

Gun Lawyer -- Episode 64 Transcript

SUMMARY KEYWORDS

bayonet, firearm, gun rights, law, marijuana, federal law, state, problem, individuals, gun laws, relief, prohibited, lawyer, charles schumer, felons, gun, oswald, rights, evan, feds

SPEAKERS

Evan Nappen, Speaker 3

Evan Nappen 00:19

I'm Evan Nappen, and welcome to Gun Lawyer. There is systemic racism in our gun laws, and this is something that is not discussed too often. But I think this is actually the time to really bring it home, particularly on one issue that just highlights the problem. And it will have the effect of either the gaining of gun rights for 10s of 1000s of perfectly safe citizens and/or call out the politicians on the other side that make these wild claims of racism all the time about everything. Yet, on this issue, the silence is deafening, and the time has come.

Evan Nappen 01:21

Let me tell you what I am talking about. It is really outrageous that we have a law on the Federal books, under the U.S. Code, a law that says felons can be relieved of their disability, that being a felony conviction that bars the felon from having Second Amendment rights. They can apply in law to get what is called a Relief from Disabilities. However, this Federal Relief from Disabilities is now coming on the 30-year anniversary of it being unfunded, thanks to none other than Charles Schumer. In other words, for almost 30 years, even though we have a law that allows for individuals to get their gun rights restored, thanks to Charles Schumer, for 30 years, individuals have not been able to utilize that law, because it has been de funded.

Evan Nappen 02:48

I want to get into detail and explain this here. The reason this is systemic racism is because the black to white ratio for felons is essentially five to one or six to one, given whatever statistics you are looking at. Even if we go with the low number of five to one, it means for every white felon, there are five black felons. Today our society seems to be desiring to address how blacks have been treated through the criminal justice system; how there is this disparity; how statistically it can be shown. Look, you could argue about whether these convictions are justified or not justified or whether they were based in race or not to begin with, but it is indisputable that there is this disparity, a huge disparity. And the problem is that at a ratio of five to one, blacks cannot get their rights back. The same as whites because of that ratio.

Evan Nappen 04:22

Let me explain this further, because now is the time for someone, some legislator, federally to put a bill forward to fix this situation. If you look at Title 18 of the U.S. Code under Section 925, subsection c.,

here is what it says. It says: "A person who is prohibited from possessing, shipping, transporting or receiving firearms or ammunition may make application to the Attorney General for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms, and the Attorney General may grant such relief if it is established to his satisfaction, that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety . . ." Okay, that's in the consideration. ". . .and that the granting of relief would not be contrary to the public interest. Any person whose application for relief for disabilities is denied by the Attorney General may file a petition with the United States district court for the district in which he resides for a judicial review of such denial. The court may in its discretion admit additional evidence where failing to do so would result in a miscarriage of justice. A licensed importer, licensed manufacturer, licensed dealer, or licensed collector, conducting operations under this chapter, who makes application for relief from the disabilities incurred under this chapter, shall not be barred by such disability from further operations under his license pending final action on an application for relief pursuant to this section. Whenever the Attorney General grants relief to any person pursuant to this section, he shall promptly publish in the Federal Register notice of such action, together with the reasons therefore."

Evan Nappen 07:04

That is our law; it still is our law. It is still on the books so that individuals who are not a threat to public safety, where it's not a problem in the public interest, good people who have paid their debt to society, in which enough time has gone by, and they have demonstrated that they are rehabilitated and no longer a danger and no longer a threat. They made their one mistake, they paid for it, and now they can get their rights restored. Even though that law is on the books allowing that to happen, thanks to Charles Schumer in October of 1992, who put forward the defunding of that provision so that ATF / Attorney General has no money to process the applications.

Evan Nappen 08:11

By denying the money to process the application, it has gone through the courts, and they say then it is as good as if they repealed the law, but they didn't repeal the law. You cannot force the review even though it says that you have this right, this ability. Now keep in mind this was passed in the 60s, when they passed the '68 law. This was part of it so that individuals would not permanently lose their gun rights forever if they were proven and able to be shown that they are not a danger. Yet this cannot be utilized. What it means now for 30 years, decent people who are not a threat or danger have had no means to gaining their Second Amendment rights back if they had a federal conviction.

Evan Nappen 09:14

Interestingly, if you have a state conviction, thanks to the Gun Owners Protection Act in 86, there was a recognition expressly, that if you had a state relief, a state expungement, a state annulment, or a governor's pardon from your state for a state crime, the feds automatically recognize that as relieving you, and you get your gun rights back. But if you happen to have a federal conviction, there is no way for you to get your rights back. It doesn't exist because of Schumer, and I think he needs to be called out on his institutionalized racism. Given today's environment with a focus on this issue, well, here's a real one. Here is an issue right here, that bars blacks and Hispanics in a disparaging ratio from being

able to get their rights restored, so that they can be law-abiding gun owners exercising their Second Amendment rights.

