



CPT William F. Bradley Jr.

RETURN FIRE

THE OTHER SIDE OF THE NATIONAL GUARD/UCMJ QUESTION

The National Guard has come a long way since the days when different states outfitted their militia in their own uniforms, such as the Zouaves during the Civil War. The IFV does not stand for the Indiana Fighting Vehicle, and it would be difficult to imagine any Total Force commander being satisfied with an Army composed of units from different states that had been trained to their own state's SQT standards rather than the Army's standards.

The National Guard Association of the United States in behalf of the National Guard generally has been using the state control argument successfully, together with other arguments, in lobbying to make the National Guard an equal partner in the Total Force. In exchange, the National Guard has accepted active component individual and unit training standards and physical fitness standards. However, one significant area remains parochial and I believe, as a private citizen, soldier and lawyer, that it is hurting our troops.

The point of the editorial, "Some Things Never Change—Even in 35 Years," (January, NATIONAL GUARD), is that mandating the Uniform Code of Military Justice (UCMJ) for the states by congressional action would further erode state control over the National Guard. Happily, an alternative exists that would preserve state control while reaping the benefits of uniformity. That solution is for the states to adopt the UCMJ complete. To make it remain uniform, a farsighted state would adopt the UCMJ "together with all amendments as they may be made from time to time in the UCMJ by the Congress of the United States." Without this phrase, the states would have to adopt the amendments as they are passed by Congress.

This type of legal procedure already is common in some states that have adopted the Uniform Consumer Credit Code, with references to the Federal Truth in Lending Act. As a

Editor's note: Return Fire is a new department in NATIONAL GUARD that will be published from time to time as the available material dictates. It is designed to afford Guardsmen a chance to express their personal views on subjects currently relevant to the Guard nationally in a format of greater length than a letter to the editor. The author of this month's maiden article is an attorney with the firm of Martindell, Carey, Hunter & Dunn in Hutchinson, Kansas. He is chief of legal assistance, Judge Advocate General Corps, for the 35th Infantry Division (Mech), Kansas Army National Guard.

lawyer who handles commercial matters, I find this to be a tremendous help since I do not have to worry about two overlapping sets of laws and the subtle differences.

The advantages of such an adoption by the state are many. For instance, the Kansas Code of Military Justice was last extensively recodified and amended in 1972. Prior to that, its previous codification had been in 1923. I know of not a single court case construing the Kansas Code of Military Justice. The effect of this is that any ambiguities or unclear sections are left to the resolution by the unit commander. The UCMJ, by contrast, is constantly being tested and revisions proposed by the active services and their JAG schools. It has been extensively interpreted by the Court of Military Appeals.

There are many more benefits such as the fact that under the current system, unit clerks, legal clerks and others involved in JAG functions would train with one code. That is even true of we JAG officers, who now work with two codes, which bear only the faintest resemblance.

The confusion is not limited to legal personnel. I recently had occasion to read a newsletter from the commander of an armor company of the Kansas Army Guard, warning his soldiers that should they be late or miss

an upcoming field exercise for an unexcused reason, that they would be prosecuted "to the full extent of the UCMJ," notwithstanding the fact that since the FTX was to be on an IDT weekend, his soldiers would not be subject to the UCMJ but rather to the Kansas Code of Military Justice.

At least upon mobilization, the forces commander will find all his troops subject to the UCMJ. But imagine the problems of the commander of a multistate division like the 35th Infantry Division (Mech) at annual training. Assume for the moment a division AT at one site and a private from Kansas befriending a private from Kentucky. Together, they manage to get themselves in trouble. The Kansas private is subject to the Kansas Code of Military Justice, while the Kentucky private is subject to the Kentucky code for the same offense. What if the codes prohibit different things? What if they require different procedures for courts martial? I submit that this diversity of laws cannot be tolerated when it comes to military codes for soldiers training together in the same way it can among the states for such things as property ownership, marriage and divorce and taxes.

We are working on a multistate compact in this area, but much confusion remains in the five states comprising the 35th Division (Colorado, Kansas, Kentucky, Missouri and Nebraska). But as in other areas of training, coordination and cooperation, I am sure we will lead the way.

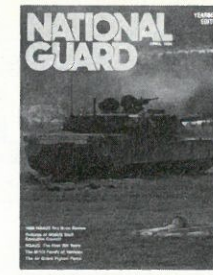
However, as an attorney, soldier and a private citizen, I would urge NGAUS and the various states to seriously consider adopting the UCMJ *en toto*. I see little difference between a federal Modified Table of Organization and Equipment (MTOE) governing how many soldiers a state's National Guard may have in what grades and with what MOSSs, and the UCMJ applying to those soldiers during IDT and AT. Both promote the efficiency and cohesiveness of the Total Force.

National Guard

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COVER:

As more M-1 tanks enter the Army inventory, the Army Guard will increasingly be equipped with the M-60A3. One of the units to get the M-1 is the 1st Bn., 252d Armor, North Carolina Guard, which rounds out the 2d Armored Division. Design, Johnson Design Group.

FEATURES

The M-113 Family of Vehicles

16

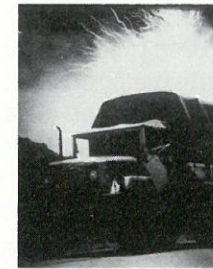
Although the M-2/3 Bradley Infantry Fighting Vehicle is coming into the inventory, it will never completely supplant the M-113 family of armored vehicles. Indeed, it should not, because the M-113 continues to be a combat effective piece of equipment.



1986 RED BOOK Review: The GI Bill

24

Defending the GI Bill from Gramm-Rudman-Hollings budget cuts will be a top priority of NGAUS for the 1986 legislative year. Other priorities of the RED BOOK are explained.



NGAUS at a Glance: What We Do

39

A small staff of about 30, headed by LTG La Vern E. Weber (ret.) works full-time at the National Guard Memorial in Washington to advance the interests of National Guard officers at the national level. Here's what we do.



NGAUS: The First 100 Years

50

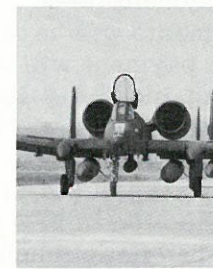
National Guard's editor emeritus recounts the first century of the National Guard Association of the United States and how a struggling band that met in St. Louis has evolved into one of the most powerful associations in the capital.



The Air Guard Fighter Inventory

66

The Air Guard is famous for its fighter jocks. They fly a variety of aircraft, from the leisurely A-10 with its rapid-fire gun that is a tank killer to the hottest of all fighters, the F-15.



DEPARTMENTS

Return Fire	2
Washington Tie-Line	4
Views from the Field	6
Capital Focus	10
Newsbreaks	12
Guard Stars	15
Editorial	22
Pentagon Paragraphs	65
People	72
Posting the Guard	78
Publisher's Notebook	82

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