

## Training for the Armed Citizen

by Marty Hayes, J.D.

Recently the question came up regarding what type and scope of training an armed citizen (and specifically a member of the Network) should have? In response to this question, I decided to write the lead article for this month's journal. The ultimate goal is to have the armed citizen in a position to be able to handle just about any type of situation they may find themselves in, and then to be able to justify their actions legally. With that in mind, and with the eventual need to justify their actions legally, we must understand that there are three main categories of training needed by the armed citizen. These are:

1. Gun safety and marksmanship,
2. Tactical training, and
3. Legal training.

We will separate the issue of training into these three important categories, and over the next three months, explore these topics in-depth.

### ***Gun Safety and Marksmanship Training***

If you are in a state where mandatory training is required before being able to apply for a concealed carry license, then you have likely been exposed to gun safety and marksmanship training if your course had a shooting component, and if not, then at least gun safety training in lecture form.



Night shoot drills at Gunsite's Revolver 250 class give students experience using flashlights and handguns together in the dark.

The successful completion of state-mandated training allowed you to get your concealed carry license, but it did not train you sufficiently in either gun safety or marksmanship. That is because simply cognitively understanding the Four Universal Gun Safety Rules does not mean you will perform them all the time, especially when under the stress of a life-threatening event. It takes hours of range work (or dry fire work if a range is not available) to train your body to handle guns safely.

Every time you pick up your gun, your body needs to reflexively not point it in an unsafe direction, needs to not have your finger on the trigger, and if your gun is equipped with a manual safety, then your body must have registered one of your digits to take the safety off in a moment, but to keep it on until you need to fire. You must build physical habits that control your handling of the gun. This is not accomplished by attending a 15-minute lecture on gun safety. It means finding a competent instructor to teach you the physical manipulation of the gun and then spending enough time to inculcate the habits.

How long must you spend in this endeavor? That depends primarily on where you are at now in your gun handling skills, and to a lesser extent, your ability to learn physical skills. Some people pick it up very quickly, others struggle.

As far as marksmanship goes, for the purposes of this writing, I am including the entire array of skills one might need to call upon in a defensive handgun encounter. Those skills include, but are not limited to the following:

- Accuracy,
- Speed,
- Reloading skills,
- Target transition,
- One-handed shooting including weak-handed shooting,
- Shooting at moving targets,
- Shooting while moving, and
- Low light skills, meaning doing all the above in the dark.

Let's break these down into their individual components.

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### Accuracy

Accuracy means being able to deliver fight-stopping hits when called for, which of course depends on the circumstances. You will hear many instructors say that all you need to do is hit a man-sized target at 7 yards, as that is where the majority of reported incidents occur, but remember just a short year ago, when Texas churchgoer Jack Wilson, part of his church's security team, needed to stop an active shooter in his church? That required a head shot at 17 yards, under tight time constraints, and while the fellow was shooting people. Fortunately, Wilson was highly trained, and was able to make that shot with aplomb. Are you able to make that accurate of a shot? We don't have to just worry about being the victim of an arms-length attack.

### Speed

The skill of speed is also important, as Wilson demonstrated. He was able to draw, acquire his target and fire a disabling shot in about 5 seconds. To do this, he drew in under 2 seconds, lined up the sights in another second or so, and pressed the trigger smoothly and deliberately until the shot broke, all without disturbing

his sight picture. In addition to the time from his draw stroke to his first shot, if needed, he would have had to control recoil and continue to fire. The trend to 9 mm for the armed citizen means that unless one is aiming for the head, likely more than one shot will be required to stop the threat. That doesn't mean quarter second times between shots, but certainly less than a half a second between well-aimed shots is doable for most people. After all, one must be able to tell if the shots are doing any good, and to know when to stop shooting.

### Reloading

Reloading falls primarily under gun handling and with the high capacity guns available these days, the ability to perform a sub-one second reload is probably not worth the time required for sufficient practice to be able to accomplish that, but it is important to be able to competently exchange magazines, especially when considering magazine changes are a primary part of resolving a handgun malfunction.

### Multiple Shots

It has often been said that attackers come in pairs, or perhaps even more than two, so you need to understand how to effectively deliver disabling hits on more than one target. Training to engage and hit multiple targets is absolutely necessary, and I am happy to report that most training programs I am aware of include this in their basic defensive handgunning class.

### One-handed

One-handed shooting, both strong hand and weak hand, should also be included in a good two-day defensive handgun course. Usually this entails an introduction to the skill, then

relying upon the student to take the correct skills learned and go home and practice. It takes about an hour or so to go over both strong hand and weak hand shooting in a normal course. More advanced courses should increase the training time, including drawing one handed with each hand, reloading and clearing malfunctions one handed.

