

**S. 923 AND H.R. 2040, TO DENY BURIAL IN A FEDERALLY
FUNDED CEMETERY AND OTHER BENEFITS TO VETERANS
CONVICTED OF CERTAIN CAPITAL CRIMES**

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS

HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

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WEDNESDAY, JULY 9, 1997

**HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
*Washington, DC.***

The committee met, pursuant to call, at 10 a.m., in room 334, Cannon House Office Building, Hon. Bob Stump (chairman of the committee) presiding.

Present: Representatives Stump, Spence, Everett, Buyer, Quinn, Bachus, Stearns, Cooksey, Hutchinson, LaHood, Evans, Kennedy, Gutierrez, Doyle, Mascara, Peterson, Carson, Reyes, Snyder and Rodriguez.

Also present: Representatives Skelton and Knollenberg.

OPENING STATEMENT OF CHAIRMAN STUMP

The CHAIRMAN. The Committee will come to order. We are pleased to welcome our colleagues, Congressman Bachus, Congressman Skelton and Congressman Knollenberg this morning.

We are here to discuss an issue that goes to the very core of America's long-standing tradition of recognizing honorable military service.

The fundamental question before us is: Under what circumstances is it appropriate to deny veterans' benefits to someone who has served honorably in our armed services? This is not as easy a question to answer as some may think, and our actions must reflect a reasoned approach to this issue.

That is why I want to especially thank our colleagues for being here this morning and for their cooperation in agreeing to this proceeding, and also for withholding an attempt to amend the DOD bill while it was on the floor. That helped a lot. I would also like to thank our veterans services organization for their support in discussing this matter in a proper forum, the hearing setting. Additionally, the Committee appreciates the thoughtful consideration given this matter by our witnesses from the Department of Veterans Affairs and CRS.

This hearing is not simply about Timothy McVeigh. This hearing is about restricting burial rights in national cemeteries and entitlement to other VA benefits when a veteran commits a serious crime.

Current law reflects the Nation's reluctance to sever the bond with its veterans. Chapter 61 of title 38 clearly demonstrates this

has been done only when the veteran commits crimes against this Nation as opposed to crimes against individuals. The Secretary may deny benefits where there is evidence that a person is guilty of crimes against the Nation involving "mutiny, treason, sabotage or rendering assistance to the enemy." Further, the law allows forfeiture of benefits to those convicted of certain types of "subversive" activities.

We also must ask whether an act or acts constitute such a heinous crime against citizens of our Nation that the veteran should forfeit any right to benefits previously earned in honorable military service.

The purpose of H.R. 2040 is to update title 38 to include some recent changes to the criminal code that reflect today's society. We have also asked for views on S. 923, a broader bill passed by the Senate last month. Chairman Specter's bill would deny all benefits for anyone convicted of a Federal capital crime.

The language in provisions drafted by Mr. Bachus, Mr. Skelton and Mr. Knollenberg differ from the Senate bill and H.R. 2040 in varying degrees, and hopefully this hearing will provide the basis for a wide range of discussion on these issues.

[The prepared statement of Chairman Stump appears on p. 45.]

The CHAIRMAN. At this time I recognize Mr. Evans.

OPENING STATEMENT OF HON. LANE EVANS

Mr. EVANS. Thank you, Mr. Chairman.

When I came to Congress 14 years ago, my goal was to protect the programs and benefits our great Nation provides its veterans, but today we have the hard task to come together to consider legislation that would limit veterans' benefits, although under extremely narrow circumstances. Circumstances and events in today's world, however, compel us to confront the question of who should be buried in a federally-funded cemetery. Our challenge is to preserve and protect the sanctity of our veterans' cemeteries while also preserving and protecting the rights and privileges that flow from honorable service in America's Armed Forces. I believe that H.R. 2040 achieves that difficult goal.

I want to thank the Members that are testifying today, and I want to thank Congressman Bachus for holding this issue off when we almost considered it on the floor of the Congress.

I want to commend the veterans groups for their excellent testimony that we will hear later today. Their statement carefully examines the complexity of the issues before us, while at the same time recognizing the deeply personal responses we have all had on this painful issue. I congratulate the DAV, the American Legion, AMVETS, the Blinded Veterans Association, the Jewish War Veterans, the VFW and the BVA on their very thoughtful analyses.

I also want you to know that I plan to submit your testimony for inclusion in the Congressional Record so that all of our colleagues in Congress will have the benefit of your comments. As you note in your statement, you represent the voices of America's veterans, and that voice must be heard. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the Ranking Member not only for his statement, but for his cooperation on this hearing.

Now in deference to our Members that are present, we are going to go right into the first panel, and Members who wish to make opening statements may do so after we hear from the first panel.

Mr. Bachus, since you are a Member of this committee, we will lead off with you, if you like. Of course, all statements will be printed in their entirety in the record.

**STATEMENT OF HON. SPENCER BACHUS, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF ALABAMA**

Mr. BACHUS. Mr. Chairman, I do not want to speak from that statement now, I want to speak from my heart. I want to make one statement. If you hear this and you hear nothing else, then my testimony will be, I think, of some assistance to you.

By honoring those that do not deserve it, we dishonor those who do. It is that simple. By honoring those that do not deserve it, we dishonor those who do. I think this committee and this Nation have taken up this debate, and it has focused around Timothy McVeigh, because that is the experience that they have. It is not something that we created; the Nation can relate to this legislation because they know they have gone through what we have all gone through with Timothy McVeigh.

I would totally agree with the Chairman. This is bigger than Timothy McVeigh, and this should not be discussed as a bill which addresses Timothy McVeigh, because it does not. It addresses the question, and I would invite the veterans groups to also—they have entered this discussion. I have a copy of a *Mobile Register* paper. The catalyst for my initial legislation was Henry Hays, not Timothy McVeigh, a Klansman in Mobile, AL, who took a totally innocent young black teenager off the street in Mobile, drove him some 40 miles, he and other Klansmen, to another county, beat him half to death, slit his throat, brought him back critically injured to Mobile, put a noose around his neck, and hung him from a street corner in Mobile simply to send a message that they disagreed with a jury verdict 200 miles away.

A jury in Mobile, AL sentenced him to die in the electric chair. He died in the electric chair. He was then taken out to a cemetery in Mobile where an honor guard performed a military honors funeral with a 12-gun salute. It sparked protests in Mobile, AL.

In my written statement, I commented on what a captain, an Army captain, from my home State said to me in a letter: "As a soldier, I would have a difficult time obeying a lawful order to serve on an honor guard for a man like Hays. Hays does not represent anything that I, the U.S. Army, or this country stands for. Murderers put to death by the State do not deserve military honors. Furthermore, it stains the memory of those who have devoted and, in some cases, lost their lives in the common defense of our Nation."

Let's ask ourselves, Members of the committee, these questions: Who is deserving of this honor? Who is worthy of honor? Who are our heroes?

Now, let's relate that to Timothy McVeigh, because the Nation is going to be deciding that. Is he deserving? I would submit to you that at one time he was, but in a moment of time, when he took the lives and committed what I would say, Mr. Chairman, is a

crime against this Nation—not against people, because the Nation is the people, and we are honoring people's defense of lives. That is what we honor. They were fighting to defend our country, and our country is our people, and in a moment in time in Oklahoma City, he crossed over from being deserving to undeserving.

He was worthy of honor at one time; he is no longer worthy of honor. He may have been a hero to us at one time. He is no longer our hero. He shed innocent blood, the lives of 168 people. But even if it had been one person's innocent blood, he is no longer deserving.

I would like to enter into the record this article from Mobile, because I have said, Mr. Chairman, that my legislation was drafted long before the debate on Timothy McVeigh. It did not address originally Timothy McVeigh. It simply said that we must have standards, we must have values, we must conform our law to those standards and to those values. We have a word here that we call reconciliation—this is what we want, and this is where we are. I consider this legislation is where we need to be to conform to our values, what we as a Nation stand for, what our military stands for. This is where we are.

My amendment differs somewhat from H.R. 2040, Mr. Chairman, and we have had many discussions. I have had discussions with veterans' groups. This legislation addresses only Federal crimes. I will say to you that my legislation addressed anyone convicted of murder, sentenced to death or to life imprisonment without parole and said they are not worthy of a full military honor, funeral, or burial in a national cemetery. It didn't take up benefits, it didn't take up entitlements. But when we do talk about entitlements, decide whether this is an honor or an entitlement, and decide—if you decide it is an entitlement, ask yourself, who is entitled to this? Who is entitled to this?

Mr. Chairman, I say relating to the Nation's experience, this is a debate we need to have; this is a debate we should have, and we should put closure on it. I think the citizens of Oklahoma, Frank Lucas and I cosponsored this, this needs to be addressed for the sake of those victims and for the sake of future victims of these crimes.

Thomas Jefferson said that the strength of our military is that we have citizen soldiers, and to be a good citizen soldier you must not only be a good soldier, you must be a good citizen. By honoring those that do not deserve it, we dishonor those who do. Thank you, Mr. Chairman.

[The prepared statement of Congressman Bachus, with attachment, appears on p. 47.]

The CHAIRMAN. Thank you, Mr. Bachus.

At this time I recognize the gentleman from Missouri, Mr. Skelton.

STATEMENT OF HON. IKE SKELTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. SKELTON. Thank you, Mr. Chairman.

Mr. Chairman, come with me in our mind's eye to Jefferson Barracks outside St. Louis, which is one of the oldest, if not the oldest national cemetery, west of the Mississippi River. Buried there are

those who wore the American uniform way back when our country was just blossoming. Buried there are those from both sides of that horrendous conflict between the North and the South. Buried there are heroes, which is one of three national cemeteries in the State I represent, buried soldiers and those who wore the uniform who were either heroes in life or heroes in death.

Many buried there are those who gave their life on the battlefield, being heroes in death, defending our interests and defending our country, and defending those principles for which they believed. There are many buried there that wore the uniform and qualified either as recipients of certain awards or having retired, or other qualifications that they met, were honorable in their service to our country, and they are heroes in life. And those people, both those who qualify had full and happy, productive lives, and those who lost their lives as a result of service, are really the role models for those who followed, young soldiers, airmen and Marines, those who gave their life.

What this bill does is to essentially prevent the desecration of those present and those future who are entitled to honorable burial. This bill brings to the present day the law that has been on the books for some time. It is not a new concept. For many, many years, since the 1950s, certain persons convicted of heinous crimes have been prevented from burial rights in these national cemeteries.

This brings it to the modern era, because in the modern era we see the killing, intentional killing, of officers and employees of the Federal Government, destruction with explosives, use of mass destruction weapons, acts of terrorism, use of chemical weapons, providing material to terrorists, providing material in support of resources designated to foreign terrorist organizations. That is the world, sadly, in which we live today.

So what we ask, Mr. Chairman, is to bring this statute to date so that those who follow and are buried in those barracks or in the national cemetery in Springfield or the national cemetery in Jefferson City, Missouri, the district which I represent, so that we can be assured and the families can be assured that their last resting place of those who served honorably and well will not be desecrated by those who committed these Federal crimes.

We must look to those who are buried there for inspiration; we should look to them as heroes of the past, so that those who serve honorably and well today may some day receive that high honor to which those who are buried there have received so deservedly.

The CHAIRMAN. Thank you, Mr. Skelton.

The gentleman from Michigan Mr. Knollenberg is recognized.

STATEMENT OF HON. JOSEPH K. KNOLLENBERG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. KNOLLENBERG. Mr. Chairman, I want to thank you in particular for your leadership in regard to this issue, and also this committee which does so much for the veterans of our country at every turn, it seems.

I am pleased to be here. I am also troubled that we meet to address this subject of preventing death penalty convicts from receiving military burial honors in our Nation's 114 veterans' cemeteries.

Our legislation, and I am speaking now for my colleagues as well, is the right thing to do for the veterans of this country who have given so very, very much for us.

The most heinous domestic terrorist act ever committed ripped apart the insides of our country. The Oklahoma City bombing, which has been alluded to, will remain, I think, always ingrained in our hearts, our minds and our souls. Yet, the perpetrator of this act, this dastardly act which killed 168 people, many of whom were innocent children, can currently receive military burial benefits in a veterans' cemetery after he receives a death penalty sentence.

As a Member of the appropriations panel that funds the Department of Veterans Affairs and its programs, and as a veteran myself, I was outraged to hear, as I know my colleagues on this panel were, to hear that our tax dollars could be used to honor any mass murderer who also happens to be a veteran. While military burial privileges can be revoked for certain acts of treason, mutiny, insurrection or disclosure of classified information, the mass murder of hundreds, including children, Federal workers and Federal law enforcement officials, was not on that list. In a narrow, targeted way, that is what I propose we do.

Our Nation's cemeteries are sacred ground. They are a solemn and sad reminder of the price our Nation has paid for the freedom that we enjoy every day. It is not fitting to allow the likes of Timothy McVeigh or any other death penalty convict in the company of our fallen heroes.

More than 40 Members have cosponsored my legislation, which is H.R. 1955, to prevent death penalty convicts, or those sentenced to life in prison, from receiving the privilege of a military burial in a veterans' cemetery. As this legislation moves forward, I suggest we narrowly focus on the target: the criminal who commits a Federal crime and is sentenced to die or sentenced to life in prison. That should be our focus.

We must be careful to stay focused on the true target and not get bogged down by issues outside this committee's jurisdiction. We need to aim our cross hairs at the murderers who have taken innocent lives from us; in fact, the same innocent lives they once defended when they served in our Nation's Armed Forces.

This legislation is about criminals, and criminals must pay for their crimes. That does not mean they should be honored with a 21-gun salute, taps, a flag-draped coffin and burial next to our fallen heroes who sacrificed their lives and their future for us.

I commend this committee and its Members for its prompt action, and particularly, Mr. Chairman, your leadership in moving ahead quickly. I urge the House leadership to quickly bring a bill to the floor so that we can get something to the President's desk. I do think there is an urgency about this, and we should act as quickly as we can and go through the process of hearing from the various people. But let us come to a conclusion, to closure if we can, please.

[The prepared statement of Congressman Knollenberg appears on p. 51.]

The CHAIRMAN. I thank all three of you for your very fine testimony. Let me once again express my appreciation for your agreeing to slow this process down so that we may have a proper hearing and do it correctly and not be stampeded into it just for publicity's sake. I appreciate it very much.

Mr. EVANS.

Mr. EVANS. Mr. Chairman, I just want to thank the Members for testifying before us today.

The CHAIRMAN. Mr. Everett.

Mr. EVERETT. Mr. Chairman, I have no questions.

The CHAIRMAN. Mr. Mascara.

Mr. MASCARA. Mr. Chairman, I would just like to commend all three of you for their excellent testimony and appearing before this committee. Thank you.

[The prepared statement of Congressman Mascara appears on p. 52.]

The CHAIRMAN. Mr. Buyer.

Mr. BUYER. I just have one question. I want to make sure I am clear that your standards that you were talking about would also apply to the Uniform Code of Military Justice, so that if an individual was convicted of rape and received life imprisonment, I mean you would apply State law, Federal law, and UCMJ?

Mr. BACHUS. Let me say this. First of all, it is not the action of this committee, you know, it is not something that we are being stampeded into doing. This action of these people in taking innocent life, it is their action that brings us here today. It is not our action, it is their action. And what my legislation did, which unanimously passed the House of Representatives, it said that a person convicted of a capital offense and sentenced to death or to life imprisonment without parole was not eligible for burial in a national cemetery, or an honors funeral.

Mr. BUYER. Is that by Federal, State?

Mr. BACHUS. Let me say this. I am very troubled—I didn't say this in my statement. I am very troubled that we would talk about—for years, if you destroyed \$100 worth of military equipment, you couldn't be buried in a national cemetery. But if you take a 19-year-old, a totally innocent young boy off the streets of Mobile, AL, and you hang him on a street corner to make a political statement, you are eligible. That is not my idea of a hero, gentlemen. That is the desecration of our national cemeteries.

What I am saying, and I apologize, but I feel very strongly about this, life is life. Innocent life is innocent life. The Federal employee? You know, I don't really understand the distinction of a Federal employee and a 19-year-old citizen walking down the street in Mobile, AL. I don't understand why killing a Federal employee disqualifies you, but killing a 17-year-old boy or a 19-year-old boy—

Mr. BUYER. I just want to be very narrow. I wanted to make sure that—

Mr. BACHUS. Let me say this. In our focus I hope we are not so narrow that we excuse the actions of Henry Hays in Mobile, AL, which this legislation would excuse.

The CHAIRMAN. That is why we are having this hearing.

Mr. BACHUS. I agree. I agree, Mr. Chairman, and I think that we should not in any manner apologize for this hearing, apologize for

bringing these issues up. I think if anything, there is a sense of—and I think the veterans groups, I think there ought to be soul-searching by every one of us, by every veterans group. What do we stand for as veterans? You know, what is service to our country? What is a good soldier?

Mr. BUYER. I just have one last question.

Mr. BACHUS. As I said, I think it illustrates a perfectly——

Mr. BUYER. I just want to make sure, Mr. Bachus, you wanted this apply to all State, Federal, Uniform Code of Military Justice, not only our 50 States, but also to include the United States territories. Whether it is someone from Puerto Rico, Samoa or Guam, they serve——

Mr. BACHUS. Oh, yes. Because I don't see a difference in killing anybody—you know, where it is or who it is. I mean, you know, should we pick and choose?

Mr. BUYER. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Reyes.

Mr. REYES. Mr. Chairman, I also have a statement for the record, and I would just like to echo and associate myself with my colleague's comments that this is a larger issue, and it should be an issue that we do our best to cover every aspect of it. I appreciate the opportunity. Thank you.

[The prepared statement of Congressman Reyes appears on p. 53.]

The CHAIRMAN. Mr. Quinn.

OPENING STATEMENT OF HON. JACK QUINN

Mr. QUINN. Thank you, Mr. Chairman. I have a statement for the record. I want to thank our colleagues who are here today, who I think bear witness to a lot of the concerns that we all hear back in our District by private citizens and may not have the opportunity that you have, gentlemen, to testify, may not have the opportunity that we all have as serving on this committee, and yet rank and file citizens are sensing the same frustration that I hear from you, Spencer, and Joe and Ike. So I appreciate that very much. I also appreciate your working with us and the Chairman on the floor with this just a few short weeks ago.

[The prepared statement of Congressman Quinn appears on p. 54.]

The CHAIRMAN. Thank you, Mr. Quinn.

Mr. Rodriguez.

Mr. Peterson.

Mr. Stearns.

Mr. Gutierrez.

Mr. GUTIERREZ. Mr. Chairman, I just want to thank my three colleagues for being here this morning. Thank you very much. I have a statement for the record.

[The prepared statement of Congressman Gutierrez appears on p. 55.]

The CHAIRMAN. Mr. Doyle.

Mr. DOYLE. Thank you, Mr. Chairman. I have a statement I would like to submit for the record.

I would like to thank my colleagues for being here. Joe, I am a cosponsor of your bill. Spencer, I am sorry I missed your presen-

tation, but Mr. Mascara tells me it was very moving, and I think we should all work with the Chairman to develop some legislation. [The prepared statement of Congressman Doyle appears on p. 57.]

The CHAIRMAN. Thank you, sir. Mr. Spence.

Mr. SPENCE. Mr. Chairman, I don't have any questions. I just want to commend the gentlemen for their statements.

The CHAIRMAN. Mr. LaHood.

Mr. LAHOOD. Mr. Chairman, I have no questions.

The CHAIRMAN. All right. Gentlemen, thank you very much. We look forward to working with you, and we will get to this bill just as rapidly as possible, but we want to do it thoroughly and do it right.

Our second witness today is Jerry Bowen, the Director of our National Cemetery System at the Department of Veterans Affairs.

Mr. MASCARA. Mr. Chairman, I have a statement for the record.

The CHAIRMAN. Without objection, all statements will be submitted for the record.

Mr. GUTIERREZ. Mr. Chairman, I ask unanimous consent to submit Congressman Bob Filner's statement for the record.

The CHAIRMAN. Without objection.

Mr. GUTIERREZ. Thank you.

[The prepared statement of Congressman Filner appears on p. 60.]

The CHAIRMAN. Mr. Bowen, Director of the National Cemetery System, Department of Veterans Affairs. Your entire statement will be printed in the record. If you care to introduce your guest, please do so.

STATEMENT OF JERRY W. BOWEN, DIRECTOR, NATIONAL CEMETERY SYSTEM, DEPARTMENT OF VETERANS AFFAIRS, ACCOMPANIED BY JOHN H. THOMPSON, ASSISTANT GENERAL COUNSEL

Mr. BOWEN. Thank you, Mr. Chairman. I have with me Mr. Jack Thompson, who is Assistant General Counsel for the Department of Veterans Affairs.

Mr. Chairman and Members of the committee, I am pleased to present the views of the Department of Veterans Affairs on two bills: H.R. 2040, which would render ineligible for burial in a federally-funded cemetery persons convicted of certain crimes, or administratively found to have committed those crimes; and S. 923, which would render any person who is convicted of a Federal capital offense ineligible for all benefits provided under title 38, United States Code.

Mr. Chairman, we commend you for your wise counsel in urging your colleagues to avoid precipitous action on these matters. The Government would do a tremendous disservice to American veterans if it were to act without due consideration of the principles which have guided the establishment of programs that have served veterans and their families so well for so long.

Both bills under consideration today raise the issue of the propriety of imposing forfeiture of benefits based on the post-discharge conduct of veterans discharged honorably from military service. In the past, it has generally been recognized that veterans' benefits

are provided on the basis of faithful military service and are not contingent on the veteran's conduct subsequent to discharge.

However, we recognize that under certain limited circumstances, veterans' benefits currently may be forfeited based on conduct after service. Provisions of chapter 61 of title 38 provide for forfeiture of gratuitous benefits based on the post-discharge commission of certain serious acts, such as treason, sabotage, spying, and subversive activities, and, under very narrowly defined circumstances, submission of fraudulent claims.

Mr. Chairman, should the committee decide it is necessary to pass legislation limiting veterans' benefits based on the commission of Federal capital crimes, VA's preference would be for the more narrowly focused provisions of H.R. 2040. We believe H.R. 2040 would adequately address concerns regarding the preservation of the sanctity of veterans' cemeteries while having a limited impact on veterans' families. H.R. 2040 applies only to persons who have committed certain crimes which result in the death of a Federal employee. It would prevent the interment of perpetrators of such crimes in the 114 national cemeteries within the VA system, Arlington National Cemetery, 34 State veterans' cemeteries which have received Federal grants.

We also caution that the bills in question, if enacted as drafted, could give rise to a number of anomalous situations. For example, the provisions of H.R. 2040 authorizing an administrative determination of ineligibility for a person not brought to trial because of insanity would seem to make a distinction between those found by a jury to be not guilty by reason of insanity, and those found by a judge to be not competent to stand trial. Further, this provision would run counter to the long-standing tradition of not holding the insane responsible for their actions.

So, Mr. Chairman, for these reasons and because of the administrative difficulties that can be expected as a result of this provision, we urge the committee to delete it from the bill.

We also wish to call the committee's attention to H.R. 2040. While denying the right to burial in a federally-funded cemetery to a person convicted of certain crimes would not bar that individual at death from receiving certain other forms of recognition under title 38, such as a headstone or marker for use in a private cemetery, a U.S. flag to drape the casket, or a Presidential memorial certificate, in our view the terms of H.R. 2040 and S. 923 present some problems that could make implementation difficult or inequitable in certain cases. However, of the two bills, VA would prefer the more narrowly focused H.R. 2040.

Mr. Chairman, this concludes my statement. Mr. Thompson and I will attempt to answer any questions that you or Members of the committee may have.

[The prepared statement of Mr. Bowen appears on p. 65.]

The CHAIRMAN. Thank you, Mr. Bowen.

You stated a preference for the more narrowly focused H.R. 2040. Would the VA favor a bill—while ours does not cover a terrorist act of killing people who are not Federal employees, would VA favor such an amendment to the bill to include persons other than Federal employees?

Mr. BOWEN. We as a department and as an administration, do not have a position concerning expanding the provisions of the law as currently stated. We will defer to the will of the Congress, expressing the will of the American public, about how we do that. We will simply enforce the laws as you see fit to pass them.

The CHAIRMAN. Let me ask you one more quick question. What about other capital offenses? Does the VA favor expanding the bill to cover other mass murders, or a situation involving a serial killer claiming victims over the course of several years?

Mr. BOWEN. No, sir. We would not support or advocate expanding or limiting the terms of the bill as currently written.

The CHAIRMAN. I have a couple of more questions that I will submit for the record if you would care to answer them later.

(See p. 100.)

The CHAIRMAN. Mr. Evans.

Mr. EVANS. Mr. Bowen, your statement is well written, but I want to make sure I understand you. You say your preference is for H.R. 2040. Does that mean the VA would support H.R. 2040, or is supporting H.R. 2040?

Mr. BOWEN. Sir, of the two that we have examined and were asked to look at the provisions and the difficulties of implementing them, we would prefer the provisions of H.R. 2040.

Mr. EVANS. But you are not endorsing that piece of legislation?

Mr. BOWEN. No, sir.

Mr. EVANS. On page 6 of your statement, you note with concern that the bill only restricts the right to burial in federally-funded cemeteries and does not affect any other benefits. Does the VA recommend that the restriction also apply to other death-related benefits?

Mr. BOWEN. No, sir, we do not recommend that. All we are bringing to the attention of the committee is that we are talking about two things. The first concerns military honors, which are not provided by the Department of Veterans Affairs, but provided by either the Department of Defense or by voluntary honor guards from the veterans' service organizations, such as the American Legion or the DAV.

Second, to deny burial in a national cemetery is one thing. To deny the other auxiliary burial benefits that a veteran is entitled to as a result of honorable service is another. The way the bill is currently written, also may be denying the veteran a headstone or marker for placement in a private cemetery, a U.S. flag to be draped over the casket, and the issuance of a Presidential memorial certificate. We simply bring that to your attention. You may wish to consider this; you may not. We do not advocate the inclusion of it.

Mr. EVANS. I thank you for your comments regarding the provision which would authorize an administrative determination of ineligibility. I agree with you that this issue requires further consideration, and I appreciate you raising it.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Mr. Quinn.

Mr. QUINN. Thank you, Mr. Chairman.

Mr. Bowen, I want to associate myself with the questions that Mr. Evans began, and thank you for your comments. I don't want

to speak for the panel of Members who just exited the room, because as you saw, they are perfectly able to speak for themselves, as most Members are in the House and across the hallway. I would just say to you and appreciate you bringing to our attention the headstone, flag, Presidential certificate and any kind of voluntary American Legion, VFW ceremony. I would guess that many Members and other Members of the public would say that ought to go, too. I am not asking that question, because Mr. Evans probed enough that you are not supporting it; you are bringing it to our attention, and I appreciate it. Thank you.

