

SOME THINGS NEVER CHANGE—EVEN IN 35 YEARS

The *National Guardsman* in its April 1949 issue, reported as follows:

"The Guard found itself bitterly opposed to H.R.2498 as drafted, a bill which would set up standard military justice procedures for all services.

This bill would subject Guardsmen to regular Army or Air Force disciplinary powers, in time of peace, a provision which National Guard leaders are convinced is unconstitutional. . . ."

Isn't it ironic, and isn't it instructive, that the first resolution adopted by the 107th NGAUS General Conference last fall in Louisville opposes any suggestion of bringing the Guard under the provisions of the Uniform Code of Military Justice (UCMJ) in peacetime. Perhaps a little review of history, and why the Guard leaders of 35 years ago opposed such an idea then just as Guard leaders do today, is in order.

The proposal that the Guard brought under the jurisdiction of the UCMJ while under state control came, unfortunately, from the Honorable James H. Webb, assistant secretary of Defense for reserve affairs. It was one of Mr. Webb's first-year initiatives, one that got the immediate attention of one member of the National Guard Association of the United States (NGAUS) Executive Council, COL Leewell Fairey of South Carolina. Fairey's immediate reaction to the proposal, contained in a letter to the editor of *NATIONAL GUARD* published in the April issue, was that this was just another attempt to create a chink in the National Guard's "state control in peacetime" armor. He is right.

What also must be understood, and hence this rather lengthy explanation of why Mr. Webb's proposal is a bad idea, is that some Guardsmen in the field think it is a good idea. That is because some of them, particularly if they are commanders, require some form of disciplinary lever to forstall an AWOL problem (if they have one). Indeed, states that make extensive use of courts martial on an ongoing basis frequently direct it at AWOL more than against any other breach of disci-

pline.

A little more history: In the 1960s and early 1970s, when the draft was still in full operation, the military had a policy that permitted members of the Guard to be inducted into active military service if they missed more than four unit training assemblies (UTAs) without permission. As it worked at the unit level, this was a fearsome disciplinary tool because four unit training assemblies comprise just one weekend. Thus, a member of the Guard who missed one weekend per year was within one more half-day of being ordered to active duty for 24 months less service completed.

It probably comes as no surprise that leaders of the active military didn't particularly care for this policy. It resulted in the Guard's least illustrious representatives being shifted to the active establishment for punishment. It made the active military a penal institution, in a sense. The policy was abandoned in the 1970s soon after the end of the draft.

The trouble was, some would say, that nothing replaced it. In part because this policy had been in place for quite a few years, many states for that reason or some other one, had not modernized their state military codes; some states still haven't. So, the local commander's only tool to fight the AWOL problem in the all-volunteer environment was to simply discharge the Guard member who consistently failed to show up for drill. However, this was generally what that individual wanted, he or she having tired of Guard membership. It solved the problems of both the Guardsman and the commander.

Critics of that procedure point out, however, that an enlistment is a contract and that contracts should be observed, not merely thrown away when found to be inconvenient. Guard leaders in states that adhere to this view have moved aggressively to win approval in their legislatures of state military codes that give them the legal tools to punish Guardsmen.

The argument against a policy of widespread courts martial is that it is very time-consuming. Indeed, one very senior Guard lawyer several years ago argued against such a pol-

icy on that basis and on the basis that there are too few judge advocate general corps lawyers at the state level to process the work load. That, of course, is a problem that a state's Guard leaders can solve at state headquarters if they choose by allocating sufficient JAG slots in the STARC to accommodate whatever work load they choose to impose through a courts martial process.

The problem as articulated by Mr. Webb and some active (Army mainly) leaders is that the constant AWOL problem in some—although not all to be sure—states contributes significantly to the overall strength problem of the National Guard. It is one aspect of the backdoor problem, which are formally called "unprogrammed losses," which are defined as Guardsmen who leave before their expiration-of-enlistment dates. There are many reasons for unprogrammed losses besides AWOL, of course.

A scaled-back version of Webb's 1984 proposal now being staffed would apply to the Guard only in title 10 (federal active duty) status. Few question the wisdom of Guardsmen being subject to the UCMJ while on federal duty, such as basic training or officer branch courses. The objection here is to imposing the UCMJ while in title 32 (drill and annual training) status. State codes should apply to title 32 duty.

The bottom-line reason for opposing this UCMJ suggestion, however, is the concept of state control in peacetime. This year's Resolution No. 1 follows in the long tradition of the NGAUS and National Guard leaders across the nation opposing any efforts by the federal establishment to gain control of the Guard in peacetime. That is what is meant by the militia clause of the Constitution. It is one that is wrapped up in the concept of the various governors being the commanders in chief of their Guard organizations until mobilization.

Enactment of any proposal to bring the Guard under the UCMJ in peacetime would be a significant breach of faith—and, in our view, a violation of the law of the land.

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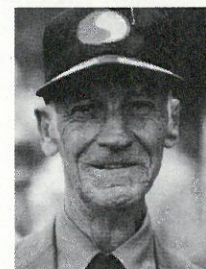


FEATURES

"Blue and Gray" Division Reborn

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After a 17-year sleep, the famed 29th Infantry Division, Army Guard, was reactivated recently in ceremonies at Fort Belvoir, Virginia. The "Blue and Gray" Division of World War I and II fame is composed of Guard units in Maryland and Virginia.



Life in the Eskimo National Guard

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Alaska has a unique element in the Army National Guard, an Infantry Scout Group. The units of the group's two battalions are scattered across western and southwestern Alaska in numerous Eskimo villages, where the infantrymen combine everyday life with their Guard mission.



15 Years of Progress in the Guard

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The adjutant general of Georgia compares life in the Guard of 1985 with the beginning years of the Total Force Policy. It has been 15 years of growth and change.



Minnesotans at the NTC

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The 2d Battalion, 136th Infantry (Mech) found out about the learning curve during a rotation through the Army's National Training Center at Fort Irwin, California.



COVER:

Some 17 years had passed since the famed Blue and Gray colors of the 29th Infantry Division had flown. October 5, 1985, the 29th was reborn, becoming the Guard's 10th division and its only light infantry unit. Photo, SSG Billy Snyder. Design, Johnson Design Group.

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