Episode 177-- "It's Like an Infection" â€" the Damage Done by ...

SUMMARY KEYWORDS

guns, case, brady, buffalo, bud, jon, gun dealer, trial lawyer, dealer, handguns, gun violence, victimized, community, court, state, unscrupulous, people, law, trafficker, connors

SPEAKERS

Jon Lowy, JJ Janflone, Kelly Sampson, Jim Grable



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 one of your hosts JJ,

Kelly Sampson 00:44 and I'm your other host Kelly.



JJ Janflone 00:46

And today we close out our brief tribute to Brady legal, the Brady staff, outside counsel and of course, the amazing survivors who have fought in the courts to help end gun violence.

Kelly Sampson 00:56

So I might be biased but a month wasn't nearly enough time for this. There are so many cases and people to talk to and with, but I'm glad we were able to at least highlight some great stories. And of course, I'm sure we'll cover more cases in the future.



Absolutely Kelly, I can tell you we will. But for this month, we're gonna close out with a story of 16 year old Daniel "Bud" Williams, high school basketball star who was about to start his junior year when he was severely injured in a drive by shooting. Now the gun used in that crime against him was then traced to a prolific gun trafficker. Y'all are not gonna believe the degree here. And the case that was later brought on Bud's behalf led to big changes in the legal landscape of gun violence prevention.

Kelly Sampson 01:42

Yeah, and to discuss the case we're joined by two great guests from Brady. We have a now old friend of the podcast, Brady, VP of legal and Chief Counsel John Lowy, and from offices of Connors LLC, we have James "Jim" Grable.

Jon Lowy 02:00

I'm Jon Lowy, a chief counsel and vice president legal at Brady, where it's been my privilege to litigate gun cases on behalf of victims and survivors for the past 25 years.

Jim Grable 02:14

Well, I'm glad to be with you. Thanks. My name is Jim Grable, I'm a trial lawyer in Buffalo, New York, at the firm of Connors LLP. And I was fortunate to partner with John and the Brady center to represent a young man and his family here in Buffalo who were victims of gun violence.

JJ Janflone 02:31

And I think that that starts us off really brilliantly, because, you know, this case is is quite a bit older at this point, you know, we're going back in time, listeners to 2003. So I'm wondering if you to, you know, can you tell our listeners a little bit about Bud Williams and about what happened to him to even prompt this case to start in the first place?

Jim Grable 02:52

Yeah, sure. I'd be happy to explain how it came to be that Jon and I were helping Bud and his family. Bud was a promising basketball star here in the Buffalo area. He was only 16 years old at the time of the shooting. He had been to the movies on August night, in 2003 in Buffalo, and when he got home, he was outside practicing basketball, he had a roll around hoop that he set up in his neighborhood and he was out doing layups and taking shots and and someone came by in a case of mistaken identity and shot him through the stomach with a gun that he had acquired illegally, that had come to Buffalo via a gun trafficker who bought the gun at a gun

show in Ohio, as part of a bulk purchase of over the course of time. Many, many guns. The particular bulk purchase that included the gun that was used to shoot Bud was an 85 all cash gun purchase out of this Ohio gun show.

Jim Grable 03:53

And when Jon contacted our firm, we were mindful of the fact that there was really an epidemic of gun violence in Buffalo, with guns that were reaching western New York via this method, meaning that out of state gun shows were being used to purchase crime guns, guns that don't really have much sporting value. And these handguns, semi automatic handguns, in particular high point guns were finding their way into Buffalo. And were being used by young people to inflict violence on other young people, often as part of gang activity or drug activity. And it was proving really frustrating to the Buffalo Police and to law enforcement, that they couldn't stop the flow of these guns. And it really hit home for us when when our young 16 year old client was victimized by this stream of commerce,

Kelly Sampson 04:42

Particularly poignant that you talk about Budds basketball talent. You know, we're recording this in March when, we're everyone's sort of obsessed with basketball. And for him to be harmed in this way to show is how gun violence can affect so many things including people's dreams and One thing we know about this case is that the shooter was apprehended. But what happened after that, and how were you able to trace the gun to this gun show in Ohio.

