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**APPROVED**  
**OCT 18 1974**

**THE WHITE HOUSE**  
**WASHINGTON**

**ACTION**

Last Day - October 19

October 17, 1974

*Posted  
10/19  
To Archives  
10/19*

MEMORANDUM FOR:

THE PRESIDENT

FROM:

KEN COLE

SUBJECT:

Enrolled Bill H.R. 3532  
For the Relief of Donald L.  
Tyndall and others

Attached for your consideration is House bill, H.R. 3532, sponsored by Representative Henderson, which authorizes total payments of \$50,000 to Donald L. Tyndall and his three children in full settlement of their claims against the United States arising from an accident in which a Marine Corps vehicle collided with their car.

Roy Ash recommends approval and provides you with additional background information in his enrolled bill report (Tab A).

We have checked with the Counsel's office (Chapman), the NSC, and Bill Timmons who also recommend approval.

RECOMMENDATION

That you sign House bill H.R. 3532 (Tab B).



APPROVED  
OCT. 18 1974

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

OCT 11 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 3532 - For the relief of  
Donald L. Tyndall and others  
Sponsor - Rep. Henderson (D) North Carolina

Last Day for Action

October 19, 1974 - Saturday

Purpose

Authorizes total payments of \$50,000 to Donald L. Tyndall and his three children in full settlement of their claims against the United States arising from an accident in which a Marine Corps vehicle collided with their car.

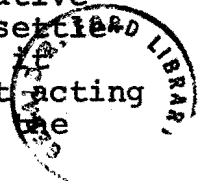
Agency Recommendations

Office of Management and Budget	Approval
Department of the Navy	No objection
Department of Justice	No objection

Discussion

On October 5, 1967, Donald Tyndall, his wife and three children were riding in an automobile near Beulaville, North Carolina. A Marine Corps truck traveling in the opposite direction collided headon with the Tyndall's car when the driver of the truck, a member of the Marine Corps, apparently attempted to pass another vehicle. Donald Tyndall and his children all were severely injured; his wife and the Marine Corps driver were killed.

Following the accident, the Tyndall family submitted claims to the Department of the Navy for administrative settlement under the Federal Tort Claims Act. No settlement was possible under that Act, however, because it was determined that the Marine Corps driver was not acting within the "scope of his employment" as defined in the



Act at the time the accident occurred -- an investigation revealed that he was intoxicated and had taken the truck without permission. Under a different authority (10 U.S.C. 2737) the Navy tendered an administrative settlement of approximately \$4,200. This settlement was rejected, however, and Donald Tyndall filed suit in a United States district court under the Federal Tort Claims Act. In 1970, the suit was dismissed, apparently not only because the driver had not been acting within the scope of his employment but also because the alleged negligence of other Marine Corps personnel was determined not to be the proximate cause of the accident. Upon appeal, the decision of the district court was upheld.

The enrolled bill would provide for total payments of \$50,000 to the four surviving members of the Tyndall family for medical and hospital expenses, funeral expenses, personal injuries, death, property damage, and other damages and losses suffered as the result of the accident.

In recommending favorable action on H.R. 3532, with an amendment to reduce the total amount of awards under the bill from approximately \$170,000 to \$50,000, the House Judiciary Committee relied upon the long-standing power of Congress to recognize claims based upon moral or equitable considerations as opposed to merely legal considerations. The Committee's report states:

"The Committee finds that the facts and circumstances of this case do involve particular equities which provide the basis for relief.

"The facts developed by the investigation establish that this accident was caused by a Marine who was operating the truck. The same investigation made it clear that the acts and omissions of other Marine Corps personnel in failing to take appropriate action, created a set of circumstances that enabled an intoxicated member of the Marine Corps to gain access to the keys of a truck after having been observed to have been under the influence of alcohol, appropriate that truck and drive it through a guarded gate of the Marine facility onto a public highway. He then caused an accident, the consequences of which have been borne by the Tyndall family without compensation.

\* \* \* \* \*



under such circumstances creates an equitable basis for relief; in other words, the U.S., not the innocent, damaged party, should bear the loss in such cases.

*Walter H. Rommel*

Assistant Director for  
Legislative Reference

Enclosures



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 653

Date: October 11, 1974

Time: 3:30 p.m.

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

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

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, October 15, 1974 Time: 2:00 p.m.

SUBJECT: Enrolled Bill H.R. 3532 - For the relief of Donald L. Tyndall and others

ACTION REQUESTED:

- |   |  |
|---|--|
| <input type="checkbox"/> For Necessary Action     | <input checked="" type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply                         |
| <input type="checkbox"/> For Your Comments        | <input type="checkbox"/> 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.

