

# Gun Lawyer -- Episode 122 Transcript

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## SPEAKERS

Evan Nappen, Speaker 3

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

I'm Evan Nappen, and welcome to Gun Lawyer. So, I want to make it clear that I would advise that you never become a plaintiff for the Brady Center to Prevent Gun Violence because of a recent case here, relatively speaking, that I thought was pretty interesting. It really shows just what can happen. This was out of The Colorado Sun newspaper, and it's an article by Jesse Paul. And what it says is "Colorado law makes it very difficult and financially perilous to sue the gun industry. (That's likely to change.)" And you better believe that it does. This is a lesson learned that unless you just want to be a pawn of gun control and don't care about your own finances, I don't think it's such a hot idea. Listen to this. In this article, it says, "Sandy and Lonnie Phillips wanted to hold the gun companies that sold ammunition, tear gas, and armor to their 24-year-old daughter's murderer accountable." Instead, they've ended up having to file for bankruptcy. Now, you know, I can feel for anybody who has lost their child. It's terrible. Honestly, I feel horrible for these people. But to attempt to blame the inanimate objects and the people that produce these because they're being by a very small, miniscule number of folks get used criminally, and then try to hold the company responsible. It just is nothing less than an anti-gun ploy to sue the gun makers, manufacturers, and sellers out of business by abusing the tort system.

### **Evan Nappen** 02:30

So, in response to this tactic that the antis were using, and still are attempting to use, of trying to sue our Second Amendment out of existence, Colorado passed a law that said you cannot bring essentially lawsuits of this nature against manufacturers, dealers, etc. Yet, despite this law, the Phillipses still attempted to sue under some very weak theory that obviously failed to still the Brady Center have their publicity stunt out of it, obviously, and to file the litigation, etc. They spent, as they say here, they lost three years of our life, fighting this, and it says they were like being revictimized, and I can see that. And what happened was the law in Colorado has a provision that says if you bring such an action, and then you lose, it gets dismissed, you are responsible to pay the attorneys' fees and costs. And guess what? They ended up losing, and they had to pay \$200,000 in attorneys' fees and costs for bringing this action. That was an utter failure, and they should have known that it would be a failure.

### **Evan Nappen** 04:22

And what's interesting here, if you dig into this article, because they don't want to make a big deal, you see, about just how bad the Brady Center acted in this regard. But if you dig down, you'll find where it actually says, deep in it, that the Phillipses 2014 lawsuit, this is quoting direct from the article, was

brought in conjunction with and at the urging of the Brady Center to Prevent Gun Violence. . ." And it said the couple were pushing here to require businesses to take steps to prevent their products from being purchased by people who would use them in mass shootings. Oh, there you go. Yeah, how are they even going to do this. But anyway, that was their, supposedly, their laudable goal. Their optimistic, idealistic, pie in the sky, idea, and they'll do it thru the tort system. So, they got sold this bill of goods. In the article, the Philipeses say they trusted the Brady Center to have their back in the lawsuit, but they weren't fully made aware of the financial consequences they faced before ultimately being forced to shoulder the defendants' legal costs themselves.

**Evan Nappen 05:50**

You see Brady didn't join in the lawsuit with them as a plaintiff. It was just these two. They were the only plaintiffs. And what's really amazing is the article goes on, it says here that the judge overseeing the case apparently expected Brady to help the Philipeses as well. It says, this is quoting from the judge, "It may be presumed that whatever hardship is imposed on the individual plaintiffs by these awards against them may be ameliorated by the sponsors of this action in their name. (Judge Richard P. Matsch wrote in a motion.)" Well, guess what? No such luck. Sorry, Judge. Brady ain't paying for it. The folks who lost their daughter, who were convinced to bring this and who, as they say, weren't advised as to the risks that were involved, they get to pay. They get to declare bankruptcy because they couldn't afford to pay the costs and fees to the defendants. So, you know, this falls under the old adage of "F" around and find out. Because that's exactly what happened to them.

