



“Mere Military Colour”:
The State Police and Martial Law

by Merle T. Cole

When Governor Ephraim F. Morgan placed Mingo County under martial law in 1921, responsibility for enforcing the proclamation rested primarily on troopers of the West Virginia State Police (WVSP). In a landmark decision, the state supreme court invalidated police enforcement of the proclamation, creating turmoil at the very moment in the state’s history when prospects for savage industrial warfare were most threatening.

Three separate gubernatorial martial law proclamations were issued during 1912-1913 before relative calm was restored. Conditions remained sufficiently unsettled to require occupation of some areas by state militia companies until June 1914.

Under the proclamations, the adjutant general was granted wide ranging powers, including authority to try civilians for a variety of crimes as well as for offenses against the proclamations themselves. Hundreds were arrested, tried, and imprisoned, frequently receiving sentences more severe than could have been levied by civil courts under existing statutes.(1) Three cases came before the state supreme court directly challenging the validity of martial law, the actions of military authorities in enforcing the proclamations, and related gubernatorial orders. In deciding each case, the justices relied on the “doctrine of conclusiveness,” which held that the governor alone could determine the necessity for martial law. Further, his determination was not reviewable by the courts, regardless of constitutional questions raised by appellants. So adamant were the justices in refusing to entertain questions of gubernatorial authority that a noted martial law au-

thority labeled their position “the West Virginia doctrine.”(3) Trouble had been brewing in the smokeless coal fields of southern West Virginia since before World War I. When the constraints of wartime labor-management cooperation evaporated, operator associations joined battle with the United Mine Workers of America (UMWA) in a final struggle to decide the question of organizing the state’s richest coal producing region. Governor John J. Cornwell realized he had no reliable means of maintaining law and order during the impending struggle. The organized state militia (national guard) had ceased to exist in August 1917 when it was drafted into federal service. Due to uncertainties over pending revisions of federal national guard statutes most states, including West Virginia, did not reconstitute their militia units immediately after the war.(4)

The obvious potential for unprecedented industrial violence combined with lack of state military forces, provided a potent rationale to support Cornwell’s desire to create a state constabulary. After heated debate, in which organized labor provided the most strident opposition, the legislature passed a state police bill on 29 March 1919, which Cornwell signed into law on the 31st. The law would not take effect, however, until ninety days after passage. For reasons of “political correctness” the new agency’s official name was “Department of Public Safety.” Cornwell appointed Jackson Arnold superintendent of the new constabulary, with rank of colonel, on 29 June 1919. Arnold faced serious difficulties in recruiting an adequate number of qualified men to make his command operational. Not until late November, in fact, were enough men assembled to permit activation of the constabulary’s two

field companies.(6) In the interim, additional proof of the need for effective law enforcement was provided by the “Miner’s March”



Colonel Jackson Arnold

of September 1919. Rumors of brutal repression of UMWA organizers and miners by Logan County deputies prompted a gathering of sympathetic miners at Lens Creek, near Marmet in Kanawha County. Disregarding Cornwell’s personal plea, some 2,000 miners set out to break into Logan County, a bastion of anti-unionism. Since he had no militia and the constabulary was not yet sufficiently staffed, the governor threatened to call in federal troops to disperse the marchers. This persuaded the state’s UMWA leaders to exert their influence, and the march was disbanded shortly after it had reached a point on the Logan-Boone county line.

The UMWA national leadership was frustrated over failure to achieve wage and hour demands. They called a nationwide strike, which was promptly enjoined by a federal judge. Federal troops were dispatched to Charleston, Beckley, and Clothier in November-December 1919 to enforce the injunction.(8) But continued non-unionization of the smokeless fields threatened the



UMWA's very existence, and organizing efforts were not diminished by the prospect of federal intervention.