\_\_\_\_\_  
K. R. COLE, JR.  
For the President

THE WHITE HOUSE  
WASHINGTON

10/11/74

TO: WARREN HENDRIKS

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Robert D. Linder



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

October 7, 1974

Dear Mr. Ash:

Your transmittal sheet dated October 4, 1974, enclosing a facsimile of an enrolled bill of Congress, H.R. 3532, "For the relief of Donald L. Tyndall, Bruce Edward Tyndall, Kimberly Fay Tyndall, and Lisa Michele Tyndall," and requesting comment of the Department of the Navy, has been received.

H.R. 3532, as passed with amendments, provides for the payment of a total of \$50,000 to members of the Tyndall family in full settlement of their claims against the United States for medical and hospital expenses, funeral expenses, personal injuries, death, property damage, and other damage resulting from an automobile accident involving a U.S. Marine Corps truck, driven by a member of the Marine Corps, near Beulaville, North Carolina, on October 5, 1967. The Chevrolet automobile in which the Tyndall family was riding was struck head on and demolished by the Marine six-wheel truck. Mrs. Tyndall was killed and her husband and children were severely injured. The driver of the Marine truck was also killed.

Claims arising from this accident were submitted to the Department of the Navy. No settlement under the Federal Tort Claims Act was possible, however, because the Marine driver, who was intoxicated, had taken the truck without permission and, therefore, was not in the "scope of his employment" as defined in the Act. A settlement of \$4,195.70 was tendered under authority of 10 U.S.C. 2737, computed as follows: \$195.70 for medical expenses for one of the children and \$1,000 each for the other four members of the family. This settlement was rejected and suit was brought in the United States District Court for the Eastern District of North Carolina. On January 27, 1970, the District Court judge ordered the action dismissed; his decision was subsequently affirmed by the United States Court of Appeals for the Fourth Circuit [430 F.2d 1180 (1970)].

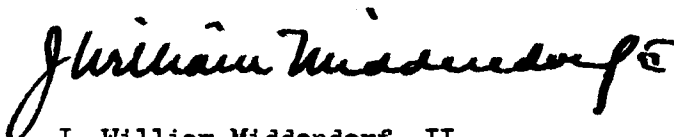
In its report to the Chairman of the Committee on the Judiciary, House of Representatives, the Department of the Navy opposed H.R. 6344, a bill in the 92nd Congress which was identical to H.R. 3532 as originally introduced, on the grounds that enactment of the bill would discriminate unfairly against other persons similarly situated who are limited to the relief authorized by 10 U.S.C. 2737. Although the Department of the Navy was not requested to comment on H.R. 3532, a representative of the Department testified in opposition to the bill before the Subcommittee on Claims and Governmental Relations of the House Committee on the Judiciary. The basis for the testimony was the Department of the Navy report on H.R. 6344, 92nd Congress





Inasmuch as the Congress enacted H.R. 3532, after giving consideration to the adverse views expressed by the Department of the Navy, the Department of the Navy interposes no objection to the approval of this enrolled enactment.

Sincerely yours,

A handwritten signature in cursive script, reading "J William Middendorf II". The signature is written in dark ink and is positioned above the typed name.

J William Middendorf II  
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 9 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 of the enrolled bill (H. R. 3532), "For the relief of Donald L. Tyndall, Bruce Edward Tyndall, Kimberly Kay Tyndall, and Lisa Michele Tyndall."

H.R. 3532 would provide for the payment of the total sum of \$50,000 in full settlement of all claims against the United States for medical and hospital expenses, funeral expenses, personal injuries, death, property damage and other damages sustained by the Donald L. Tyndall family as a result of an automobile collision between the Tyndall vehicle and a United States Marine Corps six wheel truck. The bill recites that the claims are not cognizable under the Tort Claims provisions of Title 28, United States Code.

The circumstances surrounding the accident of October 5, 1967 as recited in the Congressional Record of October 3, 1974 at S 18125 are substantially correct. As a result of the accident, a suit against the United States under the Federal Tort Claims Act was commenced in the United States District Court for the Eastern District of North Carolina. The history of the litigation is recorded at 295 F. Supp. 448, 306 F. Supp. 266 and 430 F.2d at 1180 (C. A. 4). In sum, the suit against the United States was ultimately dismissed on the ground that the alleged negligence on the part of Marine Corps personnel was not the proximate cause of the death, personal injury and property damage sustained by the Tyndall family.

While the Department of Justice is generally opposed to private relief measures of this type, since such measures accord preferential treatment to the beneficiaries, in view of the peculiar circumstances pertaining to this relief measure and the particular equities of the situation we interpose no objection to Executive approval of H. R. 3532.

Sincerely,



W. Vincent Rakestraw  
Assistant Attorney General

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 653

Date: October 11, 1974

Time: 3:30 p.m.

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

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

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, October 15, 1974 Time: 2:00 p.m.

