

Episode 174-- Seeking Justice for Rachel Guns in the Hands o...

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SPEAKERS

Jon Lowy, Erin Davis, JJ Janflone, Kelly Sampson, Gail Duncan



JJ Janflone 00:08

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Kelly Sampson 00:37

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



JJ Janflone 00:43

And I'm JJ your other host.



Kelly Sampson 00:45

Yeah, we're switching things up here with the intro order.



JJ Janflone 00:48

Well, it's only fitting that we start the episode with you, Kelly, since you do represent Team legal,




 Kelly Sampson 00:53

What an honor.



JJ Janflone 00:54

But this month we're cracking open the legal vault, if you will, discussing four cases that if I do say so myself, the brilliant Brady legal team has brought up on behalf of victims and survivors of gun violence.


 Kelly Sampson 01:05

Yeah, and today we're speaking with two members of the Brady team, Vice President of legal and Chief Counsel Jon Lowy and senior counsel Erin Davis




JJ Janflone 01:13

we're also speaking with survivor Gail Duncan, whose daughter Rachel Renee Duncan, was killed in 2018 by a man who legally should not have had access to a firearm.

 Kelly Sampson 01:22

Brady helped represent the Duncans and we were so privileged to have Jon, Erin, and Gail on to discuss how this horrific event happened, what the case was like, and how the results of this case might protect others in the future.


 Erin Davis 01:39

Hi, I'm Erin Davis. I am the Senior Counsel for trial and appellate litigation here at Brady and I spend my days representing wonderful clients like Gail Duncan, who are victims of gun violence against different actors in the gun industry.



JJ Janflone 01:53

How about you, Jon?

 Jon Lowy 01:54

Sure. I'm Jon Lowy, a chief counsel and vice president of legal at Brady, I run our legal division where I've been honored to, to work for the past 25 years.



JJ Janflone 02:07



And Gail, how about yourself?



Gail Duncan 02:09

My name is Gail Duncan. I live in Michigan and my daughter, who was 25 years old, at the time, was killed almost four years ago as, as a result of domestic violence, but it was with a gun



JJ Janflone 02:23

And Gail before we get into everything that came after this awful shooting. Can you tell us a little bit about Rachel?



Gail Duncan 02:30

Sure. She was the oldest of three girls. So she was just the perfect big sister. She was very close to her two younger sisters. She's very lively. She's very spirited. But at the same time, she could you know, she had a quiet side to her. She's very responsible. She, you know, took her her work and her responsibilities seriously, except for that time when she was in sixth grade and wasn't turning in her math homework. But otherwise, you know, very studious, she had a lot of interest. She loved to cook. She also liked to sew, and she made a lot of her own clothes. But I think the thing that really stands out the most is that she loved music. She played clarinet from the time she was about seventh grade, maybe sixth grade. You know, she she was she has, she had a great sense of humor. She's, she's really missed by everybody.



Erin Davis 03:27

I sadly never had the opportunity to meet Rachel. And you know, although I've enjoyed my relationship with Gail so much, I wish I never had the opportunity to meet her under these circumstances. But one thing that you know, every time I talked to Gail and through every picture that she shared with me of Rachel and and story, Rachel just had this smile that, you know, came forth in every picture, whether it was when she was a little kid with her siblings or with Gail, or you know, pictures that got taken of her later in life. And you could just tell what a wonderful, wonderful, like daughter and person she was just based on how she lit up the room with her smile. So for us, it's been a pleasure to get to know Rachel indirectly through Gail and you know, she was certainly a special person. And we were really glad to do this lawsuit on her behalf with Gail.



Kelly Sampson 04:20

Thank you so much for sharing a little bit about Rachel with listeners and helping us get a picture of who she was. And unfortunately, we'd love to hear more about who Rachel was and how she lived. But as much as you're comfortable. I'm wondering if you could tell us what happened on March 26 of 2018.

