

Gun Lawyer -- Episode 96 Transcript

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SPEAKERS

Evan Nappen, Speaker 3

Evan Nappen 00:00

Hi. I'm Evan Nappen, and welcome to Gun Lawyer. I have a fun fact for everyone today. I have been working a lot on New Jersey gun laws and such. I have the following to report, and it is absolutely true. Do you know that New Jersey gun laws are actually four times the size of the Communist Manifesto? That is a fact. That is how many gun laws we have. We have four times the amount of gun laws than it took for Karl Marx to write his manifesto that brought misery to millions and millions over years and years and is still dogging us to this day. That's right. But New Jersey has succeeded in having four times the amount of words as appears in the Communist Manifesto. I think that's quite a statement.

Evan Nappen 01:20

It's really one of the key problems that we have in New Jersey and for that matter, all throughout the United States is that there are so many infringements on what "shall not be infringed" that we have essentially lost count. The old estimate used to be there were 20,000 infringements nationwide, but I'm sure that is probably five times that figure by now at least in terms of infringements. Now, on the good news, I think with the reinvigoration of the Second Amendment, and with the Bruen case that we've discussed, we are going to see these infringements be attacked left and right. They already are. We should see them fall, and we should see tremendous progress. It's going to take a lot of time. It took a lot of time to get us to this sorry, state of affairs, and it's not something that with a magic wand, it's just going to go away. We have been given a very substantial tool to do that.

Evan Nappen 02:36

But it is astounding, as to how many gun laws there are, and how these gun laws have no effect on crime. It's just a constant lie and an anti-gun narrative to disarm us and to take away our rights. It is just triggered by emotion. It's fueled by emotion. It's passed based on emotion. Then we're left to sort it out, and those that suffer are the law-abiding that get caught in its vicious traps. New Jersey not only has some of the worst, if not in my opinion, the worst, but also it is so extreme in its approach, its penalties, and its enforcement that the Jersey is by far the worst scenario in America. It just wins the prize, for sure.

Evan Nappen 03:53

Along those lines, I have gotten an interesting email question that was sent to me, and I want to talk about it in depth because it really shows just how effed up New Jersey is. Now let's remember we're

talking about a state that makes possession of a slingshot, a felony level offense. We've discussed just how unbelievably bad the gun laws are to try to follow and understand, how they are applied so unfairly, and how the system is essentially rigged to disenfranchise all of us of our gun rights. In New Jersey, there is no gun offense that's lower than a felony level offense. I use that term felony level even though New Jersey calls them crimes. I like to call them felony level offenses. It makes it clear what we're talking about. We're talking about offenses that make individuals barred from exercising their gun rights anywhere in America. As a convicted felon under federal law, you become a prohibited person throughout the United States. Federal law does not care one bit that you lost your gun rights because you had the nerve to possess a sling shot in New Jersey. It still counts, and you become disenfranchised and a prohibited person and lose your Second Amendment rights.

Evan Nappen 05:37

My whole practice is dedicated to defending what I lovingly call law-abiding criminals because the laws have turned these individuals into criminals. They're attempting to make it permanent on them by destroying their lives, their hopes, their dreams, their finances, their families, and their careers, you know, the whole job. And I realized that it's really funded and fueled, not by some noble purpose, or even some misguided thought that this could do something about crime, it really boils down to folks just hating us, hating guns, and hating gun owners. That hatred is expressed through the laws that they pass, because there is no rational basis here. Oh, they'll put forward their narrative and make claims that it somehow is in public interest, but the reality is that it never is. We know it, and we see it. It is something that we have to not give up, and we have to fight.

Evan Nappen 06:52

So, here's a letter that I received from James, someone I've known for many years, but I'm still not going to use his last name. James writes regarding NJ 101.5, which is a local radio station. It says, NJ 101.5 tells residents to buy an illegal gun? I know it's ridiculous. But aren't the bug assault toys considered firearms in New Jersey? Then he gives a link to the 101.5 article talking about the Bug-A-Salt. Now, I don't know if you're familiar with a Bug-A-Salt, but it's kind of a fun thing. The headline to the 101.5 link which you can see yourself says, A salt weapon to kill spotted lanternflies: New Jersey has these options. (<https://nj1015.com/a-salt-weapon-to-kill-spotted-lanternflies-nj-has-these-options/>) So, they're putting the bug-a-salt out there as a way to help control the dreaded lantern fly infestation that is taking place. I think some of this article is written in order to be funny and tongue in cheek, but it is also seriously promoting the use, at least from the way I read it. So, it is a legitimate question.

