

# Gun Lawyer Episode 20 Transcript

## SUMMARY KEYWORDS

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## SPEAKERS

Evan Nappen

### **Evan Nappen** 00:20

I'm Evan Nappen, and welcome to Gun Lawyer. Today I want to tell you about a really interesting case I had, and it's something that folks all around the United States should really be aware of even though this happened in New Jersey, Democratic People's Republic of New Jersey. It is unbelievable how bad the gun laws are there, and you've heard me talk about it because that's where I fought many a battle. It is really frontlines on gun control, and New Jersey stands for what you never want to have happen in your state ever. New Jersey turns law-abiding citizens into criminals, and they do it with glee and vigor. We see it all the time, and I want to tell you about a case that will shock you to hear about.

### **Evan Nappen** 01:15

It involves a fellow whose name was Mr. Van Gilder. At the time, Mr. Van Gilder was in his 70s, and he was a retired teacher. Mr. Van Gilder had a love for history, and he loved 18th century objects of history. He studied them, and he had a collection of various papers and documents and things of that period. He really, really enjoyed that in his retirement. It so happened that one of the things that he had in his house was an old flintlock pistol, an original flintlock from that period of time. Okay, the last time that flintlock had been fired, George Washington was alive. That's how old this was. It was a Queen Anne, flintlock, single shot pistol from the mid-1700s, maybe even a little earlier. The Queen Anne is a kind of a neat flintlock. It has a single barrel, and normally the barrel will turn out. The barrel looks like a miniature cannon of a Queen Anne style cannon that would be on the great sailing ships. It was a pistol barrel, single shot, and they were popular for individuals of the day to have as a carry gun against ruffians, highway men and such. This was really an interesting artifact, and it was a bona fide original flintlock.

### **Evan Nappen** 03:03

Unfortunately, an individual who had been residing with him in his house, kind of helping take care of things in the house, pawned his flintlock pistol without his knowledge or permission. When Mr. Van Gilder learned about it, he took the fellow with him, and they went back to the pawn shop. He retrieved his property that should not have been pawned. But he got it back, and he wrapped it in a cloth and put it in his glove box. He was driving back home with his original flintlock pistol, and he got stopped for a minor traffic matter. The officer asked him if there's anything dangerous in the car. Mr. Van Gilder said just a flintlock pistol from the 1700s. The officer said that's awesome, let me see it.

**Evan Nappen 04:03**

The officer looked at it, and then he arrested Mr. Van Gilder for possession of a handgun under New Jersey law. Now this is an unloaded, no ammunition, no black powder, no nothing, bona fide antique, roughly 250 to 300 years old. That is simply going from this pawn shop where it shouldn't have gone in the first place, and he's bringing it back home. Mr. Van Gilder is arrested and charged with possession of this flintlock. Let me tell you, it is serious because New Jersey makes no distinction, none whatsoever, between a flintlock pistol 300 years old and a modern, .44 Magnum loaded in your shoe. They don't care. Same thing, same thing. Okay, no difference. If you're charged with this offense, you're facing up to 10 years in State Prison with a minimum mandatory three and a half years, no chance of parole. So, if Mr. Van Gilder got convicted, and a judge had to sentence him that judge has no discretion at all over the minimum mandatory sentence. The best sentence he could give this 70-year-old man, a retired professor for possessing a flintlock, the best sentence would include three and a half years of parole ineligibility, no matter what his sentence was. So that Mr. Van Gilder would have to do every day of three and a half years before he could even be released from state prison for this heinous offense. That is insanity, and New Jersey still hasn't changed the law at all. It's still the same deal.

**Evan Nappen 06:21**

That black powder firearm, antique firearm, no matter how old, no matter what the mechanism, is still a firearm. If it is made to be fired with one hand, it is still a handgun. There's no distinction whatsoever in the law between that flintlock and a modern firearm. It is really absurd. You don't ever want this to happen in your jurisdiction, because you can just see how bad it is. It truly is. So, when I got this case, I was absolutely disgusted that Mr. Van Gilder had to go through this nonsense. I contacted the prosecutor and made my position pretty forcefully known about it. It was kind of interesting, because prior to representing Mr. Van Gilder, I had represented Shaneen Allen in the famous Shaneen Allen case, and we had relatively recently fought and won that case.