G

Gail Duncan 04:41

Sure, so she had stayed at my house that weekend. Which was so nice. I think that was just a gift that was given to me because it was so nice to have all of my girls in the house at the same time for the weekend. Monday morning when she, she was getting ready to leave for work. And I could hear her and my middle daughter in the bathroom getting ready for work. And they were laughing and talking and just everything, everything was well are always well. And Rachel even asked her sister, she's like, "Do you want me to take you to work? I can drop you off on the way." And my middle daughter, she said, "No, that's fine. That's fine. Now I'll drive." And then, you know, later, like, my middle daughter told me, she said, "You know, I, maybe I should have let her drive." And I said, you know, it wouldn't have changed anything. It wouldn't have, everything would have still happened just the same way. Although maybe she would have gotten more sister time.

G

Gail Duncan 05:42

So then, I was, I was back at work. And I, I was starting to hear things about a- first I had received a phone call. And it was actually from her work. And I thought that's really odd that anybody would call me. I tried calling back I wasn't getting through, I was starting to think something was wrong. And then it then it did come out on social media, that there had been a shooting, and it was a murder-suicide. And the the place that was list, the corner that was listed was the intersection where she worked. And I thought, oh, no, because I knew I mean, even though no names were given. I knew right then just because of things that had been, you know, things that had happened, they had been leading up to that, as I understand it, he had, the shooter had walked in, they had argued, because this was somebody that she knew. And they had argued in the, I guess he left for a brief time, and then came back in. And then when I say brief time, it was only maybe a couple minutes if that because I'm not even sure he entirely left the building. I think he was just out in the middle, then he came back in, they argued just for a few seconds more. And then he pulled out a gun, and he shot her multiple times, in the chest and abdomen, and then once in the forehead, and then he took his own life.

G

Gail Duncan 07:09

So that's what I had heard from, from witnesses and from reading the police report. From there, it was it was just, it was just a big circus, you know, talking to, talking to police and just, you know, talking about the, you know, the investigation, and I, you know, I was confused because I'd never had anything like this happened to me before. And I wasn't sure, you know, who am I supposed to follow up with? And, you know, is this person going to call me or am I supposed to call them and it was it was very, it was very overwhelming. Even four years later. Now it's, it's still hard to think about that day.

E

Erin Davis 07:47

So when we first heard about the facts of Gail's case, we heard about them. And we initially thought, "how could this possibly happen? How did the individual who ultimately took Rachel's life end up with a gun in his hand?" And as we dug more into the facts of the case, we realized that this case was so unique because it touched on and highlighted so many issues involved in

gun violence, it highlighted the negligent conduct of gun dealers. It highlighted problems with the shooting range and loopholes that exist, it focused on domestic violence and restraining orders. It focused on mental health and suicide. And as we dug more and more into the facts of the case, we learned that the shooter was actually a prohibited possessor of a firearm, and that Rachel had done everything in her power to protect herself. And this individual never should have had access to a firearm. Rachel had gone out and gotten a personal protective order, often called the domestic violence restraining order, which prevented this individual from being able to walk in a gun shop, buy a gun, and legally possess a gun. Yet despite that, through the negligence of this gun dealer, he found a way to do so. He found a loophole, and he found the gun dealer that was not properly screening to determine whether he was a prohibited possessor of a firearm. That gun dealer gave him the gun and then allowed him to leave their shooting range facility with the gun. And ultimately, that gun was the gun that was used to kill Rachel,

K

Kelly Sampson 09:32

Could you tell us a little bit more about, you kind of alluded to the fact that Rachel, she did everything that she could to try to protect herself and yet this person was still able to get a gun. So could you tell us a little bit about the ways that the system failed or the processes that weren't followed to allow this to happen?

