

Episode 176-- You Can't Sell Guns Like Bananas and Ice Cream...

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SPEAKERS

Bill Miller, Erin Davis, JJ Janflone, Kelly Sampson, Judy Miller



JJ Janflone 00:08

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JJ Janflone 00:38

Hey, everybody, welcome back to another episode of Red, Blue, and Brady. I'm JJ, one of your hosts.



Kelly Sampson 00:43

And I'm Kelly, your other host



JJ Janflone 00:44

and we're continuing our salute to Brady's legal work and the survivors who have demonstrated true determination in the pursuit of justice by speaking with Bill and Judy Miller,



Kelly Sampson 00:52

Bill and Judy are a great couple who have joined us to share the memories of Judy's brother Donald and his wife, Ladonna,



JJ Janflone 00:59

Tragically, Donald and Ladonna both in their 70s at the time, were shot and killed during a robbery. The shooter could not legally purchase a firearm, but still gained access to a gun via a blatant straw purchase.



Kelly Sampson 01:12

Yeah, so Bill and Judy, along with Brady Legal and outside counsel joined together to bring a suit against a seller who allowed the straw purchase to help prevent such a tragedy from happening to other families.



Erin Davis 01:26

Hi, everyone. I'm Erin Davis. I am the Senior Counsel for trial and appellate litigation here at Brady. And I had the great privilege to represent Judy and Bill Miller in their lawsuit on behalf of Don and Donna rice.



JJ Janflone 01:41

Thanks so much, Erin. And Judy, go ahead and introduce yourself and Bill.



Judy Miller 01:46

I am Judy Miller. And my husband is Bill. And Don was my brother, Donald rice. And, of course Ladonna and we always called her Donna was our sister in law. And I guess we're here to talk about them more than about us.



JJ Janflone 02:05

Well, and on. On that note, I think Judy, you brought this up beautifully. Can you share with our listeners just a little bit about Donald and Ladonna? What was what was your brother like?



Judy Miller 02:16

He was my next older brother. I come from a large family. And there were approximately three years between us. And in our younger years, we were playmates and spent a lot of time hiking around in the woods and fields and whatnot. We lived on a dairy farm. And when he was going to be graduating from high school, he decided he would go into the Navy, he thought that would be his path toward higher education. We met Donna, not too long after he was, had completed his time in the Navy. And he settled in Chicago. And he met her there. And she

loved to cook. And she was quite a busy housekeeper all the time. It was just her nature. They vacationed in Arkansas. They were campers and they loved it. It's wooded, it's beautiful. You know, it's green. They decided that when they retired, they would build a home there.



JJ Janflone 03:21

What about you, Bill?

B

Bill Miller 03:22

I have a different perspective of him. He to me, he was the family hero. Let me explain why. Self-made man. He went to the Navy so he could use the GI Bill to go to college. Like Well, my dad worked in the mill. Every day when he went to work, he gave me a kiss goodbye and said "Promise me you won't go in the mill, that you'll go to college." Don didn't have that advantage. You know, he did it on his own. And something that Judy didn't mention that I've known. He was the Pathfinder. Because every child in that family after Don, went to college. Some had, you know, advanced degrees. Oh, very successful. But Don showed the way. You know, Judy was going to go to college, no matter what, why? Don showed the way. I was so proud of him and his life because of that.

K

Kelly Sampson 04:25

First of all, thank you both for sharing those memories. It's really important to be able to know more about Donald when Ladonna and not, you know, just reduce them to what happened to them because as you said, it sounds like they had a huge impact and a huge legacy on your family. This is the the sucky part of conversations like this. And we have to turn a little bit to what happened and as you said things were good and their retirement for a little while, at least until November of 2015. As much as you're comfortable with, I'm wondering if you could tell us what happened.

