Uvalde Families Sue Call of Duty Publisher and Meta Over School Shooting

0:01

from The New York Times I'm Rachel Abrams in for Michael and this is the

0:07

[Music]

0:13

daily as mass shootings continue to plague the United States the families of victims continue to search for

0:20

accountability now a pair of lawsuits by the families of victims of the Uvalde school shooting are trying a new tactic

0:28

the suits Target a popular video game a gun manufacturer and Instagram accusing

0:34

them of helping to groom and equip the teenage gunmen who committed the massacre today my colleague David

0:40

Goodman on the lawsuits and the lawyer behind

0:46

them it's Tuesday June [Music]

0:56

18th so David after a shooting people are always looking around for who to blame they ask questions about how did

1:03

this person get a gun could anything have been done to prevent this should anything have been done to prevent this

1:08

and now we've got these two new lawsuits that are filed by the families of victims in the Uvalde shooting and

1:14

they're pointing the finger in a pretty interesting Direction so tell me about those you know after all of these

1:20

shootings what we have is people from the right and from the left sort of going to their different camps on the

1:26

Democratic side there are calls for greater gun control background checks other types of policies that could be

1:32

put into place to limit the access to guns and on the Republican side it's who

1:37

is this person and what kind of mental health challenges are particular to this person and we've gone through the cycle

1:43

so many times that it's really you know become just almost like an American tradition for us

1:49

now but you know recently there have been actually some efforts to try and sort of broaden the scope of who might

1:55

be you know legally accountable for these shootings we want to get you now to your Texas families of victims of the

2:02

rub elementary school shooting are making an announcement you can say a lot of things about the law enforcement

2:08

response in this case but one thing you can't say is that they caused this

2:14

shooting families of yaldi shooting victims filed lawsuits against companies they say bear responsibility for

2:20

products used by the gunmen What's Happening Here is we have these two new lawsuits you know filed by the families

2:27

of most of the victims of the evaldi Massac lawsuits have now been filed against three companies meta platforms

2:34

which owns Instagram the video game company Activision which makes the popular game Call of Duty and Daniel

2:40

Defense which made the AR-15 style rifle used in the massacre that accuse video

2:47

game company and one of the biggest social media platforms and a gun manufacturer of essentially grooming the

2:53

gunmen these are really some of the most far-reaching to be filed yet in response to these escalating number of mass

3:00

shootings in the US and they're really the brainchild of this one

3:08

lawyer hello hi guys can you hear me yeah how are you good good hi David how

3:13

are you and tell me about this lawyer well his name is Josh kosoff he's 57 years old he's based in Connecticut and

3:21

for most of his career practicing law he's been a medical malpractice attorney a personal injury attorney the way I got

3:28

into the gun litigation was really by total accident and happen stance and you

3:35

really had no experience trying gun cases at all and so how does he actually go from making the leap to representing

3:41

some of the families here well the way he makes this transition starts well

3:48

before yal basically 10 years earlier well I'm about 20 miles from Sandy Hook

3:55

it starts with the school shooting at Sandy Hook and he essentially gets involved by accident tell me how you got

4:01

approached about the Sandy Hook case I was getting a rod to the airport and the driver asked me what I did for a living

4:08

and I told him that I was a lawyer and he said uh oh really boy do I have a

4:14

friend who really needs a lawyer he said uh that his friend had just lost a child

4:20

at Sandy Hook he had a conversation with a cab driver who ended up connecting him with one of the Sandy Hook families at

4:26

the time I wasn't really thinking about a lawsuit I was simply thinking about could I help these people get through probate could I help them with the

4:33

manage the Press which was all you know he's been a medical malpractice attorney he can help in terms of the basic law

4:39

after someone's lost someone but I started to get to know these families

4:44

and I started to see tremendous shattering loss which left them sort of

4:51

looking for answers and and as he's trying to figure out the strategy he comes across photos of the crime scene

4:59

that the police have released and I saw a photograph of the weapon on the floor

5:04

of this classroom and I just asked the question how did it get

5:09

here and so that sort of began a long Odyssey of so trying he starts to think

5:15

about the kinds of liability that might exist here and as he starts looking into

5:21

this um I knew nothing about guns as a product and I knew even less about gun

5:28

litigation I didn't know anything about the law of guns I just assumed you could sue a gun company for being negligent I