E

Erin Davis 09:53

Yeah, so the law has a handful of disqualifiers that legally prevent individuals, who are oftentimes a danger to themselves or others from being able to possess firearms. One of those categories is domestic violence restraining orders or personal protective orders that are filed against them. And that was the situation in this case. Gail's daughter, Rachel, like I said, did everything she could within the system to protect herself, she had that order in place. And actually, prior to the shooter getting this gun at a shooting range, he actually had tried to purchase a gun. They ran a NICS background check on him, and he was denied from being able to purchase a gun. So all of this information was in the system. The way the law is currently interpreted, which is one of the reasons why we were interested in the case and brought the case, is that a background check is not required to rent a handgun from a dealer, if that firearm is used on the premises, and the use of that firearm is, is supervised by the gun dealer. Now, that doesn't prevent the gun dealer from screening. In fact, the gun dealer should always screen anyone who handles his gun. In this case, that didn't happen. So this individual, the shooter was able to get a gun, renting the gun, and then ultimately was not supervised by the dealer and was allowed to leave the premises through the front door with possession of that handgun. So that's how he obtained the handgun in this case.



JJ Janflone 11:27

So for listeners who may not be aware, can you you know, what's an example of those loopholes that may let a prohibited purchaser gain access to a firearm?

J

Jon Lowy 11:37

Well, I mean, for one, you know, federal law, the Brady law requires background checks for sales of guns by gun dealers. But at the same time, it allows people who aren't gun dealers, to sell guns without background checks. You know, that is crazy. That would be as if the law were that, you know, if you want to obtain prescription drugs, you need to go to a pharmacy and get a have a prescription from your doctor. Unless you don't feel like it. Which case, you could go across the street and go to the Drug Mart and buy all the drugs you want without a prescription. That's what our federal gun laws are now, and people can go online or to gun shows, can buy all the guns they want without a background check. And that's been a problem for decades. So you know, that's a major loophole, certainly.

K

Kelly Sampson 12:36

And I just want to clarify listeners to that there are gun stores and dealers in the like that have, you know, maybe ranges attached to their businesses or even part of their businesses. But the idea is that you can rent a gun and shoot it there, that you are firmly not meant to take it with you out the door, especially if you're not even permitted to own one in the first place.

E

Erin Davis 12:57

That is absolutely correct. And really, the system is set up that way so that if somebody wants to try out a gun before they purchase it, they can try out the gun on the range under close supervision, and then be able to pick which one they like and go through the proper process before that gun is transferred. Obviously, that's not what happened in this case. He walked into the store. He wasn't screened. He wasn't asked any questions about, you know whether he was a prohibited purchaser. They gave him the gun, and then allowed him to walk off the premises in possession of that gun.



JJ Janflone 13:32

And so then Gail, you decided to move forward with a legal case. And I'm wondering if you can explain to us, you know, how did that happen? What what prompted that journey for you?

G

Gail Duncan 13:43

Yeah, absolutely. So it was a few days after she was killed that I found out the circumstances, because one of the first questions I had asked the police chief when he called I said, "How did he get that gun? Was that his gun? Because I was under the impression that his guns had been confiscated." And he said, "Well we're checking into that." So he did call me a couple days later, told me the circumstances. And I remember just being stunned that something like that could happen. Because I mean, I knew you could. I knew you could go into certain facilities. I knew you could rent guns to use there and then you turn back in, turn them back in and you know, then you go on your way. So it never occurred to me that someone would try to take one off the premises, but then I thought, well, that makes perfect sense because he was prohibited from having a gun so he's gonna have to get it another way.

G

Gail Duncan 14:52

And then the more I thought about it, I thought well, but that's not right. Because if I let that go. What we're telling people is that, you know, if you can't, if you can't get a gun, by, you know, if you, if you can't get a gun by, I don't want to say legal means maybe that's not the word. But if you can't secure a gun on your own, then here's how you can get one. And I did not want to send that message, and my daughter is gone, and she doesn't have a voice anymore. So I thought, "I have to be her voice." And I thought I really have to bring attention to this. But more importantly, I wanted to make sure that this doesn't happen again. I mean, I didn't want this to happen to another family and have another family have to go through this, when it could have been prevented.