Jim Grable 05:10

So the shooter was apprehended and convicted and ended up in prison. But that was only part of the story of the crime that victimized poor Bud. So, federal authorities prosecuted the gun trafficker who had brought the guns from Ohio to Buffalo. But there was much more to Bud's victimization than just those two people. And the victimization really began in Ohio and Jon and his team came to us in our firm with evidence that they had gathered about the trail that led back to Ohio.

Jon Lowy 05:46

Yeah, what we found out and actually the local newspaper in Buffalo had an expose, going into this trafficking ring that explained a lot of this, but what happened was there was a gun trafficker who was working with a few women to buy large amounts of guns at this Ohio Gun Show, and then he would traffic them to New York mostly to Buffalo. And he bought from the same gun dealer, went to the gun show, bought five handguns. And he came back a few weeks later, bought eight handguns came back a few weeks later, bought 10 handguns and this is him with including him and the his accomplices came back a few weeks later bought 39 handguns, came back a few weeks later bought 35 handguns over 180 Cheap Saturday Night Special handguns all bought in cash from the same

gun dealer. You know what gun dealer in their right mind would think this is a legitimate buyer of guns. I mean, they're not equipping their large family with you know, self defense or sporting guns.



JJ Janflone 07:23

So just to kind of maybe then clarify for our listeners, you know, the the line of how this works. So there's these guns are in Ohio, there's a dealer selling them at a gun show, an individual with accomplices, but you know, is buying, as you said, John 180 of them in the course of a year, bringing them those guns into New York, which has, I'm guessing we can talk about this in a second, very robust gun laws. So these are being brought in to get around existing laws that are present there. One of those guns ends up then being sold to someone who uses it in a crime shoots Bud. Bud is lucky that he survives, but is obviously incredibly injured. And this sort of derails his collegiate basketball dreams right on top of everything else, then the police step in and they arrest the man who shot him, they can arrest the man who sold that gun to him, but then the police go, Okay, well, how did this original this dearth of guns show up? Is that is that sort of my tracing this out? Appropriately, I know it gets a little weedy.

Jon Lowy 08:20

Yes. But you know, nothing happened to the gun dealer or the distributor or the manufacturer which, you know, too often the case until we brought the lawsuit.

Jim Grable 08:31

So even the federal authorities so that the shooter was prosecuted in state court and served served a substantial state sentence. The gun trafficker who brought them from Ohio into the Western New York area was prosecuted in federal court served a federal sentence. But as is often the case, the punishment sort of ended there. And and there was much more to, to how Bud had been victimized than just those two individuals that the gun that gun and many others that ended up used in crime here in western New York could not have gotten here, if not for the greed of the dealer, who was aware that the guns were headed to Buffalo and headed to New York State, and made the sale anyway. And that the 85 guns sale that included the gun that was used to shoot shoot, Bud that was almost \$8,000 in cash that were handed to the dealer. They were literally wheeling boxes of guns out to the traffickers car. And as John said, there's really there's no basis on earth that you would think that the dealer thought that these that these guns were going to be used for anything other than some nefarious purpose, especially when the purchaser is using obvious straw purchasers, these women who were his accomplices to buy the guns and they clearly didn't know anything about about the guns or how they worked.

Jim Grable 09:53

It was it was clear to the dealer it should have been clear to the dealer that that he was selling guns that we're going to harm a community. And that's exactly what happened. They harmed this western New York community. And when John and I were preparing the case, and we spoke

to Buffalo Police officials who shared with us that it was terribly frustrating for them, they would get to homes in Buffalo, where they believe they had leads to find these guns that were being trafficked. And they would find the empty boxes, but not the guns themselves. The trail would never quite get them there in time. And And so Jon and I and the Brady Center and our firm, we thought it would be important to try to, for lack of a better way of saying it cut the snake off at its head right to try to stop the flow in as you said, New York has good, strong gun laws, but they're completely circumvented when a dealer decides to be unscrupulous, and the gun show provided a setting where an unscrupulous dealer could circumvent New York's robust gun laws.

