

# HEARING TO EXAMINE ARLINGTON NATIONAL CEMETERY BURIAL WAIVERS

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HEARING  
BEFORE THE  
SUBCOMMITTEE OVERSIGHT AND INVESTIGATIONS  
OF THE  
COMMITTEE ON VETERANS' AFFAIRS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FIFTH CONGRESS  
SECOND SESSION

JANUARY 28, 1998

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# HEARING TO EXAMINE ARLINGTON NATIONAL CEMETERY BURIAL WAIVERS

WEDNESDAY, JANUARY 28, 1998

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,  
COMMITTEE ON VETERANS' AFFAIRS,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 334, Cannon House Office Building, Hon. Terry Everett (chairman of the subcommittee) presiding.

Present: Representatives Everett, Stump, Spence, Buyer, Clyburn, Snyder, and Mascara.

Also present: Representatives Hutchinson and Evans.

## OPENING STATEMENT OF CHAIRMAN EVERETT

Mr. EVERETT. Good morning. As we begin this hearing, I want to recognize that in the Capitol Statuary Hall the memorial service is beginning for our departed colleague, Sonny Bono. I wrestled with the decision of whether to reschedule the hearing, and I decided that Sonny, who was a member, along with myself and many others on this panel, of the National Security Committee and a great supporter of our Armed Forces and of our veterans, would probably have wanted this hearing to go on because of its significance and importance, as will be revealed to you later today. A number of our committee members are attending that service. I expect them to join us shortly.

I do ask that all of us here today observe a moment of silence for Sonny Bono, who was very special to us.

Thank you.

This hearing today by the Veterans' Affairs Subcommittee on Oversight and Investigations is intended to provide an in-depth look at the Department of Army's waiver process at Arlington National Cemetery, to include the case of Ambassador M. Larry Lawrence. We will also examine presidential waivers to the extent that we can and the presidential waiver for Dr. C. Everett Koop.

Arlington National Cemetery is hallowed ground dedicated to the high honor and eternal rest of America's military heroes, most of whom gave their lives in defense of our liberty. The subcommittee's only objective is to ensure the integrity of Arlington, a historic place which has obtained almost mystic connotations to many Americans.

This hearing may cause discomfort to some Republicans and Democrats and to this administration and to some past administrations and to the Army, which is responsible for Arlington. But it

is time that this business of Arlington waivers got a thorough airing and is straightened out. I believe that this hearing will show that the Carter, Reagan, and the Clinton administrations were entirely too free with waivers. The Bush administration record was apparently better because the White House stayed out of the decisions.

The Army, in at least one incident the committee has learned about, treated Arlington as a private preserve and not as a sacred trust. Arlington belongs to the American people. Too much secrecy has surrounded the Army's operation of Arlington. It isn't necessary. It isn't right, and it must stop.

I hope that no family of anyone buried at Arlington as the result of a waiver is embarrassed or apologetic that a loved one is there. Other than the Lawrence case, we have found no situation of outright lies, fraud, or anything illegal, none at all, regarding any person currently buried there.

I believe the serious problems are with the process and the government officials from the President on down who have made the decisions to disregard eligibility and grant waivers for Arlington. I recognize how hard it is to say no to grieving family members who have just lost a loved one. It is very hard. Yet each time a waiver is granted because someone put on political pressure or sought favoritism—each time that happens a qualified, eligible veteran loses his or her place at Arlington. And unfortunately, it is my opinion, in some cases there undoubtedly has been favoritism, overwhelming pressure, political influence, string pulling, and arm twisting, as well as public relations considerations, even if no one will openly admit it.

Waivers for the ineligible and de facto reservations in violation of Arlington's regulations have been one of Washington's dirty little secrets. Those who are insiders and who are well connected have a distinct advantage. I hope it is about to end. But what is done is done. We should allow those who rest at Arlington to rest in peace.

Chairman Stump is introducing bipartisan legislation to codify Arlington's eligibility, to curb waivers, and to provide additional land for Arlington. Other committee members and I will join him. I expect he will have more to say about that when he is recognized.

Representatives of the General Accounting Office will testify first regarding GAO's intensive and expedited review of Arlington waivers. It is unfortunate that someone in possession of the GAO-embargoed testimony decided to leak it to the press. It troubles me greatly that someone would side with the White House and against those heroic heroes who are currently buried at Arlington. That, in my opinion, is what that leak has done. It was done to gain a cheap headline. I think you will see in testimony today Mr. Lawrence did not deserve his ambassadorship and he certainly used his influence to be buried at Arlington National Cemetery.

The current and former Superintendent of Arlington will testify.

The Secretary of the Army, the Honorable Togo D. West, Jr. who is now Acting Secretary of Veterans Affairs, will testify about his waiver decisions and the administration of Arlington. And he will also be asked some questions about the Army's belated disclosure and production of an important file.

Next, representatives of the U.S. Coast Guard will testify regarding the Lawrence matter and records of his Merchant Marine service.

Ms. Norma Nicholls, who was Ambassador Lawrence's longtime personal assistant prior to his nomination, will testify regarding her knowledge of the Lawrence matter.

Representatives of the State Department's Bureau of Diplomatic Security will testify regarding the Lawrence background investigation and nomination. The reason the State Department is before a Veterans' Affairs committee is because when the subcommittee traced back Ambassador Lawrence's fabricated Merchant Marine service, the trail went through the State Department. I've asked the State Department Inspector General to investigate the State Department's background investigation on the Lawrence matter as it pertains to his assertions of Merchant Marine service.

I also intend to ask the State Department witness about a criminal referral which I have confirmed has been made to the Justice Department and which may relate to the Lawrence matter.

President Clinton was invited to designate a White House representative to testify regarding presidential waivers during his administration. The White House Counsel to the President, Mr. Charles Ruff, has responded with a letter dated January 23, 1998. The letter does not address whether the White House is sending a representative to address questions. The letter is available to the public. The documents accompanying the letter are being reviewed and no decision has been made about their release.

The President's counsel has asserted executive privilege with respect to two documents dated January 9 and January 10, 1996 which pertain to Ambassador Lawrence or Arlington. Ambassador Lawrence died on January 9, 1996. Subcommittee counsel will have discussions with White House counsel regarding these two documents.

Dr. C. Everett Koop, former Surgeon General, was invited to testify regarding the waiver granted to him by President Clinton, but he declined. I'm asking unanimous consent that his letter of January 21, 1998 be made part of the record. (See p. 89.)

I have urged the President to withdraw the waiver granted to Dr. Koop, and the White House has not responded. If I do not get satisfactory information considering this, I will introduce a sense of Congress that that waiver be withdrawn.

All witnesses are here today voluntarily. On behalf of the subcommittee, I thank them for their cooperation and their willingness to testify under oath and to possibly face some hard questions.

I now recognize Mr. Clyburn, our ranking member on the subcommittee.

#### OPENING STATEMENT OF HON. JAMES E. CLYBURN

Mr. CLYBURN. I would like to thank Chairman Everett for holding this important hearing to discuss the waiver process for burials at Arlington National Cemetery.

The Arlington National Cemetery burial issue was one of the major political stories over the congressional recess. I am hopeful that the testimony that we hear today will help to bury once and

for all the baseless allegations which initially brought the unprecedented media attention to our committee.

This committee has historically been a committee that has gone about its serious business away from the glare of the media spotlights and insulated from the partisan rancor that has unfortunately tainted the public's view of the Congress in recent years.

Last December Chairman Everett and Lane Evans, the ranking Democratic member of the full committee, joined me in asking that the General Accounting Office conduct a review of Arlington National Cemetery records and the Department of the Army files to give us a better understanding of how the cemetery's waiver process works. Lane and I went a step further and asked that as part of the review that the GAO tell us what role, if any, political contributions played in decisions to grant or deny waivers for burial at Arlington National Cemetery. I am pleased to say that the GAO has found no evidence to support the recent media reports that political contributions played a role in waiver decisions.

Obviously, this should be welcome news to all members of the subcommittee, whether Democrat or Republican. This should not, however, be the end of our consideration of the current standards for burial at Arlington. Clearly, as the GAO testimony also points out, there have been ambiguities and internal inconsistencies with regard to how waivers have been decided since 1967, the point when stricter eligibility requirements were established for Arlington.

Throughout both Republican and Democratic administrations, we can now all agree that Presidents have exercised their discretion, discretion that according to GAO lawyers was legally within their authority to grant individual waivers for burial at Arlington. We have no reason to believe that any such decisions were made for anything but humanitarian reasons. Similarly, since at least 1980, the Department of the Army has routinely granted waivers for burial at Arlington. One of the problems appears to be that the waiver process itself has not always been adequately explained to the general public. In addition, the waiver criteria have evolved over time and have been perhaps overly dependant upon the particular management styles of the various Superintendents who have kept watch over the cemetery through the years.

Because there are no firm statutory guidelines on this issue, the standards have been open to interpretation over the years. I believe we should enact legislation to codify the Arlington eligibility requirements, so that we can avoid the uncertainties which clearly exist today and which may have led to the criticism which has enveloped the cemetery in the last few months.

Before closing, I want to take a moment to thank Arlington National Cemetery Superintendent, Mr. Jack Metzler, for his willingness to work with the staff of this subcommittee throughout the course of this controversy. I think that everyone who knows anything about Arlington National Cemetery would agree that Jack is a public servant in the truest and best sense of the word. And I want to thank you, Jack, for your service to our Nation.

Thank you, Mr. Chairman. And that completes my opening remarks.

Mr. EVERETT. I will now recognize the chairman of the full Veterans' Affairs Committee, Mr. Bob Stump.

**OPENING STATEMENT OF HON. BOB STUMP, CHAIRMAN, FULL COMMITTEE ON VETERANS' AFFAIRS**

Mr. STUMP. Thank you, Mr. Chairman.

First, let me express my appreciation to you and to the subcommittee ranking member, Mr. Clyburn, for working during the past 2 months. And I would like to recognize all the hard work you have done when you could have been on recess, as well as that of the staff. I believe you did a great job.

As you say, Mr. Chairman, it appears that most recent administrations were less judicious regarding waivers for burial at Arlington than they should have been.

Part of a 1994 memorandum from the Secretary of the Army regarding a request for exception to the burial policy at Arlington National Cemetery stated, and I quote, "As you are aware, exceptions to burial policy tradition are granted only in limited circumstances. Those circumstances must be particularly compelling when granting the exceptions which will result in the displacement of an eligible veteran." The memorandum recommended disapproving of the requested exception. However, the exception was granted by the President of the United States.

I believe the phrase "particularly compelling" was an appropriately high threshold to use. Unfortunately, it appears that in too many waiver cases granted during this administration and previous administrations the circumstances were not particularly compelling.

Regardless of our individual views about the appropriateness of any particular waiver granted, I believe that we have already reached a collective determination that legislation is needed to codify more restrictive eligibility rules for Arlington National Cemetery.

We also need to assure veterans and the American public that political influence can no longer undermine those eligibility rules. We have been working to draft legislation addressing these concerns. Our bill would tighten up current eligibility requirements to reemphasize that special military nature of Arlington National Cemetery. It would cancel the eligibility of so-called high Federal officials, including Members of the Congress who are currently eligible based on basic rather than distinguished military service. The President would remain eligible based on his status as Commander-in-Chief.

The bill would also make clear that no waiver exceptions to the eligibility rules would be authorized under law. Army regulations do not now provide any waiver authority. Rather than establishing a more formal waiver process, our bill would prevent any granting of waivers in the future.

Additionally, the bill would require that future memorials erected in Arlington Cemetery be limited to recognition and commemoration of military events only.

Mr. Evans has agreed to be an original co-sponsor of the bipartisan bill which we intend to move to the floor as soon as possible, hopefully before the Easter break.

Mr. Chairman, I look forward to the testimony of our witnesses today.

Thank you very much.

Mr. EVERETT. Thank you. Mr. Snyder.

#### OPENING STATEMENT OF HON. VIC SNYDER

Mr. SNYDER. I just made a comment to the witnesses who are going to testify here today and probably into the afternoon. We've heard some conclusions expressed. I think that the great majority of members of the full Veterans' Committee and the great majority of the American people still have a lot of information to learn and are entering this with an open mind about what the situation is and I hope—I would encourage you not to be too defensive about some of the conclusions you may have already heard. We would just like to hear the full story from your perspective.

Thank you, Mr. Chairman.

Mr. EVERETT. Thank you. Mr. Hutchinson.

Mr. HUTCHINSON. Mr. Chairman, as you know, I'm not on this subcommittee, but I am very delighted to have the opportunity to hear the testimony today, and I thank you for your leadership on the issue and look forward to the testimony.

Mr. EVERETT. Thank you. Mr. Mascara.

#### OPENING STATEMENT OF HON. FRANK MASCARA

Mr. MASCARA. Thank you, Mr. Chairman, and good morning to you and to my colleagues on the subcommittee. It is nice to be back in Washington, DC. While I am glad to be here, I do wish that the topic for this morning's hearing was a different one.

When this story first broke in December and serious charges were raised alleging that the White House was selling plots in Arlington Cemetery, I was, frankly, shocked. As a Member of this Subcommittee on Investigations and an Army veteran and the son of a World War I veteran highly decorated with the Silver Star for valiant service, I naturally feel very strongly that the veterans who gave so much to serve their Nation in times of war and peace deserved the highest priority in consideration for burial in this great and historic national cemetery.

Like all of you I heard from angry veterans. They were hurt and demanded answers. I felt that the allegations were so serious and upsetting to our Nation's veterans that the subcommittee should have immediately held hearings to get to the bottom of this story.

Now, 2 months later, the smoke has cleared, the facts are out, and while we all can agree the waiver process at Arlington is flawed and needs to be tightened, there is no major scandal to be found. The GAO report being released here today makes it clear that no evidence has been found to support the early and frequent media reports that political contributions played a role in the waiver process. In the spirit of bipartisanship on which we pride ourselves on this committee, I think that it serves no purpose to rehash the full, sorry tale. I sincerely wish we were instead focusing on the legislation that will be introduced in the near future which seeks to reform the waiver process.

Our veterans deserve to know that the limited space at Arlington truly belongs to them. The sooner that we can ensure them that this is the case, the better.

I'm ready to get to work.

Thank you, Mr. Chairman, and I yield back the balance of my time.

Mr. EVERETT. Thank you.

I would ask the GAO panel now to come to the table. I ask each witness to limit your oral testimony to 5 minutes. Your complete written testimony will be made part of the official record. I ask that we hold our questions until the entire panel has testified. Because of the nature of some of today's testimony, I have decided to have the witness panels with the direct knowledge of events and the investigative activities sworn in.

I now recognize and welcome Mr. Richard Hembra, Assistant Comptroller General for Health, Education, and Human Services Division of the General Accounting Office. If you will, Mr. Hembra, please introduce the rest of your panel.

**TESTIMONY OF MR. RICHARD L. HEMBRA, ASSISTANT COMPTROLLER GENERAL FOR HEALTH, EDUCATION, AND HUMAN SERVICES DIVISION OF THE GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY BARRY R. BEDRICK, ASSOCIATE GENERAL COUNSEL, OFFICE OF THE GENERAL COUNSEL, GENERAL ACCOUNTING OFFICE; MARK TRAPANI, SENIOR EVALUATOR, HEALTH, EDUCATION, AND HUMAN SERVICES DIVISION OF THE GENERAL ACCOUNTING OFFICE**

Mr. HEMBRA. Thank you, Mr. Chairman.

On my left is Barry Bedrick, our Associate General Counsel. On my right is Mark Trapani, who led our review for you on the waiver issue.

Let me begin by just mentioning briefly that with the history that goes back to the Civil War, Arlington is today revered by many as a national shrine. And with the interment of President Kennedy, the requests for burial at Arlington shot up dramatically. For this reason, in 1967, the Army imposed strict standards. Absent the imposition of those standards, Arlington probably would be at full capacity today.

Key eligibility requirements now limit interment to service members who have died while on active duty, retired service members meeting certain qualifications, and holders of the Nation's highest military decorations. In addition to a columbarium, Arlington has a grave—

Mr. EVERETT. Mr. Hembra?

Mr. HEMBRA. Yes?

Mr. EVERETT. Excuse me. I apologize. But I had a page transposed in my notebook, and before you give your testimony, I really do need to swear you in.

Mr. HEMBRA. That would be fine.

Mr. EVERETT. Raise your right hand. Do you solemnly swear that the testimony that you are about to give, including answers to the questions of the committee members, is the truth, so help you God?

Mr. HEMBRA. I do.

Mr. BEDRICK. I do.

Mr. TRAPANI. I do.

Mr. EVERETT. Thank you. Please continue.

Mr. HEMBRA. I was mentioning, Mr. Chairman, that in addition to the columbarium, Arlington has a gravesite capacity of about 264,000 sites and the Army now projects that these sites will be at full capacity by 2025.

If we turn and look at the trends with regard to the waiver process, since 1967, there have been 196 waivers for burial at Arlington that have been granted. Sixty-three percent of those involved individuals asking to be buried in gravesites of someone already interred at Arlington or eligible to be interred in the future. About 18 percent were granted for burial in new gravesites to those having no military service. Forty-two percent of those who were granted waivers had military service.

With regard to the question you posed to us as to the authority for granting waivers, although no explicit statutory authority exists, we believe there is a legal basis for the Army's long-standing assertion of that authority.

Let's turn now and take a moment and look at the Army waiver process itself. I should begin by saying that although there is a process, it has not been formally established in regulatory policy. The way the process works is a request goes into the Superintendent's office. There is an attempt to verify information. The Superintendent makes a recommendation for granting or denying the waiver. That is then forwarded to the Assistant Secretary. At that level, the Assistant Secretary reviews the Superintendent's case, seeks concurrence from other offices within the Army, such as the General Counsel, and then forwards his or her recommendation to the Secretary. In this process the Secretary would make the final decision with regard to granting or denying the waiver.

I should mention that all of these actions usually occur within a 24-to-48-hour period. And I believe that for that reason it does impose some obvious limitations on how much verification can occur.

Most presidential waivers, unlike those decisions made within the Department of Army, are handled outside the waiver process, and the Army is simply informed of the decision.

Interestingly, some individuals that inquire about burial at Arlington may not know that a waiver can be pursued. Others may be aware of this, but they give up on their attempt to obtain a waiver. Others, however, persist, and may even contact a high-level government official. In cases where a high-level government official makes the request or expresses support, the waiver process appears to be vulnerable to influence.

Recognizing the controversy that has occurred over the last couple of months, last month the Secretary of Army imposed some new requirements with regard to providing the public with information about burial waivers, requiring publication of the names of those who were granted waivers, and notification of the appropriate committees of both the House and Senate with when a waiver is granted.

Finally, let me turn for just a minute to waiver criteria. There are no formal criteria for determining when a waiver should be granted or denied. For waiver decisions made by the Secretary, the

Superintendent and the Assistant Secretary cite their reasons for recommending denial or approval, but the basis on which these individuals weigh the various factors in making these decisions is not clear. Since 1993 there have been 12 cases where the Secretary has made a decision to grant a waiver even though the Superintendent or the Assistant Secretary had recommended denial.

INSERT FOR THE RECORD FROM THE SECRETARY OF THE ARMY

The GAO testimony states that since 1991 the Secretary made a decision to grant a waiver even though the Superintendent and the Assistant Secretary recommended denial in 12 cases.

Correction: Of the nine cases between November 1993 and December 1997 in which the Secretary granted a waiver even though the Superintendent recommended denial, the Assistant Secretary only concurred with the recommended denial in seven of those cases.

Mr. HEMBRA. In three of those cases, the Secretary reversed his initial decision which was to deny the waiver and in turn approved it.

The bases for waiver decisions are not always cited in the decisions made by the Secretary and rarely are they cited in decisions made by the President.

I should note, though, that waivers, by their very nature involve unique circumstances for which specific criteria cannot easily be developed.

In conclusion, Mr. Chairman, in light of the diminishing capacity at Arlington and the current controversy over waivers, decisions are likely to continue to be scrutinized by veterans' groups and the American public. For this reason, my statement contains several options to address these concerns. But I should note that each of these options has its own advantages and disadvantages. I think, most importantly, we believe that whatever decisions are reached should be ones that ensure the use of waiver authority is sound and that the waiver process be publicly visible. And to the Secretary's credit, I think that his recent requirements that he put in place in December should help in that regard.

With that, that concludes my prepared remarks. And we are prepared to answer any questions that you and other members of the subcommittee would have.

[The prepared statement of Mr. Hembra appears on p. 90.]

Mr. EVERETT. Thank you very much.

And I want to thank GAO for undertaking and completing this huge task of reviewing Arlington's waivers on schedule in the short time of about 6 weeks. The subcommittee wanted an independent, non-partisan, objective look at the Arlington waivers. And who better than the GAO to do the job? I think that it must be one of the last organizations in this city with any real credibility left, at least as far as I'm concerned. GAO in its very careful, understated way has done an outstanding job. I know the staff has worked nights and weekends on this, and I commend everyone at GAO who contributed to this very important review.

I'll begin the questions. I'm going to allow each member to question the GAO for a period of 10 minutes. I will not allow any member to go over 10 minutes, but we will have 10 minute questioning.

I'm going to begin questioning by pointing out, and this statement will be put in the record, in my press conference on December 4, 1997, I made the statement, in response to a direct question, that I had found no evidence, in reviewing the waivers, that any political donations had been a part of getting a waiver. I later said that—it will come out in testimony a little later—I had told Secretary West that initially Mr. Lawrence was not a target investigation of this subcommittee. We were interested in the 12 waivers that had been denied by the Superintendent and then had been overruled by either the President or the Secretary of the Army. I make that statement because I was asked by the minority to join them in asking GAO to look through these files to see if any political donations had been made. This committee had done that already. Number one, in looking at those files if I find out that political donations had been made, it is kind of like looking for a moon rock in this room. There is absolutely no possibility that you could have found that. And that is the reason I did not want to give somebody a cheap headline defending this administration against—as I said earlier—the heroes who are buried over there at Arlington. I resisted pressure by this White House to let political donations be a focus of this, and I'm sorry that my minority members who have respect for it will not honor that. Because, as I said, there is no way—did you look at any Federal election files?

Mr. HEMBRA. Mr. Chairman, given the time available, we did not. Our review was limited to the case files that were made available by the Army.

Mr. EVERETT. Let me just ask some quick questions here and yes, no, and then we'll get into details later.

Mr. HEMBRA. Okay.

Mr. EVERETT. Did you look into any Member of Congress's personal donations that he had gotten?

Mr. HEMBRA. No we did not.

Mr. EVERETT. Did you look at the Democratic National Committee, any donations that they may have gotten?

Mr. HEMBRA. No we did not.

Mr. EVERETT. Did you look at the DCCC, at any donations that they may have gotten?

Mr. HEMBRA. No we did not.

Mr. EVERETT. And you looked at no files in the Federal Election Commission. Any donations that may have come from there?

Mr. HEMBRA. That is correct.

Mr. EVERETT. So let me read the lead paragraph of an AP story—which I again regret that in my 6 years of service on this committee, this is the first time that a GAO report had been leaked to the press. And it was leaked simply to buy a cheap headline at the expense of the veterans of this country in defense of this White House.

Let me read to you the opening paragraph: "Congressional investigators have found no evidence that political contributions played any role in selecting people to be buried at Arlington National Cemetery."

Can you actually make that statement? This is referring to your GAO report. Does your GAO report actually say—from the basis of

what you have found, can you actually say that there were never any political donations made?

Mr. HEMBRA. No we cannot. And nor does our statement say that.

Mr. EVERETT. Well, and I suggest to this committee that was the sole reason for violating trust of this committee in leaking that to the press. It is unfortunate. I do consider it a violation of trust of the committee, and I apologize to all the veterans of this country and to the families who have members buried at Arlington that somebody would stoop so low.

Let me go with some other questions. Did GAO interview anyone or review records at the White House regarding presidential waivers? What specifically was GAO told by the White House about its response and about presidential waivers and by whom?

Mr. HEMBRA. We did attempt to discuss presidential waivers with someone from the White House. We began our attempts to make that contact early in January. We had some difficulty connecting with someone. We did finally talk with the Deputy Counsel, Cheryl Mills, and requested from her documentation and to be able to talk with someone who could give us a better understanding of what the basis was for the decisions made by the President in granting waivers. We were told by the deputy counsel that subcommittee staff had made a similar request to the White House and that she was concerned about the redundancy of the requests—that being GAO and the subcommittee—and indicated to us that she wanted to talk to the subcommittee staff and work through how to cooperate to provide that information.

Mr. EVERETT. So can GAO provide at this point a complete analysis of presidential waivers?

Mr. HEMBRA. No we cannot because we do not, to this day, understand the basis behind the President's decisions to grant waivers.

Mr. EVERETT. I think that the White House's minimal response is a disservice to the veterans and to our Armed Services. I want to add that the GAO was told essentially what the subcommittee staff was told as well. In other words they danced around it using the two folks that were questioning them. All I can say is that I hope the President hears from veterans and military people about the contemptuous way the White House has handled this. They have behaved over there as though they think that we are all fools beneath their notice or that they are not answerable to anyone.

What did GAO learn about the waiver for Dr. Koop, the former Surgeon General?

Mr. HEMBRA. In terms of what was contained in the files—and I should mention or repeat that the information that we have on Dr. Koop and the granting of the waiver was information that was provided to us from the Army files—in those files you will see certain pieces of documentation. For example, there are a couple of faxes of information back and forth from the White House to the Army preceding—it appears to be preceding the August 16 letter that the President sent to the Army granting a waiver for Dr. Koop. What you will find is a fax between the White House and the Secretary's office thanking the Secretary's office for helping drafting the letter—and we are assuming that the letter is the let-

ter that the President sent back to the Secretary saying that he granted the waiver.

There is also another fax or document—it wasn't clear to us, we couldn't find a date on it—from within the Secretary's office talking about working with the White House and the Chief of Staff's office to try to resolve the issue and get the letter finalized and signed because of a visit that Dr. Koop was making to the White House. And also mentioning that the letter from a White House standpoint had been cleared through the White House Counsel and the First Lady's office.

The only remaining documentation contained in the files was the August 16 letter from President Clinton granting the waiver. And dated also on August 16 was a letter moving through the Army process that was pointing out to the Secretary of the Army that Dr. Koop was determined not to be eligible because there was no verification that he was a veteran. They had concerns about the fact that this would be a reservation for future interment, and also pointing out that if in fact the waiver was granted that there should be certain limitations placed on that decision.

Mr. EVERETT. The Army did produce documents to the subcommittee and the GAO regarding the Koop waiver didn't it?

Mr. HEMBRA. Yes they did.

Mr. EVERETT. Does one of the documents show who some of the individuals at the White House and what offices were involved? Who were they?

Mr. HEMBRA. The offices were, from what we understand, the Chief of Staff's office, whether it was the Chief of the Staff at the time, Mr. Panetta, or whether it was the Deputy Chief of Staff, Mr. Lader. It's somewhat unclear with regard to Mr. Panetta, but there was a mention of Mr. Lader's name in the documents, and there was also a mention of the letter being cleared by the counsel and by Mrs. Clinton's office.

Mr. EVERETT. Mrs. Clinton's office?

Mr. HEMBRA. That's correct.

Mr. EVERETT. Why would a waiver concerning a burial at Arlington National Cemetery go through the First Lady's office?

Mr. HEMBRA. We can't answer that.

Mr. EVERETT. Also there is a memo from the Secretary of the Army, Mr. West, isn't there?

Mr. HEMBRA. Yes there is, and that was—I believe you are referring to the memo from Colonel Peters in the Secretary's office.

Mr. EVERETT. What is the date on it compared to the date on the President's waiver letter?

Mr. HEMBRA. On that particular document, it is difficult for us to identify the date. But based on what is contained, it would suggest that it was sometime prior to August 16. And I say prior to August 16—I think that most of this happened over a couple day period with regard to trying to get the letter signed, finalized and signed because of a visit that Dr. Koop was making to the White House.

Mr. EVERETT. I would ask unanimous consent to have a memorandum from the Army Assistant Secretary, Secretary West, be made a part of the record as redacted.

[The information follows:]

EXPLANATORY INSERT FOR THE RECORD PROVIDED BY THE SECRETARY  
OF THE ARMY

A memorandum from Acting Assistant Secretary of the Army (Civil Works), John Zirschky, to the Secretary of the Army dated August 16, 1994 is included as part of the record. Reliance on this memorandum to imply that the Army's objection to the Dr. Koop exception was considered and rejected by the White House is misleading. In fact, this memo was a personal note transmitted to the Secretary of the Army after the exception had been granted and was never shared outside of his office. The Army, despite the objections voiced internally in this memorandum, provided no recommendation to the White House on this case.

Mr. EVERETT. I would like to add that the subcommittee staff in response to a request by Cheryl Mills of the White House counsel's office faxed a copy of the memorandum to her because she said that she could not locate it. One can only assume that at this point that the White House staff never saw it, and in a rush to grant Dr. Koop's waiver did not wait for the Army to give a response.

Since the 1960's when reservations started to be prohibited, how many other waivers displacing an eligible veteran have been granted to living individuals?

Mr. TRAPANI. There have been two other waivers granted to living individuals for burial in a new grave, thereby displacing an eligible veteran.

Mr. EVERETT. I see that my time is about up. I have many other questions. Perhaps some of my other colleagues will ask them. But true to my promise not to allow anybody to go over 10 minutes, that includes the chairman.

I now recognize the ranking member, Mr. Clyburn.

Mr. CLYBURN. Thank you, Mr. Chairman.

Mr. Chairman, let me begin by establishing something that you and I are very aware. We share similar backgrounds in that prior to our coming to this body, both of us were owners of newspapers. And I think that we know something about newspapers and how to write a lead and how to engender a headline. And I think that all of us are aware that this story broke as a result of an article written in Insight magazine, one of the extreme right-wing organizations in our country. And this story—and I want you to correct me if I'm wrong about this—my understanding is that this story was all about whether or not burial plots were being sold for political contributions. That's all my wife ever said to me about it and she worked with the VA for 29½ years, and she was very upset about that.

Now Mr. Chairman, I would be derelict if I did not include references to that headline in my request. I would have been derelict to just ignore—and I know something about ignoring headlines. My father taught me that as a kid. Silence is consent. If we had not addressed what was in the headlines, then the natural conclusion would be that we agreed with that part of it.

Mr. EVERETT. The gentleman asked me to respond. Would he like for me to respond.

Mr. CLYBURN. I didn't ask you to respond.

Mr. EVERETT. Yes you did—

Mr. CLYBURN. I said—

Mr. EVERETT. You said to "tell me if I'm incorrect."

Mr. CLYBURN. No, I'm talking to the panel.

Now, I want to ask the panel this question. Was this report, the GAO report, was it circulated to other Federal agencies for review prior to your submission to us?

Mr. HEMBRA. Our policy is to attempt to get agency comments, and in this case we discussed the results of our work with the Department of Army and received feedback from them.

Mr. CLYBURN. Well my question is—

Mr. HEMBRA. They were provided a draft, that is correct.

Mr. CLYBURN. That's exactly—thank you very much.

Now, am I to understand from that that other eyes saw this document outside of people who may be on this side of the subcommittee and that other eyes saw this document before we ever saw it?

Mr. HEMBRA. That would be correct.

Mr. CLYBURN. But we have no way of knowing who, if anybody, may have leaked this document. It could have been leaked before it ever got here. Is that a possibility?

Mr. HEMBRA. It is a possibility.

Mr. CLYBURN. Okay. That's all I wanted to know.

I, for one, still have not read the report. And maybe I am being derelict in my duties, but I didn't see where it was all that important to read the report, quite frankly. I thought that all of this was behind us.

And now I want to ask this. Based on your review—well let me ask this first. I thought that we—I saw somewhere—I thought that we were looking at this thing since we changed the review process back in 1967. Now did you all go back anything beyond this current Administration to look at anything what may or may not have been practices that took place after 1967?

Mr. HEMBRA. The fact of the matter is that it is difficult to go too far back because there is just an absolute absence of documentation. And it was not until more recently that case files were being developed to document the granting of waivers.

Mr. CLYBURN. But you did not go back beyond the current administration. So we have no idea?

Mr. HEMBRA. No, that is incorrect. There is information—we do have information that goes back a number of years. Let me clarify that.

Mr. CLYBURN. Okay.

Mr. HEMBRA. The focus of our work is post-1967, and looking at files that were available and talking to both the current Superintendent and talking to the former Superintendent.

Mr. CLYBURN. Okay. Let me get to the real question. The question is: what would you characterize as the reasons for giving waivers to individuals who otherwise did not meet the eligibility requirements? I'm assuming that the reason there is a waiving in the first place is because these people did not on the face meet the requirements. Now looking at all of that, the files and the interviews of all the people prior to this administration, can you give me how you would characterize the reasons for these waivers? That's what I'm asking.

Mr. HEMBRA. Let me give you two examples, one dealing with presidential waivers. With regard to presidential waivers, with the exception of the approval for reservation for Dr. Koop, we do not know what the bases were for the decisions made by the President.

In the case of the decisions made by the Secretary, in those cases where the Secretary granted a waiver in spite of the recommendations by the Superintendent or the Assistant Secretary not to grant the waiver, those decisions usually reflected that the individual did not meet the criteria or that a precedent would be set by granting the waiver. There is little documentation of the bases behind the Secretary's decision to grant the waiver.

So what we have in terms of documentation, Mr. Clyburn, is what is contained on those decisions where the Superintendent, the Assistant Secretary, and the Secretary all concurred that an exception should be granted. Over 60 percent of the waivers that were granted were granted basically to former spouse and adult children that would be interred in the same gravesite of someone either already interred at Arlington or eligible for future internment. In the other instances, you would probably best characterize the affirmative decisions being based on what in their minds were compelling reasons to grant the waiver.

Mr. CLYBURN. That's presidential or secretarial?

Mr. HEMBRA. It would be secretarial because, like I said, with regard to Dr. Koop, we do not understand at all the bases behind the President's decisions.

Mr. CLYBURN. Well, I don't either, quite frankly. One thing I do know, it wasn't partisan.

Now let me ask you, without naming names—I guess I'm trying to get before Mr. Koop. That's the only presidential waiver—there were presidential waivers in the past?

Mr. HEMBRA. There have been presidential waivers that have gone back certainly to the Johnson administration. The only period from the Johnson administration forward, Mr. Clyburn, where there were not presidential waivers granted appears, once again based on the information contained in records, was during the Bush administration.

Mr. CLYBURN. Okay, well, let's just look at this administration to give us some defined theory here. How would you characterize the reasons for the waivers?

Mr. HEMBRA. The reasons for those, other than those that were interred in the same gravesite, had to do with the events surrounding the death of the individual, the tragic nature of the death, and a judgment call in terms of the significance of the contribution made by the individual to this country.

Mr. CLYBURN. Okay. Would you say that that's different from what may have been the reasons for Carter waivers or a Clinton waiver?

Mr. HEMBRA. We would have to, once again based on the records, we would have to say that you probably would not see much difference between those waiver decisions, whether it was made during the Carter administration, the Reagan administration, or the Clinton administration.

Mr. CLYBURN. Thank you very much, Mr. Chairman. That's all right.

Mr. EVERETT. The chair now recognizes the chairman of the full committee, Mr. Stump.

Mr. STUMP. Thank you, Mr. Chairman.

Mr. Hembra, let me ask you one question, as I understood you to say, would the spouses and unmarried children of those veterans that were eligible, they would not have required a waiver, would they?

Mr. HEMBRA. The way the eligibility standards are set up, there are some questions that needs some clarification with regard to whether former spouses and certain unmarried adult children fit the eligibility criteria and these questions are resolved as part of the exception process.

Mr. STUMP. I see. Let me ask you one question. As a result of your reviews, of these exceptions to waivers, would you agree that the particular "compelling" standard for granting waivers, the standard the Army itself tried to establish, was probably routinely ignored?

Mr. HEMBRA. I would say that, once again based on what we could see in the records, looking at how the process works in terms of the Superintendent's decision, the Assistant Secretary's decision with regard to denials or approvals, they appear to make their recommendations based on, even though there are no formal criteria, based on what in practice is a set of criteria for granting exceptions.

Mr. STUMP. Thank you, sir.

Mr. Chairman, I don't have any further questions, but I'd be glad to yield my time to you, sir.

Mr. EVERETT. I thank my friend.

In response to my friend, Mr. Clyburn, yes, I was in the newspaper business 30 years, and that's served me well in being suspicious of certain things. As I pointed out earlier, this chairman announced in the December 4th press conference that he had not found, or did he expect to find, or know how you would find, any indication of political donations in the waiver files on Arlington. If my friend had asked the GAO to look in the files of donations of the Democratic National Committee or the Republican National Committee, the Federal Relations Committee, then I think that the statement attributed which GAO denies, that there was no indication of political donations having bought a plot in Arlington, would have some credibility. As I said earlier, asking someone to look into those files for evidence of political donations is like looking for a moon rock in this room; it simply—and I have stated it for the record—would not exist.

Now let me ask GAO—

Mr. CLYBURN. Will you yield?

Mr. EVERETT. Since the gentleman refused to yield to me, I'll ask the gentleman to use the time of someone else.

Was Dr. Koop a veteran?

Mr. HEMBRA. The information we were able to derive from the files suggests that Dr. Koop was not a veteran.

Mr. EVERETT. Our staff has been told by his staff that he was a veteran. Can you explain that?

Mr. HEMBRA. I can't explain it because we're going, once again, by what was provided to us in the files, and the information generated by the Army, and at that time they were still attempting to verify whether, in fact, Dr. Koop was a veteran.

Mr. EVERETT. Do you have a record of how many non-veterans have been given waivers?

Mr. HEMBRA. Non-veterans have been granted waivers.

Mr. EVERETT. Do you have any idea how many?

Mr. TRAPANI. There were 113 non-veterans granted waivers.

Mr. EVERETT. How many?

Mr. TRAPANI. One hundred and thirteen.

Mr. EVERETT. One hundred and thirteen non-veterans have been given waivers. How many of those were spouses or children?

Mr. TRAPANI. About 100 of those were spouses or adult children.

Mr. EVERETT. About a hundred, which leaves about 13.

Mr. TRAPANI. That's correct.

Mr. EVERETT. What did the GAO learn about the Zachary Fisher case?

Mr. HEMBRA. Let me mention, while I'm finding my sheet on the Fisher case, that up until a couple of weeks ago we had felt that we had pretty much all of the records that the Army had, and had done a wonderful job providing to us, and it was about a week ago that we received a phone call that another record, another case, had been identified and they were bringing it over to us.