J

Judy Miller 05:04

Well, I remember the weekend, we were very busy at our home because we had a bed and breakfast. And I remember we had a house full of guests. And I had a phone call from my sister-in-law, who lives in Alabama. And she had received a phone call from Don and Donna's neighbor. And she said, do you know if they are home, there are flames shooting up from their house. And it was just such a shock. Did any of us know they were home? At that point in Don and Donna's life, they weren't travelling, she didn't care to drive that much. And he was having vision problems. He had some macular degeneration. And for them to be away and to be away at night was really unusual. And they also had their dog and their cat. So my sister-in-law was calling different ones, the family members. Did we know, you know, have we heard from them were they come in to visit one of us? Did we know if they were driving anywhere? Well, none of us knew. They had a truck and a car in the garage. And you know, the firefighters saw that the truck was gone. And they thought, well, maybe they took the truck and went somewhere? Well, no, they didn't. So the fire continued. And it was a matter of days before they could anyone could even go in. It was so hot. The debris, the ashes,

B

Bill Miller 06:31

We had three days from seeing the fire and knowing that and hoping that the truck wasn't there hoping that they had gone somewhere. So we had three days before we actually found out for sure that they were gone.

J

Judy Miller 06:48

All kinds of things go through your mind because you think you don't want them to be in there. And if they are in there, you don't want them to have been burned alive. That's all I can think of.

B

Bill Miller 06:58

You know, from that point on, Judy, and I lived this horror, to be honest, because we got some newspaper articles. And we actually were in contact with the sheriff who was very, very helpful to us because he knew, here we were, miles and miles away in the north. And, and he was very understanding of our predicament. So we needed to know things, you know, we needed some kind of closure. And so he told us when they apprehended the the people that did this. And so we actually, through the newspaper, and through the things he told us got to know secondhand these three people that were involved. And then we learned how it all transpired, you know, with the purchase of the gun, and then so we had this ongoing experience for a long time. In fact, to be brutally honest, it is still ongoing. You...you can't forget what the murderer said in the trial. Of what he did. You know, he had to actually, there's a name for it. And I don't know what that is when they have to just tell what they did wrong.

E

Erin Davis 08:19

Testify.

B

Bill Miller 08:20

Yeah, yeah. But it just is still still with us.



JJ Janflone 08:25

Well, I think just, just to clarify for our listeners, you know, what unfortunately happened is that Don and Donna were killed in their home during a robbery. And then unfortunately, the three men involved in that robbery, lit the house on fire in an attempt to cover up the crime. So it just just horrific all the way around.

B

Bill Miller 08:48

And this crime too. I think in the nature of it. This had a really big impact on the local community, too. Right, Erin?

B

Bill Miller 08:48

I think the thing that always comes back to me and it's already sort of been mentioned here today that Donn and Donna, they went to live to a place they love. I mean, they loved Arkansas, they loved their home, they loved their neighbors, I cannot imagine this happening to them in this place that they love, you know, the fact that that, that they went to this place that they loved and that this terrible thing happened. It's just so strange to me. And that's something about Don Donna that I I don't know, if I think that hey, at least you were where you wanted to be. You know, I just I try I guess I'm grasping for straws with that. But that's the thing that I remember JJ an awful lot about.

E

Erin Davis 09:49

Yeah, absolutely. I think an important picture to paint is you know, the town that where this occurred is a very small town in Arkansas. This is not the type of incident that happens, you know, every day or every week or every month. I mean, this was all over the news throughout and rocked, you know, the entire community. And I think that one question that Bill and Judy had, one question that we at Brady had, when we first got involved is, how could this have possibly happen? And how did the shooter get access to the gun? And what we learned as we started to dig into the facts and try and find some answers to those questions, is that the shooter got access to the gun through an illegal straw purchase. And you know, he never should have had access to the gun, he got access to the gun, and this gun was sold in the straw purchase the day before the shooting happened. So it was very, very close in time. And what occurred to us as we learn more about it is that had that gun store not sold that gun, the way that they're instructed to do so in the way that best practices of the industry dictate, Don and Donna would be alive today, because he wouldn't have had a gun and wouldn't be able to have committed that crime less than 24 hours later.



JJ Janflone 11:11

Well, I'm wondering, Erin, if you can explain to folks you know, how the shooters in this case, how do they even gain access.

E

Erin Davis 11:19

So I think the first thing to recognize is that a straw purchase is illegal. And everybody in the gun industry knows that a straw purchase is illegal, a straw purchases when one person is buying a gun for somebody else to use. So, the important thing to recognize is that the store in this case, knew or should have known exactly what a straw purchase is. Both the gun industry and the ATF who regulates the gun industry puts out significant guidance about how to comply with laws to stop straw purchases, and also what the best practices are that they should be

following. In this case, it's important to recognize it two things needed to happen. One, a dealer should always be spotting for a straw purchase. And two, if they see any signs of a straw purchase, they need to stop it.



