

Gun Lawyer -- Episode 132 Transcript

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SPEAKERS

Evan Nappen, Speaker 3

Evan Nappen 00:00

Hi, I'm Evan Nappen, and welcome to Gun Lawyer. Have you ever wonder how come after any atrocity committed with a gun, Democrats think the answer is take away guns from those who didn't do it? I always wonder why that's their knee-jerk reaction. But anyway, I've got some great questions that have come in from listeners. These really get me thinking about stuff. I got to say you guys are really something. You come up with some interesting questions, and I have to ponder them. So, here's what I'd like to start off with.

Evan Nappen 00:58

This is from Bill, and Bill says regarding - are slam-fire shot guns, machine guns? Hi, Evan. My question for you is: are slam-fire shot guns, like the Ithaca Model 37, machine guns in New Jersey? He talks about N.J.S. 2C:39-1.i, which defines machine gun as: "Machine gun" means any firearm, mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir, belt or other means of storing and carrying ammunition which can be loaded into the firearm, mechanism or instrument and fired therefrom. A machine gun also shall include, without limitation, any firearm with a trigger crank attached." Think about that. Any firearm with a trigger crank attached. Well, I'm kind of cranky at times. What if I attach my finger to a trigger, does it . . . No, I'm just kidding. But the thing is that the trigger crank was added in by the way by Murphy, and in the adding of the trigger crank though, they specifically exempt Gatling guns, which I think is really great. Machine guns are prohibited, but Gatling guns are specifically allowed. So, if you want a Gatling gun in Jersey, you can have one. And man, some of them are really nice. Those old Gatlings are pretty cool. But anyway, I digress.

Evan Nappen 02:36

So, the question with Bill here is, are slam-fire shotguns, machine guns? What he's referring to as a slam fire are certain pump-action shotguns as he correctly identifies an Ithaca Model 37, but also the most famous would be the Winchester 1897. Those are guns where if you hold the trigger back, just like you would on a single action revolver, if you hold the trigger back and then pump the action, every time you pump, it will fire without you having to release the trigger, and then pull the trigger. So, you simply hold the trigger back and then pump away. Boom, boom, boom, boom, boom, boom, boom. And it's fun. Slam-fire shotguns if you haven't done it. If you have a gun that allows you to do it.

Evan Nappen 03:35

It reminded me on slam fires of an interesting. There's an interesting book, subversive literature. You may have heard of it. It's The Poor Man's James Bond. This was a book that competed with the Anarchist Cookbook. The famous Anarchist Cookbook that you should not rely upon, because a lot of the information in that book is seriously flawed. Now The Poor Man's James Bond is actually a better book of interesting, improvised weapons and was written by a guy named Kurt Saxon. In that book by Kurt Saxon, he talks about when he took a Winchester Model 1897, and he tricked it out by putting a mag tube extension. I think it held like 10 rounds in it. Then he put this T-bar handle with a roller on the end of the bar to the pump. So, you literally would pump this "T", it stuck out like a stent gun mag off the side of the shotgun. You would pump it, and it would roll in your hand. By holding the trigger back, you could like Ba ba ba ba ba ba. You could really rip that slam-bang action by pumping it with that roller pump mechanism that he outlines how to do in The Poor Man's James Bond.

Evan Nappen 05:07

But anyway, be that as it may, the question is, are slam-fire shotguns machine guns in New Jersey law? Now that's something. I had not really considered. Because slam-back shotguns have been around a hell of a long time. Like I said, the Winchester Model 1897, one of the classic pump shotguns that have been around since, well, the late 1800s, was a slam fire. I have never heard of anyone prosecuted for possessing an old Winchester 97 shotgun as a machine gun. There's only been about a million Ithaca Model 37s out there that function in the same way, and no one's ever been prosecuted for that. So, if you technically read Jersey's law here, yes, it appears so because of the requirement that a trigger be pressed for each shot. The trigger pressing for each shot is where we get into the argument.