In 1920 the focus of the unionization dispute shifted to Mingo County. Prounion miners clamored for organization, causing their eviction from company-owned housing. The reaction was predictable. After completing a series of evictions, a group of Baldwin-Felts Detective Agency men were ambushed while waiting for a train at Matewan. Ten men were killed in the famous "Matewan Massacre" of 19 May 1920.⁽¹⁰⁾ The UMWA called a strike for recognition in the Mingo field on 1 July, touching off scattered violence over the next several months. At Cornwell's request, federal infantrymen were dispatched to mines throughout Mingo County from late August until early November. Under threat of a statewide strike, the governor acceded to UMWA demands to withdraw the troops.

Violence promptly erupted again, claiming the lives of state trooper Ernest L. Ripley (killed 18 November near Vulcan) and three strikers among its victims. Declaring that "the time for temporizing is past" Governor Cornwell again requested federal troops, to be accompanied this time by a martial law proclamation. Displeased with the president's resistance to the latter action, Cornwell issued his own proclamation, placing Mingo County under martial law effective 27 November 1920. A federal infantry contingent arrived in Williamson, the county seat, the following day. Its commanding officer in turn issued a proclamation of "limited martial law" prohibiting parades, demonstrations, public assembly, and unauthorized possession of firearms and explosives. While the soldiers maintained order, state constabulary strength was grow-

ing. The last federal unit withdrew on 17 January 1921, and martial law was terminated the same day.⁽¹²⁾

Responsibility for maintaining law and order in Mingo County was shared by the sheriff and state police Captain James R. Brockus, who had brought 45 troopers with him when he replaced Thomas W. Norton as Company B commander. An uneasy calm prevailed throughout the early months of the new year, but latent violence surfaced dramatically in the "Three Days Battle." Beginning on 12 May 1921 strikers on both shores of the Tug River commenced sniping at houses, trains, automobiles, and persons in the open. Cooperative patrolling by authorities in Mingo and Pike County, Kentucky, was largely ineffective in capturing the gunmen. Ephraim F. Morgan, who had succeeded Cornwell as governor on 4 March, ordered Colonel Arnold to deploy the entire constabulary force to Mingo County. He then joined the Kentucky governor in submitting a joint plea for imposition of federal martial law. President Harding actually signed proclamations for both states, but withheld issuance until additional information on the situation was available. Conditions in Kentucky improved as state forces concentrated in Pike County. Truces were arranged on both sides of the border.⁽¹³⁾ In West Virginia, despite a similar decline in shootings, tensions remained high. There were reports of weapons being smuggled into Mingo County from state UMWA headquarters in Charleston. This was particularly ominous in view of the approaching anniversary of the "Matewan Massacre"—a day when widespread striker violence was expected. On 16 May, Morgan prevailed upon Kentucky's governor for another joint plea for federal intervention. But he was

informed the next day that "on the representations thus far made, the President is not convinced that West Virginia has exhausted all its own resources...." Troops would be held in readiness but would not be dispatched unless widespread violence recurred.

Faced with the president's refusal to intervene and under tremendous pressure from coal operators, county officials passed responsibility on to the state police. On 18 May, Sheriff A. C. Pinson issued a warrant commanding Captain Brockus to assume responsibility for law enforcement in Mingo County, citing the imminent threat of riot and circumstances beyond the control of county agencies. The warrant was delivered to Colonel Arnold, who immediately directed Brockus to comply.

Pinson's warrant invoked a section of the WVSP creative act which specifically vested all constabulary members with posse comitatus authority:

When called by the sheriff of any county or when the governor by proclamation directs, [members] shall have full power and authority... to direct and command absolutely the assistance of any sheriff, deputy sheriff, constable, chief of police, policeman, town marshal, game and fish warden, deputy prohibition officer and any and every peace officer of the State... or of any able-bodied citizen of the United States to assist and aid in accomplishing the purposes of this act. [Any persons so commanded become] for all purposes, members of the department of public safety and subject to all provisions of this act.⁽¹⁶⁾

In view of his new responsibility, Captain Brockus keenly felt the need to strengthen his existing force of state troopers, deputies, and other peace officers. Seeing no alternative, he



called a meeting, to solicit men for a civilian volunteer reserve. A New York Times correspondent described the atmosphere of the meeting.

