

Brady music: [00:08](#) ***music plays***

Kelly: [00:08](#) Hey everybody. This is the legal disclaimer where we tell you the views, thoughts, and opinions shared on this podcast belong solely to us, the people talking, and not necessarily Brady or Brady's affiliates. Please note this podcast contains discussions of violence that some people may find disturbing. It's okay. We find it disturbing too.

Brady music: [00:43](#) ***music plays***

JJ: [00:43](#) Welcome back to Red, Blue and Brady, the podcast devoted to letting you know what's happened and what's happening in the world of gun violence prevention. Today I'm talking with Kelly and Chris. It's a very girl power episode. Two wonderful folks here at Brady. Kris, you should all know of course, she's Kris Brown, president of Brady and Kelly is Kelly Samson, counsel here at Brady. Kelly is also a podcast super fan. So it is great to have her in studio, but I'm a little nervous now cause she will know, she knows all the tricks of the trade. So, and today we're talking about toy guns. And specifically should you let your kid carry a toy gun on Halloween? And when we talk about toy guns, I want to be really clear that there are two types of guns. The obvious fake toy gun, like say like a neon green squirt gun and then the no powder guns like airsoft guns, BB guns, that on average tend to look more realistic. But the idea is in each case that they're toys, not weapons, they're fake guns, not real guns. The problem is, is that increasingly, these toy guns don't look fake, and that makes them super dangerous.

Kris: [01:51](#) Right, right. I think one of the things in thinking about this mini-episode and thinking about my own youth a long time ago, relatively, now is when I was little and growing up, I remember seeing water guns. I remember seeing and playing games with boys in the neighborhood and they would have their fake guns, which was their hands. Right. But fast forward to today, and I was just talking to you guys that, I was shopping for holiday gifts and saw guns and at first was really shocked that real guns were for sale next to the Halloween costumes. And actually as I really investigated it took some time for me to realize, oh, these aren't real guns these are toy guns for purposes of this discussion. Fake guns. But to the average person looking at those guns, they look very, very real and it was shocking to me frankly, because I hadn't seen some of the ones that are on the market as toy guns in a long time. It would be hard for people to understand, looking at them even pretty closely, that they're fake guns and that's pretty disturbing.

- JJ: [02:51](#) We actually have a link in the descriptor of this episode of a quiz that was posted by The Trace of pictures fake versus real guns and you click to sort of guess can you tell the difference between the two, and not one person in this office has gotten a perfect score? There's that line there of sort of I think the hyper-reality that it crosses.
- Kelly: [03:10](#) To add on to that point, when you're talking about the hyper-reality, we've seen there's a lot of research out there about police officers and what they are encountering on the streets, and we know so many guns and so many civilians are armed. Police officers will often say that in the case where they have to make a split second decision, a lot of times what's governing their reaction is whether or not the civilian is armed. And when you have these hyper-realistic guns that makes those decisions even more difficult. And then obviously you have situations like what happened to Tamir Rice, which there are variables into that, obviously the racial issue, but you can't ignore the presence of this very realistic looking gun. But I think that's another thing that just makes these weapons really dangerous, especially for children of color who are kind of encountering or walking around the street and you can't really distinguish what they have in their hand.
- JJ: [03:58](#) And who, studies have shown that law enforcement tends to perceive as actually already being older than they are, too. So you add in that not understanding of age, that not understanding of a toy or not. So it's definitely I think a privileged position to take if you think it's safe or not for your kid to play with one of these too, is that are, is someone on the street going to think that they have a firearm as well. On the police end between 2015 and 2018, so within a three year period, police shot 146 people who were brandishing non powder and toy firearms. And in response to that, there was a lot of lobbying that, you know, we've got to really make these toy guns distinct and different looking. And the gun lobby actually pushed back against legislation to regulate the appearance of non powder and toy guns, which is why we see in the U.S. That sometimes these toy guns have to have a little orange tip on them and sometimes don't.
- JJ: [04:45](#) There's a lot of loopholes as we found out, that exist. So one of the things that comes up a lot is then this sort of tricky claim, which is that toy guns are more regulated than real guns. And it's not so much that they're regulated more than real guns. It's that they're regulated. Toy guns are regulated in two very important ways that we would hope, or at least I would hope that real guns would be regulated. But in fact are not, so I think

I'll turn the first one over to Kelly, which is toy guns have federal consumer safety standards and firearms do not, which gets, I think into PLCCA a little bit. So if you want to break it down for what PLCCA is for the audience, I'm still trying to explain it to my like relatives and the best elevator pitch way I can.

