

Gun Lawyer -- Episode 106 Transcript

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SPEAKERS

Evan Nappen, Speaker 3

Evan Nappen 00:20

I'm Evan Nappen, and welcome to Gun Lawyer. I've got a lot of cool stuff to tell you about some, some good news. I know, we are always looking for good news here, and I got some good news for you. But before we get into the good news and some other letters and interesting things, I just want to say you're listening to the show and it's just a day or two before election day. I know you're probably sick of hearing about get out and vote. But I'm going to tell you right now, get out and vote. You have to vote. One of the toughest things in all my years of activism for the Second Amendment and gun rights and knife rights and all that has been apathy, apathy from our own people. Don't be that guy or gal. Okay, no apathy. This is so critical. So crucial. We are at midterms, and we have to send the message. We have to send the message. Putting aside all the other issues that have been wrecking our lives under the current administration and just focusing on what we're talking about today, which is Second Amendment issues, then it's critical that we get out, make that vote, make that statement so they can see what they're in for.

Evan Nappen 02:08

Let me just tell you, that we have a strict policy here, a strict policy of how to determine who to vote for. Some of you may say, well, who should I vote for? I'm going to make it really simple. You vote Republican. It's that simple. It doesn't matter who the person is. Not in this election. It sure doesn't. Not one bit. We've got to vote Republican to send the message and get the Republicans in power in both houses of Congress. We got to do it. It's incredibly significant because Republicans have to gain the power in both houses. Once the Republicans have the power, then Biden's anti- gun, anti 2A agenda can be stopped. And more than that, way more than that, because the Republicans will then be in control of the committees. The committees, you see, they decide what bills go forward. But more importantly, what investigations take place. Then they'll be able to use the power of the committee to subpoena and to investigate all the wrongdoings of the Democrats and their cohorts that they've been doing to America, to you and me and our rights.

Evan Nappen 03:47

This also means getting into the activities of the ATF and the FBI, in what they're doing to gun rights. It means the ability to investigate and go at all these things, so that we can finally, actually, get some real information out there. Not what the Democrats have wanted to hide and conceal and fool the American public about. It goes directly to our rights across the board. Everything from their being in cahoots with

social media and stopping even my voice from social media, etc. to telling you things you need to know. Our ability to have discourse to the administrative and Executive Orders by Biden intruding on our Second Amendment rights. All these things are at stake and in play, and other proposed laws. And how about Court appointments, Judge appointments, maybe even Supreme Court appointments? They have to have that approval by the Senate. We need Republicans in control because there's nothing better that they would like to do, than to turn the Court around as a weapon against us. So, it's critical. Even in the local races throughout the land. There needs to be such a red tsunami, not just a red wave, a red tsunami, to slam them into reality, and to stop taking our rights and threatening our rights, and doing the things that they seem to get away with, with impunity, that will be no more. So, do your part. I'm counting on you. You know, I'll be out there. Make sure you vote.

Evan Nappen 05:45

Here's some good news. Some good news in knife rights. That's right. Remember, the Second Amendment is not just the right to keep and bear guns, it's the right to keep and bear arms. And arms include knives, as well as guns and many other weapons. Any weapon that is utilized in self-defense. Any weapon utilized for hunting, etc. This is shown by history in history texts and tradition of our American laws. I have researched the earliest knife laws in America, and I did a piece on this in the Knives Annual 2021. You can read it. The oldest knife laws in America. I traced those laws.

Evan Nappen 06:46

You know, in those days, the old days, you were required to have edged weapons. You were required as part of the militia, of which every able-bodied man was part of, to not only have your firearm and your ammunition, but you're also required to either have to have a bayonet or a tomahawk. Yeah, that was actually the law. You could pick, but you needed an edged weapon on you as part of your accoutrement. That's what the well-regulated part means whenever you hear the antis talk about, well, the Second Amendment says we can regulate. No, that's not what regulation meant. Well-regulated meant well equipped. Being equipped was incumbent on the individual, and that equipment was often outlined in law, and that included edged weapons.