Jon Lowy 10:56

And I will say that this one gun dealer caused such harm to the Buffalo community. When Jim and I were preparing for trial, we talked to one law enforcement expert. And this was over 10 years after the trafficking, he said they were still recovering these guns in Buffalo. I mean, they were pumped into the criminal bloodstream of the community and remain there. My guess is they're still some today that are out there.

Jim Grable 11:31

Yeah, it's like an infection. Once it's in the once it's in the community, it's really hard to eliminate that many guns that have been trafficked in illegally. And even the most diligent law enforcement officers have a really hard time tracking those guns down and getting that many guns off the streets. And what ends up happening in a community like Western New York is that, you know, these guns are dealt to poor communities, communities of color, and the people in these communities are victimized by the unscrupulous gun dealer, who took, you know, big piles of cash to sell guns that are, as John said, Saturday night specials, these guns aren't going to be used for any sporting purpose, they're going to be used to the harm of the community. And that's why we thought this case would be really important to try to set an example and and do what we could to try to eliminate what happens in these communities when these guns are flooded in by trafficker who buys them from an unscrupulous dealer?

Kelly Sampson 12:30

And could you explain to listeners who may not be familiar with the term what what are Saturday night specials? And why is that such a marker of guns that are probably not going to be used for anything but crime?

Jon Lowy 12:42

Well, Saturday night specials are basically cheap handguns. And they have been a big problem for decades. And, in fact, a lot of them used to be made in California. California cracked down on them and basically just increased their standards for the sorts of handguns you could make in California, you had, you know, they had to be stronger, they have some safety features, they had to be a little bigger, which drove a lot of those companies out of California, and all of them out of California. But of course, they populated in other states, the guns that were involved in this case, were not just sold in Ohio, they were manufactured in Ohio as well.



And I have a I have a practice, law practice that puts me in federal court all the time in criminal cases, I do criminal defense work here in Buffalo. And I can tell you that this many years after the fact that the the manufacturer and category of gun that was used to victimize Bud and his family, is a gun that repeatedly appears in my criminal cases here in Buffalo. And each time I see it in the in the discovery that I receive in those cases, it reminds me of the fact that it was all too easy for these guns to be trafficked into Buffalo and and to be in the community. And all it took was a gun dealer who was willing to look the other way.

JJ Janflone 14:11

I wonder to serve on the definition end can we touch on what you know why someone would choose a gun show to both to purchase these weapons and then to to sell 185? Because presumably if I were to go to a best practice following FFL at a store 185 handguns might get flagged in the space of a year unless I was myself another retailer. Right. Is there a reason why

Jon Lowy 14:36

Sure, well, it's often talked about the gun show loophole, okay, which is and what that refers to is the fact that under federal law, you know, only licensed gun dealers are required to do background checks, but unlicensed people can sell guns without a background check, of course is crazy. As if, as I said before, it's as if we had a law that said, you need a prescription to get a pharmaceutical drug, unless you don't feel like getting a prescription, in which case, you can go to a private drug dealer and buy the drugs you want. That's sort of what our law is. But that's, that's why a lot of criminals flock to gun shows. What happened this case, though, this was a licensed gun dealer, who was doing Brady background checks. And so what some research has found is that, you know, while you have some dealers who go to gun shows, and they even if they follow the minimum of the law, and they do the background checks, some of them are there, because they want to attract the same sort of crowd that would go to a place where you can, you know, buy guns, no questions asked. So even if there are records, you know, there is a reason why a certain type of person goes to this gun show where half the people or more than half the people, you know, don't follow any laws, as opposed to going to, you know, a legitimate gun store that would ask questions, and would say, you know, "I'm sorry, I'm not selling you 35 guns or 85 guns, because I don't think there's legitimate reason why you're buying those other than trafficking them."