The CHAIRMAN. Mr. Gutierrez.

Mr. GUTIERREZ. Mr. Chairman, I just have the same issue. It seems like we all read your comments, and Mr. Evans kind of hit the nail on the head. That was the issue I was going to raise, too, so I think, Mr. Chairman, we should, in listening to Mr. Quinn, and listening first to the Ranking Member, and then to Mr. Quinn and then back this way, it seems to be bipartisan, I think we should take a good, serious look at that particular area of the legislation. I want to thank you for bringing it to our attention. Thank you so much.

The CHAIRMAN. Mr. Buyer.

Mr. BUYER. Thank you, Mr. Chairman.

I want to ask both of you gentlemen, in H.R. 2040, if we made that law, and if we had a veteran that was a disabled American veteran receiving his disability payments, and then upon conviction, and we go with H.R. 2040, I am trying to figure out where we are going to draw the line here. Would we continue to pay this individual disability payments while they are sitting in prison awaiting death?

Mr. THOMPSON. Currently the law precludes payment of disability compensation to incarcerated felons beyond a certain amount. A minimum amount of the benefit is still payable. Regardless of the level of disability, the 10 percent disability rate is the most a person can receive while in prison. This legislation was enacted in the 1970s, and so currently there are quite severe restrictions on receipt of benefits by incarcerated felons.

Mr. BUYER. Well, if you are going to draw the line for these particular offenses, do you have a recommendation to us on whether or not we should eliminate all veterans' benefits to include those disability payments for someone convicted of these types of offenses?

Mr. THOMPSON. We do not have a cleared position, other than on the legislation that is before the committee.

Mr. BUYER. So if we wanted to take this another step, H.R. 2040 to another step, what would be your opinion if this committee—if we laid out an amendment to H.R. 2040 or worked with the Chairman to say, all right, we are going to deny those disability payments for someone while they are sitting on death row to even include that 10 percent? What is your feeling?

Mr. THOMPSON. Again, we would have to coordinate a position on that.

Mr. BUYER. Well, would you let us know what your opinion is?

Mr. THOMPSON. Yes. (See attached insert.)

As indicated in our testimony, VA prefers H.R. 2040, which would make certain criminals ineligible only for burial in Federally funded cemeteries, to S. 923, which would preclude all eligibility under title 38. Consistent with this position, VA does not advocate amending H.R. 2040 to prohibit eligibility for additional benefits.

The CHAIRMAN. Would you yield to me for just one second? While you said the VA does not make those payments, we have been very careful to see to it that the innocent are not harmed by our action. This would not apply to, say, dependent children or a spouse; is that correct? Those payments would continue.

Mr. THOMPSON. That is correct. The amounts withheld by virtue of the incarceration may be apportioned to family members.

The CHAIRMAN. Thank you.

Mr. BUYER. Thank you for the clarification, Mr. Chairman.

The CHAIRMAN. Mr. Mascara.

Mr. MASCARA. I have no questions.

The CHAIRMAN. Mr. Doyle.

Mr. DOYLE. Thank you, Mr. Chairman.

I guess one concern I have about H.R. 2040 is, and you pointed this out in your testimony, that if a person committed a crime like, a few years back when we had the New York subway incident where a guy walks on the subway and wipes out 18 or 20 people, and if that person was a veteran, he or she would receive benefits under this bill. That's because he didn't kill any Federal employees in the act of doing their duty; even if there were Federal employees killed, if they weren't in the act of doing their job as Federal employees, that person would be eligible for full burial rights whereas in the other incidents we talk about they wouldn't.

I agree with Spencer. I don't see the distinction between the guy that does that or the person that blows up a Federal building. That would be my only comment. I appreciate you pointing that out in your testimony.

The CHAIRMAN. The Chair would like to make a comment. I hope that the Members stay around to hear Mr. Surratt, who is representing all of the veterans' service organizations today. They all got together and came up with one statement, and I think he addresses this issue.

Mr. Reyes.

Mr. REYES. Thank you, Mr. Chairman. I don't have a question, but if you can help me out, there are a number of issues that have surfaced here this morning that I feel need to be addressed. Will we have an opportunity to address them so that we comprehensively cover all of these areas?

The CHAIRMAN. Absolutely. We will do that in our markup session. This is strictly a hearing, that is the purpose, to get the views of the various organizations that wanted to testify.

Mr. REYES. Thank you.

The CHAIRMAN. Mr. Bachus, you may want to explain very briefly your amendment to the DOD bill on the floor since it does come into this area.

Mr. BACHUS. Also, there has been some concern, and I think we ought to all be concerned about stepping into State jurisdiction. Mr. Buyer expressed that concern. I think that is a valid concern. We are not doing that here. We are talking about national cemeteries; we are talking about military service to the country; we are talking

about the country honoring these people. The United States, not the State of Alabama, not the State of Texas; we are talking about the Nation giving these people certain benefits. Nothing in my bill denied anything to survivors, widows, anything of that nature.

What my amendment did, which passed unanimously, it simply said that if you are convicted of a capital offense and sentenced to death or life imprisonment without parole, that you are not eligible for an honored funeral. And among those honors are flags and such, so I would think that that would have covered that. And that is certainly something of national jurisdiction.

The CHAIRMAN. Thank you, sir.

Mr. Mascara, my apologies. I think I skipped over you a while ago.

Mr. MASCARA. Mr. Doyle asked a question. I was curious about that situation where you had to be on duty in order for this to apply, and I agree with Mr. Doyle, and I thank you for your comments.

The CHAIRMAN. Mr. Spence.

Mr. SPENCE. I have no questions, Mr. Chairman.

The CHAIRMAN. Dr. Snyder.

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

The CHAIRMAN. Mr. LaHood.

Mr. LAHOOD. Mr. Bowen, if this bill, H.R. 2040, were to pass as it is written now, would you recommend that the President sign it; if it passed the House and Senate, would you recommend the President sign it?

Mr. BOWEN. We do not have a position on that at this time, sir. We are here to bring up some issues that we have identified which we would like the committee to consider. We do not support the Senate version versus H.R. 2040; however, of the two, we would prefer the measures and the provisions as drafted in H.R. 2040.

Mr. THOMPSON. I would add, Mr. LaHood, that by virtue of not opposing H.R. 2040, we are certainly not in a position to recommend disapproval by the President.

Mr. LAHOOD. So you would recommend that he sign it if it were passed?

Mr. THOMPSON. I think that is likely, although we haven't reached that bridge. I think that is altogether likely.

Mr. LAHOOD. So the glass is half full rather than half empty.

Mr. THOMPSON. About half.

Mr. LAHOOD. Yes. Mr. Bowen, could you at some point along the way in the next, say, several weeks, by written correspondence, give me a report on how we are doing with Camp Butler?

Mr. BOWEN. Yes, sir.

Mr. LAHOOD. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Rodriguez.

Mr. RODRIGUEZ. Thank you, Mr. Chairman. I have, I guess, personally just some difficulties, and I think I agree with some of the Members that if you have a crime that is committed against citizens, I would think that would also apply. What I am gathering is the way it is written right now, that it doesn't encompass that area; is that correct?

Mr. BOWEN. It must be a Federal employee, and that employee must be on duty.

Mr. RODRIGUEZ. That doesn't make sense to me in terms of why we just don't narrow it down to Federal employee.

The other thing is that I gather that some of the concerns that you have is to make sure we don't restrict any resources maybe to the family and go beyond that.

The other area that was raised that I also would have some concerns about is if an individual has mental health problems, and in that area I can see maybe some difficulties arising from that, but maybe as we deal with it, we can come to grips with this issue and encompass—at least I would hope that we would want to encompass a little bit more than just the narrow definition right now, with the opportunity of maybe not restricting some of the benefits to the family members or innocent individuals that are out there.

The CHAIRMAN. Are there any other questions?

Mr. Quinn.

Mr. QUINN. Mr. Chairman, I really think that this discussion is very, very helpful, and to slow things down a bit, to get us through this is extremely helpful. As we heard just this morning, a lot of questions coming up.

Mr. Bowen, you mentioned on page 6 in your testimony, and I mentioned in an earlier question about a headstone and flag and voluntary honor guards and so on. Would it be possible for the Department in your area to write back to us, to the Chairman, all of us on the committee, just what some of those other things are and spell them out for us in writing? You mentioned them on page 6, but I would ask if you could go into a little bit more detail. As Mr. Thompson pointed out, the 10 percent for someone who is incarcerated, for someone who is already receiving disability benefits. We certainly don't want to be headed in one direction and affect somebody else along the line. As the Chairman of the Subcommittee on Benefits, I know that I have talked to Members of the subcommittee, and they are very interested in where we are headed on this. So something in writing for all of the Members to look at would be extremely helpful if I may ask for that.

Mr. BOWEN. We will do that.

Mr. QUINN. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Bowen, thank you.

Mr. Thompson, thank you for taking the time to be with us.

There will be some questions in writing that we would submit for the record, if you would answer them, please. Thank you very much.

(See p. 100.)

The CHAIRMAN. On our next witness, Mr. Johnny H. Killian. Mr. Killian is a constitutional law attorney from the Congressional Research Service.

Mr. Killian, we appreciate your being with us today, and you may proceed in any way you see fit. Your entire statement will be made a part of the record.

STATEMENT OF JOHNNY H. KILLIAN, LEGISLATIVE ATTORNEY, AMERICAN LAW DIVISION, CONGRESSIONAL RESEARCH SERVICE

Mr. KILLIAN. Thank you, Mr. Chairman.

I am appearing today at the request of the committee to testify about any constitutional implications that may arise from consideration of these bills. As an employee of the Congressional Research Service, I, of course, cannot comment on or advocate policy; I can only address the issue of constitutionality with regard to these bills.

The first point simply is that there is no general constitutional objection that can be raised against a bill that imposes prospective disqualification. That is because veterans' benefits, the burial rights, privileges, that sort of thing, are gratuities that Congress can confer out of respect and gratitude to veterans. The statutory provisions do not create any kind of property interests that would be violated by Congress's prospective revocation of these rights.

The only constitutional issue that arises is as to the application of any of these bills to persons who have already become disqualified in the sense of having been convicted. We know reference has been made to Mr. Timothy McVeigh, and there is a prospect, a possibility, of the raising of an ex post facto issue or a bill of attainder issue.

The thing about an ex post facto law is that it is one that is forbidden by article I, section 9 to the Federal Government, and article I, section 10 to the States. It is a law that imposes punishment in addition to punishment that may already have been imposed in the past, prior to the enactment of the bill. But an ex post facto law, as I have defined it, requires that there be punishment. Either the purpose or the intent or the effect of a law enacted by Congress must punish in order for it to violate the ex post facto clause or a bill of attainder clause or any others that have been the subject of constitutional decision by the Federal courts or by the Supreme Court.

The definition of what is punishment and what is not is a little difficult to get a grip on outside the facts of particular cases. It essentially is that there may be two different grounds for Congress to proceed. There may be a punitive reason; there may be a non-punitive reason. If the purpose that Congress has, if the effect that Congress has in enacting is nonpunitive, then there is no ex post facto violation and no bill of attainder violation.

Generally, although it is sometimes difficult to get a precise grip on it, a statute which is aimed at the activity or status from which an individual is barred is a nonpunitive enactment. It is not a violation of the ex post facto clause. The contrary is the case where the statute in question is aimed at a person or class of persons who are disqualified. So if the intent is to get at particularly individuals or groups of individuals, that is a violation. If the purpose is to regulate some activity which is within Congress's power, that is not punitive, and just as Congress may have the purpose in legislating prospectively to deny burial in a Federal cemetery or a national cemetery to people that Congress feels would dishonor the privilege, that Congress would feel that scarce resources should be better left to people that it more rightly believes would not bring dishonor on the system of burial, then there is a nonpunitive purpose, and that applies just as well retroactively as it does prospectively.

The other basis on which the courts frequently find ex post facto violations is if the legislative record of enactment contains expres-

sions of hostility toward, objections to a particular person, and, therefore, Congress always has to be concerned about the creation of the legislative record.

I will stop there, Mr. Chairman. My statement is much more fully developed, and I would be delighted to answer your questions and the questions of Members of the committee.

[The prepared statement of Mr. Killian appears on p. 72.]

The CHAIRMAN. Thank you, Mr. Killian.

Let me ask you one question. Some concerns have been raised about the provisions in H.R. 2040 which would allow for administrative disqualification from entitlement to burial if the veteran had not been available for trial due to, quote, "determination of insanity." Would it make more sense to use "incompetence to stand trial," rather than "stand trial for insanity?"

Mr. KILLIAN. For constitutional purposes, I don't think it makes any difference, Mr. Chairman. The Supreme Court has indicated there are constitutional problems with punishing someone who is insane or incompetent, but as we discussed, this bill is not aimed at punishing. Therefore, it seems to me to present a purely policy question to the committee of how that disqualification should be defined.

The CHAIRMAN. Thank you, sir.

Mr. Evans.

Mr. EVANS. Thank you, Mr. Chairman.

Mr. Killian, I want to thank you for your excellent testimony. It is very well written and covers the complexity of these issues.

I do want to establish that the legislative intent this bill is not purposely punitive. Rather, the Congressional intent is to preserve the sanctity of veterans' cemeteries. If, however, the bill were to be amended in such a way as to be construed as purely punitive, what would be the effect on the constitutionality of the bill?

Mr. KILLIAN. If the legislation on its face were construable as purely punitive, or if the legislative history contained a great deal of evidence of animus and hostility, then courts would be more likely to declare it unconstitutional, the legislation unconstitutional as a bill of attainder or as an ex post facto law.

Courts are generally very loath to strike down legislation on the basis of the motivation of Congress. A law comes to the courts with a presumption of constitutionality. The courts are loath to look behind the stated purposes of Congress, but it is conceivable that legislation which either on its face seems to be hostile, seems to be punitive, or which evidenced in the legislative history of its consideration a punitive intent, then the legislation could be found unconstitutional. There have been laws under those circumstances which have been struck down by the courts.

Mr. EVANS. Thank you, Mr. Chairman.

Thank you, Mr. Killian.

The CHAIRMAN. Thank you, Mr. Evans.

Mr. Buyer.

Mr. BUYER. What I was thinking about, Mr. Chairman, is so often we try to be accurate in our laws for their interpretation and here is what I want to ask the witness.

What is your recommendation to us? Should we really pass a statute that would give some greater discretion for administrative

decisions for them to make some judgment calls? I hate to sit here and try to draft a law to cover all of the what-ifs, because if we talk about a case, America got to see when this veteran stole a tank in California, and he drove that tank, and he put a neighborhood there and a city into peril and terror, and fortunately no one was killed, but he could have easily killed someone. Yet when the tank then—the track was thrown off, they killed the individual who was driving it.

Now, he got military honors in his burial. Not everyone is going to get an adjudication. Someone, in fact, could be a veteran and go in with an AR-15 and shoot people up in a McDonald's, and the police then kill him, yet he is going to get a military burial.

So on those kinds of cases where there isn't an adjudication from the courts, what about if we give some administrative decisions to be made by the VA in these judgment calls?

Mr. KILLIAN. In terms of the fact of consideration of *ex post facto*, bill of attainder and that sort of thing, I don't think it makes much difference. It is still relating to either enactment by Congress, which does the act, or a delegation to an administrative officer to do the act, so that I think there is not a great deal of difference.

I would point out that the present 38 U.S.C. section 6104 does provide for administrative determination by now the Secretary of Veterans Affairs, and then the Administrator, that a person has engaged in a variety of activities that Congress wished to constitute a disqualification for certain veterans' benefits. That was at issue in the case which I mention on page 10, *Thompson v. Whittier*, where the then Administrator had made certain decisions, had gotten involved in the courts challenging this as *ex post facto*. The courts had difficulties with the grounds that the Administrator had asserted certain speech-related activities by a Member of the Communist party and that sort of thing, so that even a delegation to the administrator, unless it is cabined quite carefully, could raise constitutional problems in its exercise, in its administration. But simply in terms of giving an administrator the discretion to find additional disqualifications beyond what Congress may expressly enact, I don't think as a general rule that that would raise any constitutional problems and could suffice to prevent Congress from having to come back to that again.

Mr. BUYER. Sir, this one statute that you cited where there is some administrative, what was that again?

Mr. KILLIAN. That is 38 U.S.C. section 6104, I think it is. Yes.

Mr. BUYER. All right. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Doyle.

Mr. DOYLE. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Quinn.

Mr. QUINN. No questions, Mr. Chairman.

The CHAIRMAN. Dr. Snyder.

Mr. SNYDER. Yes, just a quick question.

I don't have much feeling for Congressional intent. Fortunately I came from a State legislature where we never kept records of anything, and we could always make up intent later as it suited our purpose. Clearly this is an example where you have 435 Members of the House, and every one of them are going to have a dif-

ferent intent, and I know you discussed that, that you can have multiple purposes, but clearly, I was at the Federal cemetery in Little Rock on Memorial Day, and it is a centrally located cemetery and very well—I mean, a lot of folks come to it. In fact, I have a grandfather of a good friend of mine who is buried there, and we have gone to the cemetery just to put some flowers on the grave.

But clearly one of the purposes is, totally separate from the person that we are talking about burying there, is what it is going to do to the family members who have loved ones buried nearby, totally separate from any type of punitive purpose. I guess for the purposes of this record, those are the people that I am thinking about. I want any convicted mass murderer-terrorist to have a decent burial, and it probably is going to be at taxpayer expense somewhere, if we were to follow through with an execution or whether a person passes away, but that is not my concern. My concern is the people in proximity to that, which is a totally nonpunitive purpose, and I just make that comment.

Mr. KILLIAN. If I just may say very briefly, the courts have problems with legislative history, and certain Justices of the Supreme Court have a lot of trouble with legislative history. In the course of any enactment of a bill, there is created legislative history which demonstrates this Member's intent or that Member's intent and that kind of thing.

The Court generally requires, for determining that there was a punitive purpose when what was said to be the purpose was nonpunitive, that there be very clear evidence of substantial hostility or animus among more than just a few Members of Congress, so that I don't think that even if there might appear in the record some comments that could be construed to be punitive, that a bill that was crafted with a nonpunitive purpose, the preservation of burial spots to veterans who are entitled to the honor, the preservation of scarce resources and that kind of thing, I would seriously doubt that the courts would find that there had actually been punitive purpose driving Congress.

Mr. SNYDER. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Doyle.

Mr. DOYLE. No questions.

The CHAIRMAN. Mr. Spence.

Mr. SPENCE. Thank you, Mr. Chairman.

A few Members this morning have expressed concern about the Federal employee aspects of it and also these other enumerated things here. It says, as it applies to one of the following. Could you explain why we have these provisions, the Federal employee and this? Is that to get Federal jurisdiction?

Mr. KILLIAN. Not in terms of Federal jurisdiction. Of course, the issue is burial in federally-funded cemeteries or a denial of benefits. I can only assume that the bills were drafted in the context of a particular factual situation. It was written entirely that way.

Mr. SPENCE. So it wouldn't make any difference if just any person was killed.

Mr. KILLIAN. That is correct. I mean, Congress can determine that people are entitled to the honor of burial in federally-funded cemeteries or the receipt of benefits, and Congress can determine

that certain conduct which does not have to have anything federally related to it would disqualify persons.

Mr. SPENCE. How about the insanity part?

Mr. KILLIAN. Well, as I indicated, insofar as the bills are non-punitive, they have a nonpunitive purpose, I do not think that that raises a constitutional issue. Congress can very well determine for any number of reasons that certain persons are not entitled to burial in federally-funded cemeteries or the receipt of particular Federal benefits and the like. It is simply a policy question that Congress has to decide.

Mr. SPENCE. Well, the reason I am asking these things, we have never had a chance to rule on these things. The best example that comes to mind is that Congress passed a law saying that if you burn a flag, that is a crime, and the Court comes back and says, that is a violation of free speech. They have a little difficulty, the Court, determining what is an act and what is speech. So when we have that kind of situation that exists, there is no telling what might happen about a ruling on something like this. That is the reason I asked the question.

Mr. KILLIAN. Right. I would say the Court is much more strict in its review of legislation that it decides violates speech than it is with respect to laws that may structurally violate—that may violate structurally the Constitution, such as the ex post facto clause.

Mr. SPENCE. While I am on that, the act and the speech part right there, if the Court is going to say that burning, that is an act, burning a flag, that is an act, that is not speech, they could extend that to say that when you throw a bomb in a building, like out there in Oklahoma, that is a way of expressing yourself, that is free speech.

Mr. KILLIAN. Well, they have never extended it to the commission of violence. In fact, there is a whole doctrine in the first amendment area, the clear and present danger doctrine, which is that when speech is imminently aimed at provoking violence or other activities, and there is no time to correct it by speech, then Congress or a State legislature may punish that kind of speech. I mean, the pure speech, pure advocacy, the advocacy of overthrow of the government, or the advocacy of conducting riot, you can't go out in the street and say, everybody, let's go down and do X, which would be criminal. The Court draws lines at speech that provokes or promotes criminal conduct, so that the precedents are very strongly against the prospect of that kind of thing being accomplished by the courts.

Mr. SPENCE. Thank you.

The CHAIRMAN. Ms. Carson.

Ms. CARSON. Thank you very much, Mr. Chairman. I don't want to be repetitive. Probably you have answered the question, but for my edification, two questions.

This bill, H.R. 2040, does it, Mr. Chairman, apply only to individuals who have committed Federal crimes?

The CHAIRMAN. As it is currently written, yes, ma'am, it would. This is the purpose of this hearing, to take everybody's input, and then we will decide when we mark up the bill what is best after we listen to everyone.

Ms. CARSON. My second question, Mr. Chairman, is whether it would affect the families of an individual.

The CHAIRMAN. We have gone out of our way to make sure that innocent victims such as spouses or minor children are not affected.

Ms. CARSON. Thank you, Mr. Chairman.

The CHAIRMAN. You are welcome.

Dr. Cooksey.

OPENING STATEMENT OF HON. JOHN COOKSEY

Mr. COOKSEY. Mr. Chairman, I have limited comments to the fact that I would like to record that I agree with the intent of this legislation. I happen to have a shortage of space in my District, and we have a shortage of space in our national cemeteries, and we have been looking into getting an additional cemetery. We have the ground. I cannot see the value of putting someone in that has committed a crime that has disgraced this Nation and disgraced the uniform and disgraced the flag.

So I agree with the intent of the legislation. I got here late, and I gather that there are some problems with it.

Mr. KILLIAN. Well, not that I think there is a problem with it. I was suggesting that in the context of the application of the legislation, that somebody who has already suffered the disqualification, as in Mr. McVeigh's case, there could be raised an ex post facto claim or bill of attainder claim and the like, and I suggested that the courts are quite unlikely to adopt that claim, and to strike the legislation down on the basis of it, because the committee has a nonpunitive purpose, and with the ex post facto laws, the courts require a punitive purpose in order to qualify as a prohibited law.

Mr. COOKSEY. I see. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Bachus.

Mr. BACHUS. Thank you.

Mr. Killian, I am going to give you a copy of three bills which I think you are already familiar with. One is Senate 923, which the U.S. Senate passed.

(See p. 41.)

Mr. BACHUS. My understanding is under that bill, if you were to kill an FBI agent or kill someone in a Federal courthouse and were convicted of that, you would be ineligible for any veterans' benefits; is that correct?

Mr. KILLIAN. Yes.

Mr. BACHUS. Now, if you killed a city police officer and a deputy sheriff and a State trooper, you would still be eligible; would you not?

Mr. KILLIAN. That is correct.

Mr. BACHUS. If you went into a local elementary school and blew up a classroom and killed 40 students and a teacher and a teacher's aide, you would still be eligible for full benefits under the bill that was passed out of the Senate; is that correct?

Mr. KILLIAN. That is correct.

Mr. BACHUS. I show you H.R. 2040.

(See p. 42.)

Mr. BACHUS. If you kill an FBI agent, if you go into a Federal courthouse, if you kill someone within a Federal courthouse who is a Federal employee, you are ineligible for certain benefits.

Mr. KILLIAN. That is correct.

Mr. BACHUS. If you went into a State capitol and killed a State trooper or the Governor, you would still be eligible?

Mr. KILLIAN. That is correct.

Mr. BACHUS. If you went into a local school and you killed, you would still be eligible for a military funeral?

Mr. KILLIAN. Yes.

Mr. BACHUS. Or if you went into city hall and killed everyone who happened to be in that building, you would still be eligible?

Mr. KILLIAN. That is correct.

Mr. BACHUS. I show you the amendment that I passed out of the House.

That addresses only burial rights, burial benefits. A person becomes entitled to those upon their death; is that correct?

Mr. KILLIAN. That is correct.

Mr. BACHUS. Timothy McVeigh would only be denied benefits upon his death.

Mr. KILLIAN. That is right.

Mr. BACHUS. If this bill passed today, he would not apply for these benefits until the day he dies; is that correct?

Mr. KILLIAN. That is correct. There is a way in which this bill is not retroactive in the sense that the actual accrual of the privilege or the benefit is going to occur sometime after enactment, such as when he becomes eligible, if that is the correct word, eligible for burial in a federally-funded cemetery.

The difficulty is that, as in a number of other cases, the courts have decided that the disqualification that the bill established pre-dates the enactment of the legislation so that you have a retroactive effect there, but a prospective application with respect to the other.

Mr. BACHUS. That would be for the courts to determine.

Mr. KILLIAN. That is right.

Mr. BACHUS. But now he is not entitled to these benefits until such time?

Mr. KILLIAN. Well, prospectively he is entitled, just as all of us may say that we are entitled to receive something in the future when that qualification time comes.

Mr. BACHUS. I had read that the family could not even apply for this until his death.

Mr. KILLIAN. I am not at all sure, but I think that is undoubtedly the case. There would be no reason for somebody to apply in advance of the death.

Mr. BACHUS. I think the record was clear in the House of Representatives when we passed that amendment that we were doing it to honor our military heroes and not out of dishonor for anyone, that the focus of the bill was on honorable military service.

Mr. KILLIAN. It struck me that the record reflects clear nonpunitive purpose, yes.

Mr. BACHUS. Thank you.

I have no further questions, other than I would point out that I don't think that this Congress ought to be on record as saying that

it is wrong to kill an FBI agent or an AFT agent, and deny them all benefits, but by the same token say that if it is a city police officer or an elementary school teacher or an entire classroom or a busload of students, that there be no denial of any benefits. Thank you.

The CHAIRMAN. The gentleman from Arkansas, Mr. Hutchinson.