Evan Nappen 06:14

Now, you could argue, though, that you are pressing the trigger for each shot, and the reason you are is that, even though you're continuing to hold the trigger, you're still having to keep it pressed for each shot, and each shot is created by the pump of the shotgun. Whereas with a machine gun, as you and I know, which is fully automatic, you're pulling the trigger, and the gun is just firing by itself. Its function is automatic, and the trigger is not being pressed for each shot. It is being held, and the gun is automatically firing. But it's true that New Jersey's statute does not say automatic and that's because New Jersey's gun laws are so unbelievably poorly written, and this is yet another example. They never cease to amaze me with how bad a legislator, who doesn't know jack about guns, can write crap gun laws. They specialize in it in Jersey.

Evan Nappen 07:23

If we look at the federal law, which has been around since the 1930s, the federal law under 26 U.S.C. 5845(b), has the definition for purposes of the National Firearms Act. "The term 'machinegun' means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically. . . " They put the word in there, automatically. ". . . more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any weapon. . ." So, federal law is quite clear about it having to be automatic and the trigger pull. New Jersey didn't include that. But often in New Jersey's deficiencies in their definition of various prohibitions, they do often give a default to federal law, and I've seen that over and over again.

Evan Nappen 08:28

For example, defining a firearm with firearm or frame until recently. We've seen Jersey actually use that term in their ghost gun law. But prior, it took the State Police Admin Code to follow that. We saw the pistol brace that was following federal law by the state, and I gave them credit for following federal law on that. So, it's not that unusual for the state to do that. Here, of course, it cries out for it. Because plainly, shotguns that have been around for well over 100 years, are not machine guns. And I believe with expert testimony, if push came to shove on this issue, we could absolutely demonstrate the difference in what has been traditionally recognized as a machine gun, and that the old Winchester 97 is not a machine gun. And even though, yeah, it's fun to slam fire a shotgun, I don't think you have to worry about being prosecuted for machine gun possession in New Jersey simply because you have a shotgun that operates like the old 97 or the Winchester or the Ithaca 37. I don't see that as something to lose any sleep over. Although I don't blame you for asking because New Jersey is still New Jersey, folks, and I get it. But good question and something definitely to think about.

Evan Nappen 10:03

I received another great letter here from Mark. Mark writes regarding permit delays. We encounter this permit delay situation a lot in New Jersey, and here's what Mark says, I applied for a firearm purchase and pistol permit in the first week of March. Followed up for a status with Wall Township in April and was told not to expect any action on my application until July through August. Is this reasonable given all the CC permits, I guess he means concealed carry permits, they're reviewing or am I being jerked around?

Evan Nappen 10:45

Well, you know what, you're being jerked around. You're being jerked around because the law says for Firearm ID Card and pistol purchase permits, they're supposed to approve it or deny it within 30 days. So, they are well over the statutory requirement. However, the New Jersey statute on 30 days has no teeth. It has no teeth. Yeah, the law says that. But guess what? The state routinely breaks the law. Now, if you break any law, if you make any mistake in the gun law, anything, well, forget it. You're going to be nailed on that. But the state, well, we'll just ignore the 30-day deadline. Try ignoring a deadline for your time to appeal and see what happens with you. But the state, no problem. There's even case law on it out there. *Adler v. Lee*, where the Court said, oh, yeah, that's there. But you know what? If they have good reason, they can extend it, even go 90 days. They just bend over backwards for the state to blow through deadlines that, hey, only applies to our Constitutional rights. So, why should that deadline be enforced?

Evan Nappen 11:55

But the bottom line is, yeah, it's supposed to be 30 days, and they're not doing their job appropriately under the law, which is true. That's what the statute says. Now, it could be that they are overwhelmed with the number of permits and numbers of applicants and individuals trying to get guns, and they're just doing their best. It could very well be that, and if it is, I can almost understand. It's not right. It should be funded. It should. We shouldn't have to lose our Constitutional rights over this. But maybe, maybe, they have legitimate reason, just in terms of the physical ability to get it done. I don't know. But the fact is, the law says 30 days and that's a fact. But it's no teeth to it. There's no enforceability.

Evan Nappen 12:42

Now, contrast that with the carry permit law, which is kind of interesting now that we have the right to get that carry license or right to carry, thanks to the Bruen decision. New Jersey's carry law, if you apply for a carry permit, it says that the police have 90 days to approve or deny it. If they don't approve it within 90 days, they could try to get an extension of another 30 days. So, that puts it at a max of 120 days. But at that point, folks, under the carry law, it is deemed approved. If that deadline for them to make their decision passes, then it's automatically deemed approved and that means it has to be granted. Whereas there is no deemed approved for a Firearm Purchaser ID Card or a Pistol Purchase Permit.