5:34

thought you could sue them for selling a product that was unreasonably dangerous you know his assumption is that like any

5:40

legal action you can hold a company liable for the way that their product is used or misused only to learn that

5:47

actually this industry is uniquely protected by the federal government and

5:52

so he ends up discovering that there's this 2005 law the protection of lawful Commerce and arms act often referred to

5:59

as plaa and I read one case and I thought H what is this

6:05

plcaa and I looked it up and I read the statute and I genuinely thought it was

6:11

not [Music] constitutional so what this law does is

6:18

really give arms makers gun manufacturers a a broad set of protections against being sued for the

6:23

way their weapons are used to cause harm you know the sort of harm that occurs all the time in this country and most

6:30

lawyers come to the conclusion that this all but slams the door shut on the courts when it comes to Bringing legal

6:36

cases against gun makers for these mass shootings and worst of all the gun

6:41

industry was perceiving it as an absolute immunity and the perception of being

6:48

immune from civil liability and having to pay damages for harms or deaths that

6:54

are created when you sell guns is a very dangerous perception

7:00

okay so kov is considering suing the company that made this gun that was used in Sandy Hook and he runs up against

7:06

this wall of protection that's unique to the gun industry pla which does this make him think

7:12

twice well not exactly you know he didn't really even know enough to have

7:21

that attitude he sort of felt like this was the right thing to do and he was going to keep going with it so what he

7:27

ends up doing with this case is is taking advantage of an exception to the federal law so the law is the protection

7:34

of lawful Commerce in arms act what he correctly notices is that it does not

7:40

protect unlawful Commerce and so what he tries to do is prove that the company in the Sandy Hook shooting Remington has

7:46

done illegal marketing you know has essentially violated a Connecticut consumer law okay so basically he's

7:52

arguing hey Remington broke this other law so they should not be protected by pla right and does that work it

8:02

does and so you know one of the things that he points to is that these

8:07

advertisements that were aimed at regular people that played up the guns military connections and their combat

8:13

Readiness and he basically argues that this was an unlawful uh promotion

8:18

because in the military guns are used to wage war and kill people I mean there's a lot of legal back and forth but you

8:24

know eventually the suit survives the company's attempts to get it thrown out which in and of itself is really a

8:29

remarkable feed M and so then they go into this phase where the company has to turn over documents as part of the lawsuit it's as if they were selling

8:36

widgets but they're talking about AR-15 so what they're trying to do in this time period of the Sandy Hook shooting

8:43

was they're trying to reach and expand the AR-15 Market to Target youth as

8:51

potential future customers they call the Target and end user so what he's able to

8:56

see in these documents that are turned over are you know internal company discussions about marketing weapons and

9:03

he sees that this company is trying very hard to reach a younger audience we see in the documentation um questions like

9:11

what kind of problems do they have is it a a man a woman or a kid who are we

9:17

trying to reach and why does he think they need to reach this younger audience

9:22

because they need to win that audience to sell their products you know this is

9:27

like any other them in a you know Market that's very competitive and in order to get new customers you need to go get

9:34

them when they're young you need to develop a brand loyalty early on we saw this effort reflected in the

9:41

documentation that we were able to obtain there were very intentional efforts to reach these kids through Call

9:48

of Duty in fact the records show that Remington the gun manufacturer had actually made a deal with Activision the

9:55

makers of Call of Duty to get one of their products featured in the game and it was reported that the Sandy Hook

10:00

shooter was an avid player of Call of Duty oh wow interesting so how did they actually make use of that information in

10:06

court at this point all that information is really locked up in the lawsuit it won't be made public until the trial but

10:13

before that ever happens the company Remington is in financial trouble and is

10:19

essentially bankrupt and its insurers are the ones negotiating with the

10:25

lawyers at this point and they agree to a settlement to end this lawsuit so does that mean they

10:30

won well it's a win for the families they got $73 million in a free market

10:38

where corporate conduct is often motivated by greed and people lose their moral compass the only way to correct