OPENING STATEMENT OF HON. ASA HUTCHINSON

Mr. HUTCHINSON. Thank you, Mr. Chairman. I first want to tell you that I appreciate you sending out the letter for each and every one of us to keep their powder dry. I think this is a type of issue when you are speaking of veterans' benefits that we need to be reflective upon, and your leadership has been very helpful on that. I think this is the right way to approach consideration of this legislation.

I did have a couple of questions following up on Mr. Bachus's questions concerning the possible extension of this to those who might be convicted of capital offenses under State law. Would there be any particular constitutional problem or drafting problem if that extension was made under this legislation?

Mr. KILLIAN. There would be no constitutional problems inasmuch as what we are talking about are disqualifications for receiving Federal monies or a privilege made available through the utilization of Federal monies, such as burial in a national cemetery. The disqualification runs to that. Congress is not attempting to regulate a State law or a State practice. It simply, as in a number of instances of Federal benefit programs, is recognizing a circumstance that arises under State law so that there is no difficulty of constitutional application of the law.

Mr. HUTCHINSON. And within the purview of your expertise, do you see any particular policy or drafting reason that that should not be extended?

Mr. KILLIAN. I cannot at the present time see that there would be any problem with regard to definitional provisions that related to the State crimes as well.

Mr. HUTCHINSON. And then in the legislation, and your testimony referred to it, that the Secretary of Veterans Affairs is authorized to adopt regulations providing for ineligibility for persons who might have fallen into the prior category, but for death, flight to avoid prosecution, or determination of insanity. In the legislation, the Secretary must make that finding by clear and convincing evidence.

Do you believe that is the appropriate standard, or would you comment on that in contrast to preponderance or beyond a reasonable doubt?

Mr. KILLIAN. It is such a policy determination for Congress to make as to whether the Secretary's discretion should be cabined to some extent by the kind of showing he is required to make. Congress has provided any number of delegations which a recipient of the delegation must show by various standards, whether it is preponderance or the like, so that it simply depends on the importance that Congress might very well attach to the determination of the Secretary to make. We may very well want to assure that the Secretary makes a determination on the basis of a substantial amount

of evidence; that he is really—that his determination is really informed rather than simply a 51-49 kind of thing. But that is entirely a matter for the policy determination of this committee and of the entire Congress.

Mr. HUTCHINSON. I thank you, and I thank the Chairman.

The CHAIRMAN. Mr. LaHood.

Mr. LAHOOD. Based on the current makeup of the Supreme Court and your knowledge of this legislation, if it were passed the way it is today, do you believe it would be—if someone challenged it constitutionally, that it would be ruled constitutional?

Mr. KILLIAN. The Court on June 23 upheld, in a case called *Kansas v. Hendricks*, against an ex post facto challenge as a sexual predator statute from the State of Kansas under which Kansas provided for civil commitment of persons who have been convicted of certain sexually violent crimes and have served a term of imprisonment. The person was civilly committed upon petition of the State, by a jury finding of a beyond a reasonable doubt standard that the person was a hazard, would likely be a hazard to other persons after he was released. He was committed for treatment, if treatment were available for his circumstances, or of simply confinement for the protection of the public otherwise, if treatment were not available.

This statute was applied in the *Hendricks* case to somebody who had committed the offense prior to the time Kansas had enacted it, had enacted the civil commitment statute. He challenged it. The Supreme Court upheld the constitutionality against—on various grounds, but upon the ex post facto ground. The ex post facto ground was, I must say, 5 to 4, but it demonstrates the slipperiness of it, and it does indicate the standard that the Court applies to confinement as being an indication of punitive intent.

With regard to disqualifications for benefits, the other Supreme Court cases have been overwhelmingly, in terms of the vote of the Justices, in favor of sustaining the constitutionality of those provisions on the basis that the Congress had a nonpunitive intent.

Mr. LAHOOD. And do you think if we add other non-Federal persons that that would affect it at all?

Mr. KILLIAN. I don't think it would affect it at all in terms of the constitutionality.

Mr. LAHOOD. What do you think of the idea that somebody would challenge this constitutionally? Do you think that a relative, if we passed this and the President signed it, that a relative would say, hey, this person did serve with distinction prior to the commission of a crime, and they are entitled, or somebody—you know, they are entitled. What is your notion of that? Do you think that a relative, somebody, probably would file a challenge to the Supreme Court?

Mr. KILLIAN. I would think, first of all, that there might be some difficulty with a relative filing a judicial action. I think there is a standing question there. But assuming there was some injury to the person bringing the action, such as he was required to pay for the interment and other functions that went along with the interment, that the person might have standing. But I don't think that on the merits he would likely be successful inasmuch as whatever the person's status as a veteran prior to the commission of an of-

fense that worked to disqualification, if Congress has a nonpunitive purpose in disqualifying a person or taking away the privilege, which a number of Members here identify as representing the honor that attaches, that shouldn't be dishonored, the burial of certain people or the using of scarce resources and the like. So long as there is a nonpunitive intent reflected in the legislation, I think it is quite unlikely that the courts would ever hold it to be unconstitutional.

Mr. LAHOOD. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Buyer, did you have one other question?

Mr. BUYER. I did, Mr. Chairman. Thank you.

First of all, all the references today by different Members and witnesses to Timothy McVeigh, I have to agree with Mr. Bachus. I mean, this legislation came about with regard to Mr. Hays. I appreciate you bringing to our attention about the bill of attainder. I thought that was antiquated, and I have to go back 15 years to law school to remember even what that was about.

I am trying to sort through my mind when you said that we can do this so long as it is nonpunitive, and then you keep using the word "disqualification." And Spencer got into it trying to figure out, well, earned benefit, when does he receive it; I only want to do it by death. These earned benefits, is it an earned benefit with a condition subsequent, meaning you get it so long as you don't do, and then there is an enumerated list.

So when you look at our laws and how they are set up, wouldn't you concur that these are conditions subsequent?

Mr. KILLIAN. So far as the legislation applies prospectively to people who, after its enactment, may commit a crime, certainly that is true. You still have the problem that applies to persons who have, by their conduct, established their disqualification prior to enactment of the legislation, and that is when you have the *ex post facto*/bill of attainder kind of problem, and that is the instance in which it makes a great deal of difference whether Congress's purpose was punitive or whether it was simply remedial or regulatory.

Again, the focus is on, if Congress is looking at the activity or the status to which the disqualification attaches, it is much more likely to be nonpunitive. If they are looking to the person that they are disqualifying as *animus*, there is a possibility of finding that it is punitive and therefore violates the statutes.

Mr. BUYER. That is why I think Mr. Bachus cautioned at the beginning of this hearing that this is about Mr. Hays in Alabama, who has already been buried, and for us to talk about someone else, even who are still alive, isn't really helpful.

Mr. KILLIAN. The case law does reflect some instances under either *ex post facto* or bill of attainder in which Congress had in mind a particular person or a particular class of individuals, but the fact that they had in mind someone—I mean, the fact that Mr. McVeigh is present in spirit at the hearing, the fact that someone is identifiable, that does not make the disqualification punitive.

We have a case that is quite well-known, a case called *Nixon v. General Services Administrator*, where Congress provided legislatively for the seizure of Mr. Nixon's papers and tapes, and the cataloging of them, by the GSA. He was the only one affected. He was named by name. There was specificity, which is what you require

as the first prong of the bill of attainder, but it was not intended to be punitive. The purpose was to preserve those records for historical purposes and for trial use and the like, so that the fact that Mr. Nixon was singled out, the Court said, he constituted a legitimate class of one.

Mr. BUYER. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Killian, thank you very much. You have been very helpful. Thank you for taking the time to be with us today.

Mr. KILLIAN. Thank you, sir.

The CHAIRMAN. Rick Surratt will be our next witness to testify. While he is coming up, the Chair would like to make a little announcement.

Today is the last day for one of our very faithful employees, Ira Greenspan, who has been with this committee for 4 years.

Ira, if you want to stand up over there.

He has been most helpful, done an all around good job. He is going on to what he perceives to be bigger and better things. I am sure that some of us would disagree with that, but we wish you the very best, Ira. Thank you for your service.

The CHAIRMAN. Rick, welcome. Let me thank you very much for the way you and the veterans' services organizations have handled this testimony and made it possible for you to represent all of them, and we appreciate you being here. Your entire statement, of course, will be printed in the record, and you may proceed in any way you see fit. If you care to introduce the guests with you.

STATEMENT OF RICK SURRATT, ASSISTANT NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS, ON BEHALF OF THE AMERICAN LEGION, AMVETS, BLINDED VETERANS ASSOCIATION, DISABLED AMERICAN VETERANS, JEWISH WAR VETERANS OF THE USA, PARALYZED VETERANS OF AMERICA, VETERANS OF FOREIGN WARS OF THE UNITED STATES, AND VIETNAM VETERANS OF AMERICA; ACCOMPANIED BY DAVID TUCKER, PARALYZED VETERANS OF AMERICA; KELLI WILLARD WEST, VIETNAM VETERANS OF AMERICA; JAMES MAGILL, VETERANS OF FOREIGN WARS OF THE UNITED STATES; KIMO HOLLINGSWORTH, AMERICAN LEGION; AND WILLIAM F. CRANDELL, AMVETS

Mr. SURRATT. Thank you, Mr. Chairman. Before I do that I would like to say in regard to Ira, we would like to take this opportunity to thank him for all of the good work that he has done. He has been really helpful, I am sure, with all of the veterans' service organizations. The DAV has had a very pleasant experience working with him, and we are going to miss him, but we wish him well if he is going to greener pastures.

I will just ask each of the witnesses to introduce themselves, if they will.

Mr. TUCKER. David Tucker with the Paralyzed Veterans of America.

Ms. WEST. Kelli West with Vietnam Veterans.

Mr. CRANDELL. Bill Crandell with AMVETS.

Mr. MAGILL. James Magill, VFW.

Mr. HOLLINGSWORTH. Kimo Hollingsworth, with the American Legion.

The CHAIRMAN. Thank you. You may proceed.

Mr. SURRATT. I am Rick Surratt. The American Legion, AMVETS, the Blinded Veterans Association, DAV, the Jewish War Veterans, PVA, VFW, and the Vietnam Veterans of America are grateful for the opportunity to present their views on S. 923 and H.R. 2040. Together these organizations are made up of millions of veterans, and these two bills are certainly of interest to our Nation's veterans.

No group of our citizens has invested more in the preservation of our national interests than veterans. Therefore, as much as any group, they detest actions which do not respect the rule of law. Yet, among them, as within society generally, there are, of course, those who transgress the dictates of civilized conduct. And though we tend to expect more from our fellow veterans, we cannot deny their misdeeds when they occur, nor can we in good conscience condone their criminal acts just because they are veterans. They must face the same justice as any citizen.

But, if the perpetrator incidentally happens to be a veteran, under what circumstances, if any, should that in and of itself be of consequence in how we administer punishment for his or her offenses? The veterans' organizations submit that equal treatment demands a firm general rule that penalties should correlate to the crime and should not go beyond to revoke unrelated rights earned through service to the Nation. In other words, revocation of veteran-related rights should not conveniently become a bonus penalty for the Government to impose in addition to that imposed by the criminal justice system.

Just as veterans do not deserve lighter punishment merely because they are veterans, they do not deserve harsher punishment just because they are veterans. Current law is consistent with that principle. Veterans lose the rewards of service to their country only when they subsequently do such disservice to the country itself as to counteract the benefits of their prior contributions and make continuation of the rewards unwarranted and inappropriate. They forfeit their special veterans' rights when they engage in acts of mutiny, treason, sabotage or subversive activities.

In addition, as a practical matter, most veterans' benefits, such as home loans or educational benefits, would be of little or no use to veterans imprisoned for crimes. Under current law, most of a veteran's compensation payment is suspended while he or she is incarcerated. This suspension is a method of savings for the Government during a time when a veteran does not suffer the economic effects of disability because he or she is incarcerated and maintained at Government expense, and such provisions do not penalize a veteran's dependents because compensation can be apportioned to them during the incarceration.

S. 923 provides that a person who is convicted of a Federal capital offense is ineligible for veterans' benefits. S. 923 could also be read as prohibiting benefits for the innocent dependents. Regardless, S. 923 is objectionable in that it would impose additional penalties on veterans merely because they are veterans and because it would revoke their veterans' rights for reasons unrelated to their military service.

While it is not the purpose of veterans' organizations to support measures to withdraw veterans' benefits, they understand this Committee's duty to respond to concerns that certain veterans who have committed despicable acts and brought shame upon themselves might be buried in our veterans' cemeteries.

To permit persons undeserving of such honor to be buried in veterans' cemeteries diminishes the rights of other veterans fully deserving of the honor. The veterans' organizations believe that H.R. 2040 represents a proper exercise of restraint and that it is a reasonable, appropriate response to the concern that has arisen regarding burial of infamous criminals in our veterans' cemeteries.

Mr. Chairman, the veterans' organizations commend you and your cosponsors' efforts to ensure that any legislation enacted is fashioned to best protect the rights of all concerned: those who are completely innocent, but who might be adversely affected without some legislation to protect the sanctity of veterans' cemeteries; those dependents who are completely innocent, but who might be unfairly affected by S. 923, if enacted; and those who would lose their veterans' rights for reasons not associated with the basis of those rights. We urge the Members of the committee to reject S. 923 in favor of H.R. 2040.

Thank you, Mr. Chairman. That concludes my statement, and I would be happy to answer any questions you or the Members of the committee may have.

[The prepared statement of Mr. Surratt, with attachments, appears on p. 83.]

The CHAIRMAN. Thank you.

Let me ask one question that has been asked several times today and one that I asked Mr. Bowen. Does the veterans group support an amendment to H.R. 2040 to cover terrorist acts killing victims who are not Federal employees?

Mr. SURREATT. Let me say, Mr. Chairman, this is a very difficult issue. As a practical matter I would like to think that the veterans' organizations would like to reflect on that carefully before responding beyond that.

You used the word "support." Let me explain the position that I am in with the DAV, and I suspect most of my colleagues are. We are not authorized to support legislation that we don't have a mandate from our membership to support. We do have a standing mandate to oppose anything detrimental to veterans, so in that context, we analyzed S. 923 in comparison to H.R. 2040 and found H.R. 2040 to be more appropriate, of course, and oppose S. 923. But on behalf of the DAV, I would like to say we would be happy to respond to that, and we would like to do it in writing after giving some study to that.

To give you my immediate response, let me say that H.R. 2040 currently has two premises; is that it is directed towards crimes against the Nation, and that it goes only to those benefits which involve an honor, and that is burial and possibly the other benefits mentioned here today. If you were to extend this to murder, capital murder, under State statutes, then, of course, you would be departing from the precedent that veterans lose their benefits only because of crimes against the Nation. That is certainly a difficult policy question, but that is the crux of the issue. Other than that, if

this were extended just to preclude burial benefits for those people who commit capital offenses, whether it be under a State statute or a Federal statute, you have not departed from the premise of H.R. 2040 as it now exists. So that is what I see as the crux of the issue, and that is one that we would like to reflect on a little more thoroughly before we respond to that.

The CHAIRMAN. I have a couple of other questions that I will submit for the record.

(See p. 102.)

Mr. EVANS. Rick, you would be submitting this answer in regards to the DAV position?

Mr. SURRETT. Yes. I don't believe I can speak for the other organizations. The way we did this today is quite convenient for these purposes, but I cannot speak for the other organizations when it goes beyond this.

Mr. EVANS. I do appreciate the veterans' groups speaking as one. That makes your voice directly heard here. If we could have other veterans' organizations respond to the Chairman's questions, that would be helpful to us, in maybe 5 to 10 days.

Mr. SURRETT. We would be happy to do that.

(See pp.)

Mr. EVANS. The value of your statement cannot be exaggerated. I think it is an important thing that you have done, and I am going to try to get it entered into the Congressional Record to let our other colleagues hear from you as well.

I believe the strength of H.R. 2040 is the fact that it is very narrowly drawn, and your testimony also expresses that view, so I would assume that you would support keeping the bill as it is now drafted; that is, rather narrowly drawn?

Mr. SURRETT. I think the bill should be narrowly drawn. I think that is the proper measured response to this. Obviously there are many issues which raise emotions and concerns, and we expressed that in our statement. This could be a slippery slope, we believe. There are a lot of things that people do that are despicable and abominable. We would like to find ways to level a little extra punishment on them. That is the danger on that. So I think the more restrained you are, the better.

Mr. EVANS. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Buyer.

Mr. BUYER. Mr. Chairman, I am still back on my thoughts about these are benefits, earned benefits, yet they are conditioned subsequent. I mean, you mentioned the slippery slope. I understand that, but we have to draw the line somewhere, and where do we draw that? I guess in terms of the VSOs who want it to be very narrow, and now that we are beginning to shine the light on all of these different what-if scenarios, I am having difficulty figuring out where to draw that line. I just want you to know that here up front.

Mr. SURRETT. I think we all have that, Mr. Buyer. In law you well know that the demarcation between what is within the purview of a provision and what is outside the purview is often not a clear one, and in that case nuance controls. And that is what we are, I think, faced with here is that these are nuances, and so we again caution restraint and not go too far afield.

Mr. BUYER. If Congress has come in, and I guess CRS here provided for us, Congress has made it pretty clear with regard to cash benefits for those who are incarcerated, whether it is SSI, social security, you can't claim the EITC, and then it talks about with regard to veterans' benefits and then the unemployment compensation, Federal, civil service, military retirement.

So we draw the lines in different areas, and I am trying to figure out, if we are going to do that for any forms of incarceration, why the VSOs would be so hesitant to expand this about honoring someone upon death. If, in fact, these are earned benefits based on a condition subsequent, and they brought dishonor, why would the VSOs then come forward and say, you're right?

Mr. SURRETT. First of all, let me say I don't know of any provision in law that would lead us to believe that these benefits are conditioned on subsequent behavior, except with the exception of the treason and those things that now negate veterans' rights.

With respect to the incarceration——

Mr. BUYER. So let me ask you this: Then in present law when you have a veteran that is incarcerated for more than 60 days, on service disability, and they reduce those monies which you can pay to them, you don't think Congress should have been able to do that then?

Mr. SURRETT. No, I think they should be able to do it, but the reason was totally different. If I remember correctly, that was a reconciliation provision, the logic being that the veteran is being maintained by the Government. Compensation is to pay for the economic effects of disability. He is obviously not disadvantaged by the disability while he is incarcerated, because he is not available for employment, and he is being maintained at Government expense, thus they reduce the compensation, both on that logic and as a cost-saving measure.

Mr. BUYER. So I guess the key is we are trying to figure this out in such a way so that it is, quote, "nonpunitive," yet we would be disqualifying someone based upon someone's conduct subsequent.

Mr. SURRETT. Right. Punitive in the criminal sense, of course, is one thing, but to the recipient, to the veteran who you revoke all of his rights is punitive whether you call it that or not, punitive in the actual sense, factual sense. I mean, what is the reason for doing it if it is not as a punitive measure?

The cemeteries are different. I mean, again, that crosses a line, because other people's interests are involved. You are diminishing other veterans' rights by burying these scoundrels, if you will, among them. But when you talk about compensation and those benefits, there is a distinction there, because that doesn't cross the line to infringe on other people's rights.

Mr. BUYER. These what-ifs again, and let us go narrower. Earlier I brought up about these cases where there are a lot of individuals who commit crimes who are necessarily never brought to adjudication, and they are killed, shot and killed during the act, or they themselves blow themselves up in the bombing. Should we be able to give some administrative judgments there to the VA for them to come in and say, no military honors?

Mr. SURRETT. I believe that H.R. 2040 would do that in subparagraph B where the Secretary concerned, be it the Secretary of Vet-

erans Affairs in the case of VA cemeteries or the Secretary of the Army in the case of Arlington Cemetery, would be able to make a determination under a standard of clear and convincing evidence whether or not this person should be disqualified.

Mr. BUYER. In conclusion, though, you are hesitant or the VSOs are very hesitant if any of us come in here and try to expand this to other forms or offenses or applicable to other jurisdictions in United States territories?

Mr. SURRATT. We are particularly hesitant if you attempt to extend it, as S. 923 does, to other benefits, other than those that are a form of honor accorded to a veteran upon his death, yes.

Mr. BUYER. And other applicable offenses?

Mr. SURRATT. Yeah. Well, again, that is a difficult issue, using the example of a capital crime under a State statute, the question being is not the life of a person the same regardless of the technicalities? I think that is a very troubling question.

Mr. BUYER. That is where the awkwardness is, and that is what Mr. Spence brought up. You want to draw lines between someone who is a Federal employee versus someone who is not, or Spencer bringing up, okay, there is a difference between a DEA agent and a county sheriff.

Mr. SURRATT. I understand your being perplexed at that, and I am just not prepared to answer it.

Mr. BUYER. When the VSOs get together on that one, if you could respond to us on that, we would appreciate it.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Doyle.

Mr. DOYLE. We appreciate you all being here today.

I find some of the arguments that my colleague Mr. Bachus makes very compelling. I want to make sure I understand where the VSOs are coming from.

If I understand what you are saying is you have not had a chance or an opportunity to discuss in depth with your memberships how they would view expansion of H.R. 2040. For instance, when we brought up the case of Henry Francis Hays, who was executed for brutally killing a 19-year-old, under H.R. 2040 he would still be allowed to be accorded full military honors: the 12-gun salute, draped coffin and a military ceremony. Similarly, Mr. Bachus gives us the example of going in and wiping out 40 kids in a school and a teacher. That person, under H.R. 2040, would still be eligible for full burial honors.

Mr. BACHUS. And under the Senate bill.

Mr. DOYLE. Yes. And under the Senate bill.

I find it hard to believe that the veterans that I would talk to back home at the American Legion hall or other places would be supportive of giving a veteran full military honors that committed a crime such as that. While I think we need to be very careful in protecting innocent families, like spouses, surviving children that were not doing anything to people, that are family members, that are innocent, I would be very interested to hear comments back from all the VSOs on how they feel about us expanding the scope of H.R. 2040 to take in the situations that Mr. Bachus brings up, with regard to whether or not these veterans are deserving of full military honors in burial. Because, quite frankly, I think he makes

some compelling arguments in favor of that. I can't believe most veterans wouldn't feel the same way.

So I understand, as representatives of your organizations, that you want to be very careful about how this legislation is crafted, and I commend the Chairman that we are slowing this process down and giving everybody a chance to really think through some of these issues. But I find Mr. Bachus's comments to be very compelling, and I am sure that Members that you represent will also. So we look forward to hearing back from you on those particular issues. Thank you.

Mr. SURREATT. We will respond.

The CHAIRMAN. Mr. Bachus.

Mr. BACHUS. Thank you, Mr. Chairman. I think that you brought up two good points. One is that we are talking about, first of all, benefits. The Senate and the House bill are very different in that regard. The Senate bill says all benefits. The House bill talks about burial, interment, military honors. That is one big distinction between these two bills. The House bill doesn't get into survivors' benefits, widow benefits, things of that nature.

Now, what I want you to focus on a minute is not the benefits. I agree with you that we ought to be very careful in what we deny and what we are talking about here. My amendment, which passed the House unanimously, focused on a military honor funeral, and it simply says that certain people are eligible, certain people are not.

Both the Senate and the House bill, where I see them come up short is that this arbitrary distinction we make between a Federal crime, or even, as you have mentioned, a crime against our Nation, I think they ought to be ineligible for a crime against our Nation, but I think it is entirely inappropriate to say to a sexual predator that takes a young child out, sexually brutalizes them and throws their body like a piece of trash in a river, you know, they weren't according that victim much of a burial, that we take that sexual predator, once he has been convicted and given the death penalty, that we give him a full military honors funeral. I think it is inconsistent with what military organizations stand for.

So I would say that I would hope that each of you would go back to your Members and say that we need to be consistent and that we don't—you know, veterans' groups, we don't need to send a message that certain lives are much more valued than others. You know, Federal offenses somehow cause you to be ineligible for military honors, but as long as you don't—you know, if it is just some child that happens not to be an FBI agent because he is 7 years old and he is brutalized, I mean, that is as much of a dishonor to bury a person in a heroes' cemetery that did that as someone who commits treason.

Mr. SURREATT. I don't think any one of us can disagree with your rationale.

Mr. BACHUS. In including these people, we are only trying to be consistent with the statement, and to protect those cemeteries, protect the military standards, protect the values that those people buried in those cemeteries fought to preserve, those lives that they fought to protect. Nothing in the amendment that the House passed did anything other than just set one standard, you know,

that they would not be buried with full military honors if they committed a capital offense, and I thought it was very—it made no judgments. It just said, you know, the States and the Federal Government make a judgment on what a capital offense is. Life imprisonment without parole, that person is not coming out, or death.

So I would just ask you to maybe focus again on that and sort of separate eligibility and benefits. I agree, the Senate bill, it talks about all benefits, where the House bill is quite different.

Mr. Surratt. Mr. Chairman, I would just like to add, all of us here are representing veterans, and most of the veterans who are represented are the ones that wouldn't be affected adversely with this. We have the same concern you do. We don't want to see their rights diminished by these very few who have done these things. So I wouldn't want it to be seen in the perspective that we are here defending those people that we are concerned about that have perpetrated these acts.

The Chairman. I think now more than ever we realize that these are not easy questions to answer, and that is why we are trying to slow this whole process down.

Dr. Snyder.

Mr. Spence.

Mr. LaHood.

Mr. LaHood. Thank you, Mr. Chairman.

How do all of you communicate? How do all of you elicit from your Members ideas about this particular bill in terms of whether we expand it, don't expand it; the idea that you are not too enamored with the Senate bill or don't support it, but perhaps the House bill you like in its current form, but maybe—how do you get their opinions on stuff like that?

Mr. Surratt. Congressman, I would say that I am responsible to my membership, just as you are to your constituents, and we communicate in much the same way that you do to get a read on their sentiments. I have authority to speak for my Members, as you have authority to speak for your constituents. I am not apt to keep that authority very long if I don't articulate their sentiments properly.

Do we go out and survey? No. But we have the advantage of, perhaps even over you, that our area of interest is much more narrow, and we know what the sentiment of our membership is, and we take a read on that, and we represent them in that capacity.

We haven't had a lot of input on this particular issue. But again, to support, affirmatively support, officially put the weight of the DAV behind an effort, we have to have a resolution adopted by our national convention. Again, our bylaws require us to oppose things that are detrimental to disabled veterans even without a resolution. So if that gives you the mechanics, that is the way we are at least answerable to our membership in the DAV, and certainly the other organizations may have some different structure.

Mr. LaHood. If we were to expand this bill, but not go as far as the Senate, what do you think that you would say about that?

Mr. Surratt. I again would have to consult with all of the people that make the policy in my organization. I am just a messenger. I, of course, have some say in that, and I just won't want to com-

ment until we have determined that policy position within the DAV.

Mr. LAHOOD. All the rest of you feel the same way?

