

Episode 175-- Gun Dealers Can Be Held Accountable Brady Lega...

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SPEAKERS

Jon Lowy, JJ Janflone, Kelly Sampson



JJ Janflone 00:08

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JJ Janflone 00:22

Hey, everybody, welcome back to another episode of Red, Blue, and Brady. I'm JJ, one of your hosts. And while normally my co-host Kelly is with me, today, I'm flying solo. I'm super excited, though, because I am joined by Brady's chief legal counsel and vice president of legal Jonathan Lowy, who we all at Brady very affectionately call Lowy. Together, we're discussing the 2002 DC sniper attacks, the legal case that followed, and what Brady's win in that case meant for gun violence prevention in 2003 and beyond.



JJ Janflone 01:11

Welcome back, Lowy, for folks who haven't listened to the episodes that you've been featured in before; which stop, go back to that right now. You can start with episode 174. Then come back. But for folks who don't know you, can you introduce yourself to everyone?



Jon Lowy 01:23

Sure. I'm John Lowy, I'm Chief Counsel and vice president of legal at Brady



...



JJ Janflone 01:28

And Lowy, you are once again an award winner, can you can I make you brag about yourself?



Jon Lowy 01:33

Sure. I'm not comfortable doing it, but



JJ Janflone 01:37

I'm gonna make you do it anyway.



Jon Lowy 01:39

But uh, lawdragon is a legal periodical that every year names, the 500 leading lawyers in the country, and including people like Clarence Thomas and Chief Justice John Roberts and the NRA's lawyer, Paul Clement and others and and it's been my privilege to be on that list for the past 11 years.



JJ Janflone 02:07

Well, and you've had not just an award winning, you've had a long legal career. And I'm wondering if you could tell our listeners a little bit about what brought you to Brady and what has kept you here?



Jon Lowy 02:17


So Well, I think that was a nice way of saying that I'm old. But the, I was in, after law school. I was in private practice for about 10 years, and was always interested in doing public interest work. I always, that was my goal in law school. And it remained. Then, after about 10 years in private practice, I was doing plaintiffs civil rights and injury litigation. And this opportunity came up, there was an opening at Brady. And when I interviewed Danny Hannigan, who started the Brady legal operation, said to me that this was the best job in the law, you're taking on the most dangerous and most powerful, special interest in America. And that was very tempting. And I've, I agree with what he said, it's a great challenge. And it's very satisfying, very fulfilling. And so that's what's kept me and also the clients and the people at Brady. You, Kelly, and Kris Brown and the team in Brady Legal. I mean, everyone is it's just a great team.



JJ Janflone 03:26

Well, and we're very, very lucky to have you, which I think sort of brings you to the whole the whole point of today's episode, which is, you know, we're here to talk about what I guess commonly now gets referred to as the DC sniper case. And we're going to talk about the role

that Brady played in the aftermath of that. But for our listeners who may not be aware, can you explain a little bit what happened in October of 2002? And this is something that happened in DC, Maryland and Virginia as well.

 Jon Lowy 03:56

Sure. And I will say, you know, in the 25 years of representing victims of gun violence, represent people all around the country, you know, usually, or I'd say always cases where I don't know the people until after it happens. After the shooting, and it's usually in Alaska or Kansas or Missouri or Arkansas. The sniper case, Johnson v. Bushmaster is very different. It's something that I experienced, it's very close to home. I live in the DC metropolitan area. I live in suburban Maryland, and in a few weeks in October of 2002. There was there were gunmen, we didn't know whether it was one person or a bunch who were terrorizing this area and basically just randomly shooting people. And one day October 3, they were I think, five different shootings. Just people going about their business. Sonny Buchanan was mowing the lawn at a car dealership and was shot dead. There was a taxicab driver shot dead. All sorts of other people. I was living here with my wife and kids. My kids were little, I remember bringing them to get a sandwich, get ice cream, and I would literally get them in front of me. So my back was to the road because one thing we knew about the snipers is they were shooting from a car. So you would not want to be in the line of fire where somebody could be driving on the road. So if I was getting out of the car, I would make sure that my kids were in front of me and I was between the road and them. So if the sniper was there, they would shoot me and not my kids.

 JJ Janflone 05:57

Yet, DC, Virginia, Maryland natives. I feel like a lot of folks around here have have stories about this, because people were really, really frightened and had a really big impact on how people were living their their day to day lives.

