

The National Guard: Defending the Nation and the States



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The National Guard: Defending the Nation and the States

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Executive Summary

The National Guard is a successful but Little examined intergovernmentalinstitution. However, recent events have called attention to the role of the Guard in America's defense and emergencypreparedness systems and to a range of intergovernmental issues concerning the Guard's control and operation. First, the SupremeCourt resolved in favor of the federal government a conflict between the governor of Minnesota and the U.S. Defense Department regarding assignment of Guard units to active duty training outside the United States without the consent of the governor.

Second, decisions about downsizing U.S. military forces will have a major effect on the number of Guard troops and their integration into the Defense Department's Total Force Policy. Third, Guard troops had a front-line role in the Persian Gulf operations. Finally, Guard members have been very visible in response to natural disasters and to the riots in Los Angeles in 1992.

This Advisory Commission on Intergovernmental Relations (ACIR) study—*The National Guard: Defending the Nation and the States*—explores the role of the Guard in the federal system, focusing on:

- Questions of constitutional balance involving dual control of the Guard by the federal and state governments;
- Concern over the future of the National Guard in the context of national security and state needs;
- Opportunities for improved intergovernmental cooperation between the federal and state governments in control and operation of the Guard.

The National Guard is a centuries-old institution and a vital part of our national defense and emergency preparedness systems. The Guard has emerged as the foremost reserve of the Army and Air Force. Unless called up for active duty by the federal government, the Guard is under the command of the governors and plays an important role in times of civil unrest or natural disasters. For 1992, the Guard had an estimated 584,000 members organized into 54 state and territorial military commands, and was funded at nearly \$10 billion.

The roles of the National Guard have changed over the years to meet the national interest as well as those of the states and territories. The Guard remains partly independent, but its responsibilities also link it to the active armed forces and to the reserves. The Guard's unique status is exemplified by the fact that its members take an oath to their state and to the United States.

The role of the National Guard during the Persian Gulf operations highlighted the Guard's place in the national defense structure. Equally important, however, is the Guard's role in domestic affairs under the control of the governors. The Guard is the only military force immediately available to a governor for meeting state emergencies, and the states have a substantial stake in the responsiveness and effectiveness of their Guard units.

ACIR's findings and recommendations include:

- (1) The role of state officials in Guard training and integration into the Total Force Policy is minimal, and there is

insufficient consultation between the governors and the military concerning issues in balancing the national and state roles of the Guard. **An** expanded mechanism is needed to analyze these issues. The Guard also should have membership on the Joint Chiefs of Staff.

- (2) Public Law 102-190 provides that the Defense Department submit to the Congress an assessment of alternatives relating to the structure and mix of active and reserve military forces for the 1990s. This study should include an assessment of (1) the impact of force alterations on the Guard's ability to fulfill its state responsibilities and (2) the feasibility of combining the Army and Air Force Reserves with the National Guard.
- (3) Decisions regarding the reduction and restructuring of defense forces will have an impact on states. Plans call for a more than 30 percent reduction in Guard forces in each state, which could affect their capability to respond to natural disasters, civil disorders, and other emergencies. States have a strong stake in maintaining their Guard capability, which should receive special attention when policies are made that affect the Guard.
- (4) Participation in drug interdiction and other anti-drug activities raises important intergovernmental issues because the Guard's domestic role has been expanded to assist civilian authorities in these efforts. Cooperative agreements **may** lead to federal-state cost sharing.
- (5) Compliance with environmental protection laws and equal employment opportunity needs continuing attention. The Guard has initiated the Environmental Compliance Assessment System to identify deficiencies and develop corrective **plans**. The Guard also needs to develop programs to ensure the progress of minorities and women into leadership positions.
- (6) Policy requiring unit integrity in calling up state Guard units is not always followed, but is important for state sovereignty, federal-state comity, and troop efficiency, trust, and support. Defense Department policy should allow state designation of Guard units, except when in federal service, and allow units to indicate their home state on uniforms and equipment.
- (7) Twenty-four states have established state defense forces, which are paramilitary, volunteer civilian militia that serve as a back-up in the event the state's Guard contingent is mobilized for federal service. They also provide services such as crowd control. State defense forces are faced with a number of problems, however. They have no federal standing now, but legislation has been introduced to increase federal support. Careful consideration should be given to the need for and purpose of such legislation.
- (8) Several states have authorized interstate mutual aid agreements for response to civil disturbances or natural disasters. **This** should be done by all states in view of the fact that the number of Guard troops may be reduced and certain types of equipment may become inadequate or be eliminated. Congress should approve the compacts, and the Federal Emergency Management Agency should assist in these efforts.

Preface

The National Guard is a venerable state-federal institution that has long served the states and the United States well at home and abroad. In addition, the history of the Guard reflects, in many respects, the history of American federalism as well as the contours of intergovernmental conflict and cooperation from the 1780s to the 1990s. Initially a highly state-based system of defense and domestic assistance under the primary command of governors, the Guard has, over two centuries, been increasingly integrated into the overall and more unified and hierarchical defense structure of the United States. **As** a result, the federal government plays a much larger, even commanding role in the National Guard system than it did in the past, just as it plays a much larger role in domestic policy areas more generally today.

Because of the Guard's crucial role in responding to natural disasters and civil disturbances, however, Guard policy points up more clearly than is the case in many other policy areas the importance of continued state authority to ensure the ability of Guard units to respond to state needs as well as the need for federal-state cooperation, especially to avoid federal policy actions that might reduce Guard capabilities in some or all of the states and to ensure effective and efficient intergovernmental responses to natural disasters and civil disturbances. Recent developments regarding gubernatorial authority, disaster response, defense force reductions, and total force policies have raised new questions and concerns about the Guard, which are of great intergovernmental importance.

Indeed, a degree of notoriety was achieved when the U.S. Supreme Court resolved a conflict between the governor of Minnesota and the U.S. Department of Defense regarding the assignment of state Guard units, without the consent of the governor, to active duty training outside the United States. When the Court ruled in favor of the federal government, attention was called to a range of other intergovernmental issues involving the states and the federal government in the operation and control of the Guard.

Intergovernmental and even federal issues relating to the National Guard generally do not have a high salience with the public, but there is intense interest within the U.S. Department of Defense, among the governors, and in organizations such as the National Guard Association of the United States. This report seeks to explain to a broader intergovernmental audience the place of the National Guard in the federal system. It explores:

- 1) Questions of constitutional balance involving dual control of the Guard by the federal and state governments;
- 2) Concern over the future of the National Guard in the context of both national security strategy and state needs; and
- 3) Opportunities for improved intergovernmental cooperation between the federal and state governments in control and operation of the Guard.

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The Commission and its staff are responsible for the contents of this report.

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Findings and Recommendations

A subject of extensive debate and compromise during the Constitutional Convention of 1787, the National Guard has its origins in explicit provisions of the United States Constitution, including the Bill of Rights. Throughout the nation's history, the Guard has been an integral component of the defense and domestic emergency-response networks of the states and the United States.

Just as the federal government's relationship to the wide range of state activities and responsibilities has evolved over the years, so too have the federal and state roles of the National Guard changed in order to meet the national interest as well as the particular needs and circumstances of each state and territory. By virtue of their intertwined constitutional, statutory, and military responsibilities, the National Guard, the active armed forces, and the reserves are now linked very closely; yet, the Guard remains partly independent as well. The Guard's unique status is exemplified by the fact that Guard members, unlike their counterparts in the active or reserve forces, take an oath both to their state constitution and to the United States Constitution.

The role of the National Guard during the 1991 Persian Gulf operations highlighted the Guard's place in the national defense structure. Equally important, however, is the Guard's role in domestic affairs under the command of the governors. Because the Guard is virtually the only military force immediately available to a governor, it plays a vital role in responding to natural disasters, civil disorders, and other emergencies. Constitutional authority aside, the states have a substantial, practical stake in the ongoing responsiveness and effectiveness of their Guard units.

Given the roles of the Guard in many aspects of domestic and foreign policy, it is not surprising that virtually all issues involving the National Guard have an intergovernmental component and need cooperative federal, state, and local decisionmaking. The Commission, therefore, presents its findings and recommendations about the National Guard's role in protecting the nation and the states with a view to improving intergovernmental relationships.

FINDINGS

1. The governors play a minimal role in training the Guard and integrating it into the U.S. Department of Defense Total Force Policy.

Recent events have demonstrated the limited role that state officials will play in controlling aspects of National Guard operations that relate to its national military role.

In its 1990 opinion *Rudy Perpich, Governor of Minnesota, et al. v. The Department of Defense*, the U.S. Supreme Court unanimously upheld a federal statute allowing the president to order members of a state's National Guard to active duty for training outside the United States even during peacetime, without either the consent of the governor or the declaration of a national emergency. The Supreme Court reiterated the generally accepted reality that the modern conduct of military operations has evolved into a function directed by the federal government. **AL-**most as an aside, however, the Court assured the states that they retain certain powers seemingly taken away by the opinion. Thus, the Court pointed out that if a call of

the Guard to federal active duty would interfere with a state's ability to address a local emergency, then the governor validly could veto the call-up. Further, even with the 1986 statutory authority given to the U.S. Department of Defense, a governor might legally withhold approval of a call-up to active duty "if the order was so intrusive that it deprived the State of the power to train its forces effectively for local service." The states also were assured that they could continue "the use of their National Guard units for any legitimate State purpose." The states, of course, must pay for any strictly state activities.

2. *Current decisionmaking regarding reductions in, and restructuring of, defense forces, particularly as they affect the number of National Guard troops and the distribution of equipment and skilled personnel, will have a substantial impact on the states and their ability to meet internal responsibilities.*

Plans announced in March 1992 by the U.S. Department of Defense call for a more than 30 percent reduction in the National Guard in each of the states. As a result, armories will close and communities may suffer economically. Of equal concern is that some state Guard units will lose personnel and equipment that may be vital for responding to natural disasters, civil disorders, and other emergencies. These reductions will occur at a time when many states are experiencing serious fiscal strain. On any given day, between 500 and 1,000 National Guard members are at work helping the states meet domestic needs.

Despite the importance of the National Guard to the states, no statutory body or advisory commission exists for the governors, collectively, to meet with the military or congressional policymakers to discuss these vital issues. Although the state adjutant general works closely with the Defense Department on the full range of operational issues, some of the most significant state policy and resource concerns fall outside their scope of influence. Those issues are most appropriately handled at the gubernatorial level. They include, but are not limited to:

- The number of National Guard troops in each jurisdiction and the type of units (e.g., engineering or military police) maintained within the state;
- The role of the Guard in responding to civil disorders and the training and equipment provided for such contingencies; and
- Compliance with federal, state, and local environmental protection laws and ordinances.

States have a strong stake in maintaining the National Guard's ability to respond to civil disorders and emergencies. Furthermore, they are in the best position to evaluate the consequences of any change in Guard resources as it affects these capabilities.

3. *It is essential to maintain the federal and state disaster relief and emergency assistance roles of the National Guard.*

The National Guard provides a wide range of relief services for states during emergencies. Guard personnel,

for example, were mobilized for assistance in massive clean-up efforts after crude oil spills like the 1989 accident in Prince William Sound, Alaska. They also provide emergency assistance during floods, airplane crashes, civil disturbances, earthquakes, hurricanes, power failures, and even for presidential inaugurations, to name just a few occasions. Without the National Guard, many states and communities could be overwhelmed by an emergency that could result in more fatalities and destruction of property.

The work of the National Guard in emergency situations, as well as providing disaster assistance, is indispensable to the states and the nation. Any reduction in the Guard's resource base may have negative consequences in communities that depend on their support to help manage emergencies. It is essential, therefore, that disaster relief and emergency assistance receive special attention when policies affecting the Guard are developed by the federal government.

4. *The use of National Guard units to respond to civil disorders remains an ongoing concern. Recent events have highlighted the need for recurring civil disturbance response training.*

The use of the National Guard to quell civil disorders in the 1960s and early 1970s in cities and on college campuses led to public debate over the role of the National Guard in responding to domestic disturbances, particularly the use of deadly force by the Guard. The adoption of specific Defense Department regulations on this topic and increased training by the Guard has reduced public concern about this issue.

Los Angeles's 1992 riot reminded America that occasional, large-scale civil disorders remain likely. As a result, the National Guard again may need to be mobilized by state or federal authorities to restore order under volatile circumstances.

Although minimum force is now emphasized by the Guard in responding to disorders, National Guard troops will be faced with potentially dangerous situations in which they will have to make decisions about the use of deadly force. Given the heavy fire power now available to many criminals, policies on the appropriate use of deadly force, designed to protect members of the Guard as well as civilians, require diligent oversight by federal and state officials. In particular, decisionmakers must ensure adequate, recurring training for the National Guard, and especially its officers, in support of this role.

5. *Participation by the National Guard in drug interdiction and anti-drug activities raises important intergovernmental issues.*

The National Guard's domestic role has been expanded to assist civilian authorities in their efforts to eradicate illegal drug activities in the United States. The Guard's role was strengthened by the 1989 *National Defense Authorization Act*, which authorized the loan and lease of specialized equipment to federal and state law enforcement agencies for those purposes. Guard members in state status, however, are prohibited by policy (although not by statute) from direct enforcement activities, such as arrest, search, and seizure. Today, Guard troops help patrol land entry points into the United States, and perform aerial reconnaissance and surveillance operations. Large-scale

anti-drug smuggling operations are now undertaken by the Guard in cooperation with law enforcement agencies. Lessons learned from these initiatives could lead to improvements in future operations. For example, cooperative agreements may lead to cost sharing between state and federal authorities in their quest to enhance drug interdiction activities.

- 6. National Guard compliance with federal, state, and local government environmental protection laws and ordinances needs continuing attention by the Guard. In addition, the Guard needs to give continuing attention to equal employment opportunity to ensure the progress of women and minorities into senior leadership positions, even as the Guard is downsized,*

The National Guard in recent years has encountered public criticism for its treatment of the environment. Some environmental groups have expressed concern about the Pentagon's use of a congressional waiver from fines for violations of the *Resource Conservation and Recovery Act* (RCRA).

Recognizing these difficulties, the National Guard has begun an initiative called the Environmental Compliance Assessment System (ECAS). This program is designed to help the Army Guard identify compliance deficiencies and develop corrective action plans to help achieve compliance. The entire assessment process or "cycle" is scheduled for completion by 1995. Compliance with federal and state environmental protection laws and regulations by the National Guard will require many years. Cleaning up large amounts of toxic wastes from numerous National Guard bases and facilities could become the biggest engineering project ever undertaken by the Guard.

With respect to equal employment opportunities, enlistment of minorities in the National Guard has risen substantially during the past two decades. Approximately 25 percent of all Guard troops are non-white, and more than 45,000 women belong to the Guard. The challenge to the National Guard leadership for the rest of the decade is to develop programs that ensure the progress of minorities and women into the senior leadership positions even as the Guard is being downsized.

- 7. Statutory policy requiring Guard units to be called up as complete components—to maintain their unit integrity and readiness—is not always followed.*

The governors, as commanders in chief of the National Guard, have an interest in their Guard units retaining their organizational and personnel integrity when called to active federal duty. From the perspective of state sovereignty and also federal/state comity, it would appear desirable that, wherever possible, Guard units retain their identification with their home states and communities. Combat efficiency, mutual trust and support, and the group spirit of the National Guard members are maximized when the unit in which they have trained is called up together and, if possible, retained intact.

Current Department of Defense interpretation of "unit integrity," however, leaves considerable organizational and personnel leeway. Defense Department regu-

lations provide that Guard units should be activated as such, but further defines units as groups of two or more individuals organized to perform a particular function. Experience under Operation Desert Storm again has raised the "unit integrity" call-up issue, as indicated by the recent report of the Reserve Force Policy Board.

- 8. Uncertainties about the availability of National Guard units to serve state purposes have caused some states to establish alternative "state defense forces."*

State defense forces are paramilitary, volunteer civilian militia that serve as a back-up force in the event the state's entire National Guard contingent is mobilized by the President. In addition, they provide important services to the public, for example, maintaining crowd control at large public gatherings. Twenty-four states have established state defense forces.

Forces in some of these states have had scandals because membership in these units has included neo-Nazis, mercenaries, survivalists, and violent felons, and because some units have engaged in questionable, unsupervised activities. State defense forces are faced with a number of problems regarding their role as both a combat force and a constabulary group. Many of these forces do not have minimum professional standards for recruitment, grade classification, training, and career development.

Although the state defense forces lack federal standing, the National Guard Bureau helps coordinate their activities. Several members of Congress have introduced legislation to increase the federal government's involvement with and support for these units.

- 9. Several states have authorized interstate mutual aid agreements in the event they lack sufficient capacity to respond to civil disturbances or natural disasters.*

Recognizing that emergencies may arise for which their own National Guard may lack sufficient manpower or equipment, several states have authorized mutual assistance compacts or agreements.

At the request of another compact member, for example, Virginia Guard troops may be sent outside the state and placed under the temporary command of officials in the requesting state. Specific provisions in the compact extend to out-of-state Guard members the same liability protections applicable to in-state Guard troops.

Vermont law does not set forth a specific compact, but simply authorizes the governor to enter into agreements or compacts for mutual military aid, "in case of invasion or other hostile action, disaster, insurrection, or imminent danger thereof." Similarly, Michigan's governor is allowed to enter into agreements with other governors for the deployment of Michigan Guard forces to their states, in time of "invasion, rebellion, public disaster, or catastrophe . . . for mutual assistance in the public interest."

Federal law authorizes these compacts, although the authorizing legislation was enacted in the early 1950s to help meet civil defense needs. Under present law, as modified by Executive Order, the Federal Emergency Management Agency is responsible for assisting states in formulating these agreements.

RECOMMENDATIONS

Recommendation 1

A Mechanism for Dialogue between Governors and the Department of Defense

The Commission finds that the shared state and federal roles of the National Guard, provided by the U.S. Constitution, are essential, desirable, and practical. Nevertheless, these roles constantly create a changing array of intergovernmental issues that need high-level policy attention. The Commission finds, however, that there is insufficient direct and meaningful consultation between the governors of the states, collectively, and the U.S. military establishment concerning intergovernmental issues.

The Commission recommends, therefore, that the Department of Defense, the National Guard Bureau, the governors of the states, Guam, Puerto Rico, and the Virgin Islands, and the mayor of the District of Columbia develop a more formal, expanded mechanism to analyze the issues involved in balancing the national and state roles of the National Guard.

That mechanism should address intergovernmental issues, such as the adequacy of National Guard forces within each jurisdiction to meet domestic needs; the study of military force structure authorized by Public Law 102-190, Section 402; and possible combination or coordination of certain Reserve and National Guard units. Issues for discussion also could include the need for diligent oversight of the use of deadly force in responding to civil disturbances; the National Guard's role in drug interdiction activities; the roles and relationships of state defense forces; Guard compliance with federal, state and local environmental protection laws and ordinances; maintenance of unit integrity; and continued progress toward meeting equal employment opportunity goals.

In addition, the Commission recommends that the National Guard have membership on the Joint Chiefs of Staff.

Recommendation 2

Special Study of Reserve Forces

The Commission finds that the study called for under Section 402 of Public Law 102-190, may be an invaluable vehicle for considering important issues regarding the future of the National Guard and other reserve forces, and the relationships between them. Under this provision, the Department of Defense must submit to the Congress "an assessment of a wide range of alternatives relating to the structure and mix of active and reserve forces appropriate for carrying out assigned missions in the mid- to late-1990s." The Commission finds, however, that the statute does not specifically require an assessment of the impact of alternative force structures on the National Guard's ability to meet its state responsibilities, nor does it

specifically require a study of the feasibility of combining the Army and Air Force Reserves with the National Guard.

The Commission recommends, therefore, that the study authorized by Public Law 102-190, Section 402, include an assessment of the impact of alterations in the force structure, including the mix of active and reserve forces, on the National Guard's ability to fulfill its state responsibilities. Furthermore, the Commission recommends that the study contain an assessment of the feasibility of combining the Army and Air Force Reserves with the National Guard.

Recommendation 3

Interstate Mutual Aid for Emergency Response Needs

The Commission finds that, as the nation's military forces are downsized in the coming years, the number of National Guard troops may be decreased and certain types of units and equipment in each state may be reduced to inadequate levels or even eliminated. The resulting reductions may leave some states, particularly the less populated ones, without the personnel and equipment necessary to respond adequately to natural disasters, civil disorders, and other emergencies.

Furthermore, the Commission finds that some states have authorized compacts of mutual aid to protect themselves in the event their own resources are insufficient to respond to a natural or civil emergency.

The Commission recommends, therefore, that all states authorize mutual aid agreements for emergency response purposes. Those states with interstate mutual assistance authority should review that authority and, if necessary, revise it to reflect contemporary conditions.

When necessary, the Congress should approve these compacts. Moreover, the Federal Emergency Management Agency, in accordance with its responsibilities under 50 U.S.C. App. 2283, should assist, as needed, in this effort.

Recommendation 4

Unit Integrity

The Commission finds that National Guard units are not identified by state of origin, nor are National Guard troops allowed to wear any insignia identifying their state affiliation, according to Defense Department policy. The Commission believes, however, that information identifying the home state of the unit would boost troop morale and would highlight the contribution of the states to the nation's defense and emergency response systems.

The Commission recommends, therefore, that Department of Defense policy be changed to allow state designation of Guard units, except when in federal service, and to allow Guard units to indicate their home state on uniforms and equipment.

Introduction

Two basic sources of organized military strength exist in the United States today: (1) the active Army, Air Force, Navy, and Marine Corps and (2) the organized Reserves of those services (e.g., the Army Reserve), including the National Guard.¹

The role of the Army, Navy, Air Force, and Marines in America's national defense and history is well chronicled. Less is known of the Reserves, which consist of the following: Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, Coast Guard Reserve,² Army National Guard, and Air National Guard.³

The National Guard, the subject of this report, is a centuries-old institution, with roots going back before the "Minutemen." The Guard plays a vital role in our national defense and emergency preparedness systems. Today, the Guard has emerged as the foremost reserve of the Army and the Air Force, capable, under the Total Force Policy, of providing organized and trained units to engage in missions shoulder to shoulder with elements of the active forces.