SUBJECT: Enrolled Bill H.R. 3532 - For the relief of Donald L. Tyndall and 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 10/15  
yes*

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

THE WHITE HOUSE  
WASHINGTON

October 14, 1974

MEMORANDUM FOR: MR. WARREN HENDRIKS  
FROM: WILLIAM E. TIMMONS *W. E. Timmons*  
SUBJECT: Action Memorandum - Log No. 653  
Enrolled Bill H. R. 3532 - for the relief  
of Donald L. Tyndall and others

The Office of Legislative Affairs concurs in the attached proposal and has no additional recommendations.

Attachment

THE WHITE HOUSE  
WASHINGTON

October 14, 1974

MEMORANDUM FOR: MR. WARREN HENDRIKS  
FROM: WILLIAM E. TIMMONS *W.E. Timmons*  
SUBJECT: Action Memorandum - Log No. 653  
Enrolled Bill H. R. 3532 - for the relief  
of Donald L. Tyndall and others

The Office of Legislative Affairs concurs in the attached proposal and has no additional recommendations.

Attachment

DONALD L. TYNDALL, BRUCE EDWARD TYNDALL, KIMBERLY FAY TYNDALL, AND LISA MICHELE TYNDALL

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APRIL 25, 1974.—Committed to the Committee of the Whole House and ordered to be printed

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

REPORT

[To accompany H.R. 3532]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3532) for the relief of Donald L. Tyndall, Bruce Edward Tyndall, Kimberly Fay Tyndall, Lisa Michele Tyndall, and the estate of Elizabeth M. Tyndall, deceased, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, lines 3 through 10: Strike "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 \$82,058.46 to Donald L. Tyndall; the sum of \$44,965.84 to the estate of Elizabeth M. Tyndall, deceased; the sum of \$25,000 to the legal guardian of Bruce Edward Tyndall, a minor; the sum of \$3,000 to the legal guardian of Kimberly Fay Tyndall, a minor; and the sum of \$15,000 to the legal guardian of Lisa Michele Tyndall, a" and insert:

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 \$24,000.00 to Donald L. Tyndall; the sum of \$12,000.00 to the Clerk of the Superior Court of Duplin County, North Carolina, to be administered under North Carolina general statute 7A-111 entitled "Receipts and Disbursements of Insurance and other Moneys of Minors and Incapacitated Adults", in behalf of Bruce Edward Tyndall, a minor; the sum of \$12,000.00 to the Clerk of the Superior Court of Duplin County, North Carolina, to be administered under North Carolina general statute 7A-111 entitled "Receipts and Disbursements of Insurance and other Moneys of Minors and Incapacitated Adults", in behalf of Lisa Michele

Tyndall, a minor; and the sum of \$2,000.00 to the Clerk of the Superior Court of Duplin County, North Carolina, to be administered under North Carolina general statute 7A-111 entitled "Receipts and Disbursements of Insurance and other Moneys of Minors and Incapacitated Adults", in behalf of Kimberly Fay Tyndall, a

Page 2, line 12: Strike "the amount" and insert "each of the amounts".

Amend the title to read:

For the relief of Donald L. Tyndall, Bruce Edward Tyndall, Kimberly Fay Tyndall, and Lisa Michele Tyndall.

#### PURPOSE

The purpose of the proposed legislation, as amended, is to pay the persons named below the amounts shown in full settlement of their claims against the United States for medical and hospital expenses, funeral expenses, personal injuries, death, property damage and other damage resulting from an automobile accident involving a U.S. Marine Corps truck driven by a member of the Marine Corps which occurred in North Carolina near the town of Beulaville on October 5, 1967.

Donald L. Tyndall, \$24,000.00.

Bruce Edward Tyndall, a minor, \$12,000.00.

Kimberly Fay Tyndall, a minor, \$12,000.00.

Lisa Michele Tyndall, a minor, \$2,000.00.

The amended bill would provide that the payments in behalf of the minors would be paid to the Clerk of the Superior Court of Duplin County, North Carolina to be administered under North Carolina general statute 7A-111 entitled "Receipts and Disbursements of Insurance and other Moneys of Minors and Incapacitated Adults".

#### STATEMENT

On the evening of October 5, 1967, Donald L. Tyndall, then 24 years of age, with his wife Elizabeth—24, and their three small children, was driving a 1957 Chevrolet on Highway 24 in Duplin County, North Carolina near the town of Beulaville. While apparently attempting to pass another vehicle, Private First Class Robert H. Braathe, U.S. Marine Corps, drove a Government owned six wheel stake truck headon into the Tyndall vehicle. The Tyndall car was totally destroyed, Mrs. Elizabeth M. Tyndall was killed, and Donald L. Tyndall and their children all suffered injuries. Private First Class Braathe was also killed in the collision. Subsequent investigation indicated that the Marine driver was intoxicated and had taken the truck without permission. As a result of the foregoing circumstances and a subsequent court proceeding, it was held that the Marine driver was not acting within the scope of his employment. The

action was brought in a United States district court under the Federal Tort Claims Act but the determination as to lack of official duty status was the basis of a dismissal. The decision was affirmed on appeal.