10:47

that conduct and to protect the public is by hitting them in the pocketbook you

10:53

know I mean this was the biggest settlement by a gun manufacturer for a m

10:59

shooting that we've yet seen but you know he didn't actually test these arguments at trial so there was never a

11:05

final verdict on the arguments that he was putting forth after the settlement happens he

11:12

really felt like this was the end for him with these kinds of cases I didn't know that I would be the quote like mass

11:17

shooting lawyer unquote it was something I never anticipated but then just a few

11:24

months later after they settle the Sandy Hook case a gunman walks in to Rob

11:29

Elementary School in yal Texas and Uvalde was like Sandy Hook

11:36

2.0 with even more outrageous facts and

11:41

the shooting there is really eerily similar in its details and I just felt when I was

11:50

contacted by these families that I can't turn my back on this like I knew it was

11:55

my obligation to do it so kostov gets involved in your vault day it had been

12:00

pretty much widely reported early on that he acquired the Daniel Defense

12:06

AR-15 effectively from the day he turned 18 and as he starts to dig into the case

12:12

what stands out to him is the timing so that told me that this company had been

12:17

targeting this kid for years and he's pretty convinced he can draw a direct line between the marketing scheme and

12:22

the shooter and really expand on the strategy that he' pioneered with Sandy Hook

12:30

what makes him say that how is he so sure well part of the reason he feels this way is that he says he has access

12:37

to information that's actually coming from the shooter's phone now to be clear

12:42

this is something that I haven't actually seen myself but kov in writing his complaint what he does with that is

12:50

construct this really Vivid timeline that he says explains you know the Crux

12:56

of the matter here you know how did a impoverished teenager from you know a

13:01

small town in rural Texas becomes so enamored with this pretty expensive

13:07

rifle that he would be so primed to purchase it that he would do so really

13:14

minutes after he was legally able to so what has kostov actually learned from looking at the shooter's phone and what

13:20

timeline is he able to construct from that okay well according to the complaint in November of 2021 which is

13:27

several months before the shooting the shooter here downloads Call of Duty Modern Warfare and he's downloaded the

13:34

game before a different version of the game but what's unique about this version of the game is that the title

13:39

page so the loading screen that comes up when you first start playing the game features a character you know really

13:45

sort of all decked out in body armor and they're carrying an AR15 style rifle

13:50

with this sort of special site on it a special scope and this is a weapon made

13:56

by Daniel Defense it's the ddm4 4 V7 model which is exactly the rifle used by

14:03

the shooter in yaldi m so he's exposed to this weapon at that point we don't

14:08

know if it's the first time he's seen it but certainly after that moment he begins to research on his phone this

14:15

particular rifle this very Niche weapon why this weapon all these weapons do the

14:21

same thing they're all function exactly the same and they all offer the same ability to kill and these guns are not

14:27

the cheapest on the market was something about this small company from Georgia

14:32

that spoke to this kid and so you can see that shortly after downloading this game he begins to research Daniel

14:39

Defense and research this particular weapon and the Daniel Defense website becomes one of these frequently visited

14:45

sites on his browser of this phone that kov says he has access to and the shooter begins saving money from his

14:51

low-wage job to buy this high-end weapon and according to the complaint

14:57

about a month before the shooting at Rob Elementary the shooter creates an account on the Daniel Defense website he

15:03

puts the Daniel Defense rifle in his cart like many of us have done with other items and soon after this is in

15:10

April of 2022 while the shooter is still 17 he puts this particular weapon the

15:16

ddm4 V7 into his cart on the website and

15:22

the complaint alleges what the company does at that point is send him an email and they do what every other company

15:29

does in the Online Marketplace they say hey are you still interested in buying that Daniel Defense rifle because we're

15:35

still more than happy to sell it to you now this is one of these kinds of you know alerts that says hey you know

15:41

we saw you put something in your cart are you do you still want to buy it but he's not allowed to buy it at that

15:47

moment because he's still 17 all they have to do is buy their time to get what they really want from him which is his

15:54

credit card he's so eager for that moment to come he's apparently Googling how many days it will be he then goes on

16:01

a kind of counter to figure it out and the day he turns 18 he's on that Daniel Defense website that happens when he is