 Jon Lowy 06:09

My kids came home from school one day, and I said, "how's school?" and they said we couldn't play outside. Because the teacher said there was a gunman. Now, then, obviously, they got a lot of complaints. They were in like kindergarten at the time. And so the next day, they came back and said, the teacher said the gunman has been caught. So that's not a problem. But we still can't play outside because the playground equipment is broken. Well, the playground equipment wasn't broken and the gunman had not been caught. It was just not the sort of thing you tell kindergarteners, which of course made it even more just so depressed course that they we all have to live with this fiction.

 JJ Janflone 06:59

Well, and so then what happens once the the gunmen are caught.

 Jon Lowy 07:05

 Jon Lowy 07:02

So it happened October 24 2002, and what was found out that there were two shooters. One was a adult man who was under domestic violence restraining order and another was a 17 year old. And they were working together in this this campaign of terror



JJ Janflone 07:27

And for our listeners, the fact that a restraining order was present and that one of the shooters was under age, you know, that's really significant, because that means that neither shooter should have been able to gain access to a firearm, right?



Jon Lowy 07:39

That's exactly right. Neither of them could buy a gun legally, which gets to, how did they get the gun that they did use?



JJ Janflone 07:47

How though did they manage to get access here?



Jon Lowy 07:51

Well, we never found out exactly, but I can tell you what we do know. That is that the gun, which was a Bushmaster, semi-automatic assault rifle, was obtained from a gun dealer outside of Seattle called Bullseye, and Bullseye had a lot of guns that it had sold that were traced to crime. I mean, it was in the top 1% of gun dealers in the country as far as selling crime guns. Bullseye also had over 230, quote, unquote, missing guns, that is guns that were in their inventory, and then somehow left without any record of sale. And those sorts of quote, missing guns, and we've run into them in a number of cases of ours, are very suspicious. You know, jewelry stores don't have 230 Missing diamond rings. It's fairly easy to to prevent that sort of theft. And most gun dealers have absolutely no guns that are missing from their inventory. So we have that many guns missing from your inventory, the most likely explanation is that the dealers selling guns off the books, doing them illegally and not putting any record of sale. We don't know if that's what happened in this case, but it's very suspicious. And the 17 year old said that he stole the gun. And we don't know if that's true or not. It seems rather bizarre that 17 year old could walk into a store, take a four foot long assault rifle, and stroll out the door with it and nobody says anything and nobody knows it. That's hard to believe.



Jon Lowy 09:43

But our view was, if it is true, that is totally reckless that you have a gun store where that can happen. And if it's not true, it means that they sold off the books. Either way, that's irresponsible and the gun dealer should be responsible for that, and also, we felt that Bushmaster should be responsible. Particularly if you're selling an assault rifle, but actually, if you're selling any gun, you should be careful about who's selling it at retail. And, you know,

Bushmaster easily could have known that this was a top crime gun seller that this was a dealer with all of these quote unquote, missing guns and not supply them. Or if you do supply them, make sure that they have safe business practices. So for those reasons, we argued that Bushmaster was responsible for these shootings as well.



JJ Janflone 10:42

And so how reasonable is it for you know, someone like a manufacturer to know that the the store that they're selling inventory to is, you know, in good standing, or has been linked to crime guns and things like that? Is this a relatively easy thing for them to find out?



Jon Lowy 10:57

Well, they easily could know. And that's the most important thing, you know, I mean, they, they could ask, I mean, it's a lot easier for them to find out that is for us to find out, that's for sure. I mean, they can just say, you want to sell our our guns, well we're not going to provide them to you unless you tell us how many guns are missing. Give us your ATF audit reports, your inspection reports, which have all the violations of law, which which actually, that's how we know there are these many missing guns is from the ATF inspection reports. And a responsible gun dealer should get that information they should see, ask for how many crime guns you're selling. That's something they actually could check. They have access to trace data they could get that themselves in, but manufacturers don't get that information because they don't care. And they want to be willfully blind. They want to, you know, act like this isn't happening. And they want to have plausible deniability by not hearing the truth, because they profit from guns going to criminal market, and they want to keep profiting from it. And so it's in their interest to supply dealers who aren't criminals.



JJ Janflone 12:11

Well, and have you seen it before, where industry members will say no to selling to a particular dealer or a business that has has unsafe practices?



Jon Lowy 12:20


I mean, for manufacturers, it's either almost never or probably never, that I've seen manufacturer cut off supplies to a dealer, and their general view is, as long as they have this dealer has a license, from ATF, I guess, sell them all the guns they want. I mean, we have cases where, there were videotaped sting operations, which gave manufacturers video evidence of a dealer engaged in a blatantly illegal straw sale. And manufacturers still supply the dealer. Still, they don't require any reasonable practices. They just basically say it's ATF's responsibility. Unless they yank their license, I'm still supplying them.



