert what would otherwise be neither a "legal" nor an "equitable" claim under the reference statute, but a "gratuity," into a nongratuitous claim upon which relief could be recommended. Such amendment by the Congress therefore effectively eliminates this case as an adverse precedent for future reference cases.

Accordingly, the Department of Justice has no objection to Executive approval of this bill.

Sincerely,



W. Vincent Rakestraw  
Assistant Attorney General





DEPARTMENT OF THE NAVY  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20350

October 22, 1974

Dear Mr. Ash:

Your transmittal sheet dated October 21, 1974, enclosing a facsimile of an enrolled bill of Congress, H.R. 6624, "For the relief of Alvin V. Burt, Junior, Eileen Wallace Kennedy Pope, and David Douglas Kennedy, a minor," and requesting comment of the Department of the Navy, has been received.

The purpose of H.R. 6624 is to pay the sum of \$45,482 to Mr. Alvin V. Burt, Jr., and \$36,750 each to the widow and the son of Mr. Douglas E. Kennedy for damages suffered by Mr. Burt and Mr. Kennedy on or about May 6, 1965, as a result of wounds received from gunfire from a check-point in the Dominican Republic manned by U.S. Marines.

Although neither the House nor the Senate Committees on the Judiciary requested the views of the Department of the Navy on H.R. 6624, this Department opposed enactment of H.R. 9752 and S. 1660, identical bills in the 90th Congress which were similar to H.R. 6624. After considering the Department of the Navy report on H.R. 9752, the House of Representatives enacted H. Res. 1110, 90th Congress, which referred H.R. 9752 to the Chief Commissioner of the Court of Claims. The Review Panel of Court of Claims Commissioners concluded that the United States has a moral obligation to compensate for the damages suffered by Mr. Burt and Mr. Kennedy [Burt v. United States, 199 Ct. Cl. 897 (1972)]. H.R. 6624 directs payment to Mr. Burt and the widow and the son of Mr. Kennedy in accordance with the Review Panel's findings as to the extent of the damages suffered by Mr. Burt and Mr. Kennedy.

The Department of the Navy has previously concurred in a Department of Justice proposed report to the Senate Judiciary Committee which opposed H.R. 6624 primarily on the grounds that the payments directed by the bill constitute a gratuity rather than recognition of a legal or equitable claim. The Department of Justice proposed report indicated that payment of a gratuity in this case would set an undesirable precedent.

In view of the foregoing, the Department of the Navy defers to the Department of Justice with regard to the approval of this enrolled enactment.

Sincerely yours,

D. S. Potter  
Acting Secretary of the Navy

Honorable Roy L. Ash  
Director, Office of Management  
and Budget  
Washington, D. C. 20503





TO THE HOUSE OF REPRESENTATIVES:

I am today withholding my approval from H.R. 6624, a bill "For the relief of Alvin V. Burt, Junior, Eileen Wallace Kennedy Pope, and David Douglas Kennedy, a minor."

I am advised by the Attorney General and I have determined that the absence of my signature from this bill prevents it from becoming law. Without in any way qualifying this determination, I am also returning it without my approval to those designated by Congress to receive messages at this time.

This bill would provide for payment, "as a gratuity," of \$45,482 to Mr. Burt and for similar payments of \$36,750 each to the widow and son of Douglas E. Kennedy for injuries and other damages Mr. Burt and Mr. Kennedy sustained as a result of gunshot wounds inflicted by U.S. military personnel in the Dominican Republic in 1965. The amounts in the bill were recommended in a congressional reference case opinion by a review panel of the Court of Claims.

The claims presented in this bill arise from an admittedly tragic and unfortunate incident. On May 6, 1965, Mr. Burt and Mr. Kennedy, two newspapermen who were covering the civil upheaval in the Dominican Republic and the peace-keeping operation in that country of U.S. military forces, attempted to drive through a U.S. checkpoint in Santo Domingo en route from rebel-held territory in the city. The Marines manning the checkpoint opened fire on their car when the men failed to get out as ordered and when it accelerated violently in reverse at the same time that the Marines were fired upon by snipers from an area behind the car. Both Mr. Burt and Mr. Kennedy were seriously injured as a result of the Marines' actions.