Mr. TUCKER. It is a similar process for all of us.

Mr. LAHOOD. Well, I am trying to figure this out. Would you go back to a board, or would you send a letter out, or would you pass a resolution? In all honesty, I am trying to figure out how you would elicit from your membership. Obviously you got some sense of the fact that you didn't like the Senate bill, and apparently you like Mr. Stump's bill in its current form, but if it is expanded to eliminate some other benefits, how would you figure out whether you liked it or not?

Mr. SURRETT. Well, I think we would simply have a brainstorming session among the professional staff of the organization, which involves several people, and get the input, and much the same as the deliberative process that you are going through here today we would go through in-house to try to determine why we should come down in a certain way on what you propose.

Ms. WEST. Speaking for Vietnam Veterans of America, between our conventions, at which point convention resolutions on various issues are passed, our elected board of directors serves as the ultimate policymaking board, and we would consult with our board of directors, who, because they represent different areas of the country and the membership as a whole, do have a pulse on the membership's feelings.

Mr. EVANS. Will the gentleman yield?

Mr. LAHOOD. Yes.

Mr. EVANS. I guess all of you are having conventions this August, too, is that correct, in which this issue will probably be raised?

Mr. TUCKER. Yes.

Ms. WEST. Yes.

Mr. HOLLINGSWORTH. Yes.

Mr. MAGILL. Yes.

Mr. CRANDELL. Yes.

Mr. EVANS. I thank the gentleman for yielding.

Mr. LAHOOD. Of course.

I get the sense, though, that you don't particularly like the idea of expanding much beyond what Mr. Stump has done with his bill, right?

Mr. SURRETT. That is right, from the DAV's standpoint. The only question—

Mr. LAHOOD. All the rest of you feel the same way, right?

Mr. CRANDELL. Yes.

Ms. WEST. Yes.

Mr. HOLLINGSWORTH. Yes.

Mr. MAGILL. Yes.

Mr. TUCKER. Yes.

Mr. LAHOOD. And if we were to go beyond what Mr. Stump's bill does by amending it, then you would probably have something—you probably wouldn't feel too good about that; is that accurate?

Mr. SURRETT. It depends on how far beyond. We are not inflexible here. I think we are going to give genuine consideration to the issue of whether this bill should be expanded to include capital of-

fenses, other than Federal capital offenses. But much beyond that, I think probably the policy of the organizations is probably set.

Mr. LAHOOD. So if we included a county sheriff or some other official who was not a Federal official, you probably wouldn't like that too much?

Mr. SURRATT. No. That was precisely the issue I said that we were going to give serious consideration to, whether capital offenses should include those that would come under State statutes.

Mr. HOLLINGSWORTH. I would like to respond. I think the point here is that—

The CHAIRMAN. Just make it loud so the reporter can hear you, please. And, Jim, you had a statement also?

Mr. MAGILL. Yes, please.

Mr. HOLLINGSWORTH. I think our position is that we would like to proceed with caution. We would like ample opportunity and—fortunately our convention is coming up, to float this through our membership, where a lot of these decisions are made.

In the absence of the resolution process, we have to get decisions from a National Executive Committee, which is made up of the leaders of the American Legion. I think the important point here is we applaud Chairman Stump and this committee for putting the brakes on the Senate bill and what has happened. Let us not get caught up in the passion of the moment and react to a hideous crime just because we are all in an emotional state at this point. Let's sit down and analyze and move forward and do the right thing.

The CHAIRMAN. Jim Magill, VFW.

Mr. MAGILL. Thank you.

First of all, I would like to state that I am glad that we are here today. I think the questions that have been raised, prove this is not a simple issue. It is a very complex issue. I don't think we can resolve it in just one time. I would think, and I would hope, that we could sit down again and meet with staff, with you, with the rest of the Committee, to try to get a better grasp of this.

In dealing with State capital crimes, I have always been—well, as a military person, you are serving the Federal Government, and I certainly think that that should be the first precedent, having to consider a Federal capital crime. When you have 50 States, there is just a plethora of capital crimes each State can determine. I don't want to give the impression that the VSOs, and particularly the Veterans of Foreign Wars, look at any heinous crime lightly. We are very concerned, and we think that appropriate penalties should exist. But again, I think we should concentrate more closely on the Federal.

I did like what I heard at one point, and I think it was Mr. Evans that stated that we are not looking so much at punitive, but we are looking at preserving the sanctity of a national burial. So I think that has to be looked at a little bit more.

But in closing, I think that if anything has shown itself at this hearing, it is that this is an extremely complex issue, and I would have one other comment. I won't take much more time. But when we talk about a Federal officer working while he is on duty, I think that these guys are on duty 24 hours a day, and I think that may be something we should think about. I know if there is something

happening at 2 o'clock in the morning, they can't call and say, I am not on duty. So it is in the military when you serve, you are on duty 24 hours a day.

Mr. LAHOOD. Mr. Chairman, could you indulge me for one more question?

What did all of you think of Mr. Bachus's amendment? Did you support that, or did you think that was sort of a precipitous thing that overreacted to a situation, and since he is gone, you are not going to offend him. Unfortunately, it will be on the record.

Mr. QUINN. Will the gentleman yield? He sent me here to listen for him.

Mr. SURRATT. I can always state how we were thinking about it after the fact, because I don't think we had any advance notice of it. But it seems to be very much in line with what this bill seeks to do.

Mr. LAHOOD. How about the rest of you?

Mr. HOLLINGSWORTH. I think the American Legion has indicated we need to proceed with caution. I think one of the concerns we have is that if we proceed and somehow or way hold a higher standard to veterans, and I think what we are trying to avoid is creating double standards.

Mr. LAHOOD. Did you like Mr. Bachus's amendment?

Mr. CRANDELL. I don't think any of us want to be in the position of saying that we think one kind of murder is better than another kind of murder, and that a domestic quarrel that resolves itself in death is a better deal than shooting up a school yard. But you start getting into, I think, a rather slippery business when you have any kind of capital offense in any State being brought in as a jurisdictional matter.

The sorry truth is that even acts of heroism do not guarantee that you will not have a tragic life afterwards, as I think we have seen with some of the our bravest veterans. When you get the question of should we have a hero's burial for someone who has committed murder, some of them are heroes. I don't think we want to get into a position of spreading this as wide as we possibly can. I think we need to keep this within some bounds.

Ms. WEST. If I could make a comment as well—

Mr. LAHOOD. Let me just clarify what I am after here. If you want to disregard Mr. Bachus, the amendment, his approach, the concept that he was after, I guess I am trying to determine how you all feel about that, and from the answers I am getting, there is not much enthusiasm for the intent, setting aside Mr. Bachus, you know, this is not a personal thing, but the concept that he was after in offering that amendment. How do all of you feel about that concept?

Mr. SURRATT. To clarify now, offering the amendment to broaden this bill, to include—

Mr. LAHOOD. The bill that he passed on the House floor unanimously.

Mr. SURRATT. Which had to do with military honors?

Mr. LAHOOD. Yes.

Mr. SURRATT. Again, I think that was in line with this bill.

Mr. LAHOOD. I agree.

Go ahead, ma'am. I am sorry.

The CHAIRMAN. I believe Kelli was next.

Ms. WEST. If I could just make a comment. Vietnam Veterans of America within our national board committee structure has a committee that does outreach to incarcerated veterans. The objective and purposes of that committee, as well as many of the activities our chapters and State councils undertake at the local level doing outreach in the prisons, is primarily targeted at veterans who are going to be able to be rehabilitated and exit the prison system and go back into civilian society.

One of the underlying foundations of why our Members choose to do that kind of work, though, is one of fellowship on the basis of common experience in the military. I don't want to make this a broad-brush statement, but from our experience, many of the veterans who are in prison are there in part because they are having mental difficulties. Some of it is trauma-related, which are service-connected. They may or may not have an adjudicated claim of service connection, but could still have post-traumatic stress disorder and related substance abuse problems. They may have gotten very involved in crime related to drugs.

Again, I don't want to imply that every incarcerated veteran's crimes are, quote/unquote, "service-connected." That would be too far-reaching. But as Mr. Surratt indicated, it would be problematic to impose additional penalties upon a veteran simply because they are a veteran. By that same token, we would have a problem with imposing additional penalties on a veteran whose crimes may be related to the fact that they are a war veteran. Again, I don't want to imply that that is a broad-brush statement, but for some of these individual cases, those types of disabilities are the underlying factors in their crimes.

The CHAIRMAN. I believe the gentleman's time has expired. We will come back to you. Mr. Quinn.

Mr. QUINN. Thank you, Mr. Chairman. I apologize for having to step out for a few minutes, but I wanted to come back.

Jim Magill, you point out just how complex this issue is, and this discussion this morning is proof of how complex it can be.

One quick question. The Senate version of this is finished and over, and none of this was even discussed. Why? You weren't invited? They did it too quickly?

Mr. MAGILL. It was done very, very fast. There were no hearings held, unlike you are doing here. All of a sudden I think they were—I want to say caught up in the emotion of it. I have to think that they thought they were doing the right thing.

I believe that this is the proper procedure, to have hearings, and not—for instance, with Mr. Bachus's amendment, we were not informed. In fact, I was hearing it passed unanimously on the House floor. I was scurrying around, what passed on the House floor? I mean, we had no indication. I think if Mr. Bachus had called the VFW and asked, and he explained what his amendment was, I first would remind him or inform him that our opinion is H.R. 2040 addresses this issue; and number two, I would have suggested that the House slow down a little bit, exactly what we are doing now. Let's not piecemeal, let's not have something in one bill and also have it in another bill.

Mr. QUINN. Thank you. Let me just say that what makes this so complex is that for the person in the street, it is not complex at all. That is what makes this more difficult. I just left for two meetings, and in the two meetings probably about 8 or 10 people on two different issues, and I asked, I took a little survey. We have a hearing going on down the hall with Mr. Stump, and this is what we are talking about. What do you think about this? Well, no discussion, nothing complex with this business at all. Somebody shoots a cop in Buffalo, like they did 2 months ago, they do not deserve any kind of honor.

And, sir, some are heroes, some were heroes. They are, but they were. They are not anymore, because they have done some bad things. And all I say to you is that the folks in the street, the carpenters and the auto workers in Buffalo, and the businessmen and women, and for the people that we all know about, they don't see this as complex, and that is what makes it more complex for us. It is really difficult.

Mr. MAGILL. Well, with us, too, sir. As you said, we are all going to convention in August, and I am sure this is going to be an issue. It is going to be a very hot issue. We are going to have to listen, and we are going to have to do the same thing that we are doing here. We are going to have to try to explain to them the complexities of it and not get wrapped up in emotion.

Mr. QUINN. Finally, Mr. Chairman, I will finish up and yield back my time, but you mentioned with the Vietnam veterans the outreach that is going on with incarcerated members. I think that that kind of information is helpful for this committee. Some of us don't know that is going on.

Mr. Buyer and I were talking about a question that he asked earlier today. He had the time to ask it, about benefits that are or aren't available to incarcerated veterans, how much are those, and we found out some new information. I didn't know some of that information today. So, indeed, to slow down and get some information, for you to supply us with some things that already happened, some information we might or might not know would be very, very helpful. I appreciate that and the time you have given us today.

The CHAIRMAN. Dr. Snyder.

Mr. SNYDER. I wanted to go back to somebody had mentioned the comment or made a comment about a double standard, that veterans shouldn't be held to a higher standard. I am trying to figure that out. I guess I finally came up with this scenario, that if I am the owner of a private cemetery, and I have a nonveteran who commits a heinous act and is executed, and I have cut a deal with the family some 10 years before and they have a plot there, are you saying then that perhaps if we—and I am not suggesting this at all, but somehow if there was legislation out there, somebody said any private cemetery or any cemetery anywhere may refuse to bury someone who has committed acts A, B, C and D, is that what you are trying to get at when you are saying you are holding veterans to higher standards?

Mr. SURRATT. No. I think what we are talking about there is the other benefits other than burial where you would impose a criminal penalty, and just because he happens to be a veteran take away his benefits, too, and thus impose a double penalty. I think that is

what we are talking about. That is the reason and principle that we oppose S. 923, I believe. Am I correct in my response?

Mr. SNYDER. But there are examples in society of, you know, some State legislators have retirement benefits that can be taken away for certain acts. I mean, I think there are examples of people losing benefits that are related to their specific role in life.

Well, I am just rambling on. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Doctor. Any other questions?

If not, gentlemen, thank you. Thanks again for agreeing to testify as one group today. Let me assure you that it is not the intention of this committee of moving before you have time to at least put in adequate input, and it appears that you may not be able to answer some of those questions until after the conventions, which will occur in August, but we would appreciate any expeditious replies you could do as quickly as those conventions are over. It would help us a lot.

[Whereupon, at 12:20 p.m., the committee was adjourned.]

APPENDIX

105TH CONGRESS
1ST SESSION

S. 923

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 1997

Referred to the Committee on Veterans' Affairs

AN ACT

To deny veterans benefits to persons convicted of Federal capital offenses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DENIAL OF VETERANS BENEFITS.**

4 Notwithstanding any other provision of law, a person
5 who is convicted of a Federal capital offense is ineligible
6 for benefits provided to veterans of the Armed Forces of
7 the United States pursuant to title 38, United States
8 Code.

Passed the Senate June 18 (legislative day, June
17), 1997.

Attest:

GARY SISCO,
Secretary.

105TH CONGRESS
1ST SESSION

H. R. 2040

To amend title 38, United States Code, to deny burial in a federally funded cemetery to persons convicted of certain capital crimes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 1997

Mr. STUMP (for himself, Mr. EVANS, Mr. SKELTON, Mr. BACHUS, Mr. EVERETT, Mr. FILNER, Mr. QUINN, Mr. CLYBURN, and Mr. STEARNS) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to deny burial in a federally funded cemetery to persons convicted of certain capital crimes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DENIAL OF ELIGIBILITY FOR BURIAL IN FED-**
4 **ERALLY FUNDED CEMETERIES TO PERSONS**
5 **CONVICTED OF CERTAIN CAPITAL CRIMES.**

6 (a) BURIAL IN FEDERALLY FUNDED CEMETERIES.—
7 Section 2402 of title 38, United States Code, is amend-
8 ed—

9 (1) by inserting “(a)” before “Under”; and

1 (2) by adding at the end the following new sub-
2 section:

3 “(b)(1) The remains of a person described in para-
4 graph (2) of this subsection shall not be buried or interred
5 in a federally funded cemetery.

6 “(2) A person referred to in paragraph (1) is—

7 “(A) a person who has been convicted of a
8 crime under—

9 “(i) section 1114 of title 18, and

10 “(ii) section 844(f), 2332a, 2332b, 2332c,
11 2339A, or 2339B of such title,

12 for which the person was sentenced to death or life
13 imprisonment without parole, or

14 “(B) a person shown to the appropriate Sec-
15 retary by clear and convincing evidence, after an op-
16 portunity for a hearing in such manner as such Sec-
17 retary may prescribe, to have committed a crime de-
18 scribed in both clauses (i) and (ii) of subparagraph
19 (A) but who has not been convicted of such crimes
20 by reason of such person not being available for trial
21 due to death, flight to avoid prosecution, or deter-
22 mination of insanity.

23 “(3) For purposes of paragraph (1), the term ‘feder-
24 ally funded cemetery’ means a cemetery of the National
25 Cemetery System, Arlington National Cemetery, or any

1 State cemetery for which a grant has been approved or
2 provided under section 2408 of this title (or any prede-
3 cessor to such section).”.

4 (b) EFFECTIVE DATE.—The amendments made by
5 subsection (a) shall apply with respect to applications for
6 burial or interment made on or after the date of the enact-
7 ment of this Act.

○

HONORABLE BOB STUMP
Statement
Committee on Veterans' Affairs
Hearing on H.R. 2040 and S. 923
July 9, 1997

The Committee will come to order.

I am pleased to welcome Congressmen Bachus, Skelton and Knollenberg who are testifying this morning. We are here today to discuss an issue that goes to the very core of America's long-standing tradition of recognizing honorable military service. The fundamental question before us is: under what circumstances is it appropriate to deny veterans benefits to someone who has served honorably in our armed forces? This is not as easy a question to answer as some may think, and our actions must reflect a reasoned approach to the issue. That is why I want to thank our colleagues Spencer Bachus, Ike Skelton, and Joe Knollenberg for their cooperation on this issue and agreeing to be part of today's proceedings. I also want to thank the veterans organizations for their support for discussing this matter in the proper forum, the VA Committee. Additionally, the Committee appreciates the thoughtful consideration given this matter by our witnesses from the VA and CRS.

This hearing is not simply about Timothy McVeigh. This hearing is about restricting burial rights in national cemeteries and entitlement to other VA benefits when a veteran commits serious crimes.

In recent years, we have seen an increase in terrorism related and capital crimes. As a result, Congress has enacted new criminal laws to punish this type of "domestic terrorism." Obviously, the VA Committee does not have jurisdiction over criminal laws. H.R. 2040 is not intended to punish – it is regulatory in nature. As an administrative measure, H.R. 2040 is consistent with other laws which apply to forfeiture of VA benefits, including burials in national cemeteries. Currently, if a veteran commits any one of more than 20 crimes, from treason to harboring persons who have committed espionage crimes, to advocating the overthrow of the Government, the veteran forfeits all rights to VA benefits.

Veteran's status is a precious thing. It is a status that has been earned by what has often been described as long periods of boredom punctuated by moments of stark terror. It is earned by long separations from family. It is earned by duty in the most rigorous environments. And in every case, there is a commitment to do the nation's bidding - a commitment to orders that may not be popular or to events that may never be noticed. It makes no difference whether you joined for the benefits, to begin the climb up the

economic ladder, or out of sheer patriotism. It is this very special relationship between the nation and its guardians that must guide our deliberations on this issue.

Current law reflects the nation's reluctance to sever the bond with its veterans. Chapter 61 of title 38 clearly demonstrates this has been done only when the veteran commits crimes against the nation as opposed to crimes against individuals. The Secretary may deny benefits where there is evidence that a person is guilty of crimes against the nation involving "mutiny, treason, sabotage or rendering assistance to the enemy." Further, the law also allows forfeiture of benefits to those convicted of certain types of "subversive" activities.

Unfortunately, the world continues to add new ways that may meet the standard of crimes for which we have previously denied veterans benefits. Just as it was necessary to add provisions to deny veterans benefits for nuclear-related subversive activities after the advent of the atomic bomb, we are now faced with a similar situation in which the United States criminal code now contains offenses which alone or in combination may reach the level of severing the nation's bond with a veteran. We must also ask whether an act or acts constitute such a heinous crime against citizens of our nation that the veteran should forfeit any right to benefits previously earned in honorable military service.

While there may be some that would characterize this bill as merely a response to recent events, that is decidedly not the intention. The purpose of H.R. 2040 is to update title 38 to include some recent changes to the criminal code that reflect today's society.

H.R. 2040 would deny the right of burial in a national cemetery or other federally operated or funded (fully or in part) veterans cemeteries, including Arlington National Cemetery, to anyone convicted of both murdering a government employee or officer and at least one of several newly defined subversive-type violations of the criminal code. Additionally, that person would have to be sentenced to death or life without parole to be covered by this restriction.

The Secretary could also administratively deny burial when clear and convincing evidence shows that a veteran was guilty of crimes against the nation, if the veteran was not available for trial due to the veteran's death, flight to avoid prosecution, or insanity.

We have also asked for views on S. 923, a broader bill passed by the Senate last month. Chairman Specter's bill would deny all benefits for anyone convicted of a capital crime. The language in provisions drafted by Mr. Bachus, Mr. Skelton, and Mr. Knollenberg differ from the Senate bill and H.R. 2040 in varying degrees. Hopefully, these proposals will provide the basis for a wide-ranging discussion of these issues.

**STATEMENT OF
CONGRESSMAN SPENCER BACHUS (R-AL)
BEFORE THE HOUSE VETERANS AFFAIRS COMMITTEE
July 9, 1997**

Mr. Chairman and Members of the Committee:

I thank you for this opportunity to offer my strong support for H.R. 2040, which is similar to legislation I have also introduced, H.R. 1908, and follows the same path as an amendment I offered that has already been unanimously approved by the House of Representatives.

Officially, we are here today to discuss legislation.

But I believe the real purpose of this hearing is to discuss something much deeper, much more meaningful, something that tells us a lot about ourselves as a nation. What we're really discussing here today is who we choose to honor in this country, who we will hold up to our children and say -- "That person is a hero."

There are those who say we don't have heroes anymore. And as a substitute, they sometimes give hero status to celebrities, confusing notoriety with character.

I would say we still have heroes. They are the men and women who have so bravely and so honorably fought for our nation. Heroes who fought, and in many cases died, defending our freedoms.

In our 114 national cemeteries, who have 2.5 million such heroes -- brave Americans who honorably defended this country, its people and its ideals.

We have high standards for these individuals, and rightfully so. Our veterans lose their rights to benefits and burials in national cemeteries when they are found guilty of sedition, treason, and espionage. But inexplicably, the law allows cold-blooded killers to be entitled to benefits and honors, notwithstanding their heinous crimes.

Certainly, a cold-blooded killer is not a hero and should not be honored as one. But that has happened, and it could happen again in the case of Timothy McVeigh.

McVeigh is single-handedly responsible for killing the most Americans in the history of the United States. A jury of his peers rightfully decided that he should forfeit his life for his actions. We are here today to make sure he also forfeits the honor of being buried alongside our fallen heroes.

There are some who disagree. They say that despite what McVeigh did, he served in our

military and is entitled to a hero's burial. Well, I would remind the members of this committee of our nation's oldest military force -- the National Guard. The very idea of the National Guard is that to be a good soldier, one has to be a good citizen.

Serving in our military, however honorably, and then coming home and waging war against Americans, is not being a good soldier nor being a good citizen.

Mr. Chairman, as you know, I offered an amendment last month that would prohibit military honors at the funerals of those who have been sentenced to death or life in prison without parole. I am proud that the House unanimously passed my amendment.

Although this issue has gained national attention due to the McVeigh case, I actually first offered this legislation in response to an incident in Alabama. There, on June 9, Henry Francis Hays was given a hero's burial with full military honors complete with an honor guard, a flag-draped coffin and a 12-gun salute. Hays was given a hero's burial, but he was certainly no hero. He was executed for the brutal, racially-motivated killing of 19-year-old Michael Donald.

I was outraged, as were the people of Alabama. Shortly thereafter, I heard from a constituent -- an Army captain -- and I want to share with you and other members of the committee his thoughts. He writes,

"As a soldier, I would have a difficult time obeying a lawful order to serve on an honor guard for a man like Hays. Hays does not represent anything that I, the United States Army, or this country stands for. Murderers put to death by the state do not deserve military honors. Furthermore, it stains the memory of those who have devoted, and in some cases lost, their lives in the common defense of our nation."

Mr. Chairman, for all those who have honorably served our country in the past and are serving it today, and out of respect and compassion for the victims and the families of the victims of those who have committed heinous crimes, I urge prompt action by this committee on this bill.

It is a slap in the face to all of them to let killers be buried alongside our honorable veterans and receive military honors at their funerals.

Thank you.

curities

their lives are an open book/1D

I'm sorry...

Apologies have become
a tool of politics/6A

Business	8B	Today's high in Fah. 60-65°	Complete weather/14B
Metro	1B		
Living	1D		
Sports	1C		
Television	8D		
Complete Index	2A		
Vol. 128	No. 59	Mobile, Ala.	68 pages 8 columns

Alabama's oldest newspaper

June 18, 1997

MOBILE REGISTER

City Edition

50 Cents

WEDNESDAY

gave Nicaraguans nents of support

n branch
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ague and
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and its
ign news

INSIDE

■ UM Foundation's director
terminated/4A

that could lead us to believe otherwise."

The UM vice president in charge of the campus, Roger Gonzalez, meanwhile, was reported as saying that Baptist

members of UM's board of trustees were out to get him in part because he is Catholic.

While published in Spanish in Nicaragua, translations of the stories containing statements by Maxwell have been circulated among Baptists in the United States because the chairman's words were at odds with what Maxwell and others have been

Please see MAXWELL on 4A



Maxwell



Gonzalez

Military burials under scrutiny

► Proposal by Bachus would keep those sentenced to death or life in prison from receiving honors

Associated Press

OKLAHOMA CITY — Convicted federal building bomber Timothy McVeigh would lose his rights to a military burial with honors if legislation introduced Tuesday is adopted.

Alabama's U.S. Rep. Spencer Bachus, R-Vestavia Hills, proposed an amendment to the Defense Authorization Bill that would prohibit burials with military honors or in national cemeteries for anyone sentenced to life in prison without parole or death on federal or state convictions.

The legislation also would deny burial benefits. U.S. Rep. Frank Lautenberg, D-N.J., said he was working with Bachus on the legislation "that could help remedy the distasteful prospect of burying an individual guilty of committing a capital crime with military honors or in cemeteries designated for our nation's heroes."

Jeff Emerson, a spokesman for Bachus, said McVeigh's case as well as a recent execution in Alabama brought the issue into focus.

In Alabama, Henry Francis Hays, executed earlier this month for the 1981 lynch-style slaying of black teen-ager Michael Donald, was buried in Tillman's Corner with military honors and a 12-gun salute, Emerson said.

The military honors for the former Klansman prompted widespread debate that has played out on the pages of the Mobile Register since the funeral.

Emerson said the legislation cannot do anything about the Hays case.

"But it would apply to McVeigh and everyone like him who comes in the future," Emerson said.

"A man responsible for the deaths of 168 innocent people deserves no such honor," Lucas said in a statement from his Washington office. Lucas said he would work to "see that the government who puts him to death will not then



Bachus



Stirewalt gets 10 years in prison

► Coast Guardsman sentenced for sex offenses

By GEORGE WERNETH
Staff Reporter

NEW ORLEANS — Coast Guardsman Darrell R. Stirewalt showed no emotion Tuesday as a court-martial panel sentenced him to 10 years in prison for sex offenses against his female shipmates.

Stirewalt, 26, of Daphne, will be given a dishonorable discharge, forfeit all pay and allowances and will be reduced in rank from petty officer second class to seaman.

Stirewalt, a health services technician, was convicted Saturday of one count each of rape and sodomy, three of assault, consummated by battery, and four each of indecent assault, maltreatment and adultery involving shipmates from the Mobile-based cutter Sweetgum.

Five women testified about the sexual offenses they said Stirewalt committed between October 1995 and January 1997.

Please see STIREWALT on 15A

2nd Class Darrell Stirewalt, right, leaves a federal court Tuesday. Stirewalt was sentenced to 10 years in prison in the photo are unidentified.

AP photo

Please see HONORS on 4A

Honors

Continued from 1A

provide military honors at his burial."