JJ Janflone 13:11

Well, that makes me wonder, you know, if if this dealer has a known history of crime guns, if they have this history of guns service falling off into the other, you know, how was it that they


they have this history of gun service falling off into the ether, you know, how was it that they were still in business, even prior to 2002?

 Jon Lowy 13:23

I mean, that's another big part of the problem that, you know, ATF had not revoked their license. They did. Eventually, after we brought this lawsuit, which is one thing, we've seen a number of cases over the years where ATF has had inspections with dealers, found a lot of violations of law, in some cases, has found a lot of, you know, quote, unquote, missing guns, and yet has not revoked their license. Then we bring a lawsuit. It gets out in public, that ATF I think gets embarrassed, and then they yank their license. And that's what happened here. So Bullseye did eventually lose the license, but it was out until the sniper shootings and our lawsuit.

 JJ Janflone 14:10


Yeah, as somebody who worked retail for a long time, and who, you know, for many of our listeners, I'm sure that that is the case as well, if over 200 pieces of product just sort of disappear off the floor, like generally that is a big problem and people notice, so it's, it's absolutely wild to me, that weapons can and it seemed to not go reported.

 Jon Lowy 14:29

Yes, exactly. And, you know, it's just any dealer who... you're going to know if that many guns are missing, or even a fraction of those guns you're missing, you're probably gonna know if one gun is missing as a matter of fact, but certainly 5, 10. You know, hundreds and so, you know, it's very easy to lock up your guns, to only show you know, guns to people when you're attending to them and a clerk's attending to them, you know, the sort of thing that a jewelry store does. And you know, most gun dealers do that. And ATF has recommended that for decades. So when you're not doing that, and you're having a lot of missing guns, something is up.

 JJ Janflone 15:18

it's just it's horrifying to think of, you know, where all those other guns might have ended up or still could be, or all the other crimes that might have been committed with those guns, too.

 Jon Lowy 15:27

And there's a regulation that requires dealers to report lost or stolen guns within, I believe it's 48 hours of when they know that it's missing. So, you know, that's their excuse. That is like, again, it's in their interest to not know if they want to maintain deniability and say we didn't violate the law because, no, these 200 guns were missing until ATF inspected us, which is how those numbers came to lie.



JJ Janflone 16:03

So Brady, in conjunction with an outside firm, and some of the surviving family members and victims, filed a suit against the shooters, the Bullseye store and Bushmaster itself. And I'm wondering if you could share a little bit of the details of the case, you know, what were some of the changes that everyone was asking for? And why was this important in sort of gun violence prevention circles, especially to to see it through to the end?



Jon Lowy 16:29

Sure. And I should say, we brought this case, along with the Paul Luvera law firm, and in Seattle, Paul Luvera is a legendary trial lawyer. And almost all of our cases, we co-counsel with private attorneys, and they definitely deserve great credit. But it a number of the victims of these shootings reached out to us and we represented them and brought a lawsuit against the gun dealer Bull's Eye and the manufacturer Bushmaster. And the theory was that they were both negligent. They acted unreasonably in different ways. One, you know, the gun dealer allowed or enabled a 17 year old to walk out of their store with a gun, which they couldn't legally have. Either that was done through an illicit sale or through looking the other way, well, he walked out the door. Regardless, it was unreasonable. And then Bushmaster chose to supply to use this Bullseye as a as its retailer, even though it either knew or easily could have known that this was a top seller of crime guns and engaged in irresponsible practices such as having these, you know, hundreds of guns walk out the door.



JJ Janflone 17:56

Well, and as you said, this was really uncommon. Right? You know, in 2003, it wasn't the norm to be bringing cases, especially against a manufacturer. And I'm wondering if you can talk about what the outcome of that was?



Jon Lowy 18:13


Well, I think legal action is an important part of public health and safety. In all sorts of ways. I mean, not just just guns. I mean, Ralph Nader, in the 60s, you know, took on the auto industry. And that sort of led to regulation of the auto industry into requirement of more safety features, you know, tobacco litigation, now we're seeing opioid litigation. I mean, it often is that it's victims, standing up and taking on these powerful industries in court that really changes things when legislatures or regulators are often somewhat captive or afraid to take on these powerful interests. And that's certainly the case with guns and certainly something I've seen over the time. I've been doing this at Brady through decades, where Congress does very little or what it does do is harmful. Protecting the gun industry, litigation like this, can hold them accountable and put a price on misconduct and on dangerous conduct, which is going to change behavior. In some cases force, some reforms of gun companies.




JJ Janflone 19:36

On that note, can you tell us a little bit about what was the process of the case like and you

know, ultimately, its its outcome?