Jim Grable 16:31

And here that the pattern of purchases it, it seems as though the trafficker was testing the dealer, meaning, he gets to the gun show, and he's buying smaller quantities in ever increasing amounts as the weeks go by. And by the time the gun that's used to victimize Daniel is sold, it's he's up to 85 guns. I think, because he's established for himself, that this dealer is not gonna tell him, he can't have the guns. He's tested the marketplace at the gun show, he's realized that he's found a dealer at the gun show, who's willing to look the other way, in exchange for the cash. And so he has, he's now found a conduit that he can use as his supplier of guns that

he's gonna take in his car and drive from Ohio, back into New York State and sell in New York illegally. And the testing, or apparent testing that the chronology suggests suggested to Jon and me as we were preparing the case for trial that, that this was a dealer who gave the trafficker confidence with the pattern of purchasing that happened, and that confidence was rewarded. With the end, by the way, the 85 gun purchase was not the last purchase that the trafficker came back for more. It just so happened that the biggest bulk sale was the one that included the gun that was used to victimize Daniel and caused so much harm to him and his family.

Kelly Sampson 18:00

And turning now to the case, I'm wondering, Jon, if you could tell listeners how Brady got involved, and how did Connors Law Offices get involved?

Jon Lowy 18:13

Sure, well, it's a lot of what we do at Brady is represent victims and survivors of gun violence. So it was was, you know, natural for us to to represent, Bud when we brought the case, the case was on behalf of him and his father, since he was a minor, as we'll maybe explain, later, this case, for a lot of reasons, lasted a very, very long time. So he was, by the time it ended, he was an adult. And, in fact, ultimately, his father passed away during the case. But that's how we got involved. Now, when we bring a case, you know, one thing I do is I look for who are the best lawyers in the community that we want to file the case and and that's who we want to partner with. And that was pretty easy. Sometimes it is. It was pretty easy to find that that Terry Connors and Jim Grable, Terry's the lead partner in Jim's firm, you know, were what seemed to me the best trial lawyers in Buffalo in that area. And so I reached out to to them, and certainly everything that they showed me throughout the case confirmed that that they are the best in fact, some of the best trial lawyers I've worked with in the country.

Jim Grable 19:41

Well, thank you, Jon. That's and we feel the same way about the pleasure of working with the Brady center we are a firm, Connors LLP where we do take a lot of pride in helping people and helping our community. And so when the Brady center contacted us about what had happened to Bud we didn't have experience in in gun litigation, but we knew that the Brady center had a lot of expertise in that area. And we're always looking for opportunities to work with great lawyers to make a positive difference. And here, we were aware from some of our other areas of practice, including our criminal defense practice, that illegal guns were a scourge on our community that they were causing a lot of harm. And here we were presented with a young man and his family who had been directly victimized by illegal trafficking and by an unscrupulous dealer. And so we really, we really didn't hesitate because we felt like we could make a difference in our community. And we could make a difference for this family. And doing it with the Brady center would give us a partnership with the expertise and resources to be able to do the case properly, especially since when we sued the case there was new federal litigate-a new federal statute that had been passed that at least on its face, provided for immunity in most circumstances.

Jim Grable 20:58

So you know, we looked at the case carefully, and thought, if there's anybody who can help us, help the community and help this family, it's the Brady center. And as Jon said, it was a long journey, and a journey that took a lot of patience and effort. But it was a journey that was worth taking, we were able to give Bud some something back that was taken from him that night. And we were able to we like to think we were able to help our community because and perhaps other communities because if if this litigation causes the next unscrupulous dealer to say, "Geez, I better not make that sale, make that bulk sale to a trafficker or his straw purchasers," we really will have accomplished something positive that might save more than a few lives.

JJ Janflone 21:45

on that end. I wonder, can we talk about the process of it being a long process, we talk a lot on this podcast, that the legal system does not work like "Law and Order" the television show, it can sometimes take a very long time, particularly in cases like this, where you're going up against sometimes very wonky and very entrenched laws and interests. So can you maybe, both of you walk us through what the the case itself was like, moving through the court system?

Jon Lowy 22:13

Sure. I'll I'll begin. I mean, we went through, Jim, how many appeals were there? There was uhh

Jim Grable 22:21
Five appeals and five judges.