In 1992, the National Guard consisted of an estimated 584,000 personnel (see Appendix Table 1) organized into 54 separate state and territorial military commands (the 50 states, District of Columbia, Puerto Rico, Virgin Islands, and Guam), funded at an estimated \$9.9 billion!

An Intergovernmental Institution

The Guard's contribution to the national defense structure is so significant that it is sometimes forgotten that the Guard, unless called up for active duty by the federal government, is under the command of the governors. As such, Guard units play an important role in times of civil unrest or natural disasters because they are virtually the only military force immediately available to a governor. Their importance was illustrated during the May 1992 civil disturbances in Los Angeles.

The National Guard is a unique intergovernmental institution by virtue of the roles that both the federal and state governments play in its operations and governance. This status is exemplified by the fact that Guard members, unlike their counterparts in the active or reserve forces, take an oath to their state constitution and to the United States Constitution.

Joint federal/state management of the Guard, in some instances, has produced productive working relationships. Given the National Guard's dual domestic and national defense responsibilities and its supervision by the president, Congress, and the governors, it is not surprising that aspects of the relationship also have generated federal/state tensions. Most notably, disputes have arisen in the past over foreign training of Guard units, especially in Central America, which culminated in several gubernatorial lawsuits against the federal government.

Foreign training, however, has not been the sole source of controversy. As the Defense Department reconfigures its forces in light of changing international circumstances in the 1990s, the role of the National Guard is being hotly debated. For states that rely heavily on National Guard forces to assist them in responding to civil disorders, natural disasters, and other emergencies, the outcome of this debate is of utmost concern.

Although these have been the most visible intergovernmental issues involving the National Guard, other issues have generated debate between federal and state officials, including topics such as:

- 1) The role of the Guard in disaster relief, emergency assistance, and civil disorders;
- 2) The use of the Guard in drug interdiction and anti-drug activities;
- 3) The relationship of the state defense forces to the National Guard;
- 4) Compliance with federal, state, and local environmental laws and ordinances at National Guard facilities;
- 5) Equal employment opportunity; and
- 6) Maintenance of unit integrity after a Guard mobilization.

Despite their significance, little research and analysis have been conducted on these issues. **This** study aims to fill that gap by first examining constitutional balance in control of the Guard. It also examines the issues mentioned above and seeks ways to improve cooperation between the federal and state governments with regard to Guard operations.

Evolution of an Idea

The National Guard was conceived as an artful com-

promise between the powers of the federal government and the states. Two centuries later, this institution continues to evolve and adapt to national and state needs.

Today, the National Guard fulfills a vital national defense role. National defense planning **has** integrated state National Guard units into crucial combat, combat support, and combat service support elements of the nation's military forces. Federal support for National Guard staffing **and** equipment has expanded in recent **years**. **As** a result, almost half of Army combat units and over one-third of **Air** Force operational capabilities consist of National Guard units.

At the same time, the Guard is an indispensable element in each state's ability to respond to natural disasters, civil disturbances, and other emergencies. From time to time, these **two** roles come into conflict.

Knowledge about the historical **origins** of the Guard and its evolution **as** an intergovernmental institution is important to developing an understanding of federal-state conflicts over Guard operations. Chapter 2 provides that perspective.

Notes

¹ These are supplemented by the trained personnel available to each service through its former members.

² Although a "military service and a branch of the armed forces of the United States," the Coast Guard is in the Department of Transportation, except "[u]pon the declaration of war or when the President directs," at which time it shall be a service in the Navy. 14 U.S.C. Secs. 1 and 3.

³ 10 U.S.C. Sec. 261.

⁴ Of this amount, approximately 95 percent is provided by the federal government. See Appendix Tables 2-4 for federal appropriations figures.

The Colonial Militia

The National Guard predates the founding of the nation and a national military by almost a century and a half.¹ America's first permanent militia regiments, among the oldest continuing units in history, were organized by the Massachusetts Bay Colony in 1636.² Since that time, the Guard has participated in every U.S. conflict from the Pequot War of 1637 to Operation Desert Storm in 1991.³

According to National Guard historians, the greatest influence on the Guard was the English military ideas brought by the first settlers. These ideas initially were based on the view held by medieval Englishmen "that every free, able-bodied male had the obligation to furnish his own weapons and turn out under local leaders to defend the realm. . . . By the late 1500s, when Englishmen were beginning to plan colonies in the New World, the militia had been separated into two categories. Most individuals would serve only in a crisis, such as the approach of the Spanish Armada in 1588. A select number, however, were grouped into trained bands and voluntarily held periodic musters for training."⁴

In England, control over this force was not in dispute, as the growing power of the Parliament preserved civilian control over the king's small army. The elected assemblies, or legislatures, were to do the same in the colonies. With the coming of the American Revolution, however, colonialists began agitating for a capable militia that could take on the British Army. Colonists organized voluntary military companies for extra training. Those actions evolved and, in 1774, the Massachusetts Committee of Safety created a select militia force ready to turn out at a minute's notice—the "minute men."⁵

Constitutional Developments

Going into the Constitutional Convention of 1787, the role of the militia in any new federal government was one of the most vigorously debated subjects. Prompting this concern was the absence of a unified defense for the new country during Shays' Rebellion in 1786. In that episode, the Commonwealth of Massachusetts resisted attempts by the confederated government to send armed forces to suppress the rebels.

Generally, states had been relied on for money and men to equip the army and had been unreliable suppliers. As a result, "the need for a more viable national military force was generally recognized."⁶

The majority of the convention's members wanted to rely on the state militias as a federal defense force to avoid maintaining a large standing army. They would be based in the states but created mainly for defense of the nation.⁷ At the same time, there was considerable support for allowing the states to retain control over their respective militias. That was because "a national military force had been a symbol of tyranny for many colonists and one which they did not want their new government to repeat."⁸ Thus, the final product was an artful compromise between the power of the federal government and that of the states, producing shared authority over military power.

Chapter 2

History of the Guard

Militia Clauses

Specifically, Article I, Section 8 of the U.S. Constitution contains a series of “militia clauses,” vesting distinct authority in the federal government and the state governments.

Clause 14 provides that the Congress has three constitutional grounds for calling up the militia: “to execute the laws of the Union, suppress insurrections, and repel invasions.” All three standards appear to be applicable only to territory of the United States.

Clause 15 gives the Congress the power “[t]o provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States.” That same clause specifically reserves to the states the authority to establish a state-based militia, to appoint the officers, and to train the militia according to the discipline prescribed by the Congress. As written, the clause seeks to limit federal power over state militias during peacetime.

Armies Clause

The “armies clause” in Article I, Section 8 conferred on the Congress the power to provide for the common defense of the United States, declare war, raise and support armies, and make rules for the “government and regulation of the land and naval Forces.” The Congress also was granted authority to make all laws “necessary and proper” for carrying out such powers. Under this provision, congressional power over the National Guard appears to be “far-reaching.”⁹

Other Relevant Provisions

Other sections add to the constitutional underpinnings of our national defense structure. Article I, Section 10 provides that no state, without the consent of the Congress, shall keep troops or ships of war in time of peace, or engage in war unless actually invaded. This section was qualified, however, by the Second Amendment to the Constitution, which was intended to prevent the federal government from disarming the militia.¹⁰ Part of the Bill of Rights that the Anti-Federalists insisted on, this section states: “A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.”

In addition, Article IV, Section 4 provides that the federal government “shall guarantee to every state in this Union a republican form of government,” and shall protect each of the states against invasion. At state request, the federal government was to protect the states “against domestic violence.” Through these provisions, the potential for both cooperative federalism and for tension between the “militia” and “army” clauses was built into the Constitution.

As a result of the constitutional compromise, Article I, Section 8 grants the federal government explicit authority to raise and maintain land and sea forces in peacetime as well as in wartime. Article II, Section 2 placed all forces, including the militia when in federal service, under the control of the executive branch by making the president the commander-in-chief. Article I, Section 8 gave ultimate control to the Congress, however, by granting it the

sole power to collect taxes to pay for the military, to declare war, and to employ the militia for common purposes of internal security. Existing state militias could be maintained, although troops could be called into national service.” But the founding fathers moderated that authority by leaving the individual states with the explicit responsibility for appointing militia officers and for supervising peacetime [domestic] training of the citizen-soldiers.¹²

Wars Affect Composition and Role of Militia

Federal policymakers subsequently built on the foundation laid in the Constitution to expand and clarify the role of the militia.

President George Washington, a former militiaman himself, was a leader in this effort. An advocate of a strong militia, he desired “national uniformity in organizing and training these units to avoid the chaos experienced during the Revolution when militia forces mobilized to support the Continentals.”¹³ To accomplish that goal, Washington hoped to divide the militia into two categories: (1) young men who would be intensively trained (including summer camps) to serve as the mobilization forces; and (2) older men who would remain in a lesser state of readiness to provide for local needs.¹⁴

Despite Washington’s views, Congress voted for a less ambitious program. The *Militia Act of 1792*¹⁵ required all able bodied men aged 18-45 to serve, to be armed, to be equipped at their own expense, and to participate in annual musters.¹⁶ From that pool of individuals, the law provided for “two categories of militia, but in a less expensive and less centralized form. The vast majority of individuals would continue to serve in the common militia, just as they had in the past. A volunteer militia, similar to the Minutemen of 1775, would be the actual ready reserve. These volunteer militia units would consist of men willing to buy their own uniforms and equipment, and to undertake extra training without pay. . . . The 1792 act established an idea of organizing these militia forces into standard divisions, brigades, regiments, battalions, and companies,”¹⁷ as directed by the state legislatures.

For the 111 years that it remained in effect, this act “defined the position of the militia in relation to the federal government.”¹⁸ Most noteworthy was the fact that it did not call for any inspection of a state’s militia by the federal government. Nor did it specify any penalties for noncompliance with the law. It did establish the post of adjutant general in each state, however, and required each brigade to have a brigade inspector.¹⁹

Another key piece of legislation, passed three years later, contained a congressional delegation of authority to the president. It authorized the chief executive to call forth the militia “whenever the United States shall be invaded, or be in imminent danger of invasion from any foreign nation or Indian tribe.”²⁰ In the case of “an insurrection in any state,” the president also was allowed to call out the militia, “on application of the legislature of such state, or the executive (when the legislature cannot be convened).” Sanctions were leveled against those who failed to respond. Service was limited, however, to no

more than three months in **any year**.²¹ A later modification also provided federal funds to the states to purchase weapons for those men too poor to buy their own.

This approach produced varied results. Some states, such as New York, Massachusetts, Connecticut, and Pennsylvania, maintained a strong militia on their own initiative. Other states, unwilling to finance the endeavor, allowed their militias to fall into decline. "In many parts of the country, the once-a-year muster of an untrained, un-uniformed militia company became a subject for ridicule. In other areas, the militia did not muster at **all**."²²

The War of 1812 tested this unique American defense establishment. To fight that war, "the new republic formed a small regular military, trained it in accordance with European standards, and employed it to protect the frontiers and coastlines. Although it performed poorly in the offensive against Canada, this small force of regulars, when backed by a well-armed militia, accomplished its defensive mission in the War of 1812. Generals like Andrew Jackson proved, just as they had in the Revolution, that regulars and militia could be effective when employed as a **team**."²³

"While the unorganized, or enrolled, militia (as established by the *Militia Act of 1792*) was dying a slow death in most areas of the country, a different kind of militia organization was taking its place following the War of 1812. Groups of men interested in military drill and camaraderie were forming volunteer militia **companies**."²⁴ The first half of the nineteenth century saw explosive growth of such militia.

These volunteers "paid for their own uniforms, which were often quite elaborate, and for most of their equipment. After they were firmly established, the volunteer units could apply for a charter from the state, and their officers received commissions. As the enrolled militia declined, many states began to rely completely upon the volunteer units, and spent all of their limited federal arms and equipment subsidy on **them**."²⁵

Throughout this period, the volunteer militia was primarily an urban institution. Fueling its growth was an increasing number of European immigrants in the 1840s and 1850s. Most prominent in the cities and towns in which they settled were the Irish and German volunteer companies, with names like the "Hibernian Guards" and the "German Brigade." Louisiana's Creole units conducted drills in French, and units comprised of Scotsmen outfitted themselves in **kilts**.²⁶

Civil War and Reconstruction

With the coming of the Civil War, state militias played a pivotal role, as might be expected. "Because the Regular Army was so small throughout the nineteenth century," and no reserves existed, "the majority of the U.S. Army units which carry Civil War battle honors are from the Army National Guard."²⁷

After the four long years of war, there was "no rush to revive the pre-war volunteer units from which so much of the Union Army was **formed**."²⁸ In the former Confederacy, however, "the situation was different. The southern militia units were quickly reformed; one of their main duties was to enforce the 'Black Codes' which the reorga-

nized state governments had passed to assure the legal inferiority of former **slaves**."²⁹

In 1867, the Congress suspended the southern states' right to organize their militias until a state was firmly under the control of an acceptable **government**.³⁰ Units formed under these governments included many former slaves. "The sporadic violence which often resulted did not abate until 1876, when Reconstruction officially ended. The Republican militia units in the South were promptly disbanded, although black militia units were to survive in Alabama, North Carolina, Tennessee, and **Virginia**."³¹

In addition to enforcing martial law in the South during Reconstruction, the U.S. military was called on to complete a variety of tasks following the Civil War, although the citizenry feared a large standing Army. These tasks included aiding revenue officers in suppressing illegal production of whiskey and assisting state and local officials in quelling labor disturbances.

Expansion of the military's role in domestic life, however, did not occur without debate or response. Reaction to the use of the Army in suppressing labor unrest in the North and guarding polls in the South during the 1876 election, for example, led to congressional enactment of the *Posse Comitatus Act* in 1878. Designed to limit the president's use of military forces in peacetime, this statute provided that:

it shall not be lawful to employ any part of the Army of the United States. . . for the purpose of executing the laws, except on such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress. . . .³²

Concern over this new domestic role also led the states to "reexamine their need for a well-equipped and trained militia, and between 1881 and 1892, every state revised the military code to provide for an organized **force**."³³ Most called their state militias the "National Guard," following New York's example. Nineteen states also established naval forces between 1880 and 1900 (only New York's survives as a federally recognized **force**).³⁴

The Militia in the 20th Century

When the United States declared war on Spain in 1898, the president did not have the legal right to "federalize" the militia. As a result, National Guard units had to volunteer as individuals. Unit integrity was maintained, however, as units were sworn in as individuals (often taking the oath en masse), but kept their previous structure by reelecting their officers and noncommissioned officers. Some 165,000 Guard members, representing every state, entered federal military service in this way.³⁵

"Despite the difficulties of fighting in a strange environment, the 13,000 Guardsmen who served in the Philippines acquitted themselves well. . . . Perhaps more than any other major campaign in American history, the success of the first year's fighting in the Philippines belongs to the National Guard."³⁶ Regardless of the Guard's success, The Spanish-American War demonstrated that, if the U.S. was to be successful in its new role as an international power, its military forces were in need of serious **reform**.³⁷

Dick Act of 1903

Beginning in 1903 through the 1920s, legislation was enacted that strengthened the National Guard as a component of the national defense force. Despite rivalry between the regular Army and the Guard, the *Dick Act of 1903*³⁸ was passed, replacing the 1792 *Militia Act* and affirming the National Guard as the Army's primary organized reserve. The 1903 law "opened the way for increased federal control over the Guard."³⁹ If a state wanted to share in the significantly increased federal funds that the *Dick Act* made available, units had to subject themselves, for the first time, to inspection by Regular Army officers. In addition, they were required to maintain specified unit strengths. The act also directed Guardsmen to attend 24 drills per year and five days of annual training, supervised by regular Army instructors. For the first time, federal pay was provided for annual training, although not for drills.⁴⁰

Under the provisions of this legislation, the president must call out the Guard before taking volunteers for military service. The *Militia Act of 1908*⁴¹ increased militia appropriations to \$4 million, and lifted the previous restriction of nine months active duty time in case of national emergency. Through his call, the president could "specify the period for which such service is required, and the militia so called shall continue to serve during the term so specified, either within or without the territory of the United States. . . ."⁴² In 1912, the attorney general nullified this provision by ruling that the president could not employ the militia outside of the United States.⁴³

A new supervisory structure also was established by the 1908 act with the creation of the National Guard Bureau as a Division of the Militia Affairs, Office of the Secretary of War.⁴⁴ (Later, it was redesignated as the Militia Bureau and in 1933, it became the National Guard Bureau.)

National Defense Act of 1916

The *National Defense Act of 1916*,⁴⁵ further expanded the Guard's role in national defense (although its primary objective was to create the military reserves). One significant provision required new Guardsmen to take an oath to the United States as well as to their state. Section 62 of the act declared that there would be at least 800 National Guardsmen for each congressional district.⁴⁶ It also guaranteed the state militias' status as the Army's primary reserve force. Furthermore, the law mandated use of the term "National Guard" for that force.⁴⁷

Some autonomy had to be surrendered, however, in order to get this recognition. The *National Defense Act* prescribed that qualifications for National Guard officers would be determined by the War Department, that each unit would have to be federally recognized, and that units would be organized in accordance with Army organization patterns. States could not disband their militias without presidential approval. Power was given to the federal government to cut off federal funds for noncompliance. Other provisions specified fiscal and enlistment procedures, strength requirements, and school training requirements, among other requirements.⁴⁸

Moreover, the President was given the authority, in case of war or national emergency, to mobilize the National Guard for the duration of the emergency. The number of yearly drills increased from 24 to 48, and annual training from five to 15 days. Drill pay was authorized for the first time.⁴⁹

Due to continued opposition from the Regular Army, the status of the National Guard remained uncertain after World War I "despite the distinguished war record of many National Guard divisions. . . . The Regular Army remained unhappy with the Guard's state ties, and some distinguished Guardsmen agreed that a 48-state force could be unwieldy."⁵⁰

Subsequent legislation

The *National Defense Act Amendments of 1920*⁵¹ did not resolve this controversy. The act decreed that the chief of the Militia Bureau would be a Guard officer, that Guard officers would be assigned to the general staff, and that the divisions, as used by the Guard in World War I, would be reorganized.⁵²

Subsequent amendments to the act, the *National Guard Mobilization Act of 1933*,⁵³ created the National Guard of the United States as a component of the Army. As "part of the Army at all times," the new Guard, "could be ordered into active federal service by the President whenever Congress declared a national emergency."⁵⁴

During the period between the two World Wars, the only noteworthy development, although a substantial one, took place in 1921, when the federal government recognized the first National Guard airborne reconnaissance squadron. By 1930, 18 of these units had been created,⁵⁵ setting the stage for the creation of the *Air* National Guard in 1947.

Later legislation added to federal oversight of the Guard by officially creating the Reserve Forces Policy Board of the Department of Defense.⁵⁶ The board traced its origin to the Committee on Civilian Components, established by President Harry S. Truman in 1947, and had the responsibility of serving as the "principal policy advisor to the Secretary of Defense on matters relating to the reserve components."⁵⁷

In a related development, the National Guard Bureau was reorganized into Army and *Air* Force divisions in 1950, although the bureau did not become a joint activity of the departments of the Army and Air Force until 1958.⁵⁸

After the Korean conflict, the National Guard faced controversy about its role in the nation's defense structure. Landmark legislation, the *Reserve Forces Act of 1955*,⁵⁹ barely mentioned the Guard, except to require six months of basic training for all Army recruits (Guard members included). This rule conflicted with the National Guard's practice of providing its own training. By 1960, the Guard relented and complied with these training requirements.⁶⁰

One of the most significant nonlegislative developments occurred in 1957, when President Dwight D. Eisenhower federalized the Arkansas National Guard to prohibit it from assisting in enforcing segregation? That action, one observer explains, "ended forever any lingering states' rights mythology in the role of the Guard as defenders of the liberties of the states against federal interference."⁶²

Adoption of the Total Force Policy

In 1973, a substantial change occurred in the National Guard's mission with the adoption of the Total Force Policy (TFP). This policy, developed with the concurrence of the governors and National Guard officials, requires that all of the active and reserve military organizations of the United States be treated as a single integrated national defense force.⁶³

TFP places increased reliance on the Guard and the Reserves as a combat-ready part of the total military force structure, while at the same time reducing the federal government's dependence on the full-time, active defense forces and trimming the overall cost of defense programs. As a result, the National Guard's federal mission has been extended through training and assignment around the globe." Guard personnel have served with the North Atlantic Treaty Organization in Europe, and in Central America and the Middle East. (See Chapter 6 for further discussion of this subject.) As a result of this policy, federal support for the Guard has increased dramatically as well, with federal funding rising from approximately 65 percent in 1933 to more than 90 percent currently.⁶⁵

Conclusion

Historically, the National Guard has been a key component of national defense, fighting in all of this nation's major conflicts. The Guard provides a trained and capable military force, able to provide rapid augmentation and reinforcement in time of call or mobilization.

Despite its development as a key component of national defense, the Guard also has retained strong constitutional and institutional ties to the individual states, a unique accomplishment. The next chapters look at the contemporary Guard in its roles as both a federal and a state institution.

Notes

¹ Jim Dan Hill, *The Minute Man in Peace and War: A History of the National Guard* (Harrisburg, PA: The Stackpole Company, 1964). For additional information on the history of the Guard, see John K. Mahon, *History of the Militia and the National Guard* (New York: Macmillan, 1983) and R. Ernest Dupay, *The National Guard: A Compact History* (New York: Hawthorn Books, 1971).

² Robert K. Wright, Jr., and Renee Hylton-Greene, *A Brief History of the Militia and the National Guard* (Washington, DC: National Guard Bureau, 1986), p. 2. These regiments and the troops that fought at Lexington and Concord are still active units of the Massachusetts National Guard. Pennsylvania, given its settlement by pacifist Quakers, trailed the other colonies in creating a militia. A mandatory militia was not established until 1777.

³ U.S. Department of Defense, Departments of the Army and Air Force, National Guard Bureau, *Annual Review of the Chief, National Guard Bureau* (Washington, DC, 1992), p. 2.

⁴ Wright and Hylton-Greene, *A Brief History of the Militia and the National Guard*, p. 1.