**Evan Nappen 07:20**

Okay, here's this law in Colorado, that says you can't bring these actions, and then you bring the actions, and you lose. You're responsible to pay attorneys fees and costs. But somehow, they thought this was still a great idea. Gee, I wonder if they were explained all the ramifications before they did this. Or do you think that Brady wanted to just go full steam ahead anyway, and got these folks as plaintiffs? And look what happened to them. Hey, this is the deal. And of course, the antis now want to repeal these protection laws. They want to repeal the ability to get attorneys fees and costs. But you know, what? Attorneys fees and costs are a significant aspect of dissuading folks from bringing lawsuits that never should be brought. And why should you have to pay to defend a lawsuit that should not have been brought? That you are, in fact, exonerated from? Why do you get stuck with your legal bills because some political organization wants to go after you and your industry by burying you in litigation? Shouldn't you get attorneys fees when those efforts fail? I think loser pays is an excellent idea.

**Evan Nappen 08:54**

And if loser pays, not only in civil, loser pays should also exist in criminal, but it doesn't. It doesn't. If you get charged by the Government, you fight it out. You spend life savings, defending yourself, your reputation, the whole bit, and you get acquitted. Does the Government reimburse you for your fees? No. Oh, sorry. Sorry. Are you telling me that these attacks on gun owners, these horrible gun laws that you and I have discussed over and over again, these politically-motivated laws that have no impact on crime, that have these draconian penalties that screw over law-abiding citizens, where they face enormous amounts of state prison time that's mandatory. They fight it, and they win it. But they can't get reimbursed for their fight. And it shouldn't be limited just to criminal actions. What about just licensing actions? The way New Jersey abuses the individual by putting hurdle after hurdle, and having

abuse of denials, that in my firm we win frequently, overturn these denial of Second Amendment rights. And yet New Jersey has no recourse for fees to be paid by the loser. The loser being the state of New Jersey. If the loser had to pay, if that issuing authority was responsible to pay your fees, you'd see a hell of a lot less of unjustified denials being made, that's for sure, when they know that they're responsible.

**Evan Nappen 10:41**

In other jurisdictions where they actually have that, such as New Hampshire, I actually had a case in New Hampshire where there was an unjustified denial of a carry license by the Chief. And that Chief had to personally pay, personally pay, the attorney's fees for denying Second Amendment rights to my client. It's why you don't see too many issues like that in New Hampshire. If you're going to deny, you better be solid in your basis for denial. You better really be justified because if you're not and you lose, you can be responsible. But not in New Jersey, just the opposite. This is why you see so much abuse take place, folks. The abuse of the gun owner, the abuse of our Second Amendment rights, and anti-gun states have tried to stack it up. New Jersey even recently passed a law to try to get around the federal protection that the industry has from lawsuits, to try to couch it under Consumer Protection, and some other legal theory instead of in a whole entire department and through the Attorney General just to sue and go after gun companies and manufacturers, sellers all through America. So, they can export their tyranny, export it beyond Jersey, to the rest of America. Luckily, that law has already been enjoined with a nice win by NSSF (National Shooting Sports Foundation). So, this is what we see. This is part of the war on our rights.

**Evan Nappen 12:30**

And let me tell you, in terms of the war on our rights in Jersey, you need to belong to the Association of New Jersey Rifle & Pistol Clubs. I'm proud that they are sponsor of Gun Lawyer. [anjrpc.org](http://anjrpc.org). Go to their website. They have full-time paid lobbyists in Trenton. They're fighting and sponsoring and currently litigating, and I might say successfully even in Federal Court, on the Carry Killer, Anti-Civil Rights bill. They're litigating right now over assault weapons and magazines. They just had that case consolidated in Federal Court. They're litigating in state court and a case my firm has even, MU. The MU case is challenging this arbitrary and vague, licensing denial of the, what we call the all-inclusive weasel clause. The catchall of so-called "not in the interest of public health, safety, welfare", whatever the hell that even means. We're battling that out on constitutional grounds, and the Association is there. The Association of New Jersey Rifle & Pistol Clubs.

**Evan Nappen 13:47**

I want to tell you that not only when you join, you do a part of what every gun owner should become here, and that is helping in this fight. But you also get many great benefits from the Association. You get their news releases through email so you're getting immediate, up to the moment, action news releases. You also get an outstanding printed newsletter. Let me tell you. One of the best printed newsletters on New Jersey gun rights in the state of New Jersey, and that is a member benefit. That publication keeping you informed is excellent. If you care about your gun rights, you need to get that and you need to read that. You also know that you're part of the fight and helping to fund the battle for Second Amendment rights. So, please join the Association of New Jersey Rifle & Pistol Clubs. Do your part. Make sure you are a member. It's the least you can do in New Jersey. Hey, when we get back, I

have some really interesting letters and some important information, particularly over questions that never end regarding concealed carry in New Jersey.