A jury in Denver returned a death sentence Friday for McVeigh, a decorated Persian Gulf soldier convicted June 2 of murder and conspiracy in the April 19, 1995, bombing of the Alfred P. Murrah Federal Building.

"I don't believe Timothy McVeigh is entitled to a military burial," Sen. Don Nickles, R-Okla., said. "He murdered 168 people. Our national cemeteries are for honoring heroes, not for murderers."

Emerson said the House Rules Committee should consider the amendment later this week.

U.S. Rep. Jim Knollenberg, R-Mich., also promised legislation.

"This man was convicted of the worst domestic terrorist attack in the history of the United States," Knollenberg said.

"I don't think it is right to bury him in sacred ground with the fallen heroes who gave their lives for our freedom."

Knollenberg said his proposed legislation is aimed at McVeigh and others like him who commit capital crimes and are sentenced to die, but have an honorable discharge from their military service.

He said he has introduced a measure in the House and would not hesitate to use the appropriations process to get passage.

Knollenberg is a member of the House Appropriations panel, which provides funding for veterans programs.

"The law specifies certain crimes (for which burial can be denied a veteran) and that's not one of them," Ken McKinnon, a spokesman for the U.S. Department of Veteran Affairs in Washington, told The Denver Post. "The (crimes) he was charged under are not among those that would preclude receipt of VA benefits."

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EMPLOYER-EMPLOYEE RELATIONS

Congress of the United States
House of Representatives
Washington, DC 20515-2211

Congressman Joseph Knollenberg
Testimony Before Committee on Veterans Affairs
July 11, 1997

Mr. Chairman, I want to thank you and the committee for your outstanding service to our veterans. You have been a leader protecting our veterans at every turn.

While I am pleased to be here, it saddens me that we meet to address the subject of preventing death penalty convicts from receiving military burial honors in our nation's 114 veterans cemeteries.

Our legislation is the right thing to do for the veterans of this country who have given so much for us.

The most heinous domestic terrorist act ever committed ripped apart the insides of our nation. The Oklahoma City Bombing will always remain ingrained in our hearts, our minds and our souls.

And yet, the perpetrator of this dastardly act which killed 168 people -- many of which were innocent children -- can currently receive a military honor burial in a veterans cemetery after he receives his death penalty sentence.

As a member of the Appropriations panel that funds the Veterans Administration and its programs, I was outraged to hear that our tax dollars could be used to honor a mass murderer who also happens to be a veteran.

While military burial privileges can be revoked for certain acts of treason, the mass murder of hundreds -- including children, federal workers and federal law enforcement officials -- was not on the list.

In a narrow, targeted way, that is what I propose we do.

Our nation's veterans' cemeteries are sacred ground. They are a solemn and sad reminder of the price our nation has paid for the freedom we enjoy every day.

It is not fitting to allow the likes of Timothy McVeigh or any other death penalty convict in the company of our fallen heroes.

More than 40 members have co-sponsored my legislation to prevent death penalty convicts from receiving the privilege of a military burial in a veteran's cemetery.

As this legislation moves forward, I suggest we narrowly focus on the target: The criminal who commits a federal crime and is sentenced to die.

We must be careful to stay focused on the true target and not get bogged down by issues outside the Committee's jurisdiction.

We need to aim our cross hairs at the murderers who have taken innocent lives from us. In fact, the same innocent lives they defended when they served in our nation's armed forces.

This legislation is about criminals, and criminals must pay for their crimes.

That does not mean they should be honored with a 21-gun salute, taps, a flag-draped coffin and burial next to our fallen heroes who sacrificed their lives and their future.

I commend the Committee for its prompt action on this issue, and I urge the House leadership to quickly move a bill to floor so we can get something to the President's desk.

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PREPARED STATEMENT OF CONGRESSMAN MASCARA

Good morning Mr. Chairman. I want to thank you and Ranking Member Evans for working together to draft H.R. 2040. A bill which would deny burial rights in veterans cemetery to veterans convicted of certain Federal capital crimes.

This is a very serious and important topic and I am pleased we are holding this hearing today to get input and advice from a broad range of experts.

I must say I was very disturbed earlier this Summer when I read the memo prepared by the General Counsel of the Department of Veterans Affairs indicating that current law only prohibits burial rights and VA benefits to those convicted of crimes against the Nation such as mutiny, sedition, treason and espionage or insurrection.

Obviously, recent events in Oklahoma City have taught us that veterans can be and are convicted of other serious Federal crimes that are punishable by death or life imprisonment. As a result, we must rethink current law and find a way to see that those who commit horrible crimes and kill Federal officers are not given a full blown military burial or lifetime veterans' benefits.

I must say, however, that I also agree with the tone of Chairman Stump's colleague letter sent out prior to the July 4th break which urges caution and a deliberative review of this matter.

This problem needs to be corrected, but it needs to be fixed without hurting innocent veterans or dependents who had nothing to do with the crime in question.

Again I look forward to today's testimony and look forward to working with Chairman Stump and Ranking Member Evans to report out a sound bill we can all support and see adopted by the full house.

I yield back the balance of my time.

Statement of Hon. Silvestre Reyes

Veterans' Affairs Committee Hearing on H.R. 2040

Introductory Remarks on H.R. 2040 - To deny burial in federal funded cemeteries to persons convicted of certain capital crimes.

July 9, 1997

Thank you Mr. Chairman, Mr. Evans, and fellow members of the Veterans Committee. I also want to thank our colleague on the committee Mr. Bacchus for coming here to testify regarding this important matter, along with Mr. Skelton and Mr. Knollenberg and the other fine witnesses.

Certainly, the issue we have before us today is one that all of us feel strongly about. I share the strong sentiments of my colleagues. The issue of retaining the sanctity of our national cemeteries can not be overemphasized. Those convicted of heinous crimes should not be placed in the same company as those we consider national heroes. Our national veteran cemeteries are the final resting place of men and women who sacrificed on behalf of this great country of ours. In the name of freedom, these Americans served both here and around the world to defend the great pillars of our country: freedom, liberty, and justice for all. Because of our soldiers' sacrifice to this country, veterans are accorded deserved benefits to themselves, their survivors and dependents, and honors including burial within our national cemeteries. We are correctly a society that values the special contributions of outstanding members of society and with regard to veterans we should never consider diminishing their distinction without great consideration. Nonetheless, our society is sometimes struck by criminal acts and misdeeds by some members of our society, and unfortunately, even by indiscriminate acts of terrorism and mass destruction that we as a society must come to terms with, and those persons committing such acts must be dealt with accordingly.

Within this context, it would be incorrect, and inappropriate to lay to rest among honorable veterans, members of our society who we clearly find have gone way beyond accepted norms of our society.

So as we listen to the rest of today's testimony, I want to thank Mr. Stump for his careful and measured authorship of this bill H.R. 2040, which attempts to focus on the most egregious of situations for prohibiting veteran burial in our national cemeteries, while at the same time preserving the rights of veteran's dependents and survivors. Furthermore, in reviewing the testimony of today's witnesses, their suggestions for improving this bill further should be given strong consideration.

Thank you, Mr. Chairman.

Honorable Jack Quinn
Remarks
July 9, 1997

Mr. Chairman, let me first thank you for the reasoned manner in which you have approached this issue. Because of the special relationship between the nation and those who have served honorably in its military forces, veterans benefits are sacred. These earned benefits should be forfeited only under the most extreme circumstances and only after serious deliberation. In crafting H.R. 2040 very narrowly, I believe the Committee has taken the correct approach, and I thank the Chairman for his leadership in this matter.

I would also like to thank the VSO's for their very thoughtful written statement as well as their measured response to what is certainly an emotional issue, and I look forward to a good discussion.

Statement by Rep. Luis V. Gutierrez
Committee on Veterans' Affairs
July 9, 1997

Thank you Mr. Chairman for calling this hearing to consider this important legislation.

As we all know, the repercussions of the Oklahoma City bombing incident continue to affect all the people of our nation.

The recent conviction and sentencing to death of Timothy McVeigh, the perpetrator of this heinous crime, will not wash away the tears of the families of the bombing victims, nor will it diminish the need for our government to protect the American people from future acts of terrorism.

Here, in the halls of Congress, in this Committee, we also must deal with the aftermath of this serious offense.

Timothy McVeigh is a veteran and this unfortunate fact has raised some important questions about the rights of veterans who commit terrorist acts.

A number of pieces of legislation have been introduced in Congress that would deny the benefits provided to veterans of the Armed Forces of the United States under Title 38 to individuals convicted of capital crimes in Federal and State courts.

I believe that veterans should not be treated differently than other people who receive government benefits and have been convicted of breaking the law.

Nevertheless, a narrowly focused bill that denies cemetery rights to veterans who commit acts punishable by death should not unduly infringe upon the rights and prerogatives of the veterans community.

Mr. Chairman, I look forward to a thorough analysis of the merits of these bills and the opinions of the members of the veterans community who have joined us this morning.

Thank you again.

Statement of the Honorable Mike Doyle [PA-18]
Committee on Veterans' Affairs
Hearing on H.R. 2040 and S. 923

July 9, 1997

I would like to join Chairman Stump and the rest of the cosponsors of this bill in offering my strong support of H.R. 2040. It saddens me that crimes so heinous are being committed at all in this nation, and the fact that we are here today to deal with such appalling crimes committed by veterans is even more disheartening.

Current law already prevents veterans who have committed a limited list of crimes, including treason and sabotage, from receiving veterans benefits. Clearly, expanding this denial of veterans benefits should not be taken lightly by this Committee, or this Congress. However, I do believe that there are limited circumstances where such a denial of benefits is

justified. In these cases, providing such benefits would dishonor other veterans or the entire veterans community. These are the situations H.R. 2040 is intended to prevent.

H.R. 2040 would only affect burial in federally funded veterans cemeteries by preventing veterans who have committed particular crimes from being interred at such locations. Burial in our nation's veterans cemeteries is more than simply a benefit, it is an honor. Those veterans who have lived honorably in their post-military lives should not be laid to rest beside individuals who have committed such unthinkable acts as outlined in this bill. Again, I thank the Chairman for introducing legislation that would maintain veterans cemeteries as a place of honor, where families and all

Americans can go to celebrate the positive contributions our veterans have made to the prosperity and future of our nation.

Thank you Mr. Chairman.

**The Honorable Bob Filner
Full Committee Hearing – H.R. 2040
July 9, 1997**

Thank you, Mr. Chairman.

I want to reinforce a comment made earlier by my friend, Lane Evans, regarding the purpose of H.R. 2040. Our aim today is clear – and that is to determine if this bill would preserve the dignity of the hallowed grounds that our nation has set aside as final resting places for America’s veterans.

Our goal is not to punish. That is the role of the judicial system. Rather, the single, but critical, purpose of H.R. 2040 is to ensure that our veterans’ cemeteries continue to be special places – places of solace and peace – grace and beauty – honor and respect – for our nation’s veterans and their families.

Thank you.

Statement of Representative Helen Chenoweth**7/9/97**

Our national cemeteries are, and should remain, places of peace and honor. For those who gave lives of service to our nation, and for their families and loved ones, it is vital that we preserve the sanctity of national cemeteries.

The decision to deny veteran benefits to an individual is a difficult one -- I understand that it can be difficult to draw the line. But I think we can all agree that to bury an individual who has committed acts of murder and terrorism in a national cemetery is a dishonor to those resting there and their families.

I would like to thank each of my colleagues testifying today for your hard work on this issue. I look forward to moving this bill quickly through to final passage.

The Honorable Michael Bilirakis
Committee on Veterans' Affairs

Hearing on H.R. 2040 and S. 923

Thank you, Mr. Chairman.

First, let me commend you for scheduling today's hearing on legislation pertaining to benefits eligibility for veterans who commit capital crimes. I look forward to hearing the testimony of our witnesses and would like to take a moment to welcome our colleagues, Representatives Spencer Bachus, Ike Skelton and Joe Knollenberg, to our Committee.

There are 114 national cemeteries. To be eligible for burial in one of these cemeteries, a veteran must have been discharged under conditions other than dishonorable. Recently, concerns have been raised about the veterans' burial benefits that are available to individuals who have been convicted of capital offenses.

At first glance, this would appear to be a very straightforward issue. If asked, most Americans would probably say that someone who is convicted of a capital offense should not be eligible for burial in one of our national cemeteries. However, upon closer examination, it becomes clear that this is really a much more complex issue than one would first imagine.

An individual's veterans status is earned through his or her military service, and veterans' benefits are provided on the basis of this service. Generally, these benefits are not contingent on post-discharge conduct.

Current law does provide for forfeiture of burial benefits for the commission of certain crimes that jeopardize or seriously threaten national security. These crimes include mutiny, treason, sabotage and subversive activities. The question before us today is whether or not the commission of other capital offenses by veterans should affect their eligibility for burial benefits?

Several bills have been introduced on this matter in the House of Representatives. In addition, the Senate recently approved a bill, S. 923, that would deny veterans' benefits to persons convicted of Federal capital offenses.

A variety of concerns have been raised about the Senate bill. In some respects, S. 923 is too broad and may have some unintended consequences. In other ways, the bill is too narrow and may not take into account all the circumstances that might warrant the forfeiture of burial benefits.

Consequently, there are important questions that must be addressed as we consider any legislation to deny burial benefits to veterans. What should be done in the case of a veteran who commits mass murder and immediately kills himself and is not convicted of a capital offense?

Should we deny VA death or education benefits to widows and dependent children based upon crimes committed by the veteran? What if the criminal act committed by the veteran is determined to result from a service-connected mental condition for which the veteran is rated 100 percent disabled?

Mr. Chairman, I want to commend you for your willingness to tackle this difficult issue. Your bill, H.R. 2040, seeks to strike a balance between a veteran's rights and preserving the sanctity of our national cemeteries.

As always, I look forward to working with you and the other members of our Committee on this issue. I welcome any recommendations our witnesses may have on ways to improve the legislation that we will be discussing.

Thank you.

STATEMENT OF
JERRY W. BOWEN
DIRECTOR, NATIONAL CEMETERY SYSTEM
DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
JULY 9, 1997

Mr. Chairman and Members of the Committee:

I am pleased to be here today to present the views of the Department of Veterans Affairs (VA) on two bills:

- H.R. 2040, a bill to deny burial in Federally funded cemeteries to persons convicted of certain capital crimes; and
- S. 923, a bill to deny veterans' benefits to persons convicted of Federal capital offenses.

S. 923, passed by the Senate on June 18, 1997, would render any person who is convicted of a Federal capital offense ineligible for all benefits provided under title 38,

United States Code, including burial in the National Cemetery System. Dependents and survivors of an individual convicted of a Federal capital offense would lose benefits to the extent their eligibility would be based on the eligibility of the convicted individual.

H.R. 2040, which you and others on this Committee introduced on June 25, 1997, would render ineligible for burial in a Federally funded cemetery persons convicted of certain crimes. In order to be rendered ineligible, a person must have been convicted of both murder of a Federal employee while the employee was performing official duties, and one of several listed offenses involving terrorism, use of a weapon of mass destruction, or destruction of Federal property by fire or explosion. The bill would also render ineligible those persons administratively found, by clear and convincing evidence, to have committed crimes of the type specified, but who were not brought to trial for those crimes because of death, flight, or insanity. Dependents and survivors would not lose benefits based on the veterans' disqualification.

Both bills under consideration today raise the issue of the propriety of imposing forfeiture of benefits based upon the post-discharge conduct of veterans discharged honorably

from military service. In the past, it has generally been recognized that veterans' benefits are provided on the basis of faithful military service and are not contingent on post-discharge conduct.

We do recognize, however, that, under certain limited circumstances, veterans' benefits may be forfeited based on conduct after service. Section 6105 of title 38, United States Code, provides for forfeiture of gratuitous benefits under laws administered by VA for any person convicted of certain crimes, including treason, sabotage, spying, and subversive activities. This forfeiture provision specifically applies to the right to burial in a national cemetery.

In addition, section 6103(a) of title 38 provides that persons who make a false or fraudulent claim before VA may forfeit all gratuitous benefits under laws we administer, and section 6104 provides for the forfeiture of gratuitous veterans' benefits based on an administrative determination that an individual is guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States. Since September 1, 1959, however, the law has limited application of these two sections to persons who were not

residents of or domiciled in the United States at the time of the events in question.

Should the Committee decide to report out legislation limiting veterans' benefits based on the commission of Federal capital crimes, VA's preference would be for the more narrowly focused provisions of H.R. 2040. We believe H.R. 2040 would adequately address concerns regarding the preservation of the sanctity of veterans cemeteries, while having a more limited impact on veterans' families. H.R. 2040 applies only to persons who have committed certain crimes which result in the death of a Federal employee. It would prevent the interment of the remains of perpetrators of such crimes in the National Cemetery System, Arlington National Cemetery, and many state veterans' cemeteries.

We also caution that the bills in question, if enacted as drafted, could give rise to a number of anomalous situations. For example, H.R. 2040 would require that, to be rendered ineligible for burial in a Federally funded cemetery, a person would have to be convicted of both a specified terrorist-type activity and the murder of a Federal employee engaged in official duties. Therefore, a deadly terrorist act, no matter how heinous, would not

render a person ineligible for burial unless a Federal employee were killed while performing official duties.

The provision of H.R. 2040 authorizing an administrative determination of ineligibility for a person not brought to trial because of insanity would seem to make a distinction between those found by a jury to be not guilty by reason of insanity and those found by a judge to be not competent to stand trial. Further, this provision would run counter to the longstanding tradition, in VA law and elsewhere, of not holding the insane responsible for their actions. We also note that, not only would the bill result in application of different standards of proof for judicially based and administratively determined forfeitures, it would dispense in administrative proceedings with the requirement, applicable in the case of forfeitures based on criminal convictions, that the crimes at issue justify a sentence of death or life imprisonment. For these reasons, and because conducting such an involved administrative proceeding in the very limited time available for making burial-eligibility determinations could prove impossible, we urge the Committee to delete this provision.

Neither S. 923 nor H.R. 2040 includes a reporting provision similar to the one found at 38 U.S.C. § 6105(c),

which requires the appropriate Secretary or the Attorney General to inform VA when a person is convicted of one of the crimes listed in that statute. Lack of a notification provision could lead to haphazard reporting of crimes rendering persons ineligible for benefits, and uneven application of the forfeiture provision.

Although H.R. 2040 would specifically bar burial in Arlington National Cemetery for persons found to have committed specified offenses, S. 923 would not cover burial in Arlington National Cemetery because burial there is not a benefit provided pursuant to title 38, United States Code. Neither H.R. 2040 nor S. 923 would bar burial in the Military Retirement Home or military installations.

We also wish to call to the Committee's attention that H.R. 2040, while denying the right to burial in a Federally funded cemetery to a person convicted of certain crimes, would not bar that individual, at death, from receiving certain other forms of recognition under title 38, United States Code, such as a headstone or marker for use in a non-Federally funded cemetery, a flag with which to drape the casket at burial, or a presidential memorial certificate.

Finally, we note that S. 923 does not specify an effective date or whether it applies to crimes committed before the date of its enactment. This ambiguity may result in challenges to the application of the legislation.

In summary, the terms of H.R. 2040 and S. 923 present some problems that could make implementation difficult or inequitable in certain cases. However, of the two bills, VA would prefer the more narrowly focused H.R. 2040.

This concludes my statement. I would be pleased to respond to any questions the Committee may have.



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**HEARING
BEFORE
HOUSE VETERANS' AFFAIRS COMMITTEE
ON
CONSTITUTIONAL QUESTIONS RAISED BY H. R. 2040,
To Deny Burial in a Federally Funded Cemetery to
Veterans Convicted of Certain Capital Crimes**

SUMMARY

I am appearing today at the request of the Committee to discuss any constitutional issues that may be raised by H. R. 2040, a bill to deny burial in a federally funded cemetery to veterans convicted of certain capital crimes. The Committee also has before it S. 923, a bill to deny generally veterans' benefits to persons convicted of federal capital offenses.

I am Johnny H. Killian, a Senior Specialist in American Constitutional Law at the Congressional Research Service. As such, I must emphasize that it is not my place or function to discuss or to advocate policy issues; my responsibility is only to address any constitutional issues that may arise or may be raised by the bills under consideration.

In brief, H. R. 2040 would amend 38 U. S. C. § 2402, to establish a uniform national policy with respect to the ineligibility for burial in a federally funded cemetery (see 38 U. S. C. § 2400), of any veteran (or other defined persons) who has been convicted of a crime under listed federal penal statutes and for which the veteran (or other defined person) was sentenced to death or to life

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imprisonment without parole. The bill also authorizes the Secretary of Veterans' Affairs to prescribe regulations providing for ineligibility for persons who might have fallen into the prior category but for death, flight to avoid prosecution, or determination of insanity.

No constitutional objection would appear to be warranted against either of the bills as establishing additional qualifications for those persons who can be buried in the covered cemeteries or additional qualifications for receipt of veterans' benefits. Veterans' benefits are gratuities that Congress confers on persons under its powers to provide for a military and for the national defense under its Article I powers and under its authority to tax and spend under clause 1 of § 8 of Article I of the Constitution. Congress always has the power to constrain and curtail eligibility for these programs, as it historically has done. Whether we notice the House bill, dealing only with burial, or the much broader Senate bill, the conclusion is the same.

In setting qualifications for benefits, Congress can surely be concerned, as these bills evidence, with limiting scarce resources, such as burial space, to those persons that it is fitting that they be honored, excepting persons that Congress may feel has dishonored the standards that would otherwise befit them for inclusion.

However, in one respect, there is a constitutional question that may be raised and must be noticed. The application of either of these bills to persons who already, prior to enactment, have met the conditions of ineligibility will support a challenge to the bills as *ex post facto* laws or perhaps as in violation of one of the other restraints on congressional power, such as the bar on bills of attainder. We know of the existence of Timothy McVeigh and the application of any enacted law to him; for constitutional purposes, that application cannot be ignored. But I say that the "application . . . will support a challenge." I do not say that such a challenge would be successful, because under the precedents of the Supreme Court, and of general understanding about the meaning of the constitutional clauses, it is highly unlikely that a challenge would be successful. That result would flow from the fact that a law to be an impermissible *ex post facto* law or one condemned under one of the other clauses must be penal, must

impose punishment, and under the standards enunciated by the Supreme Court these bills, if enacted, are highly unlikely to be held to be punitive.

ANALYSIS

For purposes of my presentation, I will focus on the *ex post facto* objection, inasmuch as the standards of the Supreme Court for determining what it is that constitutes punishment under any of the clauses are all generally the same. I will cite some cases rising under one or another of the other clauses (identifying them as such).

The *ex post facto* clauses incorporate "a term of art with an established meaning at the time of the framing of the Constitution." *Collins v. Youngblood*, 497 U.S. 37, 41 (1990). From the beginning, it has been established that the ban on *ex post facto* laws, as against federal action in § 9, cl. 3, of Article I, and as against the States in § 10, cl. 1, of Article I, reaches only to penal laws. *Calder v. Bull*, 3 Dall. (3 U.S.) 386, 390 (1798)(opinion of Chief Justice Chase). The constitutional provision "forbids the application of any new punitive measure to a crime already consummated." *California Dept. of Corrections v. Morales*, 514 U.S. 499, 505 (1995)(quoting *Lindsey v. Washington*, 301 U.S. 397, 401 (1937)). The Supreme Court has emphasized that "only the clearest proof could suffice to establish the unconstitutionality of a statute" on the basis that it "was so punitive either in purpose or effect" as to constitute a penal statute rather than a regulatory one. *United States v. Ward*, 448 U.S. 242, 248-249 (1980)(quoting *Flemming v. Nestor*, 363 U.S. 603, 617-621 (1960)).

Whether a statute is punitive is a slippery question, answered by the standards the Supreme Court has set out, but sometimes difficult to apply. In *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 169 (1963), the Court listed seven factors that helped it determine whether a particular statute was primarily punitive for purposes of using the Fifth and Sixth Amendment. Those factors include whether a sanction involves an affirmative restraint, how history has regarded it, whether it applies to behavior already a crime, the need for a finding of scienter, its relationship to a traditional aim of punishment, the presence of a nonpunitive alternative purpose, and whether it is excessive in relation to that purpose.

The Court has at one point suggested that basing a disqualification or a burden upon a previous criminal conviction is evidence of a punitive intent. Thus, in *Department of Revenue of Montana v. Kurth Ranch*, 511 U.S. 767 (1994), it voided as a violation of the double jeopardy clause a confiscatory tax imposed upon the possession of marijuana for which the person had already been criminally convicted. The fact that the tax was "conditioned on the commission of a crime" is "significant of [its] penal and prohibitory intent." *Id.*, 781. *Kurth Ranch* has subsequently been narrowed by the Court, although the general principle for which it stands - basing an adverse future effect on the fact of a previous conviction is an indicia of punitive intent remains - has been maintained. See *United States v. Ursery*, 116 S.Ct. 2135, 2142-2147 (1996)(no double jeopardy violation when criminal prosecution follows a civil forfeiture or when a civil forfeiture follows a criminal conviction); *Kansas v. Hendricks*, 65 USLW 4564 (June 23, 1997)(upholding against due process, double jeopardy, and *ex post facto* challenges a statute providing for the civil commitment of persons convicted or charged with a sexually violent offense as applied to person convicted of sex crimes upon the completion of his prison sentence).

However, as has been noted in the discussion of *Mendoza-Martinez* and other cases, Congress or a state legislature may have a nonpunitive purpose in imposing a disqualification on someone. That disqualification may relate to past behavior preceding enactment of the statute and seek to address the propriety of permitting someone to access to a program when that person has engaged in behavior that Congress feels does not warrant the person the honor of inclusion in a program or benefit.

What Congress chooses to call some disqualification, whether punitive or civil, may be important but not dispositive. More important is judicial analysis looking to "whether the statutory scheme was so punitive either in purpose or effect as to negate Congress' intention to" accomplish a nonpenal purpose. *United States v. Ursery*, *supra*, 116 S.Ct., 2142 (quoting *United States v. One Assortment of 89 Firearms*, 465 U.S. 354, 365 (1984)).

