

# Episode 30 Transcript

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## SPEAKERS

Evan Nappen, Speaker 3

### **Evan Nappen** 00:19

I'm Evan Nappen, and welcome to Gun Lawyer. So, we have some exciting news to talk about today. It really is exciting because I have really dedicated my entire career fighting for gun rights and the Second Amendment. It started way back in 1982, believe it or not, before I was even in law school. When I was in college, I ended up writing papers for some classes, and they ended up becoming a book. The book was published, and the book actually helped me get into law school. It was called Concealed Weapons - How to Get Your Permit to Carry. So, it is a rare, Evan Nappen book. It was published by Guns magazine back then.

### **Evan Nappen** 01:21

I studied all the concealed carry laws at the time. The only so-called constitutional carry state (we didn't even call it then) just a state that did not require any permit was Vermont. I looked at things, and I really was very critical of states like New Jersey that were so restrictive and terrible. It really infuriated me about how New Jersey has treated its citizens where they would rather see them be victims of violent crime, instead of defenders against violent crime. Of course, that's New Jersey, and there is still a number of other states that restrict your ability to get a license to carry. Of course, they are light years away from constitutional carry.

### **Evan Nappen** 02:15

Another one of those states is New York. They have a lousy system there that requires a showing of need. And you see that is where they get you. That is the point. When you try to get your carry license in New Jersey, you have to show justifiable need. When you try to get a carry in New York, you have to show what they are calling a special need. And this need has to be more than a generalized fear of a need for self-defense. They will not accept that. As many of you may have heard, the Supreme Court of the United States granted certiorari, meaning they will now decide a case that challenges the New York carry license law.

### **Evan Nappen** 03:11

This is extremely exciting because they have not done anything of significance since Heller and McDonald cases in 2008 and 2010. We have been waiting. We have had many attempts at getting the

carry licensing laws that restrict individuals from being able to protect themselves to get them to accept and grant certiorari. The reason that it was not granted is that in order for the Supreme Court to review a matter, it takes four of the nine judges to grant certiorari. Remember, it takes five or more for a majority opinion to win. Although for a long time, we have had four judges, the understanding is that we did not have five because of Justice Roberts and his evolving position.

**Evan Nappen 04:19**

It ended up that with President Trump getting three justices appointed including Amy Coney Barrett, that gave five solid pro-gun justices. Six if you add Roberts, which we are never quite sure what he is going to do, but with five, it is a win. Now they have accepted a case that challenges New York's carry law, and this has tremendous significance. Even though this case was accepted and is pending, my firm has a case before the Supreme Court requesting certiorari. It is the Russell case and that case challenges New Jersey's carry license law. This challenge justifiable need in New Jersey. So, I am hopeful that the Court, now that they have accepted the New York case, will hold the Russell case until a decision gets made. This is most likely what they will do. They could even accept cert on the Russell case and have multiple cases in case they are worried about New York pulling a fast one, like they did on the last New York case.

**Evan Nappen 05:33**

That case which they did accept had to do with being able to transport your firearm outside of the Boroughs of New York. Even though the court granted certiorari on that and we thought, hey, we are finally going to get a Second Amendment decision explaining these parameters on our rights. New York repealed that law on purpose to moot out the case, and they succeeded in making it moot. Well, now with this challenge, it would be a lot more difficult. They would have to repeal the need provision, which would then open it up for anybody to get their carry license without having to show this need. So, I do not think they are willing to do that.

**Evan Nappen 06:18**

Even if they are, then the Russell case on New Jersey is in the wings and waiting. So, it is pretty cool. There are other Second Amendment challenges that are moving ahead as well, and this is an exciting time because the potential on this case, is incredibly significant. The Second Amendment has been battled over since Heller and McDonald. Those are the cases that established it as an individual right. The anti's have essentially argued, and to some degree successfully, even though it's weird, that our right to keep and bear arms only applies inside our homes. Now, I know that is ridiculous considering that the shot heard round the world at Lexington and Concord was not fired by a patriot from his bedroom. No, it was someone who carried a gun to the famous spot in Massachusetts. Obviously, the right to keep and bear arms is the right to possess and carry.