Mr. EVERETT. Was that a surprise to you?

Mr. HEMBRA. Well, it was a surprise, but a surprise only in the sense that we had believed up until a couple of weeks ago that the Army had given us everything that was available. Now at the time they provided us with the information with regard to Mr. Fisher, it was explained to us that part of the reasons the information didn't surface earlier is this particular set of information was being maintained in a correspondence file as opposed to a waiver file.

Mr. EVERETT. How did that meet the subcommittee's request for all applications be furnished to the subcommittee? The subcommittee didn't get that file until January 21st.

Mr. HEMBRA. Clearly, in our case, after looking at the file, it should have been a file that was made available earlier, but we're going by, once again, how the Army explained the fact that there was this oversight, and that's how it was characterized.

Mr. EVERETT. Was the Fisher file handled routinely by the Army?

Mr. HEMBRA. I'm going to have to say that, based on what's contained in this file, it certainly doesn't fit with the waiver process. I would say that there were some—there was a different type of role being played certainly with regard to the Fisher case.

Mr. EVERETT. Was Mr. Fisher a veteran?

Mr. HEMBRA. Mr. Fisher was not a veteran. Mr. Fisher was a New York businessman. He was an individual that had donated generously over the years to the military, set up a foundation that operates the U.S.S. *Intrepid* as a museum, contributed funds to the Beirut bombing victims' families, the U.S.S. *Iowa* explosion victims' families, established Fisher Houses at military medical facilities, and done a number of things that the military certainly were grateful to Mr. Fisher for.

Mr. EVERETT. Do you know whether or not, for instance, the Medal of Honor Society opposed Mr. Fisher's tentative, if that's what it was—I won't split hairs with people—approval to be buried at Arlington?

Mr. HEMBRA. I personally couldn't remember, but Mr. Bedrick said he recalled seeing a fax in the file that at least one individual in the Society had raised some opposition.

Mr. EVERETT. In other words, the best you can determine, the only information you've been able to gather about Mr. Fisher is because he was a very wealthy man he was able to at least get tentatively endorsed by the Secretary of Army, Secretary of the Navy, and the Secretary of the Air Force for burial at Arlington National Cemetery?

Mr. HEMBRA. Yes, what is missing—what is not part of the files is an actual request by Mr. Fisher or a representative of Mr. Fisher for his interment in Arlington.

Mr. EVERETT. Did that not include an extensive instructions on how that burial should be carried out?

Mr. HEMBRA. Well, that's what is somewhat unusual about this case. If you look at the chronology of most of the case files, it usually begins with a request that a waiver be granted, and that's not quite the chronology that we saw in this particular case. In terms of the correspondence, the correspondence basically began with the transmittal of funeral plans for Mr. Fisher and his wife for burial at Arlington National Cemetery, and at some point after that, there were endorsements by the Secretary of the Air Force, endorsements by the Secretary of the Navy, that Mr. Fisher and his spouse be granted waivers. There is a letter from the Assistant Secretary basically indicating that the Secretary of the Army, while he was not in a position to grant a waiver, certainly endorsed the notion of the Fisher family being buried at—

Mr. EVERETT. Did not the Secretary of the Navy in his letter say he requested that he be buried—

Mr. HEMBRA. Yes.

Mr. EVERETT (continuing). Rather than endorsed?

Mr. HEMBRA. Yes. The Secretary of the Air Force and the Secretary of the Navy both requested—

Mr. EVERETT. Well, there are tons of other questions, but, obviously—you know, I should say in fairness on December 7th the Fisher family submitted a letter withdrawing the request or the application or the correspondence, or whatever you want to call it, for interment at Arlington National Cemetery, and I certainly salute the family for doing so.

And I would like to thank Mr. Stump for allowing me to use his time. I will now recognize Mr. Evans.

Mr. EVANS. Mr. Chairman, I'd prefer, if possible, if you'd yield to the subcommittee members and come to me last; they've been waiting for a period of time. I'd appreciate it.

Mr. EVERETT. I'm sorry, I've reached the age I need a hearing aid and I'm too vain to buy one. Please, would you repeat the request?

Mr. EVANS. I'd like it, if possible, if you could yield to the members who preceded me getting here.

Mr. EVERETT. Certainly. I'd be happy to. Mr. Snyder, I'm sorry.

Mr. SNYDER. Thank you, Mr. Chairman.

Mr. EVERETT. Mr. Evans, being the ranking member of the full committee, I naturally deferred to him.

Mr. SNYDER. No problem. Thank you, Mr. Chairman.

Several questions I wanted to question: Is it "Hembra" or "Embra?"

Mr. HEMBRA. "Hembra."

Mr. SNYDER. Mr. Hembra, just a comment, and I don't even know if I want you to respond, on the statement with regard to the political contributions. I got the report last night that was provided to us, the draft, and if I can just read the sentence: "Although these cases indicate that involvement of high-level officials may in some cases influence the waiver process, we found no evidence in the records we reviewed to support recent media reports that political contributions have played a role in waiver decisions."

Your comments about records, I'm now wondering, were those, you know, NFL playbook records? Were they financial reports? I mean, to be in the spirit of providing this information, I think probably a second sentence would have been helpful, in line with Mr. Everett's comments that, please be aware that our review was limited only to the waiver file, which I think was put together in 24 or 48 hours, but that's perhaps not as fully discussed there as it might have been in the GAO report.

I wanted to ask about the numbers here, and trying to make a distinction now—I mean, isn't it a fair statement to say that the ones that we should really be concerned about here are the new gravesites; that when you're talking about family, there's really not been any controversy, has there, about family members meeting the criteria to be buried in the same site as long as they meet the criteria of a predeceased veteran or even a veteran that may not be predeceased? Is that a fair statement?

Mr. HEMBRA. Well, I would agree with that. The controversy tends to be focused not on the individuals that are asking to be interred in an existing gravesite.

Mr. SNYDER. Right. I was trying to do the math last night, and I guess we have two Superintendents here, and as I look at the numbers, the most recent ones, I came up with 21 new gravesites out of a total of 22,413 total burials, 22 out of 22,000, and then in the years preceding, I guess the predecessor Superintendent, 44 new gravesites out of 55,500, a little bit of increase in the numbers, the percentage, 21 out of 22,000, 44 out of 55,000, but pretty close in terms of the numbers.

The one thing that struck me, when Mr. Stump asked you about the question, do you feel the standards, that the criteria were routinely ignored, you made the comment that you thought, even though they weren't written down, that there was a set of criteria. It would also be fair to say, would it not, given that you're talking about, what, 68 new gravesites over quite a few years now, there really can't be anything routine about this. I mean, personnel change; Presidents change; Secretaries of the Army change. There's not much of a routine established in that kind of thing, which may be one of the problems. Is that a fair statement?

Mr. HEMBRA. I think if there is probably a point of continuity, it has been in the Superintendent's—

Mr. SNYDER. Superintendent, yes.

Mr. HEMBRA (continuing). Office, and while there clearly is a process that's followed, I think we tried to make it clear that it is

not something that has been articulated in regulation, and so there is an absence of that being institutionalized.

Mr. SNYDER. Right. In your statement, if I've not lost it, you give a little bit of a history lesson on this thing, and you point out that around 1980—this is on—well, I don't know what page it is—you make the comment that around 1980 or so that the Army appears to have adopted a more lenient approach also to granting of waivers. I'd just make a comment, does that reflect again that, by not having any kind of written standards, that the waiver standards can kind of ebb and flow, all in a good faith perhaps effort to resolve those questions?

Mr. HEMBRA. I think the absence—and we've tried to make it clear in our statement—the absence of criteria and the absence of fully understanding how the process works all contribute, can contribute to that happening.

Mr. SNYDER. Yes, yes. Then on the following page in your report you talk about the period from 1986 to 1989 that the Army talked about coming up with some proposed changes to deal with explicit authority and some criteria, but then you make a comment that one of the concerns was that by formalizing the process and publicizing it, I mean the implication is that the Superintendent or somebody were afraid that they'd be overwhelmed by waiver requests or that Members of Congress would be overwhelmed by waiver requests. That's an interesting comment to me. Is that—did I characterize your comment there?

Mr. HEMBRA. I think that is an accurate characterization, that there is concern. There has always been concern at Arlington about the capacity question and the more light you shine on this issue, the fact that there is a process that you can use, it does increase the likelihood of more people applying.

Mr. SNYDER. Yes. I guess in terms of an overall comment, by looking at 1986 to 1989, this is—I think the chairman referred to it as a dirty secret. I mean, there has been concern expressed within—concern about the lack of standards expressed now and again. Is that a fair statement?

Mr. HEMBRA. It is a fair statement.

Mr. SNYDER. Yes. The comment that the process could appear to be one subjected to influence—and I agree with that—I assume that what you're talking about there would be, again, given the time period of 48 hours, somebody passes away; the family's scrambling around; I would assume that they call a Member of Congress; they may call the First Lady; they may call the Secretary of Defense; they may call the commanding general of the nearby—the commanding officer of the nearby military facility, and say, "Please help me. Daddy died today, and he always wanted to be buried at Arlington." I would assume that that kind of a letter or nowadays a fax would trigger this whole process, and it could be nothing more than: Dear Mr. Superintendent, as commanding officer or the governor of the State of Arkansas, I was recently contacted by a constituent whose father passed away this morning. Would you please expedite their consideration?

I assume that that's—you would—I mean, is that the extent of what we mean by influence? Do we have examples where repeated

letters and phone calls—do you have any comments there in your review of the files?

Mr. HEMBRA. In reviewing the files, what you see is a combination of either a record that—and if we would use the example of Congressional Members, which is probably the predominant example that appears with cases, that there is either some telephone call that has been made or a case where an individual Congressional Member will request that a waiver be granted or a Member or Members will certainly endorse.

Mr. SNYDER. Right.

Mr. HEMBRA. Now—

Mr. SNYDER. But it's fair to say—I mean, it's fair to say that I would put that under the category of influence. I mean, being a Member of Congress, we wouldn't see it that way, but I would say that if a letter appeared in the file, we would say that certainly is effort to influence.

There's a note in here that you say in 1997 there was legislation proposed or discussed or consideration given for a legislative proposal. Was that before any of these allegations were made?

Mr. BEDRICK. Yes, sir, that suggestion was made in, I think, January of 1997.

Mr. SNYDER. Was there a bill filed? Was it discussed by a committee? Was it—I didn't—I couldn't tell; I couldn't find from staff.

Mr. BEDRICK. We're not entirely sure about that either, but we were told by Army officials that the initiative did not originate with them, that they were asked by committee staff to draft a legislative proposal for the convenience of the committee, and that the Army did not necessarily endorse or support the proposal.

Mr. SNYDER. So what you're telling me is that sometime prior to when all these allegations broke over the break that our chairman has been so dedicated to sorting out there was concerns apparently by at least committee staff or committee members to pursue this lack of clear standards?

Mr. BEDRICK. There was some interest but I can't attribute it. The Army could tell you more authoritatively.

Mr. SNYDER. That's all right. And, finally, on your discussion of potential solutions, one of the areas that you don't discuss is this lack of process or the lack of anything written down. It would seem like—I mean, I would think that governors and Members of Congress and First Ladies and anybody else is going to be very sensitive now, given what has come out in the last couple of months, about process, and that it would probably be helpful to have, for congressional offices to have, a 2-page official statement from the Superintendent, you know, "You called me today. Let me—come over to my office right now, even though it's Sunday morning. I've got the process to show you that you can go through to apply for a waiver." You make no comment about any kind of discussion about the process, and yet your statement is very strong that there needs to be the same information given to the same group of people, regardless of political influence.

Mr. HEMBRA. I think throughout the statement it's clear on our part that this is a process that needs to be built so that the waiver decisions are sound ones and ones that are publicly visible, and to

us that clearly means a process that is better understood, as well as decisions being better understood by everyone.

I mentioned in my opening remarks that, to the credit of the Secretary of the Army, last month—certainly in light of all the controversy, and what they've learned themselves, I believe, through this process—has put into place three new requirements. One is to help the public better understand how you go about requesting burial waivers at the cemetery. The others are to publish the names of those individuals who are granted waivers to be buried there that would not otherwise be eligible, and very importantly, that the appropriate congressional committees on both the House and Senate side be notified when a waiver is granted. While those requirements have just been put in place, I think if they're followed through, they are going to help considerably.

Mr. SNYDER. Thank you, Mr. Chairman.

Mr. EVERETT. Thank you. Mr. Mascara.

Mr. MASCARA. Thank you, Mr. Chairman.

Perhaps I'll refer you to page 6 of your testimony, the authority for waiver decisions, I'm a little bit confused, but perhaps you could move me through chronologically about the legislation—I mean, dating back to 1967, because in that paragraph you cite that in 1973 the Congress in the National Cemeteries Act expressly preserved the existing functions, powers, and duties of the Secretary of the Army with respect to Arlington, while at the same time repealing the prior law that specified who was eligible for burial at national cemeteries. And then you go on to say that this left no explicit legal restrictions on the Secretary's authority over burials at Arlington.

Can you sort of take me through 1967, 1973, and the eighties?

Mr. BEDRICK. I'll try to, sir. It's complicated, but for a long time there was no explicit legislation governing eligibility for the national cemeteries generally. 1948 was when a statute was enacted that set forth some specific eligibility criteria, and that remained in effect with a few amendments until the 1973 amendment. In 1973, the Congress decided to transfer all the national cemeteries, except for Arlington and the one at the Soldiers' Home, to what was then the Veterans' Administration. The clause that we referred to that preserves the authority of the Secretary of the Army was in recognition that the transfer to the VA did not include Arlington.

At the same time, the 1973 act repealed the 1948 eligibility requirements and enacted new eligibility requirements that were only applicable to the cemeteries under the Veterans' Administration. So it's very difficult, frankly, to sort all that out and come up with any sort of definitively legal view, but given that the Secretary had had waiver authority in the past that had been exercised and was recognized, and given that the Secretary's earlier authority had been preserved in the savings clause, and given that the specific eligibility authority applicable to Arlington had been repealed, we agreed with the Army's interpretation that the net result was that there was some surviving waiver authority.

Mr. MASCARA. So the authority lies with the Secretary of the Army, in your opinion, under current statute?

Mr. BEDRICK. Yes, sir.

Mr. MASCARA. Do you have any recommendations on how and who should have the authority in granting waivers, after the research that you have done?

Mr. HEMBRA. I would say we do not have any recommendations in terms of who should have that authority. There's some questions of how explicit you need to make that authority. I think perhaps most of the controversy has generated not so much around who has the authority, but how the authority has been exercised. I think that in terms of whether the President should maintain that authority solely or whether the Secretary of the Army or the Secretary of Defense, there's nothing in our view that suggests who has it is as important as how it's being used.

Mr. MASCARA. I have just one final question, and it's repeating what was disclosed earlier when the Chairman made his statement, but just one more time: Are you aware of any abuses in the waiver process related to campaign contributions?

Mr. HEMBRA. And I'm glad you raised that again. Mr. Snyder pointed out that we have a statement with regard to political contributions, and we stand by that statement. We also make it very clear early in the statement—and certainly the Chairman has alluded to this—that because of the compressed time that we were working in, our review focused on the available files that we had access to, and in looking at those files and looking at those specific records, there was nothing contained in the records that would suggest that political contributions weighed in on the decisions. But that review, I've tried to make clear from the beginning, that was quite limited, as the Chairman himself has pointed out.

Mr. MASCARA. Thank you very much, Mr. Hembra. Thank you, Mr. Chairman.

Mr. EVERETT. Thank you. The chairman now recognizes a member of this committee and the chairman of the full National Security Committee, my friend, Mr. Floyd Spence.

All right. Let's see, I have restricted—I apologize to Mr. Evans—I have turned down members of the majority already because they were not members of this subcommittee, and earlier staff reminded me of restricted questions to only members of this subcommittee since we have such a long list of people to be questioned today, and I didn't want this thing to go to midnight tonight, but my apologies to Mr. Evans in that respect.

I thank this panel for its testimony and for the great job it did, and my earlier statements about my respect for GAO still stand. The panel is dismissed.

Mr. HEMBRA. Thank you.

Mr. EVERETT. I would like to call the second panel: Mr. Ray Costanzo, former Superintendent of Arlington National Cemetery, and Mr. John Metzler, the current Superintendent of Arlington.

I would also say that all members would have 5 days to submit any additional questions to any of these panels, and we would ask the panels to respond.

[Witnesses sworn.]

Mr. EVERETT. The chair would like to recognize Mr. Ray Costanzo, former Superintendent at Arlington, and Mr. Jack Metzler, the current Superintendent.

**TESTIMONY OF RAYMOND J. COSTANZO, FORMER SUPERINTENDENT, ARLINGTON NATIONAL CEMETERY; ACCOMPANIED BY JOHN C. METZLER, JR., SUPERINTENDENT, ARLINGTON NATIONAL CEMETERY, DEPARTMENT OF THE ARMY**

Mr. EVERETT. Mr. Metzler, you recommended the waiver of Ambassador Lawrence, I believe. Did you attempt to confirm his Merchant Marine service?

Mr. METZLER. Yes, Mr. Chairman, I did.

Mr. EVERETT. How did you do that?

Mr. METZLER. Through the State Department.

Mr. EVERETT. By the way, each person will have 5 minutes on this round. Please go ahead.

Mr. METZLER. Through the State Department, sir.

Mr. EVERETT. Did you contact the Coast Guard National Maritime Center?

Mr. METZLER. No, I did not.

Mr. EVERETT. Did you contact the Lawrence family?

Mr. METZLER. I attempted to work with their representative, but my major effort in contact or trying to get the service information was through the State Department, sir.

Mr. EVERETT. The cemetery worksheet for Ambassador Lawrence, dated January 11, 1996, has blank service date data blocks for enlistment and discharge. Why are these blocks blank?

Mr. METZLER. We were not able to determine his period of service during World War II that was represented to us.

Mr. EVERETT. Who did you tell in the Army that you could not verify Mr. Lawrence's Merchant Marine service?

Mr. METZLER. I didn't tell anyone that I couldn't validate the service. I did tell them I received a memo from Patrick Kennedy, and signed by Mr. Holbrooke, on behalf of the State Department attesting to Mr. Lawrence's military service during World War II.

Mr. EVERETT. Does it bother you that these blocks remained at the time blank?

Mr. METZLER. Yes. I did try to continue to validate through repeated phone calls to get the rest of the information, but was unable to obtain that information.

Mr. EVERETT. How many Merchant Mariners are buried at Arlington whose service could not be verified?

Mr. METZLER. Mr. Lawrence is the only one that I'm aware of, sir.

Mr. EVERETT. Out of how many?

Mr. METZLER. Eighty-one exceptions, 26 Merchant Marines from the period of 1995 to 1997 and 55 records from the period of 1988 to 1994, some records are duplicates, some are of spouses.

Mr. EVERETT. Submit it for the record. I think it's about 82 or 83, somewhere in that area.

Eighty. Eighty other than Lawrence, staff informs me.

Did anyone from the White House contact you regarding Mr. Lawrence, and if so, when and why?

Mr. METZLER. I was contacted by the military office of the White House and they asked me to keep them informed of the progress of this case.

Mr. EVERETT. That would be routine?

Mr. METZLER. It's not normal that the White House contact me, but in the case when the President would attend a funeral or in the case when a high-level Government official passes away, then I would say it was normal, yes.

Mr. EVERETT. And we could consider it routine?

Mr. METZLER. Yes, I would.

Mr. EVERETT. What part did you have in granting the waiver for Dr. Koop?

Mr. METZLER. None whatsoever.

Mr. EVERETT. Does the granting of the waiver follow usual waiver process?

Mr. METZLER. I'm sorry, sir, I didn't understand—

Mr. EVERETT. Does granting of the Koop waiver follow the usual waiver process?

Mr. METZLER. No, it does not. We were not—my office was not informed of Mr. Koop's request. We were only informed that it had been approved by the President.

Mr. EVERETT. Does the waiver for Dr. Koop set a new precedent?

Mr. METZLER. It is certainly a different one, yes, sir.

Mr. EVERETT. Have you in the past had, to your knowledge, any other waiver granted in this way?

Mr. METZLER. Not before the death has occurred. The White House has approved other requests in which I have not been consulted in.

Mr. EVERETT. But not for any living human being?

Mr. METZLER. That is correct.

Mr. EVERETT. Does the waiver for Dr. Koop violate Arlington regulations against reservations?

Mr. METZLER. It does from the standpoint that the death had not occurred, but no actual grave was assigned to Mr. Koop; only the letter from the President that came that he was eligible. So if you look through the regulations, we didn't actually assign a section and grave number to him.

Mr. EVERETT. How many of your recommendations to deny waivers were not followed by the Secretary of Army from 1991 to 1993?

Mr. METZLER. I believe it was 13, sir.

Mr. EVERETT. How many from 1993 to the present? I'm talking about prior to 1993, and then from 1993 to present.

Mr. METZLER. I'm sorry, let me start again. From 1991 to 1993—

Mr. EVERETT. Right, 1991 to 1993.

Mr. METZLER (continuing). I believe there was three.

Mr. EVERETT. And from 1993 to the present?

Mr. METZLER. Ten.

Mr. EVERETT. Ten. With respect to consideration of the waiver for Mr. Fisher, did that follow normal process?

Mr. METZLER. I don't consider Mr. Fisher's request a waiver in the sense of we're talking about the rest of them, and, no, what we did with Mr. Fisher was not what we normally would do. I did not write a memo, did not review this case. The only information I was provided or was asked to provide was on the actual burial procedures that were involved—

Mr. EVERETT. Let me ask you, can you explain why the Secretary of the Navy thought it was a waiver request, as he referred to in his letter?

Mr. METZLER. I didn't see that letter initially, Mr. Chairman. That was only—that came in after the——

Mr. EVERETT. Have you seen it now?

Mr. METZLER. I have seen it now, yes.

Mr. EVERETT. Can you explain why he would refer to it as a waiver request?

Mr. METZLER. No, I cannot.

Mr. EVERETT. I see. Okay, there again, for this panel, I've limited members to 5 minutes, and I've about used my 5 minutes up. Thank you, Mr. Metzler.

Dr. Snyder?

Mr. SNYDER. When—explain to me the process briefly, if you would. It's Friday night at 11 o'clock, and I leave my home number in the book for these kinds of occasions, as a matter of fact. I get a call; someone's passed away. I assume I'll be able to somehow struggle and find a number for the Arlington Cemetery, saying, "I've got a family that wants to have someone buried at Arlington." Walk me through the process of somebody who you would decide is not eligible.

Mr. METZLER. Someone who is not eligible?

Mr. SNYDER. Yes.

Mr. METZLER. If they don't meet the normal burial criteria as laid out in the Federal Code of Regulations——

Mr. SNYDER. What do you tell them?

Mr. METZLER. I would tell them that, based on the information you've provided me, that you are not eligible for burial in Arlington Cemetery. If you were—if that deceased person was in the military and had an honorable discharge, I would tell them, though, that you are eligible for cremation in our columbarium or you'd be eligible for burial in any one of the 115 national cemeteries opened by the Veterans' Administration.

Mr. SNYDER. So getting to the issue of I think the chairman's concern of, do we have a two-tiered situation here where those that know there's an elaborate waiver process, if you can get on the phone very quickly and have the right biography of the deceased person—do you advise or does your staff advise in those situations that you need to understand these are our criteria; from here on, there is a waiver process, and that in rare situations you may be able to get a loved one buried at Arlington, either by a decision of the Secretary of the Army or by the President? Is that routinely—is that information routinely given to people when they're denied?

Mr. METZLER. If the requestor does not accept the information that's provided to them over the telephone, then generally they're referred to my office or to me specifically to continue asking questions, and depending upon how the question is asked, they may be told right upfront about the exception policy as well.

Mr. SNYDER. So when you say routinely—so I call; Daddy, who was a veteran for 2 years, he got a good conduct medal and I'd like to have him buried at Arlington, and the information would be, while we appreciate his service, he's not eligible for burial in Ar-

lington, but perhaps would be at one of the other veterans' cemeteries—

Mr. METZLER. Or he's also eligible for cremation—

Mr. SNYDER. For cremation.

Mr. METZLER (continuing). And then at Arlington—

Mr. SNYDER. And then they would say, thank you, and hang up. They would never be aware that, in fact, there is a waiver process available for them. It will only be our persistent, squeaking-wheel types that will eventually get that information? Is that a—I don't—I'm getting back, I guess, to the issue we were talking about earlier: do we need to have some written information sitting in congressional offices and in governors' offices around the country that we would all have that we could say, "Okay, this is the situation. If you meet this criteria, you're in. If you don't, chances are pretty slim, but we could, if you want to make the application, you could." But it sounds like only some people are getting that information on the second part of that or I guess the second two parts, part A, the Secretary of the Army; part B, the President. Is that a fair characterization?

Mr. METZLER. The way you describe it, yes, sir.

Mr. SNYDER. In view of what has happened here in the last few months, what's your thoughts about—are you providing information differently now when people call or contact you in those kinds of situations with regard to the burial policy at Arlington or is it the same?

Mr. METZLER. Right now it's still pretty much the same. My office has been pretty well wrapped up with doing the—providing the information to the various requestors, the committees and the GAO, and really haven't had an opportunity to implement fully the Secretary's new guidance. We have implemented the disclosure aspect of it. So when the requestor comes in for an exception, he or she is told that their name would be released publicly as well as the information released to Congress.

Mr. SNYDER. Now let me ask—I'm about out of time—if instead of the phone call from a family member, you get a letter from a Member of Congress that says, please consider this person for burial at Arlington, does that automatically trigger your waiver process?

Mr. METZLER. No, sir.

Mr. SNYDER. Would the first letter I get back the "I'm sorry, they don't meet the eligibility," and in that contact would then you also advise me that there is a waiver process, if you're now dealing with a governor or the First Lady or a Member of Congress, say?

Mr. METZLER. If the letter is written for someone who is deceased, then, yes, we would institute the exception policy procedure. If the letter is a letter of general information, we would not.

Mr. SNYDER. Okay. So we do have a two-tiered system then, don't we? I mean, if you get the—if the request for information comes from a Member of Congress, even though within that letter it may not say, please consider this person for a waiver of your eligibility requirements at Arlington, what you're telling me is that that automatically does trigger the waiver process if the person had just recently died?

Mr. METZLER. If the person's deceased, it would.

Mr. SNYDER. If the contact is from the veteran's family, not a power player in the system, they do not get the same information back, and the case file is handled differently? Is that a fair characterization?

Mr. METZLER. It depends upon how the question is posed to my office.

Mr. SNYDER. Yes. It sounds like—you have a very good reputation, Mr. Metzler, but that sounds like something we probably needed to perhaps handle a little differently, don't you think?

Mr. METZLER. Well, if I may say, sir, we get requests and phone calls throughout the day—

Mr. SNYDER. Right.

Mr. METZLER (continuing). Dozens, maybe sometimes more, of people inquiring about their eligibility at Arlington Cemetery, and we try to provide them the information based on what they tell us over the telephone, based on their military information. We don't go into the waiver process on those routine calls at all.

Mr. SNYDER. But the concern of Mr. Everett is that some people—I mean, I think—I don't want to put words in his mouth, but I think them with money get a different set of information than them that don't; them with influence get a different set of information than them that don't, and that may be something that's—I understand that's such a small number, but it still is of concern.

Thank you, Mr. Chairman, for letting me put words in your mouth.

Mr. EVERETT. Well, that's all right.

Mr. Spence?

Mr. SPENCE. Yes, Mr. Chairman, just one brief question and then I'll yield the remaining of my time back to you.

Mr. Metzler, why did you check with the State Department with the information on the service of this individual?

Mr. METZLER. The State Department is one of the initial phone calls I had received when Ambassador Lawrence passed away, and I was working directly with their office, which is typical when we have a State Department representative die overseas.

Mr. SPENCE. They usually have the information as to his service record?

Mr. METZLER. They usually have all the pertinent information on the deceased; that is correct.

Mr. EVERETT. I thank Mr. Spence. In regard to the questions, putting words in my mouth by my friend, I would say that the problem is that people who are outside the sphere of influence have no knowledge that the waiver system exists. But I will go further. I would think that the results of this hearing will show that, in particular, the case of Mr. Fisher and Mr. Lawrence, that the very least you could say is that favoritism pays a great part in them being buried at—or in Mr. Fisher's case tentatively agreed to be buried at Arlington National Cemetery, and I don't believe that you can dismiss it out of hand because of the files that we've gone through showing that, well, it may have played some part, and we'll get into that a little bit later.

Mr. Costanzo, during the Carter administration, is it correct you sent a letter to the President about waivers at Arlington? Please tell us about it.

Mr. COSTANZO. During President Carter's administration?

Mr. EVERETT. Yes, sir.

Mr. COSTANZO. I did not send it directly to the President. I forwarded the request through the chain of command. President Carter was a very humanitarian person. He took every death personally and was granting exceptions that I thought should not have been granted.

Mr. EVERETT. And you were there during the Reagan administration also?

Mr. COSTANZO. Yes, I was.

Mr. EVERETT. Did you have any such feeling during the Reagan administration also?

Mr. COSTANZO. No, sir.

Mr. EVERETT. I see. During the 1980s, how did the granting of waivers operate at Arlington?

Mr. COSTANZO. 1980?

Mr. EVERETT. 1980s, yes, sir.

Mr. COSTANZO. There was a distinct change around the year 1980. Prior to that time, all exceptions or waivers were granted by the President. After 1980 the responsibility for granting waivers was shifted to the Secretary of the Army. We did notice an increase after 1980.

Mr. EVERETT. Do you recall at any time any waiver you had denied being overridden by either the Secretary of the Army or any other member of the administration?

Mr. COSTANZO. No, sir, none comes to my mind at this time.

Mr. EVERETT. And under how many Presidents did you serve?

Mr. COSTANZO. I started under President Ford, and continued all the way through to President Reagan.

Mr. EVERETT. All the way through Reagan?

Mr. COSTANZO. Yes.

Mr. EVERETT. And we have established already that Mr. Bush took a hands-off approach, and then—

Mr. COSTANZO. He wasn't involved as deeply as others were, that's correct, to the best of my memory.

Mr. EVERETT. And so, as far as you know, the 13—the current overruling of the waiver process of the Superintendent's recommendation, that's the first that you know of that happening?

Mr. COSTANZO. That's correct.

Mr. EVERETT. Okay. I have no other—excuse me. Was there a de facto waiver process in 1990?

Mr. COSTANZO. 19—

Mr. EVERETT. Reservation—I'm sorry. Reservation, de facto reservation process in 1990?

Mr. COSTANZO. Correct.

Mr. EVERETT. Was that denied by the Army?

Mr. COSTANZO. I don't quite understand that—

Mr. EVERETT. The Army IG did an investigation on that, and I think a reporter asked about it, and it was publicly denied that it had happened.

Mr. COSTANZO. The making of gravesite reservations were discontinued in 1962. The two gravesite policy was changed to a single gravesite for each veteran. It was therefore no longer legally possible to make a reservation.

Mr. EVERETT. Was that an open process?

Mr. COSTANZO. Making a reservation?

Mr. EVERETT. Yes, sir.

Mr. COSTANZO. No, you could not make a gravesite reservation. We did, however, continue to receive numerous requests for a reservation. I responded to many of these requests—not granting a grave reservation, just advising them that the cemetery records would be annotated to reflect their desire for burial and that it would be honored if they were still eligible at the time of death.

Mr. EVERETT. Thank you, sir. I've used my time up, and I would like for a copy of the IG report to be submitted for the record.

[The information follows:]



DEPARTMENT OF THE ARMY  
OFFICE OF THE INSPECTOR GENERAL  
WASHINGTON, D.C. 20316-1700



January 8, 1991

Investigations Division

Major General William F. Streeter  
Commanding General, U.S. Army Military District of Washington  
Washington, DC 20319-5000

Dear General Streeter:

The United States Army Inspector General Agency has completed an investigation into issues concerning the management of Arlington National Cemetery (ANM).

We concluded the following: (1) The Army has been properly approving exceptions for interment in ANM when requests submitted by eligible persons did not require additional grave space. That is, the ineligible deceased person would be buried in the same gravesite expected to be the final resting place for the eligible. There was no evidence to indicate preferential treatment in granting approvals for exceptions. The practice of approving interment in ANM for ineligible family members could reduce the uniqueness of ANM as a national shrine; and (2) Ground burial sites at ANM were de facto reserved in violation of Army policy.

The Secretary of the Army approved the report of investigation on December 19, 1990. His office will take any action resulting from his review. My office will take no further action pertaining to the management issues concerning ANM.

Sincerely,

Bobby F. Brashears  
Major General, U.S. Army  
Deputy The Inspector General  
for Investigations and Oversight



DEPARTMENT OF THE ARMY  
OFFICE OF THE INSPECTOR GENERAL  
WASHINGTON, D.C. 20310-1700



January 8, 1991

Doctor G. Edward Dickey  
Acting Assistant Secretary of the Army (Civil Works)  
Washington, D. C. 20310

Dear Dr. Dickey:

The United States Army Inspector General Agency has completed a Secretary of the Army (SA) directed investigation into allegations concerning improprieties in the management of Arlington National Cemetery (ANC) (enclosure 1). The issues investigated included: (1) Army policy and procedures for granting exceptions for interment in ANC; and (2) Policy and practices for reserving burial sites at ANC.

The investigation concluded: (1) The Army has been properly approving exceptions for interment in ANC when requests submitted by eligible persons did not require additional grave space. That is, the ineligible deceased person would be buried in the same gravesite expected to be the final resting place for the eligible. There was no evidence to indicate preferential treatment in granting approvals for exceptions. The practice of approving interment in ANC for ineligible family members could reduce the uniqueness of ANC as a national shrine; and (2) Ground burial sites at ANC were de facto reserved in violation of Army policy.

The SA approved the report of investigation. The recommendations included: (1) ASA, CW, review the current practice of recommending approval for interment in ANC for ineligible family members to ensure the future preservation of ANC as a national shrine; and (2) ASA, CW, take necessary action to discontinue the practice of allowing people to select ground burial sites in ANC and take appropriate action to notify individuals who have selected gravesites that their sites are not being held.

In a separate note (enclosure 2), the SA questioned the conclusion that the "de facto" reservation policy is truly inappropriate.

-2-

The investigating officers, [ ] and [ ]  
extension 57385, are available to provide additional information.  
Please notify us of any actions taken as a result of your review.

Sincerely,



Bobby F. Brashears  
Major General, U.S. Army  
Deputy The Inspector General  
for Investigations and Oversight

Enclosures



DEPARTMENT OF THE ARMY  
OFFICE OF THE INSPECTOR GENERAL  
WASHINGTON, D.C. 20310-1700



19 DEC 1990

U.S. ARMY INSPECTOR GENERAL AGENCY  
REPORT OF INVESTIGATION  
(CASE 20-90)

**EXECUTIVE SUMMARY**

**NAME/POSITION:** There were no suspects/subjects.

**AUTHORITY:** Secretary of the Army (SA) directive, 11 June 1990

**BACKGROUND:** Several allegations were received by the U.S. Army Inspector General Agency (USAIGA) concerning improprieties in the management of Arlington National Cemetery (ANC):

a. [filed an Inspector General Action Request alleging] [U.S. Army Military District of Washington (MDW), fraudulently interred his own mother in ANC. The Department of Defense (DOD) Hotline received the same allegation from an anonymous complainant. The DOD Inspector General inquired into the matter and questioned the absence of extraordinary circumstances presumably required to justify an exception to policy for interment in ANC.]

b. [Assistance Division (AC), USAIGA, learned that the adult son MDW, was interred in ANC.] [Aware that the son did not qualify for interment in ANC, questioned the appropriateness of the interment.]

c. [AC, USAIGA, reported a perception existed that senior officials were allowed to reserve ground burial sites at ANC.]

SAIG-IN (20-1b) (20-90)

DISCUSSION: Due to the general nature of the allegations, the SA directed an investigation into two issues: (1) Army policy and procedures for granting exceptions for interment in ANC; and (2) Policy and practices for reserving burial sites at ANC.

1. ISSUE: Were exceptions to Army policy for interment in ANC properly granted?

ANSWER: Yes. The evidence indicated the Army has been properly approving exceptions for interment in ANC when requests submitted by eligible persons did not require additional grave space. That is, the ineligible deceased person would be buried in the same gravesite expected to be the final resting place for the eligible. There was no evidence to indicate preferential treatment in granting approvals for exceptions. The practice of approving interment in ANC for ineligible family members could reduce the uniqueness of ANC as a national shrine.

2. ISSUE: Were ground burial sites at ANC reserved?

ANSWER: Yes, ground burial sites at ANC were de facto reserved. Senior officials, as well as others, were allowed to select their gravesites at ANC. Persons were informed by the Superintendent of ANC that their choices were not guaranteed, but they would be accommodated if their requested site was available upon their death. A record was maintained at ANC of the person requesting a specific ground burial site and the chosen site. It was general practice to not schedule a ground burial in a previously selected site as long as other sites were available. This practice created a perception that ground burial sites were reserved.

SAIG-IN (20-1b) (20-90)

CONSIDERATION OF ISSUES

1. Issue: Were exceptions to Army policy for interment in ANC properly granted?

a. Evidence:

(1) AR 600-50, Standards of Conduct for Department of the Army (DA) Personnel, stated, "DA personnel will avoid any action, whether or not specifically prohibited by this regulation, that might result in or reasonably be expected to create the appearance of . . . giving preferential treatment to any person or entity . . . DA personnel are prohibited from using their official positions to induce, coerce, or in any way influence any person, including subordinates, to provide any unauthorized benefits, financial or otherwise, to themselves or others." (Exhibit D)

(2) AR 290-5, Army National Cemeteries, stated:

(a) The Assistant Secretary of the Army for Civil Works (ASA, CW) is directly responsible to the SA for policy formulation in the administration of these cemeteries.

(b) The Act of 14 May 1948 . . . authorized interment in Arlington . . . under such regulations as the SA may, with approval of the Secretary of Defense, prescribe.