### Moving

One of my favorite subjects to teach advanced students is the combination of engaging moving targets

and shooting and moving. When learning basic skills, it is best to separate them, such as teaching a block on just shooting at moving targets. After all, bad guys don't just stand there and say "shoot me" and while I am not sure if there are solid statistics to say how many defensive handgunning situations involve shooting at moving targets, I believe the number would be high.

I can remember starting to work on the concept of shooting and moving during defensive handgun training about 25 years ago. I think Clint Smith deserves the credit for developing this skill, to which I was first exposed when my wife, Gila Hayes, came back from Thunder Ranch (<https://www.thunderranchinc.com>). My first attempts to incorporate this into range training had the students move while drawing, then stopping and delivering hits. This is a good skill to have, along with drawing and shooting while moving.

The skill of moving away from the threat while shooting should



Students watch as Ed Monk (<https://www.facebook.com/Last-Resort-Firearms-Training-180316642038491/info/>), right, demonstrates moving and shooting in his Active Shooter Threat Response class.

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be considered as an advanced skill, and is not likely seen in your basic defensive handgun course. In my opinion, it has replaced the “shooting from retention” drills. I have to ask: why on earth would you stand arms-length away from someone trying to kill you, when you can take a couple steps back, create distance and deliver hits in exactly the same amount of time? Several decades ago, not long after I started teaching drawing and shooting while retreating, a student used that very skill to save his life and kill his attacker. He attributed his survival to learning this skill at The Firearms Academy of Seattle (<https://firearmsacademy.com>), something I will proudly take to my grave.

A vast number of criminal attacks happen in low light situations. Thankfully, not pitch dark, although if attacked in your home at night, it could be pitch dark. Consequently, training in low light with and without a handheld flashlight is paramount to your survival.



### ***Where to Get this Training?***

I suspect the average reader is kind of overwhelmed right about now, thinking there is no way I can manage to take training that covers all these topics. I say to you, it is simply a matter of priorities. To accomplish all this, there are a couple of things that you can do.

If you want the confidence to handle any type of self-defense encounter, you must dedicate a portion of your income to training. When I was a young cop in the early '80s, I read a magazine article advising that an officer should set aside 10% of their income for survival training. I did it! After all, as a young cop, I had my first job that actually paid a decent salary, and to set aside 10% to increase the odds I would make it to retirement seemed doable. I took that advice to heart, and whenever a training course or needed piece of equipment (like a bullet-proof vest) came to my attention, I personally paid for it.

Now that I have made it to an older age, my goal is to still invest in my survival, and I do that by taking remedial training courses to keep my skills as sharp as possible.

The second challenge for many is to find the right instructor with whom to study or the right school at which to start training. So, let's explore how to find a school or instructor.

If you can find a good local training school, you can eliminate the need to travel, one of the most costly and time-consuming aspects of training. When I started The Firearms Academy of Seattle back in 1990, my goal was to offer all these skills in our program. That curriculum has evolved into a multi-class format, which one can take two days at a time on the weekends.

It was my goal to develop a school which had a great regional reputation, to get as many people trained as possible, not necessarily make the most money. I am happy to say I accomplished that goal and, in fact, I have recently sold the Firearms Academy of Seattle to one of my instructors, Belle McCormack. She has promised to keep the dream alive and I believe she will be successful. There are now hundreds of schools like Firearms Academy throughout the nation, and many are run by Network Affiliated Instructors.

Before you start laying your money down, do your due diligence and check them out. Call and talk to the lead instructor/owner. Research the school on the Internet. Check Yelp and the BBB. Ask for references, and ask for the instructor's training resume, also known as a curriculum vitae or CV.

Additionally, the instructor or school should plainly explain what is covered in the course or courses for which you are considering signing up. If not, send them an e-mail link to this article, and ask them if they cover the material discussed. Likely not all the subject areas will be covered, but I suspect you can get a good majority through the right school.

The foregoing sounds like a lot of work, doesn't it? Well, it is, but, you see, you are making an investment to live the remainder of your life in a state of calmness and confidence.

### ***Traveling to Training and Traveling Instructors***

In addition to local instructors/schools, there are a plethora of traveling instructors making the rounds. Some are more successful than others, and some are much more valuable than others. Many times, one or more such instructors are within a

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day's drive from your home and would be a cost-effective way to get top-notch training. Top tier traveling instructors include three of our Armed Citizens' Network Advisory Board John Farnam, Massad Ayoob and Tom Givens, and there are at least a dozen more I could name, but that risks offending someone I forgot, so suffice it to say that a little research and discussion with your gun buddies should get you started.

