

MR. THURMAN HIGGINBOTHAM, DEPUTY SUPERINTENDENT, ARLINGTON  
NATIONAL CEMETERY

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DEPUTY SUPERINTENDENT  
ARLINGTON NATIONAL CEMETERY**

**UNITED STATES SENATE COMMITTEE ON VETERANS' AFFAIRS HEARING  
ON  
PRESERVING SACRED GROUND: SHOULD CAPITAL  
OFFENDERS BE BURIED IN AMERICA'S NATIONAL  
CEMETERIES?**

**SEPTEMBER 22, 2005**

**NOT FOR PUBLICATION  
UNTIL RELEASED BY THE  
UNITED STATES SENATE COMMITTEE ON  
VETERANS' AFFAIRS**

**STATEMENT BY  
THURMAN HIGGINBOTHAM  
DEPUTY SUPERINTENDENT  
ARLINGTON NATIONAL CEMETERY**

Mr. Chairman and distinguished members of the committee, thank you for inviting the Department of the Army to discuss the 1997 law intended to prohibit certain capital offenders from interment or memorialization in Arlington National Cemetery. Thank you for the opportunity to testify before this committee in support of the Department of the Army's Arlington National Cemetery and Soldiers' and Airmens' Home National Cemetery Program. I am testifying on behalf of the

Secretary of the Army, who is responsible for operating and maintaining Arlington and Soldiers' and Airmen's Home National Cemeteries, as well as establishing the Army's eligibility policy for interment, inurnment, and memorialization.

Arlington National Cemetery is the Nation's preeminent military cemetery. It is an honor to represent this cemetery and the Soldiers' and Airmen's Home National Cemetery, which are both national cemeteries under the jurisdiction of the Department of the Army and are civil works activities. On behalf of these two cemeteries and the Department of the Army, I would like to express our appreciation for the exceptional support that Congress has provided over the years.

In fiscal year (FY) 2004, there were 3,858 interments and 2,517 inurnments in Arlington National Cemetery. To date in FY 2005, we have performed a total of over 6,300 interment and inurnment services. We anticipate, at a minimum, an equal number of services in FY 2006.

Additionally, millions of visitors, both foreign and American, come to Arlington National Cemetery each year to view the Cemetery and both participate in and observe ceremonial events. During FY 2004 and FY 2005, over 3000 ceremonies were conducted each year, with the

President of the United States attending the ceremonies on both Veterans Day and Memorial Day.

During FY 2004, Arlington National Cemetery accommodated approximately 4 million guests, making it one of the most visited historic sites in the National Capital Region.

One of the Army's paramount objectives is to steadfastly maintain the integrity of Arlington National Cemetery by ensuring only those eligible under applicable law and Army policy are buried, inurned, or memorialized. There are two sections of the United States Code (U.S.C.) that address the burial of certain convicted criminals in Arlington National Cemetery. 10 U.S.C. § 985, enacted in 1997, disqualifies persons convicted of a Federal capital offense, an offense for which the death penalty may be imposed, from burial or inurnment in Arlington National Cemetery.

38 U.S.C. § 2411, also enacted in 1997, prohibits the interment, to include inurnment, or memorialization of a person who has been convicted of a federal capital crime and sentenced to death or life imprisonment, or a person convicted of a state capital crime and sentenced to death or life imprisonment *without parole*. However, this statute does not address those who commit other heinous crimes, and

limits State capital crimes to the willful, deliberate, or premeditated killing of another human being.

Under 38 U.S.C. § 2411, the prohibition shall not apply unless written notice of a conviction is received by the Arlington National Cemetery before approval of an application for the interment or memorialization of such person. Pursuant to the statute, such written notice shall be furnished to such official by the Attorney General, in the case of a Federal capital crime, or by an appropriate State official, in the case of a State capital crime.

Since these laws were enacted in 1997, Arlington National Cemetery has interred, inurned, or memorialized over 50,000 veterans and/or eligible family members. In not one of these cases were we timely notified in writing of a Federal or State conviction in accordance with the statute's requirements. National media extensively reported on the recent inurnment in Arlington National Cemetery of Russell W. Wagner, an eligible veteran who was also a convicted murderer. Arlington National Cemetery was neither notified nor aware until after his inurnment service that he had been convicted in a Maryland state court of two murders. However, under 38 U.S.C § 2411, he was not barred from inurnment in Arlington National Cemetery, as his life

sentences included the possibility of parole. The disqualification contained in 10 U.S.C. § 985 did not apply because Mr. Wagner was not convicted of a Federal capital offense.

Arlington National Cemetery's process relies on receiving proper notification from the appropriate state or federal official that an individual was convicted of a state or federal capital offense and is prohibited from interment, inurnment, or memorialization in Arlington National Cemetery, as specified in 38 U.S.C. § 2411. Again, to date, no such timely notification has been received by the Cemetery from any state or federal officials.

I note that the prohibitions of 38 U.S.C. § 2411 do not apply in cases where notification was not made prior to approval of interment, inurnment, or memorialization, which contemplates that eligible veterans who have been convicted of a state or federal capital offense may be interred, inurned, or memorialized in Arlington if notice is not timely received.

The Army and Arlington National Cemetery recognize the significance of the issues involved in this matter, will continue to follow current law, and look forward to working with this Committee and the Congress in maintaining the integrity of the Cemetery. The Army thanks

the Committee and the Congress for its long-standing commitment to,  
and support for, Arlington National Cemetery.