Evan Nappen 08:39

A bug-a-salt is air powered. You pump it once, and it fires a burst of salt. Literally a pinch of salt is fired from air power, and it's extremely effective on bugs. You can kill flies and spiders and other creepy crawlies that you don't want in your house or around you by using salt. It's effective on bug killing, but it does not have the negative effects that a chemical bug spray would have. It also allows for killing bugs without having to smash them whether it be with newspapers, magazines, back of shoes, hands, etc. As you know, flies love to kind of buzz around windows and things made of glass and lights, and if you start trying to smash them, you start becoming like one of the cartoons where your house is getting destroyed in your quest for killing the bug. The bug-a-salt does not, at least to my knowledge, cause damage to glass or to lighting, and things that are paint things like that. So, it can be very effective tool.

More like a modern-day flyswatter. But the question that James raises here is, is it essentially illegal in New Jersey. Is a bug-a-salt, an air powered mechanism that fires or projects a pinch of salt, like a shotgun blast but miniaturized in salt. Is that a lawful item in New Jersey?

Evan Nappen 10:55

In order to answer that question, we start by looking at New Jersey's laws, which is always a good place to start, when you want to know whether something is legal or not. One of the places I want to start is. . . Let's start with a definition of what is a firearm. This is New Jersey's statutory definition of firearm. "Firearm" means any handgun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectable ball, slug, pellet, missile or bullet, or any gas, vapor or noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any firearm which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person.

Evan Nappen 12:48

So, let's take a look at the elements of what makes a firearm in terms of the bug-a-salt. When you look at New Jersey's definition of firearm, first it talks about a gun, device or other instrument and the nature of a weapon. When you go to the bug-a-salt's own website and go to their safety section, they publish their safety policy. It's at the bug-a-salt website, and it says all customers purchasing a bug-a-salt original salt gun, so they refer to it as a gun themselves, and any and all variations of bug-a-salt guns, including but not limited to different models and the Shred-er (hereinafter Bug-a-salt Guns) must certify their 18 years of age or older and agree to the terms and conditions herein have the "Safety Policy and Code of Conduct" prior to completing their order, or for Indiegogo Customers, prior to your order being shipped to you. Skell Inc., makers of bug-a-salt Guns, and its employees, directors, contractors and advisors all take safety seriously. That's why we've put together this Safety Policy and Code of Conduct for the use of our product. If you do not agree to abide by the "Safety Policy and Code of Conduct" DO NOT PURCHASE THE BUG-A-SALT GUNS for yourself or for others.

Evan Nappen 14:28

The very first number one on their policy says: Treat the bug-a-salt guns as a loaded firearms at all times. Do not under any circumstances point the gun at any person, pet or valuable personal property. Never leave the Bug-a-salt guns in a cocked and loaded position when not in use and always leave the safety engaged until you decide it is safe to fire it in a direction that will not cause injury or damage to people, pets or personal property.

Evan Nappen 15:11

Number two says: Never point bug-a-salt guns in the direction of a person's body, face or eyes. The bug-a-salt guns spray a shotgun pattern of salt that disperses wider as it travels toward its target and so it should never be fired if there are people or pets in the 180-degree plane in front of the gun. All people and pets should be behind you when the gun is being fired or pointed at any target. Number three: The

bug-a-salt guns are intended ONLY TO SHOOT FLIES AND OTHER HARMLESS INSECTS. Do not shoot any other animals including cats, dogs and other mammals. Do not shoot mites, rats or other rodents Do not attempt to shoot poisonous or otherwise dangerous insects/invertebrates, reptiles or mammals including but not limited to, snakes and scorpions. Do not shoot beneficial insects such as butterflies and other pollinating insects. Some Bug-a-salt Guns, like the SHRED-ER are made with the power to shred Hornets, Wasps or Scorpions, however as these pests bite or sting, so you must take special care when hunting and shooting them and follow the instructions which come with your SHRED-ER. Anyway, it goes on.