"In this city and other points in the danger zone, groups of quiet determined men, all armed, are gathering tonight and entering their names on the roll of Mingo County's first Vigilance Committee. All are pledged to remain within easy call from tonight until tomorrow's sun has set and to lay aside all ordinary pursuits to maintain law and order. Judging from the character of the men who met at the Mingo County court house here, the new law and order organization will be composed of the most substantial citizens of the county—businessmen, lawyers, physicians, and some officials connected with the business and engineering parts of the mining industry. At the meeting here tonight, 250 Vigilantes were sworn in from this city alone. All the clergymen of the city attended to declare their willingness to carry arms for the protection of the homes of Mingo County's peaceful and law abiding folk, who at last appear to have had more than enough of guerrilla warfare."

While the meeting was in progress announcement was made that Gov. Morgan... had issued an order at Charleston directing the State Police and the 500 citizen deputies who were sworn in tonight in different localities throughout Mingo County to proceed under the [martial law] proclamation of last November [1920] when military control was in force and wholesale seizure of arms was undertaken by the sheriff and the State Constabulary, in that instance backed by federal troops. This, with any defensive measure that has been undertaken so far, is expected to prove effective in restoring order and public security.(17) The commander of

Kentucky militia in Pike County gave assurance of full cooperation, following which the assembled vigilantes sang "My County Tis of Thee." As the meeting was breaking up, Captain Brockus arrived, having just returned from

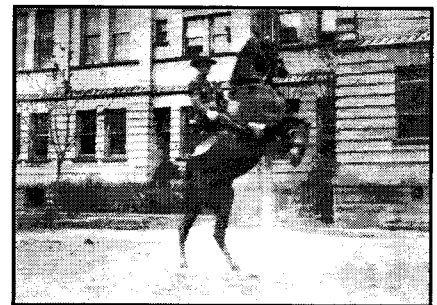
Captain Brockus



an inspection of Matewan. He addressed the assembly. He then challenged, "I would like to have everyone who is willing to shoulder a rifle tomorrow and go out and do his bit arise." Everyone in the court room sprang to his feet and raised his right hand. 'It seems to be unanimous,' said Captain Brockus." Committees were then formed to "fix up the details" of organizing the reserve force. Eventually nearly 800 men from Williamson and mines scattered throughout Mingo County were enrolled, the latter supervised by two state troopers detailed to each mine. Not being familiar with county residents, Brockus established a seven-man screening committee "to pass on the names submitted and to cross off those they were not absolutely sure of, that is, that they could be relied upon to be issued a rifle and ammunition and go out in the interest of law and order." The selection process has been criti-

cized because it was controlled by the Williamson business community, which had suffered loss of trade from the UMWA strike. Both the committee and the force it selected conspicuously lacked union, farmer, working class, and non-white membership. As if to mock the frenzied preparations to meet it, or perhaps in view of the obvious willingness for headlong confrontation, "Matewan Day" passed virtually without violence. Certainly there was no widespread outbreak of shooting or dynamiting as had been feared. One ominous portent occurred when a mine superintendent's car was fired upon and forced off the road. The incident "fan[ned] into a white heat the determination of the newly formed Vigilance Committee to maintain law and order at any cost..." Several vigilantes urged Brockus to "clean out the Lick Creek tent colony," the largest concentration of evicted strikers in the county. "But for the firm stand he took against any hasty action, there is little doubt that the spirit of anger and resentment would have been translated into vigorous action with consequences that might have made the day one long to remember."

Capt. Brockus on horseback



Governor Morgan seized on the anniversary of "Matewan Day" to issue his own martial law proclamation on 19 May 1921, declaring "a state of war, riot, and insurrection" to exist in Mingo County. The governor desig-