There are also nationally-recognized schools armed citizens can attend, including the oldest and most well-recognized, Gunsite Academy (<https://www.gunsite.com>), located in Paulden, AZ. I have attended many of their week-long courses and will continue to as long as my body holds out. Tuition is comparable to the cost of a Caribbean cruise, so when I schedule one of these weeks, I just say I am going on another cruise! Another great destination place is Thunder Ranch, with Clint and Heidi Smith. I would be remiss if I didn't mention the school I founded and until recently ran, The Firearms Academy of Seattle, Inc. which offers a week-long course once a year, so people who had heard about the quality of training can take advantage of a full week of training and cut down on travel expenses.

### ***Training after Training***

The purpose of most training is to teach the student specific techniques and to give enough repetitions so the student has it down, but if you walk away and do not continue the training, those skills you learned in your training will waste away. Now, many people take the easy way out and simply keep taking training, sometimes repeating the same course over and over. There is nothing wrong with this; most trainers depend on repeat customers to make their businesses profitable. I would recommend, however, finding a shooting range where you can practice newly-learned skills on your own, saving your training dollars for advanced tactical and legal training.

### ***Matches***

Additionally, you can expand your shooting skills by participating in competition shoots, specifically IDPA matches. You can track down local clubs at [IDPA.com](http://IDPA.com). Matches are typically held on a weekend day and take 4-6 hours to complete. At these matches, you will shoot 4-6 stages, where you will have a chance to practice your shooting skills. In addition, you will likely be exposed to some variant of moving targets, and other scenarios where moving and shooting is called for. While not a training venue (no one is teaching anything), you can use the experience to assess your skills and use the exposure to better shooters to learn how to shoot better.

Back in the late '80s I pretty much trained myself by watching IPSC videos and going to IPSC matches. It wasn't until 1990 that I took my first formal class. Nonetheless, I would not recommend IDPA as a competition endeavor, unless you want to run around with a gun in your hand. Most matches incorporate a lot of moving between shooting positions, to build up stress,

but this rewards speed of movement instead of shooting skill. If your ego can deal with not placing in the top of your class because your body doesn't move as fast as others then by all means go for it. If you find IDPA is not your cup of tea, check out Action Shooting International (<https://asi-usa.org/about/>) founded by my long-time friend Sandy Wylie. They offer a similar experience, but without a lot of the running and gunning. It is a great way to get started.

### ***When Are You Good Enough?***

Many years ago, I developed what I called the FAS Handgun Master Test. This was a skills assessment device where students could take the test and see where their skills were when compared to a set standard. It was kind of the same idea as a police qualification, but incorporated the different skills we have discussed here. The test is as follows:

1. Draw and fire six rounds in 30 seconds at a target 15 yards away. All shots must hit in the A-zone of an IPSC target.
2. At 7 yards, draw and fire one shot on each of three targets, reload and fire another shot on each of three targets, then reload again and fire one shot at any of the three targets. Must have all C-zone hits, in under 12 seconds.
3. At 7 yards, fire six shots into the A-zone in under 6 seconds, one handed strong hand. Repeat for weak hand.
4. At 7 yards, draw and fire at a moving target, firing three shots in approximately 3 seconds. Repeat for a total of six shots, all A-zone hits.
5. Repeat drill #2 in low light conditions, but at 5 yards.

The above test covers all the components I outlined at the start of this article, with the exception of moving and shooting. I dropped it from the Masters Test a few years ago because it took a lot of time to administer, and students who passed the other five components could easily handle the moving and shooting.

### ***Conclusion***

When a person can shoot the above test clean without prior practice, they should be confident that they can handle just about any critical incident life might throw at them. The luxury of having this type of skill is that you are much less likely to be selected for victimization, as your confidence and awareness of your surroundings will act like a suit of armor to protect you from being selected by the normal predator, because there are many easier targets to prey on.

In next month's *eJournal*, we will discuss tactical training, the second aspect of training for armed citizens.



## President's Message

by Marty Hayes, J.D.

I hope you all enjoyed the lead article this month. I wrote it from the viewpoint of a guy who dedicated his entire life to training normal American citizens how to use firearms in self defense. Starting in 1988 after a decade in law enforcement, I thought that since I really enjoyed the police training aspect of law enforcement, why not teach full-time? So, I left full-time law enforcement and went to work for an indoor gun range that had just opened up in the Seattle area. I talked them into hiring me to be their rangemaster and firearms instructor.