Evan Nappen 16:48

So, the question here is, is it a firearm under New Jersey law? Well, first of all, is it in the nature of a gun or a weapon which may be fired or ejected, and their own policy seems to make it pretty clear that it is, and it is fired by gas. I think the SHRED-ER is fired by a compressed gas and it is possibly carbon dioxide, specifically as mentioned here, and does it eject a bullet or missile smaller than three eighths of an inch in diameter? Of course, salt is substantially smaller than three eighths of an inch in diameter. With sufficient force to injure a person? Well, look at their safety warnings. Does BUG-A-SALT think it has sufficient force to injure a person? Does the manufacturer, by their own publications, seem to indicate this? What happens if you're shot in the eye or in the face with a BUG-A-SALT? I don't think I want to get shot in the eye with a shotgun burst of salt. And is that considered a noxious thing? Plainly here, this is something designed for bug shooting and killing pests and lantern flies as suggested by 101.5, and I get that.

Evan Nappen 18:19

The problem is New Jersey's gun laws themselves. Looking at a broad, overbroad really, their definition of firearm is how it takes in all types of air guns and BB guns. By the way, BB guns, air guns, and pellet firing guns are firearms under New Jersey law. Traditional BB pellet etc, 177 pellet, .22 cal pellet, you name it. Those guns are firearms, plainly, no question they are. Now some of you may say well what about if I have a paintball marker? Well, paintball markers have been taken outside the definition of firearm by a case In Ray Gong. But one of the key distinguishing features of a paintball marker is that its projectile is larger than three-eighths of an inch, and it is designed specifically for shooting at people because the game of paintball is played in that manner and that's what it's designed for. So, paintball markers have been taken out of this. What about what about Soft Air? Well Soft Air gets trickier because its projectile is a six millimeter, normally plastic, pellet. It's not really designed for injury. Although tests have been made and it could sting or hurt if it hits an eye or something, it's not the intended use.

Evan Nappen 19:54

In fact, there are many games played where soft air is intentionally fired at persons in competitions. Very popular, for example, in Japan and other places. America seems to prefer paintball. But there are still soft air guns in which these things take place. Of course, with any of these things you need eye protection to wear. Now soft air is a little bit harder on the scale. Because if you have a line and you have paintball at one end, which is legal in Jersey and not a firearm, and at the other end, you have traditional pellet firing BB and air guns, lead pellets, etc. They are firearms are at the other end. Soft air lands somewhere in the middle. I have been able to win soft air cases if allegations have been made as

to firearm. I have not had experience yet defending on the BUG-A-SALT for anyone charged with possession of a BUG-A-SALT. But I have no doubt that I will get that case. Because it's New Jersey, folks, no doubt.

Evan Nappen 21:07

I have read you the definition of firearm and you can see how the State will attempt to argue using the manufacturers own publication. I'm sure whatever fact pattern presents in the case that they've attempted to charge will probably involve somebody who got shot in the eye by somebody with one of these things, and we'll be dealing with it. So, as ridiculous as it is, I would have to advise to stay away from possessing a BUG-A-SALT in New Jersey. As I said, we're talking about the State that makes possession of a slingshot, a felony level offense, and makes possession of a Daisy Red Ryder BB gun a firearm and is treated as such under the law. So, James' question is not as crazy as it sounds. When I come back, I have some other great Ask Evan letters to talk about.

Speaker 3 22:27

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 propoganda 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, that 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 23:41

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Evan Nappen 23:56

We're back here at Gun Lawyer, and I appreciate my listeners so much. Any of you that subscribe don't miss an episode. I suggest you do if you haven't already and tell your friends this way we get to talk about these fun things and warn you about all the crazy stuff that New Jersey and other anti-gun activities that seem to never stop. Anyway, I have a great letter here, and it says from Rick regarding HR 38 Concealed Carry Reciprocity Act. (<https://www.congress.gov/bill/117th-congress/house-bill/38/text>) Hi Evan. Love your podcast. It's both informative and entertaining, and I've learned a lot from it. Like Hank Hill - propane is both clean and efficient. Just kidding. Okay. I hold CCW permits in five states, Max Coverage and all that, you know. Funny thing is I could never get one in the state that I live in. He happens to live in the DPRNJ. Happy to see that's finally changed. I'm currently in the process. My town, I'll skip the name of the town for privacy) is notoriously slow. They've waited up to four months on several occasions. We'll see how this one plays out. So, with the recent decision in Bruen and the current state of affairs in this country leading to what many are saying will be a Red