It is often the case that the line between punitive and regulatory/remedial is not clear or that the elements are to some extent mingled. The Court has

stated the tests in a highly regarded opinion by Chief Justice Warren in *Trop v. Dulles*, 356 U.S. 86, 95-97 (1958)(plurality opinion):

Each time a statute has been challenged as being in conflict with the constitutional prohibitions against bills of attainder and *ex post facto* laws, it has been necessary to determine whether a penal law was involved, because these provisions apply only to statutes imposing penalties. In deciding whether or not a law is penal, this Court has generally based its determination upon the purpose of the statute. If the statute imposes a disability for the purposes of punishment - that is, to reprimand the wrongdoer, to deter others, etc., it has been considered penal. But a statute has been considered nonpenal if it imposes a disability, not to punish, but to accomplish some other legitimate governmental purpose. The Court has recognized that any statute decreeing some adversity as a consequence of certain conduct may have both a penal and a nonpenal effect. The controlling nature of such statutes normally depends on the evident purpose of the legislature. The point may be illustrated by the situation of an ordinary felon. A person who commits a bank robbery, for instance, loses his right to liberty and often his right to vote. If, in the exercise of the power to protect banks, both sanctions were imposed for the purpose of punishing bank robbers, the statute authorizing both disabilities would be penal. But because the purpose of the latter statute is to designate a reasonable ground of eligibility for voting, this law is sustained as a nonpenal exercise of the power to regulate the franchise.

In looking to the question whether a remedial motive actuated Congress, the Court has frequently observed the import of taking away benefits gratuitously conferred. "Remedial sanctions may be of varying types. One which is characteristically free of the punitive criminal element is revocation of a privilege voluntarily granted." *Helvering v. Mitchell*, 303 U.S. 391, 399 (1938).

Illustrative of this point is *Flemming v. Nestor*, supra. Congress had provided for the termination of certain Social Security benefits payable to any alien who, after the date of enactment in 1954, was deported on any one of listed grounds. Nestor became eligible for old-age benefits in 1955, and he was deported in 1956 for having been a member of the Communist Party from 1933 to 1939. His benefits were therefore terminated. The primary holding of the Court was that the revocation or withholding of a noncontractual benefit under a social welfare program was not protected by the due process clause of the Fifth Amendment, a point to which I shall return.

Secondarily, the Court considered whether the termination of Nestor's benefits constituted punishment, so that he was punished without a judicial trial, was punished by a bill of attainder, or was punished for past conduct not unlawful when engaged in, a violation of the *ex post facto* clause. The Court, after analysis, held that the revocation implicated none of these clauses.

In determining whether legislation which bases a disqualification on the happening of a certain past event imposes a punishment, the Court has sought to discern the objects on which the enactment in question was focused. Where the source of legislative concern can be thought to be the activity or status from which the individual is barred, the disqualification is not punishment even though it may bear harshly upon one affected. The contrary is the case where the statute in question is evidently aimed at the person or class of persons disqualified. *Id.*, 613-614.

Upon the latter ground, the Court distinguished such cases as *Ex parte Garland*, 4 Wall. (71 U.S.) 333 (1867) (disqualification of persons from practice in federal courts on grounds of participating in the Confederacy), and *Cummings v. Missouri*, 4 Wall. (71 U.S.) 277 (1867) (disqualification of persons as office holders because of participation in the Confederacy), as being based on evidence in the record and on the face of the laws that such persons were being punished. However, the *Flemming* Court discerned behind Congress' action a rational basis in concern about the loss to the country of benefits paid abroad. It thought this concern more than adequately explained the legislative

amendment and refused to consider any proffer of evidence showing some congressional intent to punish Communists or former Communists who had been deported.

We observe initially that only the clearest proof could suffice to establish the unconstitutionality of a statute on such a ground. Judicial inquiries into Congressional motives are at best a hazardous matter, and when that inquiry seeks to go behind objective manifestations it becomes a dubious affair indeed. Moreover, the presumption of constitutionality with which this enactment, like any other, comes to us forbids us lightly to choose that reading of the statute's setting which will invalidate it over that which will save it. *Id.*, 617.

The fact that only one person is known now to suffer the disqualification to be imposed upon enactment of any of the bills is, without more, inadequate to establish that punishment is being imposed on him. Illuminating in this respect is *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977). The law specifically applied only to President Nixon and directed an executive agency to assume control over the documents and recordings accumulated during his tenure and prepare regulations providing for ultimate public dissemination of at least some of them. The Court's analysis under the clause forbidding bills of attainder bears directly on the issue the Committee is considering.

First, it held that the clause did not deny the power to Congress to burden some persons or groups while not so treating all other plausible individuals or groups; even the law's specificity in referring to the former President by name and applying only to him did not condemn the act because he "constituted a legitimate class of one" on whom Congress could "fairly and rationally" focus. *Id.*, 472.

Second, even if the statute's specificity did bring it within the prohibition of the clause, the lodging of Mr. Nixon's materials with the GSA did not inflict punishment within the meaning of the clause. This analysis was a three-pronged one: 1) the law imposed no punishment traditionally judged to be prohibited by the clause; 2) the law, viewed functionally in terms of the type and severity of

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burdens imposed, could rationally be said to further nonpunitive legislative purposes; and 3) the law had no legislative record evincing a congressional intent to punish. *Id.*, 473-484. That is, the Court, looking "to its terms, to the intent expressed by Members of Congress who voted its passage, and to the existence or nonexistence of legitimate explanations for its apparent effect," concluded that the statute served to further legitimate policies of preserving the availability of evidence for criminal trials and the functioning of the adversary legal system and in promoting the preservation of records of historical value, all in a way that did not and was not intended to punish the former President.

There are some precedents bearing more or less directly upon the precise constitutional issue before the Committee. In *United States v. Landers*, 92 U.S. 77 (1875), the Court held that a statute imposing a forfeiture of a soldier's pay on the ground of desertion was not a punishment and that, therefore, the fact of desertion did not have to be established by the finding of a court-martial but might be determined administratively. See also *United States v. Kingsley*, 138 U.S. 87 (1891).

More directly on point is *Thompson v. Whittier*, 185 F.Supp. 306 (D.D.C. 1960)(three-judge court), *vacated and remanded for referral to administrative process, sub nom. Thompson v. Gleason*, 317 F.2d 901 (D.C.Cir. 1962). Congress had enacted a statute, now 38 U.S.C. § 6104, which provided for the forfeiture of all accrued or future gratuitous veterans' benefits to any person upon evidence satisfactory to the (now) Secretary of Veterans' Affairs that he had been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States. The claimant was disqualified for benefits based on his Communist Party activities predating the statute's enactment. The district court upheld the statute, rejecting an *ex post facto* attack on the basis that the law was not punitive, rather reflecting Congress' decision to deny a gratuity to persons whose activities might undermine the existence of the United States. On appeal, the court thought the Administrator should have made certain designated decisions and remanded for that purpose. The court did note, *id.*, 907, that no bill of attainder issue was present, inasmuch as the statute was not penal, relying on the just decided *Fleming v. Nestor*, *supra*.

We would note that, in addition to the two statutes just cited, Congress in 1959 enacted a statute providing for the forfeiture of veterans' gratuitous benefits, including, as added in 1973, "the right to burial in a national cemetery[.]" 38 U.S.C. § 6105. The basis for disqualification is conviction under a number of federal laws having to do with subversive activities. Notably, and probably only an act of grace on Congress' part, the statute is applicable to any person "who is convicted after September 1, 1959," of any of the offenses, the date being the date of enactment.

Although the matter is not totally free of doubt, it strongly appears that enactment of this general bill, H.R. 2040, or other broader bills, would not be deemed in its application to Mr. McVeigh or to someone else in his position to constitute an *ex post facto* law or to violate one or another of the other bars. First, the bill has a nonpunitive purpose, the limitation of the honor of burial at federally-funded cemeteries to persons who have not or would not bring dishonor upon the privilege Congress has bestowed. That is, in the context of *Trop v. Dulles*, *supra*, a statute is not penal if it imposes a disability, not to punish, but to accomplish some other legitimate purpose. Or, in terms of *Flemming v. Nestor*, *supra*, a law that bases a disqualification upon the happening of a certain past event will not be considered as imposing a punishment if Congress has focused on the activity or status from which an individual has been barred, here, the question of the limited space available in federal cemeteries and who should be privileged to be buried in them.

Second, attention needs to be focused on the presence or absence of a legislative intent to punish a known person. As *Nixon v. GSA*, establishes, a law that specifically applies to only one named person is not necessarily punitive, if, although the intent is aimed at one person, the statute is found to be nonpunitive, inasmuch as the condition imposed is not traditionally penal, the burden imposed rationally furthers nonpunitive legislative purposes, and in the enactment there was no record evincing a congressional intent to punish. Even if there is found to exist in the legislative history some hostility toward an identifiable person, a constitutional flaw may not be found to exist. As *Flemming v. Nestor*, states, and it is reiterated in more recent cases, "only the clearest proof could suffice" to invalidate a statute with a nonpunitive purpose

on the basis that congressional motives as expressed in the statements of Members and other indicia indicate a bare desire to punish. Especially is this so because a federal statute comes before the judiciary with a presumption of constitutionality.

One additional element must be noted. Even a nonpunitive law could be attacked as a violation of the Fifth Amendment's due process clause, if it were found that a liberty or property interest had been infringed. As we noted above, it is evident that under *Flemming v. Nestor*, supra, such a challenge, too, would fail. Under *Goldberg v. Kelly*, 397 U.S. 254 (1970), governmental benefits, entitlements to those who meet the qualifications, are property interests for *procedural* due process purposes, so that claimants are entitled to hearings and the like. But such benefits, as *Flemming v. Nestor*, and cases subsequent to *Goldberg*, see *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 432-433 (1982); *United States Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 174 (1980); *Richardson v. Belcher*, 404 U.S. 78 (1971), hold, are not property interests for purposes of *substantive* due process. Thus, Congress, or a state legislature, may at any time alter the qualifications for receiving the benefits to the detriment of present or future recipients.

CONCLUSION

In short, so long as Congress in the enactment process of any of these bills establishes a rational, nonpunitive purpose related to qualifications for the particular benefit, and so long as the record does not reflect a punitive motive, it seems evident upon the precedents that the application of any such law to a person whose disqualifying acts predate the date a bill becomes law that the burden imposed, although retroactive in some respects, will not be found by the courts to constitute a prohibited *ex post facto* law nor to violate any of the other prohibitory clauses.

Neither would retroactive application of a bill, that is, the legislation of a disqualifying condition based on past conduct, violate the due process clause. The precedents are quite clear that for *substantive* purposes, Congress can terminate or alter benefit programs based on past conduct. A potential recipient may be entitled to an administrative hearing, under *procedural* due process, to

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argue about the application to him of disqualifying provisions, but that is a far different matter.

Mr. Chairman, I would be delighted to attempt to answer any questions you are the Members may have.

Johnny H. Killian

STATEMENT OF RICK SURRATT
ON BEHALF OF
THE AMERICAN LEGION • AMVETS • BLINDED VETERANS ASSOCIATION
DISABLED AMERICAN VETERANS • JEWISH WAR VETERANS OF THE USA
PARALYZED VETERANS OF AMERICA
VETERANS OF FOREIGN WARS OF THE UNITED STATES
VIETNAM VETERANS OF AMERICA
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
JULY 9, 1997

Mr. Chairman and Members of the Committee:

I am pleased to present the collective views of The American Legion, AMVETS, the Blinded Veterans Association (BVA), the Disabled American Veterans (DAV), the Jewish War Veterans of the USA, the Paralyzed Veterans of America (PVA), the Veterans of Foreign Wars of the United States (VFW), and the Vietnam Veterans of America (VVA) on two bills to amend the law pertaining to benefits eligibility in the case of veterans committing capital crimes. The national veterans organizations comprising this group, which for the sake of convenience I will refer to as the "veterans group," have come together to speak as one, united voice because of the views and concerns they hold in common on the subject matter of these bills.

The veterans group appreciates your invitation to explain its position on whether and to what extent the commission of capital offenses by veterans should affect their, or their dependents,' benefit eligibility status. Without question, this raises a serious public policy question for our Nation's citizens. It is also certainly appropriate that the millions of veterans the group represents have a voice on this issue because, after all, these veterans are some of America's most patriotic and civic-minded citizens, and these matters, of course, also involve highly valued and honored rights veterans earned by virtue of their revered service to the Nation. On the other hand, because veterans are among our most responsible citizens, they must not and will not view their interests as veterans as separate from or in conflict with the greater interests of the Nation as a whole. However, as appropriate with many such difficult issues, they counsel a balancing between the immediate human desire for and the attractiveness of societal retribution for crimes and the countervailing rational concerns about the maintenance of stable, measured, and equitable principles of law—and thus the best interests of our society as a whole—over the long-term. It is that sense of prudence and equity that guides the veterans group in their position on these bills.

The veterans group has no quarrel with a view that veterans are without privilege to disobey society's rules, and that, absent special circumstances, the consequences for crimes should be the same for veterans and nonveterans. Fairness dictates that veterans be treated the same as other citizens on matters unrelated to their status as veterans per se, however. Thus, the veteran should not suffer greater or harsher penalties merely because he or she is a veteran than a similarly situated nonveteran. To impose greater punishment on the veteran goes beyond punishment on account of a crime to punishment on account of being a veteran. That is not to argue that we should continue to hold veterans who commit crimes in the same high esteem that we do veterans who conduct themselves properly. Thus, we do not have to bestow the same honors upon veterans who bring dishonor to themselves as we would upon veterans who continue to conduct themselves in an upright manner during their civilian lives following completion of military service.

Of concern to the veterans group here, however, is the treatment to be accorded veteran status once earned through satisfactory fulfillment of service to the Nation. Veteran status is a legal status which, as a practical matter, is realized through the special rights created for veterans to enjoy as a restitution for the sacrifices of military service. Almost without exception, this status, once accrued, is considered indefeasible. It is conferred by the completion and honorable character of the recipient's military service and is not conditioned upon subsequent conduct in civilian life. Logically, that is as it should be. Just as a former servicemember without

honorably service should not be awarded veterans' rights on the basis of post-service accomplishments, no matter how commendable, conversely, veteran status should not be exposed to rescission as a result of civilian conduct following, or for other reasons unrelated to, the performance of military service. Veterans should be secure in the knowledge that their veteran status is vested and will not be held hostage to irrelevant, post-service factors. If veterans' rights are intended to remunerate for disabilities incurred, opportunities lost, extraordinary rigors suffered, or contributions made in connection with and during the time of military service, such rights should, like wages earned, not be withheld or recalled because of subsequent performance or unconnected actions or events, even when such actions or events are of a character that evoke very negative public sentiments. The special value of service to one's country and the integrity of veteran status would be defeated by departure from that tradition. Fidelity to this principle admits exceptions for only the most highly exceptional circumstances.

Currently, the law provides for forfeiture of veterans' rights only under circumstances of crimes against the government which jeopardize or seriously threaten our national security. Section 6104 of title 38, United States Code, provides that veterans shown to be guilty of mutiny, treason, or sabotage forfeit all future VA benefits, and section 6105 of title 38 similarly provides that veterans convicted of a variety of subversive activities forfeit VA benefits, including eligibility for burial in a national cemetery. These circumstances justify nullification of veterans' entitlements because individuals should not receive support from a government they actively seek to destroy.

This Committee now has before it S. 923 which the Senate passed recently. This bill would essentially void the veteran status of any veteran convicted of a Federal capital offense. Forfeiture would result from the commission of any Federal offense punishable by death (regardless of whether the death penalty was deemed warranted or actually imposed). Obviously, that would go well beyond the nature of the offenses which are now deemed to justify voidance of veteran status. While the veterans of this Nation understand and, indeed, share in the public indignation at such detestable acts, they believe that persons committing such crimes should be punished as criminals, not veterans. As noted previously, when the laws impose the criminal penalty and also void veteran status, they punish veterans both for the crime and because they are veterans. Unquestionably, persons committing capital offenses, as well as many lesser but also repulsive or unsavory crimes such as child molestation or even drunken driving, are justifiably not viewed very sympathetically by the public, but emotions should not obscure or overcome the more judicious considerations appropriate in these matters. An integral part of our national values and the qualities that set us apart from other nations is our refusal to compromise justice and fairness even for the most reprehensible within our society.

Therefore, in addition to opposing S. 923 because it operates to impose greater punishment on veterans merely because they are veterans, the veterans group also opposes it as a matter of principle inasmuch as it diminishes the intrinsic value of veteran status. This would be but one step in undermining the fortification of veteran status against the capricious overreactions of those who would revoke it in the name of any popular cause or crusade or would find it a convenient target against which they could direct their frustration. If enacted into law, this will make veterans more vulnerable to oblique attacks or indirect punishment for unrelated matters. Again, once veteran status is earned, it should be a protected and an irrevocable right, not to be taken away because of subsequent unrelated events, except for serious crimes against the nation. Preservation of the high esteem of veteran status promotes patriotic ideals and national unity, and is in the best interest of the Nation as a whole.

H.R. 2040, introduced by Committee Chairman Stump on behalf of himself, Mr. Evans, Mr. Skelton, Mr. Bachus, Mr. Everett, Mr. Filner, Mr. Quinn, Mr. Clyburn, and Mr. Stearns, would preclude burial in a federally funded cemetery for persons guilty of first-degree murder of certain Federal officials and law enforcement personnel in conjunction with the commission of certain other Federal crimes. This bill does not have the objectionable effects of S. 923.

H.R. 2040 would impose this bar by amending section 2402 of title 38, United States Code, to exclude from eligibility for burial in federally funded cemeteries those who have been convicted of, or are shown to have committed, the crimes specified. In addition to first-degree murder of Federal officers or employees as provided in section 1114 of title 18, United States

Code, the persons excluded must have committed one of the following crimes: damage or destruction or attempted damage or destruction by fire or an explosive of Federal property, as provided under section 844(f) of title 18, United States Code; use of a weapon of mass destruction, as prohibited under section 2332a of title 18, United States Code; acts of terrorism, as prohibited under section 2332b of title 18, United States Code; use of chemical weapons, as prohibited under section 2332c of title 18, United States Code; providing material support to terrorists within the United States, as prohibited under section 2339A of title 18, United States Code; or providing material support or resources to foreign terrorists, as prohibited under section 2339B of title 18, United States Code. Such persons would be ineligible for burial in Arlington National Cemetery, any cemetery of the National Cemetery System, or any state cemetery for which a grant has been approved or provided under section 2408 of title 38, United States Code. This prohibition would apply to applications for burial or interment made on or after the date of enactment of the legislation.

While we do not wish to understate the gravity of capital offenses, the disqualifying crimes are of a character and magnitude to be distinguishable from the other numerous capital offenses generally. Moreover, the question of who should be permitted to be buried in our national cemeteries is different from the question of who should have rights as veterans generally. There are valid reasons to prevent persons committing these crimes from being buried in the places of honor set aside for our Nation's most gallant and beloved sons and daughters. First, such persons are themselves unworthy of the honor of burial in these hallowed shrines. Second, to permit persons of such depravity to be buried in the midst of those who fully deserve the honor and tribute, belittles that honor, mocks that tribute, and defeats the special purpose of these places of dignity and sanctity. The national and other federally funded veterans cemeteries serve as a lasting testimonial to this Nation's gratitude for the sacrifices of its veterans. Being an enduring symbol of the special honor our Nation reserves for its veterans to memorialize their bravery, patriotic deeds, and glory, the renown of these sanctuaries resides in the character of those buried there. It is therefore unfair to our other noble veterans to permit persons who have acted so dishonorably through the commission of such heinous crimes to be buried alongside of them.

H.R. 2040 appropriately responds to concerns that our veterans' cemeteries not be degraded by interment of persons who wear a badge of infamy. The class of persons barred by H.R. 2040 is very carefully tailored to exclude from eligibility those who commit the type of crimes warranting such action, and this bill does not include more reactive provisions and sweeping forfeiture that has inappropriate implications and disturbs the integrity of veterans status itself.

The veterans group does have some questions of a purely technical nature about H.R. 2040, however. To bar those who have not been convicted by a court due to unavailability for trial but who are nonetheless shown to have committed disqualifying crimes, H.R. 2040 provides for an administrative determination of ineligibility. Subparagraph (B) of the new subsection (b) excludes burial eligibility for:

a person shown to the appropriate Secretary by clear and convincing evidence, after an opportunity for a hearing in such manner as such Secretary may prescribe, to have committed a crime described in both clauses (i) and (ii) of subparagraph (A) but has not been convicted of such crimes by reason of such person not being available for trial due to death, flight to avoid prosecution, or determination of insanity.

Although it presents no serious concern, the practical effect of subparagraph (B) in the case of unavailability for trial due to death or flight to avoid prosecution is questionable. If the person has not been tried due to death, he or she would either already be interred or inurned in a nongovernment cemetery or mausoleum, would already be interred or inurned in a federally funded cemetery covered by this bill, or might be in a mortuary. In the first instance, the question of interment in a veterans cemetery would seem an unlikely one. In the second instance, if the person's crimes were not learned until after burial in a veterans' cemetery, for example, would disqualification under this section require disinterment, and if so, who would bear the costs of such disinterment? In the third instance, where the person was killed at the time

of the crime and the body is awaiting burial, for example, the requirement of an administrative hearing might effectively bar burial regardless of the proper disposition of the issue if the bureaucracy moves at its usual speed. It is also unclear how the issue of eligibility would arise if the person is a live fugitive, unless this provision is to be interpreted as requiring a preemptive administrative determination, which would seem unnecessary given the possible eventualities that there may never be a request for burial of such person in a federally funded cemetery; that the person will be apprehended and tried, making this subparagraph inapplicable; or that the issue will arise upon the person's death, which of course then returns us to the questions about implementation in the case of a deceased person. (Recognizing that, in their proceedings, administrative tribunals do not apply the standard of proof beyond a reasonable doubt, The American Legion is nonetheless also concerned that the presumption of innocence is rebutted by less conclusive proof in the administrative proceedings under subparagraph (B) than in criminal trials.)

As written, subparagraph (B) applies to those who have not been "convicted" because of "not being available for trial." Thus, it would not, and should not, apply to persons tried and found not guilty by reason of insanity. For simple clarity and to ensure this causes no hesitation or possibility of misinterpretation by administrative personnel, the veterans group suggests that "determination of incompetence to stand trial" or language of similar import might be more appropriate.

It appears that there would be a right of appeal on any adverse determination with respect to burial in a national cemetery under section 2402. Under section 7104 of title 38, United States Code, the Board of Veterans' Appeals has jurisdiction to review any decision of the Secretary of Veterans Affairs on the provision of benefits in accordance with the Secretary's authority under section 511 of title 38. H.R. 2040 appears to leave unanswered the collateral question of the right of and process for administrative or judicial appeal from adverse determinations of the Secretary of the Army regarding Arlington National Cemetery, however. The Committee may wish to amend H.R. 2040 to resolve this question.

Other than these minor technical matters, H.R. 2040 appears to be carefully crafted to accomplish its goal of maintaining the stature of our veterans' cemeteries. The veterans group is especially appreciative of the sponsors' careful, wise, and thoughtful approach to this sensitive issue and urges this Committee to take the same approach and favor this bill over S. 923. The veterans group is also especially grateful for the Chairman's leadership on this matter and the advice he has given sponsors of other related bills.

Curriculum Vitae
for
RICK SURRATT

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Biographical Data

Birth Date: May 22, 1949
Place of Birth: Carroll County, Virginia

Military Service

U.S. Army
Enlisted June 1966 and honorably discharged April 1969.

Education

AA Liberal Arts
Paralegal Certificate

Relevant Experience

Assistant National Legislative Director, Disabled American Veterans (DAV), January 1996 to present.

Associate National Legislative Director, DAV, March 1994 to January 1996.

Judicial Appeals Representative before the United States Court of Veterans Appeals, DAV, September 1989 to March 1994.

National Appeals Officer before the Board of Veterans' Appeals, DAV, June 1989 to September 1989.

National Service Officer, DAV, September 1976 to June 1989.

Other Information

Principal author of DAV's portion of *Independent Budget*



Motto: "If I cannot speak good of my comrade, I will not speak ill of him."



DISABLED AMERICAN VETERANS

NATIONAL SERVICE and LEGISLATIVE HEADQUARTERS
807 MAINE AVENUE, S.W.
WASHINGTON, D.C. 20024
(202) 554-3501

DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS

The Disabled American Veterans (DAV) does not currently receive any money from any federal grant or contract.

During fiscal year (FY) 1995, DAV received \$55,252.56 from Court of Veterans Appeals appropriated funds provided to the Legal Service Corporation for services provided by DAV to the Veterans Consortium Pro Bono Program. In FY 1996, DAV received \$8,448.12 for services provided to the Consortium. Since June 1996, DAV has provided its services to the Consortium at no cost to the Consortium.



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(202) 861-2700 ★ FAX (202) 861-2726 ★

July 1, 1997

Honorable Bob Stump, Chairman
House Veterans' Affairs Committee
335 Cannon House Office Building
Washington, DC 20515

Dear Chairman Stump:

The American Legion has not received any federal grants or contracts during this year or in the last two years, from any agency or program relevant to the subject of the July 12 hearing on legislation to deny burial benefits in a federally funded cemetery and other benefits to veterans convicted of certain capital crimes.

Sincerely,


Kimo S. Hollingsworth, Deputy Director
National Legislative Commission

AMVETS, DISCLOSURE STATEMENT:

AMVETS hasn't received any federal grants or contracts during FY97 or in the previous two fiscal years.



BLINDED VETERANS ASSOCIATION

477 H STREET, NORTHWEST

•

WASHINGTON D.C. 20001-2884

•

(202) 371-8880

BLINDED VETERANS ASSOCIATION'S DISCLOSURE STATEMENT

The Blinded Veterans Association, (BVA) did not receive any federal grants or engage in any federal contracts with the federal government during FY'97.

Moreover, BVA has not received any such grants or contracts during the past 5 fiscal years.

Respectfully submitted,

Thomas H. Miller
Executive Director

7/1/97

CHARTERED BY THE  OF THE UNITED STATES



Jewish War Veterans of the U.S.A.

• 1811 R Street, NW • Washington, DC 20009 • (202) 265-6280 • Fax: (202) 234-5662 •
• Email: jwv@erols.com • Web Site: <http://www.penfed.org/jwv/home.htm> •

Jewish War Veterans of the U.S.A. Disclosure Statement

Jewish War Veterans of the U.S.A. has not received any federal grants or engaged in any federal contracts during fiscal year 1997, or during the previous two fiscal years.

PVA DISCLOSURE STATEMENT

Pursuant to House Rule XI 2(g) (4) the following information is provided regarding federal grants and contracts:

Fiscal Year 1995

Department of Justice - Joint venture to produce procedures implementing the Americans with Disabilities Act (ADA) through certification of building codes \$25,000.00

Department of Veterans Affairs - donated space for veterans' representation \$869,519.26 *

Court of Veterans Appeals, administered by the Legal Services Corporation - National Veterans Legal Services Project \$240,286.

Fiscal Year 1996

General Services Administration - Preparation and presentation of seminars regarding implementation of the Americans with Disabilities Act (ADA) \$25,000

Federal Elections Commission - Survey accessible polling sites resulting from the enactment of the Voting Access for the Elderly and Handicapped Act of 1984, PL 98-435 \$10,000

Department of Veterans Affairs - donated space for veterans' representation \$897,522.48 *

Court of Veterans Appeals, administered by the Legal Services Corporation - National Veterans Legal Services Program \$200,965.