(c) Persons eligible for interment in ANC include:

(1) Any active duty member of the Armed Forces; (2) Any retired member of the Armed Forces; (3) Any former member of the Armed Forces separated for physical disability before 1 October 1949 who has served on active duty (other than for training) and who would have been eligible for retirement under the provisions of 10 USC 1201 had that statute been in effect on the date of separation; (4) Any former member of the Armed Forces whose last active duty (other than for training) terminated honorably and who was awarded one of the following decorations: Medal of Honor, Distinguished Service Cross, Distinguished Service Medal, Silver Star or Purple Heart; (5) Persons who have held various government positions; (6) The spouse, widow or widower, minor child and, at the direction of the SA, unmarried adult dependent child (characterized as incapable of self-support due to physical or mental condition) of any categories listed above; (7) Widows or widowers of service members who are interred in Arlington as

SAIG-IN (20-1b) (20-90)

part of a group burial; (8) Surviving spouse, minor child, and, at the discretion of the Secretary of the Army, unmarried adult dependent child of any person already buried in Arlington; (9) The parents of a minor child or unmarried adult dependent child whose remains, based on the eligibility of a parent, are already buried in Arlington; (10) Any honorably discharged former member of the Armed Forces may be interred in the same grave as a close relative who is the primary eligible provided the close relative is already interred, the former member is without minor or unmarried adult dependent children, the former member will not occupy space reserved for the spouse or minor or unmarried adult dependent child of the primary eligible.

(d) A father, mother, brother, sister or in-law is not eligible for interment by reason of relationship to an eligible service person even though he or she is dependent upon the service member for support and/or is a member of the service member's household. (Exhibit E)

(3) A Memorandum of Law, Army General Counsel, dated 10 April 1983, stated

(Exhibit F)

(4) The exceptions to Army policy for burial in ANC for March 1967-June 1990 were reviewed. There were 96 exceptions approved for burial in ANC. Of these, the White House approved 49 and the SA, 47. The SA began approving exceptions in 1980. Of the 47 exceptions approved by the SA, 40 individuals were related to family members who were eligible for burial in ANC. Exceptions granted by the SA were proper. There was no evidence of preferential treatment for any of the approved exceptions. (Exhibit G)

(5) Mr. Robert W. Page, ASA, CW, testified:

(a) He recommended approval/disapproval of exceptions to Army policy for burial at ANC to the SA. A lieutenant colonel in his office oversaw the program.

(b) Space has been a criteria for burial of ineligible persons when there was a direct relationship to eligible persons. Exceptions were favorably considered as long as the ineligible

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SAIG-IN (20-1b) (20-90)

deceased person was related to an eligible person and did not require additional space for interment. He believed that granting an exception for an ineligible person could be perceived as reserving a space for a primary eligible for a later date. He believed a hard look was required to review the case of each ineligible.

(c) Approving burial in ANC for ineligible persons based on space and relationship could lessen the uniqueness of ANC as a national shrine. There was no preferential treatment given to anyone applying for an exception. (Exhibit B-1, p 3-12)

(6) [ ASA, CW, testified: ]

(a) All exceptions for burial in ANC were processed through his office. He coordinated all exceptions with the Superintendent of ANC. The exceptions, usually approved, did not require the displacement of a primary eligible.

(b) He believed ANC changed its policies to be more restrictive because it was running out of space. Space considerations weighed heavily in any decisions for exceptions to burial in ANC. He did not believe that approving exceptions to Army policy for burial in ANC could be interpreted as reserving space for primary eligibles at a later date. (Exhibit B-2, p 3-7, 18-19)

(7) [ testified: ] SA,

(a) The issue concerning ANC burial was whether or not space was given up for an eligible person to an ineligible person. If no space was given up for an ineligible person, it would be treated as a standard humanitarian response and required no further inquiry. Exceptions were considered routine as long as additional grave space was not required. The SA would consider the merits of each case; but as long as an eligible person was not displaced, the exception should be approved.

(b) ANC was a national treasure given to the Army for stewardship. There were certain specific categories of persons eligible for interment versus those persons who were ineligible. The SA had the responsibility to maintain a standard; however, he also had the authority to grant exceptions. Major exceptions to policy were classified as actions requiring approval for burial of persons who displaced space for eligible persons. Eligible individuals who requested exceptions for related persons were not considered major exceptions for burial.

SAIG-IN (20-1b) (20-90)

children, and remarried widows. Requests for exceptions to this policy were handled by the ASA, CW, and submitted to the SA for approval.

(3) The evidence indicated the Army has been approving exceptions for interment of family members in ANC when requests submitted by eligible persons did not require additional grave space. That is, the ineligible deceased person would be buried in the same gravesite expected to be the final resting place for the eligible. Examples of exceptions granted included mothers, mothers-in-law, adult children, brothers, and remarried widows. The approved exceptions were proper and within the authority of the SA. There was no evidence to indicate preferential treatment in approving exceptions to include the burial of mother and son.

(4) Some witnesses perceived the practice of routinely recommending approval for interment in ANC for ineligible persons, when additional space was not required, could reduce the uniqueness of ANC as a national shrine.

c. Conclusion: Exceptions to Army policy for interment in ANC were properly granted. However, the practice of recommending approval for interment in ANC for ineligible family members could reduce the uniqueness of ANC as a national shrine.

2. Issue: Were ground burial sites at ANC reserved?

a. Evidence:

(1) AR 290-5 stated, "Gravesites will not be reserved." (Exhibit H)

(2) A memo by the Deputy Superintendent, ANC, dated 7 September 1990, documented the list of persons who had selected gravesites at ANC. This list indicates that gravesites in ANC are being held for senior officials and others; however, these gravesites will be used by other eligibles if the need arises. (Exhibit I)

(3) Mr. Costanzo testified he had received a number of requests from persons to select their gravesites. Some persons told him where they desired to be buried in ANC, while others were taken around ANC by him to select a site. He recorded the person's request for a specific gravesite. He was not reserving the space but would hold the space open if possible. If it became necessary, he would use the space. He attempted to convey the message that he would do everything he could to accommodate a

SAIG-IN (20-1b) (20-90)

(c) The relationship to an eligible person should be a factor in approving the exception. (Exhibit B-3, p 5-6, 8-10, 15)

(8) Mr. Raymond J. Costanzo, Superintendent, ANC, testified:

(a) It was the policy of the SA to approve all requests for exceptions to burial in ANC for humanitarian reasons as long as an otherwise eligible person was not displaced. As long as additional space was not required, Mr. Costanzo favorably recommended approval of exceptions.

(b) Space was considered as a primary factor in considering recommending approval of major exceptions since ANC was anticipated to run out of space in 2020. Eligible persons should be allowed to bury any ineligible person who was closely related to the primary eligible as long as additional space was not required. The request by [redacted] to bury his mother in ANC was routine and not improper. Although he did not feel too strongly about including mothers-in-law in receiving approval of exceptions, there were instances where they had been approved.

(c) A perception could exist that approving ineligible persons' burial in ANC reserved a space for the primary eligible at a later date. He could understand how others could perceive that granting ineligible persons space in ANC could reduce the uniqueness of ANC as a national shrine.

(d) Prior to Secretary Marsh's assuming office, most exceptions for burial in ANC were approved by the White House. The White House wanted the Army to handle more of the exceptions. He believed eligibility rather than space was the primary focus of Congress. Although AR 290-5 stated that relationship was not important in determining eligibility for burial in ANC, he believed it was important. (Exhibit B-4, p 4-9, 11, 16-17)

b. Discussion:

(1) ANC was established as a military shrine to provide gravesites for gallant men and women who served their country honorably. AR 290-5 states the ASA, CW, is responsible to the SA for policy formulation in the administration of ANC. The SA is the approval authority for granting exceptions for interment in ANC.

(2) AR 290-5 classified family members not eligible for burial in ANC as parents, brothers and sisters, in-laws, adult

SAIG-DM (20-1b) (20-90)

person's request if available. This courtesy was available to anyone. (Exhibit B-4, p 11-13, 15)

b. Discussion: Senior officials, as well as others, were allowed to select their gravesites at ANC. They were informed by the Superintendent of ANC that their choices were not guaranteed, but they would be accommodated if their requested site was available upon their death. A record was kept on file at ANC of the person who requested a specific burial site and the chosen site. It was general practice to not schedule a ground burial in a previously selected site as long as other sites were available. This practice created a perception that ground burial sites were reserved.

c. Conclusion: Ground burial sites at ANC were de facto reserved.

**RECOMMENDATIONS**

3. ASA, CW, review the current practice of recommending approval for interment in ANC for ineligible family members to ensure the future preservation of ANC as a national shrine.
4. ASA, CW, take necessary action to discontinue the practice of allowing people to select ground burial sites in ANC and take appropriate action to notify individuals who have selected gravesites that their sites are not being held.
5. This report be approved and the case closed.

IG  
Investigator

IG  
Investigator

CONCUR:

*Deaby M. Brashears*  
Deaby M. Brashears  
Major General, U.S. Army  
Acting The Inspector General

APPROVED:

*M. P. W. Stone*  
M. P. W. Stone  
Secretary of the Army

Mr. EVERETT. Let's see, I believe that's all for this panel. I will now dismiss you and thank you very much for your participation here today.

I'd like to call up our third panel: the Honorable Secretary Togo West, Acting Secretary of the Department of Veterans Affairs.

Perhaps Secretary West has not arrived. We'll go to another panel. Panel 4: Captain Michael Rosecrans, Director of the National Maritime Center for the U.S. Coast Guard, and his Deputy, Donald Kerlin.

Mr. SNYDER. Mr. Chairman? Mr. Chairman?

Mr. EVERETT. Yes?

Mr. SNYDER. While they're getting settled, if I could ask a question about the schedule, when I first came in here at 10 to 10:00, I was advised that Mr. West wasn't even scheduled until 1:30 this afternoon. Was that incorrect?

Mr. EVERETT. That may have been. The problem was that Mr. West's confirmation hearing was originally scheduled for today. The 1:30 schedule was then set so that he could attend his confirmation hearing.

Mr. SNYDER. Oh, I see. I see.

Mr. EVERETT. For the third time, the confirmation hearing—

Mr. SNYDER. Was postponed.

Mr. EVERETT (continuing). Has been cancelled. It was to take place originally tomorrow. Then it was moved to today. Then it was moved back to tomorrow. Now it's been cancelled. I would suggest to my friend it may be pretty typical for the Senate.

Mr. SNYDER. Okay, thank you, Mr. Chairman.

Mr. EVERETT. Captain Rosecrans and Mr. Kerlin, would you please rise?

[Witnesses sworn.]

Mr. EVERETT. Please be seated.

I now recognize you, Captain, for any statement you may have to make.

**TESTIMONY OF CAPTAIN MICHAEL ROSECRANS, DIRECTOR, NATIONAL MARITIME CENTER, U.S. COAST GUARD; ACCOMPANIED BY DONALD J. KERLIN, DEPUTY DIRECTOR, NATIONAL MARITIME CENTER, U.S. COAST GUARD**

Captain ROSECRANS. Good morning, Mr. Chairman. I'm Captain Michael M. Rosecrans, Director of the Coast Guard's National Maritime Center. As such, I'm responsible for the licensing and documentation of all U.S. merchant mariners as well as maintaining records of such licenses and documents issued.

The National Maritime Center is also responsible for maintaining records concerning Merchant Mariner service. Maintaining these records has been the Coast Guard's responsibility since 1937.

I'm accompanied today by Mr. Donald J. Kerlin, Deputy Director of the National Maritime Center.

In November 1997, this committee requested that we search our records regarding the Merchant Marine service of Ambassador M. Larry Lawrence. This investigation was in conjunction with concerns regarding his burial at Arlington National Cemetery, based upon a waiver granted on his behalf as a result of service with the U.S. Merchant Marine during World War II. We were also asked

to investigate Ambassador Lawrence's service on the SS Horace Bushnell, a vessel which was torpedoed in 1945. I'd like to make a correction to my written testimony. I stated there that it sank in 1945. In fact, it was only torpedoed.

As a result of the above inquiry, a check was made of our records. No record for Maurice Larry Lawrence was found. Shipping articles for the Horace Bushnell were retrieved from the National Archives, and a review of the crew list showed that Mr. Lawrence was not aboard the Horace Bushnell when it sailed from Philadelphia, nor was he onboard the vessel when it was torpedoed in March of 1945.

Thanks for the opportunity to appear before you this morning, and I'll be happy to answer any questions.

[The prepared statement of Captain Rosecrans appears on p. 134.]

Mr. EVERETT. Thank you very much, Captain. The Coast Guard has been cooperative, helpful, and straightforward with the subcommittee. I commend each of you and the Coast Guard for your work, for your truly public service, and I appreciate that.

You're the experts when it comes to determining Merchant Marine service for World War II; is that right?

Captain ROSECRANS. Yes, sir.

Mr. EVERETT. How difficult is it to check World War II Merchant Marine service in a case like that of Mr. Lawrence?

Captain ROSECRANS. Well, it can be rather difficult. We have a computer database that has records entered for seamen that have shipped over since 1981. Those before that time are on paper files, and can sometimes be quite troublesome to check those paper files. There is a file set up for each individual by name, but there are—it's still quite difficult. There also may be other documents besides just certificates of discharge that would show evidence that a mariner was in fact in the Merchant Marine at a particular time, and that could be the vessel's shipping articles. It's essentially a contract that's signed between the master and the crew. We have those on record. Vessel logs which are housed in different record centers throughout the country may also show the same thing, and there are also a number of other government records, medical records from the Army, from the Navy transport command; those can also be checked at times.

Mr. EVERETT. Captain, did I read your testimony correctly that these records are better than 99 percent reliable in determining veteran status of World War II Merchant Marine service?

Captain ROSECRANS. We don't have direct data as to how accurate you are; you never know what you don't have, but those who have requested since Merchant Mariners became eligible for veteran status in 1988, there have been less than 1 percent of those that have requested veteran status that have been shown to be veterans in records that we don't have. In other words, when a request is made, we do everything we can to find the record, including asking for additional information. If the individual has records that we do not have, then we honor those records and grant veteran status.

Mr. EVERETT. Would you agree with any assertion that these records were poor or incomplete in 1993?

Captain ROSECRANS. No, sir.

Mr. EVERETT. What was volunteer Merchant Marine service during World War II?

Captain ROSECRANS. Mr. Chairman, I don't know exactly what context that is in. In fact, Merchant Mariners have always been volunteers. They've shipped over voluntarily. They were hired by the shipping companies. So that term really doesn't have any application to the U.S. Merchant Marine, although I would say that some of the maritime academies have obligated service, but they entered those contracts voluntarily as well.

Mr. EVERETT. Was Robert Albertson an employee of the Coast Guard at Buzzard Point in 1993?

Captain ROSECRANS. Yes, sir, he was.

Mr. EVERETT. And could he have handled an inquiry about World War II Merchant Marine service?

Captain ROSECRANS. Yes, sir, he could.

Mr. EVERETT. Have you reviewed the State Department's summaries that the subcommittee has provided you with regard to Merchant Marine service?

Captain ROSECRANS. Yes, sir, I have.

Mr. EVERETT. Can you explain what they are saying?

Captain ROSECRANS. No, sir, I cannot.

Mr. EVERETT. Do you go along with them—

Captain ROSECRANS. I cannot explain them, sir.

Mr. EVERETT. I have to say I don't know if they're bureaucrat double-talk or if there's, frankly, been some purposely misleading information inserted into those State Department summaries. Would you expect the Coast Guard employee to make the statements attributed to Mr. Albertson and the Coast Guard source?

Captain ROSECRANS. No, sir, I would not.

Mr. EVERETT. Why not?

Captain ROSECRANS. Merchant Mariners were not enlisted, and in fact they were all volunteers. So the process that was used to check records in 1993 is the same as it was since early 1987—the 1980s.

Mr. EVERETT. Have you read Mr. Albertson's declaration?

Captain ROSECRANS. I'm sorry, sir?

Mr. EVERETT. Have you read Mr. Albertson's declaration?

Captain ROSECRANS. No, sir, I have not.

Mr. EVERETT. Okay. It looks to me that Mr. Lawrence's statement regarding his Merchant Marine service, which has technical mistakes in it, has been backfilled, frankly, into statements attributed to Mr. Albertson to make it appear consistent. Could you agree with that, Mr. Kerlin?

Mr. KERLIN. I'm sorry, the—

Mr. EVERETT. It appears to me that statements that are attributed to Mr. Albertson have been backfilled into the State Department's records to appear to be consistent with comments made by Mr. Lawrence. Do you have any opinion on that?

Mr. KERLIN. No, sir.

Mr. EVERETT. Okay. Captain?

Captain ROSECRANS. No, sir.

Mr. EVERETT. Did the Office of Management and Budget make revisions to your written statement, Captain?

Captain ROSECRANS. Sir, I submitted a draft statement through our chain of command for clearance, as we always do, and it was changed, yes, sir.

Mr. EVERETT. Do you have all the drafts submitted to OMB?

Captain ROSECRANS. No, sir, I have the statement I submitted to the—through my chain of command.

Mr. EVERETT. You don't have all the drafts you submitted to your chain of command?

Captain ROSECRANS. I only submitted one draft, sir.

Mr. EVERETT. Okay. If you will, please retain that draft and any written statements which you have submitted.

I want to thank you. Oh, and please provide a copy of that to the subcommittee.

Captain ROSECRANS. Yes, sir.

[The information follows:]

The draft version of Captain Rosecrans' written statement was provided to the Committee under separate correspondence on February 3, 1998.

Mr. EVERETT. I would thank you for your testimony.

And Dr. Snyder—

Mr. STUMP. Thank you, Mr. Chairman.

Captain, I have one question. Had a person served in the Merchant Marine in World War II for 2 to 3 years, he would not have been eligible under any circumstances for burial in Arlington National Cemetery under today's standards, would he?

Captain ROSECRANS. Sir, I don't know anything about the criteria for entering Arlington. All we can do is verify the service in the Merchant Marine.

Mr. STUMP. Well, am I not correct, the Merchant Mariners were not considered members of the military?

Captain ROSECRANS. They have been granted veteran status, sir.

Mr. STUMP. I understand that, but, nevertheless, it was alleged that he had been given—I'm referring now to Mr. Lawrence—a purple heart. There is no such thing as a purple heart for members of the Merchant Marine; is that correct? Maybe that's not fair to ask you that question.

Captain ROSECRANS. Not that I'm aware of, although the Maritime Administration does have an award system for Merchant Mariners.

Mr. STUMP. A comparable one?

Captain ROSECRANS. I don't know that it's comparable to the military, but they do have an award system. I'm not familiar with whether they have a purple heart or not.

Mr. SNYDER. Thank you, Mr. Chairman. Thank you, Captain.

Mr. EVERETT. Mr. Snyder?

Mr. SNYDER. Yes, thank you, Mr. Chairman.

Captain Rosecrans, do you all keep records of—do you have a record at your place of an inquiry that occurred in August of 1993? Do you keep—when somebody applies, particularly, say, a presidential appointee clearance or security check, or whatever you want to call it, do you keep records—do you have a log-in that this inquiry was made or not, or do you not keep a lot of those kinds of inquiries?

Captain ROSECRANS. I believe the inquiry that was made in 1993 was an informal phone call. If there was correspondence or written requests, we would have had a written answer, and we would have documentation then. We don't have any documentation that there was a formal inquiry made.

Mr. SNYDER. All right, how—

Captain ROSECRANS. In other words, if we get a phone call—

Mr. SNYDER. Excuse me for interrupting. You're not suggesting that I could get on the phone and call up without some kind of—aren't there privacy considerations on these things? Do you not—when you say an informal phone call, I hope that somebody—I hope Mr. Everett can't call up and get my Marine Corps record informally. Is that what you say is going on?

Captain ROSECRANS. No, sir. No, sir. But when the Department of State called and asked if we could verify that Mr. Lawrence was, in fact, a Merchant Mariner, that was an informal request.

Mr. SNYDER. Okay.

Captain ROSECRANS. And it was handled as such. There was no written reply, and there was no record of it.

Mr. SNYDER. And so there's no log-in of the phone call then?

Captain ROSECRANS. No, sir.

Mr. SNYDER. Okay. I assume you've read through this statement from the August 13, 1993 little statement that's in Mr. Lawrence's Department of State file?

Captain ROSECRANS. I've seen the response the Department of State sent recently to this committee.

Mr. SNYDER. It's a weird thing to read through. It kind of reminds me as a family doctor of hearing a patient repeat back to me what I said about a medical procedure; it was like somebody didn't have the information about—you know, kind of put in words and—but you haven't looked at it, the statement itself?

Captain ROSECRANS. Sir, I've seen the Department of State's response to this subcommittee on questions. That's the only statement I've seen concerning that.

Mr. SNYDER. When you all first started the, I guess the revisiting of this issue of Mr. Lawrence's records after this story broke a couple of three months ago, what information by that point did you have already available at your place? For example, did you just go in and say "Bushnell," and pull the list and have it right there? Was there more effort that you had to put in than that? I mean, what was the story there?

Captain ROSECRANS. I'd like to ask Mr. Kerlin, who was directly involved in that search, to answer that question.

Mr. SNYDER. Yes.

Mr. KERLIN. With regard to the Horace Bushnell, we put in a request to the Federal Records Center for the information, and we normally get pickups twice a week, and within a couple of days we got our request fulfilled, and we had the shipping articles, for example.

Mr. SNYDER. And is the implication—about the implication, I think the statement from the folks at the State Department, based on this comment here, this August 13th of 1993, is that this person was advised that the information wasn't readily available and that

records weren't good; they were going to be hard to find, et cetera, et cetera, et cetera.

Did you—was that—are you saying then that that was not your experience when you all—you didn't—I mean, I assume you may have gone a full court press trying to locate the records of Mr. Lawrence. Is it fair to say—are you saying that it was difficult to find them?

Mr. KERLIN. No, sir.

Captain ROSECRANS. As a matter of fact, we've had 95,000 requests in the last 10 years. This is routine business for us to retrieve these records.

Mr. SNYDER. On the Merchant Marine?

Captain ROSECRANS. Yes, sir.

Mr. SNYDER. Yes. Thank you, Mr. Chairman.

Mr. EVERETT. Thank you. I would note that apparently Secretary West—some streets are flooded, and that he is having a rough time getting here, but he's trying to get here as quickly as possible.

Also, for the record, I would ask unanimous consent to have Mr. Albertson's declaration submitted.

[The declaration of Mr. Albertson appears on p. 149.]

Mr. EVERETT. Mr. Spence? Mr. Buyer?

All right, I want to thank this panel for appearing before us.

And at this time we would call panel No. 5, Mrs. Norma Nicolls, former personal assistant to M. Larry Lawrence.

Mrs. Nicolls, before you're seated, would you please raise your right hand?

[Witness sworn.]

Mr. EVERETT. Thank you. Please be seated.

#### **TESTIMONY OF NORMA C. NICOLLS, FORMER PERSONAL ASSISTANT TO M. LARRY LAWRENCE**

Mrs. Nicolls, do you have any Federal grants or other business before the Federal Government related to your testimony?

Ms. NICOLLS. No, I don't.

Mr. EVERETT. Okay, thank you. I'll recognize you for any statement you may have.

Ms. NICOLLS. Well, unaccustomed as I am to public speaking, I would like to read most of it, if that's okay.

Mr. EVERETT. Please, and your entire statement will be included in the record.

Ms. NICOLLS. Thank you.

I received a phone call from the columnist Arianna Huffington on November 22, and she asked me if I would speak to her about Larry Lawrence and his military background. I told her that I was only willing to go on record with my opinion, and I even faxed her a copy of that opinion. When I heard that Mr. Lawrence was going to be buried at Arlington, I was astounded. As a former Navy wife of 24 years and someone who has friends who are prisoner-of-war wives, missing-in-action wives, or widows, I felt very strongly about Arlington. I told her that that's how I felt, and that I also felt that Mr. Lawrence never expressed a desire to be buried at Arlington. As far as I could remember, he always wanted to be buried in San Diego with his family. I wasn't really willing to go on the record

with anything, because I have a confidentiality agreement that I would never disclose anything.

On the 25th of November, I received a phone call from Kingston Smith on the Subcommittee for Oversight and Investigations. He asked me what I knew. At this point I felt that it was my duty to tell the truth. When I told him that as far as I could remember, sometime in the mid-eighties, Larry Lawrence walked into my office and said, "I want you to quietly do something for me, and if you have a problem with it, I'll do it myself. I would like you to do research on the names of the ships in the Pacific during World War II, and then let me know." I found it strange, and I even mentioned to his secretary that he was up to something; he was trying to concoct something. I mean, this was the nature of Larry's personality. So it was not a surprise.

I called around and got some information and gave him a list of ships. I don't remember any of them except Bushnell and Murmansk. They kind of stuck in my head. So I gave him those names. After that, he started receiving letters from the Maritime Museums and the Maritime Academy and different Merchant Marine organizations. He would send them small contributions of \$25, \$100. Every now and then he would get invited to reunions, which he never attended.

This is really difficult for me. Anyway, I mentioned that I thought it was really strange—to his secretary. I mentioned that if he had been in the Merchant Marines and if he had had any kind of service whatsoever, why couldn't he remember the name of a ship that he was on? I mean, being a Navy wife—and I'm sure you all know this, if you've had any military background at all—people don't forget their little sea stories, and they have a tremendous loyalty to their ships and their squadrons, and whatever. With Larry's personality, he would have told us; he would have mentioned it. It would have been one of the things that he bragged about.

When his name came up for consideration for the ambassadorship, I was no longer there. I left in March of 1993. I got a call one day from a friend of mine who said that an investigator was at his office to ask him about Larry Lawrence's background. My friend gave my name to this person, and my friend also found it very strange that my name wasn't on the list, since I probably knew Larry Lawrence better than anyone.

So the gentleman called me and asked if I would meet with him and I said, yes, I would, and I did the next day. I sat down with him. This is so vivid because I remember commenting that he didn't spend enough time with me, considering what information I had. He was in and out of there in less than 45 minutes.

He took everything I said, I think, with a grain of salt. It was like I was talking about something, and he was thinking the good old boys club, and he was just, you know, throwing it all off as not really anything to be taken into consideration.

I told him that I thought that he should check Larry's curriculum vitae because there were discrepancies in the dates that he went to school and also the dates that he was supposedly in the Merchant Marines. He asked me if I thought Larry Lawrence would make a good ambassador, and I said to him what I said to every-

one, and what everyone at the hotel said: if Larry Lawrence is selected to be an ambassador, let's hope it's to a neutral country because, if not, he'll have us at war in no time. That was common knowledge.

The other thing he said to me, well, do you think he would do a good job? And I said, you know, while he was a very astute businessman, he was not a diplomat. That also was common knowledge.

So from there, I'm trying to think what else he asked me. I cannot honestly, without a doubt, say that I brought up the research on the ships, but I believe I did, because that was something that always puzzled me. It always bothered me that he asked me to do that.

I forgot this. Sorry, I'm really kind of nervous about this. Before the investigator came to talk to me, I called an attorney at the Hotel del Coronado to get permission to talk to him, because my agreement said that if I was ever subpoenaed I should get permission. So I did. When I spoke to the attorney, she said to me, "Of course you can. Say nice things, and let's hope he gets it. That way he won't be here." It's also a known fact that every time he left, the hotel breathed a sigh of relief.

Mr. EVERETT. Is that pretty much the summary of your testimony?

Ms. NICOLLS. Pretty much, except there was another investigator who interviewed me about Shelia Davis Lawrence. She spent 4 hours with me, which I thought was really strange, because Shelia was being considered for a lesser position.

Mr. EVERETT. I see. And is that all included in your written testimony?

Ms. NICOLLS. Yes.

Mr. EVERETT. Well, we thank you very much.

[The prepared statement of Ms. Nicolls appears at p. 137.]

Mr. EVERETT. And I'll begin the questioning, and we'll have 5 minutes for each member, and if we need to, we'll have a second round.

Ms. Nicolls, you worked for Mr. Lawrence how long?

Ms. NICOLLS. Almost 15 years.

Mr. EVERETT. You're not always complimentary of Mr. Lawrence. Why did you stay in his employment that long?

Ms. NICOLLS. Well, it was an incredible job, and an incredible challenge. He was definitely an interesting man, and I liked my job.

Mr. EVERETT. Why? What were your duties, and how well did you know him?

Ms. NICOLLS. I probably knew him better than anyone. I spent 10 hours a day, actually a lot of my life, at the Hotel del Coronado. I knew him very well. I knew his whereabouts every minute of the day because that's how he wanted it; I kept his calendar; I took care of everything for him. I managed his office. I was the liaison between his office and the entire hotel and all of his other entities.

Mr. EVERETT. Under what circumstances did you leave his employment?

Ms. NICOLLS. His fourth wife decided that I was no longer needed. So he had to let me go.

Mr. EVERETT. You have stated in your written testimony what you told the subcommittee staff when interviewed by telephone November 25, 1997. That is, indeed, what you told the staff. So you stand by what you told us, now that you are under oath and subject to penalty of perjury; is that correct?

Ms. NICOLLS. Yes, sir.

Mr. EVERETT. When you were interviewed, certainly the subcommittee had nothing in the media to indicate the questions about Mr. Lawrence's Merchant Marine service were being raised in a public way, but of course they were about to be. It appears to me that you made your suspicions known before it became a public issue, not after. Your suspicions served to reinforce questions the subcommittee was already actively exploring in the course of its investigation. Could Mr. Lawrence have asked you to do research on the Merchant Marine service at an earlier date than the mid-1980s?

Ms. NICOLLS. That's possible. I don't recall exactly the day or the time. I do know that he wanted to create some kind of a military background. He felt it was important to do that for some reason.

Mr. EVERETT. You're talking about the research that he asked, right?

Ms. NICOLLS. Yes.

Mr. EVERETT. Let's turn to your interview with the State Department's background investigator, which I find absolutely fascinating. I'm going to read to you the State Department's summary, the interview which the State Department provided to the subcommittee on January 2, 1998.

"Norma C. Nicolls, 248G Avenue, Cornado, California, advised she was the appointee's personal assistant at the Hotel del Cornado corporation office for 14 years, until March 1993, when appointee terminated her employment due to her request for extensive sick leave asserted. When she was aware that appointee would be out of Cornado and in Washington, DC, during March for an extended period of time, she requested a month's sick leave for personal surgery. After considering her request, it was decided to terminate her employment with one year's salary as a termination payment. She believed this decision was not part of the appointee, but rather was requested by the appointee's wife, with whom she had strained relations. She believed the appointee's wife thought she had too high a position in the organization and was jealous of her relationship to appointee.

"Source advised that the appointee is an intelligent, strong businessman who always expected outstanding performance of his employees. Appointee is able to delegate authority with responsibility. However, is aware of what is happening in his business and personal affairs and follows up on decisions affecting his business interest. She advised that, in her opinion, appointee is well qualified to be appointed to the position for which he has been nominated, and she knows of no issues in his personal or professional life that would affect his eligibility. Appointee is conservative in his habits, does not abuse alcohol or use illegal drugs, nor does he have any habits that would embarrass the United States."

Is that consistent with what you told the State Department?

Ms. NICOLLS. Some of that is consistent.

Mr. EVERETT. Where is the inconsistency, please?

Ms. NICOLLS. The inconsistency is that I never said he would be an excellent choice for ambassador. I would never have said that because I did not believe it. I've never believed it.

Mr. EVERETT. You were quoted in The New York Times interview published on December the 12th, 1997, as stating to the background investigator, "You really need to investigate everything in his curriculum. I said, you need to take a look at his dates, at how he could have been in college and also been in the Merchant Marines at the same time. All this could have been avoided if the powers had done their investigation."

Do you remember saying that?

Ms. NICOLLS. Yes, I do.

Mr. EVERETT. Obviously, that's not reflected in this statement.

Ms. NICOLLS. No, it's not.

Mr. EVERETT. It's very contrary to what you have told?

Ms. NICOLLS. Yes, it is.

Mr. EVERETT. You do affirm under oath that those statements or words to that effect were what you told the background investigator from the State Department on or about August the 4th, 1993? Are you still quite certain?

Ms. NICOLLS. I'm quite certain.

Mr. EVERETT. You're very positive?

Ms. NICOLLS. Yes, I am.

Mr. EVERETT. How was Mr. Lawrence's health at the time of his nomination as ambassador to Switzerland? Was he ill?

Ms. NICOLLS. He had been ill. He was diagnosed with a disease called myeloid metaplasia in the middle eighties, and he was taking medication. He was in remission. I've heard from reliable sources that he died because of complications. He went to Africa in December and contracted malaria. That was a complication that probably caused his death.

Mr. EVERETT. Thank you very much.

Dr. Snyder?

Mr. SNYDER. Thank you, Mr. Chairman.

Ms. Nicolls, we appreciate your being here. I mean, the only way the system works is when they can get background from people. I always remember I had a couple of policemen come to my door one time, and I thought they were coming in response to all our neighborhood complaints about the ganghouse in the neighborhood; they came because one of the people in this house had applied to be a police officer. So we had an interesting exchange that day. But I appreciate your being here today. I know you didn't plan on doing this when you met with the investigator several years ago.

Would you give me the dates of your employment again?

Ms. NICOLLS. September 1979 to March of 1993.

Mr. SNYDER. Thank you. And I heard you, I believe, to say that you had gotten full permission to not have to follow along with that confidentiality agreement when you met with the investigator back in the mid-1980s. Is that an accurate statement?

Ms. NICOLLS. Yes, it is.

Mr. SNYDER. Yes. To me, your discussion here is probably the most important thing that we're talking about today because it appears that not only did we end up with somebody in Arlington who

didn't deserve to be there, but we ended up with a person appointed to a high Federal position of great trust that was lying about his military record, and I can't think of anything, anyone more unsuited for burial in Arlington than someone who lies about their military record.

You're in the unfortunate situation that you were the only one that had that apparently tipoff early on, and so the information about exactly what you said becomes very important. And is it very clear to you that you didn't—and maybe it was out of loyalty to your employer or something—is it very clear to you that you did not say to this investigator, "It appears to me that my boss falsified his military records. He's trying to create a military record that he doesn't have."?

Ms. NICOLLS. That's possible, but, like I said before, I got the impression that this guy wanted to get out of there and was in a big hurry, and whatever I said didn't mean anything.

Mr. SNYDER. Well, yes, I understand that comment, but I'm not—I'm trying to decide, given that most of these investigations are pretty routine, and if exactly—I guess the exact language that you might have used with regard to discrepancy in dates—I've got to be honest, if I filled out my work history, there would be date discrepancy; I couldn't tell you when I started working someplace and quit; there is going to be date discrepancy.

And my guess is that investigators that go back 15 and 20 and 30 and 40 years find date discrepancies all the time, whether it's for top secret clearances or anything else. To me, that is a different kind of a flag—it may have been a flag in your mind because you knew what you were trying to say——

Ms. NICOLLS. Right.

Mr. SNYDER (continuing). But that, to me, would have been a different kind of flag than, say, "I think this guy may be lying about his war record, and I think he may not even have a war record, and if he doesn't, I'm a Navy wife; he's the last person I want to represent my country." But I get the impression that you were, maybe out of loyalty, maybe being a little bit—I mean, I understand you're trying to provide a public service——

Ms. NICOLLS. Exactly. It was out of loyalty and it was a lot out of fear.

Mr. SNYDER. Right now you're still working there—or, no, I'm sorry, it was some retribution or something——

Ms. NICOLLS. No, I wasn't still working. Right, but it's—you know, I had a very high visible position, and trying to find another position after that was not easy.

Mr. SNYDER. Yes, yes, yes.

Ms. NICOLLS. So I was probably a little bit afraid.

Mr. SNYDER. Yes. Yes, I understand. Well, once again, we appreciate your being here. You're doing great.

Ms. NICOLLS. Thank you.

Mr. SNYDER. Thank you, Mr. Chairman.

Mr. EVERETT. By the way, Dr. Snyder, if I did get a hold of your Marine service, I'm sure I would be thoroughly impressed.

(Laughter.)

Mr. Stump?

Mr. STUMP. Thank you, Mr. Chairman.

Ms. Nicolls, thank you for appearing today here. It's my understanding that you came forth voluntarily; we appreciate that. Contrary to your opening statement about public speaking, I think you've done an excellent job.

Ms. NICOLLS. Thank you.

Mr. STUMP. I do have one small question. Since you did voluntarily come before us, did anyone ever suggest that you perhaps should not testify before this committee or testify on this case?

Ms. NICOLLS. I received a lot of phone calls that said, why are you doing what you're doing? And I also heard that the word around the Hotel del Coronado was that I sold out for profit. So there has been a lot of ramification. I also got a letter from the IRS saying that I owed them \$300 in 1995, and in 1995 I think my total salary for the year was \$9,000. So they must really need that money badly.

Mr. STUMP. Well, once again, thank you very much.

Ms. NICOLLS. You're welcome.

Mr. STUMP. I'll be happy to yield to the chairman.

Mr. EVERETT. Thank you. I thank the full committee chairman.

Mr. Lawrence was an active and long-time political supporter of President Clinton's, was he not?

Ms. NICOLLS. Yes, sir.

Mr. EVERETT. Did President Clinton and the Lawrences socialize together as well, have a friendly relationship?

Ms. NICOLLS. Yes, they did.

Mr. EVERETT. How actively did Mr. Lawrence pursue a political appointment with the administration?

Ms. NICOLLS. He pursued it for many, many years, but, unfortunately, never had a winner. He had a winner this time, and he pursued it very, very actively.

Mr. EVERETT. To your knowledge, do you have an information that would indicate Mr. or Mrs. Lawrence's directly having asked the President about a political appointment for Mr. Lawrence?

Ms. NICOLLS. No, I don't know.

Mr. EVERETT. You don't have any information? I'd just like to say to the committee, you know, there's something rotten in Denmark about this. We have sworn testimony here before us, and we have the State Department's refusal to give us at this time the name of these two investigators. I beg your pardon; we finally got them yesterday after requesting them for some time, and we're certainly going to be interested in pursuing this matter further.

Did you want to make a statement? I saw you—

Ms. NICOLLS. No. I'm just amazed that they gave them to you.

Mr. EVERETT. I would yield back my time, and I would recognize the chairman of the National Security Committee, Mr. Spence.

Mr. SPENCE. Mr. Chairman, I don't have any questions. I will yield back my time to you.

Mr. EVERETT. I would yield time and ask Mr. Buyer if he has any questions.

Mr. BUYER. I do. Thanks.

The—I'm just trying to figure this out, ma'am. The number four wife, her name is?

Ms. NICOLLS. Shelia Davis Lawrence.

Mr. BUYER. And when were they married?

Ms. NICOLLS. They were married in 1991.

Mr. BUYER. 1991.

Ms. NICOLLS. Actually, they were married in 1990. She turned 30 in 1991. I planned both of those events, the marriage first, and then she turned 30.

Mr. BUYER. How old is she?