**Evan Nappen 07:27**

As many of you listeners know, Ms. Allen is a single, black mom who went from Philly into Jersey. She had a licensed legal carry for her handgun. She is a single mom taking care of two young boys, and she had been robbed twice. So, she was legally in possession of it. But when she crossed into Jersey, you see, Jersey recognizes no other states license or permit. So, she was now facing the same draconian, ridiculous penalty for a licensed handgun, and we had fought all that so hard. Many folks from around the country were expressing their disgust with what was happening to Shaneen Allen. There were billboards that sprung up all around the county to free her and to stop this. So, when I talked to the prosecutor in another county on this Van Gilder case, her comment to me was, look, "I'm gonna dismiss it. We don't need any billboards." And I said, "Good, good." At least they know where this is gonna end up. I was glad to hear that.

**Evan Nappen 08:42**

So, having a good reputation and fighting for law-abiding citizens makes a big difference for my clients. As a matter of fact, in the Shaneen Allen case, one of the comments this judge who was hearing her case, he sentenced another person who had circumstances that were even more egregious than Shaneen Allen's circumstances. She had made an honest mistake and brought the gun accidentally

into New Jersey. This was just a horrible situation and it was just an honest mistake. Even more extreme was this other fellow that this judge was sentencing, and I was not representing him. His facts were even crazier. He was kidnapped and brought to New Jersey out of Pennsylvania by his buddies who decided they were going to have a bachelor party for him before he got married. They kidnapped this guy, and he didn't know where they were going. They grabbed him and threw him in the car. The whole bit. They blindfolded him. Guys messing with them, and they take them to Atlantic City.

**Evan Nappen 09:56**

The problem was when they kidnapped him, he had his gun on him. It was legal for him to have in Pennsylvania. When they got to New Jersey, they discovered the gun in the car because he wouldn't carry it. Even though he left it locked up there, it still ended up coming to light, and he ended up being charged with the same thing. He was looking at three and a half years minimum mandatory. I will never forget the judge who was sentencing him was also Shaneen Allen's judge. He said this was in the paper, in the Atlantic City press. Because, you see, there was tremendous pressure on Shaneen to plead guilty, and I was getting calls from other attorneys. "Oh, you got to plead guilty. You got to plead her out." I don't have to do anything. I'm gonna fight. "This wasn't how we do things are down here." Like you think I give a flying You know what, how you do things down here. This is ridiculous. So, even the judge when he sentenced this other guy says, "Well, we reviewed this and all, and you're pleading guilty. Because you're pleading guilty, the prosecutor is doing a Graves Waiver where the prosecutor has the discretion to waive the minimum mandatory." The judge can't do it, but if you do a plea, the prosecutor can. Here with all the attention being paid to Shaneen Allen, they're gonna show how amazingly great this County is. How benevolent and merciful they are. By only becoming a convicted felon and losing your gun rights and becoming a second-class citizen.

**Evan Nappen 11:31**

This guy did not get jail time and mandatory prison. Isn't that wonderful, folks? Doesn't that make your heart sing that Atlantic County did that for this wonderful guy? Right. Not only that, but the judge also says in the newspaper, "Unlike some people (and the reporter wrote referring to Nappen, meaning me) that have to make their clients a cause." That's right, that have to make their clients a cause. Let me tell you something, You're damn right. Every one of my clients is a cause. It's a cause for justice. It's a cause for freedom. By making Shaneen "a cause", we changed the system in Jersey. We made it so that individuals like her could get PTI (Pre-Trial Intervention) where they couldn't get it before. It is a diversion where they don't become a convicted felon and go to jail. The Attorney General said that law change saved 100 pending cases. I'm sure that the guy who the judge sentenced and made a felon probably looked back and said, "Wow, if he had stood the fight, he could have got diverted and not be a felon." Maybe he should have been a cause, too. But, you see, that's what we're up against. By making a fight and really going out and fighting, it had ripple effects of helping so many others. It even helped Mr. Van Gilder with his insane arrest for a flintlock pistol that hadn't been fired since George Washington was alive. When we get back, I've got some interesting things to talk to you about. See you in a bit.