Evan Nappen 07:41

The history of knives, as protected by the Second Amendment, is clear. They are arms. It's been noted and recognized in the Heller decision and the Bruen decision about knives being arms. Its arms that are what are protected under the Second Amendment. So, in line with our Second Amendment rights, I am very happy to say that Pennsylvania has officially repealed its ban on switchblade knives. That's right. That archaic law from the '50s, banning so-called switchblades. Somehow, they're intrinsically evil or some nonsense because they watched too many movies about West Side Story and James Dean with switchblades. Well, that's a symbol of youth violence, and hey man in America if you ban the symbol, that's how you stop crime, right? Well, all it did was remove from the public the ability to have a knife that is incredibly utilitarian, that opens with one hand for both safety and ease of use and is one of the few folding knives that actually lock closed, as well as lock open. Well, I am very happy to say that Pennsylvania has repealed their ban, and it takes effect on January 2, of '23. So, this coming January, the repeal of Pennsylvania switchblade ban becomes effective, and it is really great.

Evan Nappen 09:35

I've been very much involved from the start with this effort, what I call the Knife Liberty effort and in the Knife Liberty movement. In 2010, New Hampshire was the first state, modern state, to in modern times, to repeal its ban on switchblade, dagger, dirk and stiletto. I spearheaded that and coordinated it. Working with Knife Rights, a great Knife Rights organization. If you don't belong to Knife Rights, you should. Knife Rights is like the NRA for knives so to speak. Doug Ritter is their Chairman, and he works diligently with Todd Rathner. Both are good friends of mine. Todd is an excellent lobbyist and has done great work. Here is yet another example of the great work. We've actually had Doug on the show, as a guest, and the Knife Liberty movement here has just done so well. Now with Pennsylvania repealing its knife laws, they become the 20th state, either 20th or the 21st since 2010, when we first did it in New Hampshire. In the following states, Knife Rights has gotten repeals of bans or restrictions on switchblades. The list includes, of course, New Hampshire was the first, Alaska, Colorado, Illinois, Indiana, Kansas, Louisiana, Maine, Michigan, Missouri, Montana, Nevada, Ohio, Oklahoma, Tennessee, Texas, Virginia, Washington, Wisconsin. And of course, now Pennsylvania. So, that is fantastic work.

Evan Nappen 11:33

It's critical that we repeal any of these knife laws while we have the opportunity. Because unfortunately, with gun laws, even when we had the 1934 Machine Gun Act passed in the '30s, we had a window of opportunity in the '50s when all these men had returned from World War Two. They knew about guns, and they understood how machine guns and personal weapons saved their ass in war. There was no organized anti-gun movement at the time, and they could have repealed, I honestly believe in my heart, they could have repealed the National Firearm Act in the '50s. But they didn't. Then the '60s hit, and the assassinations and the politics, and we've been fighting for our gun rights ever since. Here the switchblade bans took place in the '50s, and we're repealing state by state.

Evan Nappen 12:39

Of course, the goal will be to repeal the federal prohibition, the federal restrictions. Now with so many states, I think we're at least 40 or more states that don't have restrictions on switchblades. Like I said, all the 20 there were ones that did that have been removed. We're left with maybe 10 states or less for the whole country that even restrict them. Why do we have a federal law that is an enormous restriction on what is really called automatic knives that shouldn't be there. I believe we're heading with great momentum to getting that repeal done. Now, here's the interesting thing about the fight for knife rights and repealing switchblade laws. When we did it in New Hampshire, I wrote an article that appeared in Blade Magazine afterwards in 2013. The article is called Miracle in New Hampshire. You can read that article for free. I got permission to put it up as a PDF. If you go to www.knifelawonline, knifelawonline, is the history of our success in New Hampshire, and you can read the Miracle in New Hampshire article. The reason I said it was a miracle is because in New Hampshire, there are 525 legislators arguably. In other words, there's 400 in the house. Yes. 400. The New Hampshire House is the third largest legislative body in the world, in little ole New Hampshire. Then there's 24 senators and one governor. Okay, so 425 politicians, if you will. When we repealed the knife law in New Hampshire, both houses and the governor's chair were held by Democrats. It's kind of astounding. But again, New Hampshire Democrats, I guess, which says something. But it was, and even though it was Democrats in power, we were able to unanimous, unanimous passage of a bill repealing the ban on switchblades. It is basically a miracle.