16:09

18 years and 23 minutes old just minutes after midnight wow and 23 minutes after

16:16

turning 18 he gets confirmation that he has purchased it this roughly $22,000

16:21

rifle it was clearly proof positive of a successful marketing campaign remember

16:27

their goal is to sell the this kid an AR-15 as soon as possible to beat out their competition they have successfully

16:35

hooked this kid with this engagement of a sale and 8 days later he walks in to

16:41

Rob Elementary School with that rifle and opens

16:47

[Music] fire we'll be right back [Music]

17:02

so David just to recap kostoff is examining the sale of this gun to the

17:07

Uvalde shooter and it seems like that email from the gun maker is important

17:13

but these are the kinds of emails that I get all the time when I'm buying something online like a coffee maker or

17:18

pair of shoes or something so help me understand why it's important and significant here well for kostov this

17:24

push email is you know pretty important piece of evidence that really allows him to make the argument that Daniel Defense

17:30

is offering to sell a weapon to a minor and that would be a violation of Texas law right and if he can successfully

17:37

argue that they violated state law he can get around pla then bring a lawsuit

17:42

against the gun manufacturer for this mass shooting that's right but Daniel Defense isn't the only company being

17:48

sued here so you would also mentioned the companies behind Call of Duty and Instagram so tell me how kov thinks that

17:55

those companies are involved right so kosov has actually filed another lawsuit in California and that's the one that

18:01

names Activision the publisher of Call of Duty and meta the parent company for Instagram and that lawsuit is about

18:07

holding those companies liable for essentially helping promote the weapons that are used in mass shootings to

18:12

vulnerable children I mean Daniel Defense is remember a niche company they

18:17

have less than 1% of the market share for these types of weapons and his argument is that they wouldn't have been

18:23

able to reach this kid without the help of these other companies and you know

18:28

says is that it really took these three prongs the gun manufacturer the video

18:34

game company and the social media company you know to groom this yal shooter to get him primed to want this

18:41

weapon and what is he basing that off of is it just the appearance of the gun on the loading page of the game well in the

18:48

case of Call of Duty like that is evidence of a connection that he sees between the two companies that that kind

18:54

of thing doesn't happen just by accident okay so kof's argument is that there's this three-prong marketing strategy and

19:01

he's saying that the gun manufacturer needs these two companies to capture a younger audience so let's talk more

19:07

about his arguments around those two companies starting with Activision the publisher of Call of Duty you know kov

19:13

says that you know he's trying to make the link between the Daniel Defense gun and Activision but beyond that he's

19:19

making a broader argument for how the game Call of Duty actually is really a key part of this ecosystem he would say

19:26

that can shape a person like this evaldi shooter and what his argument is is that

19:31

you know Call of Duty is a first-person shooter game it's you know incredibly popular it's really this extremely

19:38

immersive experience and you know for kov this is important this is a very important Point video games have always

19:45

had an addictive quality but they have never had the 360 degree immersion of a

19:52

Call of Duty it uses the reward system of an addictive game and partly

19:59

and very much is a training simulation that is so

20:05

realistic that it allows the user to experience the actual recoil of the

20:11

weapon the chaos of killing and to be habituated to it he argues it's more

20:17

like a simulator and less like a game that is really sort of giving players the experience of killing you know it's

20:24

practice for eventually doing the thing and it is too fasil to say video games

20:32

don't cause violence when a lot of that those studies are based

20:38

on generic video games of yester year so you know what kostov argues basically is

20:45

that the studies out there don't really account for this that they're about video games in the past that essentially

20:51

you know these conversations that we've had about violence in video games you know these are outdated and in some

20:56

sense it's true that there haven't been robust studies on you know the impacts of newer versions of Call of Duty for example or you know how it might

21:03

influence behavior but you know this has been an area that's been studied for a while including recently and there

21:08

hasn't been this exact connection that you know he wants to say exists between you know increasing levels of realism

21:15

and violence and you know it's also important to note that you know at the same time experts really do say that gun

21:21

violence is more tied to gun access than it is to violent video games I mean that is a really striking argument though the

21:28

idea that game could train you to use a specific type of weapon I mean aren't these two experiences playing a video

21:34

game and using a gun in real life really quite different well one of the things to know about the shooter in the evaldi

