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**T**he District of Columbia, in attempting to defend its absurd gun control laws against a constitutional challenge, argued that the Second Amendment, even if it was originally intended as an individual right, is now obsolete because the militia no longer exists.

Indeed, many gun control advocates argue that the militia, in the sense that the Framers intended it, not only no longer exists, but is an obsolete concept—rendered outmoded by modern militaries.

Even the National Guard is not a militia, as the U.S. Constitution defines a militia. As the Supreme Court pointed out in *Perpich v. Department of Defense* (1990), Congress in 1916 provided that members of the National Guard, when called into federal service, do so under congressional authority to raise standing armies. Only when they are not subject to federal authority are they members of the militia of the various states.

Many gun rights activists, however, know that there is still a militia, defined by both federal law

and the laws of many of the states. California, for example, largely mirrors the federal definition, and its militia consists of all “able-bodied male citizens,” and those who have declared their intent to become citizens, between ages 18 and 45. Those members of the militia who are not members of the National Guard are automatically part of the unorganized militia, according to the California Military & Veterans Code. The governor may order members of the unorganized militia to appear “in case of war, rebellion, insurrection, invasion, tumult, riot, breach of the peace, public calamity or catastrophe, or other emergency, or imminent danger thereof,

or may be called forth for service under the Constitution and laws of the United States.” And according to the state code, if you don’t show up when called, you are considered a deserter under the law.

(While I haven’t checked the laws for all the other 49 states, I do know that many of them have similar provisions.)

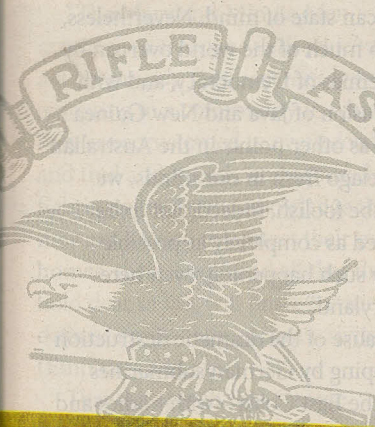
Now, those of you who watched Arnold Schwarzenegger in *Commando* know that there isn’t any problem that the “Governator” can’t handle all by himself—but at least in theory, he has the authority to order the several million men of the California unorganized militia to show up and do their duty. But when was the last time that the unorganized militia was actually called into service?

You are probably thinking it was during the Civil War or Spanish-American War. Yet, it is actually a lot more recently than that.

On a couple of occasions over the years I’ve read that Oregon’s governor called up the unorganized militia at the beginning of World War II to provide beach security, and I’ve seen a similar, and similarly hard to pin down, claim made about “some East Coast states.”

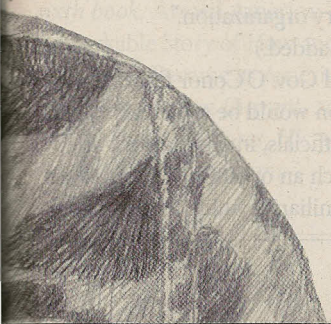
Last year, in the course of working on the *amicus* briefs for the *District of Columbia v. Heller* Supreme Court case, I found a surprising amount of information about these World War II uses of the unorganized militia.

Alaska, as you may be aware, was actually invaded by the Japanese during World War II. U.S. soldiers fought bitterly in the frozen hell of



# IS THE MILITIA OBSOLETE?

Invalid arguments that the Second Amendment only applies to some kind of “militia” and not individual Americans raise some interesting questions. What is the militia? And is it really obsolete?



SUBJECT: MILITIA



the Aleutians in 1942 and 1943. The Alaska National Guard had already been deployed outside of Alaska at the start of World War II and, understandably, the territorial governor was concerned about the prospect that Japanese troops might land on the Alaska mainland.

Consequently, more than 6,000 Alaskans, mostly Eskimos and Indians, and some of their women, were called into service as the Alaska Territorial Guard—the unorganized militia. They were unpaid volunteers, armed with obsolete U.S. Army weapons.

Oregon and Maryland were more in the tradition of the Revolutionary militias. In both cases, the unorganized militias were armed with their own

the invading activity until such time as fully equipped regular army forces could reach the point and take over.”

They would then engage in guerilla warfare tactics against “parachute and airborne troops.” The objective was to stall the invading Japanese until U.S. Army units could be brought into position. Gov. Sprague explained the value of these units: “One thing made clear in this war is the value of guerrilla fighting; and our local fighters, familiar with the terrain, can be of great value in repelling the enemy.”

While many of these groups were formally members of something called the Oregon State Guard (a militia, not part of the Oregon National Guard),

Gov. Herbert L. O’Conor gave a radio address on March 10, 1942, that is about as perfect a declaration of the value of a militia as one can imagine:

“The sincere hope of every person in Maryland is that our state may never experience invasion or attack. That we should consider such a thing as possible is in itself a terrible shock to the American state of mind. Nevertheless, with so much of the world overrun by the enemies of Democracy, and with the invasion of Java and New Guinea as well as other points in the Australian archipelago fresh in our minds, we would be foolish, indeed, not to be prepared as completely as possible for any such happening, even here in Maryland.”

Because of the dramatic destruction of shipping by German submarines along the East Coast—with bodies and wreckage washing ashore daily—Gov. O’Conor proposed the creation of a reserve militia: “The militia will be organized under our state law, and the men who enlist at this time of our grave emergency will be known as the ‘Maryland Minute Men.’

