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Episode 197: Mantrap
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[soft optimistic music]

Andrew McClurg: Well, everyone knew everyone in this very small town called Eddyville, and everyone apparently knew the Brineys.

[as narrator]

Phoebe Judge: In 1957 a couple named Ed and Bertha Briney inherited an old farmhouse from Bertha's parents in a rural part of Iowa.

Andrew McClurg: And they left it unoccupied for ten years. And it was an uninhabited old farmhouse and out in the middle of nowhere basically. But they kept items of value apparently in there.

Phoebe Judge: Bertha Briney's grandparents and parents had lived in the house. After her parents died, Bertha Briney had wanted to keep things as they were, down to the plates and silverware on the kitchen table. We're hearing about the Briney and their farmhouse from retired law professor Andrew McClurg.

Andrew McClurg: People had repeatedly broken into this house.

Phoebe Judge: According to the Brineys, in the decades since they inherited the house, it had been broken into fifty times. Ed Briney later said he'd nailed doors and windows shut, posted seven "No trespassing" signs around the property, and complained to sheriffs in two different counties over and over. But nothing seemed to work.

Andrew McClurg: So they basically boarded up the windows and put tin over the windows to try to keep people from breaking in, but that was unsuccessful.

Phoebe Judge: And that's when Ed Briney got out his shotgun.

[edgy minimal music]

Andrew McClurg: Because they were fed up, as I think with Mr. Briney, I think those were his words, they were just fed up with people breaking in.

Phoebe Judge: Ed and Bertha attached the shotgun to an iron bed frame and ran a wire from the gun's trigger to the bedroom doorknob so that if someone opened the bedroom door, the trigger would be pulled, and the gun would go off.

Andrew McClurg: Originally, the barrel was aimed to hit the intruder in the stomach. Ed Briney, the husband, wired it and his wife, Mrs. Briney, that paragon of reasonable that she was, suggested he lower it to just shoot the intruder in the leg.

[to Andrew]

Phoebe Judge: Was there any sign posted outside of the house saying "No trespassing" or "Gun on premises. You will be shot if you enter"?

Andrew McClurg: There were “No trespassing” signs they had on the land for several years. Just regular “No trespass” signs. There were no warnings that there was a deadly inside.

Phoebe Judge: A booby trap.

Andrew McClurg: A booby trap.

[as narrator]

Phoebe Judge: The population of Eddyville was around a thousand people. Its main street was two blocks long, and just off of it was a gas station owned by the Katko family. 28-year-old Marvin Katko worked there with his father.

Andrew McClurg: And he had an interest in collecting, apparently, jars and bottles that he considered to be valuable antiques. And one day he broke into an abandoned, not abandoned, an uninhabited farmhouse out in the country about seven miles away.

Phoebe Judge: Ed and Bertha Briney’s farmhouse. Marvin had noticed the house over the years when he went hunting in the area. It was surrounded by tall weeds. And some of the smaller buildings around the property were falling apart. According to court documents, Marvin had broken in once before with a friend to collect bottles, and they had decided to come back to see if there was anything they missed. The window they'd used to get in the first time had been completely boarded up. So they walked around the house until they found another window that was easier to get into, even though it was boarded up too.

Andrew McClurg: So he removed a board or a piece of tin and entered the house.

Phoebe Judge: Marvin's friend started looking around the kitchen. And Marvin headed for the bedroom.

Andrew McClurg: And when he pulled on the bedroom door, the shotgun trap went off and blew away a substantial portion of his leg.

[tense quick-paced music]

Phoebe Judge: What happened next led to a case that’s still taught to first year law students, more than fifty years later.

I'm Phoebe Judge. This is Criminal.

After Marvin Katko was shot in the leg, the friend he'd broken into the farmhouse with helped him to the hospital. He spent forty days there. He had to wear a cast for about a year, a brace for another year, and he lost two and a half inches of his leg. His doctor said he had seriously considered amputation.