**Speaker 3 13:35**

For over 30 years attorney Evan Nappen has seen what rotten laws do to good people. That's why he's dedicated his life to fighting for the rights of America's gun owners. A fearsome courtroom litigator,

fighting for rights, justice and freedom. An unrelenting gun rights spokesman tearing away at anti-gun propaganda to expose the truth. Author of six best-selling books on gun rights including Nappen on Gun Law, a bright orange gun law Bible that sits atop the desk of virtually every lawyer, police chief, firearms dealer, and savvy gun owner. That's what made Evan Nappen America's Gun Lawyer. Gun laws are designed to make you a criminal. Don't become the innocent victim of a vicious anti-gun legal system. This is the guy you want on your side. Keep his name and number in your wallet and hope you never have to use it. But if you live, work, or travel with a firearm, the deck is already stacked against you. You can find him on the web at [EvanNappen.com](http://EvanNappen.com) or follow the link on the Gun Lawyer resource page. Evan Nappen America's Gun Lawyer.

**Speaker 3 14:50**

You're listening to Gun Lawyer with Attorney Evan Nappen. Available wherever you get your favorite podcast.

**Evan Nappen 15:06**

Welcome back. I want to tell you folks that we've got to stick together. We have to keep our communication lines open. You want to keep a fellow gun owner from becoming a law-abiding criminal. In order to do that, tell your friends to listen to Gun Lawyer radio, visit our web site, it's at Gun.Lawyer. Instead of a .com. I'm actually at a dot lawyer, and I'm Gun.Lawyer. What I would really love is for you to take a look at our Inner Circle. It's on our website at Gun.Lawyer. Sign up for the Inner Circle and you're going to get the inside from me, Evan Nappen. I'll be giving you tricks, tips, insights, and we'll be having some fun while we do it. Sign up, it's free. Go to Gun.Lawyer and join our Inner Circle. Remember, this helps me communicate with you to touch base and let you know what's going on. Because Big Tech doesn't care about our gun rights. They actually hate us, and they don't want us to speak about this. We're gonna be in some big fights, and they will try to shut us down. I want to make sure that I have ability to still talk to you. So, you will know what to do to protect yourself and your gun rights. The Inner Circle is the way we can stay in contact, despite their efforts. We're gonna have big issues coming up. Biden's already talking about executive orders, all kinds of nasty things. You're gonna need to know how to protect yourself and what the loopholes are, and I'm going to fill you in. I love loopholes and I'm going to fill you in on all that you're going to want to know. So, please subscribe to the podcast, tell your friends so we can grow and keep the voice getting bigger and the communication out there. Join my Inner Circle and help me get the word out. I'm depending on you.

**Evan Nappen 16:52**

This has been an interesting week. One of the things I did this week, which I like doing, is I testified regarding a proposed gun bill. This one is in New Hampshire, and the bill is SB 141. I want to tell you, folks, about it because it has again impact outside of New Hampshire. It raises issues that we need to learn from and be aware about. So, don't think when I tell these stories about localities, if you don't live there, it doesn't affect you, because it sure does. This knowledge can help you wherever you are jurisdiction.

**Evan Nappen 17:31**

So, in New Hampshire, we're dealing with a situation regarding the NICS (National Instant Criminal Background Check System). You see the NICS background check came about with the Brady bill. As

you may recall, the Brady bill set out to create a system in which there would be background checks done on every sale of a firearm by a dealer in the United States. There are efforts right now to have the so-called Universal Background Check, and that is code for Universal Gun Registration. Because what the anti-Second Amendment folks want to do is make it so that no one can ever transfer a firearm unless there's a background check done first. So, that means it has to go through a dealer. You're not individually going to be able to just run a background check. They should really make that available, right? But no, that's not how it works. You see, the dealers are the only ones that can do it. In order for them to do it, you first have to fill out your ATF Form 4473 (Firearms Transaction Record). That's the Federal form to transfer a firearm.