Evan Nappen 10:28

This affects the ability of these minorities to have jobs in law enforcement, to serve in the military, to have any type of employment or job that requires them to be armed. This stops them from pursuing any of that kind of careers and abilities to raise themselves up in these positions. It holds them down because they cannot get their rights back. It also stops them from being able to lawfully defend themselves with a firearm. The fact that they are now vulnerable, and they are forced to be victims, even though they would qualify under an existing law that simply is not funded.

Evan Nappen 11:21

The movement, the request is simple. It needs to get funded. Money needs to be appropriated by Congress so that individuals, blacks and whites, anyone who is a felon, who is no longer a danger, who can demonstrate it pursuant to how that law is set up to do it, should absolutely get the rights back. You know this was done in a political way. Because they knew how difficult it would be for "the NRA to want felons to have guns", and this is how it got spun. Oh, you want felons to be armed. You want felons to have guns? Well, you know what? Yeah, I do. If they're not a danger, if they're not violent felons, if it's not against the public interest, if they've paid their price already in their sentence, and they've shown that they're a good person and not a danger. Absolutely. They should get their Constitutional rights back.

Evan Nappen 12:30

Today, in this environment, where you see the craziest stuff being put forward in terms of criminal justice, this is not the least bit crazy. This is a law that is already there. It needs to be funded so that good people can get their rights back. And I'll tell you what's absurd. Corporations can still get relief from disabilities, but not people. So, if a corporation committed crimes and what have you, they are not barred. They are still funded. And by the way, there's still relief from disabilities if you need to deal in explosives, dynamite, etc. That's okay, too. But not for firearms, not for firearms for any person. The people that are prohibited here are prohibited in an absolute disparity, and that is institutionalized racism. It can be addressed and needs to be addressed by Congress. Let's see that start now.

Speaker 3 13:47

For over 30 years, Attorney Evan Nappen has seen with rotten laws due 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 or follow the link on the Gun Lawyer resource page. Evan Nappen - America's Gun Lawyer.

Speaker 3 15:02

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Evan Nappen 15:18

Welcome back, Evan Nappen here with Gun Lawyer. I want to thank my listeners for being loyal listeners. This environment of trying to communicate about gun laws and things that we all care about is extremely difficult these days. Every day we are seeing Twitter and Facebook, etc., the social media is just shutting out individuals. I know that I have been hammered by them as well. So, I appreciate this forum very much. Please tell your friends to subscribe and listen; so, we can help spread the word and keep you informed about the things that lamestream media does not want you to know.

Evan Nappen 16:05

I have gotten some very interesting letters, and I would like to share some of them. This one came from Randolph regarding legal weed. That's what he said. "Evan, listening to the podcast from the start. Well done, sir." Well, thank you, Randolph. "I have learned from this show that even if legal in my state, messing with marijuana makes one a prohibited person because it is still illegal federally. I'm not interested in using. My question is more financial. If an individual investment portfolio invests in a business that supplies marijuana, would one be - 1) a prohibited person and 2) subjected to RICO? Thanks, Randolph."

Evan Nappen 16:59

This is an important question here about marijuana, and I have discussed in detail the issue with marijuana. Now you probably remember the key phrase when it comes to marijuana - Bang or Bong, you can't have both. And that is absolutely the state of our law right now because Federal law still views marijuana as a problem, even though states have been legalizing it, including New Jersey for that matter. The problem is, if you are a user, if you have what's called a Weed Card, if you have a medical marijuana card, well, that bar is you from gun possession federally. And if you are a user, you can lose your gun rights as a user because that's what the federal law talks about. Someone who uses it. If you get a possessory offense or possessory charge, the Feds extrapolate from that, that you were using, even though that may not necessarily be the case.

Evan Nappen 18:06

So, if you are going to go even to a dispensary when one opens near you, and you go to buy if they record your purchases, if there are records of this, well, those records can be used to disqualify you from gun purchase. If you are a user and actually using it, then you are a prohibited person Federally. It is on the 4473 applications. So, you have to be careful until such time as they change the federal law. Using marijuana is a disqualifier for guns. Now Randolph' question is, if you're investing in, let's just say a marijuana supply business, does that make you a prohibited person? Well, it doesn't necessarily mean that you're a user. If they are going to somehow suggest that because your portfolio has that investment that you are a user, it does not mean that; that's a stretch.

Evan Nappen 19:12

The problem, though, is you might become a prohibited person if the Feds decide to enforce Federal law on the state business because technically the Federal law is still in effect. Although there is a lack of Federal enforcement, it does not mean that there is not an ability to be prosecuted. So, you have to be careful with that, and I would advise to stay away from anything having to do with marijuana until the Feds change the law and remove it from the federal ban. Because the states are doing their own thing, but the state does not preempt Federal law. It does not become an exception for you to get around Federal law. It doesn't do any of that. In fact, it is kind of strange and amazing that states are legalizing marijuana and allowing it to proceed in this manner, when everybody is arguably at risk of Federal prosecution. But I guess the climate is such that they are not going to do it.