**Speaker 3** 15:23

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, that 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** 16:38

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

**Evan Nappen** 16:52

Hey, welcome back to Gun Lawyer. I'm Evan Nappen. Thank you for being a dedicated listener. Thank you for subscribing to this podcast, which is free. You can get the Gun Lawyer podcast anywhere you get your podcasts - Spotify, Apple, CBS, iHeart. You name it, and we're there. Make sure you subscribe and listen as I give you the up to date info and heads up on legal issues. Things going on affecting our rights, left and right here. Of course, I have a focus on New Jersey, but not only New Jersey. New Jersey, you see, is a focal point for the battle on our gun rights. It's like the front lines of our gun rights. Because New Jersey becomes the place where they test out all their wacky anti-gun laws, and then good people suffer. And I don't want to see any of you suffer. My mission is to help every law-abiding gun owner in New Jersey not become a victim of New Jersey gun laws. Because that's what gun laws do. They make you into a victim. The antis like to talk about victims of gun violence, gun violence victims, like there's some distinction over the violence. It's not gun violence. It's criminal violence. But I'll tell you what is gun specific. Gun laws, and honest, hardworking people, become victims of gun laws. Now that does distinguish out. New Jersey specializes in it. So, I don't want to see you become a victim, and here's some warnings and some important things to be aware of.

**Evan Nappen** 18:41

I've gotten a number of questions. First of all, one of the things we talked about last show was about Duty to Inform. There's a Duty to Inform the officer if you have a carry permit and you're stopped. I want to point out something interesting here. The Duty to Inform, and I meant to mention it last time, technically, the Duty to Inform does not take effect until July. That is true. However, the law for Duty to Inform has been codified and placed into the statutes. So, if you go and look up on the New Jersey website, for example, where they list the New Jersey statutes, you're going to see Duty to Inform law right there. If you go googling the newest versions of New Jersey law, you're going to see the law that

says there's a Duty to Inform, and you're not going to see, you're not going to see anything that says oh, this doesn't take effect yet until July. Now legally, it's true. It doesn't take effect until July.

**Evan Nappen 19:48**

But the problem is, how are the police going to know this? How are the police going to know this when they simply look at the statutes putting it out as codified law already. If you want to know why it's not in the statute, if you look at how the bill was written, anything that got put in the statute was either modifying an old statute, or it had to say New Section. But the last section that said when the dates were effective, didn't say New Section, so it doesn't get put into the codified laws. The only way you know is if you're actually smart enough to dig into the chapter laws. But that's not what law enforcement does. They're not researching through chapter laws to find it. They're just looking at the statutes. Oh, look, there's Duty to Inform now. New law. There it is. It doesn't say anything about when it takes place. And even though, sure, we could win. I'm confident over anyone charged, but I don't think you want to be charged.

**Evan Nappen 20:49**

I also want to say that the problem in New Jersey is police are not used to individuals carrying guns. The mentality of New Jersey is going to be one of, why do you have a gun? And if you're stopped, and you're a law-abiding citizen, you have your carry permit, and you're carrying your gun, and you don't say you have a gun, and the officer sees the gun, I don't want you inadvertently being injured or harmed. Having the officer take measures thinking you're a threat. Just putting aside the legal requirement. If you're lawfully carrying, and you have it on your person, and you're in New Jersey, I'm just going to say from a practical point of view. If you get stopped by an officer, your safest course of action, honestly, is to let the officer know that you are lawfully carrying and that you have your permit. Because in July, that's going to be required by law. Right now, it appears that it's the law, even though technically, it's not the law. But just putting aside the law. You don't need to surprise that officer or yourself when he sees a gun on you that wasn't brought to his attention upfront.

**Evan Nappen 22:09**

Think about it logically, folks. Keep your hands in plain view on the steering wheel and tell the officer about your carry gun. Normally, I get it. You want to keep your mouth shut about everything and not talk about anything, which is all good advice. But in this narrow situation when you're a licensed carrier, and you're in that stop, especially, you know, at night somewhere on a highway. Do you really want to risk your life over this going south because you didn't want to tell them that you're legal to be carrying? Try to use a little logic here, too. So, these are the things that are out there. Technically, it's not in effect yet, but I'm going to tell you, as a practice, it's your best bet. And if that's your practice, and that's what you set your mind to then come July you don't even have to think about whether it's July or June or August or May. You just have a practice in mind when you're in New Jersey of how you're going to act, and then you don't get in trouble under the law. You stay protected and not a victim of any type of accident or inadvertent tragedy. Think about that.