 Jon Lowy 19:45

Sure. It's a lot of work and a lot of time, in this case actually was quicker than most other cases, I think. And you know, this is case as an example of how these cases can be very difficult. When we brought this case, there was one appellate decision, which is finding authority in Washington state, where a gun dealer had been sued for a shooting and court appeals had held gun dealers not responsible, under Washington law. So there are a lot of lawyers who said, "You can't bring this case in Washington state," that's where you got to bring it because that's where the dealers located. And, you know, we had an argument to distinguish that case.


 Jon Lowy 20:35

And we won, there was motion to dismiss. And the court held that our case was different than this other case. And the court held that not only was Bullseye, the gun dealer, potentially liable, but that Bushmaster could be liable for what's called negligent entrustment. That is, what if you are entrusting your product to somebody else, you shouldn't do that to someone where there's an unreasonable risk that they're going to use it to harm someone. And the usual case is where like you entrust your car keys to somebody who's drunk, and then they crash it, that's a classic, that entrustment case, you shouldn't do that. And therefore you can be liable. This was very different. Because here, we're saying, you know, a manufacturer was negligent from trusting its guns to a legally licensed gun dealer, who then entrusted its guns or enabled to somebody else to get it's gun, who then shot someone. So there are several steps removed. But the court agreed with us that those principles could still be applied. And it was the first case of its time where a court held that a manufacturer could be liable under that theory of negligent trust.



JJ Janflone 22:02

Well, and Lowy, you've mentioned that this case had a big impact on other legal cases. But do you see it continuing, you know, even today to have an impact on court cases or suits that go up against the gun industry more broadly?

 Jon Lowy 22:13

Yeah, I mean, that the decision that the manufacturer could be liable for supplying a dealer who then supplied a shooter who then injured or killed people, you know, that had not been done before, and certainly not been successful before. And then, you know, to get ahead of ourselves, we, after that decision, we fairly promptly got a settlement against the dealer and the manufacturer. And that was the first time that a gun manufacturer had ever paid money for the a crime to victims of a crime using one of its guns in an incident, like that's a criminal shooting. And so you hear about the great settlement in the Sandy Hook case. Well, this was, you know, 20 some years before that, and it was the the first settlement like that,



JJ Janflone 23:08




And what was it like, Lowy, when you find out, you all won this case?

 Jon Lowy 23:14

And first, let me tell you that, that, you know, this was some time ago, when we settled the case. I still remember very distinctly some of the most memorable days of my, my 25 years at Brady because I, I, we had mediation, which is how cases often get resolved. And we had it in Seattle, and I watched the sunrise as I drove to BWI Airport, outside of Baltimore to fly to Seattle, and spent the day in mediation room with defense lawyers for Bushmaster and Bullseye and the mediator. And we obtained this very good settlement, this landmark settlement. And then I watched the sun set over the Pacific in Seattle, while I waited for my red eye flight home. So in the middle, there was the negotiations that led to this the settlement so and the settlement was that that Bullseye, we got a little over two and a half million dollars for the victims who we represented and that is we're at substantial but clearly, you know a pittance compared to their their injuries but it was given the insurance that was available. That was about the best that that we could do. And plus we got some reforms were Bushmaster agreed to some additional monitoring and conditions in its distribution of guns. which also is the first of its kind to have the manufacturer agree to any sort of involvement like that, in its distribution system, where it wouldn't just simply supply any kind of dealer. Again, not nearly enough. But, you know, but a step in the right direction.

 JJ Janflone 25:22

And then in your professional opinion, what are your thoughts on where cases are going to go in the future? You know, what do you think that representing victims and survivors, what's it going to be like, say this year, but also in, you know, 2025, or even beyond? Where do you see the courts going?

 Jon Lowy 25:39

Well, I think in a positive direction, you know, I think that what happened before PLCAA was enacted, we had Brady had a number of victories against dealers and manufacturers, number of million and multi million dollar settlements and decisions,. Then, right after PLCAA, it became a lot more difficult to initially dismiss a lot of cases. But then we got a lot of those cases reversed on appeal. I spent a lot of time arguing in appellate courts and State Supreme Courts. And that took a few years, but we got decisions saying "Not so fast." PLCAA has these exceptions. It's not as broad as as some courts initially held. And now there's more and more of that, and plus, you've got this decision, pockets unconstitutional. I think you're going to see more of that. And we've seen that and we've also seen, even just in recent weeks, there was a case against the federal government on behalf of victims of the Sutherland springs church shooting in Texas, where a judge held that the government was liable for I think, was \$230 million for failing to put records into background check system. That was important, even though it was not against the gun industry.