- Kelly: [05:24](#) Absolutely. So PLCCA has the protection of lawful commerce in arms act, and it's a federal statute that was passed 2005, and what it does is it makes it a lot more difficult to hold gun manufacturers, gun dealers, and gun distributors to the same standards that's every other industry. So just to back up a little bit, there's what's known as the Tort system. You've probably heard about it in the context of opioids or tobacco or even the Ford Pinto, but basically it's a system. It's a civil way that, we as society take responsibility for harm that we've caused. So if you slip and fall on the sidewalk, if someone sells you, a product that's dangerous, you would use the tort system to do that. And basically what this statute was intended to do was to prevent baseless claims. So basically to prevent someone from suing gun dealer just because they sold a gun or to prevent someone from stealing a manufacturer just because they made a gun.
- Kelly: [06:15](#) What this isn't supposed to do is prevent anyone from bringing of real valuable lawsuit against someone for their negligence, their irresponsibility, or creating a faulty product. In actuality, what's been going on with PLACA is that the courts have construed this in all sorts of ways. So, as you know, in the country we have, every state has courts, and there's a federal court system and some courts have interpreted PLCCA appropriately, and they have allow people who have been harmed by a gun dealer or gun manufacturer's negligence to bring that claim forward. So what that looks like is a, we had one claim where an individual went to a gun store, told them he was a felon.
- JJ: [06:52](#) As you do, you know.
- New Speaker: [06:52](#) You just let them know.
- JJ: [06:54](#) I tell people all the time, Oh, felon, I'm a felon, I'm a Scorpio. And I like cheese. You know, just like to drop some little like Tinder tidbits in my daily life.
- Kelly: [07:02](#) Tell them who you are. So this guy, he told the gun dealer that he was a felon, which makes him, he's not qualified to buy a gun because of that, and the gun dealer, instead of saying, okay, have a nice day, uh,

JJ: [07:14](#) would you like a lovely watch?

Kelly: [07:16](#) Exactly. Something that you can legally purchase. He allowed the sale to go forward by allowing this person's grandmother to sign the papers on his behalf. And then that man ended up going home that very day. And shooting and killing his eight year old son. So in that case, that's the sort of claim where PLACA shouldn't bar. PLCCA a is not supposed to bar those. What it is supposed to do is bar cases where someone says, you know what, I don't like guns. So I'm just gonna Sue people for the mere act of making guns. And some courts have instead brought in that and said not to sue a gun manufacturer or a gun dealer basically for any reason.

JJ: [07:54](#) And considering that real guns don't have to follow the same legal consumer protection rules, that toys do. So toys, they're safer because the state makes them safer, because the state makes the product have to be safer under PLCCA going after a faulty or I guess, you know, quote unquote bad gun is very difficult. Where the process for going after like a bad toy gun or a dishonest retailer of toy guns is easy. Guns themselves, firearms are exempted from the consumer products safety commission that was signed in 1972.

Kelly: [08:24](#) Right. So like a consumer product safety commission could recall a water gun that was not appropriately operating but could not do the same thing with respect to a real gun. Most people are very, very surprised by that. Yeah, I think it's sort of shocking is that everyone thinks that it's, it's us. If you buy a thing and you're injured by it, then you sue. We were joking about sort of dangerous toys from our childhood and the easy bake oven was one of them. And one of the reasons why they don't let the easy bake oven and get made anymore with the light bulb and the little metal dish of death is enough of us burned our fingertips off as children. You know, we lost our fingerprints, our parents sued and got their money back and then, you know, and now easy bake oven changed how they make their products so that future generations could enjoy it without searing off their, your tips.

