MG Ansel M. Stroud Jr., President, NGAUS

PRESIDENT'S MESSAGE

THE BICENTENNIAL OF THE CONSTITUTION AND THE MILITIA CLAUSE

It is interesting to note that the subject that has consumed the National Guard's leadership during 1987 has been truly a Bicentennial issue. It is the National Guard's part of the Bicentennial of the Constitution: the Militia Clause.

Much of this Bicentennial issue of NATIONAL GUARD revolves around discussion of the Militia Clause. But it is not a subject that is new to us. Indeed, we have been wrestling with the intent of the Founding Fathers in writing the Militia Clause for more than a year, beginning with the drafting of the Montgomery Amendment to the Defense Authorization Act of 1986.

Our experiences this past 15 months on this constitutional subject have given us a renewed appreciation of the flexible, living nature of the Constitution and at the same time the great wisdom of the Founding Fathers in writing what they wrote 200 years ago. Not only did the Militia Clause give us the legal framework for the existence of the National Guard as a part of the Total Force, but it also has allowed us over the past 200 years to provide the largest, best equipped and most combat ready element of the Total Force.

This research started in mid-1986 when the NGAUS assisted in drafting the language of the Montgomery Amendment. We concluded that a key word in the Militia Clause was the word *discipline.* Thus, rather than giving the states—and therefore the governors as commanders-in-chief in peacetime—absolute authority over the training of the Guard, this phrase "*discipline as prescribed by Congress*" reserved to the federal government the rules, regulations and standards of training so long as that training was conducted by National Guardsmen.

The discussion of the intent of the Founding Fathers is much on our minds today because of the recent decision in the lawsuit by Governor Rudy Perpich of Minnesota seeking to overturn the Montgomery Amendment language. The Minnesota lawsuit disingenuously ignores the language "*according to the discipline prescribed by Congress*" in making its argument that training should be controlled by the states. If the key word is *discipline,* then the language of the Montgomery Amendment preventing a governor from vetoing OCONUS deployments based on "location, purpose, type or schedule" is clearly valid in that it is primarily DoD officials who can determine what OCONUS training Guard units require to be combat ready elements of the Total Force.

The times were different, but the delegates to the Constitutional Convention had had recent military experience in gaining U.S. independence. There were military threats facing the United States just six years after the signing of the Treaty of Versailles. These could not be ignored by the Founding Fathers; indeed, the need for a strong national defense was one of the reasons for the convention.

It also is possible to take the debate about and the language of the Militia Clause one step further. Like other parts of the Constitution that have proved remarkably adaptive to modern problems, the Militia Clause also can be given a modern interpretation. Indeed, this has been required in this century on at least two occasions in order that the National Guard can be the preeminent reserve force. The two occasions are the National Defense Acts of 1916 and 1934.

In this regard, it is well to reread paragraph 15 of section 8 of article I of the Constitution:

"15. To provide for calling forth the Militia to execute the laws of the Union, suppress insurrections and repel invasions."

It will be recalled that the pre-World War I debate that resulted in the 1916 enactment was over whether the National Guard could be deployed overseas *at all* based on paragraph 15. The resolution of this ultimately came in 1934 with the provision of the "National Guard of the United States" as the federal component of the modern Militia. It is from this enactment that we acquired dual status, and our oaths of office to both the president and the governor of the state.

However, it seems to us that notwithstanding the efficacy of the National Defense Act of 1934, which we certainly wouldn't want to disturb, it also is possible to argue that the late-20th century interpretation of the words "repel invasions" can easily be construed to cover the National Guard as a part of the Total Force in 1987.

In 1987, the United States faces no threat of invasion. We have friendly borders north and south and vast oceans east and west. Even our Soviet adversaries, powerful though they are on the Eurasian land mass, pose no immediate threat of invasion in North America.

So what can "repel invasion" mean to the United States as we approach the 21st century? We would suggest it means acting in the U.S. national interest as the great power the United States has become since the end of World War II. Thus, we head alliances in several theaters, but most importantly in Europe and Asia.

Today, the National Guard plays its part of the U.S. post-war policy of deterrence. That means deterring invasion of our allies in western Europe and South Korea. It also can mean participating in exercises elsewhere in the world to show our nonfriends that the United States intends to assist its allies in defending themselves against invasion.

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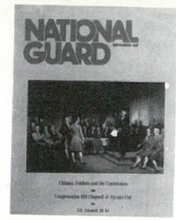
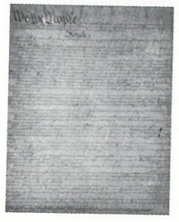


COVER:
George Washington Addressing the Constitutional Convention, a painting on display at the Virginia Museum of Fine Arts, depicts our nation's first president addressing the convention delegates during debates. This is the 200th anniversary of the U.S. Constitution. Design by Johnson Design Group.

FEATURES



DEPARTMENTS

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