A subcommittee hearing on the bill H.R. 3532 was held on October 31, 1973. In addition to the testimony presented at the hearing, the subcommittee requested and received from the Department of the Navy copies of depositions taken in 1968 of witnesses in the civil proceedings in the Federal Court, *Donald L. Tyndall v. United States*; statements obtained from witnesses in the course of the investigation by Marine authorities of the accident; and a copy of the Marine Corps investigation report of the accident. On the basis of its consideration of all of the facts of the matter, this committee has concluded that this is an appropriate case for legislative relief in the reduced amounts recommended in the committee amendment. As outlined in its report on the bill, the Department of the Navy has opposed relief. However, the Navy position, as amplified by its testimony at the hearing, is primarily based upon the right of the claimants to recover under the laws applicable to tort proceedings or the laws governing administrative relief administered by the Department. The bill H.R. 3532 embodies an appeal to Congress for the redress of grievances. The Navy report itself recognizes that legislative action in cases such as these is based upon a congressional recognition of a moral obligation. Of course, this authority extends beyond the departmental authority referred to by the Navy which is provided in section 2737 of Title 10 of the United States Code.

The power of Congress to recognize moral or equitable claims has been exercised since the early days of the Republic. The Supreme Court in the case of *United States v. Realty Co.* 163 U.S. 427 (1896) commented on this power of Congress. The court pointed out that the language of Article 1, section 8 of the Constitution provides the Congress with the power to lay and collect taxes "to pay the debts of the United States." It held that these debts are not limited to those evidenced by some written obligation or those of a strictly legal character. Specifically, the Court stated that :

The nation, speaking broadly, owes a "debt" to an individual when his claim grows out of general principles of right and justice; when, in other words it is based upon considerations of a moral or merely honorary nature, such as are binding on the conscience or the honor of an individual, although the debt could obtain no recognition in a court of law. The power of Congress extends at least as far as the recognition and payment of claims against the government which are thus founded . . .

The committee finds that the facts and circumstances of this case do involve particular equities which provide the basis for relief.

The facts developed by the investigation establish that this accident was caused by a Marine who was operating the truck. The same investigation made it clear that the acts and omissions of other Marine



Corps personnel in failing to take appropriate action, created a set of circumstances that enabled an intoxicated member of the Marine Corps to gain access to the keys of a truck after having been observed to have been under the influence of alcohol, appropriate that truck and drive it through a guarded gate of the Marine facility onto a public highway. He then caused an accident, the consequences of which have been borne by the Tyndall family without compensation.

The Navy investigation found that the Marine who took the truck was observed by a number of persons on the Marine base who subsequently testified that he was under the influence of alcohol when they saw him prior to his taking the truck. The investigation also stated that he was observed in the barracks with alcoholic beverage contrary to existing regulations prior to taking the vehicle. The investigation further found that the vehicle taken by the Marine was not turned in to the Motor Pool on the day it was taken in accordance with existing orders and verbal instructions. It was also found that the keys were not removed from the vehicle in accordance with applicable Marine regulations.

The committee feels that the most significant omission in this case was the failure on the part of Marine personnel to properly control the vehicle and, in particular, the failure to stop the vehicle from leaving the base. The investigation found that the Marine Private left the Marine Corps Air facility at about 10:00 P.M. on October 5, 1967 through or adjacent to the main gate with the Government vehicle and that the gate sentries either failed to notice the truck or failed to attempt to stop it. The findings in the investigation included a statement that the physical area of the base is such that it prohibits the exit of any wheeled vehicles from the facility except in an area within 40 yards of the main gate.

The committee points out that had proper diligence been exercised concerning the matters outlined above, this tragic accident could have been averted. The committee amendment provides for payments based on general principles of equity and justice. It should also be noted that, as provided in the committee amendment to the bill, the payments in behalf of the minor children would be made to the Clerk of the Superior Court of Duplin County, North Carolina, to be administered under North Carolina general statute 7A-111 entitled "Receipts and Disbursements of Insurance and other Moneys of Minors and Incapacitated Adults." The committee has been advised that this North Carolina statute would make it possible for the court to supervise the administration and disbursement of the funds paid in behalf of the minor children as provided in the amended bill. It is concluded that the facts of the matter justify the payments provided for in the committee amendment and it is recommended that the amended bill be considered favorably.

