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 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 devotes nicely with the Militia Clause because it carefully preserves a governor's authority over the administration and control of the National Guard in peacetime, while ensuring that the Department of Defense has control over 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 could have 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 Guard's position. Fortunately, though most of us didn't agree with Governor Brennan's and Governor Dukakis' attack on the Reagan administration's 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 popularly elected citizens have been formed into organized units. Over the years, Congress has exercised this power in various ways, but its current choice of a full enlistment system is as permissible as the 1792 choice to have members of the Militia arm themselves. Second, the clause authorizes Congress to provide for governing self-part of the militia as may be employed in 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, that limitation is, in turn, limited by the words 'according to the discipline prescribed by Congress.' In the discipline required for effective service in the armed forces of a national 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 commands of the National Guard and International Route sponsored a symposium question to question and study the Total Force as it relates to the commander's armed forces and, more importantly, the membership to the National Guard and Reserve.

The Future of the Total Force Discussed

The National Guard Association of the United States and the National Guard Bureau and International Route sponsored a symposium question to question and study the Total Force as it relates to the commander's armed forces and, more importantly, the membership to the National Guard and Reserve.

Controller Endorsement Tests Air Base Defense

The National Guard's Controller Endorsement Tests Air Base Defense (CETAB) E-104 endorses the necessary training to teach all personnel of an air base the integrated skills necessary to survive of the National Guard in peacetime.

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FEATURES

The National Guard's Defense Commitment

By John B. Conway, Chief of the National Guard Bureau. Because the long-standing commitment citizen-soldiers have made to this nation's defense and to the support of its freedoms, the commitment remains the same for the coming decade.

Top: Patricia Schroeder Speaks Out

In her first congressional speech, Patricia Schroeder, addresses the many pending issues facing members of Congress in the face of the "50% solution," the policy and strategic defense budget and the nation's strategic policies.

Top: Marilyn Lloyd Talks Guard Issues

In her capacity as the Tennessee National Guard general, Marilyn Lloyd, offers a broad agreement that will appease both members of Congress and the Bush administration with a strong emphasis on National Guard support.

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COVER: Aircrews from across the nation and throughout the Total Force arrived at Volk Field, Wisconsin, in the midst of a rainstorm to test their skills as they conduct a base perimeter to ensure that wartime sorties take off despite enemy attacks. Photo: MSGJ. Lee Steeble, Design, Johnson Design.

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