⁵ In effect, the committee was a "shadow" government representing the revolutionary, or Patriot, sympathizers. See Wright

and Hylton-Greene, *A Brief History of the Militia and the National Guard*, p. 3.

⁶ Peter A. Fish, "The Constitution and the Training of National Guardsmen: Can State Governors Prevent Uncle Sam from Sending the Guard to Central America?" *Journal of Law and Politics* 4 (Winter 1988): 597.

⁷ Samuel J. Newland, "The National Guard: State versus National Control," *Public Administration Review* 49 (January/February 1989): 69.

⁸ Ibid.

⁹ Fish, "The Constitution and the Training of National Guardsmen," p. 603.

¹⁰ Wright and Hylton-Greene, *A Brief History of the Militia and the National Guard*, p. 9.

¹¹ Fish, "The Constitution and the Training of National Guardsmen," p. 601.

¹² Wright and Hylton-Greene, *A Brief History of the Militia and the National Guard*, pp. 10-11.

¹³ Ibid, p. 9.

¹⁴ Ibid.

¹⁵ The Militia Act was two pieces of legislation passed during the same month (1 Stat. 264 and 1 Stat. 271). Ibid.

¹⁶ Fish, "The Constitution and the Training of National Guardsmen," p. 604.

¹⁷ Wright and Hylton-Greene, *A Brief History of the Militia and the National Guard*, p. 10.

¹⁸ Ibid.

¹⁹ 1 Stat. 271, Secs. 6 and 10.

²⁰ 1 Stat. 424.

²¹ 1 Stat. 424, Sec. 4.

²² Wright and Hylton-Greene, *A Brief History of the Militia and the National Guard*, p. 10.

²³ Ibid, p. 13.

²⁴ Ibid, p. 14.

²⁵ Ibid.

²⁶ Ibid., pp. 14-15.

²⁷ Ibid., pp. 19-20.

²⁸ Ibid., p. 21.

²⁹ Ibid.

³⁰ 14 Stat. 485, Sec. 6 (enacted March 2, 1867).

³¹ Connecticut, Illinois, Kansas, Ohio, and the District of Columbia also had black militia units. Wright and Hylton-Greene, *A Brief History of the Militia and the National Guard*, p. 21.

³² 20 Stat. 145 (1878).

³³ Wright and Hylton-Greene, *A Brief History of the Militia and the National Guard*, p. 22.

³⁴ Ibid.

³⁵ Ibid., p. 23.

³⁶ Ibid., p. 25.

³⁷ Ibid., p. 26.

³⁸ 32 Stat. 775.

³⁹ Wright and Hylton-Greene, *A Brief History of the Militia and the National Guard*, p. 27.

⁴⁰ Ibid.

⁴¹ 35 Stat. 399.

⁴² 35 Stat. 399, Section 4.

⁴³ 29 Opin. of the Attorney General 322 (1912). For further legislative history and background, see Wright and Hylton-Greene, *A Brief History of the Militia and the National Guard*, pp. 29-32.

⁴⁴ 35 Stat. 399, Section 11.

⁴⁵ 39 Stat. 166.

- ⁴⁶ At the time, this resulted in a 400,000-member National Guard. Based on the current composition of Congress, a 428,000-member force would be required.
- ⁴⁷ Wright and Hylton-Greene, *A Brief History of the Militia and the National Guard*, p. 27.
- ⁴⁸ *Ibid.*, pp. 27-28.
- ⁴⁹ *Ibid.*
- ⁵⁰ *Ibid.*, p. 35.
- ⁵¹ 41 Stat. 759.
- ⁵² Wright and Hylton-Greene, *A Brief History of the Militia and the National Guard*, p. 35.
- ⁵³ 48 Stat. 153.
- ⁵⁴ Wright and Hylton-Greene, *A Brief History of the Militia and the National Guard*, p. 35.
- ⁵⁵ *Ibid.*, pp. 35-36.
- ⁵⁶ 70A Stat. 1(1956).
- ⁵⁷ 10 U.S.C. 175(c).
- ⁵⁸ Wright and Hylton-Greene, *A Brief History of the Militia and the National Guard*, p. 44.
- ⁵⁹ 69 Stat. 598.
- ⁶⁰ Wright and Hylton-Greene, *A Brief History of the Militia and the National Guard*, p. 41.
- ⁶¹ Samuel J. Newland, "The National Guard: Whose Guard Anyway?" *Parameters* 18 (June 1988): 50 (note 27).
- ⁶² George J. Stein, "State Defense Forces: The Missing Link in National Security," *Military Review* 64 (September 1984): 5.
- ⁶³ Implementation of the Total Force Policy closely corresponded with the end of national selective service and its replacement by the all-volunteer force.
- ⁶⁴ The first Army National Guard overseas training mission occurred in 1977. Wright and Hylton-Greene, *A Brief History of the Militia and the National Guard*, p. 51.
- ⁶⁵ Stein, "State Defense Forces: The Missing Link in National Security," p. 7.

The National Guard Today

From its origins as a self-equipped, volunteer militia in colonial times, the National Guard has emerged as a well-armed fighting force and a valuable component in the nation's emergency preparedness network. This chapter provides a snapshot of the Guard today.

Army and Air National Guards

Army and Air National Guard units are located in approximately 3,200 communities in the 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam. More than 584,000 individuals served in the Guard during fiscal year 1992 (see Appendix Table 1). Federal law clearly sets forth the purposes of the National Guard and the armed forces reserves:

The purpose of each reserve component is to provide trained units and qualified persons available for active duty in the armed forces, in time of war or national emergency and at such other times as the national security requires, to fill the needs of the armed forces whenever, during, and after the period needed to procure and train additional units and qualified persons to achieve the planned mobilization, more units and persons are needed than are in the regular components.'

Furthermore, federal law provides that "to secure a force of units which, when combined, will form complete higher tactical units, the President may designate the units of the National Guard. . . to be maintained in each state and territory, . . ." with organization and composition the same as for the Army and *Air Force*.²

The federal government, therefore, determines the number of authorized National Guard personnel and the unit mix available across the country.³ However, federal law reserves to the states authority to locate the units and their headquarters. Moreover, federal officials may not change any branch, organization, or allotment "located entirely within a state" without the approval of the governor.⁴

Detailed federal guidelines, both statutory and regulatory, govern the organization and operation of the National Guard. Regulations issued by the National Guard Bureau spell out the policies, procedures, and responsibilities of the Guard, and provide guidance for the employment of *Army* and *Air* National Guard units, personnel, and equipment in support of state and *local* government authorities?

According to law, individuals with no previous military service may enlist in the Guard for a specified term set by the secretary of defense, which must be at least three years. Those with previous military service may enlist for any specified term, with a one-year minimum. Defense Department regulations permit extension of enlistments for at least six months, at the Guard member's request. If the Congress declares a national emergency, however, enlistments may be extended involuntarily for a maximum period of six months after the end of the emergency.'

By law, Guard members must complete at least 15 days of active duty training each year and one weekend of inactive duty training per month.⁷ When called to federal active duty, members are relieved of their state Guard responsibilities for the duration of federal service.⁸

Army National Guard

National Guard members make up almost 60 percent of the active Army.⁹ That figure has remained fairly constant since 1950, although from the 1700s through World War II, the Guard was usually substantially larger than the active Army¹⁰ (see Table 3-1).

Table 3-1
Army National Guard as a Percentage of the Army

Year	Number of Guard Members	Army Active	Guard as Number of Percent of Actives ^a	Guard as Percent of Total Army
1903	116,547	69,595	67%	14%
1916	132,194	108,393	122	14
1930	182,715	139,378	131	14
1940	241,612	269,023	90	14
1950	352,863	593,167	59	23
1960	407,549	873,078	47	22
1975	403,057	781,316	52	19
1985	450,696	780,787	58	19
1989	456,960	769,741	59	19

^a Excludes members of Reserve.

Source: National Guard Bureau, "Discussion Paper: National Guard Force Structure" (undated), p. 2.

In FY 1992, the Army National Guard accounted for an estimated 439,000 personnel, 75 percent of the total Guard (see Appendix Tables 1 and 5). The Army Guard grew by more than 80,000 soldiers during the 1980s build-up.¹¹ In FY 1991, Army Guard forces provided 44 percent of the combat units, 31 percent of total combat support, and 25 percent of the combat service support units of the total Army.¹²

The fiscal year 1993 Army Guard appropriation request was approximately \$5.8 billion (see Appendix Tables 2 and 3). That compares with total expenditures of \$2.1 billion in fiscal year 1981 and \$5.8 billion in fiscal year 1991 for personnel, operations and maintenance, and military construction programs.

Air National Guard

The Air National Guard has a much smaller force of approximately 145,252 (see Appendix Tables 1 and 5). In 1991, Air Guard units provided more than 90 percent of peacetime alert forces and contributed 86 percent of Air Force tactical reconnaissance capability.¹³ Its fiscal year 1993 appropriation request totaled \$4.3 billion (see Appendix Tables 2 and 4).

Federal Salary and Fringe Benefits

Like other members of the nation's armed forces, National Guard members are paid by the federal government for their federal service. Defense Department regulations may set different rates of compensation for the uniformed services, the National Guard, and the reserve components.¹⁴

In addition to a salary, members of the National Guard are entitled to a number of federal benefits and allowances during their enlistment. The benefits are uniform regardless of the state of residence, but they vary by the category of service—inactive duty for training (drill), active federal duty for training, and active duty.¹⁵

Guard members who are on inactive duty for training usually are eligible for full-time Serviceman's Group Life Insurance; military exchange privileges; medical care for injuries incurred while traveling to and from drills; access to military clothing sales stores, open mess facilities, post theaters, and transient billets, if available; medical aid; space-available air transportation; and authorized survivor benefits.

For Guard members on active duty for training or active duty, benefits usually include access to most military and base post facilities, including exchange and commissary facilities and open messes; limited medical and dental care; and access to most base post recreational and entertainment facilities. Other benefits include a 6 percent interest rate cap on debts incurred before Guard members are called up for active duty.¹⁶

Integration of the Guard Into the Armed Forces

As a full partner in implementation of the Total Force Policy, the Army and the Air National Guards have assumed a critical role in the nation's defense strategy. They are responsible for 100 percent of the Army light antitank infantry battalions, infantry scout troops, and heavy helicopter companies.¹⁷ As of 1990, they provided 92 percent of the Air Force's continental U.S. strategic interceptors, 51 percent of the field artillery battalions, 49 percent of maintenance units, 35 percent of tactical airlift, 32 percent of communications units, and 24 percent of air rescue.¹⁸

Under Army plans, each State Area Command of the National Guard (Joint State Area Commands on Mobilization) is assigned to conduct peacetime planning and training, and postmobilization execution for the security of key Defense Department assets and critical facilities. In a worst-case scenario, based on a massive security threat, this responsibility has been estimated to justify more than 200,000 National Guard positions.¹⁹

Specific instructions are given for the responsibilities of federal active duty Guard units during natural disasters and other federal emergencies and during counter-terrorism operations. With respect to civil disturbance support operations, for example, the regulations make clear that

the protection of life and property and the maintenance of law and order, within the territorial jurisdiction of any State, are the primary responsibilities of civil authorities. The National Guard is employed only after all other local and State resources have been fully utilized, or when the situation is beyond the capabilities of the local and State civil authorities. National Guard assistance is provided in support of civil authorities, not to replace civil authority command jurisdiction. National Guard forces will remain under the com-

mand of National Guard officers, and all missions will be executed through the National Guard chain of command.”

Federal Supervision of the Guard

As discussed in Chapter 2, the Guard is governed in part by the National Guard Bureau, which is a joint agency of the departments of the Army and the Air Force. The bureau is directed to be “the channel of communication between the departments concerned” and the state and territorial Guard units “on all matters pertaining to the National Guard. . . .”²¹

The National Guard Bureau formulates and administers programs for training, development, and maintenance, and acts as the channel of communications between the states and the departments of the Army and the Air Force. As a staff agency, the bureau participates with the Army and Air Force chiefs of staff in developing and coordinating Guard programs. In particular, the bureau chief serves as the principal staff advisor to the Army and the Air Force on National Guard affairs. The chief reports to the secretaries of the Army and Air Force through the chiefs of staff.²² Within the bureau’s staff also is a “Joint Offices” group that is responsible for all matters pertaining to the Army and Air Guards. On January 1, 1992, the bureau had an authorized staffing level of 455 persons (219 military and 236 civilians).²³

The bureau chief is appointed by the president, with the advice and consent of the Senate. Individuals selected for the post hold office for a four-year term and may be reappointed once. To be eligible for nomination, an individual must:

- 1) Be an officer of the Army or Air National Guard;
- 2) Receive the recommendation of the governor;
- 3) Have at least 10 years of commissioned service in the active Guard; and
- 4) Be in a grade above lieutenant colonel.²⁴

The chief issues regulations governing operations of the Guard by virtue of authority granted by the secretaries of the Army and Air Force. The chief has no command authority, but controls the resources distributed to the state Guard organizations and is responsible for maintaining combat readiness. The chief may grant or withdraw federal recognition of units and officers, pursuant to the standards of the respective departments.²⁵

A second governing body, the Reserve Forces Policy Board, is composed of members of the Reserves, representatives from the active components, and appointees of the defense secretary.²⁶

The board, acting through the assistant secretary of defense for Reserve affairs, is the principal policy adviser to the secretary of defense on Reserve matters. Board members may act on matters referred to them by the chair, who is a civilian, or by a member of the board.²⁷

Full-Time Personnel

In addition to the part-time Army and Air National Guard members, federal law provides for full-time support

personnel, A maximum of 53,100 additional technicians may be employed under this authority, who may be active state Guard personnel paid by the federal government or military technicians. They perform a number of functions in administration, training, and maintenance and repair.²⁸

For many years, the technicians were considered state employees, even though their salaries were paid entirely from federal funds. Fringe benefit programs (e.g., retirement and health and life insurance) depended on each state.²⁹ Because the Guard offered no uniform fringe benefits, problems were experienced in competing for skilled personnel. This dual state/federal condition also caused problems regarding a technician’s legal status in claims against the government arising from accidents occurring within the scope of employment.³⁰

The *National Guard Technician’s Act of 1968*³¹ authorized federal employee status for technicians, set forth a fringe benefit program, clarified the technicians’ legal status by placing them under the *Federal Tort Claims Act*, and recognized the military and state characteristics of the technician program. Under this law, approximately 42,000 National Guard technicians were converted from state to federal status on January 1, 1969.³²

Strong Grass Roots Support

The Guard has long benefited from strong grass roots support.

The armory has long been the center of community social life in many small towns. Fifty state National Guards are able to bring political pressure to bear on members of the Congress through Adjutants General and Governors and through the Washington-based National Guard Association.³³

The National Guard Association of the United States (NGAUS) was created in 1878 to provide united National Guard representation before Congress. The association represents approximately 56,000 commissioned officers and warrant officers of the Army and Air National Guard. In describing its history and mission, NGAUS says,

In the first constructive meeting of the officers of the North and South after Reconstruction, the organizational meeting of NGAUS had a goal of obtaining better equipment, standardized training and a more combat-ready force by petitioning Congress for resources. NGAUS today, well over a century later, has the same mission.³⁴

To those goals should be added the “successful continuation of the unique, historic, dual federal and state mission of the National Guard [and ensuring] that the National Guard continues to be recognized as a key element in the Total Force.”³⁵

Martha Derthick traced the history of the National Guard Association of the United States and concluded:

The political record of the Guard in years following World War II is imposing. . . . The NGA’s goals, after all, were not radical. The NGA was after “wherewithal,” in General Walsh’s happy

phrase. In asking men, money, and material, the Guard was seeking only to retain the position it had held throughout the century as the Army's first-line reserve force. . . . The Guard's goals were essentially defensive. In advancing them, the NGA had the advantage of speaking for a recognized interest group of long standing. When the NGA approached Congress or the executive branch, it did so with an acknowledged "right to speak" for an interest with an acknowledged "right to be heard."³⁶

Jim Dan Hill observed:

Such success and solidarity of purpose demonstrated by the Guardsmen naturally have stimulated some flattering imitation and the inevitable, cynical criticism. Be that as it may, the National Guard spokesmen and their predecessors in the Association, beginning in 1876, appear to be the first Americans who, in pride of voluntary military service to the Nation, have lobbied so long and vigorously to guarantee their being among the first on the front line against a foreign foe. It is not a minor distinction.³⁷

Especially significant recent legislative accomplishments reported by the National Guard Association include:

Dedicated equipment procurement funding for the Army and Air National Guard in Fiscal Years 1989-90;

Creation of the position of Assistant Secretary of Defense for Reserve Affairs, a position designed to promote the interest of the Guard and Reserve at the highest levels of the Department of Defense;

Defeat of various attempts to dilute state control of the National Guard in peacetime, particularly a successful effort to ensure that the Guard personnel are under the command and control of the National Guard chain of command; and

In the *Fiscal Year 1990 Authorization Act*, preserved National Guard force structure levels pending overall review of total force structure and force mix.³⁸

In 1989-90, the Congress enacted other legislation of interest to the National Guard Association. This included legislation making permanent authority for federal support of National Guard drug interdiction and counterdrug activities, expanding the Montgomery GI Bill for the Selective Reserve to include vocational and technical education, and authorizing specialized support to military associations by the military departments. A bill that would have severely restricted National Guard access to federal land for training was amended to eliminate unacceptable features.³⁹

The enlisted personnel counterpart to the National Guard Association is the 60,000-member Enlisted Associ-

ation of the National Guard of the United States. Founded in 1970, the association is organized on state and national bases, with support from other sources as well.⁴⁰ The Adjutants General Association of the United States (state and territorial) has generally supported legislative positions of the National Guard Association.

Six years ago, a new coalition of associations representing 25 military-related organizations began operation. Although each member of the coalition advances its own agenda, they also work cooperatively, pursuing matters of interest for active and retired military personnel and their families. The 25 associations include, among others, the National Guard Association, the National Military Family Association, the Air Force Association, and the Reserve Officers' Association.⁴¹

Conclusion

Under current constitutional law and legislation, as well as national military personnel policy, the federal government has the power to organize and regulate the Guard. Over the years, it has assumed the primary role for equipping these troops and setting standards for their training, at its expense.

Constitutional authority aside, the states have an enormous stake in the ongoing responsiveness and effectiveness of their Guard units. A description of the states' contributions to and oversight of the Guard follows in the next chapter.

Notes

¹ 10 U.S.C. Sec. 262.

² 10 U.S.C. Sec. 104 (b) and (c).

³ P.L. 101 510 set an authorized ceiling of 457,300 troops for the Army National Guard and 117,035 for the Air National Guard, effective September 30, 1991.

⁴ 10 U.S.C. Sec. 104 (a) and (c).

⁵ National Guard Regulation 500-1, Air National Guard Regulation 55-04, "Military Support to Civil Authorities," September 15, 1988.

⁶ 32 U.S.C. Sec. 302.

⁷ 32 U.S.C. Sec. 502.

⁸ 32 U.S.C. Sec. 325.

⁹ U.S. Department of Defense, National Guard Bureau, "Discussion Paper" (Washington, DC, undated), p. 2 (unpublished).

¹⁰ In World War II, for example, more than 8 million people served in the military. During the Vietnam conflict, over 1.5 million people served in the Army alone, including 12,000 federalized National Guardsmen.

¹¹ U.S. Department of Defense, DOD Plan for Reduction in National Guard and Reserve Forces (Washington, DC, 1992), p. 3.

¹² *National Guard Almanac 1992* (Falls Church, Virginia: Uniformed Services Almanac, 1992), p. 79.

¹³ *Ibid.*, p. 84.

¹⁴ 37 U.S.C. Secs. 204 and 206.

¹⁵ See *National Guard Almanac 1992*, pp. 8-9. Inactive duty for training constitutes "training performed in a federal status while not on active duty," including such activities as weekend drills and unit training assemblies. Active duty for training covers "annual training, particularly in small arms competition, attendance at military conferences, short tours for special projects, ferrying of aircraft, and participation in command post

exercises and field maneuvers.” Active duty means “full-time duty in the military of the United States, other than active duty for training.”

¹⁶ See *National Guard Almanac 1992*, pp. 5163; and 50 Appendix U.S.C. Sec. 526.

¹⁷ U.S. Department of Defense, Office of the Secretary of Defense, Reserve Component Programs, *Fiscal Year 1990: The Annual Report of the Reserve Forces Policy Board* (Washington, DC, March 1991), p. 29.

¹⁸ *Ibid.*, p. 36.

¹⁹ National Guard Bureau, “Discussion Paper,” p. 15.

²⁰ National Guard Regulation 500-1, Air National Guard Regulation 55-04, “Military Support to Civilian Authorities,” September 15, 1988.

²¹ 10 U.S.C. Sec. 3040 (a).

²² U.S. Department of Defense, Departments of the Army and the Air Force, National Guard Bureau, *Annual Review of the Chief; National Guard Bureau, Fiscal Year 1991* (Washington, DC, 1992), p. 3.

²³ *National Guard Almanac 1992*, p. 74.

²⁴ 10 U.S.C. Sec. 3040 (b) and (c).

²⁵ 32 U.S.C. 307; Army Regulation 130-5 and Air Force Regulation 45-17, paragraph 9

²⁶ *Ibid.*, paragraph 8.

²⁷ 10 U.S.C. Sec. 175(c).

²⁸ 32 U.S.C. Sec. 709. See also *National Guard Almanac 1992*, pp. 74-75. Technicians may be in the competitive or excepted service. Those in the competitive service are hired according to procedures established by the Office of Personnel Management. They are not members of the military. Most technicians

are in excepted service and are not hired in accordance with OPM procedures. They must be members of the military to retain their positions. As Guard members, these individuals must be assigned to the same unit they work for.

²⁹ U.S. Congress, House of Representatives, Committee on Armed Services, National Guard Technician’s Act of 1968, House Report 1823 to accompany S. 3865, 90th Cong., 2d sess. in *U.S. Code and Administrative News* 1968, Vol. 3, pp. 3321-3322.

³⁰ *National Guard Almanac 1992*, p. 74.

³¹ P.L. 90-486.