Fiscal Year 1997

Architectural and Transportation Barriers Compliance Board (ATBCB) - Develop illustrations for an Americans with Disabilities Act (ADA) technical compliance manual \$10,000

Department of Veterans Affairs - donated space for veterans' representation \$224,380.62 (as of 12/31) *

Court of Veterans Appeals, administered by the Legal Services Corporation - National Veterans Legal Services Program \$37,125 (as of 12/31).

* This space is authorized by title 38 U.S.C. § 5902. These figures are estimates and were derived by calculating square footage and associated utilities costs. It is our belief that this space does not fall under the definition of federal grants and contracts.



**James N. Magill, Director
National Legislative Service
Veterans of Foreign Wars of the United States**

James N. Magill, a native of the Chicago suburb Aurora, Illinois, is currently the Director of the National Legislative Service of the VFW Washington Office.

Prior to being honorably discharged from the U.S. Navy in 1971 as a Hospital Corpman 2nd Class, Jim served in Vietnam as a Rifle Platoon Corpman with the 3rd Battalion, 1st Marines, 1st Marine Division. Upon his discharge, he joined the staff of the U.S. House of Representatives as a Legislative Analyst responsible for legislation relating to veteran affairs. While working for the House of Representatives, he attended evening classes at George Washington University under the GI Bill where he earned a degree in Business Administration.

Jim resigned his position with the U.S. House of Representatives in 1981 to become a member of the Washington Office staff of the VFW as Special Assistant to the Director of National Legislative Service. He was later promoted to Assistant Director and on January 16, 1988, he became the Director.

He and his family reside in Gaithersburg, Maryland.

♦ ♦ ♦ ♦ ♦

**The Veterans of Foreign Wars is not in receipt
of any Federal grant or contract.**



Vietnam Veterans of America, Inc.

1224 M Street, NW, Washington, DC 20005-5183 • Telephone (202) 628-2700

Faxes: Main (202) 628-5890 • Advocacy (202) 628-6997 • Communications (202) 783-4942 • Finance (202) 628-5881

A Not-For-Profit Veterans Service Organization Chartered by the United States Congress

FUNDING STATEMENT

May 21, 1997

The national organization Vietnam Veterans of America, Inc. (VVA) is a non-profit veterans membership organization registered as a 501(c)(19) with the Internal Revenue Service. VVA is also appropriately registered with the Secretary of the Senate and the Clerk of the House of Representatives in compliance with the Lobbying Disclosure Act of 1995.

VVA is not currently in receipt of any federal grant or contract, other than the routine allocation of office space and associated resources in VA VAROs for outreach and direct services through its Veterans Benefits Program (Service Representatives). This is also true of the previous two fiscal years.

For Further Information, Contact:

Director of Government Relations
Vietnam Veterans of America, Inc.
(202) 628-2700, extension 127



Non Commissioned Officers Association of the United States of America

225 N. Washington Street • Alexandria, Virginia 22314 • Telephone (703) 549-0311

STATEMENT OF

LARRY D. RHEA

DEPUTY DIRECTOR OF LEGISLATIVE AFFAIRS

TO THE

COMMITTEE ON VETERANS AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

ON

S. 923 AND H.R. 2040

JULY 9, 1997

Chartered by the United States Congress



Non Commissioned Officers Association of the United States of America

225 N. Washington Street • Alexandria, Virginia 22314 • Telephone (703) 549-0311

DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS

The Non Commissioned Officers Association of the USA (NCOA) does not currently receive, nor has the Association ever received, any federal money for grants or contracts. All of the Association's activities and services are accomplished completely free of any federal funding.

Chartered by the United States Congress

The Non Commissioned Officers Association of the USA (NCOA) appreciates the opportunity to present its views on S.923 and H.R.2040, two bills to amend the law pertaining to benefits eligibility in the case of veterans committing capital crimes. The legislation before the Committee today raises a serious public policy question regarding when and to what extent benefit eligibility should be affected by capital crimes committed by a veteran. Understandably, it is a question that evokes sensitivity and high emotion. In NCOA's view, it is also a question that calls for rational prudence and calmness. In this regard, the Association is particularly grateful for the leadership the Distinguished Chairman has shown on this issue.

CURRENT LAW

Veteran status is a legal status acquired through the completion of honorable military service in the Armed Forces of the United States. From that status, special rights are extended that recognize the hardship and sacrifice of military service. For the most part, veterans' status and the accrued special rights are not conditioned upon the post-service conduct of the veteran in civilian life. Once acquired, the special nature of veterans' status is inviolate. Only under the most compelling and highly exceptional circumstances can veterans' status be forfeited.

Current law requires the forfeiture of veterans' rights for crimes committed with intent to jeopardize or seriously threaten the national security. All accrued and future veterans' benefits are forfeited by persons guilty of mutiny, treason or sabotage as per Section 6104 of Title 38. Similarly, Section 6105 of Title 38 requires forfeiture of all veterans' benefits, including eligibility for burial in a national cemetery, for a variety of subversive activities against the government of the United States or its allies. Clearly, the circumstances that require forfeiture of veterans' benefits in current law are compelling and justifiable.

S. 923

S. 923, passed by the Senate on June 18, 1997, would deny all Title 38 benefits to an otherwise eligible veteran who is convicted of a Federal capital offense. Since eligibility for dependent and survivor benefits are predicated upon the veteran's eligibility, S. 923 would also terminate these benefits (i.e., DIC, education, etc.) for the dependents and survivors of a veteran convicted of a Federal capital offense.

S. 923 goes well beyond the crimes in current law which require forfeiture of veterans benefits and, in that respect, sets a precedence inconsistent with current law requiring forfeiture of veterans benefits. Whereas current law relates to crimes against the nation, S.923 would make veterans status vulnerable to future popular causes that seek retribution. In NCOA's view, the standard requiring forfeiture of veterans' benefits should remain crimes against the government.

H.R. 2040

H.R. 2040 would deny burial in federally funded cemeteries to persons convicted of certain capital crimes for which the person was sentenced to death or life in prison without parole. In addition to first-degree murder of federal officers or employees, H.R. 2040 would deny burial in a national cemetery to persons convicted of:

- Damage or destruction or attempted damage or destruction by fire or an explosive of Federal property
- Use of a weapon of mass destruction
- Acts of terrorism
- Use of chemical weapons
- Providing material support to terrorists within the United States
- Providing material support or resources to foreign terrorists

The legislation would also deny burial in a federal cemetery to a person shown to have committed a crime but who has not been convicted by reason of not being available for trial due to death, flight to avoid prosecution, or determination of insanity. H.R. 2040 further defines the term federally funded cemetery to mean a cemetery of the National Cemetery System, Arlington National Cemetery, or any State cemetery for which a grant has been approved or provided under Title 38. The prohibition to burial or interment in a federally funded cemetery would apply on or after the date of enactment of the legislation.

The disqualifying crimes enumerated in H.R. 2040 are highly exceptional and compelling and thus are set apart from numerous other capital offenses generally. H.R. 2040 further confines the question to burial in our National Cemeteries rather than the more complex issue of whom should have veteran's rights and benefits. H.R. 2040 does not provide the all-inclusive and inappropriate forfeiture contained in S.923.

CONCLUSION

In NCOA's opinion, H.R. 2040 would maintain the stature of federally funded cemeteries. The Association is pleased with the thoughtful approach that the sponsors of the measure have taken on this sensitive issue. NCOA favors H.R. 2040 over S.923.

Thank you.

**POST-HEARING QUESTIONS
CONCERNING THE JULY 9, 1997 HEARING ON
S. 923 AND H.R. 2040, BILLS TO DENY CERTAIN BENEFITS
TO VETERANS FOUND TO HAVE COMMITTED CERTAIN CRIMES**

FOR THE DEPARTMENT OF VETERANS AFFAIRS

**FROM THE HONORABLE BOB STUMP
CHAIRMAN, COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES**

1. Is there any data on how many veterans convicted of capital crimes are buried in the National Cemetery System?

The National Cemetery System (NCS) does not have any statistics on how many veterans convicted of capital crimes are buried in national cemeteries under the jurisdiction of the Department of Veterans Affairs (VA). In general, under current law, any veteran who has received a discharge from service under conditions other than dishonorable, and who meets any applicable time-in-service requirements, see 38 U.S.C. § 5303A, is eligible for burial in a VA national cemetery. 38 U.S.C. § 2402(1). In certain narrowly defined circumstances, chapter 61 of title 38, United States Code, imposes forfeiture of all VA benefits, including burial in a national cemetery, based on post-service actions. However, commission of most capital crimes does not render a veteran ineligible under chapter 61. Therefore, the NCS has had no reason to collect the information on whether veterans who may be eligible for or who have received national cemetery burial have been convicted of capital crimes.

2. Does completion of a period of service under honorable conditions establish legal entitlement to burial benefits for the veteran or is the veteran not legally entitled until after death?

Regardless of whether a veteran's completion of military service under honorable conditions establishes legal entitlement to burial benefits, Congress retains the power to modify eligibility criteria for those benefits. The Supreme Court has repeatedly held that Congress has broad authority to enact, amend, and repeal the laws governing entitlement to public benefits, even though such actions may have the effect of altering or extinguishing settled rights or expectations. See, e.g., *United States v. Locke*, 471 U.S. 84, 104-105 (1985); *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 575 (1979). Congress has "plenary power to define the scope and the duration of the entitlement to . . . benefits, and to increase, to decrease, or to terminate those benefits based on its appraisal of the relative importance of the recipients' needs and the resources available to fund the program." *Atkins v. Parker*, 472 U.S. 115, 129 (1985).

While the Supreme Court has indicated that revoking an individual's existing entitlement to benefits without notice and a hearing may violate the due process provisions of the Constitution, see *Goldberg v. Kelly*, 397 U.S. 254, 260-63 (1970), the Court has found that those due process requirements do not apply with respect to a "legislatively mandated substantive change in the scope of [an] entire program." *Atkins*, 472 U.S. at 129. The legislative determination to make adjustments in a benefit program provides all the process that is due. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433 (1982). Therefore, enactment of a statute limiting the eligibility of certain classes of honorably discharged veterans for burial in federally funded cemeteries would not appear to violate veterans' due process rights.

MR. RICK SURRATT
ON BEHALF OF
THE AMERICAN LEGION, AMVETS, BLINDED VETERANS ASSOCIATION,
DISABLED AMERICAN VETERANS, JEWISH WAR VETERANS,
PARALYZED VETERANS OF AMERICA, VETERANS OF FOREIGN WARS
VIETNAM VETERANS OF AMERICA
QUESTIONS FOR THE RECORD
FROM
HONORABLE BOB STUMP
CHAIRMAN

Committee on Veterans' Affairs Hearing - July 9, 1997
H.R. 2040 and S. 923

Question 1: "Would the 'veterans group' support amending H.R. 2040 to cover a terrorist act killing victims who are not federal employees?"

Answer: The veterans group prefers that H.R. 2040 remain narrowly drafted for the reasons stated in its testimony. The group opposes broadening the bill to include offenses that are not crimes against the Nation. Should the Committee deem it advisable to amend the bill to "cover a terrorist act killing victims who are not federal employees," the group will not oppose it. We are concerned that "terrorist acts" be carefully circumscribed, however. We note that the term "international terrorism," as defined in 18 U.S.C. § 2331, and the term "act of terrorism," as defined in 18 U.S.C. § 3077, both involve violations of state and Federal laws. "Federal crime of terrorism," as defined in 18 U.S.C. § 2332b(g), appears less inclusive in that only specified Federal crimes in conjunction with acts "calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct" are within the meaning of the term. We would suggest that only the terrorist acts enumerated in the original version of H.R. 2040 remain in the bill, or at least the definition of terrorism should not be broadened beyond the definition in § 2332b(g). Should the Committee decide to amend H.R. 2040 to include civilian victims of terrorist acts, we suggest that, in addition to first-degree murder under 18 U.S.C. § 1111 of officers and employees within the scope of 18 U.S.C. § 1114 as currently covered in the bill, the bill should be expanded to include only first-degree murder of a "national of the United States" as defined in 8 U.S.C. § 1101(22).

Question 2: "What about expanding the bill to cover other mass murders, or a serial killer claiming victims over the course of several years?"

Answer: The veterans group opposes such expansion of the bill. While these crimes also cause us to cry out for the strongest possible punishment, that urge should not be satisfied by punishment of veterans through attack on their veterans' rights.

Question 3: "What does the group see as the danger to veterans in adding language that would cover those situations or other federal capital offenses?"

Answer: The group believes there must be consideration of why a right is given to properly determine what circumstances warrant taking it away. In this matter, military service is rewarded by right of burial in a place reserved for patriots. The honor earned through patriotism can be overcome, overshadowed, or lost through contrary subsequent unpatriotic and dishonorable acts, just as unadmirable actions can cost one the great public admiration previously enjoyed. To allow the burial in a veterans' cemetery of someone whose deeds have been so unpatriotic as to counteract earlier patriotism would not only award the honor inappropriately but would demean the honor itself. Surely, however, there is a wide range of human conduct that society finds contemptible; some of it violates laws and other merely violates social mores. While limiting H.R. 2040's application to murder committed in connection with terrorist acts may seem arbitrary to some, expanding it to include select other crimes or acts society finds abhorrent—but not all—is even more arbitrary. Admittedly, none of us relishes the thought of a killer being

buried in a veteran's cemetery, because it also seems a contradiction to allow his or her burial in a place of honor. Why then should we not feel similarly about the burial in a veterans' cemetery of a torturer, rapist, kidnapper, extortionist, thief, pedophile, or adulterer? Our common sense tells us that we cannot cover the entire range or continuum of unpopular, unsavory, unacceptable, or even illegal human conduct in imposing a bar against burial in veterans' cemeteries, even if logically all this conduct has similar properties, characteristics, and qualities and even though the various offenses may only be subject to differentiation as to degree and not kind. If we must draw the line somewhere, the most logical and certainly most equitable place is where there is no longer any linkage between the basis of the honor and the offensive act. Because veterans earn the privilege of burial in a national cemetery only through their patriotism, they should relinquish the privilege only through some act that cancels out the prior patriotic act. Moreover, standards that permit revocation of veterans' earned rights should always be rigid and never over inclusive, so as to be a buffer against emotional appeals to revoke such rights every time a veteran gains national attention through some notorious crime. As to the protection of veterans' rights, the desire to punish should be tempered by the value of veterans' service.

Accordingly, the veterans group opposes expansion of H.R. 2040 to cover other crimes as a matter of principle. In addition, if the bill were broadened to include a wider range of Federal capital crimes, it would quite probably pose a difficult administrative problem for VA inasmuch as VA would need a means to learn of all such crimes. That might necessitate laws, under the jurisdiction of other committees, to require courts and law enforcement agencies to report the convictions on all these charges. If the bill were amended to include crimes under state statutes, there is little doubt it would cause burdensome and perhaps difficult to enforce reporting requirements.



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A Not-For-Profit Veterans Service Organization Chartered by the United States Congress

House Committee on Veterans' Affairs July 9, 1997 Hearing

**Supplemental Statement of
 Kelli R. Willard West
 Vietnam Veterans of America**

Regarding Programs for Veterans Incarcerated

In response to my comments at the July 9th hearing, Rep. Quinn, Chair of the Subcommittee on Benefits, requested additional information about VVA's programs for Veterans Incarcerated. This statement is an effort to summarize the purpose, functioning and effects of these programs. VVA's current convention resolutions pertaining to this issue are attached for reference, as well as an informational booklet published by VVA titled From Felon to Freedom: A Guidebook for Veterans Incarcerated. Should the committee wish to have more detailed information, VVA would be pleased to provide a briefing or submit additional materials.

Vietnam Veterans of America (VVA) has long sought to do work to improve the condition of Vietnam veterans and their families, including veterans who are incarcerated. VVA's underlying philosophy for doing outreach and providing services to veterans incarcerated is that many reach this status due to circumstances which may be directly attributable to or exacerbated by their military service. It may seem like a semantic distinction, but VVA refers to this population as "Veterans Incarcerated," not as "incarcerated veterans" precisely because these men and women were veterans first. The large majority of these men and women served our country honorably, and were subsequently imprisoned for separate actions after their discharge from the military.

VVA believes that past trauma is a complicating factor in the lives of many veterans incarcerated. A number of these veterans' crimes and incarceration may be attributable (at least in part) to this condition. A simplistic definition of Post Traumatic Stress Disorder (PTSD) is "a normal human reaction to very abnormal circumstances," meaning that the rational reaction to extreme trauma may be to become irrational. PTSD often manifests itself in emotional numbing in the form of substance abuse or avoidance of personal relationships and in impulse control problems that may cause an individual to be convicted of a crime. Absent professional counseling or medical therapy, many veterans -- whether they become criminals or not -- are only able to deal with their PTSD-related nightmares, painful memories and other symptoms by self-medicating through drug or alcohol abuse. This is not unique to the Vietnam generation of veterans, but has been true throughout history. Victims and survivors of traumatic events, such as terrorist acts

like the Oklahoma City bombing, natural disasters, sexual assault and urban gang violence may also suffer the effects of PTSD.

Obviously, we are not saying that all veterans are afflicted with PTSD, that all veterans with PTSD are substance abusers, nor that all veterans with PTSD will become criminals. Rather, the point we wish to make here is that for some people, the logical and "rational" reaction to a seemingly irrational world is to act out in a manner that broader society would characterize as "irrational." Certainly this altered perception and judgement can cause otherwise rational people - even honored veterans or war heroes -- to do the irrational... to commit crimes against other people, against their communities or even against the government they fought to protect.

One of the significant incentives for veterans to become involved in any veterans organization is the one-to-one and group bonding shared by men and women with a common experience of military service. These types of relationships often have a therapeutic component for veterans suffering from PTSD, and there is a reciprocal benefit of helping others. This is true also of veterans incarcerated and of VVA members doing outreach into the prisons.

One way VVA members work on this issue is by helping veterans incarcerated obtain their earned VA benefits. Service Representatives help them file a claim for VA medical treatment or for financial benefits. It has been particularly difficult to obtain a VA medical exam to support a claim for disability compensation and for on-going medical treatment. For example, even if a veteran is allowed to visit a VA medical facility, the guard is often not allowed to bring his/her weapon inside the facility -- and the guard is not able to surrender his/her weapon when transporting a prisoner. More recently VA facilities are sending doctors inside the prison facility to conduct these exams and provide treatment.

In some states like New York and Florida, the Department of Corrections has worked with VVA to develop a formal program for helping veterans incarcerated. They conduct special classes on developing job skills, resumes and job applications, GED programs, PTSD counseling, substance abuse treatments, etc. These are all designed to give the veterans skills they need to enable them to earn a living wage when they are released and to treat the root cause(s) of their incarceration -- including dealing with the aftermath of war. By helping these veterans deal with PTSD, we help their families also. The veterans will be better spouses and parents when they learn to deal with PTSD, and will be better able to cope with life on the outside when they learn marketable job skills. Such self-help programs save valuable human and dollar resources by maximizing the chances of rehabilitation and the avoidance of recidivism.

VVA chapters in some prisons have proven to be very viable and effective. Some of these chapters have organized large service projects raising money for local charities and community organizations. Many have begun or carried forward the training activities mentioned above. Some veterans within prisons use a 12 themes self-help guide published by VVA for conducting group therapy sessions. Often these veterans join together to assist one another with self-

improvement or therapy goals. These demonstrate another function for VSO activism among veterans, which is developing leadership skills and civic responsibility. These veterans incarcerated are simply advancing these skills in a different setting -- in the prison communities. Some prison administrators, though, prohibit VVA chapters from forming or meeting because such membership is mistakenly viewed as unacceptable group or gang activity. To the contrary, anecdotal information indicates that VVA chapters in prisons and programs doing outreach to veterans incarcerated have a rehabilitative effect -- reducing recidivism following release and even curbing prison violence to a degree.

VVA's programs for veterans incarcerated do not end when the prisoner is released. VVA has carried out projects to assist veterans in transitioning back to a normal life -- things as basic as obtaining suitable clothing to wear while job searching and assisting with bus transportation to interviews and job sites; helping them to apply for and obtain VA benefits if they were unsuccessful while incarcerated; making arrangements for voc-rehab training or compensated work therapy programs; and providing them with counsel and support in day-to-day existence to avoid recidivism and to avoid homelessness. VVA helps some veterans avoid prison; and helps others become good productive citizens after they are incarcerated. VVA's founding principle is, "Never again will one generation of veterans abandon another," and this basic premise carries through to assisting with the special needs of veterans incarcerated and their transition out of prison. A veteran, by virtue of his/her service to the country, deserves such help and support.

Based upon VVA's philosophy and principles, and upon our organization's extensive experience in working with veterans incarcerated, we are very reluctant to see Congress precipitously restrict benefits and veteran status to veterans incarcerated. These men and women would not be eligible for VA benefits but for their honorable service in the U.S. military. And many would not be in prison but for the aftermath of their military experience. For some, it is a newfound pride in their military service, their involvement in the veterans community and their access to VA benefits which makes rehabilitation possible and minimizes recidivism back to a life of crime.

These veterans -- and their families -- should not be denied their earned benefits except for very extreme cases in which the veteran has committed treason (which is already covered by current law) or violent acts of terrorism against the government. We understand the public and political fervor about the possibility that Timothy McVeigh may be eligible for burial with military honors in a national cemetery. But VVA strongly urges Congress to act in a judicious manner to avoid painting all veterans incarcerated or even all veterans convicted of capital crimes with too broad a brush. These veterans do not deserve to have Congress inadvertently impose an additional punitive measure, which is really intended to specifically address one particular very extreme and heinous case.

REDUCED BENEFITS**VIN-1-95****Issue:**

Veterans incarcerated are unfairly discriminated against with regard to receiving consistent and comparable medical and psychological treatment related to service connected or service related disabilities or illnesses.

Background:

Public Laws 96-385 and 96-466 reduced the educational benefits for veterans incarcerated and place limits on disability compensation and dependency and indemnity compensation for those veterans with felony convictions. Absolutely no aspects of these bills related the nature of the veteran's military service to the decision to terminate earned benefits because of purely civilian convictions.

The Department of Veterans Affairs (DVA) has only provided very limited, individual treatment programs for veterans in custody, thereby effectively eliminating alternatives to those persons not already on probation.

This resolution reaffirms and updates Resolution V-IN-3-93.

Position:

Vietnam Veterans of America, Inc., at national convention in Houston, Texas, August 15-20, 1995, urges the unconditional repeal of Public Laws 96-385 and 96-466 and:

1. Urges the federal government to establish specialized treatment in more Department of Justice/Federal Bureau of Prisons (DOJ/BOP) institutional facilities for veterans incarcerated with ``service-connected'' disabilities that may have played a part in their criminal conduct. These DOJ/BOP facilities should accept applications of transfer and participation to specialized treatments by federal veteran prisoners on a ``priority'' basis.
2. Urges individual state governments to establish and/or expand communications with the DVA with intent of developing DVA compensation diagnostic medical examinations, specialized PTSD treatment with a secondary drug- and alcohol-treatment program, and ``pre-release'' counseling services for veterans incarcerated by DVA-qualified personnel or contracted, qualified clinicians in designated state penal facilities. These designated state facilities should accept applications of transfer for veteran participation in specialized programs on a ``priority'' basis.

VVA 1995 Convention Resolutions --**Veterans Incarcerated Committee**

3. Urges criminal-justice and penal-system officials to consider military service as potential mitigating and extenuating circumstances relating to criminal conduct.
4. Urges state parole commissioners and officials to consider military service, diagnosis, and treatment during incarceration and good behavior participation to VVA's incorporated ``self-help'' groups during the determination of veteran's release to the community.
5. Calls upon its state councils and chapters to seek and establish volunteer attorney and medical panels to work directly with state correctional officials with the negotiations and establishment of DVA treatment programs enhancing rehabilitation of veterans incarcerated.
6. The national office shall formally employ a ``full-time'' national liaison to provide needed information, administrative support, and formal workshops for all state councils and chapters, and to serve as a monitor of VVA's clearinghouse of information to incarcerated, federal, state, and local VVA entities.
7. The national office shall establish a liaison budget for travel purposes to states where direct support and administrative assistance is formally requested to negotiate, design, or implement programs for veterans incarcerated.
8. The national office shall continue to recognize the National Committee for Veterans Incarcerated as a ``standing'' committee established for the purposes of designing national, state, and local goals, objectives, and programs which promote the fostering, encouragement, and promotions of improvement of the conditions and treatments of the Vietnam-era and all other generations of veterans during terms of confinement for felony convictions.

STATE COUNCIL AND CHAPTER LIAISONS**VIN-2-95****Issue:**

In order to implement the most effective, consistent programs of assistance to veterans incarcerated, VVA must establish a proactive ``network'' at the grassroots level to communicate from the national office, state councils, and local chapters to the incarcerated memberships, and from them to each entity.

Background:

The national office of VVA has established the National Liaison for Veterans Incarcerated and the national clearinghouse for the incarcerated membership. Many of our VVA state councils and chapters have organized highly successful and comprehensive programs and projects to assist

VVA 1995 Convention Resolutions --**Veterans Incarcerated Committee**

incarcerated VVA members. However, some VVA state councils and chapters need much more technical assistance and administrative support to enhance their work with incarcerated Vietnam-era veterans.

The intent and duty of the state council liaison to veterans incarcerated is to serve as the state director of all VVA effort and action within his/her state (such as ``chair'' of a state council committee to veterans incarcerated), while also serving as the state council's immediate representative to the national liaison and coordinator of communications, meetings, negotiations, workshops, visitations, etc., between federal, state, and local authorities.

This resolution reaffirms Resolution V-IN-4-93.

Position:

Vietnam Veterans of America, Inc., at the national convention in Houston, Texas, August 15-20, 1995, resolves that VVA state councils and chapters continue the development and establishment of programs consistent with the national VVA policy for veterans incarcerated, and to identify and appoint a liaison at each respective level to thereby complete the necessary representation and communication so established by this resolution.

REPRESENTATION AT VVA STATE AND NATIONAL MEETINGS**VIN-3-95****Issue:**

Veterans incarcerated, per constitution and resolutions as indicated by VVA (Article I, Section 7, B, C (1), (2), D, E, and F; Article II, Section 3, A, and Section 4, A; Article III), are fully entitled to membership and representation in both their state council and all national meetings.

Background:

Many state councils have established quotas with regard to attendance at state council meetings, enforcing suspension practices for those individual chapters whose delegates do not attend, in succession, a designated number of meetings. Many incarcerated VVA chapters find it difficult to gain an ``outside'' delegate to the state councils who would maintain representation for their group to many (in some isolated cases, any at all) meetings scheduled by VVA state councils.