K

Kelly Sampson 15:50

Yeah, I mean, that, as you said, it's it's quite stunning to think about the circumstances and it doesn't make any sense. You know,

J

Jon Lowy 15:58

Gail is a model of what's needed. And, you know, that is that there's, you know, every year in America, over 100,000 people are shot, you know, now it's, it's recent years, it's been over 40,000 have been killed from gunfire every year. And, you know, if you look at the family members and friends of each one of those, you know, you're talking millions of people who are affected every year, you know, directly or indirectly from gun violence. And if, you know, just, you know, some of them would stand up and fight for change. And enough of them, you know, we will end this epidemic, and they're doing it, there's, there's, you know, great staff members at Brady, who are victims and survivors, that we've got activists around the country. And, you know, folks like Gail, who've really channeled their love, you know, in this case for, for Rachel, into action. And, you know, if, if there are more Gails in this country, we will end this epidemic.

K

Kelly Sampson 17:20

And I'm wondering, to Gail and also Erin, and Jon, what was the result of the case?

G

Gail Duncan 17:26

So we we didn't end up going to, I don't know the correct vernacular, but we didn't end up going to court or to trial, we did settle out of court, we get it was it was favorable. They made, they were- the gun shop was agreeable to make real changes to their policies and to their procedures that I could not have even foreseen at the beginning of the case. I wasn't, you know, I, I didn't know how open an establishment like that would be, to, to change policies for any reason, really. But for this reason, even so, yeah, it ended up being so much better than I could have hoped. And Erin was, Erin was wonderful. See, I worked with her more closely than I than I did with Jon, but she kept me updated every step of the way. And then, you know, every time anything changed, or maybe she thought of something else, she contacted me. So it was wonderful. I couldn't I couldn't sing Erin's praises enough.

J

Jon Lowy 18:30

You know, what Gail said about Erin's work is, you know, it's just part of the story of. Erin is a phenomenal lawyer who has done work like this, and she results like this in many other cases. And that, I will say that litigation like this is necessarily adversarial. And it has to be. It's a battle. And gun companies do a lot of bad things, and that result in horrific tragedies. But at the end, our ideal result is where we can put that aside and come together with the gun company. And, you know, if they can recognize that there's more that they can do to be part of the solution to to gun violence, and work with us on crafting those solutions. You know, that's ideal. That's what we we aim for at the end of at the end of the day. And fortunately, you know, there are a lot of gun dealers who want to do the right thing and are willing to learn from their mistakes and, you know, put in safer procedures. So, I know that's just a major objective of, of Brady, and certainly of our litigation.

E

Erin Davis 19:53

That's very, very sweet. But yeah, in the scope of this case, compared to our other cases, this case was resolved relatively quickly. I mean, many of our cases go on for many years. But this was a gun dealer who realized, you know, early on in the lawsuit, what went wrong and realized that there were many opportunities to improve and implement new policies that would really create a safer environment for his community and his customers. And our our hope at Brady is that this gun dealer coming forward and publicly making these changes, they including putting out a very, very strong public statement, which I'm happy to go into more detail on, that really, it acts as a ripple effect and other gun dealers who have ranges across the country can look back at what this gun dealer did, as a model to ensure that a situation that happened to Rachel doesn't have to happen to any other family.

E

Erin Davis 20:50

And that was really one of the reasons why we got involved in the lawsuit. And I think the gun dealer recognized that and made tremendous changes that really went beyond the scope of the case. I mean, they need, they implemented and strengthened their policies in ways where it really extended to, to, to other types of sales. I mean, to go into specific details, some of the things that they did; include not acknowledging her death and the incident, acknowledging that their new policies needed to go beyond the minimum requirements of state and federal law. They're now doing screening for both sales, firearm sales, and firearm rentals to look for straw purchasing, firearms trafficking, suicide ideation, or the intent to harm others. They're looking for mental illness, they're screening for influences of drugs and alcohol on potential purchasers. They're screening individuals at their range, who are not only using their guns, but are also bringing in their own personal guns. And they also, importantly, have policies where they will refuse to rent or transfer guns, if these red flags exist. They also made specific changes to their supervision, including check in and check out security procedures to prevent guns from being able to leave the range, like what happened in this case. And I think one of the strongest things they did is they put forth a really strong public statement, you know, documenting all of this that will remain in their store to serve as a reminder to them of Rachel's death, and of this incident and an encouragement to them, to ensure that they always have safe policies to protect the community.