21:41

massacre is that prior to going to that elementary school and opening Fire by

21:46

all reports that we have he had never fired a weapon before but he had shot

21:53

for many many hours countless hours guns within the world of Call of Duty in fact

21:59

one of the things that kostov argues in the complaint and he has information from the phone and another internet

22:05

activity to back this up he claims is that he was very very good and got lots

22:10

of positive feedback from the game to indicate that he had really excelled at it and kov is quick to point out and he

22:17

does so in the complaint that you know this shooter and the one in Sandy Hook were not the only ones to play Call of

22:23

Duty you also had the El Paso Walmart shooter the one in Highland Park Illinois they were were also Avid

22:29

apparently players of this game according to public reports but couldn't it just be that people who are more likely to commit mass shootings also

22:36

enjoy playing these types of violent games I mean I feel like we've been having this debate forever about whether

22:42

violent video games increase actual real world violence is the argument he's

22:48

making that the game causes the behavior just like a little bit of a stretch yeah I mean I think if that was the only

22:54

argument that he was making it probably really would be a stretch and we would be back in this you know decades long

23:00

debate over violence in video games and and whether you can connect the two but what he's really arguing here is you

23:06

know not so much that the game caused this action but that it's an addictive platform that's part of this larger

23:13

ecosystem that allows the gun manufacturer to reach teenagers and that

23:18

this whole ecosystem is essentially facilitating violence so kov is saying

23:23

hey Call of Duty is in a league of its own in terms of its addictiveness and its ability influence its users and he's

23:31

also making this argument that the game is connecting these young sometimes troubled people like the shooter with

23:37

this Niche AR-15 style rifle and that therefore Call of Duty and its maker

23:43

Activision are at least partially responsible for the eval shooting so what do they actually say in response to

23:49

that accusation well you know as to whether they have an actual formal marketing agreement with Daniel Defense they

23:55

didn't comment on that and they didn't want to address you know the spe specifics of the lawsuit they did give me a more General response acknowledging

24:03

you know the pain and and the horror of the eval Day shooting but also saying quote academic and scientific research

24:10

continues to show that there is no causal link between video games and gun violence and as a company points out

24:17

there you know it is a tiny fraction of people that play video games that are violent and go on to commit real world

24:24

violence and there are millions and millions of others who you know have been playing this game for years all

24:30

across the United States and haven't done anything like that and at the same time there's been you know many other

24:35

Mass shooters that were not connected to the game right and so we've talked about prongs one and two which are the gun

24:41

manufacturer and the video game so tell me about the third prong which in this case is Instagram specifically what is

24:47

the legal logic behind blaming them you know kov says that Instagram is is key

24:54

because of how easily gun content can reach young people on the platform that young people are able to sign up even

25:00

those who are younger than they're technically allowed to get on the platform and that this essentially

25:06

allows for kind of an unregulated or unmitigated connection between gun marketers gun manufacturers and you know

25:13

teenage viewers of of Instagram and even though the social media platform doesn't

25:19

actually allow the sponsored ads you know you're not allowed as a gun manufacturer to advertise on the platform what you can do is have organic

25:26

content they can have their own posts and one of the things that kov is arguing here is that you know because

25:32

these companies have felt like they had you know a federal shield around them that protected them they've kind of

25:37

allowed their marketing efforts to some of them anyway to get pretty extreme and so the complaint calls attention to

25:44

posts from Daniel Defense including one where they show off a weapon setup and describe it as quote totally murdered

25:49

out and there's another one that shows a view through a rifle scope you know looking down from a rooftop and it's in

25:55

an urban setting and there's a windshield of a parked car that's in the crosshairs and the caption reads rooftop

26:01

ready even at midnight wow and you know targeting someone in a car with your weapon you know it's almost by

26:06

definition an aggressive use of that weapon and it's something that they were they were marketing you know they were marketing this weapon as something that

26:14

you might use in these situations right and so these are posts that that kostov argues have have gotten increasingly

26:20

extreme because there's essentially the belief that there's nothing reing them in that the law protected them and that

26:26

at the same time there was actually Market chair to be gained by selling this violence okay but do we know that the Uvalde shooter even saw some of the