Ms. NICOLLS. She is 36.

Mr. BUYER. She was 36. How old was Mr. Lawrence?

Ms. NICOLLS. He was 35 years older than she.

Mr. BUYER. Okay. Anything happen that would lead to her level of distrust there, reason that she needed to move you out of the way?

Ms. NICOLLS. She set out to remove everyone who was connected to Mr. Lawrence from the past.

Mr. BUYER. The question about whether these investigators were good investigators or did a thorough job, I think based on your testimony, what you've delivered, there's something called a tip, Mr. Snyder, is what was going through my mind as I listened to your questions, and that's a pretty good tip. And I don't know, sometimes there are people that want to provide the tip, and you don't have to state the obvious. So you can kind of protect yourself, but how clearly do I have to state this? And I got that sense. I guess maybe it's the prosecutor coming back in me, but I think that's one heck of a tip, and obviously it depends on your sincerity and how it was delivered. Do you believe that it was delivered in such a manner that he should understand that this is something he's supposed to look at?

Ms. NICOLLS. Absolutely.

Mr. BUYER. All right, thank you.

Ms. NICOLLS. You're welcome.

Mr. BUYER. Who is the gentleman by the name of Vince?

Ms. NICOLLS. Vince is a young man who worked at the Hotel del Coronado in the banquet department, and whenever we had parties at Crown Manor, which was the home of Mr. Lawrence, he would come over and help serve. When the Lawrences went to Switzerland, Vince was still at the hotel and did some work at the house, if they had events there. One of the things that Vince did was get the house ready when the President and Mrs. Clinton came to spend a week in Coronado on their summer vacation. After that, I believe he went to Switzerland to become Larry Lawrence's aide.

Mr. BUYER. I'm not an expert on reading body language, but when I asked you who Vince was, you cringed before you spoke. Don't—tell me why—why would you cringe at the mention of his name?

Ms. NICOLLS. Because he was just a really neat kid, and he was treated very badly after Larry died.

Mr. BUYER. Now since he did event planning and did party planning, he would know about the social behaviors of the people involved, would he not?

Ms. NICOLLS. Absolutely.

Mr. BUYER. Would he have also been at these party events?

Ms. NICOLLS. Yes.

Mr. BUYER. Okay.

Ms. NICOLLS. Anyone in their employ would be in that situation. The house was such that whenever there was an event, all the people who were involved in planning were usually in the area.

Mr. BUYER. Okay. I hope there is no such thing as a quid pro quo here, that we would exchange such a right to be buried in Arlington in exchange for something else. So I'm trying to figure this out to dispel that, because I don't want to prove it.

Ms. NICOLLS. Right.

Mr. BUYER. So to help me understand the relationship between the President and Mr. Lawrence, do you know whether or not they were good friends? Or were they political friends? Or whether Mr. Clinton and Mr. Lawrence's wife were good friends or something other than good friends? And if you know any information, would you please tell us?

Ms. NICOLLS. They became good friends.

Mr. BUYER. Who's they?

Ms. NICOLLS. Mr. Lawrence, Shelia, and the President. He spent a lot of time with them when he came to San Diego.

Mr. BUYER. Would he stay at the—would he, the President, stay at the hotel?

Ms. NICOLLS. At Crown Manor, yes.

Mr. BUYER. Would he stay in the personal residence or in the hotel?

Ms. NICOLLS. There were times he stayed in the personal residence and then there were other times he stayed in the hotel. After Mr. Lawrence's death, he stayed in the hotel.

Mr. BUYER. Last week, as this scandal at the White House was breaking, I was at home, like anyone else in America, and I was watching this unfold, and I was puzzled, and I just—it's terrible to watch, and I watched the press conference with the White House press secretary, Mr. McCurry, and a reporter asked some question at the press conference about Mrs. Lawrence and the President having an affair, and I about—it's like, what is this? And McCurry just didn't even answer it, and it went on, but I heard the question. What is—what—I have to ask it because I don't know: what is—do you know anything about that or why such a question is asked?

Ms. NICOLLS. A lot of rumors. I don't know anything certainly, but there are a lot of rumors.

Mr. BUYER. Well, I don't want you to be testifying to us about hearsay—

Ms. NICOLLS. Right.

Mr. BUYER (continuing). And about rumors and things like that. Are what you're saying is that—was there common knowledge among the employees at the hotel that when the President would come that there was a friendly relationship between the President and Mrs. Lawrence?

Ms. NICOLLS. Yes, there was.

Mr. BUYER. Tell me about that. I ask unanimous consent for an additional 5 minutes to explore this.

Mr. EVERETT. Due to the nature of the testimony, I'll grant it.

Ms. NICOLLS. Well, it's just that everyone knew that Mr. Lawrence was very, very involved in having fundraisers for the President when he came and for every other political candidate in the Democratic Party. It was obvious that they were all friends just by

looking at them. I mean, walking through the hotel, the three of them, or whomever was with them—everyone in the hotel. The hotel was a very close-knit organization, and everybody pretty much knew what was going on.

Mr. BUYER. All right, Mrs. Nicolls, you're very cagey.

Ms. NICOLLS. Cagey?

Mr. BUYER. You're very cagey because, I'll tell you what, my wife thinks men are dumb, and that women can detect things far before men can. Okay?

Ms. NICOLLS. Right.

Mr. BUYER. So you've got to relate to me so I can understand here because I'm just a poor dumb man. So help me here. Did you ever in your—this is for you personally—did you ever observe the President and Mrs. Lawrence in a manner which would make you suspect something was going on?

Ms. NICOLLS. No, I did not.

Mr. BUYER. Thank you. So it was strictly rumor and innuendo?

Ms. NICOLLS. Yes.

Mr. BUYER. Okay. We live in a modern era where rumor and innuendo can almost ruin a man's character. So I want to be very careful in my questioning. So that's all that was, as far as you know?

Ms. NICOLLS. Yes.

Mr. BUYER. Okay. Is part of that rumor, though, that Vince knows something?

Ms. NICOLLS. Yes.

Mr. BUYER. Okay. All right. Vince was deposed by the attorneys in the Paula Jones case?

Ms. NICOLLS. That's what I heard.

Mr. BUYER. Okay. Is part of this rumor mill that goes around the hotel that Mr. Lawrence, in exchange for some type of—this is a rumor; I just have to ask the question—that Mr. Lawrence became aware of this special relationship between the President and Mrs. Lawrence and wanted an ambassadorship in exchange for silence? Is that in the realms of possibility or is that just fictitious innuendo, based on innuendo, fiction based on innuendo?

Ms. NICOLLS. Fiction based on innuendo.

[Notation made by Ms. Nicolls on the hearing transcript:

"I was a bit confused by Mr. Buyer's question.

I should have answered in the realms of possibility."] ]

Mr. BUYER. Thank you. I yield back my time.

Mr. EVERETT. All righty. Let's see, there are no other questions for this witness. I understand how difficult this has been for you. I sincerely appreciate your courage and willingness to appear before this panel, and I want to assure you that if the backfilling of Mr. Lawrence's record was done either by the State Department or by the White House, or wherever, I intend to keep this investigation alive until we get some answers. It is completely clear to me that we have someone who is completely unqualified to be an ambassador to anywhere who was given an ambassadorship. And the reason this committee's interested in that is because we have already ruled out him serving in the Merchant Marines as the reason of being buried at Arlington National Cemetery. Money bought his

ambassadorship, and being an ambassador allowed him to be buried at Arlington National Cemetery. That should not happen ever.

Ms. NICOLLS. I agree—

Mr. EVERETT. And if I can have anything to do with it, it will never happen again. And I defy those that say it did not happen that way to prove to me any way that it did not happen. Give me any reasonable explanation. I'm available for any reasonable explanation, and I've not seen anything. What I have seen is denial, deceit, and possibly even more. And we'll get to it.

So thank you again for your testimony.

Ms. NICOLLS. Thank you.

Mr. EVERETT. I now will call panel 6: Ambassador Eric Boswell, Assistant Secretary of State for Diplomatic Security, Bureau of Diplomatic Security of the Department of State.

Ambassador BOSWELL. Good morning, Mr. Chairman.

Mr. EVERETT. Would you please rise?

[Witness sworn.]

Mr. EVERETT. Thank you. Please be seated.

I will now recognize you, Mr. Secretary, for any statement you may have to make.

**TESTIMONY OF AMBASSADOR ERIC J. BOSWELL, ASSISTANT SECRETARY OF STATE FOR DIPLOMATIC SECURITY, BUREAU OF DIPLOMATIC SECURITY, DEPARTMENT OF STATE; ACCOMPANIED BY GREGORIE BUJAC, DIRECTOR, DIPLOMATIC SECURITY SERVICE**

Ambassador BOSWELL. Thank you, Mr. Chairman. I have a statement I'd like to read here.

Mr. EVERETT. Your full statement will be included in the record. We would ask you to limit your testimony to 5 minutes.

Ambassador BOSWELL. Yes, sir.

Mr. Chairman and members of the committee, I'm very pleased to have the opportunity to participate in this hearing on the granting of waivers to the eligibility regulations for burial at Arlington National Cemetery. As the Assistant Secretary of State for Diplomatic Security, I'm here to address matters surrounding the waiver granted for Mr. Maurice Larry Lawrence, who was U.S. Ambassador to Switzerland when he died on January 9, 1996.

On my right, Mr. Chairman, is Deputy Assistant Secretary Greg Bujac. Mr. Bujac is my principal Deputy Assistant Secretary. He is the Director of the Diplomatic Security Service, and he is the chief law enforcement officer in the Department of State.

Mr. Chairman, from the eternal flame at the grave of a U.S. President to the Tomb of the Unknown, to the thousands of simple but eloquent white headstones that dot the landscape, Arlington National Cemetery is the home of heroes and is truly hallowed ground. It is a very important symbol to the Nation and to our friends and allies throughout the world. On behalf of the Department of State, I want to pledge to you our strong support for developing and maintaining policies and practices that reflect and perpetuate that important symbol.

Let me take a moment, Mr. Chairman, to briefly outline the functions of the Bureau of Diplomatic Security and to put into perspective its role in this matter. Our primary mission is to provide

security, to allow the safe conduct for foreign affairs. This effort is carried out through programs focusing on the protection of U.S. Government personnel and diplomatic facilities and national security information. In addition, we provide protection for the Secretary of State and other senior Government officials, for resident and visiting foreign dignitaries, and for foreign missions in the United States. We also have a statutory responsibility for investigating passport and visa fraud.

In fulfillment of its mandate to protect national security information, each year we conduct thousands of personnel security investigations, of employees, applicants, contractors, and others seeking access to Department of State information or facilities. Most positions in the Department are designated as sensitive, requiring a full field background security investigation and every 5 years an update investigation. These investigations are carried out in full accord with U.S. Governmentwide standards. The investigations include checks of available sources of relevant information, such as education, employment, criminal, legal, military, medical, financial, professional, and residential records. Interviews are conducted of the candidate, individuals named by the candidate as references, and other so-called developed sources who may have personal or professional knowledge of the candidate.

The investigators' reports are used by the Bureau of Diplomatic Security to determine whether an individual is eligible for a security clearance, and then are evaluated by the Bureau of Personnel to determine whether the employment of an applicant—or the retention of an employee—is warranted.

As with most other Department positions, background investigations on candidates for an ambassadorship, whether that individual is foreign service, civil service, or a political appointee, are the responsibility of the Diplomatic Security Service. Thus, we conducted the background investigation on Mr. Lawrence when he was under consideration for an ambassadorship in 1993. Mr. Lawrence was confirmed by the Senate as Ambassador to Switzerland in February 1995. He died in office on January 9, 1996.

In December 1997, we were also tasked with conducting two inquiries relating to Mr. Lawrence's claim to service in the Merchant Marine. The focus of these investigations was to verify that claim of service and to determine the basis for the Department's waiver request. Copies of the investigation reports have been provided to the committee.

During the initial background investigation in 1993, Mr. Lawrence advised that he served on several ships as a volunteer Merchant Mariner. He told them that the last ship he was on, the SS Horace Bushnell, was sunk and that he sustained head injuries and was sent home to his parents to recover. During this interview, he advised that as a volunteer one was not deemed to be enlisted in the Merchant Marine.

At the time, the Department checked with the Military Records Center in St. Louis, which referred investigators to the U.S. Coast Guard here in Washington. The Department was advised that no record of Mr. Lawrence's claimed Merchant Marine services existed and that it was unlikely that any record would exist with the Coast

Guard for voluntary civilian service such as claimed by Mr. Lawrence.

Consequently, no further attempt was made to verify his claimed service as a volunteer seaman some 50 years ago. Moreover, investigative requirements only called for verification of active duty service, reserve service, or service with the National Guard.

As part of Governmentwide standards for a background check, the most recent education or the highest degree attained is verified. In Mr. Lawrence's case, investigators went back as far as his attendance at the University of Arizona, the most recent institution he attended. This transcript does reflect that he attended Wilbur Wright Junior College in 1944 and 1945. At the time, the Department did not connect Mr. Lawrence's attendance at this junior college with his claimed volunteer service affiliation as a Merchant Mariner.

In addition to education record checks, investigators also looked into legal proceedings involving Mr. Lawrence and confirmed his previous business and professional activities through a variety of sources who could speak directly to his character, based on their personal experience. More than 50 friends and business associates who knew Mr. Lawrence over his lifetime were interviewed, and none raised any question about his Merchant Marine service.

A recent newspaper article quoted one of those interviewed as saying that she clearly informed the State Department of her doubts as to Mr. Lawrence's Merchant Marine service. However, the August 4, 1993 investigative report covering that interview contains no information to support that allegation.

In the August 13, 1993 security summary which was forwarded to the Office of the White House Counsel, Mr. Lawrence's claimed service as a Merchant Mariner was not confirmed nor alluded to. This claimed voluntary affiliation was deemed less important when weighted against his full adult life history. The background investigation of Mr. Lawrence was performed in accordance with inter-agency standards for presidential appointee investigations and with Executive Order 10450. The Department is constantly looking for ways to improve its investigative product, and we will continue to do so in the future.

As I mentioned, the focus of the most recent investigations has been to verify Mr. Lawrence's claim of Merchant Marine service and to determine the basis for the Department's request for a waiver to Department of the Army regulations, to permit Mr. Lawrence to be buried at Arlington National Cemetery. These efforts revealed that Mr. Lawrence was, in fact, in school during the claimed period of service, according to junior college transcripts. We have concluded that he had not served in the Merchant Marine, as he had alleged.

The investigation into the burial waiver indicated that the request to permit Mr. Lawrence to be buried in Arlington National Cemetery was based primarily on Mr. Lawrence's claimed wartime service. The State Department's Bureau of Administration, which is headed by Assistant Secretary of State Patrick Kennedy, has the responsibility to consult with family members and assist with making necessary arrangements up on the death overseas of any State Department employee official. Assistant Secretary Kennedy, con-

veying the burial request of Mrs. Lawrence in a letter to Secretary of the Army West, relied on information in a memorandum from then-Assistant Secretary for European Affairs, European and Canadian Affairs Richard Holbrooke providing an account of Mr. Lawrence's claimed service. The letter noted that such service in the U.S. Merchant Marine during wartime arguably could have made Mr. Lawrence eligible for burial in Arlington National Cemetery without the need for a waiver.

The memorandum outlining Mr. Lawrence's claimed service, which was sent to the Army along with Mr. Kennedy's letter, was based on statements made to Mr. Holbrooke by Mr. Lawrence, with whom he was personally acquainted, and on a framed newspaper article that was hanging on Mr. Lawrence's office wall at Embassy Berne during his tenure as Ambassador there. That article, which is from the San Diego Union Tribune, described Mr. Lawrence's decoration in January 1993 by the Russian Government for his claimed service in the Merchant Marine in World War II. I would note that none of the State Department officials who relied on accounts of Mr. Lawrence's service indicated any knowledge of information that might reasonably lead them to doubt the claim.

Mr. Chairman, that concludes my statement. Let me again emphasize the Department's strong support of policies and practices that appropriately reflect and perpetuate Arlington National Cemetery's deep and unique meaning to our Nation and to the world, and to thank you for the opportunity to testify today. Mr. Bujac and I will be pleased to try to answer any questions you or your colleagues may have.

[The statement of Ambassador Boswell appears at p. 139.]

Mr. EVERETT. I'll give each member of the committee 10 minutes with this panel, and I'll begin the questioning.

The documents requested by the subcommittee from the State Department arrived only yesterday. Your undated letter received yesterday states that, "The Office of the Inspector General has informed us that, because there is an open, ongoing joint criminal investigation with the Department of Justice, it would not be appropriate for either the Department or the OIG to comment further on this issue, pending the conclusion of the investigation." I would just say that we will communicate further with the Department of Justice and OIG regarding the investigation.

Let me ask you, how unusual is it to be unable to verify a basic part of Form 86, the vetting form, such as military or Merchant Marine service?

Ambassador BOSWELL. It is very unusual to be unable to verify any part that has to do with military service.

Mr. EVERETT. Is there a standard procedure when that happens?

Ambassador BOSWELL. I'm talking about military service, sir. Military service is very easy to verify with a DD-214. There is no problem with that. There is no such form for voluntary service on a merchant ship, and I believe it's very unusual that anybody would have that in their background in the first place, but I can tell you that I'm not aware of any case where we were not able to verify military service.

Mr. EVERETT. It took the subcommittee staff a total of less than 2 days of work to discover that Ambassador Lawrence had probably

fabricated the Merchant Marine service. You only had to want to know and ask the right questions to the right custodians of official records. Is it really that hard?

Ambassador BOSWELL. If you are looking for a fraudulent claim or an alleged claim of Merchant Marine service that you have reason to believe may be fraudulent, it was not difficult for us, ourselves, in our own investigation, when that was brought up last year, to determine that the claim was wrong. We did it by examining the transcript of his attendance at the University of Arizona, of his student time at the University of Arizona, and noticing that it included an indication that credits had been transferred from Wilbur Wright Junior College and from another junior college in Chicago. We went to Chicago, verified that, in fact, there were transcripts and records of Mr. Lawrence's attendance at that junior college in 1944, and determined on that basis that he had not served in the Merchant Marine.

Mr. EVERETT. I'm glad you brought that up. Was Mr. Lawrence's claim of Merchant Marine service a false official statement on the vetting form, and that's a felony, isn't it?

Ambassador BOSWELL. I believe that is a false official statement on the vetting form.

Mr. EVERETT. And that is a felony?

Ambassador BOSWELL. That is a felony, to make a false official statement on a vetting form, yes, sir.

Mr. EVERETT. And if someone had bothered to check that out, his nomination would have ended immediately, would it not?

Ambassador BOSWELL. Mr. Chairman, let me just say that I wish very much that we had found that particular discrepancy on his vetting form.

Mr. EVERETT. Mr. Secretary, you know, I come out—

Ambassador BOSWELL. I never answered your question, though—

Mr. EVERETT (continuing). Of a newspaper background, and I'm a nonpolitician, 33 years in the newspaper business, and I don't like double-talk. I just simply don't like it.

Are you saying that Mrs. Nicolls is a liar, that she did not tell the investigator what she claims she told him about Mr. Lawrence's military service?

Ambassador BOSWELL. Mr. Chairman, I am supporting my investigator in this case in 1993, who—and I have seen his summary of the case as you have. We have spoken to the investigator. The investigator is a veteran personal security investigator—

Mr. EVERETT. Do you have a sworn statement from him?

Ambassador BOSWELL. We do not have a sworn statement from him.

Mr. EVERETT. I will ask you to get one.

Ambassador BOSWELL. Yes, sir.

Mr. EVERETT. And I will also tell you—I beg your pardon?

Ambassador BOSWELL. Yes, sir.

Mr. EVERETT. No, I thought this gentleman was shaking his head no.

Mr. BUJAC. No, sir, we'll be happy to get a sworn statement for you.

[The Department of State provided sworn statements to the Subcommittee as attachments to a letter dated February 9, 1998.]

Mr. EVERETT. And we will probably want to have continuing conversation on the investigators who handled this case.

Who is responsible for the mistakes made at the Department in the Lawrence case?

Ambassador BOSWELL. Mr. Chairman, the investigation, if you'll let me go into this for a minute, the——

Mr. EVERETT. Certainly.

Ambassador BOSWELL. The investigation consisted of several pieces; any investigation consists of several pieces, one of which was an investigator who went to the University of Arizona to attempt to verify Mr. Lawrence's attendance there. He verified it by a transcript. There are other pieces of a security investigation—his financial backgrounds, his residence in Chicago, his Merchant Marine service—all of this was investigated by various individuals working for the Bureau of Diplomatic Security. When all of that is put together, there is an adjudicator who brings together all of the information and verifies that all the information that was asked for is there. I earnestly wish that that adjudicator had noticed that there was a discrepancy, but you would have had to be looking at the transcript for that particular item. You would have had to be looking for junior college service on a transcript to notice it.

I wish that had been found. It was not found. I do not consider that, however, Mr. Chairman, to be negligence. I don't believe that there was any negligence in this. This was an oversight and it was not found. And I would say, Mr. Chairman, that I would imagine that many investigators, most investigators, would not have noticed that. They were looking to verify his attendance at the University of Arizona.

Mr. EVERETT. Mr. Ambassador, in addition to Mrs. Nicolls' sworn statement, we also have a difference between Robert Albertson's declaration, some might call it an affidavit, that disputes what the State Department says about the interview with him. Could someone at the State Department have doctored these records?

Ambassador BOSWELL. No, sir.

Mr. EVERETT. In other words, you're saying that Mr. Albertson has lied and Ms. Nicolls has lied?

Ambassador BOSWELL. I am saying, Mr. Chairman, that I am standing by the reports of the investigators who interviewed both Ms. Nicolls and Mr. Albertson.

Mr. EVERETT. Mr. Ambassador, I really want to be fair about this. You explain to me, then, how this could have happened. We have two people who have given declarations and sworn testimony that completely disagree with what these investigators have submitted for review. How could that have happened?

Ambassador BOSWELL. Mr. Chairman, I can only repeat that I've got to stand by—we stand by—the reports of our investigators. As I mentioned before, we re-interviewed the investigators during the course of this current review, and they stand by what they said in toto.

Mr. EVERETT. Well, let me ask you this way: do you agree that there are serious questions here, and that we don't have satisfactory answers, and that we should look at it further?

Ambassador BOSWELL. Let me just say that if Ms. Nicolls, for example, had in fact indicated that there was a problem with his Merchant Marine service or raised some question of problem with the Merchant Marine service or some question of a problem with the way Mr. Lawrence filled out his standard Form 86, that would have been an enormous red flag for any investigator, and an investigator would have followed up on that.

Mr. EVERETT. Mr. Ambassador, we seem to be going over this. That's exactly what Mrs. Nicolls says she told the investigator, and she's saying that in sworn testimony.

Ambassador BOSWELL. And I am telling you, Mr. Chairman, that I—that we—have gone to our investigator and asked him for his recollection of that, in addition to going over his own statements, and he stands by those statements.

Mr. EVERETT. But you do not have a sworn statement from him?

Ambassador BOSWELL. I do not have a sworn statement, sir—

Mr. EVERETT. But we do have a sworn statement from Mrs. Nicolls.

Ambassador BOSWELL (continuing). And we could—we would make him available for a sworn statement, if you direct.

Mr. EVERETT. Was Ambassador Lawrence's service as an ambassador distinguished enough to merit burial at Arlington?

Ambassador BOSWELL. I can't comment on his service as ambassador, sir. I'm here to talk about the process whereby he achieved his security clearance. However, I am aware that you asked for copies of inspection reports of the embassy in Berne which took place during Ambassador Lawrence's service there. So, I reviewed those inspection reports, and I have to tell you, Mr. Chairman, that the inspection reports are very complimentary of the performance of Embassy Bern and are quite complimentary on the performance of Ambassador Lawrence in furthering U.S. interests there.

Mr. EVERETT. What about the OIG inspection report on Embassy Berne that said that he did not go to his office for extended periods of time and rarely attended social functions?

Ambassador BOSWELL. I'm aware of that statement in there, but I think if you put that statement in the context of the entire report, you will see that the report was positive about—

Mr. EVERETT. Isn't there favoritism here, Mr. Ambassador?

Ambassador BOSWELL. I can't characterize an inspection report, Mr. Chairman, except by what I read in it.

Mr. EVERETT. And why wasn't the alleged misuse of a Government employee pursued against Mrs. Lawrence after the ambassador's death? Why was that dropped?

Ambassador BOSWELL. I'm sorry, Mr. Chairman, I don't know what that is.

Mr. EVERETT. There was an ongoing investigation of material presented that Mrs. Lawrence had abused the use of a Government employee for private purposes; 90 percent of the work for private purposes, which was an expense to this Government for her personal benefit. When Mr. Lawrence died, that investigation was dropped. Why is that?

Ambassador BOSWELL. I would have to refer you to the Inspector General for that, sir, but my understanding of practice is that

when there is an investigation going on of an employee, if the employee dies, the purpose of the investigation—

Mr. EVERETT. No, it's against Mrs. Lawrence; she's alive.

Ambassador BOSWELL. I'd just have to refer you to the Inspector General on that. I don't know anything about that.

Mr. EVERETT. Well, I expect the committee's going to have some further questions for you, and I appreciate that. My time is up, though, and I will now ask Mr. Snyder if he has any questions.

Mr. SNYDER. Thank you, Mr. Chairman.

First of all, when did you all, you two start working at the job you have?

Ambassador BOSWELL. Mr. Chairman, I came to my job in January of 1996. I selected Mr. Bujac to be my principal Deputy, and he went to work shortly thereafter.

Mr. SNYDER. So you're reconstructing what happened in your current position—

Ambassador BOSWELL. Yes, I am.

Mr. SNYDER. Yes.

Ambassador BOSWELL. Yes, we are.

Mr. SNYDER. Is it a fair statement to say—I'm mean I've heard Ms.—we've heard Ms. Nicolls today, and I've talked to you all earlier. I mean, this is not how you wanted this thing to go; is that a fair statement?

Ambassador BOSWELL. That is a fair statement.

Mr. SNYDER. Yes. In view of what has happened, and you all kind of coming as clean-up hitters in this whole situation, have you changed your policies in terms of how you do the investigations of high-level appointees?

Ambassador BOSWELL. We have reiterated to the adjudicators that they need to be extremely careful about any holes, any discrepancies, that may exist in an SF-86 and in the review of the SF-86.

Mr. SNYDER. Now with regard to Ms. Nicolls' statement about the discrepancy in dates, it seems like there's a lot of ways to pursue that, but one interpretation would—I mean, one way of resolving it may have been to go to two different angles. I mean, I might have interpreted that or somebody might have interpreted that to be, well, he falsified some education records. My understanding was that you did verify all the education records; is that correct? I mean, it wasn't—it's not unheard of for people to fake a degree or fake attendance at a certain college or a more status college than they actually had.

Mr. BUJAC. Yes, sir, under normal practice, what happened is the investigator, as we reviewed the report, indicated that he verified the most recent education in that particular case on Mr. Lawrence—

Mr. SNYDER. And they had the transfer—

Mr. BUJAC (continuing). Was Arizona.

Mr. SNYDER. And they had the transfer credit?

Mr. BUJAC. Yes, sir.

Mr. SNYDER. So in terms of the process, so this doesn't happen again, one line could have gone out and chased down the education records; another line pursues the Merchant Marine and gets back a report or thinks they have a report that the records are not avail-

able, but there was no conflicting information, but the two never get put together that they were at the same time period, and that's where you run into your adjudicator problem, and nobody picked that up?

Mr. BUJAC. Correct. In fact, one of the things that we're asking them to do is to correlate all of the documentation we get as part of the investigation now, so that if you are looking to verify dates from one record, you may very well find it in another. This was the case in this instance.

Mr. SNYDER. I've only been here for a year, but my recollection is that this was a—Mr. Lawrence had had a fairly controversial effort to get an appointment, that this was not the first—or is that a fair statement; it was a controversial appointment—

Ambassador BOSWELL. It's a fair statement that his appointment was controversial. As I recall, there was a protest from the American Foreign Service Association over his qualifications and, as I recall, there was difficulty getting him confirmed by the Senate.

Mr. SNYDER. Is it—what role does the Senate have in this to sort through some of these dates? Do they—is the normal practice, when you all recommend an ambassador and here's the file, that that's it, and they just review your conclusions, or do they—and has the practice that they also would look at military history and should pick up red flags and those kinds of things? Do they have an independent way, particularly given the controversy of Mr. Lawrence?

Ambassador BOSWELL. I can't really speak to what procedures the Senate Foreign Relations Committee uses in vetting an application. I know that they can have the security summary that is prepared by us if they ask for it. I do not know if they asked for it in this particular case, but it is always available, and they know that it is available. The practice, as I understand it, is when the Senate Foreign Relations Committee asks for a security summary, it is obtained from the Office of White House Counsel, and they read it and return it to the Office of White House Counsel. If your question is about any other investigation that they may do, I can't really speak to that.

Mr. SNYDER. Thank you. I think just in conclusion, I'd be interested from hearing you all in the future, if you make additional changes to your policy, and I know you all are concerned about it, too, and have instituted some changes, but this whole thing would have been put to rest—I mean, no one is going to get a nomination of any kind in this Government that lies about having had military service that they didn't have at all, and the American people won't tolerate it; no President is going to want it; you all don't want it, and yet there seem to be some clues there that, in retrospect, we wish we all had seen, but thank you for being here today.

Mr. EVERETT. Thank you, Dr. Snyder. Mr. Stump?

Mr. STUMP. Thank you, Mr. Chairman.

I'd like to pursue one question that Dr. Snyder raised, if you would, Mr. Boswell. He used the illustration if one investigator goes one way and another goes another way, but these reports never seem to get together, certainly somewhere down along the line that's got to be put together for somebody else's review. Wouldn't that have raised a red flag?

Ambassador BOSWELL. It would, Congressman, and they are put together for a review, as I mentioned in my earlier testimony. Perhaps Mr. Bujac can describe how that actually works, but all of these reports are pulled together by an adjudicator, who then prepares the investigative summary. Do you want to expand on that?

Mr. BUJAC. Yes, sir, if I could. What happens in normal course is that all the investigative reports have a case control officer. That officer looks at the scope required for the investigation, and in this particular case they would have verified that there was a report verifying education; there were attempts in St. Louis and in Washington to verify Merchant Marine work; that other employments and references were, in fact, covered. Once all those reports are collected, they go as a file to an adjudicator, who then does pour over the reports looking for discrepancies and errors and the like. In this particular investigation, it's clear there was never a correlation between the notation on the report from the University of Arizona and the fact that we were unable to confirm the Merchant Marine service.

Mr. STUMP. I thank you, Mr. Chairman. I would be glad to yield my time to you. I have no further questions.

Mr. EVERETT. Mr. Ambassador, would you tell where the vetting file for Mr. Lawrence is?

Ambassador BOSWELL. Are talking about the file that went to the Senate Foreign Relations Committee—

Mr. EVERETT. Yes, sir.

Ambassador BOSWELL (continuing). It is the property of the Senate Foreign Relations Committee, and I believe was submitted to you.

Mr. EVERETT. And it's where?

Ambassador BOSWELL. I believe it was submitted to your committee.

Mr. EVERETT. The part of that file that we're looking for is the background information that only the committee chairman and ranking member—

Ambassador BOSWELL. You're looking for the security summary?

Mr. EVERETT. Yes, sir.

Ambassador BOSWELL. Is that it? As I mentioned before in the previous response, the security summary is made available to the Senate Foreign Relations Committee on request of the Senate Foreign Relations Committee. It comes from the Office of White House Counsel. It is, I believe, hand-carried over to the Foreign Relations Committee. They read it, or the chairman or the ranking member read it, on the spot and it is carried back to the Office of General Counsel.

Mr. EVERETT. In other words, the White House is the custodian of all these files, not only for Mr. Lawrence, but for anybody?

Ambassador BOSWELL. It's custodian of the security summary.

Mr. EVERETT. For all people who are given—

Ambassador BOSWELL. That's right.

Mr. EVERETT. Okay.

Mr. SNYDER. Mr. Chairman, may I ask one additional question?

Mr. EVERETT. Certainly.

Mr. STUMP. I'll yield to the gentleman.

Mr. SNYDER. Mr. Boswell, on the August 13, 1993 statement from the investigator who apparently talked to Mr. Albertson at the Coast Guard Record, that statement—I mean, I'm not in the Coast Guard; I don't have military records; it doesn't make sense to me. It seems to me that—and I consider myself completely ignorant of Merchant Marine business, but I would have asked the same question: wait a minute, I thought people just go down and hire on a ship. They don't enlist in the Merchant Marine.

In retrospect, how do you see that statement? Is that something that should have been I guess a red flag, in your language?

Ambassador BOSWELL. I don't think so, Congressman. The investigator went to the Department of Transportation and the Coast Guard to inquire as to whether there would be any record of what was described to him and by Mr. Lawrence as voluntary service on a merchant vessel in World War II. When he was told that there would probably be no record of that service, he didn't go any farther with it. I don't see a red flag there. What we're talking about is extremely old. His service, work that Mr. Lawrence did for a brief period when he was 18 years old, in the overall life, full-life background investigation that we were doing, didn't raise any flags.

Mr. SNYDER. Thank you. Thank you, Mr. Chairman. I appreciate it.

Mr. EVERETT. I yield back and recognize Mr. Buyer.

Mr. BUYER. Mr. Chairman, I'm just trying to figure this one out. I'm not doing such a good job trying to figure it out.

I guess I'm a country lawyer, and as a country lawyer, you try to be very careful never to get lost in the high weeds, especially when some people like to put the weeds in front of you. And I can't figure this one out yet.

Sometimes when an individual wants someone so bad, there can be top-down-driven requirements that people begin to move quickly or overlook different things, and I'm trying to explore that one through my mind. I don't know if that's true or not.

We have a discrepancy between testimony of a witness who is just before this committee and there was this proffer, I suppose, by Mr. Boswell that, Mr. Chairman, if you would like affidavits from the investigator, you may direct. I would request of you, Mr. Chairman, to direct such affidavits.

Mr. EVERETT. I have done so.

Mr. BUYER. To what individuals? Who are the individuals that are involved here? What are the investigators?

Ambassador BOSWELL. The chairman, if I can reconstruct, asked me if we would make available an affidavit or a sworn statement from the investigator who talked to Ms. Nicolls.

Mr. BUYER. And his name is?

Ambassador BOSWELL. I am not going to give you his name; the committee has it.

Mr. EVERETT. We do have those names in the file, Mr. Buyer, we have it here; we'll provide them to you.

Mr. BUYER. All right, that's fine. I don't want to be so quick to move to judgment here because, you know, not long ago, even in this committee, we were faced with questions on—we had Mr. Gober, who's the No. 2 at the VA, was then the Acting Secretary

of the VA, and there was a stress for him to be the Secretary of the VA, which I was very uncomfortable with, and the FBI overlooked—they didn't—the FBI didn't know that a civil suit was filed in Federal court for sexual harassment against the No. 2 man at the VA, and the FBI didn't even find that. Now somebody's doing some pretty shoddy investigative work. So I don't want to be so quick to jump to judgment on different people here. I'm just uncomfortable about some of the things I'm seeing. So I just want to share that with you, Mr. Chairman.

So the FBI didn't do something over there, and now we've got some other investigators that aren't doing such a good job. Let me ask you this: was an adjudicating officer in this case reprimanded in any way for doing, having done such a poor job?

Ambassador BOSWELL. No, Congressman, the adjudicating officer would have been reprimanded if there was found to be negligence, but I don't find any negligence here. As I mentioned earlier, I wish that at some point somebody involved in this chain within the Bureau of Diplomatic Security had noticed the discrepancy. I wish that. I don't want anybody given a security clearance and made ambassador to anywhere who makes a false statement in his standard Form 86. I certainly don't want anybody buried in Arlington Cemetery who is not entitled to be buried in Arlington Cemetery. My own grandparents are buried in Arlington Cemetery.

Mr. BUYER. Falsification of the standard form would be a felony, would it not?

Ambassador BOSWELL. Yes, it would.

Mr. BUYER. This discrepancy is very bothersome to me.

Mr. EVERETT. Certainly. Be advised that there will be further questions in writing.

And, Mr. Ambassador, let me just say, you know, that while these have been tough questions, these are tough issues. I think we are rightly concerned. Many Democrats would not even vote for this man, as you know, and the recommendation from the committee was sent to the full Senate without any recommendation. I'm like my colleague here; I am really—well, I'm like you; I'm having a tough time figuring out why your investigators couldn't pick up on any of this stuff out there. Here's a guy having problems with the IRS, according to what we've been able to find out, had the third most problems of anybody in this country.

Yes?

Mr. BUYER. Let me just share this: I sit on the Crime Subcommittee of Judiciary, and we have responsibility over the FBI, and the FBI has had a very difficult time as of late. And when we got into the investigation on the crime lab issue, part of the allegations here were that science, the scientists would find particular facts and they would be very stoic in their reports, and then the FBI agents would have to take the stoic science, apply it to facts, other facts about the case, and they were always uncomfortable—the scientists never matched it up the way they liked it because it was the FBI agent that had to testify in court. And then there was this dispute always, well, you're changing my statement or you're coloring the facts; you're somehow prejudicing the facts to ensure that you can get a prosecution. That's the kind of allegations.

So you look at that and you go, well, you're right; I guess you could take any particular thing and cast it in any light that you want. You could take Al Capone and say, well, Mr. Capone gave such contributions to the church and he was so benevolent; what a kind man, and what American hasn't at one time fudged on their taxes? Or you could say, Al Capone, what a horrible man he is; this is what he was responsible for: the bootlegging, the murders. You can take facts and spin them every way you want.

So what I'm uncomfortable here is, and what would have to go through my mind, Mr. Chairman, is, was this so top-down-driven that individuals overlooked certain things and colored facts in a particular way that it's driven and ran right through? So we're going to get to the bottom of it, and I appreciate your leadership.

Ambassador BOSWELL. Mr. Chairman, could I address that for just a moment?

Mr. EVERETT. Yes, but let me just say, in closing, so you can address this also, we are beginning to learn that there is probably a mountain of evidence out there of why this man should never have been an ambassador. We're beginning to see that from all corners. And our question is, because we can't understand, if the investigative work by the security investigators for your Department is so shoddy, are there other problems with other people who have been given top secret clearances in this country? We don't understand with the mountain of evidence that's beginning to build against this person how your investigators could have overlooked it. Please respond.