³² *National Guard Almanac 1992*, p. 74. The legislation set a ceiling of 42,500 technicians to be employed at one time. *U.S. Code and Administrative News* 1968, Vol. 3, p. 3323.

³³ Martin Binkin and William W. Kaufmann, *U.S. Army Guard and Reserve: Rhetoric, Realities, Risks* (Washington, DC Brook- ing Institution, 1989), p. 32.

³⁴ National Guard Association of the United States, *Facts about NGAUS* (Washington, DC, undated), p. 1. See also *National Guard Almanac 1992*, pp. 103-105.

³⁵ National Guard Association, *Facts about NGAUS*, p. 6.

³⁶ Martha Derthick, *The National Guard in Politics* (Cambridge, Massachusetts: Harvard University Press, 1965), pp. 107-108.

³⁷ Jim Dan Hill, *The Minute Man in Peace and War* (Harrisburg, Pennsylvania: The Stackpole Company, 1964), p. 345.

³⁸ National Guard Association, *Facts about NGAUS*, p. 5.

³⁹ *Ibid.*

⁴⁰ See *National Guard Almanac 1992*, pp. 105-106.

⁴¹ Paul Arcani, “Introducing the Military Coalition,” *The Retired Officers Magazine* 47 (May 1991): pp. 20-25.

State Authority and Support for the National Guard

Although sometimes overlooked, the states have a major stake in their National Guard units. That importance is based on the fact that the Guard, unless called up for active federal duty, is under the command of the governors. This chapter explores the Guard's vital role as a state institution.

State Mobilization of the National Guard

What the Guard Does

The Guard is the only military force immediately available to a governor in times of civil unrest and natural or human disasters. One Defense Department informal estimate is that 280,000 National Guard "positions" are needed as the minimum essential force to meet routine and major state disaster-relief requirements.*

During FY 1991, some 7,848 members of the National Guard spent over 44,805 personnel-days on state active duty. Guard personnel were called up by the governors of 42 states for 337 military support missions, including one civil disturbance, 76 natural disasters, and 53 search and rescue operations. In addition, the National Guard used more than 875,000 training days to support federal, state, and local law enforcement officials in drug-control activities during that period.²

Past assignments included such varying activities as keeping New York City armories open as shelters for the homeless to providing aerial support for damage assessment after a major fuel spill in Desha County, Arkansas. Crowd control support was provided during the annual Kentucky Derby, and Guard members also helped establish law and order on a Mohawk Indian Reservation where rival factions were in a dispute over gambling.³

Missions required of the state Guards typically fall into the following categories:

- 1) Law and order (a substantial force may be used to augment and/or replace civilian law enforcement);
- 2) Medical (to augment civilian capabilities in emergencies and provide routine care to drilling and full-time National Guard soldiers);
- 3) Transportation, including air lift (to enhance civilian capabilities and provide both emergency transportation and support to routine National Guard missions);
- 4) Engineering (sufficient to provide emergency capabilities and support routine National Guard missions);
- 5) Maintenance (a force to maintain equipment for missions); and
- 6) Administration (limited to 5 percent, to manage the force).⁴

How the Guard is Mobilized by the States

Normal day-to-day requirements for military support to civil authorities are conducted by the National Guard in a state active duty status. Attendant costs are paid by states.

States use various methods, typically authorized by statute, to call the Guard to duty. In California, for example, local authorities call the state's Office of Emergency Services to request aid. If the office concurs, it notifies the governor. The governor must agree, and issues a mobilization order. State officials then call the National Guard headquarters, which notifies members to report to the appropriate armory. Units are selected according to the specific duties they are expected to perform (e.g., engineering and medical units for natural disasters, such as tornadoes and floods).

Guard units are deployed after notification by local authorities, who also instruct members as to when and where to take action. In the case of the 1992 Los Angeles riots, the Air National Guard took action first, helping to fly California Highway Patrol officers to the scene.⁵

Costs and Benefits

According to a 1992 survey of state adjutants general, states spend more than \$300 million annually for Guard activities (see Table 4-1). In addition to federal pay and benefits (described in Chapter 3), Guard members are eligible for pay and benefits from their states, because of their dual mission status. Pay rates and other benefits vary from state to state. Arkansas, for example, provides a \$40 per day minimum salary to those on state active duty. Indiana compensates its Guard members at a daily rate equal to 12 times the federal minimum hourly wage. Minnesota pays a \$130 daily minimum.

Practices for reimbursing expenses vary as well. California Guard members on active duty get a maximum of \$116 daily (if they submit lodging receipts) and 25 cents per mile for use of an automobile. New Mexico sets a \$58 daily maximum. Ohio Guard members receive at least an \$8 per diem and a \$6.07 daily subsistence payment?

To help recruitment, state legislatures have provided additional benefits in recent years. These include enlist-

ment and reenlistment bonuses, scholarships and tuition assistance, retirement programs, improved medical benefits, legal assistance, special automobile license plates, and life insurance programs. Recently, many states provided deferrals of state income tax payments and waivers of income tax interest and penalties for Guard members involved in Operation Desert Storm, paralleling federal initiatives.⁷

State employees who are called to active federal National Guard duty receive job protections which, in some cases, exceed those granted by federal law. Individual states, for example, may grant any state employees called to active duty military leave with pay, military leave without pay, or supplemental pay. In addition, Illinois and Oregon continue to pay health insurance for employees and dependents while on military leave. Most states give state government employees seniority and/or retirement credit for temporary active duty service. Automatic pay increases and accumulation of vacation/sick leave also are common.⁸

When under state control, the National Guard units are subject to state codes of military justice, rather than the uniform code of military justice that is applied to the national military establishment. Due to concerns over the lack of uniformity inherent in this approach, proposals have been made to preserve state control while gaining the benefits of uniformity, by having the states adopt the federal code?

State Supervision of the Guard

Just as the National Guard Bureau oversees federal Guard activities, each state has an adjutant general to run the Guard.¹⁰ As discussed in Chapter 2, the position of state adjutant general originated approximately 200 years ago with enactment of the *Militia Act of 1792*.

The adjutant is the federally recognized governor's agent, who provides linkage between the state and federal authorities. As a result, the adjutant manages the state National Guard in accordance with federal and state laws and Army and Air Force regulations.

The adjutant general is appointed by the governor in 48 states. The adjutant general is elected by the public to a four-year term in South Carolina, and by the state legislature every two years in Vermont.¹¹ Only 16 states require state legislative approval of the governor's appointee.¹² Term limits vary. Primarily, adjutants serve at the pleasure of the governor, but 17 states set a term length, typically two to seven years.¹³

The primary statutory prerequisites for appointees to the position of adjutant general include previous National Guard and/or military service, attainment of the military rank of commissioned officer, and federally recognized service. Typically, appointees must have a minimum number of years of military service (frequently ten) and service as a commissioned officer to be eligible for appointment.¹⁴

Interstate Cooperation

To help stretch their resources, some states have executed different types of interstate compacts, authorizing governors or adjutants general to enter into agreements for the sharing of National Guard personnel and equipment.¹⁵

Table 4-1
State National Guard Spending Summary,
by Function — Fiscal Years 1990-1992

Function	1990	1991	1992 ^e
Personnel	\$142,550,445	\$143,976,471	\$145,121,936
Operations/ Maintenance	105,207,535	103,032,253	109,844,317
Capital Construction	49,811,133	39,562,037	50,752,540
Equipment	2,229,295	1,497,363	1,745,737
Other	41,835,462	28,779,308	21,340,008
Total ¹	341,633,870	316,847,432	328,804,538

e—estimate

¹ Some states had offsetting revenues from local governments that lowered their actual expenses. This applied to 21 states in 1990 and 1991, and 24 states in 1992.

Source: ACIR compilation based on information from state adjutants general.

New York acted first in **1950**, by adopting the Interstate Compact for National Military Aid.¹⁶ The Congress endorsed the New York/New Jersey compact in 1952, and four years later authorized the addition of any contiguous states.¹⁷ Subsequently, Connecticut, New Jersey, Pennsylvania, and Vermont approved entry into this compact.¹⁸

Pursuant to a request of the National Governors' Conference in **1967**, the Committee of State Officials on Suggested State Legislation published a sample National Guard Mutual Assistance Compact in **1969**.¹⁹ The compact "provides for mutual aid in utilization of the National Guard for emergencies, flexibility in deployment of National Guard forces, maximum effectiveness of the National Guard when utilized under the compact, and protection of Guard personnel when serving in other states on emergency duty."²⁰

To date, Alaska, Kansas, North Carolina, South Dakota, and Virginia have ratified this compact, although the Congress has yet to extend federal approval.²¹

States have availed themselves of other opportunities for sharing resources in times of emergency. Michigan's governor, for example, is authorized by law to enter into interstate agreements for sharing military forces in times of invasion, rebellion, or public disaster.²²

Conclusion

The National Guard continues to be the most significant military force available to the states. Each year, in virtually every state, Guard members combat floods, forest fires, hurricanes, snow emergencies, and civil disturbances.

Those roles were fulfilled in addition to the more intangible roles played by the Guard in states and communities, where Guard facilities serve as a base for many community activities and keep the military visible at the grass roots.

Dual command and loyalties, in many ways, are among the Guard's greatest strengths. **But** they also have spawned controversy. The next chapter **looks** at a recent Supreme Court case that sprang from the competing interests of the Guard's governmental leaders.

Notes

¹ U.S. Department of Defense, National Guard Bureau, "Discussion Paper: National Guard Force Structure" (Washington, DC, undated), pp. **18, 24**.

² U.S. Department of Defense, Departments of the Army and the Air Force, *Annual Review of the Chief, National Guard Bureau, Fiscal Year 1991* (Washington, DC, **1992**), p. **110**.

³ *National Guard Almanac 1991*, pp. **108-113**.

⁴ National Guard Bureau, "Discussion Paper: National Guard Force Structure," p. **18**.

⁵ "Bringing in the Guard," *Los Angeles Times*, May **1, 1992**.

⁶ *National Guard Almanac 1992*, p. **34-50**.

⁷ *Ibid.*, pp. **34-35**.

⁸ Supplemental pay is the difference between the individual's state and National Guard salaries. Michigan, New Jersey, New York, North Dakota, Ohio, and Rhode Island have supplemental pay programs. Council of State Governments, "State Employees and the U.S. Military Reserve: Heeding the Call (Lexington, Kentucky, September **1990**):" pp. **4, 7-16**.

⁹ William F. Bradley, Jr., "The Other Side of the National Guard/UCMJ Question," *National Guard* **41** (April **1986**): **2**.

¹⁰ **32** U.S.C. Sec. **314**. In California, Rhode Island, and the District of Columbia, the title is commanding general. In New Jersey and New York, the title is chief of staff to the governor.

¹¹ South Carolina Code Ann., Title **20**, Sec. **263**; Vermont Stat. Ann., Title **20**, Sec. **363**.

¹² California, Delaware, Florida, Hawaii, Iowa, Kansas, Louisiana, Maryland, Missouri, Montana, New Jersey, Oklahoma, Pennsylvania, South Dakota, Texas, and Virginia. ACIR compilation.

¹³ By law in Illinois and Texas, the adjutant's term of office is two years. Four-year terms are set by statute in Arizona, Connecticut, Iowa, Louisiana, Mississippi, Nevada, Oregon, Rhode Island, and West Virginia. A five-year term is provided in Colorado, New Mexico, and Wisconsin. North Dakota and Utah have a six-year statutory term and the Minnesota term is seven-years. ACIR compilation.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ National Association of Attorneys General, Committee on the Office of Attorney General, *Legal Issues Concerning the Role of the National Guard in Civil Disorders: Staff Report to the Special Committee on Legal Services to Military Forces* (Washington, DC, **1973**), p. **79**.

¹⁷ **70** Stat. **247**.

¹⁸ New York, Military Law, Sec. **22-2**; Connecticut General Statutes, Sec. **27-38**; New Jersey Stat. Ann., Sec. **38A:20-2; 51 PCSA 4501**; Vermont Stat. Ann. **20**, Sec. **151-154**.

¹⁹ Council of State Governments, *Interstate Compacts and Agencies* (Lexington, Kentucky, **1983**), p. **19**.

²⁰ National Association of Attorneys General, *Legal Issues Concerning the Role of the National Guard in Civil Disorders*, p. **79**.

²¹ Alaska Stat. Sec. **26:25:010 et seq.**, Kansas Stat. Ann. Sec. **48-1701 et seq.**, North Carolina Gen. Stat. Sec. **127A-175**, South Dakota Codified Laws Ann. Sec. **33-9-12**, and Virginia Code Ann. Sec. **44-54.1**.

²² Michigan Comp. Laws Ann. Sec. **32.559**.

Chapter 5

The Governors and the National Guard – Whose Guard Is It?

As a reserve component of the Army and **Air** Force, the National Guard may be ordered into federal service for active duty under a number of statutory authorities. Long ago, the president and the Congress enacted laws and policies that make the National Guard available for service abroad and require the states to comply with federal law and standards as a condition for receiving federal funding for training and equipment.’ In the 1980s, conflict arose between the administration and a number of governors over training Guard units on foreign soil.

Methods for Activating the Guard

Federal law sets forth the general policy guidelines under which troops may be activated by the federal government:

Whenever Congress determines that more units and organizations are needed for the national security than are in the regular components of the ground and air forces, the Army National Guard. . .and the Air National Guard, . . . or such parts of them as are needed, together with units of other reserve components necessary for a balanced force, shall be ordered to active duty **and** retained as long **as** so needed?

Methods

There is a number of ways to activate the National Guard and other reservists (see Appendix Table 6). Using the “call” method, and consistent with the explicit constitutional language, the president may mobilize the Guard if the United States or its territories are in danger of invasion or rebellion, or to carry out the laws of the United States. In such cases, no congressional approval is required, nor must an alert be given, but orders must be issued through the governors. Such a call places the Guard under federal control.

Using this authority, the president also may, without limitation on the number of troops activated or the duration of service, call the Guard to active duty to suppress insurrections. This action may be taken with or without the request of the governor or state legislature. Before actually using troops, the president must issue a proclamation directing the insurgents to disperse.

The National Guard may be ordered to active duty under other statutes, as well. Under the authority of 10 U.S.C. 673b, the president may, even without a declaration of national emergency, order the Guard to active duty without its consent for up to 90 days for any operational mission. **An** additional **90** days may be authorized on a presidential finding of necessity.³ Under this statute, the president authorized the secretary of defense to order up to 200,000 Guard and reserves to active duty in the Persian Gulf.⁴ On January **18**, 1991, the president invoked 10 U.S.C. 673, which provides that units and individual members of the Ready Reserve (i.e., both the Selected Reserve and the Individual Ready Reserve) may be ordered to active duty without their consent for a maximum of two years, if the president declares a national emergency. Operation Desert Storm marked the fourth time the Guard has been called for a foreign emergency since World War

II. The others were Korea in 1950, Berlin in 1962, and Vietnam in 1968 (see Appendix Table 7).

Broader Guard and Reserve active duty authority is provided by 10 U.S.C. 673a, which authorizes Guard members and reservists to be called, without their consent, for up to two years if the president declares a national emergency. Only one million troops may be on active duty at any one time under that provision.

Another statute, 10 U.S.C. 672(a), allows an unlimited number of Guard members and reservists to be ordered to active duty without their consent. Service is limited to the duration of a war or emergency declared by Congress, plus *six* months.

Training

The Congress also has enacted two provisions that affect the ordering of Guard units to active duty for training. The first provision was enacted in 1952 and authorizes the secretary of defense, without consent of the individuals involved, to order Guard units to active duty for overseas training for a period of not more than 15 days a year.⁵ The consent of the governor is required.

The second provision, known popularly as the Montgomery Amendment, modified this 1952 legislation.⁶ It prohibits a governor from withholding, in whole or in part, consent with regard to active duty outside of the United States because of any objection to the location, purpose, type, or schedule of such duty. Guard members, with their consent, may serve on active duty under training authority for a longer period.⁷

Neither Title 10 nor Title 32 of the United States Code specifically addresses National Guard active duty training outside the United States. Defense Department policy is quite clear, however; any Guard personnel performing training outside the United States must be on active duty status.⁸ This is consistent with international agreements for defense cooperation, for ensuring specific military lines of authority, and for making clear the federal status of Guard members in case they are subject to terrorist acts while training overseas.

Disputes over Foreign Training

Precedent for federal and state friction over control of the National Guard was set early in our nation's history. In 1812, the Ohio and New York militias refused orders to cross into Canada? The next year, the governors of Massachusetts, Connecticut, and Rhode Island refused to respond to the president's request for the militia. Vermont recalled its troops when Great Britain blockaded the East Coast, invaded the country, and burned the national capital.¹⁰

Tensions continued through the Mexican War, when several governors expressed reluctance about having their state militias cross into Mexican territory." Again in 1848 and 1861, governors made clear their authority to refuse the call for militia troops, citing their disagreement with the president's policies and the determination of need.¹²

More than a century later, tension between the president and some governors flared again, when more than 12,000 Army National Guard troops were assigned to Central America for active duty training in 1985. According to a Congressional Research Service (CRS) report, critics of

these training missions claimed that President Ronald Reagan was using these assignments to present a show of U.S. military force, to challenge the Sandinista government in Nicaragua, and to prepare a staging area in Honduras for a United States supported "Contra" rebel invasion of neighboring Nicaragua.

CRS found that governors were split deeply on this issue. Only 23 governors would approve military "training" exercises in Honduras.¹³ Other governors threatened to use the veto authorized by the Armed Forces Reserve Act of 1952¹⁴ to halt this activity. The governor of Massachusetts, for example, threatened to bar troops from training anywhere in Central America. Governors from Ohio, Vermont, and Washington also objected to having Guard personnel on assignment in Honduras. The governors of Arizona, Kansas, Mississippi, Nevada, New Mexico, New York, Texas, and Puerto Rico announced that they would consider such training assignments on a case-by-case basis. The governor of California successfully resisted a Pentagon request for the Guard to participate in Central American training. Maine's governor refused to deploy 48 Maine Guardsmen to participate in joint exercises in Honduras.¹⁵ (In Iowa, the legislature sought to bar the state's National Guard from scheduled training in Honduras.) By vetoing the training, however, the governors risked the loss of federal funds for their Guard units.¹⁶

Following these state initiatives, in 1986, Mississippi Representative G.V. "Sonny" Montgomery sponsored an amendment to the 1987 Defense Authorization Act¹⁷ (the Montgomery Amendment) that would authorize the Congress to order the National Guard to active federal duty for training, notwithstanding a gubernatorial veto due "to location, purpose, type, or schedule of such active duty."¹⁸ Opposition to the amendment came from the National Governors' Association, which contended that it took away the governors' previous statutory authority over active duty training. Little time was provided for public debate on the amendment, which was offered initially on the floor of the House. After a brief discussion, the final House of Representatives vote was 261-159 in favor of the proposal.¹⁹ Subsequently, a Senate-House conference committee accepted the amendment without change. Conferees did state, however, that

the governor still will have the authority to block the training if he or she thinks the Guardsmen are needed at home for local emergencies. The conferees intend that nothing about the words 'location, purpose, type, and schedule' should constrain a governor in according appropriate priority to state or local emergency, such as a flood or other natural disaster.²⁰

Governors Undertake Court Challenges

Following adoption of the Montgomery Amendment, several governors sued to overturn the statute. Cases were brought against the U.S. Department of Defense in federal court, first by Minnesota Governor Rudy Perpich and, later, by Massachusetts Governor Michael Dukakis.

The latter case reached a swift, unhappy resolution, from the viewpoint of the governors. A May 1988 decision

by the U.S. District Court in Massachusetts rejected the plaintiff's argument that the Montgomery Amendment was unconstitutional. Rather, the justice held that "the Montgomery Amendment is a valid exercise of Congress's power under the Army clause and does not violate the Militia Clause."²¹ Later, the First Circuit Court of Appeals upheld the Montgomery Amendment.²² The U.S. Supreme Court refused to hear the Massachusetts appeal.²³

In *Perpich v. U.S. Department of Defense*, the governor of Minnesota sought injunctive relief against orders for a federal training mission in Central America involving up to several hundred members of the Minnesota Guard. Specifically, the issue posed in the lawsuit was "whether the Congress may authorize the president to order members of the National Guard to active duty for purposes of training outside the United States during peacetime without either the consent of a state governor or the declaration of a national emergency."²⁴

The first decision in this case was rendered in August 1987, when a federal district court determined that the governor's veto power over training missions was statutory rather than constitutional.²⁵ The Congress, having granted the power, could withdraw it, according to the district court. On appeal, a three-judge panel of the U.S. Eighth Circuit Court of Appeals reversed the district court's decision in December 1988, citing the intent of the founding fathers to give states protection from possible abuses of military power by the federal government.²⁶

The U.S. Department of Justice asked the full appeals court to reconsider the case. In June 1989, the Appeals Court held 7-2 that the law was constitutional, finding that Congress' defense power is supreme and exclusive.²⁷

Governor Perpich requested the Supreme Court to review the case because of the importance of the constitutional issue of the state's authority over peacetime militia training and the conflicting decisions in the lower courts. When the case reached the Supreme Court, the governors of Iowa, Maine, Montana, Ohio, and Vermont joined as *amici curiae*. They saw the issue as a matter of presidential accountability to declare publicly the need for operational mission support or to declare a national emergency. Disagreement with U.S. policies in Central America appears to have been a factor as well.

None of the major national organizations of state government officials filed an *amicus* brief in the *Perpich* case. The National Governors' Association, the National Conference of State Legislatures, and the Council of State Governments viewed the issue as being too divisive among their members for them to adopt a position.²⁸

The Supreme Court's Opinion

Although the lower courts had conflicting responses to the *Perpich* case, the Supreme Court expressed no doubt about its view when it ruled unanimously against the state. The Court concluded that the militia clauses do not present a constitutional obstacle to legislation such as the Montgomery Amendment. Rather, the Court found that the militia clauses plainly provide additional grants of power to the Congress so that National Guard units and

members, whether or not federalized, have a dual status, both as state National Guards and as reserve components of the Army and Air Force. Regulation of the National Guard is governed not only by the militia clauses, but also by the broad powers granted to the Congress to raise armies and provide for the common defense.²⁹ The Court found that the militia clauses added to federal power in three ways. First, they authorized the Congress to organize, arm, and discipline the militia. Second, the clauses permitted the Congress to govern the militia when actually employed in training while on active duty in federal service.³⁰ Finally, the Court held that, although appointment of officers and authority for training the militia are reserved to the states, such reservation is limited by the words "according to the discipline prescribed by the Congress."³¹ If such training involves assignment to other countries, the "Congress has the authority to provide it."³² Subordinate authority of the states to perform actual training prior to active duty does not limit Congress' training authority after Guard members are ordered into federal service.