Evan Nappen 15:22

But I have to tell you, in Pennsylvania, I am really surprised, but it's true. The Governor of Pennsylvania, Tom Wolfe, signed this. We had bipartisan effort by both Representative (Martin) Causer, who's a Republican, and Senator (Shariff) Street, who's a Democrat. It was a bipartisan effort to have the bill passed. Get a load of the numbers here, folks. It's pretty amazing. The repeal in Pennsylvania passed in the House, by 202 and only one against it. 202 to 1. In the Senate, it passed 50 to zero. It almost was the equivalent of the miracle in New Hampshire. It only missed by one and that's amazing. Think about those great numbers of both Republicans and Democrats doing the right thing in repealing the knife laws. You see, the knife law doesn't have the same stigma and politics of the gun laws. We don't have an organized anti-knife group as exists with guns. So, the ability to make headway, the ability to get liberty for knives. This is our golden age of opportunity, and I'm so thankful that Knife Rights is moving on doing that. By the way, that was not the only victory to have just occurred, because we also just had a victory in New Jersey. I will tell you about the New Jersey victory when we come back.

Speaker 3 17:29

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 or follow the link on the Gun Lawyer resource page. Evan Nappen - America's Gun Lawyer.

Speaker 3 18:43

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Evan Nappen 18:59

Okay, welcome back, and thanks again for being a dedicated Gun Lawyer listener. We are able to get the word out and let me tell you I have gotten so many people that have called me in the nick of time over so many of these issues that I'm able to raise on the show. I am able to advise these people and save them. Save them from really bad problems that they were heading into regarding the carry license law and other topics that we discuss. So, it really makes me happy to protect and help protect fellow gun owners and those that love and treasure the Second Amendment.

Evan Nappen 19:42

Well, let me tell you we got some good news, shockingly, out of New Jersey. Of course, we're fighting that horrible A4769 bill that basically guts the utility of a carry permit and completely violates the Bruen

decision in endless ways. As soon as this thing ever passes, it's going to be instantly litigated to oblivion, I'm sure. But in the meantime, that bill was so atrocious that it also had huge sweeping bans on weapons, including knives. It was literally going to limit everyday items that in any way could be construed to be a weapon, including knives and hammers and rope, and you name it, because it was so broad, it was insane. The bill is still terrible, but I'm happy to report that it's been amended. The general all-inclusive, sweeping, weapons ban part of it has been removed. So, now it is only focused on firearms and destructive devices. That's really funny, firearms and destructive devices. Yeah, in case any of you wanted to carry hand grenades in New Jersey. You can't do that under this bill. All right, I get that.

Evan Nappen 21:17

But we still have a big fight over the gun part. Luckily, the part that would have affected knives and all these other subcategories, sporting equipment, and turning all these things into felony offenses beyond belief for simple possession, etc. That is gone. To that end, not only did Knife Rights play a great role, but of course, so did our state association, Association of New Jersey Rifle & Pistol Clubs, which you all should be a member of. (www.anjrpc.org) Scott Bach, who's our Executive Director, did a great job. To all the folks that testified at the hearings and such, I congratulate you. The efforts paid off, at least in this regard for now, causing the amendment and causing delay of that horrible bill. The fight is still on. We're still going to have challenges here for sure. But at least that part has been removed, that threat to all the other arms that are protected under the Second Amendment.