To further complicate incarcerated chapters' burden of finding an ``outside'' delegate to represent them, many do not have fund-raising opportunities available which would financially support the delegates' travel and lodging needs.

Many incarcerated VVA chapters and forming chapters have expressed concern regarding not receiving information or copies of state council meetings after events take place in their states, thus they are not informed with information which they are both entitled to and desire to keep informed by reviewing such documents.

This resolution reaffirms Resolution V-IN-5-93.

Position:

Vietnam Veterans of America, Inc., at national convention in Houston, Texas, August 15-20, 1995, urges all VVA state councils to ``waive'' suspension or to provide accommodations to incarcerated VVA chapters when delegates representing each chapter are not able to attend state council meetings, and provide incarcerated VVA chapters with a complete copy of minutes of all meetings held by their state council.

DIRECT VVA SERVICES

VIN-4-95

Issue:

Veterans incarcerated, because of their incapacitation and/or confinements to state, federal, and local institutions, have very little opportunity to gain or obtain professional assistance in regard to Department of Veterans Affairs (DVA) disability claim applications.

Background:

In most cases, veterans incarcerated have no opportunity to be educated in areas of rights, entitlement, and benefits that they may be guaranteed by the federal government during their incapacitation and/or confinement.

VVA maintains accredited services representatives at the grassroots level who are qualified professionals concerning veterans law (i.e.: compensations, pensions, benefits, and/or entitlement) and privileges intrinsic to all veterans, to include veterans incarcerated.

With few exceptions, VVA service representatives pay little attention to the veterans confined to institutions in their particular state or locality(ies).

It should be relevant to acknowledge that in some unique localities (for instance Michigan and Washington State), there are financial opportunities that may become available to both support services to veterans incarcerated by accredited service representative and services to veterans residing in rural areas (not held in an institution) by contracting with the state governments.

VVA 1995 Convention Resolutions --**Veterans Incarcerated Committee**

This resolution reaffirms Resolution V-IN-6-93.

Position:

Vietnam Veterans of America, Inc., at national convention in Houston, Texas, August 15-20, 1995, urges both VVA state councils and individuals who are accredited VVA service representatives to enter into federal, state, and local penal institutions, upon request and where franchised VVA entities of VVA memberships exist, to provide traditional DVA claims assistance and informal education to veterans incarcerated with regard to their rights, entitlements, and benefits.

VETERANS INCARCERATED BENEFITS AND ENTITLEMENTS**VIN-5-95****Issue:**

The United States Department of Veterans Affairs (DVA) has, for all practical purposes, no consistent national policy for provisions, services, or guidance to veterans incarcerated.

Background:

Veterans incarcerated, because of their detention status, are unable to directly avail themselves of available DVA services. The DVA has shown itself to be reluctant and unwilling to enter penal institutions to provide federally mandated care and/or treatment, except in very limited programs in some states.

Veterans incarcerated are desperately in need of services provided by state and federal law (ie. full and complete service-connected disability ratings and compensation, effective and prompt medical attention by DVA experts in the areas of dioxin exposure, combat related traumas and PTSD, employment assistance upon release, prosthetic services, and benefits counseling).

Additionally, the Crime Bill states "assurances that the State or States have implemented, or will implement within 18 months after the date of enactment of this Act, policies to determine the veteran status of inmates and to ensure that incarcerated veterans receive the veterans benefits to which they are entitled".

Provisions of counseling and services to veterans has been proven in multiple states to reduce the rate of recidivism among these veterans. These programs have significantly reduced the return rates from an average of approximately 54 percent to 9 percent.

This resolution reaffirms and updates Resolutions V-IN-1-93.

VVA 1995 Convention Resolutions --**Veterans Incarcerated Committee****Position:**

Vietnam Veterans of America, Inc., at the national convention in Houston, Texas, August 15-20, 1995, shall press for passage of legislation to:

1. Encourage and assist a DVA policy to support provisions in the Crime Bill of 1995, requiring that all veterans benefits and medical services be provided to veterans incarcerated with special emphasis on PTSD, mental, and medical service-related disabilities.
2. Encourage and assist the DVA to develop programs including but not limited to vocational assessment/rehabilitation, occupational and educational training, and employment opportunities that can be implemented in federal, state, and local correctional facilities to assist veterans incarcerated with improving the quality of their lives and to complete a successful reintegration prior to or immediately upon their release.
3. Urge federal, state, and local correctional facilities to initiate PTSD treatment programs as required to comply with the Eighth Amendment of the U.S. Constitution in sheltering veterans incarcerated from "cruel and unusual" punishment stemming from denial of appropriate medical and mental treatment.

FROM FELON TO FREEDOM
A Guidebook for
Veterans Incarcerated



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Dedication

This manual is to help veterans recently released from prison with re-integration into society. It is dedicated to:

- Over 58,000 veterans who gave their lives for their country during active-duty participation in Southeast Asia during the Vietnam War.
- countless Vietnam veterans who lost their lives as a result of suicide, who never found "peace," or who never received the joy of a simple "Welcome Home."
- The veterans who lost their lives as the direct result of herbicide exposure during their military service.
- The veterans across our nation who, to this day, still suffer from Post-traumatic Stress Disorder (PTSD) and other related mental-health problems resulting from their wartime experiences.
- The veterans now burdened with chemical dependency or substance-abuse problems.
- The over 403,000 Vietnam era veterans presently incarcerated inside the U.S. Criminal Justice Systems who deserve the opportunity to become productive members of the society for which they once fought.

Each program in this manual is designed to provide a "bridge" to help veterans incarcerated make the transition from "Felon to Freedom".

Arthur John Woods,
Handbook Author
National Veterans Incarcerated Liaison
Vietnam Veterans Of America, Inc.

Foreword

This handbook is to be used primarily as a parole preparation/pre-release planning guide for the veteran ex-offender who is 90 days, or less from his or her release from a federal or state prison system.

If used properly, this handbook can be an important tool. It is a direct violation of the law for any person to falsify any statements or applications when applying for federal, state or rehabilitation assistance. Review all of the programs thoroughly to understand the opportunities available, then use these programs to develop a release plan.

When these programs are used properly, the benefits will be a minimization of the outside pressures you will confront upon release; social acceptance, economics, and re-establishment as a productive member of society. This program is geared toward changing national statistics, which have shown that 80 percent of those released from prisons who return to crime do so within the first 90 days of their release. Recidivism rates for ex-felons returning to prison during their lifetime are 65 to 67 percent. This appallingly high rate of recidivism is unacceptable. This appallingly high rate symbolizes the failure of our penal system to equip ex-offenders for return to mainstream society.

VVA's Standing Committee on Veterans Incarcerated is an investigative committee with channels of communication to federal, state, and congressional agencies with programs and information that can benefit Vietnam Veteran ex-offenders. Upon release, individuals participating in these programs should maintain contact with VVA's Veterans Incarcerated Committee and inform us of any difficulties or problems in using this handbook. Without proper follow-up, it's impossible to ascertain the handbook's effectiveness, and thus, keep it updated. By keeping us informed, you enable us to better prepare the veteran ex-offenders who "hit the streets" behind you, thereby helping others to lead productive crime-free life.

This booklet is a tool for the ex-offender who wishes to find a new and better way of life. Alternatives to a life of crime are available for those who have the incentive to seek them. Be aware, laws do vary from state to state. Therefore, check your state laws and regulations against this guide.

Section I

Eligibility for VA Benefits During Incarceration

Veterans incarcerated and incarcerated dependents may apply for the same compensation, dependency and indemnity compensation (DIC) — service connected death benefits — and pension benefits as veterans who are not incarcerated. Congress has, however, greatly restricted the amount benefits that may be paid to a veteran or dependent while he or she is incarcerated. These benefits are institutionalized as part of law: {38 U.S.C. Sec.5313 (a), 38C.F.R.,Sec. 3.665 (a), (d)}, which reads as follows:

If a veteran is incarcerated as the result of a "felony" conviction as defined by law: "Any offense punishable by death or imprisonment for a term exceeding one year, unless specifically categorized as a misdemeanor under the law of the prosecuting jurisdiction,"

Then, the amount paid to a veteran incarcerated for a service-connected disability is generally limited by law to the 10 percent disability rate, or half the amount of the ten percent rate if the veterans disability rating is 10 percent (If the veteran is rated before incarceration as 20 percent disabled or higher, he will receive only the amount payable to a 10 percent disabled veteran.) Incarcerated DIC recipients will receive one-half the amount paid to a veteran receiving compensation payments for a 10 percent-rated disability.

A veteran may not receive non-service connected VA pension benefits, or any portion of these benefits, while incarcerated for a felony. However, his family may receive an apportionment of such benefits under the procedure described above. (See 38 C.F.R., Sec. 3.666)

One important requirement for eligibility for VA benefits is that the veteran has to have been issued either an honorable or general discharge, or would have received one if not for re-enlisting. If a veteran had two periods of service, one honorable and the other less than honorable, he may still be eligible for VA benefits based on the honorable period of service.

Apportionment.

Although legally, the veteran incarcerated can only receive a portion of the full amount payable for his or her disability rating, the remaining balance may be "apportioned to the individual's dependent family. To apply for apportionment, send a letter to the VA Regional Office (VARO) which has jurisdiction over the veteran's case. VA regulations clearly specify this apportionable amount will only go to family members if they can show financial need for such amount. This applies to the spouse, children, or dependent parents who are involved in the application.

In deciding whether any apportionment is appropriate, the amount of the apportionment, and to whom it will go, the following factors are considered:

- ★ the family member's income and living expenses;
- ★ the amount of compensation available to be apportioned;
- ★ the needs and living expenses of other family members; and
- ★ special needs of any of the family members.

For example: a veteran incarcerated rated as 80 percent disabled can only receive the amount he or she would get if he or she were 10 percent disabled. However, his or her family can be apportioned up to 70 percent, the difference of the 80 percent rating.. (DIC may also be apportioned with similar restrictions.)

There is a 60-day "grace period" following conviction where the veteran, or DIC recipient, may still receive full benefits. If the veteran continues to receive benefits after the 60-day period, it will result in an "over-payment." The VA considers it to be the recipients responsibility and fault if this occurs because the recipient failed to notify the VA of his or her incarceration. Attempts to obtain a waiver in these situations of overpayment are often unsuccessful. As a general rule, the veteran loses most, if not all, financial benefits until the entire overpayment is recovered by the VA. It has also been a standard procedure that the family will not be entitled to receive an apportionment until the debt is completely recovered.

For more information concerning VA debt collection rules which may effect the veteran incarcerated, contact either your local VVA Service Representative or the Service Representative Program Manager at the VVA National Office. To find the service representative nearest you, write to the VVA Service Representative Program (attention SR list) at the address listed on the last page.

It is important that each disabled veteran receiving compensation or DIC payments promptly notify the VARO. Regular full benefit payments should begin upon release, providing the VA is notified of the veterans release, including placement within a community treatment center or halfway house in the community.

One other relevant restriction on veterans incarcerated eligibility for service-connected disability compensation is that: "No total disability rating based on un-employability, may be assigned to an incarcerated veteran."

For more information on this subject, or if you have any questions, contact your local VVA Service Representative.

It is important to remember that "most" VA decisions, including those on apportionment, can be appealed to the Board of Veterans Appeals and, if need be, to the Court of Veterans Appeal.

Section II
State Programs
Targeted Job Tax Credit (TJTC) Program

The Targeted Job Tax Credit (TJTC) is a tax credit for employers who hire individuals who normally have trouble finding jobs. Vietnam-era veterans and ex-offenders are two of the targeted groups. In essence, TJTC presents an incentive for employers to hire any disadvantaged minority.

To apply, take a copy of your DD 214 or Discharge Certificate and your prison release papers to your local state employment commission. Ask for the local veteran employment representative (LVER), who will assist you with your application.

If you have an employment opportunity immediately upon release, you might still consider applying for a TJTC voucher. You will be qualified because you have not earned what is determined to be an adequate amount of income during the previous six-month time period. If the job you received after your release is not appropriate for your skills or does not meet your financial needs, you will have another option available to you.

Job Training Partnership Act (JTPA)

The Job Training Partnership Act (JTPA) also targets Vietnam-era and ex-felon veterans as individuals eligible for federally funded training program under Title IV (C). The availability of training programs varies from time to time in any given community, depending upon funding made available through the local private industry councils (PICS).

Programs sponsored under JTPA are targeted towards employment training, placement, and follow-up.

To find the JTPA programs in your area of release, contact the local employment office or look in the telephone book for the private industry council in your area and ask for a listing. In most cases, the JTPA programs funded by city or county PICS are maintained by the city or state offices of Department of Health and Human Services and Resources, so you should also contact these agencies about local JTPA programs and providers.



Bonding

Ex-offenders may be bondable through the Health, Education, and Welfare Department in each state, normally up to a standard limit of \$10,000.

If you are applying for an employment opportunity which requires that you be bonded, explain to the job interviewer that if you are hired, your parole or probation officer will assist with obtaining your bond.

After you secure the job, not before, notify your individual parole or probation officer of your needed assistance in obtaining a bond for employment purposes.

Licenses

As a convicted felon, your rights may have been restored—the degree of restoration varies from state to state—to the extent that you are able to obtain a license necessary to start your own business. To acquire a Liquor, Real estate, Contractor, or Insurance Broker license, you must be able to submit documented evidence to the city clerk that you were not convicted of a crime which related, in any way, to the license for which you are currently applying.

For example: a licensed realtor commits land fraud and is arrested and convicted for the crime. That individual will probably never be able to obtain another real estate license. However, as an ex-offender, you can apply for a contractor, an insurance broker, or even a liquor license to open your own independent business after release. (Be sure to check the laws in the state where you are applying for the license since they vary from state to state.)

Food Stamp Program

The food stamp program is available to the ex-offender through the local Human Resource Department or Welfare Department in all major cities. A person who is unemployed with no income or, in some cases, employed with little income, will normally qualify for \$85 to \$100 worth of food stamp assistance.

You may be reluctant to apply for the food stamp program because you consider it "degrading." However, the difference between successful re-integration and recidivism might be in obtaining this assistance briefly, immediately after release.

To apply for this program, simply contact the local Department of Human Services or the Welfare Department and obtain an application before scheduling your appointment.

Vocational Rehabilitation

Each state has a vocational rehabilitation division, known as the State Rehabilitation Commission, Department of Human Resources, Department of Health, etc. Vocational Rehabilitation is a U.S. government subsidized assistance program managed by a state agency within every community. This department is dedicated to helping disabled and handicapped individuals secure and maintain jobs.

Some of the major disability groups served are:

- orthopedic deformities (including amputations);
- mental health (including alcoholism, drug addiction, and character disorders);
- internal medical conditions (including epilepsy);
- mental retardation;
- deaf and hearing-impaired, speech and language/learning disabilities.

Services

Many services are available to eligible clients based on individual need. Some of these services are:

- medical, psychological, and vocational evaluation to determine the nature and degree of disability, job skills, and capabilities;
- counseling and guidance to help the client and his or her family determine proper vocational training for entrance into the working world;

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- interpreter services for the deaf;
 - medical treatment, including hospitalization, surgery, and therapy to lessen or remove the disability;
 - assisting devices, such as artificial limbs, braces, wheelchairs, and hearing aids to stabilize or improve functions on the job and at home;
 - training at a trade school, business school, college or university, rehabilitation center, on the job, or home;
 - selective job placement compatible with the person's physical and mental ability; and
 - follow-up after placement to ensure job success.

A vocational rehabilitation counselor works with each client to determine the client's needs, develop a vocational rehabilitation plan, and follow up on the client's success. The counselor works closely with doctors, employers, other agencies, and resources available to carry out this job.

Contact the state vocational rehabilitation program immediately after your release from prison if you want to apply for any of these services. The address of the vocational rehabilitation services in your area should be in the local telephone book.

Vocational rehabilitation counselors report that inmates in both state and federal prison systems have obtained information and literature about vocational rehabilitation programs that ensure them: a \$1900 grant for transportation; a \$400 grant for dress clothing; a \$300 grant for work clothing; a \$400 grant for tool purchases; and a counselor to "co-sign" at the bank of the ex-offender's choice for a loan to financially re-establish oneself. **This information is not true.** Harsh demands made by ex-felons are based on false information. Each individual should objectively discredit such false literature and seek facts from the agency in his or her geographical location about the services it provides.

Section III
Your Release
The Department of Veterans Affairs

If you are preparing for release from an institution and you have a potential claim before the Department of Veterans Affairs (VA), you should seek professional counsel from the VVA Service Representative (SR) at the location of your release. To get the address of the nearest VVA Service Representative, write to the Veterans Benefits Program at VVA National Office. If VVA does not maintain an SR in your area of release, contact one of the other veterans service organizations such as (American Veterans of World War II, Korea, and Vietnam; Military Order of the Purple Heart; Disabled American Veterans; or the American Legion; Veterans Of Foreign Wars), your state veterans commission, or your county veterans service officer for assistance and information.

The VA publishes a booklet called *Federal Benefits for Veterans and Their Dependents*, which describes the various types of benefits available, including service-connected compensation, non-service-connected pension, education, home loans, vocational rehabilitation training, and health care. It also lists the addresses and phone numbers for VA facilities nationwide. The booklet can be obtained by writing to the VARO or the VVA Veterans Benefits Program in your area. VVA also publishes guides on VA claims and appeals, Agent Orange, PTSD, and other topics which are also available from the Veterans Benefits Program.

To apply for VA benefits, write the VA Regional Office (VARO) in your state. Following is a description of the forms needed when filing for certain VA benefits. To obtain the forms you need, write to your VARO. To get the address of the VARO, call (800) 827-1000. Incarcerated Veterans should get a copy of their military discharge (DD Form 214) for their records. They can get a copy for free by writing to :

VA Records Processing Center
P.O. Box 5020
St. Louis MO. 63115

You must include your full name, date of birth, either service number, Social Security number or VA claim number, and your dates of service.

Form SF-180
Military and Medical Records

Form SF - 180 is used to obtain copies of your military and medical records. It is a simple one-page form, with adequate instructions found on the back side of the application.

Under "Section II - Request," each veteran should request complete military and medical records as a standard rule. When requesting medical records, try to be as specific as possible with dates, facilities, and country locations.

VA Form 10-10

Application for Medical Benefits

The 10-10 is used by the VA to determine your eligibility for medical benefits. Complete the form and hand deliver it to the VA medical facility where you will seek medical evaluation for treatment. Although this form is not an absolute necessity, it has been found to save hours during the initial intake processing.

VA Form 10-10 (F)
Financial Statement

VA Form 10-10(F) is a financial statement report which should be attached to Form 10-10 when seeking VA treatment or assistance after release.

VA Form 21-526
Application for Compensation or Pension

Usually there will be no compensation or pension granted unless a 21-526 is filed. If you have a "permanent and total disability" which is non-service connected, then you, as a "wartime" service veteran, may apply for a VA pension claim. It is almost always best to apply for both compensation and pension. Complete this form in its entirety. If you need help, refer to the two-page instructions attached to the form.

Be sure to also include a listing of any and all non-VA medical facilities or physicians you have been treated by for your disability or disorder. Briefly describe the related details of your treatment. Be as comprehensive in your explanation as possible.

If you feel you have more than one legitimate disability claim, list them as, claim #1, claim #2, etc., on your 21-4138.

Conclude the form with the statement: "I request that the VA, in addition to the information included on my statement of claim, develop all facts pertinent to this claim and any other service-connected medical problem that I might have. I also request that the VA presume to resolve any reasonable doubt involving my claim of disability in my favor."

This form, along with your DD 214 and the following forms, should be mailed directly to the VARO nearest your release destination 30 to 45 days before your actual release. Your benefits will be calculated when your claim is received by the VA.

VA Form 21-4138 Statement in Support of Claim

The 21-4138 is designed to explain why you deserve the benefits you are requesting because of your disability or disorder. In your own wording and in as much detail as possible, describe your injury and how it directly effects your present everyday life (for example: "I received multiple shrapnel wounds while in combat on February 16, 1968, at Dong Ha, South Vietnam, and remained burdened with a severe limp for 19 years. Presently, I have hip and back problems which I believe have been caused, or aggravated by my limping problem, which resulted from my combat wounds").

If your claim is for PTSD, describe "stressors" — combat episodes or the detailed conflict situations which have continued to burden you emotionally. Describe your current problems in dealing with these issues (nightmares, flashbacks, depression, survival guilt, anxiety, rage or anger, avoidance of feelings, alienation or feeling isolated from others, etc.) Also describe how you believe PTSD may have affected your lifestyle or behavior pattern since Vietnam. Be as comprehensive in your explanation as possible.

Note: Many veterans lost their disability compensation claim during incarceration because of their inability to attend mandatory re-evaluations ordered by the VA. In these individual cases, begin your 21-4138 with the following sentence: "I am re-opening my claim, which was terminated as a result of my unavoidable failure to attend a re-evaluation or physical examination. I request a full re-instatement of all my benefits and suggest that I will be readily available to attend any necessary examination after [date of projected release]."

In 1995, the U.S. Court of Veterans Appeals ruled in the case *Bolton v. Brown*, published in 8 Vet. App. 185 (1995), that VA has a "duty to assist" incarcerated veterans by conducting a Compensation & Pension medical examination in those cases where it is needed to properly decide their claim. Incarcerated veterans need such an exam should bring this case to the attention of the VARO.

Thirty to 45 days before your release mail this form along with VA form 21-526, to the VARO in your community. It is best to have the assistance of an experienced service representative to help you complete the claim. Be sure you do not use your institution's return address. Most institutions will not forward the VA's response to you in an appropriate amount of time. Use a return address where mail will get to you as soon as possible.



VA Form 21-4142
Authorization For Release of Information

This form is used for non-VA hospitals or physicians and includes any records of treatment by the prison medical facility. If you have ever received medical or mental-health care from anyone other than in a governmental agency and feel it may pertain to your claim, you need to fill out this half-page form (a separate form needs to be filled out for each individual facility or physician) and include it with your package to the VARO. The VA will handle all further processing.

Many private medical facilities may require their own release form to be used to release the information requested. It may be necessary for you to write the facility in order to obtain copies of private records.

VA Form 28-1900
Application for Vocational Rehabilitation
for Disabled Veterans

The vocational rehabilitation program is designed to help veterans with service-connected disabilities to achieve maximum independence in daily living and, to the extent feasible become employable and to obtain and maintain suitable employment. You are entitled to vocational rehabilitation if you meet the following three conditions:

1. You were discharged from service under other than "dishonorable conditions." (Undesirable discharges are usually considered under "dishonorable conditions.")
2. You have a service-connected disability which arose on or after September 16, 1940, and for which you are receiving, or could elect to receive, VA compensation.
3. The VA determines you need rehabilitation services and assistance to overcome an employment handicap or to improve your capacity for independent living in your family and community.

To those who qualify, this program can present an outstanding opportunity to continue education or training . If you are intending to apply for service-connected disability compensation, you should also apply for VA vocational rehabilitation. If you already have a recognized service-connected disability with the VA, you should consider using vocational rehabilitation while you are residing in either a halfway house or participating in a work-release program.

If you have an established service-connected disability claim or are in the process of applying for service-connected disability, send VA Form 28-1900 to the appropriate VARO 10 to 15 days before your projected release from the penal institution. If your VA claim is pending, be sure to state this on your application. If you are denied vocational rehabilitation services based on a "pending" status on your claim, you should re-submit your 28-1900 application when service connection is determined.

Note: You may avert a delay in receiving services by submitting an adequate service-connected disability claim 30 to 45 days prior to your release, followed by your application for VA vocational rehabilitation 10 to 15 days later.

If your claim is challenged by the VA and/or an unfavorable decision is rendered, your 28-1900 will be rejected. It is recommended that each individual objectively determine if it will be worth your time in applying for services before your release.

**VA Form 70-3288
Request For And Consent To Release Of
Information From Claimant's Records**

This form is used to obtain records from VA facilities (regional offices, medical centers, outpatient clinics, and vet centers) pertinent to your claim.

38 C.F.R. Sec 1.526 (h) requires the VARO to provide a veteran with one set of his or her records "free" of charge. Request a fee waiver under this section.

You should only use this form if you were treated prior to your incarceration in a VA facility for the specific disorder which you are now applying to receive treatment or compensation. You should obtain the records maintained by the facility if they prove relevant into your claim. For example: if you are seeking PTSD benefits and you went to several different vet centers prior to your incarceration, you will want those records included in the VARO review for determination of your claim.

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To properly complete this form, look to the upper left block under "To Veterans Administration" and print in the address of the VA facility where the records are to be found (if you are unable to get the correct address, write to your VVA liaison or service representative for assistance). Fill in your name, VA file number(if any), and your social security number. The next blocked area is for the name and address where you want the information released. In this case, you print the name of the VARO where you are filing your claim. Under "Information Requested," print in;

1. any/all medical summaries;
2. any/all diagnostic reports;
3. any/all prognoses; and
4. any/all others evaluations.

Under "Purposes for Information," print in: "VA claim development and determination."

Be sure to date and sign this form. Mail the original 30 to 45 days prior to your release to the VA facility where the records are maintained. Include a copy of your 70-3288 in your package to the VARO.

Conclusion

Beyond the information presented in this guide, you are encouraged to seek information from your state regarding "expungement" of arrest and conviction records or pardons. Each state varies in its procedures of expungement. It is, however, an option which should be pursued by ex-felons. Normally, this procedure can be as simple as requesting an application from the court system, or, in some states the Attorney General's office. Certain states laws do not allow expungement. To obtain more information concerning this procedure, contact the VVA National Incarcerated Committee or the Veterans Incarcerated Liaison.

You should also consider applications for state governor's pardons concerning previous felony conviction(s). Each state has a separate set of rules and regulations for properly applying for a governor's pardon. The first step is to communicate with your state's attorney general and obtain copies of the rules before proceeding. After receiving your state's pardon procedure, you should contact the county public defender's office in your area to seek further legal assistance. Usually pardons are not granted until a number of years after release.

For information regarding discharge upgrading, PTSD, direct referrals for assistance with VA claims, or Agent Orange, contact:

**Vietnam Veterans of America, Inc.
Service Representative Program Manager
1224 M Street NW
Washington, DC 20005-5183**

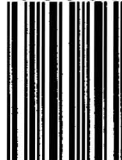
VVA can provide manuals upon written request in these and other areas of veterans law. For further information concerning VVA's goals or agendas regarding the Veterans Incarcerated Project, write:

**National Veterans Incarcerated Liaison
Vietnam Veterans of America, Inc.
1224 M Street NW
Washington, DC 20005-5183**

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