Kelly: [09:10](#) Right. Kind of on the back end. I mean, so you have the issue on the front end, with guns not being as heavily regulated and then on the back end with PLCCA it's harder to hold them responsible. So I mean if someone sells a toy gun and some, a criminal even takes it and shoots someone with a blank and that person says, you know what, this gun, you blend a criminal habit and I'm going to sue you because I'm injured because of it. That would almost be easier to then if it was a real gun, not

impossible. PLCCA is not making it impossible, but it makes it significantly more difficult.

- Kris: [09:39](#) And I think the notable part, at least for the real gun, is the number of exceptions that have been made on behalf of the gun industry that stopped the system that we have in the United States of laws and the tort system from working with respect to this product, as it does to every other product in the country. That's why we call a lot of these carve-outs, and I know we're going to talk about gun violence research as well as, I call them the parade of horrors because there are so many of them, and even with really, really smart people who know a lot about these, they're always surprised at the number of gun industry backroom deals that have been put into effect that really hurt consumers and hurt the American public. The reality is that system is what spurs industry in this country to make changes to their products, to make them more safe. Yeah. So we've basically exempted the gun industry from any incentive to do that.
- JJ: [10:34](#) Yeah. There's a reason why they're not making their own version now with the easy bake oven or the 8,000 other terrible things that we played with. Why did all of the toys, by the way, really quickly in the late eighties early nineties involve melting things? Everything was about melting some sort of thing or some sort of melting plastic. Notably they don't make them anymore or they modified them to be safe.
- Kelly: [10:57](#) Melting things is fun.
- New Speaker: [10:57](#) I mean it is a lot of fun. But as we found out, not safe. Yeah.
- Kris: [11:02](#) But as the mother of two daughters, I will say that the easy bake oven still makes really good cook cookies. So design changes can still render a very good consumer products.
- JJ: [11:13](#) We've turned into a like a Mattel commercial, this is good. Donate money, Mattel. And then on, on the other thing, the secondary one in which they differ, toy guns and real guns differ a lot. That is that toy guns are really well researched and firearms are, are not. And what I mean by that is we do have federal funding for research tied to things like toys. We don't have federal funding to study gun violence injuries.
- Kris: [11:38](#) It's legally codified effectively because someone named Jay Dickey, who was a Congressman about 20 years ago, put a rider to an appropriations bill that was going to provide historic levels

of funding to the CDC. He zeroed out that funding. So we don't say that the CDC is legally prohibited from doing gun violence research because technically they're not. It's just that Congress per 20 years has not appropriated any money. And the agency, what we hear back is concerned about putting money from his general budget because of what Congress did 20 years ago, which is to zero out its funding. That's why it's so important that the House of Representatives historically funded \$50 million for CDC research and we really want that as a top priority. Everyone should support research into this issue. We have a public health epidemic, whether you're a gun owner, a non gun owner, you might even say specifically if you're a gun owner, we should want research into this issue.

- JJ: [12:38](#) Yeah. And you should want better products that will then come from this research.
- Kris: [12:41](#) Correct.
- JJ: [12:42](#) Or, Hey, maybe you just want to prove, maybe you don't like us. Yeah, you don't like Brady. You want to prove is terribly wrong. Having statistics from the CDC might be the way to do it.
- Kris: [12:51](#) May well be.
- JJ: [12:52](#) You know, prove to me there's not a problem and I will stop yelling at you through this podcast, but I want, you know, it can't come from like you and your mom. It's gotta be real proof.
- Kris: [13:00](#) Yes.
- JJ: [13:01](#) It's just, it's, it's inconceivable to me almost that we spend more government money on research and toy safety than we do in gun safety.
- Kris: [13:08](#) We know specifically because CDC collects the information. How many children are injured by toy guns each year. And we don't have those same statistics about the number of children injured with real guns. Why elections matter.
- JJ: [13:21](#) Yes, speaking of scary things, but let's circle back to the dangers of maybe kids with, with toy guns, because the day that this goes live will be Halloween, and so kids get dressed up, they go trick or treating. People are also starting, their like Christmas shopping. My mom probably has had hers done for months. Like this is generally I think when most people get on. Yeah. And

so should our listeners, should they let kids get a toy gun? That's sort of, I think that the question for the masses.