Evan Nappen 22:37

I would like to jump now to some letters. I love letters, and you write great letters, folks. I read them, and I wish I could get to all of them, but we just don't have the time. But I have some here that I think you may find interesting. This one says hi Evan, I have a Vertex Backpack designed as a concealed carry holster. It is an excellent design and swings around quickly to reach open and reach in and access your pistol. It's a small looking plane backpack that actually mounts near your hip, not your back. This allows for a full-size handgun with two mags to be carried. Also, as a bonus, you can buy ballistic armor and put it inside and it can be used as a small shield. My question to you is while it's on your body, it's a concealed carry. But let's say I'm driving, and I take it off and put it on the passenger seat. Is that legal?

Evan Nappen 23:39

Okay, so here's the deal. Currently in New Jersey, when you look at what is actually prohibited and what a carry license does, you have to realize that New Jersey currently does not have a law regarding carrying of a handgun. Now you may say, wait a minute, what are we fighting? What are all these permits? Well let me explain, and I'll tell you why. New Jersey has a handgun possession law. Possession is found on NJS 2C:39-5.b., and what the handgun possession law says is that no person shall possess any handgun including an antique handgun unless that person has first obtained a Permit to Carry a Handgun. Think about that. You can't possess a handgun unless you have a Carry Permit for a handgun.

Evan Nappen 24:46

So, what happened in New Jersey is that a Carry Permit is viewed as a possession permit. If you don't have a Carry Permit, which is a possession permit, and you possess a handgun anywhere in New Jersey, even your home, you're not legal unless you have a Carry Permit under that law. Now before you get too excited and scared, New Jersey then has exemptions. Under NJS 2C:39-6.e., for example, there's an exemption that allows for possession and carrying of firearms in one's home. So, when you don't have the Permit to Carry, then your only way to be legal is if you're under exemptions. That's where you find your lawfulness, by way of exemption, even for a handgun that you acquired with a pistol purchase permit. You still have to stay within the exemptions so that your possession is legal, unless you have a Carry Permit. Then if you have a Carry Permit, you're not restricted by just exemptions. The carry permit allows your possession outside of exemptions.

Evan Nappen 25:58

So, here from our friend who asked about this backpack, it doesn't matter that you're possessing it in this backpack. It doesn't matter because you're still possessing it, and your carry permit now covers you for your possession. Even if you take the backpack off in your vehicle, you're still possessing it in your vehicle. You're still possessing it whether it's hooked to your back or not. So, what's the charge that you might ever face with a gun on your person or a gun in a backpack or a gun in a vehicle, what's the charge? The charge would be unlawful possession, and in that charge, it says, essentially, you're not guilty of unlawful possession if you have a Carry Permit. The bottom line is the Carry Permit covers your possession in this backpack, on your person, or in your vehicle, or anywhere else other than a restricted place, which the law itself makes clear is educational facilities, and other places that are specifically restricted. That's the current law.

Evan Nappen 27:16

Now the reason I say current law is, this is what A4769, this atrocious carry bill is looking to do. It's looking to create sensitive places. To create other places of huge numbers so it's virtually impossible to actually exercise your ability to carry, where you're prohibited from carrying, even though you have a license. In addition, it's attempting to regulate what and how you carry. Even to the degree of mandating that it be a holster that's on your person with a retention strap. Then your holster has to have a retention strap, by the way, is in the bill. That's how into the weeds they're getting over how much they want to control your life and your ability to have the means of self-defense.

Evan Nappen 28:15

Let me tell you, folks, retention straps, should not be required. That's an option, maybe, for folks. But the problem with retention straps is they are sometimes dangerous. Because if your attention strap gets stuck inside your trigger guard in front of your trigger, and you push the gun down, guess what? The gun may go bang. Therefore, preferred holsters have retention without the use of trigger straps and remove even the potential danger that a retention strap can provide. I've had cases of ADs, Accidental Discharges, from individuals with retention straps. So, it's not a great idea. Yet they want to mandate it in this bill. Of course, if this bill was law, then this backpack wouldn't even be acceptable to carry your gun at all. No less in your vehicle. So, the fight is on, and it maintains itself in battle here for this absurd A4769 bill. All your efforts are paying off. When you get those emails from Association and such, to

contact your legislature, you do it. You inundate them. It is critical. They have to hear from us and have to know. It's making a difference.