Ambassador BOSWELL. Let me address first, if I may, the issue of—somebody, I think the Congressman mentioned the IRS or you mentioned it, Mr. Chairman—the IRS. An IRS check is not part of the State Department's evaluation for a background investigation for a security clearance. That is done by the White House. We have no—

Mr. EVERETT. That is done by the White House?

Ambassador BOSWELL. That is done by the White House.

Mr. EVERETT. Is it normally done by the White House?

Ambassador BOSWELL. For ambassadors, yes, sir.

Mr. EVERETT. Is it incumbent on the White House to make a report on that?

Ambassador BOSWELL. I can't speak to that. I know they do the IRS checks.

Mr. EVERETT. In other words, they would have done the IRS check on Mr. Lawrence—

Ambassador BOSWELL. We do not do the IRS check for ambassadors. We do it for regular, normal security clearance for others, other people that we're asked to clear. We do not do the IRS checks for ambassadors.

Mr. EVERETT. The White House would have done the check on Mr. Lawrence?

Ambassador BOSWELL. That's right.

Mr. EVERETT. Yes, sir, please continue.

Ambassador BOSWELL. Otherwise, Congressman, I simply want to address your issue about possible obfuscation or possible top-down pressure. There was no top-down pressure that I've been able to discern in this case. I think we have an extremely fine record

with regard to the clearance of employees for the Department of State or issuing of security clearances for the Department of State. We have an extremely fine cadre of employees who do that. The personnel investigators are veteran investigators. They come from a personal investigation background, and I have every confidence in them.

What you saw here is very regrettable. What you saw here is that we missed a clue. It was an obscure clue, I have to tell you that. But in the process of this investigation we also spoke with a great many people about Ambassador Lawrence's life and about Ambassador Lawrence's suitability for this high office, and all of those people—all of those people—recommended him for that high office, and had nothing derogatory to say about his background.

Mr. EVERETT. Mr. Ambassador, as I said, this has been some tough questioning. I appreciate the fact that you're willing to sit there and let us kind of vent our anger in some ways; in other ways we have a great deal of curiosity about some things that we feel were not done very well. This will not be the end of this. We will be in further communications with you, as I said earlier, about the possible criminal referral by the FBI and the Office of the Inspector General. So, again, I thank you, and I will now dismiss this panel and call Acting Secretary West to the panel. Thank you.

Ambassador BOSWELL. Thank you, Mr. Chairman and members.

Mr. BUJAC. Thank you, Mr. Chairman.

I'd say I appreciate the panels and the members, and I know this has been a long hearing. We've not had a break. The Secretary will be our last witness. We haven't lost the Secretary again, have we?

I would also inform members that there has been no quorum call or anything like that. So there's no vote pending.

Mr. Secretary, good to see you. Would you please rise, please?

[Witness sworn.]

Mr. EVERETT. Thank you. Please be seated.

Mr. Secretary, it's good to see you here. I understand you decided to either get a boat or swim to make this, and I appreciate that. If you will now, you may proceed with your testimony.

#### **TESTIMONY OF HON. TOGO D. WEST, JR., ACTING SECRETARY, DEPARTMENT OF VETERANS AFFAIRS**

Secretary WEST. Thank you, Mr. Chairman. Thank you for the opportunity to participate with you and the members of the subcommittee in your review of the processes, policies, and procedures for burials at Arlington National Cemetery.

I believe that I have submitted to you a copy of a written statement. With your approval, I would like to submit that for the record and just—

Mr. EVERETT. The entire statement will be entered into the record, absolutely.

Secretary WEST. Thank you, sir, and I'll just do two or three highlights.

As you've undoubtedly discussed and established, eligibility criteria for burial at Arlington Cemetery in the post-Kennedy burial era are highly restrictive. There are, however, times when those rules may be tempered with compassion and consideration of compelling circumstances. Presidents and Secretaries of the Army have

on occasion exercised their authority to waive the governing regulation and authorize other deserving individuals to be buried at Arlington.

Nonetheless, that authority has been used sparingly and judiciously. There have been some approximately 25,000 burials at Arlington in the past 5 years, of which 69 of them occurred pursuant to waiver. I think you've already reviewed the procedures followed by the Army for processing requests for waivers. During my tenure, just a couple of highlights: all action on waivers is initiated with or referred to the Superintendent of the cemetery, of Arlington National Cemetery. He serves, along with his staff, as factfinder. He gathers the necessary information from the deceased family and other sources regarding military service, awards, plot locations, previously buried family members, and the justification for granting an exception.

After the Superintendent has obtained the relevant facts, the Army's goal is to respond within 24 hours. I have said that it is my goal to make sure that a family not have to wait more than 3 days from the time of death. We haven't always been able to accomplish that.

The Superintendent prepares a recommendation for approval or denial. That recommendation is submitted with a package to the responsible Assistant Secretary. It's reviewed, including a review by the Office of General Counsel. There's other coordination. The request arrives in my office for a decision.

On nine occasions, Mr. Chairman, I exercised my judgment, my independent judgment, and authorized a burial for which the Superintendent, having done his review, had recommended disapproval. I approved a total of 59 requests for burial from November 1993 through December 1997. There were within these 59 three basic groups of exception.

The first, family members interred in the same grave as eligible immediate family members—this would be primarily unmarried adult children with no dependents interred with their families, with their parents, and remarried widows interred with their first husbands. Forty-three of the 59 fall into this group. Requests of this type are approved out of compassion for the deceased and requesting family members. As a result, I denied only two such family member requests. Those are contained in the written testimony that I have submitted.

The second group of exceptions consists of burials that will displace eligible veterans. The vast majority in this group that are approved are veterans who were not automatically eligible for burial, but whose compelling circumstances merited burial at Arlington. After careful consideration of these circumstances, I approved 28 such—disapproved—I'm sorry, I disapproved 28 such requests. I authorized 13 such burials of veterans to be buried.

And the remaining fraction of approvals of that group of 59 I mentioned are public servants whose significant national contributions warranted burial at Arlington. I authorized three such burials. These I would refer to as pure civilians. They had no prior military service. One of them, an ambassador who died at his post, I believe is the late M. Larry Lawrence, whose burial subsequently

was known to be based on a false—on false information—or information not later confirmed.

Unlike those granted exceptions to be buried in the same grave, the facts that constitute compelling circumstances of significant national contributions are much more varied. In authorizing the burials of this group, the exceptions for this group, I relied on four categories presented to me when I took office: ambassadors, and by that, in my case I mean ambassadors who died while serving at the post; to assassinated embassy or foreign service personnels, the persons who have made a unique national contribution, and for humanitarian considerations.

Mr. Chairman and members of this subcommittee, all of us who process burials at Arlington National Cemetery take our responsibility seriously, the responsibility to those who are buried there, to their families, and to this Nation. Consistent application over some 30 years of a standard based either on immediate family relation to and burial with—that is, within the same gravesite—of a person eligible for burial or on an evaluation of the person's contribution to the Nation, I believe over time has validated that process and those standards.

The person holding my position, the Secretary of the Army, must maintain the necessary balance between compassionate discretion and responsibility for safeguarding Arlington, and accountability, personal accountability, official accountability, to service members, to veterans, to the public, and to you.

Since the conclusion of the Civil War, the Nation has maintained Arlington National Cemetery as a final resting place for its heroes. Every Secretary of War and every Secretary of the Army has assumed the responsibility for stewardship of this hallowed place with an appreciation of all it means to Americans and all it means to those and their families who are buried there.

Your hearings today underscore your subcommittee's appropriate concern that rules concerning eligibility and process for burial at Arlington continue to reflect the sacred nature of that place and its important place in the Nation's values.

I thank you again for joining in that spirit today; our Nation, our service members, our veterans deserve no less. Mr. Chairman and members of the subcommittee, I'm ready for your questions.

[The prepared statement of Secretary West appears at p. 146.]

Mr. EVERETT. Well, thank you for appearing, Mr. West. We're going to allow 10 minutes to each member, panel member, for questions.

I want to sort of do some housecleaning to begin with. As I've repeated already, in my December 4th press conference I had pointed out that I hadn't found, nor did I expect to find, any indication of political donations that would appear in those files at Arlington. In a conversation I had with you, a telephone conversation I had with you, which I think you later, a day or two after that, indicated in a news conference, I told you that initially Mr. Lawrence was not a target of our investigation; I was more interested originally in the 13 files that you, Mr. Secretary, and the previous Secretaries and the administration had overruled the Superintendent on. I wanted to get that in the record because have you seen any indication in any file over there—would you expect to find a note in there say-

ing, "Hey, this guy has given \$10,000 to the National Democratic Party, and so, therefore"—or "to the Republican Party, so, therefore, he needs to be buried at Arlington?"

Secretary WEST. Mr. Chairman, I have not seen such a note, and I would not expect to see such a—

Mr. EVERETT. In other words, and that's kind of my point. You know, I am really disturbed that I tried, as I expressed to you, to keep political donations out of this from the very beginning, and the White House pounded on me, as you are well aware of, for a number of days, asking me to release the information I had on that, and I didn't have any information because other committees are looking into donations and political influence.

However, as I said at my press conference, being in the newspaper business 33 years, when people start protesting too much, I sort of get suspicious, and that's when we started looking more closely at Mr. Lawrence. I just wish the State Department had looked at it a lot more closely and had given you perhaps some different information than you received on Mr. Lawrence.

What he did is a felony. If that had been discovered, he would never have been an ambassador—and by the way, and it's my words, not yours, a bought ambassadorship; pure money got him in, not his credibility, not his expertise, not anything but pure money. And because he had the ambassadorship bought, he was allowed to be buried at Arlington National Cemetery. That disturbs me greatly. I think it should disturb any American greatly.

Now having done away with that housecleaning chore about whether or not the GAO looking into the records at Arlington would find any list of a DCCC or DNC or RNC political donor, let me move to something that I am a little concerned about also. The Army received the first request for information about Arlington waivers on June 4, 1997. It was a broad request and asked for all Arlington waivers granted or denied since 1981. It also requested copies of all applications for waivers. From fax codes, we now know that a number of waiver summaries which were finally sent to us after your press conference on Arlington waivers actually existed prior to my letter on June 4. Yet, my staff was treated to a table covered with files and invited to compile the information.

Now I have to ask you, Mr. Secretary, if that is your idea of cooperating with a constitutional committee that has oversight over an agency?

Secretary WEST. Mr. Chairman, I agree with the underlying premise of your statement and your question to me, that whenever a subcommittee or committee of the Congress, this subcommittee, undertakes an inquiry and asks for information from an Executive Branch department, that our obligation to you, to the Congress, to the people of the United States is the fullest possible cooperation, and I don't use "possible" to introduce some unspoken limitation. I mean we should comply fully. Full compliance is in the best interest, and I believe it to be the policy of the Department, certainly my policy, and it will be my policy if I'm—it's my policy as the Acting Secretary. It will continue to be my policy if I'm confirmed at Veterans Affairs.

In fairness to the Army, I have reviewed the documentation you referred to, and I believe that the Army believed it was giving open

disclosure, and I think its rationalization, its rationale, would have gone something like this: the June 4th letter asked for a list and the matters you referred to. Mrs. Lister's response, as I read it, said: come and see everything we've got. I think that is not an unusual way of trying to get off to the first stages of exchange of documentation and complying.

I know you've expressed a concern on whether a list already existed that could have complied with the request for the list, and I'm not sure about this, but I will look, and I believe you asked for a list with names going back to 1981. I say to you under oath before this committee that no such list existed.

Now I also know that you believe semantics is an inappropriate way to resolve an issue of compliance between the requester and the requested; that is, if this difference is something of semantics, then it is inappropriate for me to raise it. I raise it because I believe that may have had an effect on the Army's thinking, well, a list that identifies the facts in a case, but that only goes back to, I think, our 1993, our tenure—I thought I heard someone give a correction; well, back to whatever the period of my tenure was—and that does not provide the names, was a big difference.

Your letter arrived, I believe, after there had been an article in one of the—in perhaps the Army Times by a reporter, George Wilson, who wrote about the large number of exceptions, who said that—who even discussed some of the cases, and then I believe who said, but this is of no consequence; we don't know how to believe this Department, and I think he even referred to me, the Secretary of the Army, unless we can know the names. And I think, frankly, that by the time your letter arrived it was perceived that the big issue was to reveal those names so that you could make your own determinations. I believe the response was intended to allow you to get to those names, but I don't stop there. I acknowledge that if you were not satisfied then, and if you are not satisfied now, then we did not carry out our full obligation to provide you the information in a way and in a form that would have made you satisfied.

Mr. EVERETT. Well, I thank for your response, and let me also point out that my subcommittee staff asked, when at Arlington early on, if there were any more files at the Pentagon and the Department of the Army. They were told there was nothing more than a few duplicates, that basically everything was at Arlington. There were extensive Army files elsewhere, including on about 100 additional waiver denials the subcommittee and GAO had not been aware of before January 9, 1998, when the Army produced the many additional file materials.

Then the Fisher file materials were produced exactly 1 week before this hearing. This was a sensitive file treated as highly confidential. It had received the high-level attention of the Army. It was clearly within the scope of our very first request last June 4, and we did not see it for nearly 7 months—not a scrap of paper on it, not even a hint that it existed.

Mr. Secretary, this is the file I'm referring to right here. I have to respectfully tell you I believe that's damaged the Army's credibility and calls into question the Army's good faith. I am certainly not suggesting that you were personally involved in this game of "keep

away," but it surely seems somebody in the Army was not anxious to have a thorough look at Arlington by the subcommittee.

Let me ask you, what was the Army's role in President Clinton's waiver for Dr. C. Everett Koop, the Surgeon General in the Reagan administration?

Secretary WEST. Thank you, Mr. Chairman. I hope you'll let me just say you presented me with two matters that I hadn't spoken to. One, documents, 100 exemptions that were not—or files reflecting—that catches me by surprise. I'm not sure whether those are archived documents or what. I'd just say to you and the committee that I am still—it would be easy enough for me to say thank you for giving me a personal buy on this, but it's the system; it's the Department. I can't do that, sir. The failure to comply must have occurred on my watch. That means I'm responsible for it. And I must say to you, on behalf of the Army, I do not believe that there was an intention, I don't believe there was a desire to keep this subcommittee from knowing about Arlington. I believe as we work our way through it, and you ask me questions, you will see that, frankly, it is my belief, and the Department's belief, that we have carried out our duties honestly, fairly, with fidelity to the spirit and the letter of the requirements, and with a consistency that is appropriate. If that is the case, we would have no reason to hold it back.

Secondly, with respect to this latest file that you say was sensitive and that was withheld for 7 months, I accept your judgment and your recitation of the facts. If it's what I think you're talking about, I believe there's probably a——

Mr. EVERETT. The Fisher file.

Secretary WEST. Okay. There's a sincere belief on the part of the Army, which we only learned about, which I only learned about quite recently, by whoever had the file, that it did not fall within the request. The effort was not made to keep it to the last minute. If that had been the effort, I suppose some ill-considered person could have just kept it forever. The point is we've turned it over, and I'm happy to answer your questions about it.

As to the Koop matter, which was your question, I believe there is a pretty good indication that the White House decided it. I think it's the President's exercise of his authority. It's clearly within his authority. I was not a person who provided any advice personally to the White House, to anyone at the White House. I did not rule on it. I did not provide an opinion on it. I think there's an indication that there was obviously some request from the White House to my office for assistance perhaps in procedures and the like, but that's a White House decision, based on no input from me.

Now how is that possible, that that could happen in my office with no input from me? It may not be apparent from the record, but I believe that I was away from my office during that period. I was on vacation at Ft. Storey. I probably received faxes about it each evening, but that was a fast-moving train, and I had no opportunity to intervene, and I did not intervene in any of the waivers granted by the White House.

Mr. EVERETT. That was apparently very fast-moving, and that's one of the things we're trying to get to, is why. Dr. Koop is not a veteran, is he? Dr. Koop is not a veteran?

Secretary WEST. To my knowledge, no, sir.

Mr. EVERETT. We've not been able to find any evidence that he is a veteran.

You said something about the President's prerogative. I understood this morning from Mr. Metzler, I believe, that it's against the rules to give a living person a reservation at Arlington National Cemetery. Is it the President's prerogative to violate that rule?

Secretary WEST. I have given exceptions to living persons. On at least one occasion, and recently I looked in the file, there may be two, to someone very close to death or at least who we thought was very close to death—

Mr. EVERETT. I think those were two very close to death.

Secretary WEST. It turns out that one of them is still alive, and I'm happy for her. (Laughter.)

But I think the better view is, it would be very difficult—let me just address what I can do. It would be very difficult for me, as Secretary of the Army, to give an exception that I could be certain was going to be honored by a subsequent Secretary. I think when a person dies is when you can judge the compliance with either our rules or our standards for exceptions. I think that describes why they are so few. I believe in the President's case in 5 years there's only this one.

But if the question is, is he violating the law, I don't think so. I think—in fact, I'm fairly certain not. He acted in accordance with what my understanding of his authority is, and with the authority that has been exercised by previous Presidents.

Mr. EVERETT. My time has run out, Mr. Secretary. I may have additional questions for you for the record, please.

Secretary WEST. Yes.

Mr. EVERETT. Dr. Snyder?

Mr. SNYDER. Thank you, Mr. Chairman. Good afternoon, Mr. Secretary.

Secretary WEST. Good afternoon, sir.

Mr. SNYDER. I appreciate your being here. I know you were caught in some flood waters.

There were several discussions we had this morning, if I must might reiterate my brief summaries of them, and my question is going to be: what do you think we need to do different, since I think that this hearing ought to be about solutions for the future to avoid similar problems, as I'm sure you're not happy about the end result of all this with Mr. Lawrence.

The GAO report, you made a comment that you follow some pretty strict standards with regard to the granting of waivers. If you've had a chance to read the GAO report, it reflects somewhat of kind of an ebb and flow. In 1980, the Army loosened the standards some. We don't get this sense that there's been this fine line drawn in sand since 1967, and people acknowledge it's been somewhat amorphous, not strict rules.

Mr. Metzler—I used the phrase “two-tiers,” but it seems that the process by which people get considered for waivers or apply to Arlington, that we may have a process, whether we intended to or not, that is easier to access for people with either political connections or influence. And by that, I mean if, you know, Joe Smith in Little Rock, AR calls Arlington because Grandpa died and he's a

veteran, and they want to know if he can be buried at Arlington, they'll look at the eligibility requirements and report back yes or no. If Joe Smith comes to Congressman Dick Snyder, and Congressman Snyder contacts Arlington or sends a fax quickly because of trying to do it in the timeframe, that that will actually start being processed; it's like a request for a waiver; that the information I get back about the process, either going to you or to the President, is going to be a different sort of information than if your average American citizen goes or asks for that information. And I think that's a problem, to be honest with you.

And then a third point that's unrelated is we've got this situation of when you are verifying veterans' status of a veteran that's passed away, are they treated differently than a high-level official who you would assume has already had that type of background check done, and that you can rely on information given, that you want to do it in 24 to 48 hours.

So having said all that, my question is, as you've had to sit in the center of this firestorm, what do you think that we need to do differently and what are your suggestions, given that Mr. Stump and some others have some legislation in the works, both legislation and with the administrative thing, and Mr. Metzler's office.

Secretary WEST. As a preliminary matter, Congressman, on the day I had a press conference a while back to release the names, that morning I spoke with representatives of several of the veterans' service organizations, just sat down with them and said, "We know the concerns, and here are the issues. Here's the way we do our process." As I had finished working my way through it, they said to me a couple of things, and one of them was very much along the lines of the point you've made; that is, whatever else one can say about the process, however much we defend our good faith and our care, the fact is that there is uneven information dissemination to families, service members and veterans who are applying for burial at Arlington.

How can we be certain that family A got the same information as family B? My answer is I have great confidence in Superintendent Metzler and his staff, but even so, it is——

Mr. SNYDER. As do I, yes.

Secretary WEST. If there is not a form or a disclosure paper that says, here's the way it works, then it's going to differ from family to family and from person who is describing it to person.

As a result, I announced three things, which I asked the Department to do right away, and which I believe it is now implementing, and which I think could appropriately be made a requirement, not just a memorandum, direction from the Secretary. One is simply because of the mystery that is now attendant to the process, or it appears to be attendant, every family has to know when they apply for a waiver that we will be disclosing that name in some fashion. We will need to get their consent to that as part of the process, and then make that name and the person in whose behalf the request is made, the deceased, in some kind of register that is available to the public.

Secondly, that the decision by the Secretary to grant a waiver must be communicated to the relevant oversight committee or such committee as the Congress will designate then and there, along

with the rationale. "Dear Mr. Chairman: Today, as Secretary, I approved this waiver of this person for this reason," an ongoing process, not a clump at the end of the year, but ongoing, so that there's no chance for the uncertainty to grow.

And, thirdly, that we had to develop a process that could assure uniform information dissemination to each family that applies. I left that memorandum there. I am fairly confident that the Army is beginning to implement in good faith.

There are other things, too. As a basic philosophical matter, I think we must decide, as an Executive and Legislative Branch, what kind of cemetery we think Arlington is. Is it a military cemetery for our military heroes or is it a largely, traditionally largely, predominantly military cemetery in which on occasion we can bury our civilian heroes as well? Because I believe the understanding about that across this Nation is very imperfect, indeed. Indeed, we as an Army describe the cemetery as a place where military heroes are buried, and yet since the day of its inception, Arlington has always had civilians, and I don't mean the civilian family members who are buried with their service members; I mean civilians buried there in their own right.

There's the historic tie to those slaves and descendants of slaves who served Arlington House, and you will see that one of my exceptions is for one of their descendants there.

Mr. SNYDER. When you were doing this work, did you ever get to the point where you, I mean, where you want to say, I wish there was just strict legislation; that I shouldn't be having to decide these kind of things on such short notice, or do you have a problem with tightening up these waiver requirements by legislation, as I think we're going to do?

Secretary WEST. Yes, I didn't get to the first point.

Mr. SNYDER. I'm sorry.

Secretary WEST. Yes, it can impose some sudden and wrenching times in the middle of a schedule that doesn't—but it's worth it for the people involved.

As to the second, I don't think that I personally have an objection to what you describe as an effort to tighten up. I think that, as the Army witness, I would have to say this: we believe that the process has worked well and fairly. Certainly, the point you made that over several administrations there will be fluctuations, and they're certainly attributable to the exercise of discretion, means that you may want to better inform the discretion that is to be exercised, and you may want to decide whether there should be discretion at all.

My belief is that when you have a system of requirements that is so exclusive, that excludes the service of veterans who served honorable, you may want to have a safety valve for those veterans, and as I said, you may also want to decide whether you want a safety valve for civilian heroes, but if so, you may well want to describe it more tightly.

Mr. SNYDER. One final question: in the GAO report, there's a reference made there that, before these events occurred that Mr. Everett has been working on over the break, that there was some time in 1997 that there was—somebody was interested in doing some legislation to specifically deal with this waiver policy and the

authority. I can't find anyone that has that information. What that tells me is that that's true; that somebody was aware of this problem, obviously, before the episode with Mr. Lawrence. Do you have any light to shed on that?

Secretary WEST. Sure.

Mr. SNYDER. Did you put some—was there something; was a bill filed? I mean, did somebody work on some legislation?

Secretary WEST. I'm not sure if it was 1997, sir, or 1996, but at one point we and the community, if you will, the Arlington Cemetery community, were very concerned over the issue of the memorial for PanAm Flight—I think it's 103—and the question of whether such a memorial was appropriate on the grounds of Arlington Cemetery. There's already, I think, statutory language that governs memorials in other places, such as a 25-year waiting period while you get over the moment and think about it, but the point was, I think as a result of that, some interest grew, and I believe that as a drafting service some of the lawyers prepared some proposed legislation that essentially codifies, I believe, the existing regulations with maybe some adjustments. I would say if there were to be legislation—or I prefer regulation, sir, but I understand I'm talking to a legislative body—I would look to this—I'm sorry, this part of our experience.

I said that some 43, I believe, of the exemptions I gave were for family members to go in the same grave. If you have that large a body of exceptions, it means that you have become routinely acclimated to doing it. That suggests to me that some rule promulgating or legislation could be appropriate there to say this is an authorized group; it cuts the misunderstanding down to a minimum. Then we're talking about only some 13 or so waivers.

Mr. SNYDER. Yes. Thank you, Mr. Secretary. Thank you, Mr. Chairman.

Mr. EVERETT. Let me advise the panel and members that we have a vote going on, but Mr. Stump says he has one brief question to let go in a way for which I'm sure we'll have a brief answer.

Mr. STUMP. Thank you, Mr. Chairman.

Mr. Secretary—

Secretary WEST. I have your warning, sir.

Mr. STUMP (continuing). I want to follow up on what Dr. Snyder brought up. In my opening statement I made some reference to codifying the rules for Arlington. I want to ask you, and I want to be specific—for instance, I went to three major battles in World War II in the Pacific. I am not eligible, excluding the columbarium, to be buried in Arlington. Yet, as a Member of Congress for 2 years over here, or anybody else, I would be eligible, and I think this is wrong, and I think this is an affront to anybody that ever gave their life for the military or have served to their retirement in the military. And I believe I speak for the majority of this committee, that it is our intention probably to eliminate all high elected officials with perhaps the exception of the President as Commander-in-Chief. I'd like to get your reaction to that. Why should a Member of Congress be eligible, regardless of any military background? It makes no sense to me.

Secretary WEST. Mr. Chairman, you realize you put me in a very awkward position. I've been advised to keep my answer brief.

Mr. STUMP. Well, brief, brief, we have to be brief because we've got to go vote. (Laughter.)

But we're going to be drafting this bill, and I want to know your feelings. I don't want to go out and do something that you're going to come back, or your Department over there is going to come back and oppose us on it. We'll try to work it out in advance, but I just think that it would be a relief to you to have something like this.

Secretary WEST. I understand your point, sir, but I am not in a position, nor do I wish to be, to quarrel with that particular regulation. I was not around when it drafted, but I do consider that if we're going to have a distinguished service category of veterans who have given honorable service, I am not at all troubled by that category.

Mr. STUMP. Would you say the same thing to applying or putting memorials out there? For instance, the Lockerbie PanAm flight, we put a memorial out there; to me, that's wrong; there is no military connotation at all, and we should also limit those type things to the strictly military.

Secretary WEST. Now I approved that. I'm the one who's responsible for that, and I want to make clear that I accept the blame for that. But I do have a responsibility to speak for the concerns of our service members in uniform and our veterans, and to say this: that is why I said we must decide what kind of a cemetery Arlington is to be, because if it is not to be a place where occasionally we can have a civilian memorial, then we should consider what that place should be.

Mr. STUMP. I was not aware that came under your watch. I was not trying to put you on the spot or make reference to that, but I'm just getting to the bottom thing, that we should not be putting civilian memorials of any kind within Arlington National Cemetery.

Secretary WEST. I understand, sir.

Mr. EVERETT. There's only 3 minutes left in this vote. I'm going to recess, and we'll be back. I think we probably have two more members, and perhaps we can finish this in about 20, 25 minutes.

Secretary WEST. Thank you.

[Recess.]

Mr. EVERETT. Now we will resume the committee hearing, and at this time Mr. Buyer is up at bat, to use a term.

Mr. BUYER. Thank you, Mr. Chairman.

Before I move into my line of questioning, I want to pick up where really we left off with Chairman Stump in a question to you, Mr. Secretary. One thing that I have learned about being up here is that what makes our job so difficult is that we become the decisionmakers, and it's that old cliché about the buck; where's the buck stop; who has to make these decisions? And, obviously, a lot of this rested upon you.

I think the chairman asked a very good question of you, and while you said you felt as though it puts you in a difficult position, you're not sure whether you really want to answer at the moment, I don't think you can do that. Personally, I really don't think you can do that, because, as the Secretary of the Army, and as the Acting Secretary of the VA, you are in that unique position for us to tell us what your opinion is and what our advice on policy should

be. Now I have an opinion about what I think Arlington is, but I am going to ask of you to answer the chairman's question with specificity.

Secretary WEST. I'll be glad to respond, but I'm not sure you're going to like this answer any better than the last one. I don't believe the way to handle Arlington is to find additional classes of veterans to exclude, and remember, the provision is not for every Member of Congress; it's for every Member of—every veteran who was honorably discharged and who is a Member of Congress. Am I saying it wrong?

Mr. BUYER. I'm not particularly concerned—I'm sorry, let me yield to Mr.——

Mr. STUMP. If you'll yield one second, Mr. Secretary, I beg to differ with you. I think that is wrong. I think any Member of Congress without any background qualifies in an upper elected officials bracket, ambassadors, the President, whatever.

Secretary WEST. I think not, sir.

Mr. STUMP. I'm going to defer to staff—if I'm wrong—well, then I retract my statement. I did not know that. I thought as a Member of Congress, as an elected official, you were qualified to be buried in Arlington. I didn't know that.

Secretary WEST. I'm sorry——

Mr. STUMP. Thank you. I apologize.

Secretary WEST. And so the thrust for me is not to find further ways to disqualify veterans, groups of veterans who have served honorably. On the contrary, if I had my choice, I would allow every veteran who has served honorably to be buried there, as elsewhere in the national cemetery system. The problem is space. And so, no, sir, I do not choose to take the opportunity to say that veterans who have been honorably discharged, and who have been elected and served in Congress, should not be buried there. I do say this: I think we should expand the space we currently have there at Arlington, so that we're not looking at a 2025 termination date, because the restrictions don't exist, or at least they were not adopted for the purpose of saying that one veteran's service is less deserving than another. They're adopted solely to say we just don't have enough room for every veteran there. That was the original purpose of the change in the regulations.

Mr. BUYER. You know, the uncomfortableness about this issue I think, if many hear, not only here in Washington, but around the country, with the allegations of the circumvention of Federal election campaign laws in the last presidential election and the whole investigations that have been going on in the Senate, and Mr. Burton's hearings that are going on right now, raise these allegations, and so then you look at them. And I now, as chairman of the Personnel Subcommittee, have responsibility on the Army jurisdiction on this issue, and Mr. Stump, obviously, jurisdiction on the veterans' side. So I also, like Mr. Stump, am now saying, so that any of these questions never come up in the future, are we now prepared to say what Arlington should be, not through the eyes of exclusion, but to say that this is hallowed ground for our Nation's war veterans and set forth a criteria with specificity, and it's sure going to make your job a whole lot easier. Because you could be dealing with high-level briefings and advice on national security

advisors on Iraq at the White House, and one of your aides comes up and says, "Excuse me, but we have a decision that we have to make with regard to this, and a burial, and a whole family's waiting." And those are very tough decisions.

And I am hopeful that never in that process is it either polluted or perverted with such issues of this is someone who is a \$10 million contributor, those types of things. I think that is insulting to that process, and, hopefully, it never happens.

People love to talk about that, because then they begin to investigate the background, but when you have the exceptions to policy that fall outside the area of military status, then you become vulnerable to the allegation, right? Would you agree?

Secretary WEST. Yes, sir, I agree.

Mr. BUYER. So what I'm asking of you is not to look at our effort as a process of exclusion, but we want to be helpful, and perhaps we can debate the matters of policy if, in fact, our legislative proposal would be to exclude individuals of whom may have had some form of national service without military service. Maybe that's saying no to Supreme Court Justices, no to Mr. Koop. I feel very uncomfortable knowing that, based on someone's life, that they can get a reservation. I'd just say that's my words. You didn't like using that word.

I read through the paper trail with Dr. Koop, and I noticed that one of the gentlemen sent a—a John Zur——

Secretary WEST. Zirschky.

Mr. BUYER (continuing). Zirschky—sent a very good memo to you. Did you happen to read his memo?

Secretary WEST. After the—I think I got it the evening of the day that the deed was done. It's a fine memo, but it came too late.

Mr. BUYER. It came after the fact?

Secretary WEST. Yes. I think he wasn't aware of that, but I think it's dated the same day as the date of the signed letter. I may be wrong.

Mr. BUYER. So he was unaware that the President of the United States was placing such pressure on the system whereby Mr. Koop was going to be at the White House and he wanted to present Mr. Koop with this letter saying, hey, we've extended to you this right of burial in Arlington?

Secretary WEST. Well, I expect he would have been unaware of all that because I was, too.

Mr. BUYER. You were unaware of that? How do you feel now knowing that you weren't brought into that fact?

Secretary WEST. Well, I guess I'm not clear on exactly what I'm to know from what you just said, Congressman, but——

Mr. BUYER. Oh, I think it's very clear, Mr. Secretary. Who's the decisionmaker? If you lead this committee to believe that you're the decisionmaker——

Secretary WEST. The President was the decisionmaker on that one.

Mr. BUYER. On that one?

Secretary WEST. Yes, he——

Mr. BUYER. Then how come he starts his letter to you by saying, "Let me authorize"?

Secretary WEST. It was—well——

Mr. BUYER. The President of the United States, signed Bill Clinton, to Togo West, the first three words——

Secretary WEST. I think those are the——

Mr. BUYER (continuing). "Let me authorize."

Secretary WEST. I think those words are identical with I have decided, I have determined, it is hereby ordered.

Mr. BUYER. "Let me authorize"?

Secretary WEST. Sir——

Mr. BUYER. It's hereby ordered?

Secretary WEST. I don't think he was asking my permission, and no one in the system thought he was.

Mr. BUYER. So we have a procedure whereby the President of the United States, on matters at Arlington, basically, can do whatever he wants?

Secretary WEST. And act on his own, and has done so.

Mr. BUYER. Okay, like other Presidents have done perhaps in the past?

Secretary WEST. Yes, sir.

Mr. BUYER. Okay. I just want to make sure because we have two decisionmakers then.

Secretary WEST. Yes, sir.

Mr. BUYER. We've got the President that gets to decide, and then you get to take care of everything else? Okay.

Secretary WEST. That is almost precisely the way my authority and my role was presented to me when I started. There are two people in the U.S. Government who have the authority to grant waivers for burial at Arlington Cemetery. Now, in fact, the way it was said to me was: the Secretary of the Army and the President, the point being not rank and authority, but most of those will be by the Secretary; only a very few by the President. Now I say that for what occurred in my time, but as I look back over the record, there have been times when in other administrations the greater number have been decided by the President, and a lot smaller number by the Secretary, and I think I even saw one administration in which none were authorized by the Secretary.

Mr. BUYER. But you are also a lawyer.

Secretary WEST. Yes, sir.

Mr. BUYER. You were also an Army JAG officer at one time; correct?

Secretary WEST. Yes, sir.

Mr. BUYER. So even though you're in this position of Secretary of the Army, at times it's also hard to remove that fact that you're a lawyer, is it not?

Secretary WEST. To the dismay of my lawyers.

Mr. BUYER. So you are aware, though, that there is a regulation, 32 in CFR section 553.12, a regulation that states that gravesites will not be reserved? You're aware of that. When the President of the United States wants to act in his—I don't want to call it capricious because he has his own criteria, and it is in a manner that violates the law, did you advise the President about this rule and regulation that says it is not permissible to give this to Mr. Koop?

Secretary WEST. Well, I've got several answers to that. First, I don't believe he violated the law. Secondly, I have never advised

the President on any matter concerning Arlington Cemetery, to include this.

Thirdly——

Mr. BUYER. Can——

Secretary WEST. Go ahead.

Mr. BUYER. Be helpful to me because I want to make sure we're clear.

Secretary WEST. Sure.

Mr. BUYER. Explain to me how extending a letter to Mr. Koop saying that we are granting you this right to be buried at Arlington is not in contradiction with this CFR that says gravesites will not be reserved.

Secretary WEST. Oh, well——

Mr. BUYER. Explain that to me.

Secretary WEST. Yes, on the question of reservations, two things: one, I understand that you draw that equation of an advanced approval with a reservation. I guess I have never considered it that way because, if so, it would mean that in those cases where I granted an exception in advance of death, I would have violated the law, and I don't think I did. I believe it has always been my——

Mr. BUYER. I understand—Mr. Secretary, I'm interrupting you, but I understand——

Mr. EVERETT. The gentleman's time has expired.

Secretary WEST. Could I just finish?

Mr. EVERETT. Yes, go ahead.

Secretary WEST. My belief is that the President's grant of an exception in advance of burial is simply stating: you now have joined that category of all people who, by virtue either of a statutory authorization or not, will be entitled to be buried there, when you die, if your family makes the request. It just moves them into that category of people who are authorized burial at Arlington.

Mr. EVERETT. I apologize for interrupting the gentleman, but we have been going a long time.

Let me just get one answer from you, Mr. Secretary.

Secretary WEST. Certainly.

Mr. EVERETT. Federal regulations do carry the force of law, do they not?

Secretary WEST. Yes, sir.

Mr. EVERETT. Thank you. I now recognize Mr.——

Secretary WEST. Mr. Chairman?

Mr. EVERETT. Yes?

Secretary WEST. So also do statutes that you pass. There is no statutory grant of authority to the Secretary of the Army or the President to grant any waiver, whether in advance of death or not. The opinion of our lawyers has been that this has been an exercise of authority by the very persons who are authorized to establish that regulation. That has been openly exercised over more than 30 years by Presidents and Secretaries of the Army. It has been periodically been made—the Congress has been made aware of it, and it fits that rule of administrative law that says this is a lawful exercise of authority.

Mr. EVERETT. Let me do a little housekeeping because we're about to wrap up, I think. My friend, Mr. Clyburn, is our last questioner. We'll get word out that all committee members have 5 days

to submit any questions for the record to this panel or any of the previous panels. Mr. Clyburn.

Mr. CLYBURN. Thank you, Mr. Chairman. Mr. Chairman, I'd like to begin by saying I think I see Mr. West's wife in the audience, and I would like for you, Mr. Chairman, if you don't mind, to introduce her.

Mr. EVERETT. Well, I apologize. I did not know she was in the audience, and if she would please stand and be recognized.

[Applause.]

We're certainly glad to have you here.

Thank you, Mr. Clyburn.

Secretary WEST. Mr. Chairman, Mrs. West has tolerated me for the better part of 32 years. She was my law school classmate. We met and were married there.

Mr. EVERETT. Mr. Secretary, I can see that you, like myself, married above our heads. (Laughter.)

Mr. CLYBURN. Now, Mr. Chairman, there is one other thing that I would like to have entered into the record. This is called a Statement of Service as a U.S. Public Health Service commissioned officer, and I would like to have this entered into the record, if I may, because it has to do with the subject of whether or not Mr. Everett Koop is or is not technically a veteran.

Mr. EVERETT. Without objection.

Mr. CLYBURN. Thank you.

