

MINUTES
ADVISORY COMMITTEE ON ARLINGTON NATIONAL CEMETERY (ACANC)

September 26, 2019

1. DESIGNATED FEDERAL OFFICER'S REMARKS: Ms. Renea Yates, Designated Federal Officer (DFO) for the Advisory Committee on Arlington National Cemetery (ACANC), initiated the meeting, noting that present in person were Major Shannon Way, ANC Strategic Planner, and Lieutenant Colonel Adrian Massey, ANC G5. Ms. Yates mentioned that this is MAJ Way's last Advisory Committee meeting, as he prepares to retire after more than 30 years of service to our nation in all three COMPOs of the Army.

Ms. Yates stated for the record that the Committee meeting is pursuant to the National Defense Authorization Act of 2012, codified in 10 U.S.C. § 4723. The Committee operates under authority and provisions of the Federal Advisory Committee Act of 1972, 5 U.S.C. Appendix 2, and 41 Code of Federal Regulation 102-3.50(d). Arlington National Cemetery is the agency that receives the benefit of the Committee's advice and recommendations. The DFO, nominated by the ANC Executive Director and appointed by the Administrative Assistant to the Secretary of the Army, is provided by ANC. Additionally, ANC provides administrative support to the subcommittee.

Ms. Yates noted that the meeting was open to the public, and that attending members of the public were not allowed to present questions from the floor or speak to any issue under discussion by the Committee without permission of the Chair. She noted that any member of the public was eligible to file a written statement or request to make a verbal presentation in accordance with the published Federal Register notice, provided in the binder on the lectern near the door of the meeting room. Ms. Yates also noted that the proceedings were being recorded in written form, and that summarized minutes of the meeting will be prepared and made available to the public on the ANC website.

The meeting was called to order at 1230.

2. ROLL CALL: Ms. Yates noted a quorum for the record, with the following members in attendance:

Secretary of the Army nominees: Mr. James Peake (Co-Chair), Mr. Gene Castagnetti, Ms. Ann Harrell, Mr. Thomas Kelley.

Secretary of the American Battle Monuments Commission nominee: Mr. Chet Edwards (Co-Chair).

Secretary of Veterans Affairs nominee: Mr. Jack Kelly.

The following member was not present:

Secretary of the Army nominee: Ms. Ann Rondeau.

MINUTES
ADVISORY COMMITTEE ON ARLINGTON NATIONAL CEMETERY (ACANC)

September 26, 2019

The following member was present but not voting:

Secretary of the Army nominee: Mr. Mark Farley

Ms. Yates noted that Ms. Debra Lopez Fix and Mr. Ron Fetherson are no longer serving on the Committee, as their terms ended without renewal.

3. PRIOR MEETING MINUTES: The DFO announced that the minutes from the March 13, 2019 meetings were available for review in the strategic documents binders on the meeting tables.

4. CHAIRMAN'S OPENING REMARKS: Mr. James Peake, Co-Chair of the Advisory Committee, opened the meeting by welcoming all members. He noted that the Committee has a robust agenda today, and that this meeting is particularly important given yesterday's announcement of proposed revised eligibility criteria for burial at Arlington National Cemetery. The Committee welcomes the opportunity for an in-depth discussion of the eligibility rollout and the Secretary of the Army's proposal.

5. REVISED ELIGIBILITY CRITERIA AND FEDERAL RULEMAKING PROCESS: Mr. Justin Buller (Associate Deputy General Counsel, Department of the Army, Office of General Counsel) briefed the Committee on the federal rulemaking process and next steps for the proposed revised eligibility criteria that the Secretary of the Army announced yesterday. We are currently at Step One in the rulemaking process, Mr. Buller emphasized: the Secretary of the Army has presented the criteria that he will consider as the process moves forward. The Office of the Army General Counsel (OGC) is currently drafting the proposed rule. It will next be sent for review and approval to the Department of Defense (DoD), and then to the Office of Management and Budget (OMB). If the Army forwards the draft rule to DoD by November 1, DoD should be able to send it to OMB by December 1. By executive order, OMB has up to 90 days to process the draft rule. Realistically (given staffing considerations and the December holidays), OMB clearance is expected sometime in early March. At this point, a notice of proposed rulemaking could be published in the Federal Register for public comment. Following the public comment period, the Army will adjudicate public comments, submit the responses and draft a final rule. After being reviewed and approved by DoD and then OMB, the final rule is published in the Federal Register. After 30 days, the rule becomes law.