[to Andrew]

When Marvin Katko recovered while he was in the hospital, he was admitting that he had broken into another person's premises. What did he do?

Phoebe Judge: Well, first, absolutely he knew. And he admitted that he knew it was wrong and criminal, and he was originally charged with a felony, but ended up pleading guilty to a misdemeanor.

[as narrator]

Marvin pled guilty to larceny in the nighttime of property valued at less than twenty dollars. He was fined fifty dollars and given a sixty-day suspended sentence. And then, he filed a lawsuit against the owners of the house he'd broken into: Ed and Bertha Briney. Marvin Katko's lawsuit alleged that Ed and Bertha Briney had shown “malice and intent to harm by rigging the shotgun”, that they meant for someone to get seriously hurt. Marvin Katko's lawyer told newspapers that he based his case on the theory that there was a big difference between protecting your life and home where you live and protecting property, and that you cannot use excessive force to protect property. Andrew McClurg says the case might have been very different if Ed and Bertha Briney lived in the farmhouse and were there that night. But the house was vacant.

Andrew McClurg: It's very important a principle, I think, because this is where people get it wrong. So the fact is, is that if this had been an occupied house, if somebody breaks into my house—I don't own a gun—but if I did and somebody broke into my house, there's a very good likelihood that, especially at night, I could legally shoot them because then I would be switching from the defensive property to self-defense, or if I had a family living there, other people living there, defense of others. So you can use deadly force, often, to protect yourself or other people, just not property.

Phoebe Judge: Ed and Bertha Briney’s lawyer argued that the law allows for property to be defended with, quote, “all the force necessary”. And then he asked, “who decides

what is necessary?" Ed Briney said that he felt like he was being, quote, "tormented by being robbed over and over again". During the trial his lawyer attempted to demonstrate how bad it feels to have your things taken by reaching into the jury box and grabbing the purse of one of the women on the jury. But in the end Marvin Katko won.

Andrew McClurg: And not only does he win, he wins not just compensatory damages to compensate him for his injuries and medical expenses, but punitive damages which are an add-on type of damage that is quite rare actually and designed to punish particularly egregious conduct.

[to Andrew]

Phoebe Judge: But they were not charged with any criminal crimes?

Andrew McClurg: No, no. Today it would be a crime in most states. Back then it probably was not technically a crime.

Phoebe Judge: So what were the damages? Will you tell me what he was rewarded?

Andrew McClurg: They were $20,000 in actual compensatory damages and $10,000 in punitive damages, but it would actually be substantially more in today's dollars. And as a result, the Brineys—and this was partly what really stirs up students—the Briney's had to sell eighty acres of their farm to pay the judgment to the criminal who broke into their house.

[slow-paced jazzy music]

Phoebe Judge: You've been teaching this case for a long time? How do your students react to this case?

Andrew McClurg: So what usually happens is people will usually speak up in favor of the court's decision, that is in favor of Marvin Katko winning, that you shouldn't be able to use deadly booby traps. So I have to kind of play along with it and draw out the people who don't want to come across as cold-hearted or cold-blood to start defending the Brineys. But once they get going, they really get going on it. And then I find somebody vociferously sticking up for the Brineys. And then I say, how many people in here—'cause law school classes, first year classes are pretty large, this might be seventy, eighty people there—I say, how many people in here ever entered illegally any kind of structure on somebody else's property when they were a kid? Whether it's a

shed or a barn or an abandoned house...and almost every single person raises their hands.

[as narrator]

Phoebe Judge: The Briney's appealed the decision, and the case went to the Iowa Supreme Court. But the court agreed with the original ruling, finding the Brineys responsible.

Andrew McClurg: But a lot of people in the town sided with the Brineys.

Phoebe Judge: One paper reported that about 3,000 people had written to offer support to the Brineys. Mrs. Briney was quoted as saying, "It's sort of a puzzling world in that I didn't feel as if I was in the wrong. I was the one being harassed. What else was I gonna do besides get a 24-hour guard?" Marvin Katko was quoted saying that some Eddyville residents no longer associated with him. But he said that the average person can see both sides of it. Courts have been hearing cases about people setting off what's called a spring gun trap, a booby trap, or sometimes a mantrap for a long time.