Evan Nappen 29:42

Now I have another letter here, and this is from Timothy. Timothy says regarding his CCW app. Now technically we don't really have a CCW in New Jersey, which normally stands for Concealed Carry Weapon. What we have is a PTC which is a Permit To Carry. So, we have a PTC, Permit To Carry a handgun. But that's okay because a lot of us know CCW is just like the lingo for the PTC, but in the future, try to refer to it in Jersey as what it is, a PTC. Timothy says hi, in Essex County, where exactly does my CCW app go after my municipality police chief signs off on it? The prosecutor's office then judge or just straight to the judge? If a judge, which court exactly?

Evan Nappen 30:33

So, when you apply to your local chief or the state police, if your local police don't process permits, the chief of police or the issuing authority, the issuing reviewer would be the better term when it comes to Permit to Carry. They have 60 days to approve or deny your application. Now, don't get confused by that. Because that 60 Day approval or denial simply means their review. But the ultimate issuing authority is the judge. So, once the chief decides to approve or deny, then that determines the next step. If the chief approves it, then the chief will forward it to the Judge of the Superior Court. Normally, what we call the gun judge, the judge in that court that is handling the gun licensing apps. If the chief takes no action for 60 days, then it's deemed approved, and it's supposed to get forwarded to the judge with no action by the chief but deemed approved. If the chief denies your license, then you have 30 days to appeal it to the gun judge, to appeal to Superior Court, challenging the chief's denial, and asking the judge to override that denial and to grant the license under the judge's power as the issuing authority.

Evan Nappen 32:05

Now, once the permit applications get to the judge, then what I've seen in my practice, is the judge will send it as well to the County Prosecutor so that they become a party to the application. Not all judges do that. Some just issue it as the issuing authority. Sometimes they bring in as a regular practice the county prosecutor. Some counties may require the police to first send it to the County Prosecutor so they can review it, and then they send it to the judge. So, the process itself is not exactly fixed in stone. But for the most part, it goes to the court and does go to the prosecutor. It's just who gets it first is very dependent on local practice. Now, plainly though, if there's a denial, then you have to serve the court and the prosecutor per the statute to challenge your denial. With approvals, that's more of a local practice. It does, though, ultimately have to go to the judge or the issuing authority.

Evan Nappen 33:33

Now, let me just warn you. When it goes to the judge, then the judge can approve it. It's not required to have a hearing if the judge wants to approve it. But under law that my firm established, under case law, because it's not in the statute, if a judge is believing that he may deny your license, even though it was approved by the chief, then the judge has to give you a hearing and has to give you notice of a hearing, because he's contemplating denial so that you get due process, still, thanks to our Carlstrom case that established it. It's important for due process purposes that you get that hearing.

Evan Nappen 34:20

The thing to be warned about is, even if your chief has approved it, if you get a message or an email or anything from the court saying for you to show up in court and the court wants to talk to you about your application, you need to seriously talk to an attorney about your application because in a number of counties that is a flag. You are going to be interrogated about something on your application that may lead to the judge wanting to deny your application. Often, they're trying to fit you into the catch all clause of "not in the interest of public health, safety, welfare", where they can, and often do, look at anything that occurred in your background. So, it can become dangerous. Then if a judge makes a finding that it is not in the interest of public health, safety, welfare, that can escalate into revocation of your Firearms ID card, Pistol Purchase Permits, and even your ability to own guns. So, the whole thing can go south badly.

Evan Nappen 35:27

If you're ordered to come in on your application, talk to an attorney beforehand to make sure that it's strictly benevolent that the judge is just wanting to see who they're granting a permit to. They want to make sure you're not showing up in court wearing a Punisher t shirt or something like that. And if that's the case, fine, but if there is something else out there that may be a problem, you want to be prepared and ready. This is Evan Nappen, reminding you that gun laws don't protect honest citizens from criminals. They protect criminals from honest citizens.

Speaker 3 36:11

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