MG Charles M. Kiefner, President, NGAUS

PRESIDENT'S MESSAGE

A NATIONAL GUARD VICTORY IN THE MONTGOMERY AMENDMENT CASE

It is great to win. That is the bottom line as a result of the June 11 finding of the U.S. Supreme Court that the Montgomery Amendment is constitutional.

The unanimous decision, written by Associate Justice John Paul Stevens, tends to justify the time, effort, dollars and emotional capital we in the Guard leadership community have invested in this case and in this situation over the past five years. Expensive it was. But it was worth it.

That is so because the stakes were so high, and the consequences of losing this case so grave. This court decision reaffirms our original conclusion that the Montgomery Amendment as written in 1986 and attached to the FY87 Defense Authorization Act was the low-level "fix" that was needed then and it remains sufficient to solve any new problems today.

We have argued that the Montgomery Amendment dovetails nicely with the Militia Clause because it carefully preserves a governor's authority over the command and control of his or her National Guard in peacetime, while ensuring that the Department of Defense has access to Guard units for overseas training exercises as needed.

What the Guard leadership faced in defending our right to train as required by national security interests was that the outcome had the potential of being a double-edged sword. As was evidenced in the first few months after Governor Joseph Brennan of Maine refused deployment of his public affairs detachment and a 35-man detachment of combat engineers, there was an instinctive wish to defend the governors. Although most of us didn't agree with Governor Brennan's and Governor Dukakis' attacks on President Reagan's Central America policies, historically, we in the Guard have sided with state control of the National Guard in peacetime.

What we quickly found was that this gubernatorial issue was a threat to our future in the very near term. Ominous sounds came from the Pentagon suggesting that if the Guard wasn't available in support of any president's foreign policy and national security policies, then perhaps the federal dollars being spent on the Guard for equipment and personnel were poorly invested. The Montgomery Amendment was the answer. Fortunately, leaders of the Army and Air Force agreed after it was enacted in August 1986. Legislatively and politically, that was the end of the controversy.

However, it was not the end of the story. Governor Perpich was the first to file suit, followed by Governor Dukakis. Unfortunately, particularly at the beginning, the Department of Defense and the Department of Justice, which provides lawyers for these cases, decided to argue the suits primarily on the Army Clause of the Constitution—the authority of Congress to raise and support armies.

However, it is far from the only argument. We at the NGAUS have contended from the beginning that it was desirable to argue the case from the Militia Clause point of view so that the invaluable dual role of the Guard not only is preserved, but also emphasized. The founding fathers knew exactly what they were doing when they wrote the Militia Clause and the Army Clause the way they did.

That said, we were gratified that the Supreme Court justices adopted language in the Court's opinion specifically saying that the Montgomery Amendment is fully consistent with the Militia Clause. Here is what Justice Stevens wrote:

"The second Militia Clause enhances federal power in three ways. First, it authorizes Congress to provide for 'organizing, arming and disciplining the Militia.' It is by congressional choice that the available pool of citizens has been formed into organized units. Over the years, Congress has exercised this power in various ways, but its current choice of a dual enlistment system is just as permissible as the 1792 choice to have members of the Militia arm themselves. Second, the clause authorizes Congress to provide for governing such part of the militia as may be employed in the service of the United States. Surely, this authority encompasses continued training while on active duty. Finally, although appointment of officers 'and the authority of training the militia' is reserved to the states respectively, that limitation is, in turn, limited by the words 'according to the discipline prescribed by Congress.' If the discipline required for effective service in the armed forces of a global power requires training in distant lands or distant skies, Congress has the authority to provide it. The subordinate authority to perform the actual training prior to active duty in the federal service does not include the right to edit the discipline that Congress may prescribe for Guard members after they are ordered into federal service."

Very well said. Nothing in this opinion infringes on any governor's authority, through the command of his adjutant general, to conduct training or utilize his Guard within his state or within the continental United States in any way he sees fit. Non-overseas annual training still is carefully under the governor's ultimate command and control, as it should be.

With this opinion, as the final word in this vexing half-decade-long controversy, we have a solid reaffirmation and restatement of the vital dual role of the National Guard in peacetime.

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COVER:
Aircrews from across the nation and throughout the Total Air Force arrived at Volk Field, Wisconsin, in the midst of a rainstorm to test their skills at defending an air base perimeter to ensure that wartime sorties take off despite enemy attacks. Photo: MSgt. Lee Straobe. Design, Johnson Design.

FEATURES

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