[The information follows:]



Mr. CLYBURN. Now, Mr. Chairman, I want to read, if I may, on page 10 of the GAO, I don't know, report on this whole process. I want to read something for you. It says here at the beginning of the first complete paragraph, "While there is a legal basis for the Secretary of the Army and the President to make waiver decisions and to adopt procedures for doing so, this authority is not explicit."

Now I know that's a difference in the legal basis and some legal authorization for doing so, but though there may not be any legal authorization, there is, in fact, according to this report, a legal basis for this. And I might add, on page 4, Mr. Chairman, a similar statement is made in this report, and I read from the paragraph under "Authority for Waiver Decisions." "Although the Secretary of the Army and the President do not have explicit legal authority to grant exceptions to the eligibility requirements that are in effect, very often there is a legal basis for the Army's long-standing assertion of that authority."

And I believe—I don't want to prolong this, but I believe there is a third reference to this in this same report, and so I just want that in the record, Mr. Chairman, because I think that helps to clarify exactly what the Secretary and the President were doing with these waivers.

Mr. EVERETT. Without objection.

Mr. CLYBURN. Thank you.

Now having said that, I want to make everybody happy here today by thanking you, Mr. Chairman. Mr. Chairman, other members of the committee, I have nothing else to say. Thank you. (Laughter.)

Mr. EVERETT. I appreciate my friend, and from time to time we do disagree, but he knows very well that we have a very warm relationship.

I'd like to close by commenting on Mr. Koop again. Mr. Koop was a member of the uniformed services. They are given certain veteran benefits. However, the process at Arlington requires that you be a member of the armed services, not the uniformed services. So that is the distinction that I think ought to be pointed out.

In my closing statement, let me say that I am greatly disturbed—and I think that anybody who's listened to the majority of this testimony today is greatly disturbed—at some of the things that we've seen happen. First of all, we have direct contradiction between sworn testimony presented to us today; also, a deposition that was given, an affidavit, if you will, from two people that were interviewed, whom investigators interviewed in the Lawrence nomination. That's troubling. That's very troubling. Somebody needs to explain that.

As I point out, we've got sworn statements. A lady sat there in front of us and gave those sworn statements. I'll just have to say again, if the State Department's work is that shoddy, then I shudder to think how many people are walking around with top secret clearances that don't need them or shouldn't have them.

Mr. Lawrence committed a felony. He lied. He lied in what I think is the worst way you can lie. He lied about being wounded serving this country. Now since that was a felony, if somebody had made the effort to investigate what was already there—and, by the way, we have information that contradicts what was said here

today by the State Department. We think, from the information we have, there was common knowledge among some of the investigators that there was a problem with Mr. Lawrence's military record. We have to get to the bottom of this, and I intend to get to the bottom of this. It doesn't matter who I have to subpoena.

We have someone who as any reasonable person would look at the record as it now stands and recognize that this man should never have been an ambassador. The only way he got to be an ambassador was the fact that he paid a lot of money to a certain political party. And in doing that, since we've ruled out the fact that he was in the Merchant Marines, he got buried at Arlington National Cemetery. So the money talked.

And we also have in the record on Mr. Fisher—and, by the way, the Order of the Purple Heart opposed his nomination—the Medal of Honor Society, excuse me. Mr. Fisher has done great things for the military; there's no question about that, like Mr. Koop; Mr. Koop has been of great service to this country, but that is not the issue. Mr. Fisher's wonderful contributions to this country in the form of money, in helping military families, is not the issue. The issue is you should not be able to buy yourself into Arlington National Cemetery, and I invite all my friends on either side of the aisle, I invite the White House, the State Department, the Department of the Army, you give me any reasonable explanation why Mr. Lawrence was given an ambassadorship other than the fact that he bought it, and in doing so, bought himself a burial plot in Arlington National Cemetery.

Now this is not over with. I don't intend to drop it. I tried very hard, as I've established in the record, to keep political donations out of this, but other folks thought they ought to be a part of this. And so we'll follow that route. We'll follow the discrepancies between the State Department's testimony here today and the sworn testimony that we have from other people, and sooner or later we're going to get to the bottom of this.

So I thank you all for your patience today. It has been a very long hearing. It has been a distressful hearing. There have been some hard questions put to everybody, and this hearing is now adjourned.

[Whereupon, at 2:30 p.m., the subcommittee adjourned subject to the call of the chair.]



# APPENDIX

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C. EVERETT KOOP, M.D.

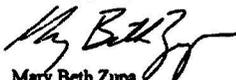
January 21, 1998

Terry Everett  
US House of Representatives  
Committee on Veterans' Affairs  
Chairman, Subcommittee on Oversight and Investigations  
335 Cannon House Office Building  
Washington, DC 20515

Dear Rep. Everett:

Thank you for your letter of January 14 inviting Dr. Koop to testify at your hearing scheduled for January 28. Dr. Koop has no information to offer on this matter and he already has obligations on that date. Accordingly, he will not accept your kind invitation.

Sincerely yours,



Mary Beth Zupa  
Special Assistant

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**GAO**

**United States General Accounting Office  
Testimony**

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**Before the Subcommittee on Oversight and  
Investigations, Committee on Veterans' Affairs, House of  
Representatives**

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**For Release on Delivery  
Expected at 10:00 a.m.  
Wednesday, January 28, 1998**

**ARLINGTON NATIONAL  
CEMETERY**

**Authority, Process, and  
Criteria for Burial Waivers**

**Statement of Richard L. Hembra  
Assistant Comptroller General  
Health, Education, and Human Services Division**



Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the issue of waivers for burial in Arlington National Cemetery. Since its establishment in 1864, Arlington has become widely revered as a national shrine. As the cemetery achieved greater national recognition, particularly following the burial of President Kennedy, requests to be buried at Arlington grew enormously. As a result, the space available in the cemetery became very limited, and the Army projected in 1966 that Arlington would soon have no room for new grave sites. In an effort to ensure that space remained available in Arlington for years to come, the Department of the Army—which is responsible for administering Arlington—promulgated regulations in 1967 that significantly tightened eligibility standards for burial. With stricter eligibility standards came requests for waivers that would allow those who were considered deserving of Arlington burial to be interred there despite the fact that they did not meet these standards.

Questions have been raised recently about the waiver process in general as well as about particular waiver decisions. As a result, the Subcommittee asked us to comment on (1) the trends in waiver decisions, (2) whether legal authority exists to grant waivers, (3) the process used in making waiver decisions, and (4) the criteria applied in the decision-making. My testimony today is based on our analysis of laws and regulations governing burial at Arlington, an in-depth review of available Department of the Army case files for both approved and denied waivers, and discussions with officials responsible for making waiver decisions. As agreed with the Subcommittee, because of the limited time available to perform our review, we did not attempt to validate the information contained in the Department of the Army files but did, where appropriate, obtain clarification of information in those files from officials responsible for making waiver decisions. It is important to note that the documentation of waivers requested or granted is limited, particularly for waiver decisions before 1991.

In summary, since 1967, 196 waivers have been granted for burial at Arlington, and at least 144 documented requests have been denied. Of the granted waivers, about 63

percent involved burial of individuals in the same grave site as someone already interred, or expected to be interred. Although the secretary of the Army has no explicit statutory or regulatory authority to grant waivers, it is legal for the secretary to do so, in part, because of the general legal authority of the Secretary for administering Arlington. We found that most waiver requests have been handled through an internal Army review process involving officials responsible for the administration of Arlington. However, this process is not followed in all cases. For example, in the case of presidential waiver decisions, the Army process is generally bypassed. In addition, this process is not widely known or understood, which in some cases has appeared to provide advantages to those who were persistent enough to pursue a waiver request or who were able to obtain the assistance of high-level government officials. Finally, while those responsible for making waiver decisions appear to apply some generally understood criteria, these criteria, which are not formally established, are not always consistently applied or clearly documented.

## **BACKGROUND**

Arlington is distinct among national cemeteries in several respects. First, although all national cemeteries honor the service of and sacrifices made by members of the armed forces, significant national events—such as the burials of Unknown Soldiers and of prominent public figures such as John F. Kennedy— have identified Arlington as a place of special recognition. Second, all other national cemeteries are administered by the Department of Veterans Affairs (VA), but Arlington is administered by the Department of the Army.<sup>1</sup> In addition, eligibility requirements for burial in Arlington are much more restrictive than the requirements of other national cemeteries. Requirements for burial in Arlington were identical or similar to those of other national cemeteries until 1967, when

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<sup>1</sup>Before 1973, all national cemeteries were operated under the authority of the Army. However, the National Cemeteries Act of 1973 (P.L. 93-43) shifted authority for all national cemeteries other than Arlington and the U.S. Soldiers and Airmen Home Cemetery to VA. VA's National Cemetery System operates and maintains 115 national cemeteries located in 39 states and Puerto Rico.

the Army imposed stricter standards to ensure that burial space would remain available at Arlington for many more years. Individuals who are eligible for burial at Arlington include service members who have died while on active duty; retired service members meeting certain qualifications; and holders of the nation's highest military decorations, such as the Medal of Honor, Distinguished Service Cross, Distinguished Service Medal, Silver Star, or Purple Heart. (App. I provides a more detailed list of requirements for burial at Arlington and at other national cemeteries.)

Arlington has a total capacity of 263,639 grave sites, of which about 60,700 remain available. Since 1967, the cemetery has averaged 2,887 burials per year. After the Army imposed restrictive eligibility requirements in 1967, the number of burials at Arlington sharply declined and then remained relatively constant until 1988. Since that time, the number of burials has gradually increased. The Army projects that all grave sites at Arlington will be full by 2025, given the expected burial rate, unless the cemetery is expanded.

Since 1980, Arlington has offered inurnment of cremated remains in its columbarium complex, which currently contains about 20,000 niches, with an additional 30,700 niches either planned or under construction. Any honorably discharged veteran, as well as his or her spouse and dependent children, may be inurned in the columbarium. The columbarium was intended as an effort to deal with the problem of limited burial space at Arlington and as an alternative for those who wish to be buried in the cemetery but do not meet its stringent requirements. As of December 1997, the remains of about 22,000 individuals had been inurned in about 19,500 of the columbarium's niches.

The secretary of the Army is responsible for the development, operation, maintenance, and administration of Arlington and for forming plans, policies, procedures, and regulations pertaining to the cemetery. The secretary has delegated the functions of Arlington burial policy formulation and oversight to the assistant secretary of the Army

for manpower and reserve affairs.<sup>2</sup> The Assistant Secretary has responsibility for making recommendations to the Secretary on requests for waivers.

The superintendent of Arlington is the primary caretaker of the cemetery. This individual is responsible for its day-to-day operations, including arranging, coordinating, and scheduling funerals; maintaining good relations with and supplying information to the public; and obtaining or verifying relevant documents or data. The superintendent also makes recommendations on waiver requests.

Given the nature and circumstances of burial requests, Army officials emphasized to us the urgency involved in responding to those requesting interment in Arlington. Therefore, these officials attempt to respond to requests for burial within 24 to 48 hours.

#### TRENDS IN WAIVER DECISIONS

Our review of Army files indicated that since 1967, 196 waivers for burial in Arlington have been granted, while at least 144 waiver requests have been denied.<sup>3</sup> The rate at which waivers have been granted has increased steadily since 1967: about 20 percent of the 196 waivers were granted during the first 15 years that waiver decisions were being made, while 80 percent of these waivers were granted during the past 15 years. About 63 percent of the 196 waivers granted involved burial of an individual in the same grave site as someone already interred, or expected to be interred. Also, 42 percent of the total

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<sup>2</sup>This responsibility rested with the assistant secretary of the Army for civil works until Aug. 30, 1995.

<sup>3</sup>Our figures for both approvals and denials are based on available Department of the Army documentation. These records were often incomplete, particularly for cases decided during the period from 1967 to 1990. This was especially the case for records of waiver denials, because Arlington officials believed there was less of a need to maintain documents on the requests of those who were not ultimately interred in the cemetery. In addition, many denials may have occurred informally through telephone conversations, which left no paper record.

waivers were for individuals with military service. About 18 percent of waivers granted for burial in a new grave site were for individuals who did not have military service. (App. II provides additional data on waiver decisions.)

Over the past 30 years, changes have occurred in the extent to which presidents have chosen to be involved in waiver decisions. Before 1980, all waiver approvals were made by the president, but since then, 72 percent of the approvals have been made by the secretary. Although the secretary did not grant waivers from 1967 to 1980, he did deny at least 65 requests during that time.

The Army's philosophy toward waiver decisions has also evolved since 1967. While precisely reconstructing the basis for this evolution is difficult, our review of documents from the late 1960s and the 1970s and our discussions with a former superintendent of Arlington indicate that the Army had been very reluctant to approve waivers as a matter of policy. This is reflected in a 1969 memorandum from the Army special assistant (civil functions) to the Secretary that stated, "Since the restrictive eligibility regulations for Arlington were promulgated ... we have received many requests for exceptions.... These requests have been uniformly denied and the regulation rigidly enforced since, if an exception is authorized in one case, it is impossible to deny it in others." A 1971 memorandum from the under secretary of the Army to the Secretary states that "Although [waiver denial] decisions...are difficult to make, in the long run it is equitable to all involved and prevents an early closing of the Cemetery...." The memorandum goes on to say that many waivers have been denied since 1967 and that "To change the rules at this time would raise havoc...."

The former superintendent explained to us that, sometime around 1980, the White House expressed a desire to be less involved with waiver decisions on a regular basis and to shift more of these decisions to the Army. At around the same time, the Army appears to have adopted a more lenient approach to granting waivers, in part, because of the number and types of cases that had been approved by the president in the past.

**AUTHORITY FOR WAIVER DECISIONS**

Although the secretary of the Army and the president do not have explicit legal authority to grant exceptions to the eligibility requirements now in effect for burial at Arlington, there is a legal basis for the Army's long-standing assertion of that authority. In 1973, the Congress, in the National Cemeteries Act (P.L. 93-43), expressly preserved the existing functions, powers, and duties of the secretary of the Army with respect to Arlington while, at the same time, repealing the prior law that specified who was eligible for burial at national cemeteries. This left no explicit legal restrictions on the secretary's authority over burials at Arlington; the secretary could decide on criteria for admission as well as on waivers. The committees, in reporting on the bill, said that a provision giving VA explicit authority to grant waivers for the national cemeteries under its jurisdiction would be analogous to "similar authority" already residing with the secretary of the army regarding Arlington.

Department of Army officials have, on several occasions since 1967, examined the issue of the secretary and the president's legal authority for granting waivers and have acknowledged that no explicit authority exists. In 1976, the Army general counsel stated that "it would be desirable to specifically recognize this authority" in legislation pertaining to Arlington. In 1983 and 1984, the Army general counsel recommended that legislation be proposed to give the secretary (and, by extension, the president) such authority. The general counsel advised the Secretary that "Public recognition of your explicit authority to approve exceptions to burial eligibility policy represents sound administrative practice."

On several occasions between 1986 and 1989, Army officials submitted to the secretary of the Army proposed changes in Army policy that would have, among other things, explicitly stated the secretary's authority to make waiver decisions. In a memorandum forwarding the proposal to the Secretary, the assistant secretary of the Army for civil works noted the Army general counsel's view that such explicit authority would "[reduce] the possibility of charges of unfairness or capriciousness in considering

exception requests." The memorandum also referred to the Secretary's concern about this provision and mentioned "possible problems of drawing the general public's attention to [the secretary's] exception authority." Because of these concerns, the Secretary decided not to pursue a change in official Army policy, according to a memorandum from the military assistant in the Office of the Assistant Secretary of the Army.

Army officials told us that, in February 1997, they submitted a legislative proposal that would have explicitly defined both the secretary's authority to grant waivers as well as some broad categories of individuals who could be considered for waivers. However, these officials explained that this was done as a technical drafting service and that they did not necessarily support such legislation. According to these officials, no action was taken by the Congress on this legislation.

#### PROCESS FOR CONSIDERING WAIVER REQUESTS

Most waiver requests have been handled through an internal Army review process involving officials responsible for the administration of Arlington. But this process has not been established through formal rule-making, and access to and knowledge of the process may vary widely among those inquiring about burial at Arlington. In addition, the Army waiver review process is not followed in all cases, particularly in those cases in which the president makes a waiver decision.

#### Army Waiver Review Process

Waiver decisions made by the secretary of the Army generally involve a systematic process of review and recommendation within the Department of the Army. The process

starts when a waiver request is referred to the Arlington superintendent.<sup>4</sup> The superintendent is responsible for verifying pertinent information about the interment candidate, such as military service and familial relationships. The superintendent recommends approval or denial and forwards this recommendation, along with related information, to the assistant secretary of the Army for manpower and reserve affairs. The assistant secretary then reviews the case file and the superintendent's recommendation and makes his or her own recommendation to approve or deny.<sup>5</sup> In formulating a recommendation, the assistant secretary solicits the views of the administrative assistant to the secretary of the Army and various other officials from the Office of General Counsel and the Office of the Chief of Legislative Liaison. These offices indicate their concurrence or nonconcurrence with the assistant secretary's recommendation. The case file, including all recommendations and records of concurrence or nonconcurrence, is then sent to the secretary of the Army, who makes the final decision to approve or deny the exception request.

All of these actions typically occur within 48 hours in order to respond quickly to surviving family members. According to officials involved in the process, this expediency imposes certain limitations on the extent of information obtained and the ability to verify this information. For example, in cases in which an exception is requested to allow the burial of one family member with another, the superintendent indicated to us that he asks for information about family relationships but does not always verify the information he receives. Similarly, he does not obtain the consent of other family members who may have a claim to burial in that same grave.

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<sup>4</sup>Before receiving a formal waiver request, the superintendent or his staff will sometimes answer questions and provide information to a potential requester who has contacted the cemetery for information on burials. The types of questions asked and information provided during these contacts may, in some cases, determine whether a person decides to pursue a formal waiver request.

### Waivers Authorized by the President

In contrast with decisions issued by the secretary of the Army, presidential decisions appear to involve little, if any, consultation with Department of the Army officials. In addition, the reasons for presidential waiver decisions are generally not explained. For most presidential waivers, the Army is simply informed of the president's decision to grant a waiver.

For example, in one case, the president authorized a waiver for a prominent public figure who was still alive. Army officials said they were not consulted on this matter. Army documents indicate that the assistant secretary did not favor such a waiver because the Army's policy was not to approve waivers before the death of an individual and that doing so in this case would set a precedent for future waiver decisions. To the extent that decisions are made outside of the normal process, perceptions of inequitable and arbitrary treatment, such as those suggested in the media, may result.

### Public Knowledge of the Waiver Process

Although a waiver process exists, it has not been formally established in regulatory policy. Individuals inquiring about burial at Arlington are not necessarily provided the same information—or any information at all—regarding the possibility of obtaining a waiver. The superintendent or his or her staff make a case-by-case judgment about the type of information to provide to those making inquiries about burial eligibility and the possibility of a waiver.

Some individuals who inquire about burial at Arlington on behalf of another and are told that the person on whose behalf they are making the request is not eligible for burial in Arlington may not know that a waiver can be pursued. But others, who are aware of this possibility, may choose to pursue it. According to the superintendent, upon making an initial request for a burial waiver and being informed that such a request cannot be

granted, some requesters abandon their attempt to obtain a waiver. But others persist in their efforts and may contact a high-level government official, such as a congressional or administration official, in order to pursue their request.

Some Army officials believe that these factors can make a difference in the outcome of waiver requests and whether such requests are even made. In 1984, the Army general counsel told the Secretary of the Army that "requests for exceptions mostly come from those people possessing information ... not available to the general public." The general counsel added that "initial requests for exceptions made to Arlington ... are not treated uniformly" and that "the prior knowledge and persistence of the individual [who is making the waiver request] often determines what information is provided." According to the general counsel "a basic question of fairness [is] raised by the operation of this type of 'secret' agency practice."

When a high-level government official (outside the Department of the Army) either makes the waiver request or expresses support for the request, the waiver process can be vulnerable to influence. For example, in a case in which the Secretary of the Army approved a waiver despite the superintendent's recommendation to deny, Army officials recommended that the waiver request be approved because of congressional interest and to avoid possible White House action. The Secretary of the Army told us, however, that his decision was not influenced by these factors.

In another case, a waiver request had been considered through the normal review process and the Secretary had concurred with the superintendent and the assistant secretary's recommendation that the request be denied. But when the Secretary of Defense became involved and asked the Secretary of the Army to reconsider his decision, the Army Secretary reversed his decision. The Secretary of Defense is not typically involved in the waiver process. Yet in this case, the requester had appealed the Army Secretary's original decision directly to the Office of the Secretary of Defense on the basis of a personal acquaintance with the Defense Secretary and his staff. Given that most

people do not have access to high-level officials such as the Secretary of Defense, the selective involvement of such officials in such a sensitive process could result in inconsistencies and perceptions of unfairness in waiver decisions.

Although these cases indicate that involvement of high-level officials may, in some cases, influence the waiver process, our review also identified many cases in which such involvement did not result in a waiver approval. In addition, we found no evidence in the records we reviewed to support recent media reports that political contributions have played a role in waiver decisions. Where the records show some involvement or interest in a particular case on the part of the president, executive branch officials, or Members of the Congress or their staffs, the documents indicate only such factors as a desire to help a constituent or a conviction that the merits of the person being considered warranted a waiver.

In December 1997, the Department of the Army, in response to recent criticism, imposed new requirements for providing information to those who inquire about burial at Arlington in an effort to ensure consistent treatment of all individuals. The Army also required that the names of those who are granted waivers be published and that such information be communicated to the proper congressional committees.

#### ABSENCE OF FORMAL WAIVER CRITERIA

No written criteria exist for determining when a waiver should be granted or denied. As a result, waiver requests that appear to be based on similar circumstances sometimes result in different outcomes. The officials we spoke with said that these decisions involve the exercise of much discretion and individual judgment. In other words, waivers, by their very nature, involve unique circumstances for which specific criteria cannot be developed to cover all cases, according to these officials.

The Arlington superintendent and the assistant secretary of the Army generally provide a rationale or cite reasons for their waiver recommendations to the secretary. The reasons cited typically revolve around five factors: (1) the burial candidate's military service, (2) whether the burial candidate is related to and will be interred with someone already buried or eligible for future burial at Arlington, (3) whether the burial candidate made extraordinary contributions to the nation or in service to the federal government, (4) the circumstances of the burial candidate's death, and (5) whether similar cases have been approved or denied in the past. Particularly in more recent waiver decisions made by the Secretary, Department of the Army officials have cited the disposition of one or more of these factors as a reason to approve or deny a waiver request.

But it is sometimes unclear how officials weigh each factor and make a final decision on the basis of the combination of these factors. As a result, the reasons cited for a waiver approval in some cases may be similar to circumstances present in other cases that resulted in a waiver denial.

The problem of unclear waiver criteria is demonstrated by the seemingly contradictory decisions and recommendations made by Army officials on the same cases. Since 1993, there have been 12 cases in which the secretary or acting secretary of the Army has approved a waiver request despite the superintendent or assistant secretary of the Army's recommendation that he disapprove the request. In three of these cases, the secretary reversed his own initial waiver decision, deciding to approve waiver requests that he had originally denied.

Our review of the records for waiver cases decided during the tenure of the current superintendent showed that although the bases for waiver decisions were frequently cited by the superintendent and the assistant secretary of the Army, this was not always the case for decisions made by the secretary of the Army and was rarely the case for presidential waiver decisions. In addition, the rationale for waiver decisions made in the years before the current superintendent's tenure, whether by the secretary or the

president, was often undocumented. Given the recent controversy concerning waiver decisions, the maintenance of clear and complete records of waiver decisions by both the Army and the White House may help to reduce questions about waiver decisions.

Some Army officials explained that waiver decisions are inherently discretionary and, as such, will involve differences in opinion among officials. These officials do not believe that such differences necessarily indicate unfair or arbitrary treatment. Rather, they emphasize that they take these decisions very seriously and recognize their role in preserving the integrity of Arlington. Officials we spoke with did not believe that it would be helpful or even feasible to develop and formalize a specific list of criteria for making waiver decisions because this would be contrary to the very nature of the secretary's discretionary authority.

#### OBSERVATIONS

The Department of the Army is entrusted with the authority to administer Arlington, one of the nation's most revered cemeteries. This responsibility, in combination with the constraints of limited space, has caused the Army to impose strict eligibility requirements for burial at Arlington. These requirements have, in turn, resulted in the exclusion from Arlington of many individuals who served honorably in the military.

Although the need to carefully scrutinize Arlington burial waiver decisions and ensure that such waivers are rare has been consistently acknowledged, the number of waivers allowed has grown steadily since they were first granted in 1967. In light of the diminishing capacity of the cemetery and the public attention to waivers, waiver decisions are likely to continue to be the focus of concern and criticism on the part of veterans' groups and the American public. To the extent that the authority, process, and criteria for granting waivers are unclear, inconsistent, or unknown to the public, this criticism will likely continue.

While there is a legal basis for the secretary of the Army and the president to make waiver decisions and to adopt procedures for doing so, this authority is not explicit. This lack of explicit authority has been cited in the past by various Army officials as something that could raise questions about waiver decisions made by the secretary. Although Army officials have, in part, proposed that legislation or regulations be enacted to make this authority explicit they currently do not support legislation or regulations.

Another area of uncertainty relates to the process used to review waiver cases and make waiver decisions. The process has not been clearly and consistently communicated to all individuals who have inquired about eligibility for burial in Arlington and has not been made generally public. As a result, the ability to get access to the process can vary on the basis of the persistence and knowledge of the individual requester. In addition, the process differs according to whether the president or the secretary of the Army is making the waiver decision and is vulnerable to influence or intervention from officials outside the normal process. Recent actions by the secretary of the Army to improve the consistency with which the waiver process is applied will likely help in diminishing the suspicions and concerns regarding the fairness of the process. No action has been taken by the Army, however, to adopt regulations governing the waiver process or to improve the Army's communication surrounding and involvement in presidential waiver decisions, although the Army may be constrained in its ability to influence this aspect.

The absence of clear, written criteria to evaluate waiver requests has also served as a basis for perceptions of inequity and inconsistency in waiver decisions. Waiver decisions made by the secretary of the Army appear in some cases to be inconsistent with criteria applied in other cases. This is particularly true in cases in which the Secretary's decision does not follow the recommendations of other Army officials. Moreover, presidential decisions are typically made without explicit reference to criteria.

Given the current controversy over waiver decisions, several options are available for addressing these problems, including the following:

- Revising the eligibility requirements for burial in Arlington to include certain categories of people who generally are approved for waivers, such as remarried spouses or other family members who request to be buried in the same grave as someone who is already buried in Arlington. Under such a change, these categories of individuals, which constituted about 60 percent of the waiver approvals we examined, would be automatically eligible and would not therefore go through the waiver process.
- Eliminating the secretary and the president's authority to grant waivers. This could, however, prevent the burial at Arlington of someone who is generally recognized as deserving of that honor but does not meet the cemetery's strict burial standards.
- Preserving some discretion to grant waivers, but providing guidance in legislation for the officials who exercise the waiver authority. While we agree with Army officials that it is not possible to establish criteria to cover all circumstances, some general guidance would serve to ensure that the exercise of discretion by the Army is not unlimited.
- Expanding the acreage of Arlington to accommodate more grave sites, thereby easing concerns over limited space. The feasibility of this option would need to be examined in terms of the land available near Arlington for annexation and the cost of acquiring such land.

These options could be adopted individually or in various combinations. Each has its own advantages and disadvantages and must be carefully considered in light of the basic purpose of Arlington. Regardless of which option is considered, we believe it is important that the use of waiver authority be sound and that the waiver process be publicly visible.

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**Mr. Chairman, this concludes my statement. I will be happy to answer any questions that you or other Members may have.**

**ELIGIBILITY REQUIREMENTS FOR BURIAL AT  
ARLINGTON AND AT VA'S NATIONAL CEMETERIES**

**Individuals eligible for burial at Arlington include the following:**

- Any active duty member of the armed forces, except those members serving on active duty for training only.
  
- Any retired member of the armed forces, who has service on active duty (other than for training), is on a retired list, and is entitled to receive retirement pay. If, at the time of death, a retired member is not entitled to receive retirement pay, he or she will not be eligible for burial.
  
- Any former member of the armed forces separated for physical disability before October 1, 1949 who has served on active duty and who would have been eligible for retirement under 10 U.S.C. 1202 had the statute been in effect on the date of separation.
  
- Any honorably discharged member of the armed forces who has been awarded a Medal of Honor, Distinguished Service Cross, Distinguished Service Medal, Silver Star, or Purple Heart.
  
- People who have held the following positions, provided they were honorably discharged: an elective office of the U.S. government; Chief Justice of the United States; or Associate Justice of the Supreme Court of the United States; an office listed in 5 U.S.C. 5312 or 5 U.S.C. 5313 (level I and II executives); and chief of a mission if he or she was at any time during his or her tenure classified in class I

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under the provisions of 411 of the act of August 13, 1946, 60 Stat. 1002, as amended (22 U.S.C. 866, 1964 ed.).

- Any former prisoner of war who served honorably, whose military service terminated honorably, and who died on or after November 30, 1993.
- The spouse, widow, or widower; minor child and; at the discretion of the secretary of the Army, unmarried adult child of any of the people listed above. A surviving spouse who has remarried and whose remarriage is void, terminated by death, or dissolved by annulment or divorce by a court regains eligibility for burial in Arlington. An unmarried adult child may be interred in the same grave in which the parent has been or will be interred, provided that child was incapable of self-support up to the time of death because of physical or mental condition.
- Widows or widowers of service members who reinterred in Arlington as part of a group burial may be interred in the same cemetery but not in the same grave.
- The surviving spouse; minor child; and, at the discretion of the secretary of the Army, unmarried adult child of any person already buried at Arlington.
- The parents of a minor child or unmarried adult child whose remains are already buried at Arlington on the basis of the eligibility of a parent.

Individuals eligible for burial at cemeteries include the following:

- Any person who served on active duty in the armed forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) who was discharged or released therefrom under conditions other than dishonorable.

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- Any member of the armed forces of the United States who died while on active duty.
  
- Any member of the reserve components of the Armed Forces, the Army National Guard or the Air National Guard, whose death occurs under honorable conditions while hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while performing active duty for training, inactive for duty training, or undergoing that hospitalization or treatment at the expense of the United States.
  
- Any member of the Reserve Officers' Training Corps of the Army, Navy, or Air Force whose death occurs under honorable conditions while attending an authorized training camp or on an authorized practice cruise; performing authorized travel to or from that camp or cruise; or hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while attending that camp or on that cruise, performing that travel, or undergoing that hospitalization or treatment at the expense of the United States.
  
- Any citizen of the United States who, during any war in which the United States is or has been engaged, served in the armed forces of any government allied with the United States during that war; whose last such service terminated honorably; and who was a citizen of the United States at the time of entry on such service and at the time of death.
  
- The spouse of any person listed above or any interred veteran's unmarried surviving spouse.
  
- A veteran's minor child (under 21 years of age or under 23 years of age if pursuing a course of instruction at an approved educational institution), or unmarried adult child

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who was physically or mentally disabled and incapable of self-support, in the same grave with the veteran or in an adjoining grave site if that grave was already reserved.

- Such other people or classes of people as may be designated by the Secretary of VA.

**WAIVER DECISIONS BY ADMINISTRATION**

The following tables provide data on waiver decisions made under the various administrations since 1967.

**Table II.1: Number of Waiver Decisions Approved and Denied by Administration**

Administration	Documented waiver requests	Waivers approved	Waivers denied
Clinton 1997-present	18	13	5
Clinton 1993-1997	91	60	31
Bush 1989-1993	53	32	21
Reagan 1985-1989	47	39	8
Reagan 1981-1985	38	24	14
Carter 1977-1981	23	18	5
Nixon/Ford 1973-1977	27	7	20

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<b>Nixon 1969-973</b>	<b>23</b>	<b>1</b>	<b>22</b>
<b>Johnson 1967-1969</b>	<b>20</b>	<b>2</b>	<b>18</b>
<b>Total</b>	<b>340</b>	<b>196</b>	<b>144</b>

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## APPENDIX II

Table II.2: Number of Waiver Decisions by DecisionMaker, by Administration

Administration	Documented waiver requests	Waivers decided by the President		Waivers Decided by the Department of Army	
		Approved	Denied	Approved	Denied
Clinton 1997-present	18	0	0	13	5
Clinton 1993-1997	91	5	0	55	31
Bush 1989-1993	53	0	0	32	21
Reagan 1985-1989	47	9	0	30	8
Reagan 1981-1985	38	13	0	11	14
Carter 1977-1981	23	17	0	1	5
Nixon/Ford 1973-1977	27	7	0	0	20
Nixon 1969-1973	23	1	0	0	22
Johnson 1967-1969	20	2	0	0	18

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Total	340	54	0	142	144
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## APPENDIX II

## APPENDIX II

Table II.3: Comparison of Number of Waiver Decisions for New-Grave and Same-Grave Space by Administration

Administration	Documented waiver requests	Requests for new grave space		Requests for same grave space	
		Approved	Denied	Approved	Denied
Clinton 1997-present	18	2	5	11	0
Clinton 1983-1987	91	20	28	40	3
Bush 1989-1993	53	2	15	30	6
Reagan 1985-1989	47	13	7	26	1
Reagan 1981- 985	38	15	12	9	2
Carter 1977-1981	23	12	4	6	1
Nixon/Ford 1973-1977	27	6	19	1	1
Nixon 1969-1973	23	0	19	1	3

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Johnson 1967-1969	20	2	16	0	2
<b>Total</b>	<b>340</b>	<b>73</b>	<b>125</b>	<b>124</b>	<b>19</b>

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Table II.4: Comparison of Number Waiver Decisions for Individuals With Military Service and Individuals Without by Administration

Administration	Documented waiver requests	Individuals with military service		Individuals without military service	
		Approved	Denied	Approved	Denied
Clinton 1997-present	18	3	4	10	
Clinton 1993-1997	91	21	28	39	
Bush 1989-1993	53	7	14	25	
Reagan 1985-1989	47	15	6	24	
Reagan 1981-1985	38	15	4	9	
Carter 1977-1981	23	16	3	2	
Nixon/Ford 1973-1977	27	5	17	2	
Nixon 1969-973	23	0	13	1	
Johnson 1967-1969	20	1	12	1	

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Total	340	83	101	113	2
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Table II.5 Number of Waiver Decisions For Those With Versus Those Without Military Service By New Grave Versus Same Grave Space During Each Administration

Administration	Number of Documented Waiver Requests	Those with Military Experience Requesting:				Those Without Military Service Requesting:			
		New grave		Same grave		New grave		Same grave	
		App.	Den.	App.	Den.	App.	Den.	App.	Den.
Clinton 1997 -	18	2	4	1	0	0	1	10	0
Clinton 1993 - 1997	91	16	26	5	2	4	2	35	1
Bush 1989 - 1993	53	2	14	5	0	0	1	25	6
Reagan 1985 - 1989	47	8	6	7	0	5	1	19	1
Reagan 1981 - 1985	38	14	4	1	0	1	8	8	2
Carter 1977 - 1981	23	12	3	4	0	0	1	2	1

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Nixon/Ford 1973 - 1977	27	4	17	1	0	2	2	0	1
Nixon 1969 - 1973	23	0	11	0	2	0	8	1	1
Johnson 1967 - 1969	20	1	12	0	0	1	4	0	2
<b>Total</b>	<b>340</b>	<b>59</b>	<b>97</b>	<b>24</b>	<b>4</b>	<b>13</b>	<b>28</b>	<b>100</b>	<b>15</b>

Legend: App. - Approved; Den. - Denied

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**Table II.6 Number of Waiver Decisions in Which the Superintendent Was Overruled During Each Administration**

Administration	Superintendent recommendation overruled:	
	Final Decision to Approve	Final Decision to Deny
Clinton 1997 -	1	0
Clinton 1993 - 1997	11	0
Bush 1989 - 1993	1	0
Reagan 1985 - 1989	0	0
Reagan 1981 - 1985	0	0
Carter 1977 - 1981	2	0
Nixon/Ford 1973 - 1977	1	0
Nixon 1969 -1973	0	0

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<b>Johnson 1967 - 1969</b>	<b>0</b>	<b>0</b>
<b>Total</b>	<b>16</b>	<b>0</b>

STATEMENT OF JOHN C. METZLER, JR.  
SUPERINTENDENT, ARLINGTON NATIONAL CEMETERY  
BEFORE THE HOUSE VETERANS' AFFAIRS SUBCOMMITTEE  
ON OVERSIGHT AND INVESTIGATIONS

JANUARY 28, 1998

THANK YOU, MR. CHAIRMAN, I AM GLAD TO BE HERE TO DISCUSS THE GRANTING OF WAIVERS TO THE ELIGIBILITY REGULATIONS FOR BURIAL AT ARLINGTON NATIONAL CEMETERY.

BEFORE DISCUSSING SPECIFICS, I WOULD LIKE TO PROVIDE SOME GENERAL INFORMATION ABOUT ARLINGTON.

ARLINGTON NATIONAL CEMETERY IS OUR NATION'S MOST PROMINENT NATIONAL CEMETERY AND SERVES AS A SHRINE HONORING THE MEN AND WOMEN WHO SERVED IN THE ARMED FORCES. IT IS A VISIBLE REFLECTION OF AMERICA'S APPRECIATION OF THOSE WHO HAVE MADE THE ULTIMATE SACRIFICE TO MAINTAIN OUR FREEDOM.

SINCE ITS FOUNDING IN 1864, THE CEMETERY HAS FUNCTIONED PRIMARILY AS A MILITARY BURIAL GROUND. OVER THE YEARS, THE SYMBOLIC SIGNIFICANCE OF ARLINGTON NATIONAL CEMETERY HAS CHANGED. THE CEMETERY HAS BECOME RECOGNIZED AS THE NATION'S FOREMOST NATIONAL MEMORIAL TO ITS WAR DEAD AND IS THE FINAL RESTING PLACE OF PRESIDENTS AND OTHER LEADING PUBLIC FIGURES. IT HAS ALSO BECOME THE SITE OF MAJOR MEMORIAL EVENTS AND CEREMONIES, AS WELL AS A SIGNIFICANT ATTRACTION FOR VISITORS TO THE WASHINGTON AREA. APPROXIMATELY FOUR MILLION PEOPLE VISIT ARLINGTON NATIONAL CEMETERY EACH YEAR.