nated Major Thomas B. Davis, acting adjutant general of West Virginia, as his agent in Mingo County. Davis had served as provost marshal of military tribunals during the 1912-1913 martial law periods. Morgan granted him full authority to enforce the proclamation, although offenses cognizable by civil courts (which were kept open) were excluded from his jurisdiction. All state and county officers were ordered to assist Major Davis, who was also commissioned "commanding officer of the militia... of said Mingo County." Davis thus commanded Brockus' troopers, Pinson's deputies, and the reserve vigilance committee, who were officially designated "volunteer state policemen." Davis arrived in Williamson on 20 May and immediately began organizing his forces to implement the governor's decree. He met with Arnold, Brockus, and Pinson, and coordinated operations with the Kentucky militia. The "new order" imposed by Davis resulted in a significant upsurge of activity in Williamson. Businessmen were pleased as sales spurted along city streets patrolled by armed vigilantes, identifiable by blue and white brassards. Davis met with state UMWA officials to establish ground rules for union activity in Mingo County. He authorized continued distribution of relief to strikers (under constabulary supervision) but forbade meetings. Captain Brockus commanded virtually the entire state constabulary field force. Governor Morgan had ordered about 90 per cent of the WVSP's 113 men to Mingo County, practically denuding the rest of the state. Colonel Arnold reported to Morgan in June 1922, "Owing to the existence of martial law under the Governor's Proclamation, there were 91 men in Mingo County for the major part of the fiscal year, kept there to maintain law and

order. These men were not under the control of the State Police Department and could not be transferred to any other county as men in the other companies were transferred, because of the military law."

The new martial law regime was only five days old when Captain Brockus committed the fateful act which would spell its demise. On the afternoon of 23 May he led a detail of troopers to arrest A. D. Lavinder, a UMWA organizer sent in from Virginia. The officers found Lavinder in an ice cream parlor and charged him with carrying a pistol in violation of the proclamation. When he protested that he had a statewide permit to carry the weapon he was informed that martial law automatically invalidated such permits. When asked by the troopers to accompany them to Major Davis' office, Lavinder unwisely retorted, "If the adjutant general wants to see me, he can come to [union headquarters]." At this point the troopers grabbed Lavinder, took his pistol, and hustled him off to the county jail, where he arrived allegedly showing signs of having been "somewhat roughly handled." He was held "practically incommunicado" although Davis did permit a UMWA attorney to visit the prisoner. Due to crowded conditions in the county jail, Lavinder was later transferred to the McDowell County lockup.

On 25 May the constabulary suffered its second fatality attributable to strike violence in Mingo County, and the first since martial law. A state police detachment was sent to investigate shooting near the Big Splint Colliery situated between Borderland and Nolan. The troopers linked up with a Kentucky militia patrol just before encountering a large group of drunken, boisterous men. The authorities had begun a

search when two suspects opened fire, killing Private Charles M. Kackley and a militiaman. One member of the group was wounded in the ensuing gun battle, one escaped to Kentucky, and two others were arrested for possession of firearms. Captain Brockus dispatched a posse into Pike County after the escapee, who was captured and returned to West Virginia without the nicety of extradition proceedings.(26)

The Big Splint incident generated a new wave of hostility toward the tent colony residents, as one journalist observed:

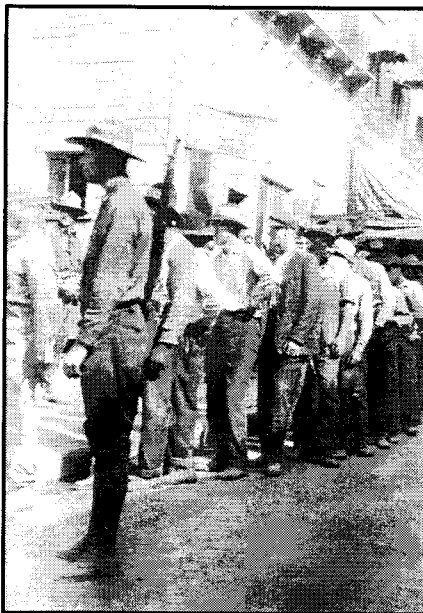
The question of what to do with these colonies, now regarded as perhaps the chief obstacles in the maintenance of peace in the Mingo coal fields, is one of the most difficult confronting the authorities. The colonies are presently free from close surveillance that many persons think they should be subjected to. The Lick Creek and Nolan colonies are on the shore of the Tug, making escape into Kentucky for tent dwellers a comparatively easy step.(27)