Evan Nappen 13:49

So, Mark, if you had applied in March for both a Carry Permit and the Firearm Purchaser ID Card and Pistol Purchase Permit, they would have to have moved on it within the deadline period for the carry permit. Which by the way is the same criteria for whether you're qualified or not qualified to get a gun because the 2C:58-3, subsection c. disqualifiers are the same disqualifiers for a carry permit, a Firearms ID Card and a Pistol Purchase Permit. So, if they failed to take action, you would get your carry permit even before you get your firearms ID card and your pistol purchase permit based on how the statutes are written and what the remedy is for the failure of the Government to follow the law and do it in a timely manner. Now, of course, I think in reality, they would simply have done all three of yours at the same time being under the pressure of the carry license statute itself.

Evan Nappen 15:06

So, if any of you are thinking about applying and you're in towns that maybe have a reputation for being slow or just these delays, then put into your package getting your carry and your Firearms ID Card or Pistol Purchase Permit all at the same time. Because then you get the benefit of the deadline in the carry permit law. It's kind of amazing to even say these things these days considering I've been doing this gun law practice for over 35 years, and suddenly the getting of a carry license gives you an advantage in getting licenses issued timely, which is just kind of hilarious, but there it is. Truth is stranger than fiction. When we come back, I have some more really interesting questions to share with you. See you in a few.

Speaker 3 16:08

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 bestselling 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 17:20

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

Evan Nappen 17:37

Welcome back to Gun Lawyer. I'm Evan Nappen, and I really appreciate my listeners. You guys are just fantastic. It's great to have a voice and be able to get this information out, and it's great having really top sponsors for this show. I'm very proud of my sponsors. The Association of New Jersey Rifle & Pistol Clubs is a sponsor that is the state gun rights, top gun rights organization in the state of New Jersey, the NRA affiliate, and the largest, strongest voice for gun owners. The Association is there in Trenton, a full-time paid lobbyist in Trenton. They're litigating, as we speak, \. Litigating against the Carry Killer, anti-Civil Rights bill, litigating against the so-called assault firearm ban, and the large capacity, as opposed to standard capacity, magazine ban and a whole bunch of other court cases. They're actively involved throughout the system, defending our rights.

Evan Nappen 18:51

Every gun owner in New Jersey, I mean it, needs to be a member of the Association of New Jersey Rifle & Pistol Clubs. They are the umbrella organization of all Rifle and Pistol Clubs. When you join as a member, you get fantastic benefits. You're going to get the email alerts right away so you know what's going on in Trenton and steps you can take and action you can take to defend our Second Amendment rights. You're going to get the finest newsletter magazine on gun rights in New Jersey. A lot of hours are put into that fantastic newsletter which is chock full of New Jersey specific gun rights information. You're just not going to find it anywhere else. You can stay on top of what is going on in New Jersey in the fight from the number one organization, and on top of all that, the Association has its own shooting range. You can join as a member or as a range member, and you're doing your part when you join. So, check out anjrpc.org. That's the Association of New Jersey Rifle & Pistol Clubs, anjrpc.org. Please make sure you're a member. That's where our strength, that's our power. That's our unifying force of the umbrella organization that puts gun owners there as a political force to be reckoned with. So, make sure you belong. It's the least you can do as a gun owner in New Jersey.

Evan Nappen 20:38

We also have as a wonderful sponsor, WeShoot, and WeShoot is a target range in Lakewood. It's really a wonderful facility there. I personally love WeShoot, and it is a great welcoming place to go. I highly recommend going to WeShoot, and you know, we have got to really give business to our ranges. You need to go and shoot. It's great to have guns, but you have got to use them. You got to train, and you got to stay sharp with your shooting skills. There's WeShoot in Lakewood, so convenient to both Monmouth County, Ocean County, and the surrounding areas. There's this great indoor range facility you can take advantage of. You can go there and shoot safely. They have tremendous training. It's also a place where you can get the training done for getting your carry permit in New Jersey. Their trainers will train you and certify you to the credentials and the criteria that New Jersey requires so that you can get that carry license. They've never had any applicant that they have trained, rejected for a carry permit because of not meeting the criteria for New Jersey's training requirements. So, go there and

take care of that. It's their trainers, their facility, and the people, not only the facility itself, but it's the people that make great ranges even better.