**Evan Nappen 07:33**

But yet this distinction gets made because the Heller decision dealt with invalidating Washington, DC gun law regarding possession of a handgun in one's home. The same with the law on Mr. McDonald in Chicago that got the Second Amendment incorporated to all the other states. Simply because the facts of those cases were determined by the home in no way meant that the Second Amendment only applied to the home. Yet the anti's have made this argument that outside the home, you do not have

the guarantee of the Right to Keep and Bear Arms. So, this is going to be challenged. We will hopefully establish that this argument is a fraud and has no value. In fact, the Second Amendment applies to you both inside and, shock of all shocks, outside your home. Now, once that is established, it will go to the case as to what about licenses to carry outside your home.

**Evan Nappen 08:54**

Should a right, a Constitutional right, be based only on need? In other words, for us to exercise our rights, do we have to have a need first? No, of course not. There are our rights. Having a need-based license to exercise a right is reprehensible. Yet that is what New York, New Jersey, and other states have done. So, I believe the Court will look at that, and they will opine that it is not necessary to show need to exercise a right. Depending how far they go with the case in invalidating need, it can have amazing, far reaching impact.

**Evan Nappen 09:47**

For example, other laws can then be challenged. One of the things we are hopeful that the Court will do, is finally set out a level of scrutiny. The test for whether a law is Constitutional or not. We are hoping that it is the highest test. The same test that is applied to First Amendment rights cases. That is what we call strict scrutiny. The burden is on the government to demonstrate the compelling state interest and to show that there is no other way to accomplish this compelling state interest, than by this rights' taking. It is a very high standard. It is extremely high. As a matter of fact, statistically, 75% of all laws that are challenged under strict scrutiny, are found to be unconstitutional.

**Evan Nappen 10:49**

So, the impact of this case could very well be if they establish the level of scrutiny as strict scrutiny, that 75% of all the gun laws in America would be invalid and subject to challenge under this scrutiny level. What you will have is plenty of folks challenging more and more of the gun laws. Using this decision and being able to cut away the infringements that have occurred on our rights. So, the impact here could be quite significant. It is definitely exciting to have a carry license case, for the first time, finally being adjudicated by the Supreme Court.

**Evan Nappen 11:44**

There were a number of attempts prior, particularly in New Jersey, starting with the Drake case. That got close, but no cert was granted. Then there were other challenges. Then the Rogers case, which a case that emanated out of my office, actually, and that came really, really close and was denied cert. Then Amy Coney Barrett was appointed. Now the carry case out of New York was accepted. You have to realize and accept that this is part of President Trump's legacy. Because it was President Trump who got three Supreme Court justices, including Amy Barrett appointed. It changed the balance of the Court and tipped it to our favor. This is extremely important, and it will be game changing. I have no doubt whatsoever.

**Evan Nappen 12:56**

It will affect all these other laws throughout the country. Anyone you know that has a fear that oh, my God, what if they rule against us? The odds of that I have to say are very remote, very remote. Because I do not think they would have granted certiorari if they thought they are going to lose or

eviscerate this right. In fact, the majority of the court is very pro Second Amendment. To me, it is not a question of whether or not we are going to lose. It is just a question as to how much we are going to win. When we come back, I am going to talk to you about carry permits and things that you need to know to protect yourself as you exercise your Second Amendment right to be a defender and not a victim.

**Speaker 3 14:06**

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 15:20**

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**Evan Nappen 15:37**

All right. By the way, the name of the case out of New York is New York State Rifle and Pistol Association Inc. vs. Corlette. New York State Rifle and Pistol Association Inc. is the NRA state affiliate in New York. So, be on the lookout for any news regarding New York State Rifle and Pistol Association vs Corlette. As this progress and we finally get an opinion out of the U.S. Supreme Court on carry. This is very exciting indeed.

