

FOR THE RELIEF OF LLOYD B. GAMBLE

JULY 31, 1997.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 998]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 998) for the relief of Lloyd B. Gamble, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

H.R. 998 would authorize the Secretary of the Treasury to pay Lloyd B. Gamble \$253,488 for damages suffered after being given LSD while he served in the United States Air Force.

BACKGROUND

Lloyd Gamble enlisted in the Army in 1944 and subsequently transferred to the Air Force in 1950. In late 1957, he volunteered to participate in a program he thought tested the effectiveness of protective clothing and equipment as defenses against chemical warfare. He was then transferred to the Army's Chemical Warfare Laboratories at the Aberdeen Proving Grounds in Maryland.

During the program, Mr. Gamble was secretly administered doses of lysergic acid diethylamide (LSD) under an Army plan to study the effects of the drug on human subjects. Gamble claims he suffered severe personality disorders as a result of the tests: periodic blackouts, unexplainable periods of deep depression and/or acute anxiety, suicidal urges, and violent behavior. He attempted suicide in 1960. The Air Force canceled Gamble's "top secret" clearance after the attempted suicide, thus limiting Gamble's opportunity for promotion. He took an early retirement from the Air

Force in 1968. He did not find out that he had participated in LSD experiments until Congressional investigations that took place in 1975. The Justice Department ruled a 1981 claim by Mr. Gamble to be barred by the statute of limitations. The Veterans Administration found no evidence of permanent disability and thus no basis for compensation.

Mr. Gamble claims that he was denied promotions, lost friends, and lost his marriage as a result of the changes LSD made in his personality. His claim is for physical, emotional, mental, and financial injuries as a result of the Army's administering LSD without his knowledge.

Mr. Gamble's claim is based upon an estimate of his economic losses which include damages for active duty pay losses and past and future retired pay losses. The economic damages are based on the assumption that, but for the LSD tests, Mr. Gamble would have been promoted three times in the years after the tests (from E-5 to E-6 in 1957, from E-6 to E-7 in 1960, and from E-7 to E-8 in 1963).

His claim also includes non-economic damages for mental anguish, such as unexplainable periods of deep depression, severe personality disorders with periodic blackouts, suicidal urges, and violent behavior. The non-economic damages also include loss of capacity for the enjoyment of life, and alienation from family and friends.

COMMITTEE ACTION

H.R. 1009, an identical bill was passed by the House of Representatives in the 104th Congress. Predecessor bills H.R. 3344 and H.R. 3590 were passed by the House of Representatives in the 103rd and 102nd Congress, respectively.

On June 3, 1997, the Subcommittee on Immigration and Claims met in open session and ordered favorably reported the bill H.R. 998, without amendment, by voice vote, a quorum being present.

On July 23, 1997, the Committee on the Judiciary met in open session and ordered reported favorably the bill H.R. 998, without amendment, by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI applies because this legislation does provide new budgetary authority or increased tax expenditures. See Congressional Budget Office letter.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 998, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 24, 1997.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 998, a bill for the relief of Lloyd B. Gamble, as ordered reported by the House Committee on the Judiciary on July 23, 1997. The bill would require the Secretary of the Treasury to make a payment of \$253,488. We expect this outlay would occur in fiscal year 1998. Because the bill would increase direct spending, pay-as-you-go procedures would apply.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John R. Righter.

Sincerely,

JUNE E. O'NEILL, *Director.*

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in the First Amendment of the Constitution.

AGENCY VIEWS

The comments of the Department of Justice and the Department of Defense are as follows:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, October 13, 1995.

Hon. LAMAR SMITH,
*Chairman, Subcommittee on Immigration and Claims, Committee
on the Judiciary, House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for giving us the opportunity to comment on H.R. 1009, a bill for the relief of Lloyd B. Gamble. For the reasons contained herein, the Department of Justice recommends against enactment of this legislation.

Mr. Gamble's private relief bill is premised on his assertion that he was exposed to LSD while he was in military service. It appears that he was one of 740 service members who was given LSD under medical supervision as part of an Army research program con-

ducted in 1957. It does not appear that Mr. Gamble has ever applied to the VA for benefits to compensate him for residual disabilities attributable to his participation in such research. Compensation is available if such disabilities were incurred or aggravated during military service. Also, we have not been provided any independent verification that the problems Mr. Gamble attributes to the research were caused by the research.

As you are aware, the Federal Tort Claims Act is a limited waiver of sovereign immunity. It was passed by Congress largely because the legislative process is ill-suited to resolve individual personal injury claims. Through the Federal Tort Claims Act, Congress gave the courts the responsibility to apply the law uniformly to all claimants and assure that each claim is decided on its factual and legal merits. In granting this limited waiver, Congress provided very specific terms and conditions applicable to the government's consent to suit, and the courts have uniformly held that the Federal Tort Claims Act's limited waiver of sovereign immunity should be strictly construed. If enacted, H.R. 1009 would effectively bypass the Supreme Court decision in *Feres v. United States*, 340 U.S. 135 (1950), which holds that the United States has not waived sovereign immunity from suits by members of the military allegedly injured incident to their military service. The *Feres* Doctrine has recently been reaffirmed by the Supreme Court in *United States v. Johnson*, 481 U.S. 681 (1987) and in *United States v. Stanley*, 483 U.S. 669 (1987).