I had heard of Massad Ayoob and Jeff Cooper (Gunsite) and thought that perhaps I could develop a full-time training business in the Seattle area, since the population was large, and the right to keep and bear arms was guaranteed by our Washington State Constitution. I was single, had all my bills paid off and a few bucks in the bank. I figured it was worth the risk, because if I was successful, my life would be full and rewarding, and I could spend it shooting guns. I also figured I could always go back into law enforcement if I wanted to, and in fact, I did spend a considerable amount of time working as a part-time and as a reserve officer in the years that followed, primarily to keep my hand in the field and stay current.

After two and a half years of increasingly successful work at the indoor gun range, I had a falling out with the owners. I originally went to work for them with the agreement that when I wanted to, I could break away from employment and rent range time. Now, it seemed that my work was bringing in more money than we had anticipated, so in the summer of 1990, I walked away from indentured servitude and started The Firearms Academy of Seattle, Inc.

For the first decade or so, it was very difficult to build another loyal student base, since I did not have the captive audience from the gun range. Being single, I was able to put most of the money back into the academy and learned to eat peanut butter and jelly sandwiches (they are pretty good grilled). I also had the good fortune to hook up with Massad Ayoob (meaning I started training with the Lethal Force Institute, not the current meaning of "to hook up"). I also sold the house I had purchased a few years earlier and came into some extra money to fund my new business venture. I went to New Hampshire that fall and

spent two weeks living out of a very run-down motel to attend the rest of Massad's program – LFI-2 and LFI-3. I became an instructor for the Lethal Force Institute and have been training with him for the ensuing 30+ years. It was this association which molded my life thereafter.

As I spent time with Massad and learned from him, I learned more and more about his work in the courts as an expert, helping defend innocent people who had been charged with crimes after acts of self defense. This piqued my professional curiosity, and as fate would have it, I got a call in the summer of 1994 from an attorney looking for an expert witness that could explain how an accidental shooting occurred. (Yes, some are accidents.) The case turned out pretty good, and while I never advertised, I did start getting calls for that type of work.

By then, I had also met and married my wife, Gila Hayes. Together, we were much more successful than we could have been separately, and within a couple of years, we had decided to purchase acreage in Lewis County, WA to build a shooting range. So, we took another risk, and another few years of eating grilled peanut and jelly sandwiches.

I also went back into law enforcement full-time for a couple of years, when range construction costs were large and shooting instruction business was small, since I had left my base in Seattle two hours away, and most students didn't want to drive that far. We persevered and eventually started making a profit, so I could quit working full-time as a cop.

This was 2001, and by 2003, we had paid off most of our debt and were on our way to a quiet and successful lifetime of teaching people and shooting guns when I got a bright idea. Why not go to law school and help out my students by being an attorney, too? I researched and found Concord Law School, applied and was accepted, and the rest is history. Fast forward to 2007 and graduation from law school, and the formation of the Network in 2008.

Of course, during all these years I taught almost every weekend, and built up the academy to a pretty successful regional training business. It was the 30 years of teaching during this time that led me to develop my thoughts regarding defensive handgun training – thoughts that I shared with you in the lead article.

Of course, successful self defense is not just being able to shoot a handgun well, but also to make good decisions, use good tactics and survive the legal aftermath, which we will explore next month.



## Attorney Question of the Month

*This month our Network President Marty Hayes has asked us to explore legal responsibilities of parents who fail to secure guns which are subsequently used in tragedies like the Oxford High School killings and injuries. Of course, the laws vary a lot from state to state, as does how strictly laws on the books are enforced. With Affiliated Attorneys all across the United States, our Network members will greatly benefit from discussion of how criminal liability is assigned to parents of minors in school shootings.*

*We asked our affiliated attorneys the following:-*

***In your jurisdiction, are there specific laws pertaining to keeping firearms secured and out of the reach of unauthorized persons such as a minor child?***

***Have you witnessed or been a part of any trial, pre-trial, or other hearing where a parent or an adult has been criminally charged for a minor's access to and/or use of a dangerous weapon?***

*So many attorneys wrote in to share their thoughts that we ran the first half of their responses last month and wrap up this question now in our February edition.*

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Maine has long had its "endangering the welfare of a child" law, recently updated. Now if a kid obtains a gun from you, and threatens or hurts someone, you need to prove your way out (affirmative defense).

Here's our new law. It describes a BUNCH of ways to secure guns so kids can't get them and if they DO (with an ax, for example), you are not guilty.

4. It is an affirmative defense to prosecution under subsection 1, paragraph B-4 that:

A. The loaded firearm is:

- (1) Stored in a locked box, locked gun safe or other secure, locked space;
- (2) Stored or left in a location that a reasonable person would believe to be secure; or
- (3) Secured with a trigger lock or similar device that prevents the firearm from discharging; [PL 2021, c. 388, §3 (NEW).]