Kris: [13:49](#) Well to wade into that. Yeah. Minefield, minefield. I mean I think those are very individual questions as a mom, that was never something that my girls wanted desired. I do have a lot of friends and several of them really chose affirmatively not to have any kind of guns or object that could be construed as a gun in the home and their child really demanded to play with something, an object that was like a gun and so there were a lot of creative processes made, and it turns out a lot of different things can seem like a gun. Yeah. And I think you've done a lot of research and discussions on this JJ, but part of that is just the natural course of maturity and exploration that children have, and wanting to have something that feels powerful, and good guys versus bad guys. And that's part of the process of being a child. I think the real question is how realistic necessarily you as the adult are going to have that toy gun be in the house. And probably we have some advice around that.

JJ: [14:48](#) Interestingly, like sort of the consensus out was that it's perfectly fine for kids to play with toy guns. That playing with toy guns or playing with toy weaponry. I, you know, didn't grow up with toy guns. In my house, but I wanted a sword.

Kelly: [15:00](#) Me too!

JJ: [15:00](#) I was down with a sword, and had a very long knife that I liked to run around with. Not a real one. Like it's made of foam, but you know what I mean like weaponry. People are, people are into, and that it's most professionals agree that it's a way for, for kids to work out power dynamics for them to feel like they've got agency over their lives, for them to figure out actually more reality and sort of their own little plays. That's great. But the consensus also is is that there's four general rules parents should be following, which the first two seem really simple like teach your kids you don't point them at other people and you don't point them at you know, animals and that you don't hurt each other. Which I think was sort of the rules, the playground rules that my mom had established, which is you know, if someone cries, game is over, you have to go home like you're done. Right. No more.

Kris: [15:42](#) You're only as strong as your weakest link.

JJ: [15:44](#) Exactly. Yes. The minute Michelle's crying, game time is done. It's done.

JJ:

[15:51](#)

Then on the more sort of serious end of things, which is that to make sure that kids know the rules about real guns, which I think a lot of that, what we've Brady tried to do with end family fire is letting kids know about real guns doesn't necessarily mean trying to teach your three year old firearm safety. It means being a responsible gun owner in terms of keeping your guns locked, keeping your ammunition separate, letting, teaching them that guns the guns that dad keeps in a safe or not a toy, right? The way that your squirt gun is. But then there's the fourth one which is that guns should not be realistic looking. Right. And the fact that the industry is allowing that to be so permissive is scary. That's the scary thing to me. Yet we have seen gun companies, again and again have these licensing deals with toy manufacturers that allow their guns to be copied. The Trace identified 33 gun manufacturers that allow airsoft companies to use their brands and likenesses to produce exact replicas targeted at children and teens.

Kris:

[16:47](#)

That's really disturbing. And ultimately, I guess the part of it is, I have two minds of this. One is part of being a child and the beauty and glory of it is use of your imagination, right? Children are endlessly imaginative. So being able to find ways to use the cereal box as a potential weapon. I just remember very various implements and being very afraid of them because they were wielded with someone who really believed. Yes. And so it seems like that's part of the exploration that we as parents should want our children to have. You wouldn't also want a situation, I have two girls who are babysitting. Babysitters extraordinaire because they love having their own cash and when they go into people's homes, they obviously make sure that they understand anything about guns and weaponry. It would be very scary for them to encounter a child with what is in essence something that they could think was a real gun that would be absolutely terrifying to them. So I can't imagine for my own children encountering that with other children, especially if they're in a position where they're attempting to care for the child.