Evan Nappen 22:19

We've been talking about WeShoots various counselors and trainers over the last few shows. They have a wide variety of talent and experts that can guide you and meet your needs. Today I'd like to talk to you about Karl. Now Karl is one of the instructors at WeShoot. Karl joined WeShoot in October of 2022, and he has absolutely established himself as a reliable and valuable member of the WeShoot team. Not only does he work the retail side of their operation, you can go there and talk with Karl, and he'll be able to help you with any of your purchases or things you're looking to acquire through the retail operation, but he is also credentialed as an NRA pistol instructor. He also graduated and became a USCCA carry and home defense fundamentals instructor, and he is furthering his education as we speak at the American Gunsmithing Institute. His classes have been getting the highest ratings, and he keeps getting five-star Google reviews. All the folks that take his classes love him from beginners to advanced shooters. We need that CCW qualification course, and he'll get you there.

Evan Nappen 23:53

So, make sure you visit WeShoot and check out Karl and the great lessons that he's put together. He'll be making a really great new class which is going to be offered this summer, and I'm sure that's going to be very popular. You want to get in on Karl's new class designed for current New Jersey carry permit holders looking to elevate their skill and push their limits. You can also book a private class with Karl. He is available on Wednesday and Friday nights. So, don't miss out on that opportunity. Get yourself to WeShoot. There's so much to offer there. If you just want to relax and target shoot, if you need to get great training, or if you need to get credentialed, you name it. There's this great facility so convenient for all the good folks in that area. We need these ranges because if we don't have a place to shoot, we're going to be in bad shape. So, make sure you give your business to the ranges and to our sponsors. Find out more about WeShoot, go to www.weshootusa.com. That's weshootusa.com. Check out their great website. Beautiful photography. They really do a great job, folks.

Evan Nappen 25:24

Also, I want to mention my new book, for those of you that listened to the last podcast, I know you know about it, but I'm really proud of this book. I just got some of the printed copies in my own hands, and I'm looking at this. This thing is just really set. It's the 25th anniversary year edition. I can't believe it is 25 years of this book, revisions and additions throughout. This is the ultimate one. It is completely up to date and has everything you need to know about the laws at the moment. Right now. How to get your carry. All these topics in detail. All the specifics you want to know. Inheriting guns, assault firearms, all these questions. It's all there in a FAQ. Easy to understand. Look, I made it as a tool to help you. I wrote it so that it would be user friendly, so that gun owners can protect themselves by knowing the law in Jersey and not getting stuck in the trap that New Jersey sets. It's been a really huge success. This book is just the pinnacle.

Evan Nappen 26:43

And let me say, I've been able to, now with modern technology, have a QR code on the front of the book. Scan that QR code, and it will take you to my Subscriber Portal. Subscribe for free, and you're

going to get alerts. As soon as I write that alert, it's going out via email, and the alerts are going to tell you about any changes. The changes, additions, whatever the news is, whatever the last change, whatever the cases have done, you get to download it free from the Subscriber archive. It's all free. So, now you'll be able to have a book that is absolutely current and up to date at all times. Get the 25th edition, and you are set. Scan that code, and you will know the current law, because I am keeping it absolutely current to the maximum speed that I'm able to, folks. So, take advantage of that if you're interested in picking up a copy. It's over 500 pages, 516 pages, folks, to explain New Jersey gun laws. Just go to my website, EvanNappen.com (www.EvanNappen.com), and click on the book there and get a copy.

Evan Nappen 28:13

I know that you will appreciate it. People love it. The only complaint I've had is, they say never lend it to anyone because you'll never get it back. They do mention that. I guess the way to solve it is to buy more than one copy. But that's what one complaint I had. The other thing that I think is kind of funny but true. They say it makes an excellent bathroom book because you can just read one of those chapters at a time there. You know the FAQs on whatever subject may interest you at the moment. So, whatever, hey. Reading it, having it, you have the knowledge, the power. Check out EvanNappen.com and get the 25th Anniversary Edition of New Jersey Gun Law.