K

Kelly Sampson 22:38

I think it's quite powerful that Gail, you said your primary motivation, or one of your primary motivations in bringing the case is that you wanted to be Rachel's voice, and you want it to prevent other people from experiencing this. And it's just interesting hearing that you wanted to, to be her voice. And one of the biggest things to come out of this is a statement that really talks about the dangers of not taking proper steps. So I just think it's really powerful what you did, on behalf of your daughter.

G

Gail Duncan 23:08

Yeah, and I hope to continue to do that. Because it's, it's, it's more of a, a widespread thing than I ever knew. And it's something that you don't really think about until it happens to you. And then I think maybe you're a little more aware of that, obviously, because it has happened to you. But yeah, I, I absolutely hope to continue to try to do good, if or where I can.

E

Erin Davis 23:37

And I can't compliment Gail enough. I mean, she is really the hero of this lawsuit. It's through her perseverance and bravery bringing it, that really allowed this gun dealer to take responsibility and make the community safer and implement changes and strengthen policies, and, you know, change the entire way that they do business to prevent this from happening to another family. So, you know, it's brave clients like Gail that really, you know, create that ripple effect across the industry and create change. So, you know, at Brady, we just we applaud what she did, and you know, the bravery it took be able to do it.

G

Gail Duncan 24:19

Oh, that's nice to hear.



JJ Janflone 24:21

And then this is sort of a more general question for all three of you. But what do you wish our listeners, and then you just even folks in the US more broadly, you know, what you wish that they knew about gun violence survivors, who have to then pursue sort of legal relief or who are trying to change things through the legal system? What is something that you wish they knew?

J

Jon Lowy 24:42

I mean one, there is a line that's pushed by the gun lobby and by others as well, that it's impossible to hold the gun industry accountable, that they got Congress to pass this awful law, Protection of Lawful Commerce in Arms Act in 2005, and that as a result, there is nothing you can do to hold gun companies accountable. And while they're right that, that law is a horrible

law, it gives the gun industry special protections that no other industry in America has. It's totally unAmerican, it makes victims of gun industry negligence into second class citizens that don't have the rights of everyone else. However, it does not give gun companies complete protection. And we at Brady have been able to get around that, and poke holes in it many, many cases. Gail's case is an example. So these cases are tough, they can take a lot of years, there's no guarantee of success, but we've had a lot of success. We've had settlements and verdicts of over \$60 million. And we have won many other opinions and reforms, like we have in this case. So it's not for everyone. And if you know, certainly my message to all victims and survivors of gun violence is, you've already endured too much. And it's, there is no obligation to anyone to do anything more than then to deal with your grief. However, if you want to bring legal action, it's a great opportunity to, to help change practices and prevent other deaths. And we can do a lot of good. And in fact, some cases we we've brought cases and lost them and still achieved reforms of gun companies. This is one that we, we were able to get a really good result I think for for Gail and her family and also for the community.

E

Erin Davis 26:48

I would just add to that, that I think that impact litigation is such an important piece of reforming an industry on issues that get so caught up in politics, because these cases are not political cases. These are about, you know, gun safety, common sense gun safety, and making sure that the people who are not supposed to have guns don't have guns, and one client bringing one case can really, you know, inform other gun dealers, how to avoid being in the same situation and what practices might help prevent those types of things where a lot of times those gun dealers don't know, and ultimately, they do want to do the right thing. So when other aspects of whether it's no policies or politics get in the way, impact litigation, you know, we have jurors and clients who and oo-counsel who we work with, we're both gun owners and non-gun owners, but they always unite over the common thread that these types of cases can make an impact and can save lives. So that's what I would add,