JJ Janflone 12:12

Well. And what are some of the signs, you know that a dealer should know? Or that went unnoticed in this case?

E

Erin Davis 12:19

Absolutely. So a gun dealer is supposed to look for red flags of a straw purchase, they're supposed to look for signs and ask questions to their customers who they think may be attempting to buy a gun in a straw purchase. And if they see those red flags, they're absolutely supposed to stop the sale. And they're supposed to call law enforcement, they have a duty to do so. For example, in this case, there were a number of red flags and indicators that absolutely the dealer, if their employees were trained properly and knew what to look for, would have been able to recognize. For example, in this particular case, two individuals came into the store together, there was one individual who handled the gun, had a handful of cash to pay for the gun, and he as a clerk in the store actually gave the 4473 to that individual and slid the form over to the straw purchaser in the presence of the clerk. Any one of those red flags in of them by themselves should have been enough to warn the dealer that this was a potential straw purchase and that dealer should have stopped the sale and called law enforcement. Despite looking at all of them in the totality of the circumstances, the dealer absolutely should have stopped this sale.



JJ Janflone 13:38

Well, and there was an issue with with the age of the clerk as well, right?

E

Erin Davis 13:42

So the gun used to kill Don and Donna was actually sold by 17 year old. And what's really important about that is that a 17 year old isn't allowed to legally own or possess a handgun, which was the type of gun that he was selling. Now, the law allows certain limited exceptions in which a 17 year old can sell guns if the individual is properly trained and supervised. Obviously, that didn't happen in this case. The individual who sold the gun, we actually considered him to be a victim of the company as well, because he was never trained to know what he was supposed to do. And as a result, this gun was allowed to get into the hands of someone who never should have had it. One of the significant legal victories in this case is that there was a ruling by the court that this gun dealer had violated the law by not properly following the requirements to have a 17 year old sell guns in the way it should have. So before we were even going to get to a jury in this case, the jury would have been told that this guy dealer had already violated the law by hiring and not training and supervising and following all the requirements and exceptions that they were required if they chose to have a child sell guns.



Kelly Sampson 15:04

Thanks for laying that all out. Erin, I think it helps go exactly why something like this is preventable if only there's responsible conduct. But I want to take a quick step back to before, you know this case happened to you, Bill and Judy, to ask what made you decide to pursue a legal case specifically about the the firearm? And what was that process like?



Judy Miller 15:30

Well, it has always troubled me the number of people who aren't killed in our United States, and the numbers just keep rising. I have trouble watching the news. I mean, our much loved Pittsburgh, I just can't stand what keeps happening. So I don't... I think when I saw an opportunity to maybe get some things in place, that might make a crumb of difference, that would be worth it. You know, I am not in a position never was never will be to totally change laws, rules. But when I saw this, you know, way back when all this happened, and whenever they were talking about the case, and there were things publicized there in Arkansas, I saw this young man selling a gun. And I'm thinking, no one has told him, no one has taught him. And being a former teacher, I'm thinking, Where was the teaching the answers saying, you know, there was a woman standing in the background, watching all this and not another employee and not a thing was done. I think what really hurt me a lot was, yes, the people who committed the crime are in jail. Yes. But the company who allowed the sale of the gun, did not get a slap on the wrist, to use a very common phrase, nothing happened to them. They, you know, so whenever Erin talks about changes being made, that's what I wanted more than anything. But I don't have those abilities to make it happen. So just do a small thing that I can.



JJ Janflone 17:14

And if we can just take a step back for the for a moment, since it has been mentioned, you know, there's a video of this sale, right?