 Jon Lowy 27:10

One, it shows that these cases have value and this was a substantial dollar amount on for victims. It accepted the premise that we make in our cases, which is that there are causes to gun violence beyond simply the shooter. And those causes can be a dealer or manufacturer. In some cases, the government and judges are getting more and more comfortable recognizing that they didn't at first, when it first they were like, you know, someone shot someone else, what there's no other cause to the shooting. And now it's much more accepted, as it should be, because it's the law holds other entities responsible, they contribute to a shooting. So I just think that the trend is very positive, even with PLCAA. I also think there's going to be more decisions holding PLCAA unconstitutional, I wouldn't be surprised at all to see it struck down by the Supreme Court or by a number of appellate courts. And that's going to cause even greater reform of the industry. Because the fact is, if it's no longer profitable to supply the criminal market, if now there's five to \$10 million, that they've got to pay for a victim of their irresponsible sales or for a gun crime that they contributed to, you're going to see gun companies change their behavior because even if all they care about is money, it's no longer profitable to simply supply criminals.



JJ Janflone 28:57

And just take a step back really quickly. Can you break down for folks who may not be familiar with that term? What PLCAA is?



Jon Lowy 29:03

Sure PLCAA, it stands for the Protection of Lawful Commerce and Arms Act PLCAA it's a federal law that was pushed by the NRA and the gun lobby and enacted by Congress in 2005. And it gives the gun industry special protection from civil liability for cases, lawsuits that no other industry or people in America has. You know, that said there are exceptions to PLCAA. And we brought many many cases and continue to that get around PLCAA that are that get within the exceptions of PLCAA. We've one case that held the PLCAA was unconstitutional. I think there will be many more cases that hold the PLCAA as unconstitutional, but it is a special protection, which makes it harder to bring cases like the case, we brought on behalf the DC, Sniper victims.



Jon Lowy 29:14

Well, and I think this is an excellent note to end on, Lowy, if is there anything that you would want to say? If there are folks listening to this who want to become lawyers or who are lawyers and who are thinking, you know, this is the kind of field that I want to be in this is I want to be like, Jon Lowy, I want to be like this. Any advice or thoughts for them?



Jon Lowy 30:23

Well, I mean, for one, I mean, this sounds really cliché, but I believe that, you know, it's important to do something of significance in your life, and to try to help other people. And the fact is, you know, I could have made, I don't like to think about it, how much more money I could have made in private practice. If I was a private attorney, I mean, I, you know, I brought a

case in 230 million, you get a third of the, or 40% of 230 million, I don't even want to do that math, because it will be momentarily rather depressing. That said, you know, I'm not, never depressed about that, I would never, I wouldn't trade, you know, my career path for a minute with anyone else. Because all we do is, is help people and take risks. And sometimes it's cases that are, you're going to lose, because they're risky stuff, but sometimes you're going to win them. And ultimately, even when you lose the case, you can create reform and, you know, create a model for cases that will win after you. And you know, at the end of the day, that's, that's what it's all about. And, you know, you're not going to look back in your career and say, you know, look how big my bank account got, probably probably going to care much more about things that were meaningful. So you know, really think long and hard about how you choose to spend your limited time on this earth and, and the talents that you have. And do you want to do it, making the world a better place and protecting life and safety of others? Or do you want to do it, buying a bigger house or perception.



JJ Janflone 32:18

So I truly can't top Lowy's life advice, and I'm not even going to try. What I am going to do, however, is list all the publicly known victims and survivors of the DC sniper attacks, as Lowy and others on this podcast have said many times, we just lose far too many people to gun violence every year in the US, it's time for a change. Now, there were nine known victims who were shot but survived. Those are



JJ Janflone 32:43

John Gaeta, 52. Paul LaRuffa, 55. Rupinder "Benny" Oberoi, 22. Muhammand Rashid, 32. Caroline Seawell, 43. Iran Brown, 13. Jeffrey Hopper, 37. Kellie Adams, 24 and Wright Williams Jr. 55. An additional 17 people were killed. We have the names of 16 of those victims. Their names are Keenya Nicole Cook, 21. James D. Martin, 55. James L. Sonny Buchanan, 39. Prem Kumar Walekar, 54. Sarah Ramos, 34. Lori Ann Lewis-Rivera, 25. Pascal Charlot, 72. Dean Harold Meyers, 53. Kenneth Bridges, also 53. Linda Franklin, 47. Conrad E. "CeeJay" Johnson, 35. Jerry Ray Taylor, 60. Billy Gene Dillon, 37. Million A Waldemariam, 41. Claudine Lee Parker, 52 and Hong Im Ballenger, 45.



JJ Janflone 33:51

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Kelly Sampson 34:06

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