**Evan Nappen 18:54**

Now, you need to know right off the bat that the Federal transfer form is a trap. It's absolutely a trap. They said, "Why is it a trap?" Because if we have an instant background check, why do you have to fill out any form? How come I just can't give my driver's license and say hey, run me. Am I good to buy a gun? And the dealer runs you and says yeah, you're good to buy it. No, no, no. Instead, you have got to fill out this form that asks you all these questions, and some of the questions are just plain outrageous. I have to admit or deny my Hispanic heritage. I mean, what is that all about? It's crazy. Identify race. Why race when a photo ID is required. Why are we going down anything with race at all? But even putting aside the offensive and intrusive questions, they ask all these different questions, and you have to fill that out. If you inadvertently give a wrong answer, and then on the background check it comes up, you can be prosecuted for falsifying the form. Oh, no, no. This old thing from 30 years ago that you forgot about oh, well. You lied on the form, and then you can be prosecuted for falsifying the form. So, this is why it really lays a trap. So, you want to be very careful when you fill out this ATF Form 4473 that you know the answers and always tell the truth. Don't make any mistakes, because it could come back on you.

**Evan Nappen 20:18**

But putting that aside, once you fill out the form, then this background check takes place. This all started with the Brady Bill (Brady Handgun Violence Prevention Act, enacted November 30, 1993). You see, the Brady Bill originally had a five-day waiting period for handguns. Yes, a waiting period. It was Federal law back then. Federal law, a five-day waiting period. Then within five years, the government would set up the NICS, and then all guns would be instant checked. The waiting period would go away. It would be sun shined and gone. So, once we got instant check that wiped out the waiting period. Now you know the antis today want to push waiting periods again. But they no longer have the guise of saying we need to check backgrounds. No, now it's just a waiting period to eff with our rights. Okay, that's what it's about, to screw with us. So, we can wait - a right delayed is a right denied. So, let's delay it, and force another waiting period even though we have instant background checks.

**Evan Nappen 21:33**

Nonetheless, back in the late 90s, when the Brady Bill passed, there was this five-day waiting period. If any state wanted to get around the waiting period, the state had to have its own instant background check for handguns. Then the waiting period did not apply Federally to that state. So, New Hampshire, being a pro-gun state, passed a law establishing in the State of New Hampshire what is called the Gun Line. It's not the official term, but it's what it's called. The Gun Line does handgun checks so that

individuals will not be stuck with a five-day waiting period as mandated by Brady. The idea was when the five years came about and we went to a national instant check, the state would no longer be doing background checks at all. The waiting period was gone by Federal law, and the Feds would just run the instant background check system. That was the plan. However, that's not what happened. You see, what happened is typical in bureaucracies.

**Evan Nappen 22:48**

What happened was this one bureaucracy in New Hampshire that did these Gun Line checks was controlled by this agency that had as part of it very political folks, you see. When it came time for NICS to come about, they didn't want to give up the State Gun Line. They wanted to keep it. I mean, that's the law of bureaucracy, right? You don't want to get rid of bureaucracy you want to ever expand it. So, what the feds created was a situation where they said, Look, if you're a state that already had a background check, like Pennsylvania had it before Brady even passed. They call it PICS (Pennsylvania Instant Check System). If you had that, you could maintain that, and you didn't have to have the Feds do the check. Any state that wanted to do the background check after the five-year period when they had NICS, you could work with the Feds, and you became what is known as a POC (Point of Contact). So, some of you may live in states that are POCs that are Point of Contact for doing the NICS check. In POC states, they run the background check for the enforcement of the Federal gun law under the Brady Bill. Many of these states that are POCs have their own state laws that had these already in place. Pennsylvania is a great example. Pennsylvania had PICS, which is Pennsylvania Instant Check System. So, what you had was PICS becoming a pop for NICS. Pick pock NICS. That's what exists there.

**Evan Nappen 24:33**

Now even to this day. Putting aside the alphabet soup, New Hampshire didn't have such a law. They only had that handgun law just to get rid of the waiting period Federally. It came time to drop the State Gun Line, and a big political battle takes place. Guess what? They end up bifurcating it. They end up in New Hampshire where only handguns are checked by the State, but the Feds do the long arms. This creates a weird situation because basically, there are 36 states in the United States that are not POCs. Thirty-six states say, hey, Federal government, you want to enforce a Federal law, you pay for it, and you do it. That's how it works. These other states that are POCs, New Hampshire is one of the remainders that are POCs, but they are a half POCs, and that makes it even stranger.