**Evan Nappen 16:23**

Now we still have carry licensing in many, many states. We have Constitutional carry now in 20 states. Yet individuals will often want to know how to do this lawfully, so they do not get into trouble when dealing with other states. Many folks get what are called non-resident carry permits or carry licenses depending on what jurisdiction you are in. A number of states offer these permits to non-residents. One of the famous ones, of course, would be Florida non-resident. Then Utah does a non-resident. Arizona does a non-resident. There are a number of states that you can get a non-resident carry. New Hampshire offers a non-resident. This allows individuals to get a carry license from that state as a non-resident. Then those non-resident licenses are often honored by more states than even the issuing state.

**Evan Nappen 17:30**

What is really kind of amazing, for example, is that a New Jersey resident, who cannot get a carry license in their own state, can get a non-resident carry license in all these other states. No problem. As

long as they are law-abiding and would otherwise not be prohibited from firearm possession. They can do it. I highly recommend that if you live in jurisdictions that restrict your right to carry, get non-resident carry licenses. It will cover you when you want to go on trips and want to experience the freedom of being able to defend yourself. It also is helpful to the states that offer it because it makes a good incentive for them to continue to offer the non-resident carry financially to the states that do offer it.

**Evan Nappen 18:25**

But more and more, of course, we are seeing like the 20 states that require no permit to carry. In those Constitutional carry states, you can just go to and carry concealed and loaded on your person, assuming you are in a Constitutional carry state. It is astounding to be like a real American. Imagine that. Not even needing a license and able to carry your handgun to defend yourself. How it was meant to be. We ended up in the situation we are now where this right has been dissolved away.

**Evan Nappen 19:04**

We have been restoring it with incredible success with shall issue carry permits and states with Constitutional carry. But even with all this great advancement, when you travel to different states, you need to be aware that different states can have different laws. I know that sounds pretty basic, but lots of folks get into trouble because they do not check in advance to learn what is allowed and what is not.

**Evan Nappen 19:37**

Here are some things you need to be aware of. If you are going to travel even with your non-resident license to states or you go into a Constitutional carry state, you need to make sure that you are still in conformance with their laws. Many states have places that are separately still prohibited for carry. For example, some states may still bar you going to a public gathering with a firearm. They might prohibit individuals from going into an establishment that sells alcohol. They may prohibit firearms in a house of worship. There are different laws in different states.

**Evan Nappen 20:31**

When you go in that state and are going to carry, you need to familiarize yourself with the nuances and the specific issues of that jurisdiction, so that you do not get into trouble. There are some jurisdictions that flat out do not honor your carry license, your ability to carry, your ability to protect yourself. Of course, New Jersey is such a place. New Jersey does not recognize any other states carry license, period. No other license. So, if you go into Jersey and you are carrying, there is no license, resident or non-resident, that would be from your state of residence other than New Jersey, that New Jersey would recognize. None exist. So, this is something to keep in mind at the extreme. Even if you are going to a place where you know that there is a lot of respect for the Second Amendment and your rights, you have to make sure that you are doing what is right.

**Evan Nappen 21:43**

Now some interesting contrast out there. New Hampshire is a Constitutional carry state. You do not need any license or permit. There is even a law on the books regulating possession of a handgun. Only felons are prohibited. But there is no charge you could even be charged with. Unlawful possession does not exist. The carry license is purely optional. So, if you want to have reciprocity for going to other states that recognize carry licenses, you can get it. Or if you are coming to New Hampshire and you

want to have a New Hampshire carry, it is optional. You can get a non-resident. Even someone from New Jersey can get a non-resident New Hampshire license.

**Evan Nappen 22:24**

In New Hampshire, the only place under state law that you are prohibited by law from carrying a handgun or any other weapon is a courthouse. That's it. You just cannot bring it into court. Anywhere else, there is no prohibition. You can have a handgun in a bar in New Hampshire. If you do something stupid with it, you can be charged, but there is no prohibition on that. You can have a handgun in your house of worship. You can have a handgun anywhere there is no prohibition under state law. Of course, the Federal prohibition still applies (Federal buildings, etc.) that is still Federal law, federal jurisdiction. But as far as the state goes, nothing, but other states differ.