Mr. Buller stated that the Army is fully prepared to adjudicate a robust public response. The public comment period could end as early as June, meaning that the final rule will be drafted by July or August—and implemented by September 1. (Historically, the federal rulemaking process has stopped in the months immediately prior to a presidential election.) This process is a high priority, and the Army is eager to move it along.

MINUTES
ADVISORY COMMITTEE ON ARLINGTON NATIONAL CEMETERY (ACANC)

September 26, 2019

Discussion. Following the presentation, several members inquired about the Advisory Committee's role in the federal rulemaking process. Mr. Buller confirmed that although he was not aware of any federal advisory committee that had responded to public comments during rulemaking, the Committee could review comments and advise ANC on which points to consider. The Committee could also request a meeting with the Secretary of the Army at any point during the rulemaking process. (In response to a question about the possibility of meeting with the Secretary of Defense, Mr. Buller noted that the Committee's federal mandate authorizes it to report only to the Secretary of the Army.) He also confirmed that the best period of time for the committee to have impact is before November 1. After the draft rule clears OMB, changes for definitional clarity can be made, but any major substantive change would require starting the rulemaking process over.

At this point in the discussion, the Committee agreed to postpone other agenda items in order to focus on how it wishes to proceed with making its viewpoints heard by November 1. It was noted that the Committee has been working on the eligibility issue for years, and is within a month of being able to make an impact on the proposed revised criteria.

The Committee engaged in a lengthy, robust discussion of the proposed revised eligibility criteria, which culminated in a written response (see below) to be submitted to the Secretary of the Army. Discussion centered on the following questions and concerns:

- How much do the proposed changes differ from what the Committee recommended?
[Note: At its November 8, 2018 meeting, the Committee voted unanimously to approve the Honor Subcommittee's recommendations on eligibility. The minutes from that meeting, including the eligibility recommendations, may be found here: www.arlingtoncemetery.mil/Portals/0/Docs/ACANC/2018-NOV/Full-Committee-Minutes-7-Nov-2018.pdf]. The discussion identified three major distinctions between the Committee's recommendations and the Secretary of the Army's proposal:
 - The Committee noted that it has never considered or debated the issue of changing eligibility to allow a President or Vice President who never served in uniform to be buried at Arlington National Cemetery, and that question was not included in any of the questionnaires used in this process.
 - The Committee recommended that active duty service members remain eligible for burial at ANC regardless of their cause of death. The Secretary of the Army's proposed criteria separates deaths caused by uniquely military activities from other active-duty deaths (illness, for example); only those who died in uniquely military activities would be eligible for ground burial.
 - Under the Committee's recommendations, veterans for conflicts after the Korean War would not be eligible for interment or inurnment unless they were killed in action, died on active duty, former POWs, and/or recipients of the Medal of

MINUTES
ADVISORY COMMITTEE ON ARLINGTON NATIONAL CEMETERY (ACANC)

September 26, 2019

Honor and/or Purple Heart, Silver Star or above. The Secretary of the Army's proposed criteria place no restriction on era of service.

- Committee members asked for clarity on the cemetery's lifespan. Under the proposed guidelines, the columbaria will close in 2044. It was noted that this, de facto, changes eligibility.
- The remainder of the discussion focused on two specific elements of the Secretary of the Army's proposed eligibility criteria, which take into account "significant contributions to the nation's security at the highest levels of public service." Specifically:
 - *for below-ground interment*: "Veterans with combat service who also served out of uniform as a government official and made significant contributions to the nation's security at the highest levels of public service"
 - *for above-ground inurnment*: "Veterans without combat service who also served out of uniform as a government official and made significant contributions to the nation's security at the highest levels of public service"

Committee members raised the following questions and concerns:

- What, exactly, does "impact on the nation's security at the highest levels of public service" mean?
- Committee members expressed concern that government officials were being given "extra consideration" for non-military service.
- The DFO noted that the current eligibility criteria include a paragraph that specifies which high-ranking government officials, in addition to the President and Vice President, are eligible for burial at ANC. This has been part of the eligibility guidelines since at least the mid-1950s. "Impact on the nation's security at the highest levels of public service," including a list of specific government positions, will be further defined and released to the public in Step Five of the rulemaking process [the public comment period].
- The Committee's consensus was that the positions or activities that fulfill this requirement should be limited and clearly defined.
- Several Committee members wondered if this provision would create the perception that government officials were getting "preferential treatment" in decisions about burial eligibility at ANC. One member called attention to polling data indicating that "veterans, military retirees, and the American people do not want preferential treatment for politicians." In the public survey that ANC

MINUTES
ADVISORY COMMITTEE ON ARLINGTON NATIONAL CEMETERY (ACANC)

September 26, 2019

conducted, only 11.78% of respondents believed it imperative that high public office holders remain eligible for burial at ANC. Furthermore, it was noted, there is greater “potential for abuse” if public officials can become eligible based on their government service, in addition to their military service.