B. The loaded firearm is carried on the person or within such close proximity to the person that the person can readily

retrieve and use the firearm as if the firearm were carried on the person; [PL 2021, c. 388, §3 (NEW).]

C. A child who in fact gains access to the loaded firearm gains access in order to defend the child or a 3rd person under the circumstances enumerated in section 108, subsection 2, paragraph A or B; [PL 2021, c. 388, §3 (NEW).]

D. The person has no reasonable expectation, based on objective facts and circumstances, that a child is likely to be present on the premises where the person stores or leaves the loaded firearm; [PL 2021, c. 388, §3 (NEW).]

E. A child in fact gains access to the loaded firearm as the result of a criminal trespass by any person on the premises where the firearm is stored or left; or [PL 2021, c. 388, §3 (NEW).]

F. A child in fact gains access to the loaded firearm as the result of a theft of the firearm by any person from the premises where the firearm is stored or left.

So, there are lots of ways of complying with the law. Note that there are also prohibitions on providing gunpowder and ammunition, as well as "air rifles."

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Illinois law is as follows:

"§ 720 ILCS 5/24-9. Firearms; Child Protection Sec. 24-9. Firearms; Child Protection. (a) Except as provided in subsection (c), it is unlawful for any person to store or leave, within premises under his or her control, a firearm if the person knows or has reason to believe that a minor under the age of 14 years who does not have a Firearm Owners Identification Card is likely to gain access to the firearm without the lawful permission of the minor's parent, guardian, or person having charge of the minor, and the minor causes death or great bodily harm with the firearm, unless the firearm is:

- (1) secured by a device or mechanism, other than the firearm safety, designed to render a firearm temporarily inoperable; or
- (2) placed in a securely locked box or container; or
- (3) placed in some other location that a reasonable person would believe to be secure from a minor under the age of 14 years.

"(b) Sentence. A person who violates this Section is guilty of a Class C misdemeanor and shall be fined not less than \$1,000. A second or subsequent violation of this Section is a Class A misdemeanor.

(c) Subsection (a) does not apply:

- (1) if the minor under 14 years of age gains access to a firearm and uses it in a lawful act of self-defense or defense of another; or

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(2) to any firearm obtained by a minor under the age of 14 because of an unlawful entry of the premises by the minor or another person...”

Please note this statute only applies if there is “a minor under the age of 14 years who does not have a Firearm Owners Identification Card is likely to gain access to the firearm.” Illinois requires any resident to obtain a Firearm Owners Identification Card (FOID) for purchase of a firearm or ammunition. It’s a background check and since the state requires insta-check at the time of a firearm purchase, serves as a partial gun registration. Gun dealers call the Illinois State Police and submit the name, FOID number and whether the gun is a long gun or handgun, Illinois State Police give either an approval number (written on the bill of sale), rejection or deferral pending further review.

There is no minimum age for a FOID, but applicants under 18 must have parental approval on the application. So in summation, this statute only applies:

1. To minors under the age of 14, and
2. To minors under the age of 14 without a FOID

I have not had any clients who were charged under this statute.

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*In your jurisdiction, are there specific laws pertaining to keeping firearms secured and out of the reach of unauthorized persons such as a minor child?*

These Utah statutes relate to parents who have knowledge that their child or “violent child” has possession of “dangerous weapons.”

§ 76-10-509.7. Parent or guardian knowing of minor’s possession of dangerous weapon

Any parent or guardian of a minor who knows that the minor is in possession of a dangerous weapon in violation of Section 76-10-509 or a firearm in violation of Section 76-10-509.4 and fails to make reasonable efforts to remove the dangerous weapon or firearm from the minor’s possession is guilty of a class B misdemeanor.

§ 76-10-509.6. Parent or guardian providing firearm to violent minor

(1) A parent or guardian may not intentionally or knowingly provide a firearm to, or permit the possession of a firearm by, any

minor who has been convicted of a violent felony as defined in Section 76-3-203.5 or any minor who has been adjudicated in juvenile court for an offense which would constitute a violent felony if the minor were an adult.

As Utah’s “gun-law” attorney, I am not aware of any criminal statute that specifically creates criminal liability for failing to keep firearms secured. However, a person in Utah could conceivably be charged with manslaughter, a felony, for “recklessly causing the death of another.” Likewise, if his or her conduct was held to be criminally negligent (more than ordinary negligence), he/she could be charged with negligent homicide, a serious misdemeanor. Civil liability could arise under Utah case law, however, for reckless or negligent conduct resulting in death or injury from leaving a firearm unsecured. E.g. Utah Supreme Court has held that giving a loaded firearm to a very drunk person who shot herself could give rise to a civil suit for negligence.