Bill Miller 17:22

Part of the reason for our attitudes, was the fact that we saw the video of this straw purchase being made. We saw the money being transferred from the one gentleman to the other. We saw the man hand the paper over to his other partner to sign. And so, you know, it really, really cemented our attitudes. The real culprit here, nothing happened to them. Sure, these three guy people were in jail for a long time, rightfully so. But the fact about the straw purchase, no one was else was ever punished, it was just going to go away and drift into the ether. And so thank God for Brady. And all you folks that were just wonderful. I mean, my gosh, there's been a change. Because of you folks, there's been a change. And that was the most wonderful thing when we were driving back from Arkansas, when we were going to the trial. And we learned that the company actually had made some positive changes toward things that we wanted. And that's on you. That is on you. And I am just so privileged to sort of have been a bystander watching y'all work.



... 10:50



JJ Janrione 18:56

And I wonder, Bill, and, Judy, if you could tell our listeners a little bit about that drive that you were all making down to Arkansas and sort of the relationship to that you had with other counsel, not just like the fantastic Erin and Brady more broadly, but some of the other folks that were involved in the case too, because it I don't think folks realize how big of a legal team is even needed for most cases.



Judy Miller 19:22

Well, there was a lot of preparation that went into this, and it started before COVID. So you know, there was a lot of preparation for the trial. It was frustrating for the attorneys involved, frustrating for us. And of course, Carter Stein was the lead attorney, he would keep asking me, you know, are you willing to come to Arkansas? Well, whenever it was scheduled in the middle of things were really hot, Arkansas with COVID I'm going oh my gosh, how can I go there? How can I go there? But anyway, the trial was postponed twice. I believe and Then when it was finally rescheduled, we made our plans. We had a reservation at the hotel there, close to the courthouse. We were coming in a day early, so that we can meet with Carter the night before and talk and because we'd never met with him face to face in person, we didn't, you know, sure, you can look up this picture, but it's not the same.



Judy Miller 20:24

Anyway, we decided we would drive. And you know, we were fine driving and stopping and watching all the cornfields and soybean fields. In the meantime, Carter was checking on us, where are you now? Where are you now. And he was keeping us updated. At one point, he had said, there's a chance we are talking, there is a chance that we might reach some kind of conclusion. And he called us and he said, we think we have a settlement, but he said don't turn around just yet. And we're thinking, keep driving. And then he called back a little later. And yes, indeed, there was a settlement settlement and the pending, and he was excited. He was really excited. After working on this for three and a half years. And all the other challenges, he was excited. And we were excited, relieved that it didn't need to go to trial, but also a little disappointed, we didn't get to meet with Carter, because we have so much respect for him. And, you know, he isn't the only one I talked with there in his office and in not being able to meet them.



Bill Miller 21:43

I really think, you know, my wife, you know, making the decision that we were going to go. I think that was important. I think that was important for the trial, that the opposition knew that there were a couple people involved here that were pretty serious. And we were coming. And because of COVID We weren't going to fly. We're going to drive. It is a long drive to Arkansas. And and I just really feel that it was very, very important that we make that, that effort to go. And, you know, we had never participated in any trial of any type. That's why we wanted to go early. So we could sit down and be tutored a little bit as to what was going to happen. And I still to this day, feel very glad that we made the investment to go, used our Marriott points at the hotels. But I'm really glad we did it. It was a positive thing.



Erin Davis 22:45

Yeah, this case was really a team effort. And I just I do want to get to give a big shout out to my colleagues. I mean, Covington & Burling, you know, worked on this case, pro bono, because they were inspired by the story. And then our partners Carter Stein out at McMath Woods and Little Rock. They were just phenomenal partners to Brady throughout this case, and, you know, in terms of us doing this whole case, and, you know, they've really, it's without the work of both of those teams, you know, we would not have been able to be as successful as we were. So, you know, Brady legal brings expertise on gun laws. And, you know, Carter Stein at McMath Woods brought, you know, expertise in Arkansas law. So it was, it was a great partnership. And, of course, you know, Bill and Judy, relating that.



Kelly Sampson 23:36

And you've, we've alluded to changes that have occurred as a result of this case. And I'm wondering if you could share with listeners, obviously, to the extent that you're able, what some of the changes have been what some of the impact has been from the case.