The committee has been advised that an attorney has rendered services in connection with this matter. Accordingly, the bill carries the customary limitation on attorney's fees.

[The adverse report of the Navy is as follows:]

DEPARTMENT OF THE NAVY,  
OFFICE OF LEGISLATIVE AFFAIRS,  
*Washington, D.C., June 1, 1972.*

LA-61B: jkl.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your letter to the Secretary of the Navy requesting comment on H.R. 6344, a bill "For the relief of Donald L. Tyndall, Bruce Edward Tyndall, Kimberly Fay Tyndall, Lisa Michele Tyndall, and the estate of Elizabeth M. Tyndall, Deceased."

This proposal provides for the payment of \$82,058.46 to Donald L. Tyndall, \$44,965.84 to the estate of Elizabeth M. Tyndall, \$25,000 to the guardian of Bruce Edward Tyndall, \$3,000 to the guardian of Kimberly Fay Tyndall, and \$15,000 to the guardian of Lisa Michele Tyndall in full settlement of all claims against the United States arising from an accident on October 5, 1967, when a Chevrolet automobile in which the Tyndall family was riding was struck head on and demolished by a U.S. Marine Corps six-wheel truck. Mrs. Tyndall was killed and her husband and children were severely injured. The driver of the Marine truck was also killed.

Claims arising from this incident were submitted to the Navy Department. No settlement under the Federal Tort Claims Act was possible, however, because the Marine driver, who was intoxicated, had taken the truck without permission and, therefore, was not in the "scope of his employment" as defined in the Act. A settlement of \$4,195.70 was tendered under authority of 10 U.S.C. 2737, computed as follows: \$195.70 for medical expenses for Kimberly Fay Tyndall and \$1,000 each for the other four members of the family. This settlement was rejected and suit was brought in the United States District Court for the Eastern District of North Carolina. On January 27, 1970, Judge Oren R. Lewis ordered the actions dismissed. The decision was confirmed by the United States Court of Appeals for the Fourth Circuit on the basis of *McAllister v. Drieves*, 318 F.2d 513 (4th Cir 1963), on October 6, 1970 (Decision #14,547).

Congress has recognized a moral responsibility to extend relief to victims under these circumstances but, in 10 U.S.C. 2737, has placed clear limits on the extent of the relief to be given.

The Department of the Navy opposes enactment of subject bill on the grounds that it unfairly discriminates against other persons similarly situated who are limited by the provisions of 10 U.S.C. 2737.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report on H.R. 6344 for the consideration of the Committee.

For the Secretary of the Navy.

Sincerely yours,

E. H. WILLETT,  
*Captain, U.S. Navy, Deputy Chief.*

○

# Calendar No. 1142

93D CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ No. 93-1202

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DONALD L. TYNDALL, BRUCE EDWARD TYNDALL, KIMBERLY FAY TYNDALL, AND LISA MICHELE TYNDALL

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OCTOBER 1, 1974.—Ordered to be printed

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

## REPORT

[To accompany H.R. 3532]

The Committee on the Judiciary, to which was referred the bill (H.R. 3532) for the relief of Donald L. Tyndall, Bruce Edward Tyndall, Kimberly Fay Tyndall, and Lisa Michele Tyndall, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed legislation is to pay the persons named below the amounts shown in full settlement of their claims against the United States for medical and hospital expenses, funeral expenses, personal injuries, death, property damage and other damage resulting from an automobile accident involving a U.S. Marine Corps truck driven by a member of the Marine Corps which occurred in North Carolina near the town of Beulaville on October 5, 1967.

Donald L. Tyndall, \$24,000.00.

Bruce Edward Tyndall, a minor, \$12,000.00.

Kimberly Fay Tyndall, a minor, \$2,000.00.

Lisa Michele Tyndall, a minor, \$12,000.00.

The bill would provide that the payments in behalf of the minors would be paid to the Clerk of the Superior Court of Duplin County,

North Carolina to be administered under North Carolina general statute 7A-111 entitled "Receipts and Disbursements of Insurance and other Moneys of Minors and Incapacitated Adults".

#### STATEMENT

The facts of this case, as contained in House Report 93-1005, are as follows:

On the evening of October 5, 1967, Donald L. Tyndall, then 24 years of age, with his wife Elizabeth—24, and their three small children, was driving a 1957 Chevrolet on Highway 24 in Duplin County, North Carolina near the town of Beula-ville. While apparently attempting to pass another vehicle, Private First Class Robert H. Braathe, U.S. Marine Corps, drove a Government owned six wheel stake truck headon into the Tyndall vehicle. The Tyndall car was totally destroyed, Mrs. Elizabeth M. Tyndall was killed, and Donald L. Tyndall and their children all suffered injuries. Private First Class Braathe was also killed in the collision. Subsequent investigation indicated that the Marine driver was intoxicated and had taken the truck without permission. As a result of the foregoing circumstances and a subsequent court proceeding, it was held that the Marine driver was not acting within the scope of his employment. The action was brought in a United States district court under the Federal Tort Claims Act but the determination as to lack of official duty status was the basis of a dismissal. The decision was affirmed on appeal.