Evan Nappen 20:28

Now, could you be subject to RICO? Well, technically, you could be. But again, they are not doing enforcement, it seems, on these things, at least not to the states where they are legal, and they set up dispensaries and all. There are many complications, financially, with marijuana and that is part of the problem. Even banks getting involved in their banking. Are they essentially involved in the drug trade? Is it laundering of money for drugs, even though they are open about where they got it from? These are all issues that are swirling around because the federal jurisdiction, the federal law, has not adjusted itself to the new political environment that exists now.

Evan Nappen 21:13

Regardless of how you feel about it, it is true of legalization by states and removing stigma to marijuana. And that's what's going on, but the Feds are well behind on getting the Fed law changed. Beware as an individual gun owner, so you do not get trapped or caught up in this. Even though it may seem to be a low risk, it's still a risk and you do not need to be made the example of. If you value your gun rights, I would just be patient. Eventually, the Feds will get into line I'm sure as more states keep passing legislation to legalize marijuana.

Evan Nappen 22:03

I also received another letter that is from Lloyd, and it's regarding a bayonet. Lloyd has an interesting story here. He says that many years ago he inherited firearms from a Norwegian friend. One of them is a Carcano with a fixed bayonet. It belonged to his father who fought the Nazis. He was bricked up in a wall in Trondheim for three days, with food and water, waiting for an up-and-coming Nazi meeting. I have all the documentation. Plus, I sent photos of the emblems attached to the rifle to the Carcano Museum in England. They gave me all the info like 1937 by Beretta differences to the Oswald rifle. I saw what you wrote about an emergency visit to one's home and finding things illegal. I'm sure bayonets are not illegal in New Jersey, I guess. This foldaway bayonet could be removed before someone saw it and reported it. But can it be saved as a historical item?

Evan Nappen 23:16

So, here's the letter and it's interesting. I get frequently individuals that have very cool collectibles and things that were left to them and inherited and acquired. And the question is, are they lawful? Is it legal? How do we navigate those waters? Well, first of all, a bayonet in and of itself, just a typical bayonet, is not prohibited in New Jersey per se. Now there is an "other weapons" section in Jersey that anything that's utilized with the intention as a weapon could be another weapon, but other weapon has

exemptions such as possession in your home, etc. So, you can have a bayonet possessed in your home, even if it is an other weapon. Now, what makes it concerning to people is that there are bayonet provisions that apply to a bayonet mount as an offending feature for an assault firearm.

Evan Nappen 24:29

In New Jersey, when we start dealing with whether something is an "assault firearm", one of the offending features is does it have a bayonet mount? Not a bayonet, by the way, but a bayonet mount, and that provision only applies to semi-automatic rifles. A Carcano is a bolt-action rifle. So, the existence of a bayonet or bayonet mount on a Carcano is not a relevant factor under New Jersey laws. So, the bolt action Carcano is not a problem. The fixed bayonet to the Carcano is not a problem individually. If the bayonet is removed, it's not a problem. The fact that it has such rich history and documentation as to the role it played in World War II, that just adds to its intrigue and fascination.

Evan Nappen 25:34

Now, of course, Oswald, his famous rifle was a Carcano, and he supposedly ordered it from mail order. That is what led to the ending of mail order guns under Federal law. It was the allegation essentially that Oswald got his gun in that way. Now, the Oswald Carcano is an interesting gun in and of itself because it has a scope mount; a scope and mount the way he ordered it. The scope and mount are actually a very inexpensive kind of Japanese scope and mount. If you can find the Carcanos that were sold by the sporting goods store, I believe was Klein's Sporting Goods store, where you paid a little extra and got the scope and the mount on it, those are pretty collectible. Because those really are the "Kennedy killers" that have that setup. They can go for some decent money. The Carcano itself is a collectible firearm. It was a military firearm of World War II.

Evan Nappen 26:53

But it's not a prohibited firearm under Jersey law, and the bayonet itself is not a problem. But you can see how the crazy patchwork of laws in Jersey just raises all these concerns. So, individuals cannot be sure, without asking an attorney, whether a collectible, bolt-action rifle from World War II with a bayonet is legal in New Jersey. It is really sad that we have gotten to that point. Really, the laws are so convoluted and so much fear which is based on the reality of the gun laws being so harsh and unforgiving. So, to play it safe, the best thing to do is clear it up. Send me your questions. I love to speak about them, and I love getting the feedback. I know that you, the listener, enjoy hearing what people have to say and what their questions may be. Who knows? Maybe this is something you were wondering about. Until next time, remember that gun laws do not protect honest citizens from criminals. They protect criminals from honest citizens.

Speaker 3 28:19

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