- Emphasizing that the public views Arlington National Cemetery as hallowed ground, some members suggested that those eligible for burial at ANC should have contributed significantly to the nation in a military or an armed services role, not simply in a national security role. The term “national security” is ambiguous, members noted, and could encompass a wide range of government agencies and positions. To be eligible for burial at ANC, public officeholders’ out-of-uniform service should be directly related to the armed forces.
 - Members expressed concern that the proposed guidelines restrict eligibility for retired veterans but not for those who have also held high public office, such that a retiree who served for many years could be ineligible while a Congressman who served for two years could remain eligible.
 - The Committee discussed whether there should be a military service requirement for the President and Vice President to be eligible for burial at ANC. (The proposed criteria do not specify that the President and Vice President must have served in the military.)
- The Committee agreed to draft a written statement to inform the Secretary of the Army of their discussion and concerns. That statement is as follows:

The Advisory Committee on Arlington National Cemetery appreciates the Secretary of the Army’s consideration of our prior recommendations and commends him for proposing a way to extend the active life of ANC well into the future. We support the variance from our recommendations and support his approach of including the first five criteria for in-ground interment and the first three criteria for above-ground inurnment.

The Committee notes that under the criteria proposed by the Secretary on 25 September 2019, above-ground space will be exhausted by approximately 2045. That will effectively eliminate eligibility for retirees and traditional veterans who have served a minimum of two years on active duty with combat experience, unless otherwise qualified. The committee is concerned with criteria that allows both above and below ground eligibility for service “out of uniform as a government official”.

The Committee recognizes the importance of the *Service* imperative as defined by the Secretary and realize that, upon exhaustion of above-ground space, a veteran with a lifetime of service in uniform would be denied space while another veteran whose eligibility is based solely on service out of the military would remain eligible.

MINUTES
ADVISORY COMMITTEE ON ARLINGTON NATIONAL CEMETERY (ACANC)

September 26, 2019

The Committee is cognizant of the survey results of 250,000 respondents where high public office was ranked next to last as a consideration for eligibility.

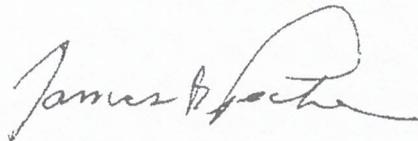
The Committee strongly recommends that honorable uniformed service in the Armed Forces of the United States be the minimum burial requirement at ANC for all primary eligible persons.

-
- A motion was called to vote on the statement as a submission for the Secretary of the Army. The motion was seconded. All present members of the Committee voted in favor of submitting the statement to the Secretary of the Army. None opposed.
 - At the end of the discussion, Committee members asked for guidance on how they, as individual, should respond to any media inquiries. Ms. Yates advised that outside of Committee meetings, each member can identify as a member of the Committee or as an individual. However, they should be sure that when speaking as a Committee member, they are speaking only to items that have been formally voted on and are in the public domain. Otherwise, they may speak their personal opinion as a U.S. citizen.

6. OTHER BUSINESS: The Committee agreed that during the next year, it should meet as much as possible within statutory guidelines, given the importance of discussions on eligibility. The next meeting will be in early December, exact date TBA. Items on the agenda for the next meeting(s) include: 1) elevation artists' rendering of Joint Base Myer-Henderson Hall; 2) status of expansion plans; 3) status of the Pentagon Memorial Visitors' Center; 4) education plans for the next ten years; 5) Defense Digital Services—how to put ANC education products in their domain; 6) a commemorative works request; and 7) state of the cemetery, including its budget.

7. MEETING ADJOURNED: In concluding the meeting, Mr. Peake noted for the record that this is MAJ Way's last Committee meeting, and that the Committee commends and appreciates his service. He then called for any other business. Hearing none, he called for a motion to adjourn. The motion was made and seconded. All members voted in favor.

Meeting adjourned at 1518.



James Peake
Co-Chairman



Thomas C. Edwards
Co-Chairman