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"The nation, speaking broadly, owes a 'debt' to an individual when his claim grows out of general principles of right and justice; when, in other words it is based upon considerations of a moral or merely honorary nature, such as are binding on the conscience or the honor of an individual, although the debt could obtain no recognition in a court of law. The power of Congress extends at least as far as the recognition and payment of claims against the government which are thus founded \* \* \*"

The committee finds that the facts and circumstances of this case do involve particular equities which provide the basis for relief.

The facts developed by the investigation establish that this accident was caused by a Marine who was operating the truck. The same investigation made it clear that the acts and omissions of other Marine Corps personnel in failing to take appropriate action, created a set of circumstances that enabled an intoxicated member of the Marine Corps to gain access to the keys of a truck after having been observed to have been under the influence of alcohol, appropriate that truck and drive it through a guarded gate of the Marine facility onto a public highway. He then caused an accident, the consequences of which have been borne by the Tyndall family without compensation.

The Navy investigation found that the Marine who took the truck was observed by a number of persons on the Marine base who subsequently testified that he was under the influence of alcohol when they saw him prior to his taking the truck. The investigation also stated that he was observed in the barracks with alcoholic beverage contrary to existing regulations prior to taking the vehicle. The investigation further found that the vehicle taken by the Marine was not turned in to the Motor Pool on the day it was taken in accordance with existing orders and verbal instructions. It was also found that the keys were not removed from the vehicle in accordance with applicable Marine regulations.

The committee feels that the most significant omission in this case was the failure on the part of Marine personnel to properly control the vehicle and, in particular, the failure to stop the vehicle from leaving the base. The investigation found that the Marine Private left the Marine Corps Air facility at about 10:00 P.M. on October 5, 1967 through or

adjacent to the main gate with the Government vehicle and that the gate sentries either failed to notice the truck or failed to attempt to stop it. The findings in the investigation included a statement that the physical area of the base is such that it prohibits the exit of any wheeled vehicles from the facility except in an area within 40 yards of the main gate.

The committee points out that had proper diligence been exercised concerning the matters outlined above, this tragic accident could have been averted. The committee amendment provides for payments based on general principles of equity and justice. It should also be noted that, as provided in the committee amendment to the bill, the payments in behalf of the minor children would be made to the Clerk of the Superior Court of Duplin County, North Carolina, to be administered under North Carolina general statute 7A-111 entitled "Receipts and Disbursements of Insurance and other Moneys of Minor and Incapacitated Adults." The committee has been advised that this North Carolina statute would make it possible for the court to supervise the administration and disbursement of the funds paid in behalf of the minor children as provided in the amended bill. It is concluded that the facts of the matter justify the payments provided for in the committee amendment and it is recommended that the bill be considered favorably.

In agreement with the views of the House of Representatives this Committee recommends that the bill be favorably considered.

Attached to and made a part of this report is the Department of the Navy report.

DEPARTMENT OF THE NAVY,  
OFFICE OF LEGISLATIVE AFFAIRS,  
Washington, D.C., June 1, 1972.

LA-61B: jkl.

Hon. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your letter to the Secretary of the Navy requesting comment on H.R. 6344, a bill "For the relief of Donald L. Tyndall, Bruce Edward Tyndall, Kimberly Fay Tyndall, Lisa Michele Tyndall, and the estate of Elizabeth M. Tyndall, Deceased."

This proposal provides for the payment of \$82,058.46 to Donald L. Tyndall, \$44,965.84 to the estate of Elizabeth M. Tyndall; \$25,000 to the guardian of Bruce Edward Tyndall, \$3,000 to the guardian of Kimberly Fay Tyndall, and \$15,000 to the guardian of Lisa Michele Tyndall in full settlement of all claims against the United States arising from an accident on October 5, 1967, when a Chevrolet automobile in which the Tyndall family was riding was struck head on and demolished by a U.S. Marine Corps six-wheel truck. Mrs. Tyndall was killed and her husband and children were severely injured. The driver of the Marine truck was also killed.

Claims arising from this incident were submitted to the Navy Department. No settlement under the Federal Tort Claims Act was possible, however, because the Marine driver, who was intoxicated, had taken the truck without permission and, therefore, was not in the "scope of his employment" as defined in the Act. A settlement of \$4,195.70 was tendered under authority of 10 U.S.C. 2737, computed as follows: \$195.70 for medical expenses for Kimberly Fay Tyndall and \$1,000 each for the other four members of the family. This settlement was rejected and suit was brought in the United States District Court for the Eastern District of North Carolina. On January 27, 1970, Judge Oren R. Lewis ordered the actions dismissed. The decision was confirmed by the United States Court of Appeals for the Fourth Circuit on the basis of *McAllister v. Drieves*, 318 F.2d 513 (4th Cir 1963), on October 6, 1970 (Decision #14,547).