*Have you witnessed or been a part of any trial, pre-trial, or other hearing where a parent or an adult has been criminally charged for a minor’s access to and/or use of a dangerous weapon?*

No, but as explained above, it’s not inconceivable if the conduct is shocking enough to constitute criminal negligence or recklessness. My alter-ego, Pancho V., always says, “Don’t become the TEST CASE!!!!”

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You might have guessed that California has such laws.

25100 PC states that “a person commits the crime of criminal storage of a firearm...if all of the following conditions are satisfied: The person keeps any firearm within any premises that are under the person’s custody or control. The person knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child’s parent or legal guardian and the child obtains access to the firearm and thereby causes death or great bodily injury to the child or any other person.”

Improper storage is a misdemeanor. An injury can put you in prison for three years.

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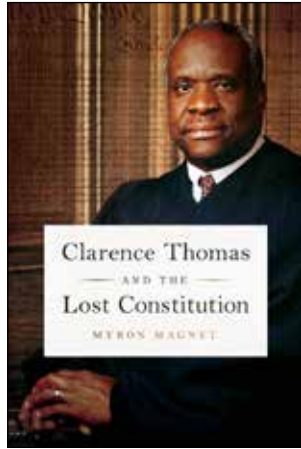
*Thank you, affiliated attorneys, for your comments about this topic. Members, please return next month for the a new topic of discussion.*

## Book Review

### Clarence Thomas and the Lost Constitution

By Myron Magnet  
Encounter Books 2019-05  
ISBN-13: 978-1641770521  
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hardcover; \$12.95 eBook

Reviewed by Gila Hayes



United States Supreme Court Associate Justice Clarence Thomas's opinions on the gun free school zone fight in *United States v. Lopez*, and whether the Second Amendment applies to laws passed by local and state governments in *McDonald v. Chicago*, endear him to the hearts of armed citizens, but the broader philosophical basis of his opinions explains why he is such a valuable member of the supreme court. Justice Thomas has a fine autobiography in print, but last month, I chose instead to read *Clarence Thomas and the Lost Constitution* for its insights into Thomas, whom author Magnet deems, "one heroically self-reliant man" and his thought processes as seen through the lens of the many supreme court cases he has influenced.

Magnet explains the founding fathers' vision for the United States Supreme Court, writing about their fear of an all-powerful central government and the "delicate balance" of a government strong enough to, in the words of James Madison, "make people do their duty." The founding fathers, he later explained, were determined to prevent the tyranny that comes from "concentration of the several powers in the same department," so gave specific and limited powers to the executive, the legislative and the judicial branches of the new government. While the three branches of government still exist, he fears they are being destroyed by "a vast administrative state" in which "unelected, purportedly expert, bureaucrats make binding rules like a legislature, carry them out like an executive, and interpret and enforce them like a judiciary, all without a hint of separation of powers or checks and balances."

Against this rather bleak setting, Magnet introduces Clarence Thomas who has written that, "The reason I became a lawyer was to make sure that individuals who did not have access to this society, gained access." His story starts in the segregated South in the 1950s, where his self-made grandfather raised Clarence Thomas and his brother like they were his own sons. Reaching adulthood during the civil unrest of the late 1960s and early 70s, Thomas realized he could live in resentment and anger, but having seen radicalism from the inside, abandoned it.

Thomas led Reagan's federal civil rights division for the education department, and later headed the Equal Employment Opportunity Commission in spite of his dislike for affirmative

action. His focus was on protecting the individual, not classes or races of people. Actions in favor of one group inevitably harm another as he observed, "group favoritism violates the constitution, 'which says you are to protect an individual's rights no matter what.'"

Upon joining the USSC in late 1991, Thomas ran up against constitutional interpretations that were "a far cry" from the US Constitution and the Bill of Rights. Magnet expounds on the history of the court's departure from strict constitutionalism, detailing the failures of post-civil war reconstruction and the court's 1873 *Slaughter-House* cases, *Cruikshank* three years later, and in 1896 *Plessy v. Ferguson*, all setting monstrous precedents.

*Clarence Thomas and the Lost Constitution* is not exclusively about race and supreme court decisions, although a number of Thomas's most important opinions address affirmative action. He also decries the all-powerful bureaucracy of unelected agency heads. Magnet asserts that the supreme court has forwarded the work of Woodrow Wilson who urged, "The period of constitution-making is passed now. We have reached a new territory in which we need new guides, the vast territory of administration." Franklin D. Roosevelt carried the idea of powerful administrative agencies to fruition.