Major Davis allegedly wanted a "tightening of reigns by military authorities" because martial law measures to date had been "too gentle" in his opinion. There was talk of forcibly evacuating the colonies, commandeering the tents, and establishing de facto concentration camps administered by the military, to keep potential "troublemakers" under close scrutiny. The proposed camps would be situated in the interior, at a distance from the strike zone and the state border. (28) Conditions remained generally calm in Mingo County for the rest of May. On the 30th, Captain Brockus led Company B in a Decoration (Memorial) Day parade through Williamson. Members of the vigilance committee and American Legionnaires also



participated. The Lick Creek question came to a head in June due to colonists' practice of sniping at automobiles travelling on the public road which bisected the colony. Following another such incident on 5 June, Major Davis sternly warned, "If there is any more shooting... you can just line up in the road, because we are going out and bring everybody in." Ignoring this, tent dwellers fired on another automobile on Monday, 13 June. The next morning Davis, Brockus, and Pinson, accompanied by three state troopers, drove out to Lick Creek to arrest the offenders. As they alighted from their automobile they were taken under fire from a hillside. Major Davis ordered a state police sergeant to "sprinkle" the hillside with his submachine gun, then the party returned to Williamson. The more combative vigilantes were finally to get their wish. Approximately 70 of their number were

Arrested strikers



summoned to the court house, loaded aboard a caravan of vehicles, and driven up Sycamore Creek, which flows parallel to Lick Creek. Brockus had already alerted other

state police detachments to seal off the northern and eastern exits from the colony. He planned to use the vigilantes in a sweep to channel strikers back into the camp to facilitate arrests.

Private James Bowles



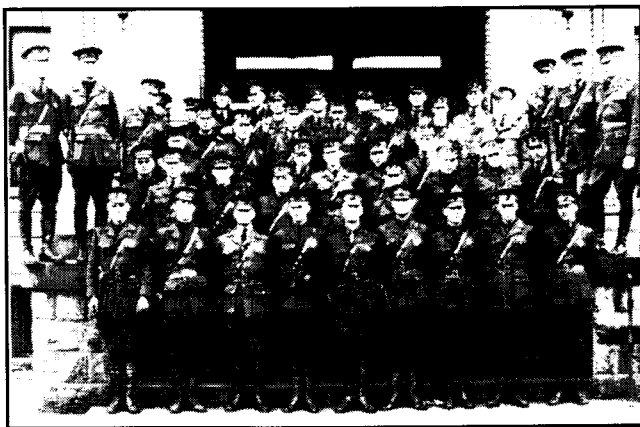
As Brockus led the main group across a ridge, it was fired on near a fence line.

Private James A. Bowles killed a striker and was almost immediately wounded himself by vigilante Victor Blackburn's poorly aimed shot, which permanently paralyzed Bowles' right arm. One other striker was wounded as the sweep progressed. The authorities assembled male colonists under guard in the public road then began searching tents to locate any skulkers. What happened next was the subject of conflicting testimony. Brockus asserted that his men obeyed orders by entering only open tents and respecting colonists' property. The strikers, however, charged that police broke locks, slashed tents, stole property, rifled supplies, used abusive language, threatened and assaulted women and children, and tore down the colony's American flag and stomped it in the dirt. Such disparate testimony is cer-

tainly understandable considering the vigilante's hatred of the strikers and the striker's hostility toward the police, whom they dubbed "Mr. Morgan's West Virginia Cossacks." Whatever the truth, 47 strikers were arrested, marched down the railroad tracks, and locked in the Williamson jail around 3:30 p.m. (31) Tuesday, 14 June 1921, proved to be a "red letter day" in another respect. Major Davis and the civil authorities were placed in a quandary over who should investigate the shooting incidents which prompted the "Lick Creek raid" by a state supreme court decision invalidating the martial law proclamation. A. D. Lavinder (from McDowell County jail), and Mount Woolford and Frank Ingram (held by Sheriff Pinson), all jailed for proclamation infractions, had filed writs of habeas corpus. They averred that the proclamation exceeded the requirements of common and statute law, and probably violated the United States constitution as well. In granting discharge to the petitioners the justices shrank dramatically from their previous policy of upholding gubernatorial prerogatives, and declared the 19 May proclamation fatally defective. The justices held that while Mingo County was officially declared to be in a state of war, no actual military forces were in occupation. The only military man present was, in fact, Major Davis. The governor's attempt to inaugurate martial law through civil agencies "constituted no more than mere military color." Morgan could not "by a mere order convert the civil officers into an army and clothe them with military powers." There being no troops in the field martial law did not exist in Mingo County and the arrests were invalid. Accordingly, the petitioners were ordered released from custody. Weiner