IN ADDITION TO THE THOUSANDS OF FUNERALS HELD THERE EACH YEAR, OVER 2,600 OTHER CEREMONIES ARE CONDUCTED TO HONOR THOSE WHO REST IN THE CEMETERY. MANY OF THESE CEREMONIES INVOLVE GOVERNMENT OFFICIALS, FOREIGN DIGNITARIES AND THE PUBLIC.

THE MOST RECENT STATUTE RECOGNIZING THE ARMY'S JURISDICTION OVER ARLINGTON NATIONAL CEMETERY IS THE NATIONAL CEMETERIES ACT OF 1973 (PUBLIC LAW 93-43), WHICH CREATED THE NATIONAL CEMETERY SYSTEM. THAT ACT EXCLUDED ARLINGTON NATIONAL CEMETERY AND THE U.S. SOLDIERS' AND AIRMEN'S HOME NATIONAL CEMETERY FROM THE NATIONAL CEMETERY SYSTEM, WHICH IS ADMINISTERED BY THE SECRETARY OF VETERANS AFFAIRS, AND PRESERVED THE FUNCTIONS, POWERS, AND DUTIES OF THE SECRETARY OF THE ARMY WITH RESPECT TO ARLINGTON NATIONAL CEMETERY. THE SECRETARY OF THE ARMY HAS PROMULGATED REGULATIONS, SET OUT IN PART 553 OF TITLE 32 OF THE CODE OF FEDERAL REGULATIONS AND ARMY REGULATION 290-5, THAT GOVERN THE OPERATION OF ARLINGTON NATIONAL CEMETERY.

WE ARE CONDUCTING ABOUT 5,000 FUNERAL SERVICES PER YEAR AT ARLINGTON NATIONAL CEMETERY. THIS IS AN AVERAGE OF APPROXIMATELY 20 BURIALS PER DAY. THE RATE OF BURIALS IS ANTICIPATED TO INCREASE STEADILY AS WE APPROACH THE AVERAGE LIFE EXPECTANCIES FOR WORLD WAR II VETERANS.

THE CEMETERY CURRENTLY CONSISTS OF ABOUT 812 ACRES. THE ARMY HAS COMPLETED A STRATEGIC PLAN FOR THE CEMETERY, WHICH IS DESIGNED TO INSURE THAT ARLINGTON WILL REMAIN ACTIVE AS A BURIAL PLACE AND MEMORIAL SITE THROUGH THE TWENTY-FIRST CENTURY. THAT PLAN IDENTIFIES FOURTEEN PARCELS OF LAND THAT ARE OWNED BY THE

FEDERAL GOVERNMENT, ARE LOCATED IN CLOSE PROXIMITY TO THE CEMETERY, AND COULD BE USED FOR FUTURE BURIALS. THIS PLANNING EFFORT WILL EXAMINE WHICH LANDS MIGHT BE AVAILABLE IN THE FUTURE. ONE OF THE STRATEGIES IS TO ACQUIRE CONTIGUOUS LAND THROUGH PURCHASE, DONATION, OR TRANSFER TO KEEP THE CEMETERY OPEN. TOWARD THAT END, FUNDS ARE INCLUDED IN THE PRESIDENT'S BUDGET FOR FISCAL YEAR 1999 TO FISCAL YEAR 2003 TO PREPARE CONCEPT PLANS TO DEVELOP CONTIGUOUS LANDS OWNED BY THE FEDERAL GOVERNMENT AS THEY BECOME EXCESS TO GOVERNMENT NEEDS. WITHIN THE LANDS THAT ARLINGTON NATIONAL CEMETERY CURRENTLY OWNS, WE WILL BE ABLE TO BURY INDIVIDUALS IN NEW GRAVE SPACE THROUGH 2025, AS LONG AS CURRENT ELIGIBILITY CRITERIA REMAIN THE SAME. THESE CRITERIA PERMIT BURIAL OF THE FOLLOWING INDIVIDUALS:

- THOSE WHO HAVE DIED ON ACTIVE DUTY. (EXCEPT THOSE MEMBERS SERVING ON ACTIVE DUTY FOR TRAINING.)

- THOSE RETIRED FROM ACTIVE DUTY OR ACTIVE RESERVE SERVICE WHO QUALIFY FOR RETIRED PAY EITHER UPON RETIREMENT OR AT AGE 60, AND THOSE RETIRED FOR DISABILITY.

- VETERANS HONORABLY DISCHARGED FOR 30% (OR MORE) DISABILITY BEFORE 1 OCTOBER 1949.

- HOLDERS OF THE NATION'S HIGHEST MILITARY DECORATIONS: MEDAL OF HONOR; DISTINGUISHED SERVICE CROSS (AIR FORCE CROSS OR NAVY CROSS); DISTINGUISHED SERVICE MEDAL; SILVER STAR; OR PURPLE HEART.

- PERSONS WHO HAVE HELD ANY OF THE FOLLOWING POSITIONS,

PROVIDED THEIR LAST PERIOD OF ACTIVE DUTY (OTHER THAN FOR TRAINING) AS A MEMBER OF THE ARMED FORCES ENDED HONORABLY.

- AN ELECTIVE OFFICE OF THE UNITED STATES GOVERNMENT.

- OFFICE OF THE CHIEF JUSTICE OF THE UNITED STATES OR AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES.

- AN OFFICE LISTED IN 5 U.S.C § 5312 OR 5 U.S.C § 5313.

- THE CHIEF OF A MISSION WHO WAS AT ANY TIME DURING HIS OR HER TENURE CLASSIFIED IN CLASS I AS SET FORTH IN SECTION 411 OF THE ACT OF AUGUST 13, 1946.

- ANY FORMER PRISONER OF WAR WHO WAS ON ACTIVE DUTY IN THE ARMED FORCES AND WHO SERVED HONORABLY WHILE A PRISONER.

- THE SPOUSE, WIDOW OR WIDOWER, OR UNMARRIED MINOR (UNDER 21) CHILD OF ANY OF THE ABOVE, OR OF ANY PERSON ALREADY BURIED IN ARLINGTON. AN UNMARRIED DEPENDENT STUDENT QUALIFIES UP TO AGE 23.

- AN UNMARRIED ADULT CHILD OF ANY OF THE ABOVE WITH PHYSICAL OR MENTAL DISABILITY ACQUIRED BEFORE AGE 21.

- PROVIDED CERTAIN SPECIAL REQUIREMENTS ARE MET, AN HONORABLY DISCHARGED VETERAN WHO IS THE CLOSE RELATIVE OF AN ELIGIBLE PERSON ALREADY INTERRED. INTERMENT MUST BE IN THE SAME GRAVE AS THE PRIMARY ELIGIBLE.

ADDITIONALLY, ARLINGTON NATIONAL CEMETERY EXTENDS TO ALL THE PERSONS LISTED ABOVE, AS WELL AS TO ANY VETERAN WHOSE LAST PERIOD OF ACTIVE DUTY SERVICE (OTHER THAN FOR TRAINING) ENDED HONORABLY, ELIGIBILITY TO HAVE THEIR CREMATED REMAINS PLACED IN THE COLUMBARIUM AT ARLINGTON.

THESE RESTRICTED BURIAL CRITERIA HAVE BEEN IN PLACE AT ARLINGTON FOR THE LAST 30 YEARS. DURING THIS PERIOD, THE PRESIDENT OF THE UNITED STATES AND THE SECRETARY OF THE ARMY HAVE RECEIVED REQUESTS TO ALLOW FOR THE BURIAL IN ARLINGTON OF PERSONS NOT ELIGIBLE UNDER EXISTING CRITERIA. THESE EXCEPTION REQUESTS HAVE BEEN GRANTED ONLY IN THE MOST DESERVING CASES. MOST EXCEPTIONS FALL INTO TWO CATEGORIES:

- CLOSE RELATIVES (WHO ARE NOT VETERANS) TO BE INTERRED IN THE SAME GRAVESITE WITH AN ELIGIBLE MEMBER, AND

- VETERANS WHO WERE NOT AUTOMATICALLY ELIGIBLE, BUT WHO MERIT BURIAL IN ARLINGTON NATIONAL CEMETERY BASED ON COMPELLING CIRCUMSTANCES.

IN RARE INSTANCES, EXCEPTIONS HAVE BEEN GRANTED FOR PERSONS WHOSE SIGNIFICANT CONTRIBUTIONS TO THE NATION WARRANTED BURIAL IN ARLINGTON.

RECENTLY, QUESTIONS HAVE BEEN RAISED REGARDING THE NUMBER OF EXCEPTIONS GRANTED DURING THE CURRENT ADMINISTRATION. IT IS TRUE THAT THE NUMBER OF EXCEPTIONS GRANTED RECENTLY HAS INCREASED. HOWEVER, THE NUMBER OF REQUESTS FOR EXCEPTIONS HAS

ALSO INCREASED DURING THE SAME TIME PERIOD. THIS FACT IS CONSISTENT WITH ANOTHER TREND THAT I HAVE WITNESSED: THE TOTAL NUMBER OF BURIALS AT ARLINGTON INCREASED FROM ABOUT 4,000 IN 1990 TO OVER 5,000 IN 1996. I BELIEVE THAT THE INCREASE IN BURIALS HAS OCCURRED FOR THE SAME REASONS WE HAVE SEEN AN INCREASE IN THE NUMBER OF REQUESTS FOR EXCEPTIONS: THE AGING OF THE WORLD WAR II VETERANS' POPULATION; INCREASED EXPOSURE FROM THE MEDIA FOR EVENTS SUCH AS THE OPENING OF THE WOMEN IN MILITARY SERVICE FOR AMERICA MEMORIAL AND SPECIAL, HIGH-PROFILE FUNERALS SUCH AS THE ONE FOR SECRETARY RON BROWN; AND MORE REQUESTS FROM UNMARRIED ADULTS WISHING TO BURIED WITH THEIR PARENTS. THE NUMBER OF EXCEPTIONS GRANTED AND THE NUMBER OF EXCEPTION REQUESTS RECEIVED HAVE INCREASED AT APPROXIMATELY THE SAME RATE.

TO PUT THE INCREASE OF EXCEPTIONS IN PERSPECTIVE, I WOULD LIKE TO COMPARE THE NUMBER OF EXCEPTIONS GRANTED TO THE TOTAL NUMBER OF BURIALS. SINCE I HAVE BEEN THE SUPERINTENDENT OF THE CEMETERY, WE HAVE INTERRED 22, 413 PEOPLE. DURING THE SAME TIME PERIOD (1991-1996), 81 INDIVIDUALS HAVE BEEN BURIED PURSUANT TO AN EXCEPTION TO BURIAL POLICY, 62 OF WHICH WERE BURIED IN THE GRAVE OF A FAMILY MEMBER. THUS, IN THE PAST 7 YEARS, EXCEPTIONS HAVE CONSTITUTED 0.36 PERCENT OF ALL BURIALS AND ONLY 21 INDIVIDUALS WHO WERE GRANTED EXCEPTIONS HAVE REQUIRED THE USE OF A NEW GRAVE SPACE.

LET ME TAKE THIS OPPORTUNITY TO EXPLAIN HOW THE EXCEPTION PROCESS WORKS. EXCEPTIONS ARE GENERALLY REQUESTED BY THE NEXT OF KIN THROUGH MY OFFICE. HOWEVER, A NUMBER OF THESE EXCEPTION REQUESTS HAVE GONE DIRECTLY TO OTHER GOVERNMENT OFFICIALS. UNDER CURRENT PRACTICE, REQUESTS ARE GENERALLY CHanneled BACK

TO MY OFFICE FOR REVIEW AND A RECOMMENDATION. THE ARMY'S INTERNAL STEPS TO PROCESS REQUESTS FOR EXCEPTIONS ARE AS FOLLOWS:

- MY STAFF AND I GATHER THE NECESSARY DOCUMENTS AND OTHER PERTINENT INFORMATION, REVIEW THE FACTS, CONSIDER THE ELIGIBILITY CRITERIA AND PRIOR EXCEPTIONS THAT HAVE BEEN GRANTED, AND FORWARD A RECOMMENDATION TO THE OFFICE OF THE ASSISTANT SECRETARY OF ARMY (MANPOWER AND RESERVE AFFAIRS) (ASA(M&RA)). AS INDICATED, MOST OF THE REQUESTS FALL WITHIN PREVIOUSLY RECOGNIZED CATEGORIES OF EXCEPTIONS AND CAN BE EVALUATED BASED ON PAST PRACTICE. IN A FEW CASES, I AM REQUIRED TO LOOK AT A NOVEL SET OF CIRCUMSTANCES AND EXERCISE INDEPENDENT JUDGMENT IN FORMULATING MY RECOMMENDATION AS TO WHETHER AN EXCEPTION SHOULD BE GRANTED. IN THESE DIFFICULT CASES, I EXERCISE MY BEST JUDGMENT TO DETERMINE WHAT I BELIEVE MAY BE APPROPRIATE BASED ON THE CONTRIBUTION THE DECEASED HAS MADE TO THE NATION. THE FACTS OF THESE SPECIAL CASES ARE UNIQUE, AND NOT SUSCEPTIBLE TO PRE-DETERMINED FORMULATIONS. IN SUCH CASES, THE DECISION AS TO WHETHER THE EXCEPTION SHOULD BE GRANTED OR DENIED IS ULTIMATELY A MATTER FOR THE SECRETARY OF THE ARMY TO DECIDE .

- ASA(M&RA) REVIEWS MY RECOMMENDATION PACKET AND PROCESSES IT THROUGH THE OFFICE OF THE ARMY GENERAL COUNSEL, THE ADMINISTRATIVE ASSISTANT TO THE SECRETARY OF THE ARMY, AND THE OFFICE OF THE CHIEF OF LEGISLATIVE LIAISON (IF THERE IS CONGRESSIONAL INTEREST). THE ASA(M&RA) CONSIDERS THE INPUT FROM THE ABOVE OFFICES AND FORWARDS A RECOMMENDATION WITH THE SUPPORTING DOCUMENTATION TO THE SECRETARY OF THE ARMY FOR DECISION.

THIS PROCESS ENSURES THAT EACH REQUEST RECEIVES A THOROUGH REVIEW BEFORE ANY DECISION IS MADE. BECAUSE THIS IS A TIME OF GRIEF FOR THE FAMILIES INVOLVED, OUR GOAL IS TO ANSWER EACH REQUEST FOR EXCEPTION WITHIN 24 HOURS. I WOULD LIKE TO ADD THAT WE TAKE VERY SERIOUSLY OUR RESPONSIBILITY TO UPHOLD THE SANCTITY OF ARLINGTON NATIONAL CEMETERY. EACH FUNERAL WE CONDUCT AT ARLINGTON IS A SIGNIFICANT AND SPECIAL EVENT FOR THE FAMILIES AS WE PAY A FINAL TRIBUTE TO MEN AND WOMEN WHO HAVE SERVED OUR COUNTRY WITH DISTINCTION.

I APPRECIATE VERY MUCH THE OPPORTUNITY TO BE HERE, MR. CHAIRMAN, AND WOULD BE PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE.

**STATEMENT BY .  
RAYMOND J. COSTANZO  
FORMER SUPERINTENDENT  
ARLINGTON NATIONAL CEMETERY**

**BEFORE THE  
VETERANS' AFFAIRS  
SUBCOMMITTEE ON  
OVERSIGHT AND  
INVESTIGATIONS  
HOUSE OF REPRESENTATIVES  
SECOND SESSION, 105TH CONGRESS  
28 JANUARY 1998**

**NOT FOR PUBLICATION  
UNTIL RELEASED BY THE  
VETERANS' AFFAIRS  
SUBCOMMITTEE**

Mr. Chairman, Distinguished Members of this Subcommittee, I am Raymond J. Costanzo, and I am appearing at the request of the Chairman.

I served as Superintendent of Arlington National Cemetery from May of 1975 through December of 1990; and for three years prior that, I served as the Deputy Superintendent, a total of approximately 19 years.

A short time prior to my assignment at Arlington National Cemetery, Public Law 93-43 was implemented. This law provided for the transfer of all Army national cemeteries except Arlington and Soldiers' and Airmen's Home National Cemeteries to the then Veterans Administration.

This law also provided that the Secretary of the Army, and the then Administrator of the Veterans Administration, conduct a joint study to determine whether or not Arlington should also be transferred to the Veterans Administration, and whether or not the restrictive interment eligibility at Arlington should be continued. I believe that this joint study was completed sometime during calendar year 1974. The completed study recommended that Arlington remain under the Secretary of the Army, and further that the Secretary review the interment eligibility requirements with a view toward possibly relaxing some of the eligibility requirements.

Some the relaxation of the restrictions were implemented in 1977 and provided that eligibility for burial be approved for:

- Recipients of the Distinguished Service Cross, Navy Cross, Air Force Cross, Silver Star, and Purple Heart.
- Honorably discharged veterans separated before 1 October 1949 with a service-connected disability at 30% or more.
- Honorably discharged veterans may be interred in the same gravesite in which a close relative is already buried.

During calendar year 1980, the first Columbarium was completed at Arlington, and provides for the inurnment of all honorably discharged veterans and their dependents.

During my term as Superintendent, 55,501 interments and/or inurnments were accomplished. Of this total, 95 interments were approved for individuals who did not meet the restrictive eligibility requirement. A breakout of these 95 cases are:

- Six people with no military service.
- Five people who were veterans and who were killed as a result of terrorist action.
- Thirty-three people who were veterans and who were considered to have performed unique service to this country or to the Federal Government.
- Fifty-one people who were interred in the same gravesite with a close relative.

A breakout of the 6 people who did not have any military service are:

- US Ambassador to Pakistan who was killed in an airplane crash together with the President of Pakistan.

- An agent of the CIA who was assassinated by Greek terrorists in Athens, Greece.
- A Foreign Service Officer killed by terrorists in Lebanon.
- A Political Officer in the Beirut Embassy killed by terrorists.
- A CIA official killed in the bombing of PanAm Flight 103 over Lockerbee, Scotland.
- An official of the Office of Strategic Service during World War II who provided critical liaison with British Intelligence.

Mr. Chairman, this concludes my formal comments. If you have any questions, I would be pleased to respond to them at this time.

DEPARTMENT OF TRANSPORTATION  
 U.S. COAST GUARD  
 STATEMENT OF  
 CAPTAIN MICHAEL M. ROSECRANS, USCG  
 BEFORE THE  
 SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS  
 COMMITTEE ON VETERANS AFFAIRS  
 U.S. HOUSE OF REPRESENTATIVES

I am Captain Michael M. Rosecrans, Director of the U.S. Coast Guard's National Maritime Center (NMC). As such, I am responsible for the licensing and documentation of all U.S. merchant mariners as well as maintaining records of such licenses and documents issued. The Coast Guard has been the custodian of records concerning shipment of merchant mariners since 1937. Maintenance of those records is also my responsibility. I am accompanied today by Mr. Donald J. Kertin, Deputy Director of the NMC, who was directly involved in the records search for Mr. Maurice Larry Lawrence in November of 1997.

The Coast Guard has no role in granting waivers for burial at Arlington National Cemetery. However, we do have a role in determining the status of merchant mariners as qualifying veterans.

The GI Improvement Act of 1977 (P.L. 95-202) provided authority for the Secretary of Defense to recognize the service of certain groups as active duty service for the purpose of laws administered by the Veterans Administration. The Civilian/Military Service Review Board (C/MSRB) performs that function. In 1988, the C/MSRB recognized the service of merchant mariners who were in oceangoing service from December 7, 1941 to August 15, 1945. The task of issuing the appropriate veteran status documents fell to the U.S. Coast Guard. A tremendous effort was mounted to respond to requests from potential veterans. There were, for quite some time, as many as 50 people working in 3 shifts/24 hours a day to process these requests. To date, the service of over 79,000 merchant mariners has been recognized for this purpose and over 16,000 have been determined to be ineligible.

Records which are routinely used to verify merchant marine service consist of:

1. Shipping Articles – Each voyage must be documented by Shipping Articles which specify the composition of the crew and position served. Shipping Articles are the ship operator's responsibility to prepare. The NMC is the custodian of these records, although most are actually stored at the Federal Records Center, Suitland, MD.
2. Certificates of Discharge (CD) or continuous discharge books – Time served on a merchant vessel is documented by a Certificate of Discharge or entry into a

continuous discharge book which states the time each mariner served aboard. The mariner received a copy when leaving the vessel. If there are Certificates of Discharge for a mariner in the Coast Guard's custody, there is a file which contains copies of the CD's furnished by the operating company and identified by mariner name. All mariners' names have been entered into the Coast Guard's computer data base for Certificates of Discharge received after 1981. Additionally, mariners who have been identified by other means have also been entered into the data base.

3. Vessel Official Logs -- Ship operating companies routinely forward the ship's Official Log to the Coast Guard for permanent storage. Official Logs contain the names of all crew members. The logs are housed in various Federal Records Centers nationwide. With information concerning a certain vessel and voyage date, the Official Log can be retrieved and the crew verified.
4. A number of other records could contain information needed to determine eligibility or lead to information which could help determine eligibility. These records include those maintained by:
  - Army Transport Command.
  - Naval Transport Command.
  - Various medical record repositories, awards, training records of maritime academies or the U.S. Maritime Service.
  - Letters or forms from shipping companies.

We are confident our records have been properly and prudently maintained. There have been instances when Certificates of Discharge were submitted by a mariner which could not be verified by other means. In these instances, the benefit of doubt is given to the mariner and veteran status is granted. Of the over 79,000 merchant mariners who have been determined to be eligible for veteran status, it is estimated that less than 1% of those were due to records not in Coast Guard possession. Not all merchant mariners are listed in the Coast Guard data base, as previously explained, and it is common practice to also check for other records maintained by the mariner's name and inquire about specific vessels and dates in an attempt to further verify service.

The procedure used to verify service for merchant mariners has been unchanged since the early 1980's. These procedures were in effect in 1993 when the service of Mr. Maurice Larry Lawrence was initially checked.

In 1997, the Coast Guard was queried in conjunction with questions concerning Ambassador Lawrence's interment in Arlington National Cemetery based upon a waiver granted on his behalf as a result of veteran status with the Merchant Marine during World War II. We were also informed that Ambassador Lawrence was purportedly on board the S.S. HORACE BUSHNELL, a vessel which was torpedoed in 1945. We were asked to investigate the eligibility of Ambassador Lawrence for veteran status as a merchant mariner.

Our investigation revealed that our database did not contain any record for Mr. Lawrence. A search of our paper files containing Certificates of Discharge and the Shipping Articles for the S.S. HORACE BUSHNELL, likewise did not contain any record of Mr. Lawrence when it sailed from Philadelphia, PA. There was no indication that he was aboard the vessel when it sank on March 20, 1945.

Thank you for the opportunity to appear before you today to discuss the Coast Guard's role in determining the status of merchant mariners as qualifying veterans. I would be pleased to answer any questions you may have.

**Written Testimony of Norma C. Nicolls**

January 23, 1998

I received a phone call from a columnist, Arianna Huffington, on November 22, 1998. She asked me if I would speak to her about Larry Lawrence and his military background. I told her I was only willing to go on the record with my opinion and attached is a copy of what I faxed to her. She asked me if I would be willing to speak to someone from the Veteran's Affairs Committee and promised not to print anything that I did not want printed. I told her that I would agree to do so.

On the 25<sup>th</sup> of November, I received a phone call from Kingston Smith. He is with the VETERAN'S AFFAIRS SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATION. He asked me what I knew about Mr. Lawrence's military background. I had no reason to be anything but truthful to him. I told him that one day in the mid-1980's (I'm not absolutely certain about the exact date), Mr. Lawrence came into my office and said, "I would like you to do something quietly for me and don't look at me as if I'm crazy. I need you to do some research and find out the names of all the Merchant Marine ships in the Pacific during World War II."

I did the research and gave it to him. The names that come to mind are the Bushnell and the Battle of Murmansk. He started receiving newsletters from Maritime Associations and invitations to different events. He never attended any of them. However, he sent small contributions, \$25 to \$100. I mentioned to his secretary that it looked as though the boss was trying to establish some kind of a relationship with the Merchant Marines. I also mentioned that I thought it was odd that he couldn't remember the name of the ship that he was supposed to be on during the War and, also, how could he be in school and in the Pacific at the same time? I wouldn't find out the answer to this puzzle until many years later.

When Mr. Lawrence was under consideration for an Ambassadorial position, I received a phone call from a friend who was just interviewed by an investigator. He said he gave him my name because since I had spent so many years working with him, I probably knew more about Larry Lawrence than any other living person. The investigator called me and we set an appointment to meet in my friend's office the next day. This took place some time in August, 1993.

I immediately called Larry Lawrence's attorney to get permission to speak to the investigator. This was done because I had signed an agreement that I would not disclose any information unless I had their permission. The attorney at the Hotel del Coronado gave me permission and told me to say nice things so he would get the appointment and be out of the country for a few years. It was a known fact that the employees breathed a sigh of relief whenever he went out of town.

Written Testimony of Norma C. Nicolls

Page 2

I met with the investigator in my friend's office and the meeting lasted a total of 45 minutes. I found this strange, since he was doing background information for someone who was going to represent the United States of America in a foreign country. I told him to check out Mr. Lawrence's Curriculum Vitae and note the discrepancies in the dates he was supposed to be in school and also in the War. I cannot honestly say that I mentioned doing research on ships in the Pacific. I do remember jokingly saying that if he was selected to be an Ambassador, I hoped it was for a neutral country. Otherwise, he would have us at war in no time. I also added that Mr. Lawrence was an astute businessman, but he certainly was not a diplomat. I remarked to my friend when the investigator left that I didn't think he took me seriously.

I was also interviewed by another investigator regarding Shelia Davis Lawrence. She spent almost four hours with me, and I couldn't figure out why since Shelia was being considered for a lesser position.

A few days prior to Mr. Lawrence's funeral in January, 1996, at the Hotel del Coronado, I received a phone call from one of his associates who asked me if I knew where to locate anything at all on the Merchant Marines. He told me that Shelia wanted him buried at Arlington. I told him I had no idea, and when I got off the phone, I was sick to my stomach.

I would like to say to anyone who thinks that I have an ax to grind that if I did, I would have done it three years ago for profit. I am sitting here, not represented by a public relations firm nor an attorney. I might add that my life has been turned upside down for the past two months. I even got a letter from the IRS last week saying I owe them \$300 for the year 1995.

Larry Lawrence was my boss for almost 15 years. He played a big part in my life and in my family's life. He was very good to us. We had an excellent working relationship as anyone could tell you. We survived many ups and downs, but none of this justifies lying. I was not the first, and certainly not the last, of a very long list of staff, at the Hotel del Coronado, his home in Coronado, and the Embassy in Switzerland, who came under the wrath of his fourth and last wife. Truth and decency should always prevail. It's a shame that the abuse of money and power usually does.

Statement by Eric J. Boswell, Assistant Secretary, Bureau of  
Diplomatic Security, U.S. Department of State

Mr. Chairman and Members of the Committee:

I am pleased to have the opportunity to participate in this hearing on the granting of waivers to the eligibility regulations for burial at Arlington National Cemetery. As the Assistant Secretary of State for Diplomatic Security, I am here to address matters surrounding the waiver granted for Mr. Maurice Larry Lawrence, who was U.S. Ambassador to Switzerland when he died on January 9, 1996.

From the eternal flame at the grave of a U.S. President to the Tomb of the Unknowns to the thousands of simple, but eloquent, white headstones that dot its landscape, Arlington National Cemetery is the home of heroes and truly hallowed ground. It is a very important symbol to the Nation and to our friends and allies throughout the world. On behalf of the Department of State, I want to pledge to you our strong support for developing and maintaining policies and practices that reflect and perpetuate that important symbol.

Let me take a moment to briefly outline the functions of the Bureau of Diplomatic Security and put into perspective its role in this matter. Our primary mission is one of providing security to allow safe conduct for foreign affairs. This effort is carried out through programs

focusing on the protection of U.S. government personnel, diplomatic facilities and national security information.

In addition, we provide protection for the Secretary of State and other senior government officials, for resident and visiting foreign dignitaries, and for foreign missions in the United States. We also have statutory responsibility for investigating passport and visa fraud.

The Bureau's dynamic mission is carried out by a worldwide cadre of dedicated special agents, security engineers, couriers, security specialists and other professionals, including contract personnel, assigned to 135 posts overseas, field and resident offices in 18 cities throughout the United States, and headquarters here in Washington.

In fulfillment of its mandate to protect national security information, each year we conduct thousands of personnel security investigations of employees, applicants, contractors, and others seeking access to Department of State information or facilities. Most positions in the Department are designated as sensitive, requiring a full field background security investigation and, every five years, an update investigation. These investigations are carried out in full accord with U.S. Government-wide standards.

The investigations include checks of available sources of relevant information, such as education, employment, criminal, legal, military, medical, financial, professional and residential records. Interviews are conducted of the candidate, individuals named by the candidate as references, and other so-called "developed sources," who may have personal or professional knowledge about the candidate. The investigators' reports are used by DS to determine whether an individual is eligible for a security clearance and then are evaluated by the Bureau of Personnel to determine whether the employment of an applicant -- or the retention of an employee -- is warranted.

As with most other Department positions, background investigations on candidates for an ambassadorship, whether the individual is Foreign Service, Civil Service, or a political appointee, are the responsibility of the Diplomatic Security Service. Thus, we conducted the background investigation on Mr. Lawrence when he was under consideration for an ambassadorship in 1993. Mr. Lawrence was confirmed by the Senate as Ambassador to Switzerland in February, 1995. He died in office on January 9, 1996.

In December, 1997, we also were tasked with conducting two inquiries relating to Mr. Lawrence's claim to service in the Merchant Marine. The focus of those investigations was to verify that claim of service and to determine the basis for the Department's waiver request. Copies of the Investigation Reports have been provided to the Committee.

During the initial background investigation in 1993, Mr. Lawrence advised that he served on several ships as a volunteer merchant mariner. He said that the last ship he was on, the *S.S. Horace Bushnell*, was sunk, and that he sustained head injuries and was sent home to his parents to recover. During his interview, he advised that as a volunteer one was not deemed to be enlisted in the Merchant Marine.

At that time, the Department checked with the Military Records Center in St. Louis, which referred investigators to the U.S. Coast Guard here in Washington. The Department was advised that no record of Mr. Lawrence's claimed Merchant Marine service existed, and that it was unlikely that any record would exist with the Coast Guard for volunteer civilian service such as claimed by Mr. Lawrence. Consequently, no further attempt was made to verify his claimed service as a volunteer seaman some 50 years ago. Moreover, investigative requirements only called for verification of active duty service, reserve service, or service with the National Guard.

As part of the government-wide standards for a background check, the most recent education or the highest degree attained is verified. In Mr. Lawrence's case, investigators went back as far as his attendance at the University of Arizona, the most recent institution he attended. This transcript does reflect that he attended Wilbur Wright Junior College in 1944 and 1945. At the time, the Department did not connect Mr. Lawrence's attendance at

this junior college with his claimed volunteer affiliation as a merchant mariner.

In addition to education record checks, investigators also looked into legal proceedings involving Mr. Lawrence and confirmed his previous business and professional activities through a variety of sources who could speak directly to his character, based on their personal experience. More than 50 friends and business associates who knew Mr. Lawrence over his lifetime were interviewed and none raised any question about his Merchant Marine service. A recent newspaper article quoted one of those interviewed as saying that she clearly informed the State Department of her doubts as to Mr. Lawrence's Merchant Marine service. However, the August 4, 1993 investigative report covering that interview contains no information to support that allegation.

In the August 13, 1993 security summary, which was forwarded to the Office of White House Counsel, Mr. Lawrence's claimed service as a merchant mariner was not confirmed or alluded to. This claimed voluntary affiliation was deemed less important when weighted against his full adult life history.

The background investigation of Mr. Lawrence was performed in accordance with interagency standards for Presidential appointee investigations and Executive Order 10450. The Department is constantly looking for ways to

improve its investigative product, and will continue to do so in the future.

As I mentioned, the focus of the most recent investigations has been to verify Mr. Lawrence's claim of Merchant Marine service and to determine the basis for the Department's request for a waiver to Department of Army regulations to permit Mr. Lawrence to be buried at Arlington National Cemetery. Those efforts revealed that Mr. Lawrence was, in fact, in school during the claimed period of service, according to junior college transcripts. We concluded that he had not served in the Merchant Marine as he had alleged.

The investigation into the burial waiver indicated that the request to to permit Mr. Lawrence to be buried in Arlington National Cemetery was based primarily on Mr. Lawrence's claimed wartime service. The State Department's Bureau of Administration, headed by Assistant Secretary of State Patrick Kennedy, has the responsibility to consult with family members and assist with making necessary arrangements upon the death overseas of any State Department official. Assistant Secretary Kennedy, conveying the burial request of Mrs. Lawrence in a letter to Secretary of the Army West, relied on information in a memorandum from then-Assistant Secretary for European and Canadian Affairs Richard Holbrooke providing an account of Mr. Lawrence's claimed service. The letter noted that such service in the U.S. Merchant Marine during wartime arguably could have made Mr. Lawrence eligible for burial in Arlington National Cemetery without need for a waiver.

The memorandum outlining Mr. Lawrence's claimed service, which was sent to the Army along with Mr. Kennedy's letter, was based on statements made to Mr. Holbrooke by Mr. Lawrence, with whom he was personally acquainted, and on a framed newspaper article that was hanging on Mr. Lawrence's office wall at Embassy Bern during his tenure as Ambassador there. That article, from the San Diego Union-Tribune, described Mr. Lawrence's decoration in January 1993 by the Russian Government for his claimed service in the Merchant Marine in World War II.

I would note that none of the State Department officials who relied on accounts of Mr. Lawrence's service indicated any knowledge of information that might reasonably lead them to doubt the claim.

Mr. Chairman, that concludes my statement. Let me again emphasize the Department's strong support of policies and practices that appropriately reflect and perpetuate Arlington National Cemetery's deep and unique meaning to our nation and the world, and to thank you for the opportunity to testify today. I will be pleased to try to answer any questions you or your colleagues may have.

STATEMENT OF THE HONORABLE TOGO D. WEST, JR.  
SECRETARY OF THE ARMY  
ACTING SECRETARY OF VETERANS AFFAIRS  
BEFORE THE HOUSE VETERANS' AFFAIRS SUBCOMMITTEE  
ON OVERSIGHT AND INVESTIGATIONS

JANUARY 28, 1968

Thank you, Mr. Chairman and Members of the Committee for the opportunity to be here today to discuss the process by which the Secretary of the Army authorizes burial at Arlington National Cemetery.

As you know, in an effort to prolong the active life of this national cemetery, the eligibility criteria for burial at Arlington, in effect since 1967, are highly restrictive. In an attempt to temper those strict rules with human compassion, Presidents and Secretaries of the Army have, on rare occasion, exercised their authority to waive the governing regulation and authorize other deserving individuals to be interred at Arlington. This authority has been exercised sparingly and judiciously over 30 years. For example, of the approximately 25,000 funerals at Arlington in the past 5 years, only 69 of them occurred pursuant to a waiver.

The Army followed a set procedure for processing requests for waivers during my tenure as Secretary of the Army. All action on requests is initiated with the Superintendent of the Cemetery. The occasional request that was addressed to a different office within the Army was returned to the cemetery for action. The Superintendent serves as the fact-finder, working directly with the family to gather the necessary information regarding military service, awards, plot locations of previously buried family members, and a justification for granting an exception. Once the Superintendent has obtained the relevant facts, the Army's goal is to respond within 24 hours.

The Superintendent prepared a recommendation for approval or denial and submitted it with the package to the responsible Assistant Secretary. The Assistant Secretary independently reviewed the package and made a recommendation after

obtaining a legal review from the Office of the Army General Counsel and other coordination. The request then arrived in my office for decision. The regularity of this process led to only nine occasions, in which I, exercising my independent judgment as the decision-maker, authorized a burial for which the Superintendent had recommended disapproval up through the system.

I approved a total of 59 requests for burial while serving as the Secretary of the Army from November 1993 through December 1997. Forty-three of these requests fell into the largest group of exceptions – family members interred in the same grave as eligible, immediate family members. This group includes primarily unmarried, adult children with no dependents interred with their parents and remarried widows interred with their first husbands. The vast majority of requests of this type are approved out of compassion for the deceased and the requesting family members. Consequently, I only denied two family member requests.

One was a married son with two dependent children requesting burial with his parents. The request was denied because the wife and children would have become automatically eligible pursuant to the regulation and insufficient space remained to accommodate all of the family members in the grave. The second was a request for a nephew to be buried with his uncle. Not only are family member burials usually limited to immediate family, but the uncle had no surviving family members to approve of the burial and the nephew had already been cremated and was eligible for inurnment in the cemetery's Columbarium in his own right.

The second group of exceptions consists of burials that will displace eligible veterans. After careful consideration of each individual circumstance, I disapproved 28 such requests. The vast majority in this group that are approved are veterans who were not automatically eligible for burial, but whose compelling circumstances merited burial at Arlington. I authorized burial of thirteen such veterans. The remaining fraction of approvals are for public servants whose significant national contributions warranted burial at Arlington. I authorized three such burials, namely: a Department of State

official killed on a diplomatic mission to Bosnia; a war correspondent who played a critical role in resolving the Cuban Missile Crisis and later served as a U.N. Ambassador; and an ambassador who died at his post.

Unlike those granted exceptions to be buried in the same grave, the facts that constitute compelling circumstances or significant national contributions are much more varied. In authorizing burials in this latter group of exceptions, I relied on four categories presented to me when I originally took office: ambassadors, assassinated embassy or foreign service personnel, persons who have made a unique national contribution; and humanitarian reasons.

This record, and the records of my predecessors, indicate that the responsibility for Arlington is taken seriously. The consistent application over 30 years of a standard based either on immediate family relation to, and burial with, a person eligible for burial or on an evaluation of the person's contributions to the Nation validates the process. The Secretary of the Army is appropriately situated to strike the necessary balance between compassionate discretion and responsibility for safeguarding Arlington, and accountability to service members, veterans, the public, and Congress.

Since the conclusion of the Civil War, the Nation has maintained Arlington National Cemetery as a final resting place for heroes. Every Secretary of War and Secretary of the Army has assumed responsibility for stewardship of this hallowed place with great seriousness. These hearings underscore this Subcommittee's appropriate concern that rules concerning eligibility and process for burial at Arlington continue to reflect the sacred nature of that place. I am pleased to join with you in that spirit today. Our Nation, service members, and veterans deserve no less.