Later in the book, Magnet quotes, "The New Deal, Thomas argues, marked an inflection point in government's subversion of personal responsibility. FDR's promise of freedom from want, in particular, redefined freedom from 'a right to self-provision and self-determination' to 'a right to make demands on government and society for one's well-being and happiness,' for housing, a minimum income, and other such benefits."

Congress also bears responsibility Magnet continues, explaining that, "The constitution lodges all legislative power in congress, which therefore cannot delegate its lawmaking function elsewhere" to say nothing of empowering those independent agencies with legally-binding rule making, and agency-level tribunals with administrative judges acting like "real judges" (also in violation of the constitution) enforcing agency policy and overseen by the agency head. "Worst of all, the regulatory agencies may presume anyone they charge to be guilty unless he proves his innocence, and he has but limited standing and scope to appeal the agency's decision to a real court," Magnet writes, adding later, "Part of America's current predicament" is a "permanent, unelected" government that is "unanswerable to the people."

Magnet outlines supreme court decisions that, in the name of desegregation, also greatly exceeded the power assigned the court by the constitution. "Busing, affirmative action, and abortion are but the three most glaring areas in which the justices have made law from the bench, with no constitutional license to do so," he writes. Compounding the errors, courts are loath to return decisions that disagree with those of earlier courts.

[Continued next page]



According to Thomas, however, the justices “are obligated to think things through constantly, to re-examine ourselves, to go back over turf we’ve already plowed, to torment yourself to make sure you’re right.”

Magnet cites Thomas’s work on *McDonald v. Chicago*, as “a textbook demonstration of his method of judging. Here, with his characteristic skepticism toward *stare decisis*, he utterly repudiates the US Supreme Court’s most tragically wrong and history-changing decisions of them all, the *Slaughter-House Cases* and *United States v. Cruikshank*.”

“The right to keep arms is fundamental to our nation’s particular scheme of ordered liberty and system of justice, the court ruled, and therefore, through the venerable doctrine of ‘substantive due process,’ which holds that the fourteenth amendment’s due process clause goes beyond procedural safeguards and makes some rights so basic that no state can withdraw them, both the second and fourteenth amendments prohibit Chicago from banning residents from keeping handguns in their homes.” While Thomas in his concurrence was strongly supportive of the *McDonald* victory, Magnet explains that his opinion was that the court should instead “straightforwardly to apply the fourteenth amendment’s privileges or immunities clause as its framers meant it to be understood.”

Thomas is particularly critical of the “rights revolution,” through which authority figures ranging from teachers to police officers are not allowed to prevent disruptive or destructive behavior. This is the worst of judge-made law, Thomas exclaims. It subverts law enforcement, by expanding “reasonable” expectations of privacy, rights to free expression, and sends a message to lawbreakers as well as model citizens that there is no benefit to complying with the rules. Local communities are denied self-government through sweeping decisions restricting policing, schools and civil organizations by activist courts.

Thomas is unusual as “a certain kind of character to be capable of, and to cherish, the liberty that the constitution protects,” Magnet writes. Despite venomous opposition by civil rights leaders, Thomas insisted on “my right to think for myself, to refuse to have my ideas assigned to me as though I was an intellectual slave because I’m black...I will not be consigned the unquestioned opinions of others,” Magnet quotes, adding that he finds in Thomas’s words an echo of founding father James Madison, quoted as crying out against “making laws for the human mind.”

Thomas’s belief that with freedom comes responsibility for “the use he makes of his liberty and the consequences of his pursuit of happiness,” always present in his concurrences and dissents explains why many in the civil rights movement hate him. While Thomas has publicly acknowledged his identify as “a man, a black man, an American,” Magnet identifies him as “the independent citizen who thinks for himself, does for himself, relies on himself, and, not incidentally, fights for the right of others to enjoy the same liberties.”

*Clarence Thomas and the Lost Constitution* is not a long book and is written for the lay readers. Nonetheless, I found it demanding reading that challenged me to pay close attention. Magnet puts a lot of effort into explaining the background of USSC cases and underlying issues and sometimes, reading a few pages now and a few pages later as time allowed, I had difficulty separating Magnet’s background detail from Thomas’s words from speeches, interviews, concurrences or dissents.

I learned a lot from the history of fights in our US Supreme Court over free speech, property rights, abortion and state rights, and especially appreciated quotes detailed with summations from Thomas’s own writings. I have been guilty, I think, of celebrating favorable court decisions won through any reasoning. I now have a new appreciation for Justice Thomas’s insistence on doing right in the right way.