The proposed bill for the relief of Lloyd B. Gamble would establish an unwarranted precedent of preferential treatment for favored litigants. Singling Mr. Gamble out for special treatment would undermine the well-established principle of American jurisprudence that requires the uniform application of the law to all persons. If he believes his service records do not accurately reflect the administration of LSD to him or his resulting disability, and if that were to present a problem in terms of his qualifying for service-connected disability payments from VA, he may petition the Army Board for Correction of Military Records. However, the case has not been made which would justify a private bill of relief for Mr. Gamble.

For the foregoing reasons, the Department of Justice recommends against enactment of H.R. 1009.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ANDREW FOIS,
Assistant Attorney General.

GENERAL COUNSEL OF THE
DEPARTMENT OF DEFENSE,
Washington, DC, October 8, 1991.

Hon. BARNEY FRANK,
*Chairman, Subcommittee on Administrative Law and Govern-
mental Relations, Committee on the Judiciary, House of Rep-
resentatives, Washington, DC.*

DEAR MR. CHAIRMAN: This responds to your request for comments on possible private relief legislation for Mr. Lloyd B. Gamble to compensate him for economic losses allegedly incurred as a result of his participation in the Army's LSD experimentation program in the late 1950's.

A private relief bill was introduced on Mr. Gamble's behalf in the 95th Congress, H.R. 6369. The Chairman of the Committee on the Judiciary, House of Representatives, requested the views of the Department of the Army with regard to the bill. The Department of the Army opposed the bill.

Mr. Gamble's personnel and medical records indicate that he participated in the experimentation program in December 1957 when he was a staff sergeant in the Air Force. His records also include a "volunteer's participation agreement," identical to the agreement signed by Mr. James B. Stanley. Mr. Gamble's medical records indicate he received LSD on two occasions; however, he recalls having participated in only one experiment. Before this experiment, Mr. Gamble was asked to form a drill team and conduct standard drill routines. They were told they would receive a chemical compound, the effects of which would be similar to those experienced from being intoxicated by alcoholic beverages. After receiving the LSD, the team was unable to drill. Mr. Gamble has indicated that he was also asked to enter and remain in a darkened room. He entered the room, became apprehensive and asked to leave, which he was permitted to do. He also experienced unusual dreams the night after the experiment.

During a follow-up study in November 1975, Mr. Gamble indicated that several months after the experiment he noticed a personality change in himself. He said he began to withdraw from others and experienced multiple episodes of depression. In June 1959, Mr. Gamble was assigned to Tripoli, Libya. Because of the inability to obtain adequate housing, his wife remained in the United States. During this period, Mr. Gamble experienced marital difficulties. During his overseas tour, Mr. Gamble returned to the United States to attempt a reconciliation. Mr. Gamble has stated that, when the attempted reconciliation failed, he contemplated suicide. He was admitted for inpatient psychiatric care at Andrews Air Force Base. Although the symptoms of depression abated within twenty-four hours of his admission, Mr. Gamble requested to stay in the hospital until he could resolve his marital problems. After eventually reconciling with his wife, Mr. Gamble returned to Libya.

Mr. Gamble has stated that he believes his military career suffered because of his hospitalization. After he left Libya, Mr. Gamble was assigned to Chanute Air Force Base as a desk sergeant. He believes he was placed in that position because of his hospitalization and that it was not a career enhancing position. Mr. Gamble's

medical records, however, reflect a medical profile, dated March 26, 1964, that indicates he had no psychiatric disease and was psychiatrically cleared for missile duties and a top secret clearance. Also, he retained the same service classification and duty title after his hospitalization.

Upon retirement in 1968, Mr. Gamble became a police officer for the Capitol Police Service.

As with the private bill for Mr. James B. Stanley, we believe there is an insufficient factual basis for private relief legislation for Mr. Gamble. The underlying assumption for the economic analysis presented on behalf of Mr. Gamble is most speculative.

The economic analysis is based on the assumption that but for his participation in the experimentation program, Mr. Gamble would have been quickly promoted to the grade of E-8 and retired in that grade. We are unable to provide the statistical possibility of the promotions on which the economic analysis is based, as we were able to do for Mr. Stanley. It appears that Air Force enlisted promotions were not centrally managed as early as the Army and, thus, specific promotion statistics for the Air Force are not available. As a general rule, an airman had to serve two years in grade to be eligible for promotion to a higher grade. There are many factors, however, that would have affected the actual time in grade for promotions, such as the person's speciality and vacancies for promotion.

As with Mr. Stanley's claim, we believe that Mr. Gamble should seek a review of his case before his service's Board for the Correction of Military Records. As noted in our report on Mr. Stanley's private relief bill, the Boards have broad statutory authority to correct any military record "to correct an error or remove an injustice." If the Air Force Board determined there was a causal relationship between Mr. Gamble's participation in the experimentation program and his promotion record, they could correct his records to reflect appropriate promotions and, thus, allow for compensation for any resulting difference in pay. Because of the speculative nature of the facts involved, we believe a review by the Air Force Board for the Correction of Military Records is necessary to evaluate Mr. Gamble's claim.

Sincerely,

TERRENCE O'DONNELL.

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