**Evan Nappen 23:15**

So, you have to be careful because there is a patchwork quilt of laws that will apply to you and that you could get into some very serious trouble. Another sore spot that I see and end up representing individuals on, many other states have weird bans on different items. There is no logic, rhyme, or reason. New Jersey prohibits magazines that are over 10 rounds. So, you do not want to come into Jersey with such a magazine. No less with a carry where you cannot carry and then you have a prohibited magazine on top of it.

**Evan Nappen 24:01**

Remember, every gun offense in New Jersey is a Felony level offense. There is not a single misdemeanor charge under New Jersey's gun laws, not a single one. Why is that? Because if you screw up on anything, you become a convicted felon, and you have lost your rights. You have lost your Second Amendment rights for the entire country because New Jersey decided to make some arbitrary prohibition a felony level offense. They have done it on every single gun, knife, and weapon law. There is nothing less than felony in New Jersey.

**Evan Nappen 24:52**

One of the things that New Jersey bans is hollow nose ammunition. Hollow nose ammunition. If you come into the state, even if you are transporting it lawfully to a gun range, and you get stopped, and if you are outside of these exemptions, which are quite narrow, then you are looking at a felony level offense, carrying up to 18 months in State Prison for even possessing one .22, hollow nose bullet. One, it is a felony. So, you have to be very much aware of these things. New Jersey's hollow nose bullet law is an absurdity. Beyond belief.

**Evan Nappen 25:45**

By the way, it is hollow nose bullets, not cartridges. I actually had a case with an individual that had a dummy key ring. One of those bullets that have a cartridge case, and they are drilled through. It is a key ring. It cannot shoot. It has no primer and no powder. It did not matter. The bullet head on the key ring was a hollow nose. They indicted this person and charged them with possession of a hollow nose bullet as a felony on a dummy key ring. So, you really have to be careful. You have to make sure.

**Evan Nappen 26:19**

Some states have open carry, the ability to carry in the open. Some states do not. They mandate that your firearm be concealed, depending on their laws. In states that mandate a concealment, and your coat blows open showing your gun, you might get charged with brandishing, even though it was not intentional. You have to be careful. You have to know what these jurisdictions are up to, and how they will interpret carry, both open and concealed. What prohibited places and what prohibited items that you might never dreamed would be illegal. This state and these other states have chosen to make illegal.

**Evan Nappen 27:05**

You probably have heard there are 20,000 gun laws on the books. I think there are more than that. But whatever the number, there are plenty of bizarre ones out there. Prohibiting things that you might never, ever have thought would be prohibited. We have talked about the Dumbest Gun Laws in America before, and they are out there. I do not want to see you become a victim of those gun laws. These are things you need to consider. There are even nuances to open carry.

**Evan Nappen 27:43**

For example, in many states where you can carry open and used to be for example, in New Hampshire, you carry open, but you could not get in your car with an open carry because now you had a loaded revolver in your car and that required a carry license even though it was legal for you to carry it in the open. Now, luckily, that is all gone. All those laws have been repealed, and it is pure Constitutional carry. You can carry in the open, concealed, and in your car. No problem. But these are the kind of things to be wary of as you travel.

**Evan Nappen 28:17**

Let me just tell you that I really appreciate you folks listening to my podcast. It feels really good to me that I can help to protect you and educate you. Because, you know, they are out to get us. They hate us. We are making good progress and that is something to be optimistic about. But the laws are still out there, turning good people into criminals. I do not want to see that happen to any of you. I do not want to see that happen to anyone but my listeners especially. You can keep a fellow gun owner from becoming a law-abiding criminal. Tell them to listen to Gun Lawyer radio. Visit our website at Gun.Lawyer. It is dot lawyer. Go to [www.gun.lawyer](http://www.gun.lawyer) instead of [gun.com](http://gun.com). I would really love for you to take a look at our Inner Circle and sign up. That is where you will get the inside scoop from me. Alerts, news breaks, all kinds of important things to help protect you. It is an ability for us to communicate. So, sign up for the Inner Circle. Go to [gun.lawyer](http://gun.lawyer).

**Evan Nappen 29:41**

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Nappen. Reminding you that gun laws do not protect honest citizens from criminals. They protect criminals from honest citizens.

**Speaker 3** 30:52

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