Wave in November, what are your thoughts on HR 38 - Concealed Carry Reciprocity Act? Do you think it, or something similar, will ever come back to life, and what are the chances of it ever being ratified or it gets passed?

Evan Nappen 25:37

Well, let me tell you that's an interesting question because it is very important. Reciprocity is that all states recognize each other's right to carry. Now if you look at the movement for National Reciprocity, it's kind of interesting. Because originally in the '80s we had the beginning of the modern "shall issue" carry permit movement. Essentially the first modern state to enact it, other than states that already had things like it, where the trend really lit on fire for the country was in Florida. When Florida passed its shall issue carry, of course, we heard all the anti-gunners screaming BITS, BITS. BITS is what I call the abbreviation for Blood In The Streets. Anytime there's liberty given, anytime the Second Amendment gets respected, the first thing they shout is BITS, Blood In The Streets, Blood In The Streets. There should be so much blood in the streets that we should be overflowing, like out of a Stephen King novel, just endless rivers of blood everywhere, so much, every step. But the bottom line is, of course, it doesn't materialize, and it doesn't become the Wild West. We're gonna be the Wild West. I always loved that - the Wild West. Really interesting. Actually, I like Westerns a lot. Enjoy them. Part of me said I wouldn't necessarily mind being the Wild West, but you know what? It never becomes "The Wild West" in the derogatory sense that they mean it. We haven't seen that.

Evan Nappen 27:29

In fact, what happens is individuals are able to protect themselves and instead of being victims, they become defenders. This movement took off with huge success, incredible success. As a matter of fact, the carry movement itself, beginning with shall issue carry, is probably one of the greatest modern day gun rights movements itself in terms of legislation. With the Heller-McDonald-Bruen trilogy being the greatest achievement in Second Amendment itself and the enforcement of those rights. But just from a legislative standpoint, if you look at the astounding growth of shall issue carry, and how that movement took up the slack of what traditionally helped protect our Second Amendment rights. Do you know what that was? Hunting. That's right, folks, hunting. Hunting and the sportsmen. Prior to the explosive growth of shall issue carry for self-defense. What the aunts would always have to preface their attempts at stealing our rights with is: Don't worry, it's not going to affect hunters and sportsmen. Because the hunting/ sportsmen contingent, was a strong voting contingent, and it still is something to be reckoned with. Don't get me wrong, it's still there and important.

Evan Nappen 29:06

But the sad truth is the number of hunters has declined and lands available for hunting and with our world of internet and video and modern generations becoming more couch potatoes and glued to computer screens than ever before. Being an outdoors person is not what it used to be. Honestly, we did see shrinkage in that great force of gun owners that we put under a banner of hunters and sportsmen. But what picked up the slack and then went beyond it was the explosion of carry for self-defense. It began with shall issue licenses and state after state after state started enacting shall issue carry licenses so that law-abiding citizens could finally protect themselves with the most effective means - a firearm, and they can carry that firearm to defend themselves. It was no longer just an elitist

thing limited to those special people or simply to "law enforcement and military". No, it exploded and became a movement of liberty.

Evan Nappen 30:37

It exploded so much the liberty became so loved, understood and recognized that it evolved into the next step, which was Constitutional Carry. In other words, the individual no longer needed a permission slip. A shall issue permit was not even required. You could just carry if you're a law-abiding citizen and protect yourself without the license, permit, or permission slip. At this moment, half of the United States, 25 states, have Constitutional Carry. Well over 50% of the landmass of the United States has Constitutional Carry. That's right. You can be a real American, and actually exercise a right to protect yourself with a handgun without any permission slip. The growth of carry for self-defense is astounding. It morphed from liberty to greater liberty, and it's wonderful.