Kelly:

[17:55](#)

You know, I have to raise again kind of the intersectionality race and childhood and how, I mean this applies for adults too, but you see NRA pushing these weapons, pushing toy guns. And then when there's adults like Philando Castille who have real guns, or a child like Tamir Rice and the way that they're carrying kind of looks to society, it's threatening to people and people lose our lives. And there's silence on that. There's no acknowledgement of the ways that guns look different in a black person's hand in general. And so I think for me personally, you know, with my niece or other children, I know, I would be terrified to have them with a realistic looking gun because I

know that, you know, their childhood is in question, and so people might not see that gun as a toy. So it would give me chills to think about, um, you know, like a little black boy with a gun that was realistic, honest, having an innocent time. But knowing that society isn't thinking that way. So I think that that's a really kind of dangerous thing to be pushing, realistic looking guns without also recognize how that plays and I, it doesn't seem like they're doing.

JJ: [19:00](#) And what shocked me with this one was that toy with with toy guns, there was a push in certain states to try to regulate them even more. Kris, we had talked about this earlier, you know, making sure that they were very clearly fake or making sure that there was an age limit on airsoft guns, which are more likely to look realistic. Right? Right. If you're buying already, sometimes these are to be quite expensive, you know, \$300 plus airsoft gun. Maybe you want it to look a little fancier, more like the real thing. Whereas you know, if you're buying a \$5 water pistol, at Walmart not as big of a concern what it looks like. So in Michigan, for example, state legislators with the support of the NRA, they passed a law in 2015 that made it easier to purchase airsoft guns by changing statutes that treated those airsoft guns the same as firearms.

JJ: [19:45](#) So now airsoft guns are distinctly something else, and they reversed a previous law banning individuals from under 18 from carrying an air gun.

Kris: [19:52](#) without an adult present. So now you can be a kid with a very realistic looking airsoft gun walking around through the streets. That makes no sense to me. Unless you were trying to use toy guns as the gateway for real gun sales and get people hooked at an early age because your market for gun sales is shrinking and then it makes some sense.

JJ: [20:12](#) Yes. You know, it really reminds me of candy. Cigarettes and e-cigarettes used to be a really popular thing and now you can't find them anywhere because candy cigarettes were shown to be tied to future smoking behavior and then consumer boycotts and backlash because how dare you try to hook us as children to do this thing that's dangerous for us led them, to being taken off the shelves. That hasn't happened with toy guns in particular. Again, don't write me angry emails. The toy guns that look super-like real guns probably because we don't have any studies that show that they're linked to anything because we don't know cause we don't have CDC research.

Kris: [20:43](#) Right.

New Speaker: [20:43](#) No way to know if this is harmful or not.

Kris: [20:46](#) Right.

Kelly: [20:47](#) and you mean like harmful in terms of getting people to then later on get a real gun?

JJ: [20:51](#) That they then use it properly, because there's lots of people who generationally are really involved with firearms and that are responsible gun owners from day one because there's been this culture of responsible gun ownership, but I worry that if you get really comfortable with something when you're really young and think of it as a toy, are you then going to treat it like a toy as an adult?

Kris: [21:13](#) I think it's a really good point because we know from the End Family Fire campaign that the single most important way to end family fire, to stop the unintentional injury and death of children with guns from their own home, is safe storage. So that whole notion of the toy gun is that it could be lying around in your room, you can pick it up, you can play with it, it could be by your bedside. And of course that's antithetical entirely, to the notion of safe storage and what it is to be a responsible gun owner. That's not something that is a big market, so far as I've seen for the toy gun, there aren't safe storage devices for toy guns.

JJ: [21:50](#) No, that is not a teeny Fisher price biometric safe, you know, with like a little hello kitty. And so it's, it just, it seems so transparent to me because we know that like since 1990 that household gun ownership is in decline. People are buying less guns because, and then the chief demographic of people who are buying guns are older white Americans, which is also shrinking. That's a smaller demographic every year. And so if gun companies need someone to fill that gap, it makes sense to me, then go after the youth, get them to associate these happy, warm, fuzzy feelings with something that looks like an AR 15.