Justices hearing the case rejected the states' argument that such an interpretation had the practical effect of nullifying a significant, constitutionally guaranteed state power, namely, to establish a state-based militia, appoint its officers and, most important, train its members. Rather, the Court gave precedence to the constitutional provisions committing "foreign policy and military affairs to the exclusive control of the national government."³³ All of the subsidiary constitutional questions regarding the role of the secretary of defense, state authority over the content of training, whether the training is outside of the United States in peacetime, or the necessity for the president to make a public declaration before Guard members may be called up for federal service, were subsumed under the Court's interpretation of congressional authority to raise armies.³⁴

In addition to the Court's constitutional arguments, the justices pointed out that:

- 1) The federal government provides most of the funding for the Guard units, for both active and inactive duty training.
- 2) Even under the Montgomery Amendment, if the federal training mission were to interfere with the Guard's ability to respond to local emergencies, the governor could veto the federalization of Guard members.
- 3) The Congress had granted states the authority to provide, at their own expense, a separate and additional defense force which is not subject to call-up by the federal government.³⁵

Implications for Federalism

Important implications for federalism arose from the *Perpich* opinion.

Expansion of the National Guard's Federal Role

One result of the *Perpich* opinion is that the federal government can expand the frequency and size of domes-

tic and overseas National Guard training assignments. The president may increase the U.S. military presence in any region of the world through National Guard active duty training exercises without a presidential declaration of emergency and without the consent of governors for any particular set of assignments. The National Guard may be so utilized by the president under the secretary of defense's statutory authority for ordering Guard units to active duty for training, without securing concurrence from either the Congress or the states.

The Supreme Court, while upholding the right of the states to train their militias in *Perpich*, also confirmed the existing and fundamental authority of the federal government to determine a federal training regimen or discipline. The practical effect of these interpretations of the militia clauses is to reduce the states' constitutional authority for federal active duty training to a largely ministerial function.

Retention of Federal Authority

One misperception of the *Perpich* case, however, is that, if the Supreme Court had upheld the governor's constitutional authority to give or withhold consent, the president's ability to call up National Guard units for active duty federal service would have been impeded, thus hamstringing national defense. A *Minneapolis Star-Tribune* editorial, for example, concluded that if Governor Perpich had won the case against the Department of Defense, he might have earned two roles in history—first, as the governor who kept the Guard under state control and, second, as the individual who weakened the nation's defenses by making the Guard a less reliable military force.³⁶

Such a conclusion is in error. The *Perpich* opinion dealt only with the statutory authority granted by the Congress for ordering Guard units to active duty for training for up to 15 days. None of the other statutory choices available to the president for calling National Guard units to active duty were involved or threatened with limitation. These include the authority of the president to order the Guard to active duty for operational missions of up to 180 days, even without a declaration of national emergency.

Residual State Authority

In *Perpich*, the Supreme Court held that Guard members "lose their status as members of the state militia during their period of active duty training."³⁷ The states, however, have had no significant reduction in their authority over National Guard units when they are not in active federal service. It would seem that, in fact, even after Guard troops are called up for active duty, their state character is in suspension and resumes at the end of their active duty status. All of the references to the state militia contained in the U.S. Constitution remain intact.

Furthermore, footnotes in the *Perpich* opinion assured the states that they retained certain powers seemingly taken away in the opinion.³⁸ If federalization of the Guard would interfere with a state Guard's ability to address a local emergency, the Court pointed out, then the governor could validly veto the call-up. Finally, despite the Montgomery Amendment, a governor might legally

withhold consent to a call to active duty "if the order were so intrusive that it deprived the state of the power to train its forces effectively for local service."³⁹ The states were assured that they can continue "the use of their National Guard units for any legitimate state purpose."⁴⁰

States and Foreign Policy

A crucial question insufficiently examined by the Supreme Court in *Perpich* is the precise authority under which the National Guard may be called into active federal military service.

The federal government, in its presentation before the Court, found it intolerable to give 54 executives of the state and territorial National Guards a de facto voice in foreign policy because of the potential for constraining the federal government in an area where it is constitutionally preeminent. In response, the Court spoke in terms of exclusive control by the federal government over foreign policy and military affairs, including a reminder that the U.S. Constitution forbids states to enter into agreements with foreign powers without the consent of the Congress.⁴¹

The Court's language with respect to the absolute federal power in foreign affairs may be unrealistic, however, if its apparent openness to a sweeping prohibition of state involvement in foreign policy extends to international relations generally. Free speech on foreign policy matters, for example, remains a constitutionally guaranteed right of governors. In addition, direct state action in international affairs is especially evident in, but not limited to, trade and economic development. Reflecting the opportunities and competition encouraged by a global economy, there are thousands of agreements between state and local governments and foreign jurisdictions, primarily with their provincial or state counterparts abroad. Extensive programs and agreements exist, especially with Canada and Mexico, in such areas as trade, transportation, energy, and environmental protection.⁴²

Although the Court made it clear in *Perpich* that the Montgomery Amendment is a legitimate exercise of congressional power, the amendment could be reversed without raising constitutional questions because the governors' veto power over assignments is statutory rather than constitutional.⁴³ Thus, it may be modified through the political process. That possibility has been demonstrated—Congress granted the governors concurrent authority in 1952 and took it away in 1986. The Congress could restore such authority in the future.

In this respect, the Court continued the intergovernmental posture that it adopted in the *Garcia v. San Antonio Metropolitan Transit Authority* and *South Carolina v. Baker* opinions, in which it held that, if states are unhappy with federal legislation, the most likely solution is to seek redress through the political (i.e., legislative or administrative) process. The Court made it plain that, in this case, the states are free to protect their interests through the federal legislative process.⁴⁴

Those seeking to preserve the dual sovereignty character of the Guard, however, see what appears to be a loophole when the secretary of defense uses statutory authority to call the Guard to active duty for overseas training. There is no requirement for the president or the sec-

retary to go to the Congress, the states, or the public with an explanation. Other statutory authorities that provide for some advance notice and opportunity for discussion are available for federal mobilization of the Guard for purposes other than training.

This dilemma might have been avoided had the Congress adopted any of several legislative options proposed at the time it considered the Montgomery Amendment. Sen. J. James Exon, for example, advanced a plan that would have recognized the dual responsibility of the National Guard to the governors and the nation's commander-in-chief.⁴⁵ The approach would have allowed the governor to object to active duty of the state Guard, with clear authority granted to the president to override such objections and assign the Guard as deemed necessary. Rather than removing the governors from the process, this approach would have allowed for an orderly and public exchange of views and fixed accountability for the authority vested in the president.

In considering any potential restraints on presidential power over active duty training assignments, it should also be recognized that federal statutes give the president authority to reduce the funding of any unit that does not comply with federal National Guard operations, even when it is in state militia status. In any conflict of wills or difference of opinion between the president and a governor over a training assignment, the federal government, with its authority over spending, is in an extremely strong position.

Conclusion

The modern conduct of military operations has evolved into a centrally directed federal function. As the Supreme Court demonstrated *Perpich*, the federal government exerts a commanding influence over Guard activities, especially as it relates to training on foreign soil.

Although the conduct of military operations may be a centrally directed federal function, many (especially the nation's governors) would argue that this planning cannot be conducted in a vacuum. According to many governors, current proposals to make substantial reductions in defense forces (in particular, the National Guard) could adversely affect their ability to respond to natural disasters and civil disorders. That subject is explored in the next chapter.

Notes

- ¹ 32 U.S.C. Sec. 108.
- ² 10 U.S.C. Sec. 243 and 32 U.S.C. Sec. 102.
- ³ P.L. 94-286.
- ⁴ As of February 15, 1991, 73,373 National Guards members had been summoned to duty under this order. National Guard Almanac 1992, p. 77.
- ⁵ 10 U.S.C. 672(b).
- ⁶ P.L. 99-591, Sec. 9122, and P.L. 99-661, Sec. 522 both amended 10 U.S.C. 672 identically to add (f).
- ⁷ 10 U.S.C. 673(b) and 32 U.S.C. 501.
- ⁸ U.S. Department of Defense, "Training Authority and the National Guard," Defense Issues, p. 3.
- ⁹ Samuel J. Newland, "The National Guard: State versus National Control," Public Administration Review 49 (January/February 1989): 73 (note 27).
- ¹⁰ Peter A. Fish, "The Constitution and the Training of National Guardsmen: Can State Governors Prevent Uncle Sam from Sending the Guard to Central America?" Journal of Law and Politics 4 (Winter 1988): 597.
- ¹¹ Newland, "The National Guard: State versus National Control."
- ¹² Fish, "The Constitution and the Training of National Guardsmen."
- ¹³ David F. Burelli, "National Guard Overseas Training Missions: An Issue for U.S. Military Manpower Policy" (Washington, DC: Library of Congress, Congressional Research Service, December 1986), p. 14.
- ¹⁴ 66 Stat. 481.
- ¹⁵ Burelli, "National Guard Overseas Training Missions," p. 2.
- ¹⁶ 32 U.S.C. Sec. 108 authorizes the federal government to withhold funding from states:

If, within a time to be fixed by the President, a state does not comply with or enforce a requirement of, or regulation prescribed under, this title, its National Guard is barred, wholly or partly as the President may prescribe, from receiving money or any other aid, benefit, or privilege authorized by law.
- ¹⁷ P.L. 99-661.
- ¹⁸ 10 U.S.C. Sec. 672(f).
- ¹⁹ Congressional Record, August 14, 1986, pp. H6267-H6268.
- ²⁰ House Conference Report Number 99-1001 to accompany S. 2638 (October 14, 1986), p. 475.
- ²¹ Ibid., p. 38.
- ²² Affirmed per curiam, 859 E.2d 1066 (1st Cir. 1988).
- ²³ Cert. denied, 490 U.S. 1020 (1989).
- ²⁴ 110 S. Ct. 2420.
- ²⁵ *Perpich v. U.S. Department of Defense*, 666 F. Supp. 1319 (D. Minn. 1987).
- ²⁶ *Perpich*, No. 87-5345 (8th Cir., December 6, 1988).
- ²⁷ 880 E.2d 11 (8th Cir. 1989).
- ²⁸ Interview with the staff of the State and Local Legal Center, April 1991.
- ²⁹ 110 S. Ct. 2418 and 2427.
- ³⁰ Ibid., pp. 2427-2428.
- ³¹ Ibid., p. 2428.
- ³² Ibid.
- ³³ Ibid., p. 2429.
- ³⁴ Ibid., p. 2430.
- ³⁵ Ibid., pp. 2428-2429.
- ³⁶ "Wise Ruling on *Perpich's* National Guard Case," *Minneapolis Star-Tribune*, June 12, 1990.
- ³⁷ 110 S. Ct. 2426.
- ³⁸ Ibid., p. 2428 (note 24).
- ³⁹ Ibid.
- ⁴⁰ Ibid., p. XX.
- ⁴¹ Ibid., p. 2428 (note 22). To date, no case has been brought to the Supreme Court that would delimit state authority as it might involve "agreements," "foreign power," or "consent of Congress."
- ⁴² John Kincaid, "State and Local Governments Go International," *Intergovernmental Perspective* 16 (Spring 1990): 8.
- ⁴³ 10 U.S.C. Sec. 672(b) and (d).
- ⁴⁴ 469 U.S. 528 (1985) and 485 U.S. 505 (1988). For a full discussion of these cases, see U.S. Advisory Commission on Intergovernmental Relations, *Federal Regulation of State and Local Governments* (Washington, DC, forthcoming 1993), Chapter 6.
- ⁴⁵ Congressional Record, "Federal and State Control of the National Guard," January 22, 1987, pp. S1133-S1134.

Chapter 6

Total Force Strategy and the Future of the National Guard

Perhaps the greatest question facing federal and state officials concerned with National Guard operations revolves around the role of the Guard in the post-Cold War era. **As** the former Soviet Union collapsed, assumptions changed about needs for national defense. Today, it is reasonably well accepted that:

- 1) Military personnel reductions will occur on both sides in Europe.
- 2) There will be increased warning signs of potential military threats in Europe.
- 3) The defense budget will be reduced in real terms.
- 4) The potential for military hostilities involving the United States outside Europe must be anticipated.

Furthermore, fiscal realities are forcing many federal policymakers to rethink defense structures and budgets on economic grounds.

As this situation unfolds, several issues emerge concerning the ability of the National Guard to meet state needs during this era of change and downsizing. These issues include, among others, the proper mix of active military and Reserve/Guard components and the allocation of duties among them.

Troop levels

The **U.S.** Department of Defense has made proposals, consistent with the above assumptions, to reduce the military budget. To oversimplify the proposed approach, reductions would be made in the number of active duty, National Guard, and Reserve soldiers on a roughly one-to-one basis, with a near-term goal of reducing the overall reserves by 250,000 personnel by 1995. According to the Defense Department's longer term plans, 100,000 active duty troops will be eliminated annually for each of the next five years, reducing the regular military from **2.1** million to **1.6** million personnel.'

Proposed National Guard reductions are limited to the Army National Guard. The Air Force has concluded that the experience and maturity of the **Air** National Guard pilots qualifies them well for any future air missions, and that their experience should not be lost.²

Actives versus Reserves

Decisions about prudent force reductions entail estimates not only of total troop needs but also of the readiness level that available troops should maintain. Defense planners may opt to place a higher reliance on full-time, active duty soldiers or on Reserve forces, activated as the circumstances warrant.

A 1990 Congressional Research Service (CRS) report on the recent activation of the Guard and reliance on the National Guard and Reserves lays out quite clearly the pros and cons of a heavy reliance on the citizen-soldier. In general, **CRS** noted that the Congress has been supportive of increased goals and responsibilities for the National Guard while the Department of Defense, as noted above, has tended to be in favor of a broadly symmetrical reduction in active and Guard components.'

CRS cited various arguments concerning a lower reserve mobilization threshold, which would structure the military so that a relatively small incident will require activating at least some Guard and Reserve units. Proponents state, for example, that this approach saves money because reserve units cost less to maintain. They also explain that this method requires that U.S. political leaders be assured of popular support for military action before they call up troops, thereby decreasing the likelihood of Vietnam-style ambivalence and dissent on the part of the public.

Supporters of the proposal also contend that not all forces required for a military action are needed immediately. Even when a rapid response is required, there will rarely be enough airlift and sealift to move all the needed forces at the same time. Thus, sufficient time will be available for reserve units to be mobilized and trained before movement to the theater of operations. Advocates note that enormous strides have been made in the past 20 years in improving reserve unit readiness, so that units may be committed more quickly to more demanding missions. Moreover, even a limited reserve call-up sends a signal of resolve and national will to adversaries and allies. For these reasons, it is argued, a lower reserve mobilization threshold would be the preferred approach.

Numerous defense experts argue against such a tactic, however, calling instead for a higher reserve mobilization threshold, that is, structuring the armed forces so that a force may respond to a comparatively large incident without mobilizing reserve components.

In support of this view, these experts assert that the commitment of U.S. forces to combat in a small incident will not be held hostage to the political courage required to mobilize reserves. Traditionally, the reserve components have been activated only when a major crisis threatens the entire nation. It is unrealistic, therefore, to expect part-time citizen-soldiers to be called up for the kinds of minor contingencies that appear to be occurring more frequently in an unstable world and risk sending a signal to the international community that could be out of proportion to the seriousness of the crisis.

Furthermore, some experts note that the decision to activate reserves may require excessive dependence on unambiguous strategic warnings to justify a timely call-up. In this view, history shows that such warnings are frequently absent, sometimes ignored by high-level political and military leaders when they do occur, or are effectively disguised by deceptions and doubts.

Finally, opponents contend that successful contingency operations often require rapid execution. For both military and public opinion reasons, only active forces can respond quickly enough. When all of these reasons are considered, supporters believe that setting a higher threshold to trigger reserve mobilization is the best approach.

Allocating Responsibilities

In addition to determining how serious the incident must be to trigger mobilization of reserve forces, policymakers must determine which forces, regular military or the National Guard/Reserves, should perform the required missions.

CRS identified the following factors that should be

used in assessing whether military missions should be placed in the active or the National Guard/Reserve forces:

- 1) Whether the National Guard/Reserves can do the mission more cheaply;
- 2) Readiness/response time;
- 3) Availability of adequate personnel;
- 4) Necessary skill qualifications;
- 5) How well National Guard/Reserves are performing similar missions;
- 6) The nature of the threat and the kind of war to be fought;
- 7) Availability of personnel in certain geographical locations to fill units;
- 8) ~~The need for forward basing of forces overseas;~~
- 9) The level of acceptable risk involved; and
- 10) Utilization and availability of equipment (which usually lasts longer in National Guard/Reserve components).⁴

CRS observed that the ideal mix of active and reserve forces should be based on the perceived threats to national security and the military forces needed to meet foreign policy objectives. To this must be added the large potential savings to be realized by having the Guard and Reserve components perform certain functions while maintaining total force readiness.⁷

The Guard's Recent Record

Indirect criticism of the Guard's role and its performance in recent military activities has been made by various authorities. Some observers have cautioned against undue reliance on the National Guard and Reserve to supplement regular Army divisions that would be called on to respond on extremely short notice.⁶

GAO Assessment

The General Accounting Office (GAO) has examined several aspects of National Guard operations. In a 1989 study, GAO found deficiencies among some Guard units, especially with respect to training and necessary equipment.⁸ In 1991, the office examined the Desert Shield/Desert Storm experience for almost 150,000 Army reservists and National Guard members, in both combat and support missions. Although the Army has structured some of its divisions with both active Army brigades and National Guard "round-out" brigades, GAO reported that none of the National Guard armor and infantry round-out brigades were deployed.

As GAO noted, special circumstances complicate the effectiveness of these units.

A roundout brigade is not a distinct segment of the division. Rather, it supplements all the division's elements. Therefore, proficiency of roundout units and of their individual soldiers is

critical to the overall readiness of the divisions they serve.⁴⁸

On its review of these forces, GAO found that:

The Army has not adequately prepared its National Guard roundout brigades to be fully ready to deploy quickly. When the brigades were activated, many soldiers were not completely trained to do their jobs; many noncommissioned officers were not adequately trained in leadership skills; and Guard members had difficulty adjusting to the active Army's administrative systems for supply and personnel management, which are different from those the National Guard uses in peacetime. Also, when activated, many soldiers had serious medical or dental conditions that would have delayed or prevented their deployment?

Defense Department Reviews

The latest Defense Department comprehensive review of its Total Force Policy (TFP, see Chapter 2), active-reserve force mix, and military force structure is contained in a report sent to Congress in early 1991. It spelled out three strategic military theaters—contingency, Pacific, and Atlantic.¹⁰ The only major role for the Guard and the Reserves was to be in the Atlantic theater, despite the slim prospect of a major land war in Europe.”

Generally, GAO supported Defense Department policies over the last ten years to strengthen the TFP.¹² Under the subject of maintaining early-response capabilities, the agency stated:

Some observers believe that in view of the recent geopolitical developments, reserve forces should generally be limited to reinforcing and sustaining roles in which they would serve only to supplement active forces during protracted contingencies or a general mobilization and subsequent to some initial period of conflict. Others . . . argue that many reserve units are fully capable of deploying with active forces in “quick reaction” contingencies.¹³

Reflecting on the Persian Gulf experience, then Defense Secretary Richard Cheney observed in a July 1991 report to Congress that “the National Guard's frontline combat brigades are not likely to be ready to fight on short notice and should receive several months of training before being given actual battle duty.”¹⁴ The department's assessment was somewhat more sanguine, and perhaps more politically prudent, given congressional resistance to reduction in National Guard support. In response to a specific statutory inquiry on the effectiveness of Reserve component forces, the department found that Operation Desert Shield and Desert Storm:

required the largest mobilization and deployment of Reserve Component (RC) forces in the post-World War II period. Over 231,000 reservists from all Services were called to active duty during the crisis, and approximately 116,000 of these served in the Kuwait Theater of Operations (KTO). They played a vital role. What the De-

partment of Defense accomplished in the resolution of the Persian Gulf crisis simply could not have been done without the skilled contributions of the thousands of Reservists and National Guard personnel who served in combat, combat support, combat service support and administrative roles both in the theater and elsewhere.

Volunteers from the Reserves and National Guard augmented the active duty force from the first day of the deployment, long before the decision to authorize an involuntary call-up. From the outset, the Air Force was heavily dependent upon these volunteers to provide essential strategic airlift. In August, for example, Air Force Reserve and Air National Guard volunteers flew 42 percent of all strategic airlift missions and 33 percent of the aerial refueling missions.¹⁵

National Guard Perspectives

From the National Guard perspective, the Defense Department policy followed during Operation Desert Storm was not quite as rosy.

The National Guard Association and others raised concerns that the round-out brigades were not utilized, a fact that seemed to signal retreat from a large National Guard role in the Total Force Policy.¹⁶ At the heart of the association's concern is the fact that three round-out Guard brigades spent 55 days in intensive training prior to the conflict in the Persian Gulf. The DOD interim report, however, observed that:

Round-Out Brigades, as expected, were not deployed with divisions with an early deployment mission. The complexity of modern combat may indicate that Round-Out Brigades will continue to need some training following activation.”

The National Guard Bureau gave both a more upbeat and a more guarded interpretation of the experience gained in Operation Desert Shield and Desert Storm in its “After Action Report.” Based on experience through February 28, 1991, the bureau concluded:

Operation Desert Shield and Desert Storm was a significant success for the Army and the Army National Guard. USARNG volunteers filled critical positions early in the crisis. The Army was successful in rapidly deploying sixty (60) USARNG COL/LTC level Commands to SWA. The deployment of USARNG units made a significant contribution to Operation Desert Shield and Desert Storm.