Evan Nappen 28:59

Now I have a question from Maryalice. This is an interesting question. Maryalice says regarding hold harmless agreements when going to a new range. Okay. Hi, Evan. I would appreciate an understanding of the hold harmless agreement that every range requires be signed before shooting. I'm sure you've written a few of these in your day. I have, as a matter of fact. Some ranges have 1/2 page of legalese and others have as many as five pages. Here is my concern. What rights am I signing away? No range will give me a copy of what I signed, and without that I can't attempt to understand what I just signed. I feel like I'm just signing it under duress without the proper attention to its legal content. I realize that shooting sports can be inherently dangerous but what if thru the range negligence I was hurt on the property? What if a leaky roof allowed for the air conditioning unit to fall down on the building and hurt me? Did I sign away my right to sue for non-firearm negligence? With all the concerns of our constitutional rights being abused, what rights am I signing away? Thank you for some clarity and for all your wonderful advice.

Evan Nappen 30:14

Well, watch out for that clause in there where you give up your firstborn male child. That's one that does cause a lot of concern for people. No, but actually, the problem here is, it's going to depend on what the release says. So, yes, you have to sign a release, but they're not stopping you from reading the release. The first thing you need to do is read it. Okay. As a matter of fact, any contract, anything you're going to sign, make sure you read it. If you're going to engage in any kind of serious purchase, acquisition, contract, or rental agreement, you should really have a lawyer read it. Now, I'm not telling you to have your lawyer read the hold harmless agreement at the range necessarily, but you need to read it.

Evan Nappen 31:05

So, you need to read it, and it will say about what rights you're giving or what you aren't doing. And if you can't live with that, then don't sign it. But you should also know that many of these hold harmless agreements are not made of stone. It's basically understood that any decent lawyer can eventually overcome this type of hold harmless for some of the reasons you even mentioned there. Because it's a contract of adhesion, which means you had no ability to negotiate it, it was all there, and you either signed it or didn't sign it. You didn't negotiate terms, and there's ways to go about breaking these things. It's just another hurdle because of how much this society litigates and sues at the drop of a hat. Ranges are trying to protect themselves from the onslaught of litigation that our society is so eager to bring, especially when it comes to even what might be attempts by those that don't like guns to take down ranges and such. So, you have to understand that they need to protect themselves, which is absolutely true. But you should not be abused in what you sign. So, read it and see if it's reasonable. That's the first thing to do. Is it reasonable? I don't know what the provisions of this particular release says until you actually read it.

Evan Nappen 32:51

Now, I will tell you that, yes, I've written a number of these for ranges, and I write them to be fair and to protect the range's interest, and to make it so that a court would not see this as a problem and something that could be stronger to be upheld. We write with a little trick that I like to do, a little added bonus, to help secure it, and that is the person certifies when they sign it that it's true. You're certifying that you agree and that it's true. The thing about certification in New Jersey is that certification has the same effect as if it was an affidavit, believe it or not. So, you can give releases more strength and ability to withstand legal challenge. But again, they're not unbreakable. The most important thing is for you to make a careful review, read it, and think about it. If you have questions, ask the person who's having you sign it, what it means, and get that clarified. That's really the best way to do it so that you don't feel that you're just making yourself incredibly vulnerable and instead, it's reasonable, and you understand they're just trying to stop from becoming a victim in an abuse of the legal system that you see take place in all different occasions throughout the system.

Evan Nappen 34:42

Really, we need what is called tort reform. We need it, but most lawyers don't think we need it. Of course, they don't, because this is where they're making their money. But it's always, oh, we make it safer for society, this and that. Yeah, right. Well, I'm not one of those guys. I'm not a personal injury attorney, and I believe in tort reform. What I do as an attorney is I fight the Government, and I fight for individual rights. Of course, the number one right that I fight for, I bet you can't guess what it is, is the Second Amendment, and that's where my law practice goes. But still, this is an interesting question. It's something that does come up, and I appreciate Maryalice that you sent that question in. This is Evan Nappen, reminding you that gun laws don't protect honest citizens from criminals. They protect criminals from honest citizens.

Speaker 3 35:48

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