Kris: [22:25](#) I don't think that introducing children to these kinds of toy guns without also a discussion about what it means to be a responsible person with a gun later on. That strikes me as potentially, you're right, very dangerous because you can't associate what you do with the toy gun with what you would do with a real gun.

JJ: [22:43](#) But I think that Kelly, to go back to what you've mentioned, it's that it's not enough though, I think anymore to think about how

your kid is going to treat the toy gun. You have to think about how the world is going to treat your kid with a toy gun when, when they go out with it.

Kris: [22:57](#) And that is bringing up all kinds of issues from what Kelly is saying about the extra policing, the extra scrutiny that black children in this country face from law enforcement and others. They're at higher risk. That's just the reality of it.

JJ: [23:12](#) So I'm going to ask you to take fake hypothetical children now. So we all have fake hypothetical children and what will we do if that fake hypothetical child wanted to take a toy gun out, trick or treating, would you say yes or no?

Kris: [23:23](#) Well, I guess I'll wade into it for my, my fake hypothetical child, ah, no to the fake AR 15, and even the cowboy gun. I mean there are a lot of different things that, as we've talked about earlier, would be interesting. Representational objects, you know,

JJ: [23:40](#) That's like oversized. And so very clearly cartoony.

JJ: [23:44](#) I think for mine I would be okay with toy gun so long, again, in that sort of the same byte, very clear and some sort of cartoonish fashion that is not a real gun. And only, I have to say, if I were with them, like if I were taking them around trick or treating and it was a trick or treat event, I'd be cool with it. But I think if it were like my teen was going to like a party at the mall, I don't know my, when I was a teenager we went to parties at the skating rink. Okay, good. It was a really good time. Pancakes, skate world! You know. But so like if I were sending like my teenager, I would probably say no. Like just to be on the safe side lightsaber we'll be fine. Yeah. So how about you, Kelly? Hypothetical, non-existent child.

Kelly: [24:23](#) Um, I'm going to say, I'm sorry my dear, but no, no. Um, for kind of the same reasons that you all listed, just the dangerousness. Again, I'm black. So any kid I have would be some shade of brown and it's just not worth the risk to me. And then also I think, you know, we talked about some of the rules about how kids should play with guns and one of them is not pointing or shooting at people. And I just feel like if you have it, you're going to do that. Yeah. Um, and so my hypothetical nonexistent child, again, it's dark outside on Halloween, no, I just wouldn't let that happen. I mean to give you like an idea of how I think about these things. So I'm a runner, an injured one right now, but a lot of times I'll be running in the dark and I have mittens for the winter and I run, I get cold at first and I taught and I see

the mittens off and I stick them in a waistband and my running tights. And then cause it, you go back and forth your hot. So when I feel cold again, I take them out and put them on my hand. And if I'm running by the Capitol or anywhere where there's police I, I will freeze rather than pull the mittens out because I'm putting myself in their shoes and they can't see, it's dark, like five o'clock in the morning. All they see is someone pulling something from their waistband, and then that quick moment, a mitten can look like a gun. An actual fake gun.

JJ: [25:40](#) Not, yep. I see. I see where you're coming from. World's awful. Sometimes it's awesome in some ways like, we're working on it. We're going to make it better. Well Kelly, Kris, thank you guys both so much for coming in. This has been great. I don't know if we really accomplished a definitive yes or no for any parents out there, but parenting is situational, you know. So with that helpful or unhelpful note, I guess we can definitively say no realistic toy guns. Right. So on that spooky note, bye everyone and happy Halloween.

Kelly: [26:10](#) Yes. Happy Halloween.

Brady music: [26:12](#) ***music plays***

Kelly: [26:14](#) Thanks for listening. As always, Brady's lifesaving work in Congress, the courts and communities across the country is made possible, thanks to you. For more information on Brady or how to get involved in the fight against gun violence, please like and subscribe to the podcast, new full length episodes from every Monday, weekly wrap up strap on Fridays and mini-sode come whenever we can fit them in. You can also get in touch with us@bradyunited.org or on social at Brady buzz. Be brave and remember, take action, not sides.

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