Jon Lowy 22:23

Okay. Yeah, I mean, which is not usual. But you know, we filed the case in state court, it got moved to federal court, it got moved back, which was improper or got moved back to state court, there was an appeal in federal court. Initially, the case was dismissed by the judge, held that it was completely barred by PLCAA, Protection of Lawful Commerce, no Arms Act. And we appealed that I argued in the in the Appellate Division Court department and the Court unanimously reversed that and held that PLCAA did not prevent this suit. And that was in itself was a huge victory. So this is, you know, some 10 years or so before the Sandy Hook case. And you have an appellate court holding that the gun manufacturer, the gun distributor, and the gun dealer, could all be held liable for this criminal shooting using one of its guns, and that PLCAA did not bar that liability. Because there were allegations that these companies violated the law, which is an exception to PLCAA in that decision was national importance. And it was because it was at a appellate decision, you know, on these major issues, particularly at a time where a lot of trial courts were dismissing cases and holding the PLCAA provided broad protection. And, you know, I said two to two Bud, his name will forever be in the law books now, mostly on the internet, but it will be your, Williams versus Beemiller. And that's his name. And it

stands for proposition that that gun violence victims and survivors have a right to their day in court, even with this horrible law on the books. So that was a big deal, even before the other victories that we achieved later in the case. I think I just summarized like the first seven years, not the last eight years of the case.

Jim Grable 24:34

You're right. The cases can take a long time. This one took longer than almost any ever. There is having done some other products liability cases. There is a certain product liability defense playbook that says delay is good for the defense. But but this was extremely unusual delay in part because the defendants initially pulled the case from state court to federal court. And it took us four years and two appeals in federal court to get back to state court where the case belong, the removal to federal court was improper, it belonged in state court. And frankly, we felt really strongly that New York had interests that were important here that this should proceed in a state court, because New York has strong gun laws.

Jim Grable 25:21

And those gun laws were circumvented by the conduct here. And so then we ended up, the defense, once the case was back in state court, succeeded in obtaining additional delays by limiting the scope of discovery for a while and, you know, trying to basically go as slowly as they could, to see if they could wear us down and, and keep the case from seeing a courtroom and being tried. And so we went through numerous judges, and weave through various layers of discovery. And finally, there could be no more delays, the defendants had obtained all the delays they could. And we were with a judge who was committed to giving us our day in court, and to seeing the case tried, and there was motion practice that Jon and I engaged in against the opposition that put the case in a really good posture for trial. And and that's really, once the case was with Judge Devlin here in Erie County. And we had that successful motion practice. It was the first time over all these many years that we were just about on the courthouse steps. We were just about to have Daniel and his family have their day in court. And that's that that's when the case was able to be resolved, thankfully, but but it was it was a long journey to be sure.

Kelly Sampson 26:35

So you already talked about the appellate victory and how important that was. And you alluded to being on the Court steps, the case ultimately resolving, and to the extent that you can share, could you tell us what happened? What was the result of the case?

Jon Lowy 26:49

Well there's a lot we can't tell you. But we will, you know, say that we we resolved the case against the distributor, and the manufacturer, and we can't go into the financial component of the settlements. But there were also commitments to engage in safer business practices, which were very important to to all of us, and certainly very important to, to Bud, you know, he did not want this to happen someone else. And he wanted to to do you have this about more than

money, and it was, so it was certainly a very good result. You know, it's always, there's always a conflict among the client and lawyers, when you're on the eve of trial, you spent a long time preparing for trial, you're geared up, you're playing that opening statement in your head and cross examinations. And this is a case we were prepared to, to win, but it was a very good result. So really, this was a fairly easy decision to to, I think to, to settle it have that certainty, and just have a very good result for for Bud.

Jim Grable 28:06

Yeah, it was Jon talks about us preparing for trial. And having seen Jon argue, multiple appeals in this case. And having seen him perform on his feet, for selfish reasons, I wanted the case to be tried just to try a case with a great trial lawyer. And to and I know that Jon and I had put in a lot of work to line up the proof. So we felt like we were coming into the trial with our ducks in a row. And that it was going to be it was going to be a good trial for us. And we felt good about our preparation, good about the evidence, good about the work that we had done to make sure that the truth was going to come out in the courtroom. And it's and when when all that happens is a trial lawyer it's hard to, to gear down and to ramp down and to and to have discussions with the client about something short of getting a verdict from the jury.