Army National Guard units were ready for federalization. The Army and the Army National Guard were successful due to years of preparation. All Army National Guard units arrived at their respective mobilization stations within 72 hours of federalization. Over 97 percent of our USARNG units were at or above deployability criteria when federalized. Sixty-seven percent (67 percent) of all Army National Guard units

deployed within 45 days of being federalized. The primary constraint to earlier deployment was sealift and airlift capability.

One hundred percent (100 percent) of the USARNG soldiers called-up reported for active duty. Ninety-four percent (94 percent) of the USARNG units' soldiers were deployable. Six percent (6 percent or 3,974 of 62,411 soldiers) assigned to units were not eligible for deployment under provisions of U.S.C. 673(b) and DoD guidelines.

The combat readiness of the USARNG was at a historic high preceding the call to federal duty. When given the mission to deploy to CENTCOM, the Army National Guard demonstrated its ability to alert, federalize, and rapidly deploy to the theater of operations."

In its 1991 Legislative Action Plan, the National Guard Association prepared a special assessment expressing concern over emerging defense strategies. The association concluded that the Persian Gulf call-up

demonstrated that, notwithstanding all its successes, the Total Force Policy has not been able to fully overcome old prejudices and attitudes within the defense establishment. The call-up was structured to ignore commitments to fundamental relationships such as Round-Out and the assigned missions of Guard combat units in established contingency/war plans. When called, the National Guard was there and was ready; but in several instances, the call did not come or came too late. This whole experience will undoubtedly play an important role in future force structure decisions.¹⁹

To reduce possible hurdles in calling up the Guard in contingency missions, the association distributed a Force Structure Study Group report to all of the state adjutants general on April 17, 1991. It recommended that:

Presidential call-up authority should be reviewed and legislative relief sought to extend that authority to 180 days with an additional 180-day extension. Legislative relief should also be sought to automatically mobilize Round-out units if the parent unit is called. Removal of these two impediments would help overcome political reluctance to use the Guard because of time limitations.²⁰

The association's Legislative Action Plan reiterated the multiplier benefits of a small active military with primary reliance on citizen-soldiers. The benefits of the National Guard cited in the plan include getting the most effective and least costly force possible, retention and preservation of skilled prior service active military personnel in the Guard, assistance rendered to third world nations in building their own national Guard forces, and a wide range of service to communities throughout America.²¹

Major General Robert F. Ensslin, Jr., Florida adjutant general and president of the National Guard Association of the United States, recently said:

The Congress and American people are presented with the option of a high cost, active duty military of questionable need, or a balanced military consisting of a "full-time" force to meet our nation's identifiable threats backed up by a trained, equipped and ready citizen-soldier force capable of being quickly "Tie-tuned" to meet a variety of currently obscure threats. Both provide requisite security. The former provides gold plated national defense; the latter provides a balanced, capable national defense force that retains the spirit of the (Constitutional) Framers' intent, and provides to the American tax paying citizenry a peacetime return on the national defense investment.²²

Study Under Way

Concern about the proper strategy to follow led Congress to order the Defense Department to prepare a report on these critical issues. The *National Defense Authorization Act* for fiscal years 1992 and 1993²³ called for the "conduct of an independent study to examine the existing and projected active and reserve component for structure, force mix, and end strength." That report is due for completion in 1993.

State Concerns

For states, changes in the nation's defense strategy could have a substantial impact on the Guard's ability to perform traditional state functions. Drastic reductions in the number of National Guard members, changes in the distribution of key units (e.g., engineering companies), and reduced access to equipment necessary in civil disorder and natural disaster responses could leave states without the personnel or equipment they need to combat a disaster or emergency.

State interests in the National Guard and concern that Defense Department strategy is tending toward reduction in Guard strength led the National Governors' Association (NGA) to adopt a policy statement on this issue in which it states that "...no restructuring of military forces should occur without a cost-benefit analysis that takes into account the dual role of the National Guard, and a review of any proposed reduction of units with appropriate state officials."²⁴

NGA supplemented that policy in 1991 with a resolution that supported congressional efforts to take incremental reductions in National Guard troop levels, starting at a level of not less than 450,000 and resulting in an end-strength of 420,000 for the Army National Guard. That resolution reflected the governors' view that troop strength below that level would adversely affect the ability of the Army Guard to "train and develop personnel, effectively manage career opportunities, provide opportunities for upward mobility for women and minority groups, perform state missions, support the war on drugs, and make the most cost-effective contributions to national defense."²⁵

A spring 1992 announcement by the Department of Defense (DOD) of major reductions in National Guard units prompted additional gubernatorial concern. Regarding this DOD proposal, NGA wrote its membership:

Eight hundred thirty National Guard and re-

serve units would be reduced or eliminated during the next two years. . . . Units would be closed in all fifty states, the District of Columbia, and Puerto Rico, affecting more than 140,000 Guard members and reservists. . . .

While the DOD announcement reflects a 10 percent reduction, the changes represent more than a 30 percent reduction to the National Guard of every state. In the years between 1992-1995, some states will lose more than 50 percent of their Guard and reserve personnel.

With the closing of armories and [the] major reduction in personnel, states will suffer an economic loss, given the reduction in federal funds in support of the National Guard mission. In addition, some state National Guard units could lose in equipment used to handle emergencies and other incidents.

The DOD proposal does not consider the dual role of the National Guard, nor does it give a cost-benefit analysis that takes into account this role as part of the Total Force.

Last year, Congress asked DOD to provide such an analysis prior to any force structure changes in the Guard. The Senate Committee on Armed Services observed that it would "continue to seek rational force structure and force mix plans" from DOD, and that their efforts have been "frustrated because it had not received force structure and force mix plans that it can review analytically." DOD appears to be ignoring this Congressional request by announcing a plan that does not consider the force mix or dual role of the Guard.²⁶

Implications of the planned cuts for the states were illustrated by Michigan's Adjutant General E. Gordon Stump:

As the state budgets become more and more constrained, there are increasingly fewer state resources to deal with natural disasters and related emergencies within the states. This is a Guard role that should be "beefed up" — not diminished. . . . The resource base for providing this assistance is indispensable to the states and should be expanded. After all, the National Guard comes at a minimal **cost** compared to maintaining these kind[s] of resources on a full-time, everyday **basis** in other public or private sector organizations. It just makes **sense** to utilize the Guard resources more fully in this **area** than has been done in the **past**.²⁷

Conclusion

Following the experience of fighting an unpopular war in Vietnam, a deliberate decision was made to meld the National Guard with the full-time active military as fully as possible. The rationale was to involve a large proportion of the American public by mobilizing the National

Guard from its thousands of locations throughout the United States when needed for national defense purposes. A related benefit of this approach is to permit elected officials to have a better sense of public support or opposition to any major military operation. This policy echoes the original intentions of the founding fathers for a small standing army complemented by citizen soldiers (and now air personnel as well). Moreover, relying on the National Guard provides a larger defense capability, albeit with some limitations, for considerably less cost. Direct unit comparisons by the Department of Defense indicate that National Guard military units cost between **25** and **40** percent less to operate than regular military units.²⁸

As planning to reduce American defense forces continues, the key issues in ensuring that the National Guard will function effectively in its dual role include:

- Will the governors have anything to say about the size and capability of the National Guard?
- Could decision making become more of a partnership with the governors?

Determination of the best mix of active duty, National Guard, and Reserve forces to ensure sufficient military preparedness at the lowest possible cost must be made in conjunction with the states, given their reliance on the Guard for domestic needs. Yet, there are insufficient communication linkages on these issues between the president, the secretary of defense, governors, and the military's strategic policymakers.

Although the National Guard Bureau is the statutory channel of communication between the Department of Defense and the states on all matters pertaining to the Guard and performs **necessary** logistical functions between the departments of the Army and ~~Air~~ Force with the state adjutants general, responsibility for military strategy and priorities lies elsewhere in the Department of Defense.

In evolving National Guard policy and resources, creativity and initiative are needed to provide better opportunities for dialogue between the governors and DOD. Even though national security questions may be involved, the implications of new national directions are of such significance to the states that **an** orderly exchange of views is needed.

Notes

¹ Robert L. Goldich, "Military Manpower and Compensation: Fiscal Year 1993 Budget Issues" (Washington, DC: Library of Congress, Congressional Research Service, April 1992), pp. 5-11.

² James Kitfield, "Total Force," *Government Executive* 23 (March 1991): 13.

³ Robert L. Goldich, "Iraq-Kuwait Crisis: U.S. Reserve Call-Up and Reliance on the Reserves" (Washington, DC: Library of Congress, Congressional Research Service, December 1990).

⁴ Warren Lenhart, "Reserve Components: Partners in the Total Force" (Washington, D C Library of Congress, Congressional Research Service, April 1989), pp. 31-32.

⁵ See *ibid.*, p. 32.

⁶ See Martin Binkin and William Kaufmann, *The U.S. Guard and Reserves: Rhetoric, Realities, Risks* (Washington, DC: The Brookings Institution, 1989).

⁷ U.S. General Accounting Office, *Army Training: Management Initiatives Needed to Enhance Reservists' Training* (Washington, DC, 1989), pp. 3-4.

- ⁸ _____, *National Guard: Peacetime Training Did Not Adequately Prepare Combat Brigades for Gulf War* (Washington, DC, 1991), p. 9.
- ⁹ Ibid., p. 3. The Defense Department, with some qualifications, concurred with GAO's findings and recommendations. Department officials reported that DOD was taking action on improved medical screening and validation procedures for future mobilizations.
- ¹⁰ U.S. Department of Defense, *Total Force Policy Report to the Congress* (Washington, DC, December 1990). The report was prepared in accordance with Sec. 1101 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (P.L. 101-189).
- ¹¹ Ibid., pp. 13-31.
- ¹² Ibid., pp. 46-47.
- ¹³ Burton Gellman, "Cheney Says Guard Units May Need Reorganizing Secretary Questions Short-Notice Capability," *Washington Post*, March 15, 1991.
- ¹⁴ U.S. Department of Defense, "Conduct of the Persian Gulf Conflict: An Interim Report to Congress" (July 1991). The report was prepared pursuant to the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Title V (P.L. 102-25).
- ¹⁵ Ibid., p. 11-1.
- ¹⁶ The concept of a round-out calls for Army divisions to be made up of two full-time active duty combat brigades and one Army National Guard brigade. See National Guard Association of the United States, "Legislative Action Plan 1991," pp. 4-5.
- ¹⁷ U.S. Department of Defense, *Conduct of the Persian Gulf War: An Interim Report to Congress*, p. 11-6.
- ¹⁸ U.S. Department of Defense, National Guard Bureau, "Army National Guard After Action Report (August 2, 1990–February 28, 1991)—Operation Desert Shield–Operation Desert Storm, Executive Summary" (Washington, DC, undated), p. 21.
- ¹⁹ National Guard Association of the United States, "Legislative Action Plan 1991," p. 4.
- ²⁰ _____, "NGAUS Force Structure Study Group Report" (Washington, DC, undated), p. 3. Such legislation subsequently was passed to lift the 180-day restriction for combat units.
- ²¹ _____, "Legislative Action Plan," p. 5.
- ²² Robert F. Ensslin, Jr., "Public Policy Dimensions of Base Force and Reconstitution Strategy for the National Guard," February 1, 1992, p. ii.
- ²³ P.L. 102-190.
- ²⁴ National Governors' Association, *Policy Positions 1991-1992* (Washington, DC, 1991), p. 32.
- ²⁵ Ibid.
- ²⁶ National Governors' Association, "The National Guard and National Defense Policy," *Action Letter*, April 10, 1992, p. 1.
- "Memorandum from Major General E. Gordon Stump to Bruce McDowell, May 1, 1992.
- ²⁸ U.S. Department of Defense, *Total Force Policy Report to the Congress*, pp. 38-46.

Chapter 7

Intergovernmental Issues Involving the Civil Activities of the National Guard

Although disputes over the operation of the National Guard, particularly with regard to its size and foreign training exercises, have garnered the greatest public attention, these issues are just two of many relating to the Guard's operations. Other issues of particular intergovernmental importance concern the Guard's involvement in civil or non-military activities, including:

- 1) Federal disaster relief and emergency assistance;
- 2) Civil disorders;
- 3) Drug interdiction and anti-drug activities;
- 4) State defense forces;
- 5) Compliance with federal and state environmental protection laws and regulations;
- 6) Equal employment opportunity; and
- 7) Unit integrity.

Federal Disaster Relief and Emergency Assistance

The range of relief services and emergency assistance provided by National Guard units throughout the United States historically has been very diverse. Guard members have assisted during floods, hurricanes, civil disturbances, Cuban refugee operations, President Nixon's inauguration, hospital strikes, power failures, searches for missing persons, and the Huey P. Newton trial, to cite just a few instances.

Without the Guard, many communities would be sorely tested, or perhaps overwhelmed, by an emergency. For example, after more than 10 million gallons of oil spilled into Alaska's Prince William Sound in 1989, 130 members of the state National Guard cooperated with the U.S. Coast Guard, civilian authorities, and active Army and Air Force units in the massive clean-up effort.

The Alaska National Guard Emergency Operation Center in Anchorage coordinated the missions, which included communications, aircraft refueling, public affairs support, and providing equipment.¹

The Federal Emergency Management Agency (FEMA) is responsible for coordinating the disaster assistance provided by all federal agencies.² In some states, the National Guard's adjutant general is the initial contact for working with FEMA; other states have an Office of Emergency Services or similar agency. But the Guard assumes primary responsibility for coordination.

Sometimes, National Guard effectiveness in disaster relief is hampered because the federal and state agencies responding to the crisis fail to communicate with each other. Different chains of command and failure to take directions from FEMA contribute to this situation. This was the case for the Florida Guard during the 1980 Key West Cuban refugee operation.

Civil Disorders and the National Guard

Use of the National Guard to quell civil disturbances and help enforce the law is as old as the history of the Guard. Often, the Guard is considered to be the only orga-

nization in the states with sufficient personnel and equipment to assist local police in riot-control operations.

Civil disorders serious enough to require National Guard intervention increased greatly from World War II to 1969.³ During that period, disturbances on college campuses and in America's cities increased the involvement of the National Guard and led to public debate over the use of the Guard in suppressing civil disorders. In particular, the Detroit riot in 1967 and the incident at Kent State University in 1970 became catalysts for action to restrict the use of deadly force in controlling civil disorders?

After studying the Detroit riot of 1967, the U.S. Riot Commission charged both the police and the National Guard with indiscriminate firing. It also found that the equipment at Kent State was inappropriate for law enforcement duties.⁵ To avoid a recurrence of these problems, the commission recommended training and policy changes to make the Guard more effective and competent in such situations.⁶ Others were even more critical of the Guard's actions in domestic situations. For example, the American Civil Liberties Union charged that, "All in all, the lives, limbs and freedoms of innocent citizens were put in immediate danger on each of the 324 occasions when the Guard was called out between January 1968 and May 1970."⁷

Prompted by these developments, the Guard reviewed its training procedures. Civil disturbance training prior to the 1967 riots, according to Lt. Col. Ronald R. Johnson, consisted primarily of mob dispersal and crowd control techniques with the emphasis on riot-control formations and the use of riot-control agents.⁸ The Department of the Army and the National Guard, recognizing their riot control training deficiencies, expanded their training requirements to a 32-hour training program, with one hour devoted to riot-control policies and legal considerations? Also aware of these problems, the states started development of riot-control plans under directives of the Department of the Army.¹⁰

After the Kent State incident of 1970, a National Guard Bureau study group reviewed the civil disturbance plans of the states, particularly the provisions limiting and authorizing the use of deadly force. The study group found that state guidelines were generally compatible with the Department of the Army's plan but did not eliminate opportunities for misuse of deadly force. For example, provisions in many state plans insisted that, "Rifles will be carried with a round in the chamber in the safe position."⁹

Today, National Guard and Air National Guard regulations specifically cover deployment of Army and Air National Guard unit personnel and the equipment of the several states in support of civil authorities.¹¹ Unit commanders assigned a civil disturbance mission must ensure that all personnel receive at least 16 hours of instructions in initial individual civil disturbance operations.¹³ Units assigned to undertake "on-the-street" civil disturbance missions are required to participate in annual refresher and junior leadership training.¹⁴

Perhaps most important are clear regulations governing the degree of force that may be used. Civil disturbance training programs now emphasize minimum force, liabilities for the use of excessive force, "degrees of force op-

tions including the use of deadly force, [and] specific requirements for . . . lock plates installed to prevent automatic firing; apprehension and arrest; precommitment briefing; and psychological orientation. . . ."¹⁵

All of these provisions are designed to protect National Guard personnel and the civilian population in a potentially tense and dangerous situation. By the same token, there is little doubt that these regulatory restrictions can and will be used in proceedings against Guard members accused of a violation.¹⁶ They have the effect of limiting the immunity or justification given by statute in cases involving injuries of bystanders after the riot-control warning has been given and when used in the arrest of felons.

As the 1992 incident in Los Angeles demonstrated, the National Guard and civil authorities face different conditions than in the 1960s and 1970s. Although minimum force is preferred to control civil disorders, some of the participants in violent urban confrontations use automatic and other highly sophisticated weapons. Store owners in Los Angeles, for example, were seen firing on crowds below. Hundreds of fire fighters were vulnerable to gun fire, and police could not protect them.¹⁷

The paradox of minimum versus deadly force is that looters and snipers involved in some urban areas are not constrained by governmental regulation, the notion of minimum force, or the police. Use of deadly force, therefore, will remain a necessary option for Guard members when their physical safety may be in jeopardy.

Use of the National Guard in Drug Interdiction and Anti-Drug Activities

The National Guard's domestic role has expanded to assisting in the fight against drugs. Hawaii was the first state to utilize the Guard in this battle in 1977, when Governor George R. Ariyoshi orchestrated "Operation Green Harvest," a program that combined local and state agency efforts to eradicate domestically grown marijuana.¹⁸

Since that time, the National Guard's role in drug interdiction has developed gradually. In calendar year 1983, four states reported Guard drug interdiction missions. By 1984, the number jumped to 14.¹⁹ Thirty-two states reported operational support to local and state law enforcement agencies in 1988.²⁰ Table 7-1 shows National Guard support to law enforcement agencies in drug interdiction activities during fiscal year 1991.

"To ensure the availability of military support to law enforcement agencies nationwide," the Congress assigned to DOD the mission of drug interdiction.²¹ A provision of the 1989 National Defense Authorization Act further expanded this role as it approved funding of governors' plans to use the National Guard in support of drug enforcement activities while in state status." By federal law, the Department of Defense is authorized to provide funding for personnel expenses, procurement of services, and leasing of equipment to support interdiction and eradication operations. Examples of the types of support given include ground-based radar, communication equipment, aircraft, aerial search lights, and aerial imagery.²³

As an instrumentality of a state, the National Guard is not subject to *Posse Comitatus Act* restrictions except when called into active federal service. In addition, the Congress

Table 7-1
Results of National Guard Drug Support Operations
Fiscal Year 1991

Confiscations	
Cash	\$47,489,000
Marijuana Plants Eradicated	20,798,000
Processed Marijuana	116,864 lbs.
Cocaine	63,890 lbs.
Heroin	1,610 lbs.
Opium	921 lbs.
Vehicles	2,083
Weapons	1,636
Arrests Resulting	6,152

Source: U.S. Department of Defense, National Guard Bureau, *Annual Review of the Chief, National Guard Bureau, Fiscal Year 1991* (Washington, DC, 1992), p. 112

enacted exceptions to the act in 1982 and 1988 to recognize an “enhanced drug interdiction and law enforcement role for the National Guard.”²⁴ As a result, it appears that the National Guard, in addition to its primary responsibility of military readiness, will be providing support to law enforcement agencies well into the 21st century. Nevertheless, Guard personnel in state status, when assisting civilian law enforcement agencies, are prohibited by policy, although not by statute, from direct enforcement activities, such as arrest, search, and seizure.²⁵

To receive funding for counterdrug missions, a governor must submit a plan to the office of the secretary of defense (OSD) outlining missions to be conducted by the Guard, with the advice of state and local law enforcement agencies. The state must request the appropriate resources to conduct these missions, which are predominately interdiction, eradication, and urban drug enforcement operations.²⁶

The office allocates funds for what it considers high-priority missions that are consistent with the president’s national drug control strategy and with advice from federal law enforcement agencies. During fiscal years 1989, 1990, and 1991, the federal government channeled \$35.5 million, \$67.7 million, and \$111.9 million, respectively, to the states through this program.²⁷

During fiscal year 1989, 53 states and territories, and the District of Columbia utilized a total of 107,348 personnel-days in 1,811 separate drug interdiction support operations. It was not uncommon to have 2,000 volunteer Guard members on duty on a given day. Guard personnel duties included inspection of commercial cargo at land border entry points, seaports, and international airports, and aerial and ground reconnaissance/surveillance.²⁸ Activities made possible by the increased federal funding included transportation of law enforcement personnel, special training programs for law enforcement officers and Guard members, and numerous radar and imagery missions.²⁹

OSD and National Guard Bureau officials acknowledge that they lack adequate information on how to quantify the expansion of their counterdrug capabilities. In the fu-

ture, they will require states to assign priorities among proposed missions. States with the most pressing interdiction needs will receive the highest priority.³⁰

Operation Autumn Harvest

Operation Autumn Harvest is an example of how federal resources were used by the National Guard to support civilian law enforcement agencies. In September 1987, Guard units from Arizona, Missouri, Utah, and Wisconsin and officials of the U.S. Customs Service conducted a 30-day, nearly around-the-clock, operation designed to detect and apprehend smugglers bringing drugs across the Arizona-Mexico border in aircraft. This operation was funded by the federal government and was conducted as a National Guard training exercise. Expenditures totaled approximately \$960,000.³¹

According to the General Accounting Office, “Operation Autumn Harvest did not meet its primary objective,” which was to detect and apprehend drug smugglers working the Arizona-Mexico border, although it did “provide valuable wartime readiness training, according to the National Guard.”³² GAO investigators found that “premature newspaper publicity, limited coordination, inadequate radar capability, and the absence of full-time Customs interceptor aircraft in close proximity to the radar sites limited the operation’s potential for interdicting drug smugglers.”³³

Perhaps the most significant lesson learned from the operation was that coordination between the National Guard and the U.S. Customs Service was inadequate. Moreover, the Customs Service was not sufficiently involved in the planning.³⁴ GAO has suggested, however, that the impact of the Guard’s counterdrug activities cannot be measured in traditional terms of arrests and seizures because the Guard supports law enforcement agencies and does not independently plan, control, or execute operations.³⁵

National Guard officials identified several important lessons learned from this operation. First, the operation provided valuable wartime readiness training and promoted a sense of purpose among Guard personnel.