**Evan Nappen 25:30**

What has occurred is that the Gun Line in New Hampshire has been doing a terrible job of things. They've been having days upon days of delays and waiting periods. They've gotten so bad, and they're so poor at their job, that with all these days of delay, they basically are no longer fulfilling even the original reason that they even came into effect, which was to avoid a waiting period. They now have a waiting period where the Feds, and I'm amazed to say it, where the Feds do a great job. I know shocking. But the Feds on instant check, 93% of the time they can say right over the phone whether the person is approved or denied, but not the State Gun Line. This has been a nightmare, especially with the giant increase in volume. We're talking record gun sales, record gun sales. I mean, just last month alone, over 4 million NICS checks in the United States, over 4 million in one month, folks. One month, 4-million-gun purchases, at least. Because sometimes you buy more than one gun. Think about that.

The antis want to somehow ban guns in America. And just in one month, the quantity is up 4 million of new gun owners or new purchases. I mean, come on. That's the insanity of what they're even trying to do. But the fact is that the State Gun Line couldn't handle it and aren't handling it. They're just not producing.

**Evan Nappen 27:11**

Then you get this question. Why would New Hampshire, the Live Free or Die state, want to use taxpayer, state taxpayer, money to enforce a Federal gun law? It's not state law. It's a Federal law. Why is the State using its tax dollars to enforce a Federal law that the Feds will do for free? And do better. Do it better. It's insane. How did they get to this situation? You know, it's just bad politics.

**Evan Nappen 27:51**

So, this bill (SB 141) is pending to abolish the State Gun Line. Really, it flies in the face of the case law on it. If you look at the Sheriff Richard Mack v. United States (856 F. Supp.1372 {1994}) and Sheriff Jay Printz v. United States (521 U.S. 898 {1997}), Sheriff Mack and Sheriff Printz sued the U.S. Government because under the Brady Bill, it required the sheriffs to do background checks. The sheriffs said that under the 10th Amendment, States rights, the feds can't make us do background checks. You can't make us do that. You can't make us pay for that manpower, time and all that. This is your law, not a state law. You want it; you do it. You can't make us do it. And they won. They won at the Supreme Court of the United States and established a tremendous precedent on 10th Amendment States rights. It's landmark cases on that. Establishing that distinction under the 10th Amendment, so they cannot force states to do the Federal bidding economically.

**Evan Nappen 28:56**

So, here you have a great win on the Brady Bill that establishes a landmark decision about states' rights and not being able to force the state to pay to enforce a Federal gun law. Yet, New Hampshire just says Oh, don't worry about it. We'll pay for it anyway. What the hell is that? I mean, come on. That's not what New Hampshire is about. You know, Live Free or Die. They don't want to be spending state money when they don't have to. It's one of the lowest tax states in the country. Why would you want to spend tax dollars on things we don't have to? We want to maintain that New Hampshire advantage. In New Hampshire, there's no Sales tax at all. You buy a gun in New Hampshire, no sales tax. You buy a car, there's no sales tax. There's no Income tax in the state either. Did you know that? Yeah. No income tax. Right. I mean, Live Free or Die. No helmet laws. No safety belt requirement. The only state in America that doesn't require you to wear a safety belt. Now, if you're smart, you wear a safety belt. But you know what's really funny. In New Hampshire, you think you're like a big boy and a big girl, and you can make your own decision. Isn't that cute? It's so quaint, isn't it? They let us make our own choice that way.

**Evan Nappen 30:18**

Of course, the real thing behind safety belts, I know it saves lives, and all this stuff. Even that may be debatable, but look, I wear one, and I think you should, too. But even if you don't want to, that's alright. Because you know what the safety belt law has become. An excuse to pull you over and then engage, which leads to searches and privacy invasion. That's what a lot of these laws do. They open the door for that. So, we want to be careful about these do-gooder laws. Things that are just common sense.

Then you try to make it law to enforce it. Anyway, we're fighting the fight in New Hampshire to get rid of the bifurcation in the State Gun Line so that the Feds handle it. And yes, they actually do it well. There's no advantage whatsoever for the state to be doing this. In fact, it's a disadvantage, done poorly, and an economic burden that New Hampshire taxpayers don't need. So, I was happy to testify in the Committee about that.

**Evan Nappen** 31:24

Folks let me just say, this is Evan Nappen, reminding you that gun laws don't protect honest citizens from criminals. They protect criminals from honest citizens.

**Speaker 3** 31:36

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