“The mission of the Maryland Minute Men is to furnish immediately local protection against parachute troops, saboteurs or organized raiding parties. It is planned that the units be confined to their own communities so that there will be assurance at all times that every residential section of Maryland will have protection ...

“For the present, the hard-pressed Ordnance Department of the United States Army cannot be expected to furnish sufficient arms, ammunition or equipment. *Hence, the volunteers, for the most part, will be expected to furnish their own weapons.* For this reason, gunners (of whom there are 60,000 licensed in Maryland), members of rod and gun clubs, of trapshooting and similar organizations, will be expected to constitute a part of this new military organization.” (Emphasis added.)

Why did Gov. O’Conor feel that this organization would be so valuable? “Military officials, in emphasizing the value of such an organization, point out that the familiarity which the members

## OBSOLETE?

“The Maryland Minute Men, armed with weapons with which they are thoroughly familiar from long use, operating in a community in which they are accustomed to every road and trail and stream, and aroused to fighting pitch by the knowledge that they are serving to protect their own homes, their family and all that they hold dear in life, will prove a staunch defense against any enemy activity.”

weapons, but like the Alaska Territorial Guard, they were unpaid volunteers. Oregon Gov. Charles Sprague called the unorganized militia into service the day after Pearl Harbor was attacked by the Japanese, and asked the federal government for rifles. The obsolete weapons offered—with no ammunition—soon prompted the governor to have the militia arm themselves.

What were the Oregon militia’s objectives? As the Oregon State Archives explain, officials expected that, in the event of a Japanese invasion of the coast, the militia would “rush to control all roads leading to the coast, and would attack and harass the invaders, delaying

there were a number of independent militia groups as well, such as the Tillamook Guerillas, and southeast Portland’s Bushwhackers. Not surprisingly, Oregon officials made some effort to bring these independent companies under some level of state supervision.

At the end of 1942, there were more than 8,000 members of these various militias. As World War II progressed, and the prospect of Japanese invasion receded, the unorganized militia evaporated, according to the Oregon State Archives.

The state of Maryland appears to have mustered their militia in a similar manner during World War II. There,



will enjoy with the faces, customs and habits of their neighbors in the community, makes them most valuable in combating sabotage efforts. They will detect, even more quickly than a secret service man from the outside, any strange faces in the community, or any unusual activities on the part of local inhabitants.

"The Maryland Minute Men, armed with weapons with which they are thoroughly familiar from long use, operating in a community in which they are accustomed to every road and trail and stream, and aroused to fighting pitch by the knowledge that they are serving to protect their own homes, their family and all that they hold dear in life, will prove a staunch defense against any enemy activity." (Emphasis added.)

That is a speech that George Washington, or Patrick Henry, or Thomas Jefferson could well have given.

Is the militia obsolete? I don't think so. World War II is not ancient history; we still have members of the Greatest Generation among us, who fought and beat one vicious form of totalitarianism.

I would like to think that our successes in the War on Terror mean that we won't be in need of asking the unorganized militia to show up with their personal firearms, as Governors Sprague and O'Connor needed citizens to do in 1942.

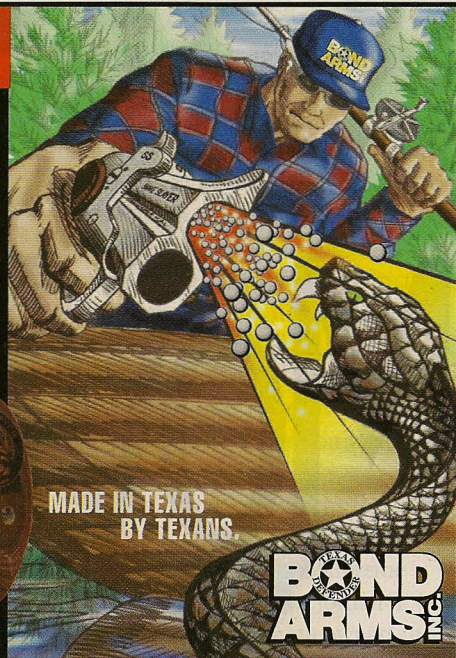
But it seems astonishingly foolish to assume that we will never again find ourselves in a position where every citizen will need to be ready to defend the nation. An armed population provides at least the core of a reserve militia—men and women who have firearms, and the knowledge to use them. ☐

Clayton E. Cramer is a software engineer and historian. His sixth book, *Armed America: The Remarkable Story of How and Why Guns Became as American as Apple Pie* (Nelson Current, 2007), is available in bookstores. His website is [www.claytoncramer.com](http://www.claytoncramer.com).

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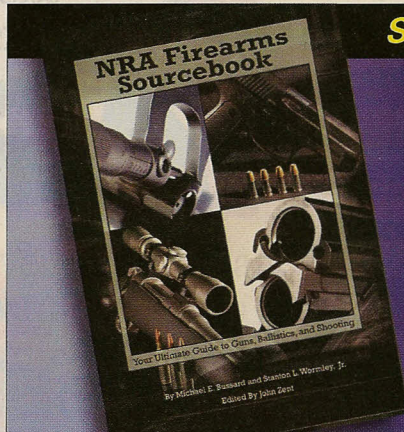


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