G

Gail Duncan 27:57

I think I would tell people, that it can be really hard to pursue justice or to pursue any something like this. Because you know, you as Jon mentioned, you do have you have your grief that you're working through, you have you know, you still have other things in your life, you're still oftentimes you're still working, or you're, you have other family to spend time with and you have other things going on. And then you know that this piece as well, it can sometimes be overwhelming. I didn't, I guess I didn't really look at it as being overwhelming myself. Because I knew, I knew in my heart that this was the right thing to do. I knew I had to bring attention to this and awareness to this. I knew I had to pursue it. Because again, my my daughter could not I mean, she's she's gone. So she she can't fight for herself. And, you know, I just I just kept thinking if I, if something like this happened to someone else, and I had not done what I could, I don't know how I would have lived with myself with that knowledge. So yeah, I would I would just tell people, it's worth it. It's worth it. I mean, and again, it isn't maybe for everyone, not everybody is going to want to go down that road. But if they do, and, and you can make a difference. It's absolutely worth it.

K

Kelly Sampson 29:27

Well, you're an extraordinary person, Gail, and you really have made a difference. I think that's one of the kind of upshots of this whole episode is the way that this case has made a real difference. And I'm wondering, you know, this is a question for anyone who wants to chime in on it. But what would you like to see happen in the future when it comes to gun violence prevention laws? Is there something that you are just hoping and dreaming of as sort of a next development that'll save people's lives?

G

Gail Duncan 30:00

Well, as a layperson, I can tell you that I would really just, it may sound simplistic, but I would really just like to see a lot of these loopholes that exist, I would just like to see those closed. I think that would be a huge step in the right direction. And sometimes you don't even know there are loopholes until something like this happens. Unfortunately, you know, when it does take something like that, to bring attention to it. That's unfortunate, but I, I would absolutely, I would absolutely love to see loopholes closed.

J

Jon Lowy 30:32

Yeah, I would agree with with Gail. I mean, you know, the first thing we need to do is to treat guns like we do other products should be treated more seriously because they're so dangerous. But, you know, we've got Protection of Lawful Commerce in the Arms Act that gives companies special protection from civil lawsuits, if they act negligently, sometimes they can not be sued. We've got exemption from Consumer Product Safety Act, which prevents federal government from requiring gun companies from putting in safety features that they would require for any other product. We've got special protections from the Freedom of Information Act with it Tiahrt rider, we've got special restraints on ATF that no other law enforcement agency has, you know, if you just got rid of them and said, Let's at least give the same rules that we applied to BB guns and teddy bears and you know, spoiled tuna fish sandwiches to, to guns, we'd be doing a lot better. And then we can go at other things like, you know, assault weapons and ghost guns and other special rules that we need.

E

Erin Davis 31:55

Yeah, I agree. I agree with everything that Jon just said in terms of things that we can do. The only thing I would add is in this current environment, I would just really hope to see gun dealers and gun manufacturers going beyond the current laws that exist and implementing practices that make their businesses safer, and implementing, creating guns that are safer and avoid injuries and just taking the self-initiative to really protect all of us from gun violence.

K

Kelly Sampson 32:29

That's an excellent point to end on, Erin. So thank you so much for coming on. And you too, Jon, but especially you Gail. We're so grateful for you and for your courage. And we thank you again for sharing Rachel with us.



Kelly Sampson 32:47

So I just want to start by saluting Gail for fighting, not only just for her daughter, Rachel, but for everyone.



JJ Janflone 32:56

I 100%. Agree, Kelly, I know we're going to talk about this. I think again and again during this whole month. While we do these legal cases. But I think we owe so much to survivors of gun violence who continue to fight to save others.



Kelly Sampson 33:09

Yeah, I mean, there are millions of people affected every year by gun violence. And if someone questions that statistic and says, "Oh, I thought it was you know about 100,000 shot." You have to think about not just those who are shot but their friends, their family, their loved ones or community members. So yes, millions of people are affected every single year. And it's time for all of us to join forces to push back against the gun lobby, and the gun laws that make us unsafe.



JJ Janflone 33:40

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 33:54

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