Second, National Guard and Customs officials agreed that the use of ground-based radar proved to be inadequate and ineffective. The Guard’s radar units identified 93 suspect targets meeting Customs’ drug smuggling profile. Customs and/or Guard aircraft attempted to identify visually and intercept 33 of the 93 targets. Six targets were intercepted, but none were carrying drugs.³⁶

Cost Concerns

At a roundtable discussion on the use of the military in controlling illegal drugs in 1983, Lawrence Korb, then assistant defense secretary for manpower and logistics, acknowledged that

the cost of military assistance to civilian law enforcement agencies is an issue of great concern to the states. . . . [A] lot of states have absorbed much of the cost in their own domestic agencies. . . . [M]ost of the assistance the military has provided to date has been on a non-reimbursable basis, which is permissible where the assistance is provided in the course of training and routine operations and no extraordinary cost is incurred. . . . [I]f

the military assistance has no benefit to the military unit . . . the Department of Defense seeks reimbursement. . . .³⁷

Cooperative agreements may be the solution to the financing question. A cooperative agreement could set down the expectations between the National Guard and state and local police officials and explain how they will work together. Specific elements of the agreement would become the instrument to measure the accomplishments.

State Defense Forces and the National Guard

Federal law allows states to organize and maintain a state defense force in addition to the state's National Guard.³⁸ These forces, which exist in 24 states, are paramilitary, volunteer civilian militia (called militia, state Guard, Guard-reserve, or defense forces) that serve as a backup force in the event the National Guard is mobilized by the president. These forces usually consist of retired and former active service members and include approximately 10,000 volunteers. The units participate in week-end and monthly drills, but receive little or no compensation. None of these state defense forces has federal status, although the National Guard Bureau assists the states in coordinating their activities.

According to federal law, the defense force is under the control of the governor and may not be "called, ordered, or drafted into the United States armed forces."³⁹ Defense force members may not be in the armed forces reserve.

Some state defense force units, such as Alaska's, were formed at statehood. Others were authorized by state constitutions. New Mexico traces its force to 1606, when the Spanish explored the Rio Grand Valley, and to an organization known as "Los Vecinos" (the neighbors). Mississippi's state defense force operated under an attorney general's opinion until it was put into law in 1989.⁴⁰

Participation in state defense forces is not always voluntary. During armed conflict in California, for example, the governor may draft any unmarried male resident between the ages of 18 and 45 who is not subject to any other armed service.⁴¹

The size, duties, and capabilities of units vary widely. For instance, Texas has a 1,300-member state Guard, and units in Tennessee and Georgia number approximately 1,000. In 1989, the Virginia Defense Force was involved in crowd control at 17 events around the state. Virginia's unit also has conducted search-and-rescue missions and has helped a small community develop a plan to handle toxic chemical spills.⁴²

The rationale for state defense forces rests with the National Guard's expanded role in the national defense structure. One observer notes that most states seem to believe and act as if "their" Guard will always be available for the traditional disaster relief and constabulary mission, but he points out that in the event of National Guard mobilization, "many states may find themselves lacking in trained cadres to replace missing Guard units."⁴⁴

The recent Persian Gulf operation call-up of tens of

thousands of National Guard personnel to active duty gave some states a new, but short-lived, opportunity to replace these troops with volunteer state defense forces. "We're sort of a has-been force until we are needed," reported Tom Anderson, president of the National Association of State Defense Forces.⁴⁵

Problems with State Defense Forces

Analyzing the experiences of states with defense forces, several problem areas are apparent. First, trying to duplicate the role played by the state National Guard as both a constabulary and a potential combat force is likely to be a waste of effort and resources. Recognizing the conflict between these dual roles, many states have given their state defense forces the mission of internal security/military police, which can be adapted to meet state needs. Other states regard the state defense force as a full replacement for the National Guard.

Second, problems have arisen with membership and other personnel. Some observers have claimed that many of the volunteers are former servicemen, nostalgic for a type of soldiering inappropriate to their constabulary mission, and that no research has been done on the qualifications of state defense force volunteers.⁴⁶

Some state defense forces have been reported to attract neo-Nazis, survivalists, former mercenaries, and violent felons.⁴⁷ At least four states have taken action regarding their state Guard units. For example, in 1987, Utah Governor Norman Bangerter removed all but 31 of almost 400 state Guard officers after an investigation confirmed that members of the Aryan Nation had infiltrated the force.⁴⁸ Virginia terminated several hundred officers in response to an investigation by the state legislature that followed reports of a brigade saving money to buy a tank and of other units practicing drug raids. In 1986, the Texas House of Representatives voted to terminate appropriations to the state Guard because of its activities and misappropriation of funds, but 40 percent of the funds were restored in a compromise with the state Senate. Some California legislators have opposed continued funding for the State Military Reserve (one bill was introduced to abolish the force) and are insisting on some accountability.

Third, there has been poor local coordination because state forces are independent of state police, disaster relief agencies, and the civil defense system.⁴⁹

The National Guard Bureau, according to some critics, should oppose federal support for such organizations when they fail to conform to a minimum standard of mission development and training.

Proposals for Expanded State Defense Forces

Despite the difficulties in some states, early in President Ronald Reagan's first administration, the Department of Defense issued model bills authorizing the creation and funding of volunteer militia organizations. These groups would be prepared, on request of the governor, to "assist civil authorities in the preservation of law and order. . . suppress subversive activities . . . protect critical industrial institutions, and assume control of state armories so that National Guard personnel would be freed for combat."⁵⁰

Members of Congress also have expressed support for these state defense forces. As of May 1992, three bills had

been introduced on this subject.⁵¹ The bills generally seek to allow arms and equipment and training assistance to be provided by the federal government to state defense forces. Supporters of such legislation argue that federal intervention is justified, for example, on the basis that it is “in the national interest . . . (1) to maintain public safety and order, (2) to protect essential resources and facilities, (3) and to perform essential services when National Guard forces are federalized or otherwise not available or adequate to the state.”⁵²

Intergovernmental Issues

If the Department of Defense becomes involved in either training or logistical support to state defense forces, some advance thought needs to be given to a number of federal-state legal questions. For instance, individuals and corporations in some states donate funds to the state defense force.⁵³ In other states, the forces receive little or no funding from the state.⁵⁴ These relationships suggest that the National Guard Bureau should consider establishing guidelines governing state acceptance of gratuities if the state defense force wants to receive federal recognition and support.

Several intergovernmental issues, such as professional standards in recruitment, grade classification, and training and development, have not been resolved.⁵⁵ These issues are important because they suggest that the current status of many state defense forces is inappropriate for their potential mission as constabulary and combat force.

An ambiguous relationship exists among the Department of Defense, the National Guard, and state defense forces in several states. These forces lack the oversight of a chain of command that governs both active duty military forces and the National Guard.

Compliance with Environmental Protection laws

Like most institutions in the United States, and particularly certain federal agencies, the National Guard has encountered public criticism for its treatment of the environment. The potential for environmental problems is enormous because the National Guard maintains more than 25,000 buildings at some 3,200 state and federal facilities.⁵⁶ Many of these sites have leaking underground storage tanks, among other problems.⁵⁷ In February 1990, Otis Air National Guard Base/Camp Edwards was added to the Environmental Protection Agency’s Superfund toxic waste site cleanup list.⁵⁸

Lt. Gen. John B. Conaway, chief of the National Guard Bureau, may be correct when he says, “There was, and remains today a pervading attitude throughout our military that the importance of the mission somehow outweighs the consequences of our action—that the end justifies the means.”⁵⁹ Conaway said that total environmental compliance will be among the Guard’s top goals in the 1990s and that the National Guard’s performance is to be the standard by which all other agencies within the Department of Defense are judged. To meet these performance standards, Conaway proposed the following:

- 1) Creating separate budget line-items for the National Guard environmental programs;
- 2) Building an Army National Guard headquarters

staff within the Army Directorate to provide federal environmental compliance management for federal facilities and for those USARNG facilities receiving federal support;⁶⁰

- 3) Upgrading and, where necessary, replacing the Guard’s underground storage tanks at Army and Air Guard federal and federally supported state institutions;
- 4) A centralized auditing program as the key to identifying past, present, and long-term environmental threats that may result from the Guard’s day-to-day operations;
- 5) Developing a central environmental contracting office, operating out of the National Guard Bureau, to help develop contracts for hazardous waste clean-up under the Installation Restoration Program and other environmental requirements; and
- 6) Instituting and following a clearly defined, uniform system for administering the *National Environmental Policy Act*.⁶¹

The Army National Guard established an Environmental Resource Management Office in July 1990 to oversee 17 different program areas, such as noise abatement, air quality, and cultural resources management. The staff also provides assistance to all National Guards.⁶² Funding for environmental management programs grew from \$8.1 million in FY 1989 to \$30.373 million in FY 1991.

U.S. Army regulations “require major commands to perform comprehensive environmental assessments at all installations on a four-year cycle.”⁶³ According to the National Guard Bureau, “all federal or federally supported National Guard installations must conduct internal compliance assessments every two years.”⁶⁴

Attention is being paid to the importance, not only of environmental remediation but also of communicating with the public on these matters. The National Guard Bureau published “Public Affairs Guidance on National Guard Bureau Environmental Programs” in October 1990, in which it is pointed out that it is the policy of the bureau to keep the public fully informed of past and proposed actions that have the potential of adversely affecting the environment.⁶⁵

Equal Opportunity in the National Guard

Legally and technically, membership in the National Guard is open to eligible Americans of every race, color and creed. Nevertheless, it has only been during recent years that the number of minority group and women members in the Guard has increased significantly.

According to the *National Guard Almanac*, the transition began with the establishment of the National Guard Bureau’s Office of Equal Opportunity and Civil Rights in 1966 in accordance with Title VI of the *Civil Rights Act* (Nondiscrimination in Federally Assisted Programs). By

Table 7-2
Minority Participation in the National Guard
 (September 30, 1991)

Service	White		Black		Hispanic		Other ¹	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Air Force								
Officers	13,345	92.4%	496	3.4%	324	2.2%	275	2.0%
Enlisted	91,231	84.2	8,812	8.1	4,627	4.3	3,627	3.4
Subtotal	104,576	85.2	9,308	7.6	4,951	4.0	3,902	3.2
Army								
Officers	45,779	88.3	3,136	6.0	1,731	3.3	1,218	2.4
Enlisted	311,664	73.9	66,550	15.8	25,846	6.1	10,774	4.2
Subtotal	357,443	75.5	69,686	14.7	27,577	5.8	18,992	4.0
TOTAL	462,019		78,994		32,528		22,894	

¹ American Indians, Alaskan Natives, Asians, Pacific Islanders, and others.

Source: *National Guard Almanac*, 1992, p. 92.

1968, the secretary of defense had approved plans to increase the number of blacks in the Army and Air National Guards, and the Office of Equal Opportunity began collecting data on minority group participation.

The Civilian Acquired Skills Program to recruit minorities enabled individuals without prior service to join the Guard and receive promotions to E-4 and E-5 rank after completing initial active duty training. In 1974, the National Guard Bureau funded personnel positions for race relations/equal opportunity for each Army Guard.

Although minority membership among enlisted personnel was good during the 1970s, the number of African-American officers and warrant officers failed to increase proportionately. As a result, the Guard launched a minority officer recruitment program in the late 1970s, which by 1981, won praises from the NAACP. Through most of the 1980s, however, progress leveled off. Minority officers make up 11.48 percent of total Army Guard officers and 7.90 percent of total Air Guard officers. The enlisted strength figures of minorities are higher⁶⁶ (see Table 7-2).

The participation of women in the military, and in the National Guard in particular, has increased dramatically in recent years. The first female Guard member was a nurse, commissioned by the Air National Guard in 1956.⁶⁷ Historically, women were excluded from many military units involved in active combat or serving on ships and aircraft on combat missions. Until 1967, women could not be officers in the Guard.⁶⁸ At the end of FY 1991, however, more than 45,000 women served in the National Guard (see Table 7-3)

The chief of the National Guard Bureau has issued a goal charter committing the Guard to leadership in equal opportunity and fair, equitable, and nondiscriminatory treatment of all members and employees. Commenting to the *Air Force Times*, Chief John Conaway said there were no specific numerical goals in recruitment, but that he wanted the Air National Guard to be as totally representative as possible of its communities.⁶⁹

Equal opportunity remains an important issue for the Guard, not only because of the need for equity but also because units may be called to quell disturbances in predominantly minority areas. When the Guard has a well-trained leadership reflective of the diversity of state citizens, its state missions can be accomplished with more ease and professionalism.

The challenge for the rest of the decade is to develop programs and processes that ensure continuation of the progress shown thus far of minorities and women into senior leadership positions within the Guard, during an era of downsizing.

The National Governors' Association has gone on record in favor of equal opportunity in the Guard. NGA policy states:

Governors, as commanders-in-chief of the National Guard, fully support equal opportunity in all state programs and institutions under the Guard regardless of race, sex, or religion; endorse the National Guard Bureau's goal; and pledge full support in achieving equal opportunity in all aspects of the Guard.⁷⁰

Table 7-3
Female Participation in the National Guard
 September 30, 1991

status	Air Force	Army
Commissioned Officers	1,490	3,575
Warrant Officers	0	264
Enlisted Personnel	14,160	28,034
Total	15,650	31,823

Source: *National Guard Almanac*, 1992, p. 93.

Unit Integrity

Although many of the intergovernmental issues discussed in this report are of relatively recent origin, unit integrity has been debated by federal and state officials from the earliest days of the militia Guard.

Many Guard officials and members believe that combat efficiency, capability, and group spirit of National Guard members are maximized when the unit in which they have trained is called up intact." Practices followed by the active military, however, have not always promoted unit integrity.

The 1916 *National Defense Act* clarified the relative federal/state relationships of the National Guard by directing that when the Congress authorized use of the Guard, the president could draft members of the National Guard into the federal service. When such action took place, neither individual Guard members nor state units retained their status as state militia.⁷²

That approach controlled for over a decade, although not without controversy. From the beginnings of the United States involvement in War World I, the regular military ignored previous state Guard identification and cohesion. Guard personnel were drafted as part of the Army and "regiments with proud histories and tradition were broken up."⁷³ Within the general army staff, "there was still strong feeling that the sooner the regional background and historic heritage of citizen-soldier units were obscured or obliterated, the better it would be for the regular Army."⁷⁴

For this reason, and to clarify Army organization structure, Guard regiments were renumbered without reference to the home state, so that, "the resulting Divisions and Brigades should bear no designations indicative of State or region. There would be no 'Wisconsin Iron Brigade,' no 'Hood's Texans,' nor 'Roosevelt's Rough Riders,' as in the Civil and Spanish Wars."⁷⁵

Following the experience of World War I, officials recognized a need to permit state Guard units to serve as federalized Guard units rather than be drafted essentially as individuals. The Congress moved to correct the situation with its 1933 amendments to the *National Defense Act*.⁷⁶ That law created the National Guard of the United States, whose units were identical to that of the various state National Guards. The legislation explicitly provided that, once called up for federal active duty, Guard units were to be kept as discrete entities to the maximum feasible extent.⁷⁷

Maj. Gen. E. Gordon Stump, Michigan's adjutant general, recently spoke to the importance of unit integrity:

An essential element of morale in a military unit is the relative cohesion of its members. Nothing could be more detrimental to National Guard units when they are called to active duty than to fragment them, or otherwise destroy their unit integrity. Any use of National Guard personnel as fillers is indicative of a sort of second class status for National Guard units and is detrimental to the Total Force Policy.⁷⁸

The Defense Department's interpretation of "unit integrity," however, leaves the department considerable leeway. Federal law states that the department will maintain units "so far as practicable" during the initial mobilization.⁷⁹ Furthermore, DOD regulations clearly provide that National Guard units are to be activated as such.

The 1990 report of the Reserve Force Policy Board observed that Desert Shield had surfaced several unit call-up policy issues. The interagency board felt the need to observe that, to the extent practicable, reserve component units should be called up

as complete units, to maintain their unit integrity and readiness. There may be occasions when an entire unit may not be needed. However, the Board is concerned that a recent trend toward calling unit cells, rather than units, is a departure from an understanding that Reserve component units would be called to serve only as units.⁸⁰

In response to the manner in which National Guard units were mobilized with respect to unit and leadership integrity during Desert Shield/Desert Storm, the National Guard Association, at its September 1991 general conference, passed a resolution urging that the Guard be activated and commanded as units.

Conclusion

The constitutional, statutory, historical, and military responsibilities of the two American defense establishments are linked, but remain partly independent as well. As a result, although the governors command the Guard in peacetime, they must comply with various federal regulations and instructions from the National Guard Bureau, the Army, and the Air Force, when exercising powers over Guard members.

With military policy expected to become even more complicated in the coming years, due to force reductions, budgetary constraints, shifting national security concerns, and expanding roles in the drug war and environmental protection, the relationship between federal policymakers and the governors needs close examination and coordination. Cooperation and consultation will be essential if America is to maximize its defense forces and meet domestic needs during the coming years.

Notes

¹ "State Line: March 1989, Prince William Sound, Alaska," *USA Today*, September 14, 1990.

² P.L. 93-288, as amended by P.L. 100-707. See also Sandra K. Schneider, "FEMA, Federalism, Hugo, and 'Frisco,'" *Publius: The Journal of Federalism* 20 (Summer 1990): 97-115.

³ Ronald R. Johnson, "The Rock and the Hard Place: Use of Force by ARNG in Civil Disturbance Operations" (unpublished, 1974), p. 2.

⁴ "The Role of the National Guard in an Age of Unrest," *The National Guardsman*, September 1970, p. 10. From 1945 to 1964, more than 99,000 Guardsmen were involved in control of 88 separate civil disturbances, with more than one-third in the final five years of that period. Between 1965 and 1969, some 291,396 Guardsmen participated in 242 control operations, with the majority in the final years.