After the incident, both men received, without charge, extensive medical care and treatment from U.S. personnel in the field and later in U.S. military facilities. Their employer, the Miami Herald, paid their salaries while they were hospitalized, and guaranteed them continued employment. They also received workmen's compensation benefits during hospitalization, including prescribed lump-sum payments.

A majority of the members on a Court of Claims' review panel, which considered the present claims, held that the claimants had not established a "legal" or "equitable" claim within the meaning of the congressional reference statute. In fact, their opinion strongly suggests that the claimants' own negligence contributed to the injuries they received and further suggests that in pursuing their professions in the face of known hazards, the claimants assumed the risk of personal injury.

Notwithstanding these findings, however, the majority concluded that payment of reasonable compensation in this case was justified on "broad moral considerations" as a matter of "good conscience." Accordingly, they recommended awards in the amounts contained in the current bill.

I have considered carefully the merits of this case, and can find no reason to approve H.R. 6624. Equitable considerations growing out of Governmental actions have traditionally been the basis for private relief awards where no legal remedy is available. But the record clearly establishes that no such considerations are present in this case.

Approval of H.R. 6624 cannot, in my view, be justified by invoking terms such as "gratuity," as the awards are characterized in the bill, or "broad moral considerations,"



the basis used by the Court of Claims panel. To adopt such an approach could easily set a precedent for the payment of a myriad of claims involving financial hardship to selected individuals simply on the grounds that they lack legal redress. Once we start down this road, it will be difficult, if not impossible, to turn back.

I urge that in the future Congress adhere to the traditional equity basis for awards, whether or not they have been recommended by the Court of Claims under congressional reference procedures.

THE WHITE HOUSE,



We assume that the form of this message including the title and the first paragraph, will be revised to conform with the approach taken in the veto message on H.R. 11541--the National Wildlife Refuge System, dated October 22, 1974.

TO THE HOUSE OF REPRESENTATIVES

Language of veto of H.R. 11541: see attached

~~I am withholding my approval from~~ ~~I am returning herewith, without my approval,~~ H.R. 6624

a bill "For the relief of Alvin V. Burt, Junior, Eileen Wallace Kennedy Pope, and David Douglas Kennedy, a minor."

Insert "A"  
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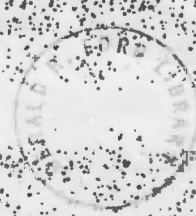
<sup>OL</sup> employer, the Miami Herald, paid their salaries while they were hospitalized, and <sup>OL</sup> guaranteed them continued employment. They also received workmen's <sup>OL</sup> compensation benefits during hospitalization, including prescribed lump-sum <sup>OL</sup> payments.

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I have considered carefully the merits of this case, and can find no reason to approve H.R. 6624. Equitable considerations growing out of Governmental actions have traditionally been the basis for private relief awards where no legal remedy is available. ~~As brought out above,~~ <sup>But</sup> the record clearly establishes that no such considerations are present in this case.

Approval of H.R. 6624 cannot, in my view, be justified by invoking terms such as "gratuity," as the awards are <sup>OL</sup> characterized in the bill, or "broad moral considerations,"



the basis used by the Court of Claims panel. To adopt such an approach could easily set a precedent for the payment of a myriad of claims involving financial hardship to selected individuals simply on the grounds that they lack legal redress. Once we start down this road ~~to the Treasury~~, it will be difficult, if not impossible, to turn back.

~~In conclusion~~ I earnestly urge that in the future Congress adhere to the traditional equity basis for awards, whether or not they have been recommended by the Court of Claims under congressional reference procedures.

THE WHITE HOUSE , X

October , 1974 . X



We assume that the form of this message including the title and the first paragraph, will be revised to conform with the approach taken in the veto message on H.R. 11541--the National Wildlife Refuge System, dated October 22, 1974.

TO THE HOUSE OF REPRESENTATIVES

I am returning herewith, without my approval, H.R. 6624 a bill "For the relief of Alvin V. Burt, Junior, Eileen Wallace Kennedy Pope, and David Douglas Kennedy, a minor."

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