noted that, "While the earlier precedents were not in terms overruled, the tone of the opinions marks a distinct backtrack from the extreme utterances of 1912-1913. The present status of the West Virginia doctrine therefore appears to be doubtful even in West Virginia." Governor Morgan was caught in a perplexing dilemma. The national guard reorganization act could not be implemented before 27 July and in view of the court's ruling the state police expansion scheduled for 14 July would be of no comfort. Taking a hint from the phrasing of the Lavender decision itself, the governor issued a "supplemental" martial law proclamation on 27 June 1921, invoking the state's antiquated enrolled militia statute. The sheriff was ordered to call up 130 male residents of Mingo County whom Major Davis mustered in as "Company A and Company B, West Virginia Enrolled Militia" for a 60-day term of state service. The proclamation continued Davis in his previous roles as martial law administrator and commander of the (newly raised) militia. Men of the two companies were later used to cadre the first national guard unit reactivated, Company I of the 150th Infantry. The enrolled militiamen assumed responsibility for enforcing martial law, the vigilante reserve was disbanded, and civil officers (including state constabulary) resumed their normal policing functions. All but 50 state troopers were pulled out of Mingo County in late October and deployed to Boone County.



14 Company 'B' 1921

Morgan placed a high priority on reactivating the national guard so that eleven companies were activated within four months. Some observers noted an evident intention to use the guard for strike suppression.

Mingo County remained under martial law until 26 September 1922. Exactly one month later the UMWA conceded defeat and cancelled its strike order.

Enforcing martial law in "Bloody Mingo" had cost the West Virginia State Police four men killed and one permanently disabled. In addition to casualties previously mentioned, Private William L. McMillion had been shot from ambush near Lynn on 28 June 1921 and died six hours later in Williamson. A state police honor roll published in 1924 underscored the fact that all constabulary deaths in 1919-1921 were directly attributable to the violence in Mingo County. By 1926, Colonel Robert E. O'Connor, Arnold's successor as superintendent, reported the extent to which industrial warfare had diminished in West Virginia:

"More attention is devoted to police work in the rural sections than in the past. The condition of the state, as regards law and order, is the best it has been for several years. Industrial disturbances have subsided and violations are confined to individual and personal in character..."

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SOURCES

This is a minor rewrite of an identically titled article originally published in the West Virginia Historical Society *Quarterly* 17 (July 2003): 1-13. Unless marked otherwise, all photos are courtesy of the Eastern Regional Coal Archives, Craft Memorial Library, Bluefield, WV (Accession 81-1, Randel Bond, Records and Photographs of the Pocahontas Operator's Association, 1880-1950).

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NOTES FROM YOUR EDITOR

I am always looking for new material and very much appreciate your contributions to the Journal. If you are considering contributing an article the following will assist me greatly:

All copy should ideally be typed with double spaced lines and no more than 2500 words. (Equivalent to 10 written A4 pages) If you are using a word processor please enclose both the printed copy and a CD or Floppy disc so that I can put it on my machine rather than have to type it in myself.

If possible enclose as many pictures as you can to illustrate your article (You will get them back). Drawings or cartoons are acceptable

Any pictures sent either on disc or by Email should ideally be in Jpeg or Tiff format. The printers cannot extract pictures from a Word document
Please write a brief paragraph about yourself (and possibly a picture) to accompany the article

Send to:-

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