## Editor's Notebook

by Gila Hayes

In a Crime Prevention Research Center email last month John Lott (<https://www.johnlott.com>) confirmed and put numbers behind what most of us knew instinctively, writing, "Data shows that while violent crime soared in 2020, violent crime with guns fell dramatically by 27%. Increased gun sales can't drive

the rise in violent crime if the share of violent crime committed with guns drops, let alone drops dramatically."

So much for the spin anti-gun politicians put on the quietly expanding numbers of armed citizens. The conservative voting base hasn't expanded at the same rate, I am afraid. Recognizing the uptick in gun sales makes me wonder what are the views of these newer members of armed citizenry? Where do we align and where do we differ?

I am a big fan of the analysis of sociology professor David Yamane who provides a scholarly look that is more attuned to the "from the outside looking in" views about firearms ownership from outside the entrenched numbers of long-time gun owners – many, like me, raised in the '50s and '60s in gun-owning families – to whom nothing makes more sense than having guns for utility around the ranch, personal protection and home defense. Yamane blogs at <https://gunculture2point0.wordpress.com> and at <https://guncurious.wordpress.com> where he directs his comments at those who are "interested in guns but unsure." His observations are, for me, always illuminating and valuable. I recently read Professor Yamane's updated *Concealed Carry Revolution: Liberalizing the Right to Bear Arms in America*. If you haven't, may I recommend it?

With the typical human tendency to long for the "good old days" while decrying the dreadful state of society today, I loved Yamane's observations that not only was the West never the armed-to-the-teeth environment popular entertainment made it out to be, but likewise, laws controlling carrying concealed weapons were in effect in the so-called wild, wild West and are nothing new. He writes that even earlier, in the old England our fore bearers fled, possessing arms for self-preservation was limited to Protestant men who owned property. Interestingly, early American colonists enforced the same restrictions in the Massachusetts Bay colony.

After the American Revolution, you'd think Americans would have held the right to guns for personal protection in higher regard, but, as Yamane reminds readers, the various states began banning concealed carry throughout the first half of the 1800s, although historians observe that the practice of carrying guns on one's person was not rare. "In the 1920s and '30s a

number of states adopted gun restrictions based on a model law called the 'Uniform Act to Regulate the Sale and Possession of Firearms.'"

Yamane opines that "The most interesting and important developments in terms of gun laws have always taken place at the state level" although he acknowledges the 1934 National Firearms Act, 1938 Federal Firearms Act, and the 1968 Gun Control Act. Least national gun control campaigns eclipse laws that more broadly affected life every day, he notes that the early 1900s saw a rash of state law restrictions on carry concealed, best illustrated, perhaps by New York's Sullivan Act of 1911. Gun owner associations of the time (like the NRA), more concerned with freedom to keep guns for hunting and sporting pursuits, offered model legislation granting states discretion to license concealed carry in exchange for promises that "reputable" citizens would be allowed to possess firearms.

I've always gotten a little hot under the collar at the idea of a government-appointed bureaucrat making decisions about who qualifies as "reputable" (beyond making contributions to political campaigns, of course) so I was interested in Yamane's more scholarly recounting of the history of concealed carry laws.

Most of what we now consider shall-issue started in the early 1960s but it was the mid-1980s to the early 2000s that brought a "massive expansion in the number of states with liberalized concealed carry laws," he writes. "Just over 100 years after New York passed the influential may issue Sullivan Law, 40 out of 50 states had adopted liberalized concealed carry laws under which officials could not deny a permit to a citizen as long as that citizen met certain basic requirements." More recently, foremost in the movement for concealed carry rights at the state level is permitless carry, he observes.

I found his chapter on variations in training required for concealed carry licensing equally interesting because even Network members sometimes write that they find it odd that some states require no training whatsoever before issuing a concealed carry permit. Yamane's viewpoint? "Requiring a meaningful training course as a prerequisite for receiving a concealed carry permit would have the unintended – or, perhaps for some, intended – consequence of creating a substantial barrier to the exercise of the right to bear arms, and one that discriminates especially against those who are more socially and economically disadvantaged."

These were just a few ideas and facts that I found interesting in Professor Yamane's book. I've noted with interest that he is an active video blogger on You Tube, with more good stuff about current attitudes toward guns in America today, headlined recently as "the changing face of gun owners today." May I recommend that you join me as a regular reader/viewer at <https://guncurious.wordpress.com>? We need to hear voices from outside the ranks of the long-time gun owners!

## ***About the Network's Online Journal***

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