UNITED STATES HOUSE OF REPRESENTATIVES  
BEFORE THE COMMITTEE ON VETERANS' AFFAIRS  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

**DECLARATION**

My name is ROBERT L. ALBERTSON. I reside at 143 West Hill Road, Spencer, New York 14883. Currently I am self employed and I am in the business of making tooled leather products for sale. I am a Marine Corps veteran, having served from 1975 to 1979, and I was honorably discharged. I was employed from 1991 to 1997 with the U.S. Coast Guard as an Application Examiner and later as a Commercial Vessel Casualty Analyst at the Coast Guard's offices at Buzzards Point, Washington, DC. One of my routine duties was to conduct reviews of records maintained by the Coast Guard to determine whether individuals had served in the U.S. Merchant Marine during World War II. The purpose of some of these reviews was to verify Merchant Marine service for background investigations and for issuance of DD-214 discharge papers to former World War II Merchant Mariners who are eligible for veteran status. I estimate that I handled perhaps 50 such inquiries.

I do not recall a specific inquiry about an individual named M. LARRY LAWRENCE. I do not recall any specific inquiry made by a background investigator from the State Department's Diplomatic Security Service in August 1993, but one could have occurred. I have carefully reviewed Attachments A, B and C, which were furnished to me by the staff of the House Veterans' Affairs Subcommittee on Oversight and Investigations.

Regarding the top paragraph on page 2 of the State Department's letter of January 12, 1998 (Attachment A), I do not believe a person in the position I held at the Coast Guard would have responded to an inquiry about "volunteer civilian service" in the way the letter states. I deny that I would have responded the way the letter states, because I have no knowledge of "volunteer civilian service" in the Merchant Marine and had never heard of it until I was asked about it by the Subcommittee staff on January 15, 1998.

I also deny that, with the exception of the statement about not being able to locate any record, I would have made the statements attributed to me in the "Military"

summary (Attachment B) which I understand was prepared by the State Department. I deny that I made such statements because, to the best of my knowledge, there is no such thing as being "formally enlisted" in the Merchant Marine. Individuals enlist in military service, such as the Marine Corps, not in the Merchant Marine. As far as I know, that was true during World War II, as well as now. The Merchant Marine is an employment situation. Having served in the Marine Corps, I am sensitive about the use of the term "enlisted in the Merchant Marine" and I would often correct other people if they used it. I do not and have not used the term "a Merchant Marine". While I respect individuals who have served in the Merchant Marine, they are not Marines, they are Mariners. To me, there is a big difference, and I would often correct other people about this.

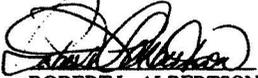
I do not know what the sentence means that states, "During World War II, the majority of individuals serving as seamen on Merchant Marine ships were not enlisted in the Merchant Marines." I have never been aware of a difference between what I think of as regular Merchant Marine service and some other type of service. I could not have made such a statement. The sentence that states, "Records for those individuals who served during World War II on Merchant Marine ships were considered indiscernible at that time in that they were not in the military service or in the Merchant Marine per se", makes no sense to me. I would not use a word like "indiscernible" and the sentence appears to me to be trying to make a distinction I do not know about.

Also, I would not have made the statement in the "Background" (Attachment C) accompanying the State Department's letter of January 12, 1998, attributed to "the Coast Guard source" that "unless SUBJECT had formally enlisted, there would probably be no record, and that the majority of individuals serving as seamen on Merchant Marine ships during World War II were not enlisted in the Merchant Marine." I could not have made the statement because of my understanding that there was no enlistment in the Merchant Marine and because of my belief that there were not different kinds of Merchant Marine service during World War II or since then.

My opinion of the quality of the Coast Guard's records on World War II Merchant Marine service was and is that, while they were somewhat difficult to retrieve in 1993, they were quite good in completeness and reliability. Though the records

were not perfect, I definitely would not have suggested that they were poor or incomplete.

I hereby certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

  
ROBERT L. ALBERTSON  
Signature

Date: Jan 23, 1998

## **Attachment A**



United States Department of State

Washington, D.C. 20520

JAN 12 1998

Dear Mr. Chairman:

Thank you for your letter of December 4 to Secretary Albright about the inquiry into Mr. M. Larry Lawrence's claim to service in the Merchant Marine and your December 5 letter requesting information provided to the Committee on Foreign Relations of the U.S. Senate regarding Mr. Lawrence's nomination to be Ambassador to Switzerland.

The Department's Bureau of Diplomatic Security (DS) has completed its investigations of the alleged Merchant Marine service and the circumstances surrounding the Department's request for a waiver to Department of the Army regulations to permit Mr. Lawrence to be buried at Arlington National Cemetery. These Reports of Investigation, which include the documentation requested in your December 4 letter, are provided as part of this response along with the explanatory information that follows.

The purpose of a DS background investigation, whether it be for Foreign Service, Civil Service or a political appointment, is to establish objectively a candidate's eligibility for a security clearance. This is accomplished by reviewing existing records, and conducting a personal interview of the candidate and individual interviews with numerous sources who have direct knowledge of and experience with the candidate, in each major area of his or her life.

In the initial probe in 1993, Mr. Lawrence advised investigators that he served on several ships as a volunteer Merchant Marine. He told them that the last ship he was on, the Horace Bushnell, was sunk, and that he sustained head injuries and was sent home to his parents to recover. During this interview, he advised that as a volunteer one was not deemed to be enlisted in the Merchant Marines.

The Honorable  
 Terry Everett, Chairman,  
 Subcommittee on Oversight and Investigations,  
 Committee on Veterans' Affairs,  
 House of Representatives.

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At that time, the Department checked with the Military Records Center in St. Louis, which referred investigators to the Coast Guard (Department of Transportation) here in Washington. The Department was advised that no records would exist for any volunteer civilian service of brief duration (such as claimed by Mr. Lawrence) in 1944-45. Consequently, no further attempt was made to verify his claimed service as a volunteer seaman some 50 years ago.

As part of any background check, the most recent education or the highest degree attained is verified. In Mr. Lawrence's case, investigators went back as far as his attendance at the University of Arizona, the most recent institution he attended. This transcript does reflect that he attended Wilbur Wright Junior College in 1944 and 1945. However, the focus of any educational check is simply to confirm education attained. At the time, the Department did not connect Mr. Lawrence's attendance at this junior college with his claimed volunteer affiliation as a Merchant Marine.

In addition to education record checks, investigators also looked into Mr. Lawrence's legal affairs and confirmed his previous business and professional activities through a variety of sources who could speak directly to his character, based on their personal experience. More than 50 friends and business associates who knew Mr. Lawrence over his lifetime were interviewed and none raised any questions about his Merchant Marine service.

In the security summary, Mr. Lawrence's claimed service as a Merchant Marine was not confirmed or alluded to. This claimed voluntary affiliation was deemed less important when weighed against his full adult life history.

The Department's background investigation of Mr. Lawrence was performed in accordance with longstanding standards for Presidential appointee investigations. The Department is constantly looking for ways to improve its investigative product, and will continue to do so in the future.

The focus of the most recent investigations has been to verify Ambassador Lawrence's claim that he had served as a Merchant Marine during World War II and to determine the basis for the Department's waiver request.

The recent investigation of Mr. Lawrence's claims to have served in the U.S. Merchant Marine revealed that Mr. Lawrence

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was, in fact, in school during the claimed period of service, according to college transcripts. (See the complete Report of Investigation at Tab 1.)

The investigation of the burial waiver indicated that the Department's request to the Secretary of the Army for permission for Mr. Lawrence to be buried at Arlington National Cemetery, conveyed in a letter from Assistant Secretary for Administration Patrick Kennedy, was based on a memorandum from then-Assistant Secretary of State for European and Canadian Affairs Richard Holbrooke, which provided an account of Mr. Lawrence's claimed wartime service. It was evidently based on Mr. Holbrooke's personal knowledge of and acquaintanceship with Mr. Lawrence, and on information derived from a framed newspaper article that was hanging on Mr. Lawrence's office wall at Embassy Bern during his tenure as Ambassador there. The complete Report of Investigation is enclosed at Tab 2.

During an informal exchange with the Department, the subcommittee staff specifically requested information in connection with a New York Times article that quoted Lawrence's former administrative aide, Norma Nicolls. In this article Ms. Nicolls is quoted as saying that she clearly informed the State Department of her doubts as to Mr. Lawrence's Merchant Marine service. Enclosed for your information (Tab 3) is that portion of the August 4, 1993, Maurice Larry Lawrence background investigative report covering the Norma Nicolls interview, which contains no information to support that allegation.

With regard to your request of December 5 for the "vetting package" provided to the Senate Committee on Foreign Relations, we have consulted with the Foreign Relations Committee on the most appropriate manner in which to make these materials available. It is the Committee's view that, because these materials were submitted to that Committee in connection with its responsibility for the confirmation of ambassadors, it would be most appropriate that your request for documents submitted by the State Department be conveyed directly to Chairman Helms. We have informed the Foreign Relations Committee that the Department has no objection to their providing these documents to you.

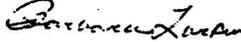
Consistent with Department practice, the Department has redacted from the enclosed documents the names of certain lower ranking U.S. Government employees and certain privacy information of private U.S. citizens. In addition, some of the

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information provided contains information that affects individual privacy interests. We ask you to treat the materials appropriately in light of these concerns.

We hope this will be helpful to you and the members of the Committee on Veterans' Affairs. The Department will advise the Committee if any additional information relevant to the Committee's inquiries becomes available. Please do not hesitate to contact us if we can be of further assistance.

Sincerely,



Barbara Larkin  
Assistant Secretary  
Legislative Affairs

Enclosures:

1. Tab 1 - Report of Investigation 12/11/97
2. Tab 2 - Report of Investigation 12/18/97
3. Tab 3 - Report of Norma Nicolls Interview 8/4/93

## **Attachment B**

LIMITED OFFICIAL USE  
exempted from automatic decontrol by statute

LAWRENCE, Maurice Larry

RECORDS CHECKS

MILITARY:

08/13/93 - Robert L. Albertson, Application Examiner, U.S. Coast Guard, Transport Building, Buzzard Point, Washington, D.C., advised he was unable to locate any record of the APPOINTEE as serving in the Merchant Marine. Mr. Albertson stated that unless the APPOINTEE had formally enlisted as a Merchant Marine there, in all probability, would not be a record of his service. During World War II, the majority of individuals serving as seamen on Merchant Marine ships were not enlisted in the Merchant Marines. Records for those individuals who served during World War II on Merchant Marine ships were considered indiscernible at that time in that they were not in the military service or in the Merchant Marine per se.

## **Attachment C**

SENSITIVE BUT UNCLASSIFIED

LAWRENCE, Maurice Larry

**BACKGROUND:**

The investigating agent responsible for that background investigation noted in the report (attachment B) that SUBJECT had "no records whatsoever showing HIS time on Merchant Marine ships", and that the U. S. Coast Guard was "unable to locate any record of the APPOINTEE as serving in the Merchant Marine." The Coast Guard source noted, however, that unless SUBJECT had formally enlisted, there would probably be no record, and that the majority of individuals serving as seamen on Merchant Marine ships during World War II were not enlisted in the Merchant Marines.

**RECORD CHECKS:**

SENSITIVE BUT UNCLASSIFIED

## WRITTEN COMMITTEE QUESTIONS AND THEIR RESPONSES

CONGRESSMAN CLYBURN TO TOGO D. WEST, JR., ACTING  
SECRETARY, DEPARTMENT OF VETERANS AFFAIRS

Question 1. Are you comfortable with the level of discretion presently given to the Department of the Army in waiver cases? If you were making policy on this issue, would you want to in any way limit the ability of the Department or the President to grant waivers in the future?

*Answer 1.* The small number of waivers granted over the past 30 years indicates that Secretaries of the Army and Presidents have exercised their discretion sparingly and judiciously. For example, of the approximately 25,000 funerals at Arlington in the past 5 years, only 69 of them have been by exception. The consistent application of a standard based either on immediate family relation to, and burial in the same grave as, a person eligible for burial, or on an evaluation of the person's contributions to the Nation, further indicates the appropriate exercise of that discretion. I would only see the need to limit that discretion if there were an indication of its propensity to be abused. There is no such evidence. The Secretary's accountability to service members, veterans, the public, and Congress provides further assurance against abuse.

Question 2. With regard to the advance waiver request for Zachary Fisher, it appears from the Files that the Army did not actually grant Mr. Fisher a waiver to be buried at Arlington, but did give him every reason to believe he would be buried at Arlington at the time of his death. Is this a fair description of the Fisher case? From a practical point of view, would it have been easier on the Department and the DOD if the law prohibited Arlington waivers per se for non-veterans such as Fisher?

*Answer 2.* While each Military Department went on record supporting an exception for Mr. Fisher at the time of his death, his Chief of Staff was informed that no decision could be made until Mr. Fisher actually passed away.

A law prohibiting waivers for non-veterans would eliminate most waivers because the vast majority are given to non-veteran family members interred in the same grave as eligible veterans. If such a prohibition was limited to non-veterans being interred in new grave sites, the law would depart from a tradition of burying a very few, exceptionally deserving, "pure civilians" at Arlington.

Question 3. What steps will the Army be taking in the future to increase public access and familiarity with the eligibility and waiver requirements at Arlington? Do you believe it would be appropriate to require that the Army disclose the names of all individuals henceforth granted a waiver for burial at Arlington, and the reasons such a waiver was granted?

*Answer 3.* Changes addressing these issues are currently being implemented pursuant to direction I gave to the Acting Assistant Secretary of the Army (Manpower and Reserve Affairs) AASA(MRA) in November. Eligibility information is already publicly available. The AASA(MRA) is working with the Superintendent to ensure that waiver information is equally communicated to those inquiring about burial at Arlington so that all persons receive the same information. Uniform talking points explaining the application and decision process for exception have been developed for use by the cemetery staff. The staff will explain that an exception request must be submitted in writing to the Superintendent, what documents the request must contain, and how the request is processed through the Department of the Army to the Secretary for approval.

The cemetery has also already implemented a procedure to inform Congress each time a waiver is granted. The information includes the requester's name, deceased's name, requester's relationship to deceased, and the reason for the authorization. Similarly a registry of names of those granted exceptions is being made available to the public and written consent to public disclosure is being obtained from the families.

CONGRESSMAN CLYBURN TO CAPTAIN MICHAEL ROSECRANS, U.S.  
COAST GUARD

MERCHANT MARINERS OFFICIAL RECORDS

**Question:** How difficult is it to find information about a person's service in the Merchant Marines? Would you agree with the assessment of merchant marine historian Arthur Moore that many pages of official records on Merchant Marines have been destroyed, and that any historical account of the American Merchant Marine during World War II would, in all likelihood, be filled with errors and omissions?

**Answer:** the U.S. Coast Guard National Maritime Center (NMC) is responsible for processing applications filed by merchant mariners requesting veteran status as a result of service during World War II under the provisions of Public Law 96-202. NMC personnel have had considerable experience with mariner files. The process in determining veteran status can be difficult and includes an actual physical review of the mariner's record to validate qualification. This record review includes checking our database, as well as all applicable paper files such as shipping articles, certificates of discharge, vessel logs, and medical records. There have been some mariner records that we have not been able to locate where qualifying sea service is claimed by a mariner.

Historically, the Coast Guard has not been able to verify approximately one to two percent of the World War II-era claims we received by reviewing the records described above. This may be because an unknown portion of the government records were destroyed during the decade of the 1960's as a result of following standard destruction of records procedures applicable at that time. Additionally, many of the shipping companies operating during World War II are no longer operating; therefore, many of the files in their possession were presumably destroyed.

WORLD WAR II MERCHANT MARINER PERSONNEL DATA

**Question:** Coast Guard historian Robert Browning, who wrote a book on Merchant Marine casualties of World War II, has written that "the most confusing and conflicting information by far is the personnel data," and that War Casualty Shipping records "are not always reliable because they often show the crew only at the beginning of the voyage, even though the crew size frequently change throughout the voyage."

Captain Rosecrans, would you agree with, or dispute, such an assessment, and please explain your answer.

**Answer.** The U.S. Coast Guard recognizes that a percentage of personnel records are incomplete and/or in error. Much of the data was collected years after the actual event and involved interviews of surviving mariners. These personal accounts provided not only a reconstruction of events, but also an account of crew and armed guard personnel on board. The accuracy of the data collected during this process was directly related to the memory of the mariner. The documentation of crew and armed guard personnel collected and recorded during the interview process often conflicted with crew identified in the shipping articles. Given the context and circumstances of that era in our nation's history, it is not inconceivable that some documentation was less than accurately recorded in the shipping articles.



United States Department of State

Washington, D.C. 20520

February 24, 1998

Dear Mr. Chairman:

Following the January 28, 1998 hearing at which Ambassador Eric J. Boswell testified, additional questions were submitted for the record. Please find enclosed the responses to those questions.

If we can be of further assistance to you, please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Larkin".

Barbara Larkin  
Assistant Secretary  
Legislative Affairs

Enclosures:  
As stated.

The Honorable  
James E. Clyburn,  
Subcommittee on Oversight and Investigations,  
Committee on Veterans Affairs,  
House of Representatives.

Question for the Record Submitted to Ambassador Eric J. Boswell  
House Veterans' Affairs Subcommittee on Oversight & Investigations  
January 28, 1998

Question:

1. What can you tell us about the credentials of the investigator who interviewed Norma Nicolls and others in 1993 as part of the State Department's background investigation into Larry Lawrence's suitability for a diplomatic post?

Answer:

The investigator who interviewed Norma Nicolls and others as part of the State Department's background investigation of Larry Lawrence served as a Special Agent of the Federal Bureau of Investigation (FBI) from March 1968 until his retirement in December 1989.

During his FBI career, this investigator conducted numerous criminal and background investigations. He served as an FBI headquarters supervisor of investigations of alleged civil rights law violations for over seven years and conducted counterintelligence and counterterrorism investigations for more than six years. He spent the final nine months of his FBI career conducting security background investigations of applicants for positions with the FBI, the Drug Enforcement Administration, the Department of Justice and the Department of Energy.

This investigator has been conducting security background investigations for the Department of State since March 1990. He also currently conducts background investigations for the FBI of applicants for positions with the FBI, United States Courts and the Department of Justice. In addition, he works for MSM Security Services, conducting background investigations of civilian contract employees of firms holding contracts with the U.S. Air Force.

Question for the Record Submitted to Ambassador Eric J. Boswell  
House Veterans' Affairs Subcommittee on Oversight and Investigations  
January 28, 1998

Question:

2. What can you tell us with regard to the State Department's efforts to confirm Mr. Lawrence's Merchant Marine service at the time of his death? Did Assistant Secretaries Kennedy and Holbrooke act in good faith when they sought to verify Mr. Lawrence's purported service in World War II?

Answer:

When a death occurs, decisions about burial must be made quickly, and are usually made on the information available without formal investigation. The memorandum from Assistant Secretary Holbrooke outlining Mr. Lawrence's claimed service, which was sent to Assistant Secretary Kennedy, was based on accounts that Mr. Lawrence had given to Mr. Holbrooke and others while he was alive, and on a framed newspaper article that was hanging on Mr. Lawrence's office wall at Embassy Bern during his tenure as Ambassador there. That article, from the *San Diego Union*, described Mr. Lawrence's decoration in January 1993 by the Russian Government for his claimed service in the Merchant Marine in World War II. Mr. Holbrooke's office confirmed the contents of the newspaper article with Embassy Bern before the memorandum was written.

Assistant Secretary Kennedy made inquiries to the Bureau of Diplomatic Security and to the family seeking documentation relating to Mr. Lawrence's wartime service. These efforts revealed the same information found at the time Mr. Lawrence was nominated to be Ambassador. The Department's understanding both at the time of nomination and at the time of Mr. Lawrence's death was that since Mr. Lawrence claimed to have served in the Merchant Marine as a volunteer, the absence of confirming records for his service was not unusual. Given the circumstances -- the death of an Ambassador in office, a grieving widow, a widely-accepted account of service during World War II -- the decision to go forward with a letter to the Secretary of the Army without further confirmation was made in good faith and seemed appropriate at the time.

The letter was drafted and sent under unusual circumstances because U.S. Government offices in Washington had been closed due to heavy snow. However, Assistant Secretary Kennedy did consult with the Bureau of Diplomatic Security and obtained the concurrence of the Bureau of European and Canadian Affairs and the Under Secretary for Management before sending the letter.

None of the State Department officials who relied on accounts of Mr. Lawrence's service indicated any knowledge of information that might reasonably lead them to doubt the claim of wartime service. Although the Department would surely handle a similar situation differently today because of what we have learned from this case, the actions were taken in good faith given the circumstances at the time.

Question for the Record Submitted to Ambassador Eric J. Boswell  
House Veterans' Affairs Subcommittee on Oversight & Investigations  
January 28, 1998

Question:

3. Is the State Department willing to admit that it made mistakes during the course of its background check of Mr. Lawrence? If you had to do it all over again, is there anything you would have done differently?

Answer:

Mr. Lawrence's transcript from the University of Arizona reflects that he attended Wilbur Wright Junior College in 1944 and 1945, the time period during which he claimed service in the Merchant Marine. Unfortunately, the Department did not connect his attendance at this Junior College with his claimed voluntary affiliation as a Merchant Mariner. The failure to note this discrepancy has been investigated, and the Department is confident that this represents a regrettable oversight and not a systemic flaw in investigative procedures.

If the connection had then been made, further investigative efforts, such as locating and interviewing corroborating sources or obtaining the vessel's manifest, would undoubtedly have been done to confirm the alleged service. Failing that, Mr. Lawrence would have been re-interviewed and asked for an explanation.

The Department is constantly looking for ways to improve its investigative product, and will continue to do so in the future. For example, we are emphasizing the need to more closely cross-check the field reports from investigators to ensure that each of element of the investigation has been fulfilled and that the elements are consistent.



United States  
General Accounting Office  
Washington, D.C. 20548

Health, Education and Human Services Division

B-279843

March 4, 1998

The Honorable James E. Clyburn  
Ranking Minority Member  
Subcommittee on Oversight and  
Investigations  
Committee on Veterans' Affairs  
House of Representatives

Subject: Arlington National Cemetery: Additional Information on Burial Waiver  
Decisions

Dear Mr. Clyburn:

The enclosed information responds to your follow-up questions concerning the Subcommittee's January 28, 1998, hearing on waivers granted for burial at Arlington National Cemetery. This information supplements our testimony before the Subcommittee. We will make copies of this correspondence available to others who are interested on request.

If you have any questions or would like to discuss this information further, please contact Stephen P. Backhus, Director, Veterans Affairs and Military Health Care Issues, on (202) 512-7101.

Sincerely yours,

A handwritten signature in cursive script, appearing to read 'Richard L. Hembra'.

Richard L. Hembra  
Assistant Comptroller General

Enclosure

GAO/HEHS-98-104E Arlington Burial Waivers

ENCLOSURE

ENCLOSURE

**SUPPLEMENTAL INFORMATION ON ARLINGTON  
NATIONAL CEMETERY BURIAL WAIVER DECISIONS**

This enclosure details your questions and our responses, which supplement information in our testimony before your Subcommittee, Arlington National Cemetery Authority, Process, and Criteria for Burial Waivers (GAO/T-HEHS-98-81, Jan. 28, 1998).

1. Through the course of your review, you have had the opportunity to interview and work directly with Arlington Cemetery Superintendent Jack Metzler. Can you provide Subcommittee members with your views on the job Mr. Metzler has done as Arlington Superintendent? Would you characterize Mr. Metzler's attitude toward the granting of waivers as conservative, liberal, or somewhere in between?

Given the absence of clear, formal criteria for making waiver decisions, it is difficult to characterize the decision-making 'attitude' of the various officials involved in making Arlington National Cemetery burial waiver decisions or recommendations. Mr. Metzler has described his own waiver recommendations as conservative, and former Secretary of the Army, Togo West, also told us that he believed Mr. Metzler's recommendations to be conservative. Our work has shown that Mr. Metzler was less willing to approve waiver requests than other Army decision-makers—the Assistant Secretary of the Army for Manpower and Reserve Affairs and the Secretary of the Army—based on the 11 cases in which the Secretary overruled the Superintendent's recommendation to deny a request. In two of these cases, the Assistant Secretary recommended approval of the waiver, while in two other cases, the Assistant Secretary remained neutral.

2. You have indicated that record-keeping at the Cemetery prior to 1991 left something to be desired, and that it has been difficult, if not impossible, to recreate many of the waiver files prior to 1991. Is this a fair description of your testimony? If so, what recommendations would you make concerning how to eliminate the risk of incomplete record-keeping in the future?

As we noted in our testimony, documentation of waivers requested or granted is limited, particularly for waiver decisions before 1991. Our figures for both approvals and denials are based on available Department of the Army documentation. These records are often incomplete, particularly for cases decided during the period from 1967 to 1990. This is especially the case for records of waiver denials, because Arlington National Cemetery officials believed there was less of a need to maintain documents on the requests of those who were not ultimately interred in the cemetery. In addition, many denials that left no paper record may have occurred informally through telephone conversations.

Despite these limitations, we were able to obtain some information on earlier waiver decisions. This information came, in part, from the efforts of the current Superintendent to reconstruct files of waiver approvals granted before his tenure (that is, before 1991). Also, additional waiver-related files that we obtained from other units within the Department of the Army provided us with further, although still incomplete, information on both waiver approvals and denials over the past 30 years.

The current Superintendent has adopted the policy of creating a waiver file for each waiver decision. These files typically contain documents from the initial waiver request through the final waiver decision. However, even these files are not always complete. For example, documentation of a burial candidate's claimed military service or familial relationship is missing from some of these files. In addition, there is no requirement that any documentation on waivers be maintained by the Superintendent or other units of the Army such as the Office of the Assistant

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Secretary, the Office of General Counsel, and the Office of the Secretary. Thus, the Superintendent's current documentation practices regarding waivers do not represent official Arlington National Cemetery or Army policy. As we pointed out in our testimony, given the public attention paid to waiver decisions at the cemetery, the maintenance of clear and complete records of waiver decisions by both the Army and the White House may help reduce questions about these decisions. To reduce the risk of incomplete record-keeping in the future, the Department of the Army may want to consider imposing formal record-keeping requirements for waiver decisions that include all relevant background material, decision papers, and explanatory documents from all offices or individuals involved.

3. As I understand it, you had the chance to interview Mr. Costanzo, the Arlington Cemetery Superintendent from 1976 through 1990. Can you briefly summarize the information provided to GAO by Mr. Costanzo? For instance, did Mr. Costanzo ever provide a formal, written recommendation to the Department of the Army for a waiver request? How would you describe the relationship between Mr. Costanzo and the various presidential administrations with whom he worked?

Raymond Costanzo served as Arlington Superintendent from May 1976 to December 1990. Although the Secretary of the Army has had the authority to grant waiver requests starting with the implementation of restrictive burial requirements in 1967, Mr. Costanzo said that the Office of the Secretary's policy before 1980 was to not exercise this authority. Mr. Costanzo told us that the Carter White House eventually concluded that it wanted to "get out of the interment business" of processing waiver requests, except for national figures. Although no formal policy change was announced, Mr. Costanzo said that there was a distinct policy shift toward the end of the Carter administration and the beginning of the Reagan administration, and at that time, the Secretary of the Army began making the final decision on most waiver requests.

The criteria that Mr. Costanzo and other Army officials used when reviewing waiver requests included military service, connection to the cemetery (that is, candidates or their relatives who had lived on the Arlington grounds), public or government service, and contacts from high-level persons in the military community, the White House, or Members of Congress on behalf of a request. Mr. Costanzo told us that if someone from one of the latter groups contacted him to advocate a request, he typically decided to recommend approval, particularly if the White House or a congressional member advocated it. Each administration under which he served (except for the Bush administration) granted waivers and took an interest in requests that it had forwarded to the Army for processing. Mr. Costanzo said that the Bush administration had an unwritten but firm "hands off" policy of not granting presidential waivers or exhibiting an interest in the Army's decision on a case.

Although Mr. Costanzo did have a role in recommending approval or denial of waiver requests, he did not generally prepare a memorandum documenting his recommendation to the Assistant Secretary of the Army for Civil Works (ASA-CW). Instead, for most of the waiver requests received by the Army during Mr. Costanzo's tenure, he and the military assistant to the ASA-CW would, through informal discussions, jointly decide whether to recommend approval or denial of a request. The military assistant would then draft a memorandum for the ASA-CW's signature, conveying this recommendation to the Secretary of the Army. Beyond that memorandum, little documentation on a case was created, and a specific case file on each request was not maintained. During Mr. Costanzo's tenure, letters from requesters and the cemetery's replies to them were kept in a "correspondence file" along with documents about all types of burial requests. He stated, however, that he did not see the need to maintain documentation regarding denied waiver requests,

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and any correspondence that may have been maintained on denials was typically destroyed after 3 to 5 years.

4. This story initially broke as a scandal involving the awarding of burial plots at Arlington to "dozens" of major contributors to the Democratic Party and President Clinton. Based on the review and analysis the General Accounting Office has conducted over the last month and a half, was this an accurate portrayal of the situation at Arlington?

As discussed and agreed with the Subcommittee staff, our examination of the extent to which political contributions were a basis for decisions to grant or deny waivers for burial was limited to a review of evidence in Department of the Army waiver files. Our review of these files did not suggest that political contributions played a part in waiver decisions. However, the absence of evidence in these files alone does not permit us to conclude whether or not political contributions were a factor. As suggested by the Chairman during the hearing, other information sources, such as Federal Election Commission records, would have to be examined before drawing a definitive conclusion.

5. On August 18, 1997, in response to a request from Congressman Evans, GAO attempted to provide an accounting of Merchant Mariners who would be eligible to receive veterans benefits pursuant to a bill introduced by Mr. Evans. In responding to such a request, GAO reviewed archived Merchant Mariner files at the Federal Records Center in Suitland, Maryland.

In GAO's response to Congressman Evans, GAO indicated that its review could not identify former Mariners who may be deceased, nor could it determine if all seamen identified actually served in the Merchant Marine. Even in cases where GAO could verify service, GAO still could not readily determine whether they served on vessels on the high seas or on inland waterways.

Is this an accurate description of GAO's work at the Federal Records Center in Suitland? If so, doesn't this give credibility to the argument made by Cemetery Superintendent Metzler that it would have been extremely difficult to verify Ambassador Larry Lawrence's record of service in the Merchant Marine within the 24-48 hour period in which a decision had to be made on a waiver?

Our August 18, 1997, letter was a culmination of work conducted at the Federal Records Center in Suitland, Maryland. The objective of our work was to estimate how many former merchant mariners might be eligible for veterans' benefits if veterans status were extended to those who served on the high seas at any time during the period recognized by the Department of Veterans' Affairs as World War II--namely, from December 7, 1941, through December 31, 1946. Our estimate was based on a review of files of merchant mariners who were issued Merchant Mariners' Documents (MMD) from 1937 on. The objectives of our work did not include an effort to determine (1) whether those issued MMDs actually served in the Merchant Marine on the high seas or (2) whether former mariners are deceased.

Based on the limited objectives of our work, the information we obtained does not shed light on how difficult or easy it would have been for Mr. Metzler to verify Ambassador Larry Lawrence's record of service in the Merchant Marine within a 24-to-48-hour period.

(106762)

**Veterans' Affairs  
Subcommittee on Oversight & Investigations  
Arlington National Cemetery Hearing  
Representative James E. Clyburn  
Mr. John C. Metzler, Jr.  
January 28, 1998  
Question 1**

**GAO Testimony**

**Question.** I hope you have had an opportunity to review the testimony provided by the General Accounting Office (GAO) on the Arlington burial policies. Are you comfortable with their analysis of the waiver process? Can you give the Subcommittee your reactions to the findings made in the GAO testimony?

**Answer.** Yes, I have reviewed the General Accounting Office's (GAO) testimony on Arlington's burial policies several times. I am comfortable with the majority of its analyses on the waiver process. My reaction to the findings made in the GAO testimony, outlined in the observation section of their testimony on pages 10 and 11, is as follows:

a. Revising the eligibility criteria for burial in Arlington National Cemetery to include certain categories of people who are generally approved for waivers is a change that I would support. These categories include family members who meet the following requirements:

1. Remarried spouses buried with their former spouses, provided that all parties agree.
2. Unmarried adult children with no dependents, buried with their parent(s).

b. Preserving some discretion to grant waivers but providing guidance in legislation for the officials to exercise waiver authority. I agree that the discretion to grant waivers should continue and should lie with the Secretary of the Army as the designee of the President of the United States. Because it is impossible to capture in law every circumstance that merits consideration for burial at Arlington, any legislation enacted governing eligibility criteria should include a provision allowing discretion to grant waivers. Once "same grave" burials are included under eligibility criteria, the number of waivers considered would be greatly reduced.

c. Expanding the acreage of Arlington National Cemetery to accommodate additional grave sites is an initiative that I would fully support. I would ask that Congress examine the contiguous lands adjoining Arlington National Cemetery for expansion opportunities. In addition, when this land is no longer needed for its current use, I would ask that Arlington get first right of refusal.

**Veterans' Affairs  
Subcommittee on Oversight & Investigations  
Arlington National Cemetery Hearing  
Representative James E. Clyburn  
Mr. John C. Metzler, Jr.  
January 28, 1998  
Question 2**

**Waiver for Ambassador Larry Lawrence**

**Question.** Much has been made of the decision to grant a waiver for former Ambassador Larry Lawrence to be buried at Arlington Cemetery. Are you comfortable with the decision you made to recommend a waiver based on the information you had available to you at that time? Is there anything you would have done differently if you had to do it all over again?

**Answer.** Based on the information that I was provided by the State Department, I am comfortable with the decision to recommend a waiver for Ambassador Lawrence. I believe this was the correct decision for two reasons:

- a. Ambassador Lawrence passed away while serving as a United States Ambassador.
- b. It was represented to me that he was a member of the United States Merchant Marines during World War II and received a head injury during his service. There was nothing to indicate that any of this information was incorrect or misleading.

**Veterans' Affairs  
Subcommittee on Oversight & Investigations  
Arlington National Cemetery Hearing  
Representative James E. Clyburn  
Mr. John C. Metzler, Jr.  
January 28, 1998  
Question 3**

**Ambassador Larry Lawrence as a Contributor to the Democratic Party**

**Question.** At the time you were deciding whether to recommend a waiver for Ambassador Lawrence, did you know that Mr. Lawrence had been a major contributor to the Democratic Party and the Clinton Administration?

**Answer.** I did not know who Ambassador Lawrence was prior to receiving the initial phone call at Arlington National Cemetery requesting his interment. I had no information that he was a contributor to the Democratic Party and the Clinton Administration. The basis for my decision to recommend a waiver for Ambassador Lawrence was strictly focused on his government service.

**Veterans' Affairs  
Subcommittee on Oversight & Investigations  
Arlington National Cemetery Hearing  
Representative James E. Clyburn  
Mr. John C. Metzler, Jr.  
January 28, 1998  
Question 4**

**Verification of Ambassador Larry Lawrence's Merchant Marine Service**

**Question.** With regard to the Larry Lawrence waiver request, did you think it was at all unusual that you were unable to obtain verification of Mr. Lawrence's Merchant Marine service, or was that a problem that you had encountered with regard to other requests? Given the relatively short time frame, you have to make a recommendation on a waiver request, did you consider it to be out of the ordinary that you were unable to obtain a so-called "DD 214" verification from the military records center in St. Louis for Mr. Lawrence?

**Answer.** Given the fact that Mr. Lawrence was represented to me as a Merchant Marine during World War II, and that his Z number (akin to the Army's service number) was not readily available, it was not unusual to conclude that a DD 214 or other verification of his service record would also not be readily available. After Ambassador Holbrook attested to Mr. Lawrence's military service, I felt that the information regarding Mr. Lawrence was sufficient to make a recommendation. In addition, a Merchant Marine must request that a DD 214 be issued based on his World War II service; this is not automatically provided. Former Merchant Marines who are not actively seeking veterans' benefits do not generally have a DD 214. Further, Mr. Lawrence's widow, who was his fourth wife, had no direct knowledge of his activities during World War II. There were no indications or signals that anything was out of the ordinary in this case.

Congressman Clyburn to Raymond J. Costanzo, former Superintendent,  
Arlington National Cemetery

1. Mr. Costanzo, can you describe to us how the waiver process has evolved since the time you became Superintendent of the Cemetery until the time you retired? For example, what in your view precipitated the decision by the Carter Administration to delegate responsibility over Arlington waivers to the Army around 1980?

When I became Superintendent in May of 1975, the majority of the waivers were being granted by the White House. During the period 1980 to 1981, there was a sharp increase in the number of waivers being received. It was about that time that I was advised by the Office of the Assistant Secretary of the Army for Civil Works that I should no longer encourage anyone to contact the White House for a waiver, and that all such requests be directed to the Assistant Secretary of the Army for Civil Works. I was led to believe that this change was being made to reduce the heavy workload being experienced by the White House Military Office.

2. Do you have an opinion as to why President Reagan elected to grant a fairly large number (22) of waivers on his own compared to President Bush, who apparently decided to completely delegate such responsibility to the Army?

A review of the 22 waivers granted by President Reagan indicated that the decedent was either a high-level government official or a prominent person. The families of these decedents were completely knowledgeable of the government procedures and knew how to get the attention of the proper officials.

3. Can you describe the nature of your relationship with the various Departments of the Army during the time you served as Superintendent? Generally speaking, did you defer to the views of the Army on waiver decisions or did you reach a decision on a particular waiver and then try to convince the Administration to go along with your position?

I enjoyed an excellent and harmonious relationship with the various Departments of the Army, and I received both the Department of the Army Civilian Meritorious Service Award and the Civilian Department of the Army Distinguished Service Award. On all requests for waivers that were processed through my office, I would first fully discuss the merits of the case with the Military Assistant in the Office of the Assistant Secretary of the Army for Civil Works. We would always reach a consensus before we forwarded a recommendation to the Assistant Secretary of the Army for Civil Works. Our recommendations were always favorably received.

4. What recommendations would you make to improve the Arlington Cemetery waiver policy? As superintendent, would it have made your life easier if you had statutory guidance on the eligibility requirements for burial at Arlington?

I recommend that this Committee seriously consider the feasibility of transferring the administration of Arlington National Cemetery from the Department of the Army to the Department of Veterans Affairs. That office has a viable cemetery service department and could easily assimilate the responsibility of supervising Arlington National Cemetery. This would eliminate the pressures exerted by the military high-archy for securing waivers.

Strict statutory guidance would certainly make life easier for those who must administer the program.

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