Congress has recognized a moral responsibility to extend relief to victims under these circumstances but, in 10 U.S.C. 2737, has placed clear limits on the extent of the relief to be given.

The Department of the Navy opposes enactment of subject bill on the grounds that it unfairly discriminates against other persons similarly situated who are limited by the provisions of 10 U.S.C. 2737.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report on H.R. 6344 for the consideration of the Committee.

For the Secretary of the Navy.

Sincerely yours,

E. H. WILLETT,  
*Captain, U.S. Navy, Deputy Chief.*

○

# 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 Donald L. Tyndall, Bruce Edward Tyndall, Kimberly Fay Tyndall, and Lisa Michele Tyndall.

*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 \$24,000 to Donald L. Tyndall; the sum of \$12,000 to the Clerk of the Superior Court of Duplin County, North Carolina, to be administered under North Carolina general statute 7A-111 entitled "Receipts and Disbursements of Insurance and other Moneys of Minors and Incapacitated Adults", in behalf of Bruce Edward Tyndall, a minor; the sum of \$12,000 to the Clerk of the Superior Court of Duplin County, North Carolina, to be administered under North Carolina general statutes 7A-111 entitled "Receipts and Disbursements of Insurance and other Moneys of Minors and Incapacitated Adults", in behalf of Lisa Michele Tyndall, a minor; and the sum of \$2,000 to the Clerk of the Superior Court of Duplin County, North Carolina, to be administered under North Carolina general statute 7A-111 entitled "Receipts and Disbursements of Insurance and other Moneys of Minors and Incapacitated Adults", in behalf of Kimberly Fay Tyndall, a minor, in full settlement of all claims against the United States for medical and ~~hospital expenses, funeral expenses, personal injuries, death, property~~ damage, and other damages and losses suffered as the result of an automobile accident which occurred in Duplin County, North Carolina, on Highway Numbered 24 near the town of Beulaville on October 5, 1967, when a Chevrolet automobile in which the family was riding was struck and demolished by a United States Marine Corps six-wheel truck driven by a member of the Marine Corps. These claims are not cognizable under the tort claims provisions of title 28, United States Code.

SEC. 2. No part of each of the amounts 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.*



October 8, 1974

Dear Mr. Director:

The following bills were received at the White House on October 8th:

- |             |              |
|-------------|--------------|
| S. 283 ✓    | H.R. 6202 ✓  |
| S. 634 ✓    | H.R. 6477 ✓  |
| S. 2001 ✓   | H.R. 7135 ✓  |
| H.R. 3532 ✓ | H.R. 12471 ✓ |
| H.R. 5641 ✓ |              |

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder  
Chief Executive Clerk

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

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 653

Date: October 11, 1974

Time: 3:30 p.m.

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

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

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, October 15, 1974 Time: 2:00 p.m.

SUBJECT: Enrolled Bill H.R. 3532 - For the relief of Donald L. Tyndall and 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

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

Last Day - October 19

October 17, 1974

MEMORANDUM FOR: THE PRESIDENT  
FROM: KEN COLE  
SUBJECT: Enrolled Bill H.R. 3532  
For the Relief of Donald L.  
Tyndall and others

Attached for your consideration is House bill, H.R. 3532, sponsored by Representative Henderson, which authorizes total payments of \$50,000 to Donald L. Tyndall and his three children in full settlement of their claims against the United States arising from an accident in which a Marine Corps vehicle collided with their car.

Roy Ash recommends approval and provides you with additional background information in his enrolled bill report (Tab A).

We have checked with the Counsel's office (Chapman), the NSC, and Bill Timmons who also recommend approval.

RECOMMENDATION

That you sign House bill H.R. 3532 (Tab B).

**MEMORANDUM**  
Last Day - October 19

October 17, 1974

**MEMORANDUM FOR: THE PRESIDENT**  
**FROM: KEN COLE**  
**SUBJECT: Enrolled Bill H.R. 3532  
For the Relief of Donald L.  
Tyndall and others**

Attached for your consideration is House bill, H.R. 3532, sponsored by Representative Henderson, which authorizes total payments of \$50,000 to Donald L. Tyndall and his three children in full settlement of their claims against the United States arising from an accident in which a Marine Corps vehicle collided with their car.

Roy Ash recommends approval and provides you with additional background information in his enrolled bill report (Tab A).

We have checked with the Counsel's office (Chapman), the NSC, and Bill Timmons who also recommend approval.