26:33

content on Instagram that we're talking about no we don't know that I mean it's not clear at least from what's in the

26:39

complaint that he did what the complaint says uh and this is from cell phone data that COV says he has is that the shooter

26:46

was an avid user of Instagram that he had at least 20 accounts wow and we know he was searching for the gun at least

26:53

according to kof's description of what was on his phone and that he was on the Daniel Defense website but it's still an

26:59

open question as to you know whether he would have been shown this Daniel Defense content because of his

27:05

activities on that website right this seems like a hard argument that Instagram should be held liable for

27:10

something that Daniel Defense or influencers or whoever were posting right it is a big challenge for them in

27:16

this lawsuit against meta at least and that's because of a law that's broadly known as as section 230 that really

27:22

protects these platforms from the content that people post on the site so it's very difficult for someone to come

27:29

along and Sue Instagram because of that content you know it's somewhat Akin actually to the gun context with that

27:36

2005 law PLA and it's a legal hurdle that many people have thought makes these kinds of suits not impossible but

27:43

very very difficult and kasoff is you know pushing on that wall in the same

27:49

way that he's been pushing on the pla wall in the gun context and you know

27:54

what makes these suits you know novel and and sort of surprising is you know he went from trying to force you know

28:00

open one door while also pushing on another very difficult door and so he's really you know kind of doubled his

28:06

difficulty with these suits but he believes that as we've discussed the evidence in this case is striking enough

28:12

that it makes it plausible and and what is meta saying in response well meta has

28:17

not said anything about this lawsuit in fact I followed up you know and you know they don't have a public comment about

28:23

it David all of these arguments seem extremely difficult to make how How

28:28

likely is it that these cases actually go anywhere well you know I think at this point it's pretty hard to say but

28:34

there's a lot of hurdles standing in his way in both cases you know he's not just going after a gun manufacturer he's

28:41

going after one of the biggest you know social media companies and a huge video game company which is happens to be

28:47

owned by Microsoft so you know this case could get thrown out in the initial process you know he may lose if he ever

28:54

gets to trial at that point but what kov is trying to do here and

29:00

what other lawyers I talked to said is to really try and sort of shift the conversation away from the person and

29:07

also kind of away from the gun to looking at what is the culture that surrounds these kids and there is a

29:15

sense in I think America right now that there is something sort of off around social media use and teenagers you know

29:21

uh I asked kov about this you know his lawsuit is kind of hitting at a time when there's broad discussion of you

29:28

know the potential harms of social media but I think what he's been able to do in this suit is reframe some of those

29:34

arguments around very specific data from this one Shooter's online activities and

29:40

really paint a picture of how these three prongs came together to create one

29:47

shooter and you know possibly allowed the families some way to get

29:52

accountability or and actually hold someone liable for the shooting that you

29:57

know really isn't available through any other means and so you know for kostov just doing that is worth

30:04

[Music] trying David thank you very much well

30:10

thank you [Music]

30:16

Rachel we'll be right

30:23

back here's what else you need to know today Russian President Vladimir Putin is visiting North Korea Putin is

30:30

expected to ask North Korean leader Kim Jong-un for more weapons for Russia's war with Ukraine this will be the second

30:37

meeting between the two men in the last 9 months a sign of Russia and North Korea's deepening military

30:43

ties and on Monday Maryland governor West Moore pardoned about 100,000 people

30:49

for low-level marijuana offenses like possession the move comes as more and

30:54

more states are legalizing marijuana and pardoning marijuana related crimes which criminal justice Advocates say

31:01

disproportionately affect people of color Maryland's attorney general said about the pardons quote today is about

31:09

Equity it is about racial [Music]

31:16

Justice today's episode was produced by Diana win Bolivia Nat and Sydney Harper

31:22

it was edited by Liz oalen and Paige cowt fact checked by Susan Lee contains

31:27

original music by Dan Powell Rowan NE misto Pat mccusker and Maran Lozano and

31:33

was engineered by Alyssa Moxley our theme music is by Jim brunberg and Ben lansberg of

31:39

[Music]

31:47

wonderly that's it for the daily I'm Rachel Abrams we'll see you tomorrow

31:57

[Music]