- ⁵ Ibid. See also Ed Grant and Mike Hill, *Was There: What Really Went on at Kent State* (Lima, Ohio: C.S.S. Publishing Company, 1971), pp. 128-132; and "No More Kent States," *The Philadelphia Inquirer*, November 12, 1970.
- ⁶ U.S. Department of the Army, "Civil Disturbance and Riot Control," August 1967; and "A New Riot Control Memo is Given to the Guard," *New York Times*, August 6, 1967.
- ⁷ "It's Time to Change the Guard," *Time*, October 20, 1967, pp. 24-23; and William A. McWhite, "The National Guard—Awake or Asleep?" *Life*, October 1967, pp. 85-98.
- ⁸ Johnson, "The Rock and The Hard Place," pp. 3-7.
- ⁹ U.S. Department of Defense, Department of the Army, "Civil Disturbance and Riot Control" 19-6(T) (August 1967); and "A New Riot Control Memo is Given to Guard," *New York Times*, August 6, 1967.
- ¹⁰ U.S. Department of Defense, Department of the Army, "Army Subject Schedule, 19-6" (February 21, 1968); and *The National Guardsman*, September 1970, p. 10.
- ¹¹ Ibid.
- ¹² National Guard Regulation 500-1 and Air National Guard Regulation 55-04, "Military Support to Civil Authorities."
- ¹³ U.S. Department of Defense, "Use of Military Resources during Peacetime Civil Emergencies within the United States, Its Territories, and Possessions," Directive 3025.1, May 1980, pp. 1-9.
- ¹⁴ U.S. Department of Defense, Department of the Army, "Army Regulations 350-7" (February 8, 1973), as supplemented by Appendix XV Annex C, FORSCOM Supply 1 to AR350-1; see also U.S. Army Military Police School, Law Division, "Policies and Legal Consideration of Leadership Training Program," Lesson Plan (Washington, DC, February 1971).
- ¹⁵ U.S. Department of Defense, Department of the Army, "Regulation 190-28"; and Federal Manual 19-15, Chapter 7.
- ¹⁶ Johnson, "The Rock and the Hard Place," p. 8.
- ¹⁷ Carlos Sanchez, "Looting's Legacy: More Guns for Gangs," *Washington Post*, May 7, 1992.
- ¹⁸ "Guard Helps Wage the War on Drugs," *USA Today*, September 14-16, 1990; and U.S. General Accounting Office (GAO), *Drug Interdiction: Operation Autumn Harvest: A National Guard-Customs Anti-Smuggling Effort* (Washington, DC, 1988), p. 10, and *Drug Control: National Guard Counter-Drug Support to Law Enforcement Agencies* (Washington, DC, 1991), p. 8.
- ¹⁹ Lt. Gen. Herbert R. Temple, Jr. (then chief of the National Guard Bureau), in a speech to the Border Trade Alliance, Washington, DC, April 4, 1989.
- ²⁰ GAO, *Drug Control*, p. 8.
- ²¹ Ibid. See also *National Defense Authorization Act*, P.L. 100-456.
- ²² P.L. 101-189, division A, Title XII, Section 1207(a)(1), now found at 32 U.S.C. Sec. 112.
- ²³ GAO, *Drug Control*, pp. 16-17.
- ²⁴ Ibid., pp. 2-4.
- ²⁵ U.S. Department of Defense, "DoD Cooperation with Civilian Law Enforcement Officials," Directive 5525.5 (January 15, 1986), pp. 4-1 to 4-3.
- ²⁶ 32 U.S.C. Sec. 112(b). See also U.S. Department of Defense, "Use of Military Resources during Peacetime Civil Emergencies within the United States, Its Territories, and Possessions," Directive 3025.1.
- ²⁷ GAO, *Drug Control*, p. 2-3.
- ²⁸ John B. Conaway, Statement before the Senate Subcommittee on Military Construction, p. 3.
- ²⁹ GAO, *Drug Control*, p. 3.
- ³⁰ Ibid., pp. 4 and 9.
- ³¹ GAO, *Drug Interdiction*, pp. 4-5.
- ³² Ibid., p. 14.
- ³³ Ibid., p. 5.
- ³⁴ Ibid., p. 26.
- ³⁵ GAO, *Drug Control*, p. 4.
- ³⁶ GAO, *Drug Interdiction*, pp. 6, 24, and 25.
- ³⁷ National Governors' Association, "A Roundtable Discussion on the Use of the Military in the Control of Illegal Drugs," Washington, DC, 1984, p. 31.
- ³⁸ 32 U.S.C. Sec. 109(c). In October 1917, the judge advocate general ruled that states could maintain forces "resembling" the Army but with "much more restricted" functions. The *National Defense Act of 1920* was amended in 1940 to loosen the prohibition on state forces in peacetime and in 1947 to prohibit state military forces except the Guard. See George J. Stein, "State Defense Forces: The Missing Link in National Security," *Military Review* 64 (September 1984): 4.
- ³⁹ "State Volunteers Replace Activated Guardsmen" *Washington Post*, December 24, 1990; and "Few States Maintain All Volunteer Militia" *Army Times*, November 20, 1974.
- ⁴⁰ "State Volunteers Replace Activated Guardsmen," *Washington Post*.
- ⁴¹ Edward Connolly, "A Quiet Plan for Volunteer Militia to Keep Peace," *San Jose Mercury News*, May 2, 1989.
- ⁴² State Volunteers Replace Activated Guardsmen," *Washington Post*.
- ⁴³ Stein, "State Defense Forces," p. 2.
- ⁴⁴ Ibid.
- ⁴⁵ "State Volunteers Replace Activated Guardsmen," *Washington Post*.
- ⁴⁶ Stein, "State Defense Forces," pp. 12-13.
- ⁴⁷ Edward Connolly, "A Highly Irregular Force: Scandals of the State Militias," *The Nation*, March 18, 1991, p. 338.
- ⁴⁸ Ibid.
- ⁴⁹ Stein, "State Defense Forces," p. 5.
- ⁵⁰ Connolly, "A Highly Irregular Force," p. 338.
- ⁵¹ H.R. 2001 (Jones), H.R. 2081 (Spence), and S. 958 (Thurmond). See *Congressional Record*, April 25, 1991, pp. S. 5216-5218.
- ⁵² H.R. 2001, Section 1.
- ⁵³ Stein, "State Defense Forces," p. 5.
- ⁵⁴ U.S. Department of Defense, Office of the Secretary of Defense, Reserve Component Programs, *Fiscal Year 1990: The Annual Report of the Reserve Forces Policy Board* (Washington, DC, 1991), p. 23.
- ⁵⁵ Ibid., p. 16.
- ⁵⁶ Ibid.
- ⁵⁷ John B. Conaway, Speech to the National Guard Commander's Environmental Seminar, April 19, 1990, p. 23.
- ⁵⁸ To qualify for aid through the Superfund program, a site must be near population centers and pose a threat to groundwater, surface water, or outdoor air. See Jeff McLaughlin, "Cancer Incidence Up on Part of Cape: Statistics Show Elevated Rates of Disease Near Hazardous Waste Site at Otis AFB," *Boston Globe*, February 4, 1990.
- ⁵⁹ Conaway, Speech to Environmental Seminar, p. 3.
- ⁶⁰ A staff increase from four to 156 has been programmed for fiscal years 1992-1993. Ibid.
- ⁶¹ Ibid., p. 33.
- ⁶² U.S. Department of Defense, National Guard Bureau, *Annual Report of the Chief, National Guard Bureau, Fiscal Year 1991* (Washington, DC, 1992), p. 39.
- ⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ U.S. Department of Defense, National Guard Bureau, Office of Public Affairs, "Public Affairs Guidance on National Guard Bureau of Environmental Programs," October 1990, pp. 1-16.

⁶⁶ *National Guard Almanac 1992*, p. 91.

⁶⁷ Robert K. Wright, Jr., and Renee Hylton-Greene, *A Brief History of the Militia and the National Guard* (Washington, DC: National Guard Bureau, 1986), p. 51.

⁶⁸ See P.L. 90-130, Sec. 2(1), amending the prior prohibition.

⁶⁹ Pat Dalton, "More Women, Minorities Participate in ANG," *Air Force Times*, April 21, 1988.

⁷⁰ National Governors' Association.

⁷¹ Conversely, communities may be decimated if the units containing their residents are wiped out in a single battle.

⁷² 39 Stat. 166.

⁷³ Samuel J. Newland, "The National Guard: Whose Guard Anyway?" *Parameters* 18 (June 1988): 45.

⁷⁴ Jim Dan Hill, *The Minute Man in Peace and War A History of the National Guard* (Harrisburg, Pennsylvania: The Stackpole Company, 1964), p. 265.

⁷⁵ Ibid.

⁷⁶ 48 Stat. 153.

⁷⁷ Many state and local Guard units were successful in maintaining that integrity. The old 69th New York Infantry, "The Fighting Irish," was redesignated the 155th Infantry during World War I. Nevertheless, throughout World War II, this outstanding military unit referred to themselves as the "69th"; carried their shamrocks, flags and colors; talked in a thick brogue; and let no one doubt that they were the "Fighting Irish." Edmund G. Love, "The Case of the 'Fighting Irish': An Illustration of American Indifference to Regimental Traditions," *Military Affairs* XI (Spring 1947): 46-48.

⁷⁸ Memorandum from Adjutant General E. Gordon Stump to Bruce McDowell, Advisory Commission on Intergovernmental Relations, dated May 1, 1992.

⁷⁹ 10 U.S.C. Sec. 3498.

⁸⁰ Office of the Secretary of Defense, *Fiscal Year 1990: The Annual Report of the Reserve Forces Policy Board*, p. 16.

Appendixes

Appendix Table 1
Reserve and National Guard Programs
Personnel Summary by Component— Fiscal Years 1990-1993

Service	FY 1990 (actual)	FY 1991 (actual)	FY 1992 (estimated)	FY 1993 (requested)	Percent Change FY 1990-1993
National Guard					
Air Force	143,495	144,146	145,252	147,339	+2.7
Army	466,479	486,758	439,023	392,431	-15.9
Subtotal	609,974	630,904	584,275	539,770	-11.5
Reserve					
Air Force	95,317	101,006	97,028	98,703	+3.6%
Army	316,491	335,815	297,730	268,469	-15.2
Marine Corps	50,427	49,100	45,427	43,250	-14.2
Navy	160,295	163,372	143,555	135,139	-15.7
Subtotal	622,530	649,293	583,740	545,561	-12.4
National Guard and Reserve—Total	1,232,504	1,280,197	1,168,015	1,085,331	-12.0%

Source: U.S. Department of Defense, *Reserve and Guard Programs Summary, FY 1992/FY 1993 President's Budget* (February 1991).

Appendix Table 2
Reserve and National Guard Programs
Funding Summary by Component— Fiscal Years 1990-1993
(dollars in thousands)

Service	FY 1990 (actual)	FY 1991 (actual)	FY 1992 (estimated)	FY 1993 (requested)	Percent Change FY 1990-1993
National Guard					
Air	\$4,506,162	\$4,572,153	\$3,881,827	\$4,285,707	-4.9%
Army	7,655,745	7,268,989	5,988,912	5,778,970	-24.5
Subtotal	12,161,907	11,841,142	9,870,739	10,064,677	-17.2
Reserve					
Air Force	2,046,847	2,086,114	1,928,908	2,132,212	+4.2
Army	4,020,686	3,838,269	3,583,616	3,486,876	-13.3
Marine Corps	707,055	781,412	576,360	551,562	-21.1
Navy	3,189,089	3,896,142	2,889,251	2,762,716	-13.4
Special Operations	0	0	76,912	90,041	+90,041
Subtotal	9,963,677	10,601,937	9,055,047	9,029,407	-9.4
National Guard and Reserve—Total	\$22,125,584	\$22,443,079	\$18,925,786	\$19,094,084	-13.7%

Source: U.S. Department of Defense, *Reserve and Guard Programs Summary, FY 1992/FY 1993 President's Budget* (February 1992).

Appendix Table 3
Appropriations Summary—Army National Guard, Fiscal Years 1990-1993
(dollars in thousands)

Object of Expenditure	FY 1990 (actual)	FY 1991 (actual)	FY 1992 (estimated)	FY 1993 (requested)	Percent Change FY 1990-1993
National Guard Personnel	\$3,294,711	\$3,466,868	\$3,201,700	\$3,038,600	-7.8%
Unit/Individual Training	1,760,479	1,815,287	1,711,215	1,622,244	-7.8
Other Training/Support	1,534,232	1,651,581	1,490,485	1,424,163,356	-7.6
Operations/Maintenance	1,864,037	2,024,867	2,080,700	2,083,700	+ 11.7
Mission Forces	1,678,864	1,797,859	1,863,605	1,850,014	+ 10.1
Depot Maintenance	54,616	50,086	50,824	48,579	-11.1
Other Support	130,557	176,922	166,271	185,107	+41.7
Military Personnel	18,517	19,230	20,970	20,970	+ 13.2
Procurement					
Aircraft	1,160,500	83,400	359,200	309,400	-73.4
Weapons/Tracked Vehicles	136,900	344,500	13,800	40,300	-70.6
Ammunition	137,300	101,000	103,700	39,500	-71.3
Other	481,500	103,700	159,400	192,400	-60.1
National Guard/Reserve Equipment	331,790	812,200	0	0	-100
Research, Development	0	0	0	0	0
Military Construction	230,490	313,224	50,400	54,100	-76.6
TOTAL	\$7,655,745	\$7,268,989	\$5,988,912	\$5,778,970	-24.6%

Source: U.S. Department of Defense, *Reserve and Guard Programs Summary, FY 1992/FY 1993 President's Budget* (February 1991).

Appendix Table 4
Appropriations Summary—Air National Guard, Fiscal Years 1990-1993
(dollars in thousands)

Object of Expenditure	FY 1990 (actual)	FY 1991 (actual)	FY 1992 (estimated)	FY 1993 (requested)	Percent Change FY 1990-1993
National Guard Personnel	\$1,063,914	\$1,119,002	\$1,145,500	\$1,195,100	+ 12.3%
Unit/Individual Training	540,515	558,330	576,886	603,087	+ 11.5
Other Training/Support	523,399	560,672	568,614	592,013	+ 13.1
Operations/Maintenance	2,020,393	2,272,036	2,287,800	2,700,900	+ 33.6
Mission Forces	1,689,467	1,881,069	1,981,664	2,358,826	+ 39.6
Depot Maintenance	325,373	385,876	300,386	336,056	+ 3.3
Other Support	5,553	5,091	5,750	6,018	+ 8.4
Military Personnel	22,446	24,055	25,727	26,907	+ 19.9
Procurement					
Aircraft	659,700	122,100	206,600	212,600	-67.8
Other	247,200	209,400	84,400	109,600	-55.7
National Guard/Reserve Equipment	238,660	645,000	0	0	-100
Research, Development	17,982	0	0	0	-100
Military Construction	235,867	180,560	131,800	40,600	-82.8
TOTAL	\$4,506,162	\$4,572,153	\$3,881,827	\$4,285,707	-4.9%

Source: U.S. Department of Defense, *Reserve and Guard Programs Summary, FY 1992/FY 1993 President's Budget* (February 1991).

Appendix Table 5
National Guard Strength by State and Territory
(November 30, 1991)

State or Territory	Army Guard		Air Guard		Total Strength	Total Units
	Troops	Units	Troops	Units		
Alabama	20,991	273	3,147	32	24,138	305
Alaska	3,213	156	1,584	24	4,797	180
Arizona	5,281	96	2,951	28	8,232	124
Arkansas	9,520	138	2,257	31	11,777	169
California	20,997	251	5,676	64	26,673	315
Colorado	3,899	73	1,576	20	5,475	93
Connecticut	5,448	88	1,253	13	6,701	101
Delaware	2,189	23	945	15	3,134	38
District of Columbia	2,107	26	1,503	15	3,610	41
Florida	12,310	161	1,610	16	13,920	177
Georgia	11,108	137	3,494	36	14,602	173
Guam	457	8	159	5	616	13
Hawaii	3,558	61	2,087	26	5,645	87
Idaho	3,647	62	1,357	14	5,004	76
Illinois	11,633	145	3,702	40	15,335	185
Indiana	14,794	151	2,535	31	17,329	182
Iowa	7,857	117	2,115	24	9,972	141
Kansas	7,000	139	2,510	27	9,510	166
Kentucky	7,441	104	1,184	16	8,625	120
Louisiana	12,149	139	1,672	16	13,821	155
Maine	3,020	47	1,419	15	4,439	62
Maryland	7,338	123	1,941	27	9,279	150
Massachusetts	10,330	138	2,826	34	13,156	172
Michigan	12,243	143	2,968	39	15,231	182
Minnesota	10,843	151	2,518	30	13,361	181
Mississippi	12,211	192	2,911	31	15,122	223
Missouri	9,657	181	2,875	34	12,532	215
Montana	3,512	59	1,104	13	4,616	72
Nebraska	4,476	71	1,060	13	5,536	84
Nevada	1,790	40	1,105	13	2,895	53
New Hampshire	2,249	38	1,048	13	3,297	51
New Jersey	8,963	181	2,848	38	11,811	219
New Mexico	4,180	65	1,052	13	5,232	78
New York	16,056	289	6,101	71	22,157	360
North Carolina	12,203	179	1,550	19	13,753	198
North Dakota	3,916	65	1,19	13	5,106	78
Ohio	13,692	182	5,566	66	19,258	248
Oklahoma	8,624	145	2,466	29	11,090	174
Oregon	7,838	108	1,987	20	9,825	128
Pennsylvania	18,290	220	4,612	56	22,902	276
Puerto Rico	9,460	38	1,331	17	10,791	55
Rhode Island	2,672	94	1,490	16	4,162	110
South Carolina	13,874	147	1,349	14	15,223	161
South Dakota	4,063	81	992	13	5,055	94
Tennessee	14,922	200	3,911	46	18,833	246
Texas	20,232	277	3,856	52	24,088	329
Utah	6,053	118	1,612	18	7,665	136
Vermont	3,537	49	1,033	13	4,570	62
Virginia	9,469	118	1,332	14	10,801	132
Virgin Islands	809	21	33	2	842	23
Washington	6,928	120	2,577	29	9,505	149
West Virginia	3,710	57	2,121	27	5,831	84
Wisconsin	8,939	141	2,125	26	11,064	167
Wyoming	1,834	44	958	14	2,792	58
Totals	443,532	6470	117,184	1381	560,736	7,851

Source: National Guard Almanac, 1992, p. 126.

Appendix Table 6
Statutory Authority for Mobilizing the National Guard into Federal Service

Presidential Mobilization Authority

- (1) Under 10 U.S.C. 331, the president is authorized to mobilize the militia (by call), if requested to do so by the governor or legislature of a state. The statute authorizes the mobilization only to suppress insurrections.¹

There is no limitation on the number of troops that may be mobilized in this manner nor their length of service. Consent of the troops is not required, nor is the consent of the governor needed.

- (2) Under 10 U.S.C. 332, the president is authorized to mobilize the militia (by call) and the armed forces (by order), if the president cannot enforce the laws through normal means. The statute authorizes the mobilization only to enforce federal law.

As in 10 U.S.C. 331, there is no limitation on the number of troops that may be mobilized in this manner nor their length of service. Consent of the troops is not required, nor is the consent of the governor needed.

- (3) Under 10 U.S.C. 333, the president is authorized to mobilize the militia (by call) and the armed forces (by order) in the event of the denial of equal protection of the laws due to domestic violence or conspiracy. The statute authorizes the mobilization to suppress insurrection or domestic violence.

Again, there is no limitation on the number of troops that may be mobilized in this manner nor their length of service. Consent of the troops is not required, nor is the consent of the governor needed.

- (4) Under 10 U.S.C. 3500 and 8500, the president is authorized to mobilize the National Guard (by call) in the event of invasion, rebellion, or if the president cannot enforce the laws with regular forces. The statute authorizes the mobilization to repel invasions, suppress rebellions, or execute the laws. Under 10 U.S.C. Sec. 8500, however, the order to mobilize must be issued through the governor.

Again, there is no limitation on the number of troops that may be mobilized in this manner or on their length of service. Consent of the troops is not required, nor is the consent of the governor needed.

Secretary of Defense Mobilization Authority

- (1) Under 10 U.S.C. 672(a), the secretary of defense is authorized to mobilize all reserve components (by order) on a declaration of war or national emergency by Congress. The statute places no limitation on the purposes for which troops may be mobilized.

There is no limitation on the number of troops that may be mobilized in this manner although their length of service is limited to the duration of the war/emergency, plus six months. Consent of the troops is not required, nor is the consent of the governor needed.

- (2) Under 10 U.S.C. 672(b), the secretary of defense is authorized to mobilize all reserve components in active status (by order). The statute places no limitation on the purposes for which troops may be mobilized.

There is no limitation on the number of troops that may be mobilized in this manner, although their length of service is limited to 15 days. Consent of the troops is not required, but consent of the governor is needed.²

- (3) Under 10 U.S.C. 672(d), the secretary of defense is authorized to mobilize all reserves (by order). The statute places no limitation on the purposes for which troops may be mobilized.

There is no limitation on the number of troops that may be mobilized in this manner or on their length of service. Consent of the troops and of the governor is required.

- (4) Under 10 U.S.C. 673(a), the secretary of defense is authorized to mobilize the ready reserve (by order) if the president declares a national emergency. The statute places no limitation on the purposes for which troops may be mobilized.

Only one million troops that may be mobilized in this manner and their service is limited to 24 months. Consent of the troops and of the governor is not required.

- (5) Under 10 U.S.C. 673b, the secretary of defense is authorized to mobilize the selected reserve (by order) if the president determines it is necessary to augment active forces for operational missions. This statute may not be used in place of a call or for disaster relief.

Only 200,000 troops may be mobilized in this manner and their service is limited to 90 days (one 90-day extension is allowed). Consent of the troops and of the governor is not required.

¹ Before employing troops, the president must issue a proclamation requiring the insurgents to disperse.

² Subject to the restrictions of the Montgomery Amendment.

Source: National Guard Bureau, August 1990.

Appendix Table 7
Selected National Guard Call-ups, 1950-1990

1. Korea

(July 1, 1950 to July 26, 1953)

Authorized by Presidential Proclamation No. 2914 of December 16, 1950, in which President Truman proclaimed a state of emergency. Reservists were called to active duty for a period of 24 months under the provisions of this proclamation.

Component	Number
Army National Guard	139,000
Army Reserves	244,300
Navy Reserves	274,563
Marine Corps Reserves	98,229
Air National Guard	46,413
Air Force Reserve	135,874
Total	938,379

2. Little Rock, Arkansas

(September 24, 1957 to May 29, 1958)

Authorized by Executive Order No. 10730 of September 23, 1957, signed by President Eisenhower.

Component	Number
Arkansas Army and Air National Guard	9,873
Released from active duty (11/10/57)	8,973
Released from active duty (5/29/58)	900

3. Berlin

(October 1, 1961 to August 31, 1963)

Authorized by Joint Resolution (Public Law 87-117) of August 1, 1961. The resolution authorized the President to call 250,000 ready reservists to active duty for one year, as units or individuals. Members were called between October 1-31, 1961. Those who reported and served did so between October 1, 1961 and August 31, 1962.

Component	Called	Served
Army Reserve/ National Guard	119,622	113,254
Navy Reserve	8,357	8,020
Air Force Reserve/ National Guard	27,821	26,575
Total	155,80	147,849

4. Oxford, Mississippi

(September 30, 1962 to October 23, 1962)

Authorized by Executive Order 11053, signed by President Kennedy on September 30, 1962

Component	Number
Mississippi	10,927

5. Cuban

(October 27, 1962 to November 1, 1962)

Authorized by Joint Resolution (Public Law 87-736) of October 3, 1962. Authorized the President to call 150,000 ready reservists for 12 months.

Component	Called	Served
Air Force Reserve	14,200	14,025

Note: Members were called on October 17, 1962, and reported within nine hours. All were released by November 21, 1962.

6. Tuscaloosa, Alabama

(June 11, 1963, to July 11, 1963)

Authorized by Executive Order 11111 of June 11, 1963, signed by President Kennedy.

Component	Number
Alabama Army/Air National Guard	16,463

7. Integration of Public Schools, Alabama

(September 10-14, 1963)

Authorized by Executive Order 11118 of September 10, 1963, signed by President Kennedy.

Component	Number
Alabama Army/Air National Guard	All

Entire force called to active duty but held in their armories on standby for the 4-day period.

8. Selma, Alabama

(March 20-29, 1965)

Authorized by Executive Order 11207 of March 20, 1965, signed by President Johnson.

Component	Number
Alabama Army/Air National Guard	4,000

9. Korea and Vietnam

(January 25, 1968, to December 15, 1969)

Authorized by Executive Order 11392 of January 25, 1968, and Executive Order 11406 of April 10, 1968, both signed by President Johnson.

Component	Number
Army National Guard	12,234
Air National Guard	10,673
Other Reserves	12,373
Total	35,280

10. Postal Strike

(March 24, 1970, to April 1970)

Authorized by Executive Order 11519 of March 23, 1970, signed by President Nixon.

Component	Number
Army National Guard	10,845
Air National Guard	1,876
Other Reserves	13,366
Total	26,087

11. Operation Desert Shield/Desert Storm

(August 22, 1990, to March 15, 1991)

Authorized by Executive Order 12727 of August 22, 1990, signed by President Bush.

Component	Number
Army National Guard/Army Reserve	88,183
Air National Guard/Air Force Reserve	13,080
Other Reserves	24,794
Total	126,057

Source: U.S. Department of Defense, *Total Force Policy Report to the Congress* (December 1990), p. 16, and unpublished data.

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