Jim Grable 28:53

But you also have to be mindful of what's best for the client. And here the reforms that were part of the settlement of the reforms of sales practice. That's something a jury couldn't give us. So a jury could only give us damages, could only give Bud money for what had happened to him. And Bud, Jon's absolutely right, but cared about making sure that this wasn't going to happen anybody else. It was never never really about the money for Bud as much as righting a wrong. And he's a wonderful human being. And even though his dreams were derailed. He was throughout the case, he just conducted himself so admirably that I found myself wondering during the case, if this hadn't happened to him that night, what a leader he is, what a great, great presence. He would have been on a division one basketball team, you know from from the guard position, leading, leading his teammates on to victory. But But he never felt sorry for himself. He never wallowed in any misery. It was always about, what can I do to make sure this doesn't happen to somebody else?

JJ Janflone 29:57

Well, and on that note, what impact has this case had I mean, Jon, you alluded to this earlier on other gun violence cases that have proceeded after it, you know, what, what has the impact of Bud deciding his, first his family, and for him to continue with it? What is the impact of this case been more broadly?

Jon Lowy 30:13

Well, I mean, certainly the the appellate decision, you know, holding that the manufacturer, distributor and dealer could be liable. You know, it's really important, you know, that has a national effect, you know, appellate decisions have a lot more effects than trial court decisions.

You know, if you're trying to influence a trial court, across the country, they might not care that much about another trial judge, you know, somewhere else, but they will care much more about appellate court. And so that has a tangible effect. I mean, there are other lawsuits brought in other states, we bring them other lawyers bring them, they can cite Williams V. Beemiller, and that can help survive a motion to dismiss and more than the gun companies is arguing that they have immunity under PLCAA. And then the fact that we were able to reach a, you know, a settlement. That's a message that trial lawyers know about, that through lawyers, other victims can know about, and the gun industry knows about it.

Jon Lowy 31:23

I mean, you know, even if we can't say details about the settlement, they know what that what the settlement was about, they can tell, you know, at least between the lines, give other companies some sense of of what happened. And that message is delivered another message that was delivered from this case, the fact that, you know, we all gutted it out over so many years. You know, I mean, the fact that, you know, we taught the gun industry a lesson that, you know, we're not going away, you can't win the waiting game with us. I mean, this is 15 years. And, you know, we'll tell you, you know, there are other lawyers, other than you know, Jim Grable and Connors firm, that would have said, "we want to get out of this case, we're paying expenses we're paying in time, you know, we want to bail," there are other clients who would have said, "I want to take what they're offering and go on with my life." And that didn't happen. And that is a really important message. Because the gun industry and their lawyers know, they can't bluff. They can't delay, they've got to just try to win. And, you know, most cases, they're not going to win when they face us in court.

Jim Grable 32:39

You know, there there are many, many times throughout the course of the years of litigation, when Jon and I would talk and we would, you know, we'd say Okay, now we got this coming up next, let's let's, let's do that really well, and see where it leaves us. And, and we weren't worn down. We didn't quit. And I think Jon's right, that that hopefully sent a message to the industry that if you do it wrong, you're going to be held accountable.

JJ Janflone 33:06

I don't know about you, Kelly. But I am so thankful for Bud and his family for bringing this case. And for folks like Jon and James for working with them on it. But I am still haunted by what James said about the number of guns one trafficker was able to bring into a community.

Kelly Sampson 33:23

Yes, same, I mean that they're still seeing guns from an initial batch of sales over a decade later, almost two decades. And so many of those guns are still unaccounted for. I mean, it just it just points to how, you know, strong gun laws are absolutely necessary at the state level. But

these existing loopholes make it far too easy for people to get illicit firearms, and into states from weaker laws. And you know, then bring them into communities that have the strong laws. So we really need change at the federal level.



JJ Janflone 33:59

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Kelly Sampson 34:14

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