**RECOMMENDATION**

That you sign House bill H.R. 3532 (Tab B).

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OCT 11 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 3532 - For the relief of  
Donald L. Tyndall and others  
Sponsor - Rep. Henderson (D) North Carolina

Last Day for Action

October 19, 1974 - Saturday

Purpose

Authorizes total payments of \$50,000 to Donald L. Tyndall and his three children in full settlement of their claims against the United States arising from an accident in which a Marine Corps vehicle collided with their car.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Navy	No objection
Department of Justice	No objection

Discussion

On October 5, 1967, Donald Tyndall, his wife and three children were riding in an automobile near Beulaville, North Carolina. A Marine Corps truck traveling in the opposite direction collided headon with the Tyndall's car when the driver of the truck, a member of the Marine Corps, apparently attempted to pass another vehicle. Donald Tyndall and his children all were severely injured; his wife and the Marine Corps driver were killed.

Following the accident, the Tyndall family submitted claims to the Department of the Navy for administrative settlement under the Federal Tort Claims Act. No settlement was possible under that Act, however, because it was determined that the Marine Corps driver was not acting within the "scope of his employment" as defined in the

To Warren Henderson  
10-11-74  
1:15 P.M.

Act at the time the accident occurred -- an investigation revealed that he was intoxicated and had taken the truck without permission. Under a different authority (10 U.S.C. 2737) the Navy tendered an administrative settlement of approximately \$4,200. This settlement was rejected, however, and Donald Tyndall filed suit in a United States district court under the Federal Tort Claims Act. In 1970, the suit was dismissed, apparently not only because the driver had not been acting within the scope of his employment but also because the alleged negligence of other Marine Corps personnel was determined not to be the proximate cause of the accident. Upon appeal, the decision of the district court was upheld.

The enrolled bill would provide for total payments of \$50,000 to the four surviving members of the Tyndall family for medical and hospital expenses, funeral expenses, personal injuries, death, property damage, and other damages and losses suffered as the result of the accident.

In recommending favorable action on H.R. 3532, with an amendment to reduce the total amount of awards under the bill from approximately \$170,000 to \$50,000, the House Judiciary Committee relied upon the long-standing power of Congress to recognize claims based upon moral or equitable considerations as opposed to merely legal considerations. The Committee's report states:

"The Committee finds that the facts and circumstances of this case do involve particular equities which provide the basis for relief.

"The facts developed by the investigation establish that this accident was caused by a Marine who was operating the truck. The same investigation made it clear that the acts and omissions of other Marine Corps personnel in failing to take appropriate action, created a set of circumstances that enabled an intoxicated member of the Marine Corps to gain access to the keys of a truck after having been observed to have been under the influence of alcohol, appropriate that truck and drive it through a guarded gate of the Marine facility onto a public highway. He then caused an accident, the consequences of which have been borne by the Tyndall family without compensation.

\* \* \* \* \*

"The committee feels that the most significant omission in this case was the failure on the part of Marine personnel to properly control the vehicle and, in particular, the failure to stop the vehicle from leaving the base.

\* \* \* \* \*

"The committee points out that had proper diligence been exercised concerning the matters outlined above, this tragic accident could have been averted. The committee amendment provides for payments based on general principles of equity and justice."

While noting that the Navy opposed H.R. 3532 as introduced and previously opposed identical legislation in the 92nd Congress on the grounds that enactment of such legislation would discriminate unfairly against other persons similarly situated who are limited to the relief authorized by 10 U.S.C. 2737, the Navy's enrolled bill letter states:

"Inasmuch as the Congress enacted H.R. 3532, after giving consideration to the adverse views expressed by the Department of the Navy, the Department of the Navy interposes no objection to the approval of this enrolled enactment."

In its enrolled bill letter, the Department of Justice states:

"While the Department of Justice is generally opposed to private relief measures of this type, since such measures accord preferential treatment to the beneficiaries, in view of the peculiar circumstances pertaining to this relief measure and the particular equities of the situation, we interpose no objection to Executive approval of H.R. 3532."

Bills paying compensation for damages caused by the unauthorized use of motor vehicles by intoxicated servicemen have been enacted from time to time. The rationale supporting those awards was essentially that set out in the committee report in this case -- even though it does not provide a basis for legal liability, the failure of military authorities to prevent the unauthorized use of motor vehicles

under such circumstances creates an equitable basis for relief; in other words, the U.S., not the innocent, damaged party, should bear the loss in such cases.

*Walter H. Russell*

Assistant Director for  
Legislative Reference

Enclosures



"The committee feels that the most significant omission in this case was the failure on the part of Marine personnel to properly control the vehicle and, in particular, the failure to stop the vehicle from leaving the base.

\* \* \* \* \*

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