Evan Nappen 31:58

But now the question is from Rick, what about National Reciprocity? Well, at one point when we had so many states that had carry licenses, and the states individually would come to different agreements as to which state would recognize other states. Florida, New Hampshire, Utah, other states had a lot of states that would join together 20 to 30 states all recognizing each other. The idea was to get every state to recognize every state so that it would operate similar along the lines of a driver's license. But what's funny is the growth of Constitutional Carry, no permit carry, kind of removes the need, at least in half of the United States, for any need for reciprocity because in half of the United States you can carry with no license anywhere. Now the states don't have to have agreements with each other. We don't need a National Reciprocity law anymore in those states.

Evan Nappen 33:05

Now, with that being said, of course, you have the other half of the country that is still utilizing permits. For the most part, the handful of the worst offenders, New Jersey being one of the key ones, that would not even issue carry licenses, at least not in any basis where an average citizen could get one. Bruen has changed that Bruen has absolutely changed that. It eliminated the bar created either by courts or by legislature to require the showing of need. As great Justice Thomas said, no other right, do we have to somehow go to government officials and explain why we need it in order to use it. That's been eliminated. So, it means that licenses at least have to be issued. We have that right, under Bruen, to carry in public, to defend ourselves. So, plainly, that's made it so the states that were combative, hate the Second Amendment and the worst offenders that didn't want to give individuals the ability to carry, they now have to do it. Kicking and screaming, yeah, but they have to do it. It does open up an opportunity for a greater argument of reciprocity now, because no state can be a holdout anymore. Because the Bruen decision makes it clear we all have that Second Amendment right to carry, and although licensing to what degree remains to be seen can still be done, ultimately, the standard needs to be objective. And that right needs to be there. So, I think politically, the ability for National Reciprocity has been enhanced by Bruen because every state must allow somehow for carry. And so that would lend itself to a theory of National Reciprocity.

Evan Nappen 35:15

But, of course, with half the country requiring no license, if you looked at HR 38, it had language for, at the time, there were a few states, a handful of states, that were Constitutional Carry. The language said, if you're a resident of one of those states, then you could carry in any state without a license. And what it would mean, if that passed is that an individual who lived in say, New Hampshire or Texas or Arizona, or any of these places that have Constitutional Carry, we would be able to carry in a state like New Jersey with no license. That would be great, and that would help push Constitutional Carry through the rest of the land. Now, of course, New Jersey and other states that are still license states are not going to want that. They're still not going to want it, and they still aren't going to respect it. It's still going to be a fight. But, if politically, things change to where those that respect the Second Amendment are in power, federally, then I can see a Reciprocity Act coming forward. It may have some need of some adjustment, but I think politically, it's more palatable than it was. But of course, ultimately, ultimately, it may be completely unnecessary.

Evan Nappen 36:43

Because as bad as it still is in the states that now, kicking and screaming, have to issue carry license, I still believe that having witnessed the evolution from Florida, beginning in Florida, with shall issue carry to half of America being Constitutional Carry, I believe that one day, we will actually have Constitutional Carry in every state. And you may say, even New Jersey, even California, even these, and I get the skepticism. I didn't say it's going to happen real soon. But as more and more individuals are licensed to carry, then that license itself is debated as to its necessity. All I can say is that history has demonstrated that it does go away. And in half the country, it has gone away. So, I think there's eventual hope that we will get even beyond National Reciprocity.

Evan Nappen 37:48

But until that day, I hope politically we can get that through, and I believe the Bruen case does help to pave that way for us. Time will tell. We have to be vigilant, and we have the midterms coming up. It's going to be a slow process. But we have to gain our freedoms back in the same way we lost them. Slice by slice. The salami tactic of the anti-gunners. Think of all those infringements that they've succeeded in passing. They didn't do it overnight, folks. We are going to get rid of them just this way. But there is hope and never give up fighting. We have seen improvement, and we can look back and see how the liberty movement in guns have worked. Individuals now that carry all have a vested interest in the Second Amendment. The carry movement itself has strengthened the Second Amendment in the United States.

Evan Nappen 38:58

Until next time, folks, this is Evan Nappen, reminding you that gun laws don't protect honest citizens from criminals. They protect criminals from honest citizens.

Speaker 3 39:21

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