**Evan Nappen 23:31**

Now, one of the letters I received here where I get lots of letters this is one that I think is of great interest from Paul, regarding defensive ammo. Hello Mr. Nappen. Can you tell me which ammo is legal

to carry? Hollow Point or Hornady critical defense ammo. This is a question we get a lot about what about hollow nose. What about defensive ammo when you carry with a carry license? The answer is that hollow nose is restricted in New Jersey and it's narrowly restricted. You can have it at your home or place where you purchased it or at the range, but hollow nose itself you cannot carry even with a carry license outside of the exemptions. Now, that's stupid I know. Why do they want high penetration ammo on the street? Because the dummies that passed this law don't know anything about guns or ballistics, and they have this mythology in their mind. Oh, it goes in you know a small hole and comes out the size of a five-gallon bucket. Just idiotic crap that runs through their head. But we know the truth is that a hollow nose is very effective because it delivers the energy transfer to the intended target, and you can avoid over penetration issues. But that's not of concern to the Legislature. So, you do not want to carry hollow nose.

**Evan Nappen 25:13**

Now with the ammo registration, they are even marking, even though the law didn't call for it, they're even denoting when you get registered of your purchase whether you've purchased hollow nose ammunition or not. I want to point out that the State Police, on their website where it has a firearm FAQ (Frequently Asked Questions), right there. It has an FAQ, and Question number 13 says, "I'm not a police officer, are hollow points legal for me to possess?" Then the State Police say: Yes. It's legal to purchase and possess in your home, as we just discussed. They're also legal to use at a gun range, again, as we discussed. You can travel with them to and from such places. Yeah, that's all true. But then it says, and I think you'll like this. "Ammunition lacking a hollow cavity at the tip, such as those with a polymer filling, are not considered to be hollow point ammunition. An example of this can be seen with the Hornady Critical Defense / Critical Duty, Cor-Bon PowRball/Glaser Safety Slug and Nosler, Inc. Defense Ammunition." That is directly from the State Police website.  
<https://www.nj.gov/njsp/firearms/firearms-faqs.shtml>

**Evan Nappen 26:43**

That ammunition, Critical Defense / Critical Duty, PowRball / Glaser Safety Slug and Nosler Defense ammo are not hollow nose and are not under the prohibition even though they may perform similar to how a hollow nose performs. You have a statement from the State Police to this effect. Now let me just say I had a very famous case on this. Roosevelt Twyne was his name, and Roosevelt was charged, a security guard, and guess what he had? Hornaday ammo. He had that Critical Defense ammo, and he got charged, even though he had a carry license, with hollow nose possession. Charged with the very thing that the State Police say. We won for him, and we were able to show precisely that the State Police said that they themselves say it's legal, but it still took a fight. So, even though Number 13 here says it's okay, and I understand the desire to have it, you still need to know that there may be some risks because again, the Police aren't educated in the gun laws, and what things are not lawful. They look at statutes and say, oh, this looks like that. So, they charge you.

**Evan Nappen 28:09**

If you're going to carry any of these rounds, I would suggest you go to the FAQ of State Police website and download Question 13. Keep it in the car with you. Keep it in your pocket, if you're carrying this ammo. Because if it's ever a question, you can take it out and say, look, this is right from the State Police website, and it's legal right here. Boom. So that's something you could find helpful. Like I said,

I've had cases of literally arrests being made, even though my client is completely innocent, and then we fight it out. And it isn't just about hollow nose. I see false charges all the time. False charges on what's an assault firearm. False charges because they don't know what exemptions are. False charges. It's just an overwhelming amount of false and wrong charges being made against honest gunners. Why? Because New Jersey's law is so convoluted, so confusing, so ridiculous, that law enforcement themselves can't even wrap their mind around it and get it straight. So, it's arrest the folks and ask questions later. Even when they call the prosecutor, the prosecutors, the duty prosecutors, they don't know. They don't know. They haven't studied this the way gun owners have studied it. Gun owners often know the law better than law enforcement. Most of the time, frankly, is when I see it most of the time. They know it better, but that won't stop you from being arrested. So, take precautions.