Erin Davis 23:52

So I think that one of the important things to note about this case is, you know, this dealer has, you know, completely reformed its approach to gun sales. And I don't think they waited until the conclusion of this litigation to do so. Even throughout the course of litigating it, there were new policies and procedures and training that had gone into effect that would allow them to, you know, sell guns the right way and not, you know, with it not, and screen for straw purchasing. So I think that's really important that they recognize early on in the litigation, what they had done wrong. And I think an interesting thing about our case is the more that we were able to dig into it, the stronger it became exactly what went wrong in this case, and it really provided them a roadmap as to what they needed to do to reform their business practices. And they now know that you can't sell a gun. You can't have a child sell a gun. You can't have a child, you can't sell a gun the same way you sell bananas and ice cream. It's different. It's regulated. And you need to adopt practices to be able to sell goods the right way,



JJ Janflone 25:12

Bill and, Judy, you've been so brave, not just to bring this case. But if it's to come on here, and to share a little bit of Don and Ladonna with us. I'm wondering if you could share a little bit more with our listeners, you know, is there something you wish that folks out there knew about what it's like to bring a court case after losing someone like this?



Bill Miller 25:37

I wish people knew about Brady more about Brady. I mean, Brady's famous for a lot of good reasons. But I wish people knew that if they were in the same situation we were in, that they're receptive to your inquiries. And, and think what we were able to do, you know, because of Brady, and Covington, and everything, in fact, when this first initiated for us, and we went to

Washington, and we met with everybody, and when we walked out of there, we looked at each other, I think we were sitting on a bench, near the White House to be honest. And we both said, "We're gonna do this, these are very, very competent individuals, this is going to be a crusade, we're going to get this done." And, as I've said before, to you, you've I've told Erin this before, we're just thrilled with, with our association with you, folks, it's been wonderful. That's what I really wish people would know that there is a place to go. You're not, you don't have to just sit in your room and, and cry, you know, there's a place to go.

K

Kelly Sampson 27:01

And I mean, I know, Erin, and Jon and others would say also, that you all have a huge part to play and are heroes of this story. So I just wanted to be able to, to call that out as well. And I'm wondering, you know, you've been through this experience, as you said, Bill, it's still ongoing. And I'm wondering, you know, what would you like to see happen in the future when it comes to gun violence prevention laws and how the industry is held accountable.

B

Bill Miller 27:33

And I mentioned this, I think when you think of the recent settlement from the Sandy Hook, experience, I think that's a step in the right direction. In other words, and so I think we have to have a few more tools to resist; background checks, and different things like that, you know, we live in Pennsylvania, and the number of guns here, it just defies understanding. And so I think that through the legislative process, there have to be changes, there simply have to be, and I won't see it in my lifetime, I don't think but you young people, hopefully, you'll see it.

E

Erin Davis 28:21

So Bill and Judy's decision to bring this case on behalf of their loved ones, has made a tremendous difference not only to this individual gun dealer, but also to gun dealers all across the country. Gun dealers hear about these horrific incidences, they hear about how they happen. And it encourages them in a ripple effect, to change their own practices so that this type of incident and this type of illegal straw sale is less likely to happen in this, in their store. As a result, it protects the safety of the entire community. So these lawsuits send the message to this store. It's sent the messages to gun dealers across the country. And as a result, you know, these impact driven litigations really do create real and meaningful change.



JJ Janflone 29:12

Yeah. Well, thank thank you so much, Erin. And thank you, Bill, and Judy, again, for everything. And I hope we do see change, Bill in your lifetime. I think it's what we're all working for. Right.

K

Kelly Sampson 29:27

I am so grateful that people continue to fight not just for their loved ones, but for people everywhere to keep us all safe from gun violence, you know, but it still breaks my heart hearing about their loss.

about their loss.



JJ Janflone 29:39

Exactly. Kelly, I keep thinking about the Millers waiting three days hoping that Don and Ladonna were okay, only to find out how senselessly and violently their lives have been taken.



Kelly Sampson 29:50

Yeah, and I mean, it just really goes to show why gun violence prevention work, including holding gun sellers accountable is so important. I mean, because far too many people like Bill and Judy are deeply hurt every single day in our country because of loopholes and violations in the law.



JJ Janflone 30:12

Hey, want to share the podcast? Listeners can now get in touch with us here at Red Blue and Brady via phone or text message. Simply call or text us at 480-744-3452. If your thoughts, questions, concerns, ideas, whatever! Kelly and I are standing by.



Kelly Sampson 30:26

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