**Evan Nappen 29:59**

One of the other issues I'm seeing a lot of is we're getting a lot of questions about carry permits issued out of Monmouth County. Judge (Joseph W. ) Oxley has issued numerous carry permits now, and they contain this bizarre, quasi-restriction language on the back of the permit. This is on your carry permit now. "Restricted from carrying in any place prohibited by federal, state, or local law . . ." Okay, so what? That's a big duh. Of course, you're prohibited from carrying where it's restricted and prohibited from carrying. Why do you even have to state it? But it states it, and that's not the problem. The problem is the next part, "and shall comply with the provisions of N.J.S.A., 2C:39-6(g)." Well, 2C:39-6(g) has to do with the transport of firearms. Transport of firearms under 39-6(g) says that firearms shall be carried, unloaded and contained in a closed and fastened case, a gun box securely tied, packaged or locked in the trunk of the automobile in which it is being transported, and in the course of travel shall include only such deviations as are reasonably necessary under the circumstances.

**Evan Nappen 31:29**

Well, that about wipes out the utilitarian value of having a carry license, doesn't it? Now, the first part of this statute says, "Any weapon being transported under paragraph (2) of subsection b., subsection e., or paragraph (1) or (3) of subsection f. of this section . . ." and then it specifies the mode of carry. Well, those subsection are subsections of Exemptions. Those are the exemptions that if you don't have a permit, you have to rely upon. Yet here's a permit, that is saying you have to rely upon exemptions and a mode of carry. It's utterly confusing. It makes absolutely no sense to put it there. All it's doing is causing risk to the permit holder to be interpreted that even carrying in your vehicle, carrying anywhere outside of the exemptions. Because those exemptions, subsection e. is possession in your home or place of business and subsection f. includes the hunting or target range exemptions. If you're outside of those, then it seems to imply right away, hey, you're doing that and you have to have it cased, unloaded. But that's not the point of the carry permit. Because a carry permit means you don't need the exemptions. You're exempt on the face of the statute. It's creating havoc, and it's just flat out stupid. Yet there it is.

**Evan Nappen 33:07**

Person after person has had this burden placed on their permit without any rhyme or reason or explanation. It doesn't make sense, and it creates this ambiguity and uncertainty. And it flies in the face, by the way, of the Bruen decision, which makes it clear that these types of restrictions when you have a carry is you can carry public, public carry, that's what's protected. Now granted you can I have a permit

system, and that's what we have. But once you have the permit, you cannot do this, and you want proof. Look at the injunction. What did the injunction enjoin? Vehicle, possession in a vehicle. New Jersey wanted to mandate that if you transport it in a vehicle, you have to have your gun locked and unloaded. But that's a separate law from the 39-6(g) exemption that the Monmouth County permits are now trying to require on the folks that have been granted them. But of course, it accomplishes the same thing. It's barring you from transporting, barring you from your vehicle, barring you unconstitutionally in the face of Bruen, and not one, but two injunctions in federal court dealing with this topic, though not specifically this statute that's on the back of this permit. So, it is a problem.

**Evan Nappen 34:38**

If you have a permit such as this, where this language has been placed, they're creating a risk to you and your ability to carry. There are basically three options that you have. Number one, you can voluntarily give up your carry permit and reapply for a new one. Thankfully judges are no longer the issuing authority, thank God, for just this kind of problem, and Chiefs cannot put restrictions on. When you get your Chief issued, or superintendent issued license, it will not have this nonsense on it. It cannot be placed on it. The new law, as bad as it is, at least got judges out of the permit business, who've been burning law-abiding citizens out of their gun rights, since the beginning of the carry license system 50-60 years ago. The second thing you could do is wait for your permit to expire. They last for two years. And when you get your new one, you'll get a non-judge issued one, again, not having restrictions. And the third option is you can try to go back to court to get it changed. But that's an expensive litigation proposition. You can do that, and we are doing that for some. But it's a shame that, again, you can't exercise your rights within the constraints of the Constitution and not have to deal with these issues. But there you go.

**Evan Nappen 36:18**

We're in this transition period, and this is the last hurrah, I guess, of some judges here to mess with permit holders. But we've got to end this practice. The new law is in place, and eventually, every carry will be a straight carry. But those that applied prior to December 22, 2022, before the law took effect, the new law, they still are under the old system of the judge issuing and those folks tending to have all these problems. This is yet another example. This is why gun laws don't protect the citizens from criminals. They protect criminals from honest citizens.

**Speaker 3 37:16**

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