Andrew McClurg: So one of the most notable and earliest cases was a case from England in 1825. So almost 200 years ago called Bird versus Holbrook, and the defendant Holbrook maintained what were apparently very valuable tulips that he grew about a mile from his house.

Phoebe Judge: He set up a booby trap with trip wires running across a few of the paths in the garden. One day a neighbor's peacock flew over the garden wall, and a 19-year-old climbed over it to help find the bird. He set off the trip wires and was shot in the knee. Then he sued the tulip gardener and won.

Andrew McClurg: So one of the problems with booby traps is they're indiscriminate. They can't discern between a dangerous criminal and a 10-year-old kid who's just out doing mischief.

Phoebe Judge: A 1986 case involved an electrified booby trap. A store owner whose store had been robbed multiple times installed an electrified metal grate above his front door. When a man broke through the ceiling, the rubber soles of his sneakers protected him, but he touched the metal grate as he tried to climb out and was killed. The store owner was arrested and charged with manslaughter. He said, "I didn't mean for anyone to be killed. I just wanted to shock him and warn him." His store had been robbed six

times in the past month alone. And he said that the police hadn't done much about it. He said, “The police come by and fill out a report and put down that fingerprint dust, and you'll be cleaning it up for two days after that. But they'll never even call you.” A grand jury voted to release.

[soft, pensive music]

Andrew McClurg: And these are all cases involving people who are fed up with people breaking into their property. So it's not like that was their first idea to set up deadly bobby trap.

Phoebe Judge: In 1974, a man named A.C. Wade owned a liquor store in Cordele, Georgia. He also owned a cigarette vending machine just outside of the store.

David Rainwater: And apparently, he had had trouble with people coming and rattling his machine and it would sling out either cigarette packages or money or change out of the cup that held the money. And so it was an early type machine, so it was not very sophisticated. So he began to make it sophisticated by—he put a third of a stick of dynamite connected to a micro switch so that if it was disturbed in any significant manner, it would ignite the dynamite stick. So, it’s quite a crude thought. I mean...

[to David]

Phoebe Judge: But if you were to shake the machine so much, it would, whatever the charge would be set off.

David Rainwater: That's correct.

[as narrator]

Phoebe Judge: Attorney David Rainwater.

David Rainwater: And this machine was sitting out front of the liquor store. So it was exposed to 24-hour use.

Phoebe Judge: A.C. Wade, the liquor store owner, said his machine had been broken into five times, and that he'd put in the dynamite to try to scare off potential thieves. He said, “The solution was to sacrifice the machine. It was the only thing I could come up with.”

David Rainwater: He had not attempted to see what the amount of force would be. Would it be a killing force, or would it just be a scaring tactic? But I think a third of a stick of dynamite is a significant force, and of course, it turned out to be a deadly force.

Phoebe Judge: Just after midnight on August 23rd, 1974, a 16-year-old boy named Robert Joel McKinsey and his 15-year-old friend reportedly tried to pry open the machine with a tire tool. The dynamite went off and the machine exploded. Both of the boys were hurt. Papers reported that the 15-year-old left the scene to seek medical help leaving his friend behind. He was eventually questioned by police and brought the deputies back to the liquor store. Robert Joel McKinsey was still at the scene, very badly injured. His leg had been hit by a piece of metal from the machine during the explosion and an artery in his thigh was severed. He died shortly after he was taken to the hospital. A.C. Wade said that he felt terrible and cooperated with police from the start.

David Rainwater: He admitted everything. He admitted that it was rigged as a mantrap. He didn't boast about it, but he actually felt that he had done nothing wrong.

Phoebe Judge: He told papers, “I gave it lots of consideration. I never activated it until afterhours. There was no way an innocent person could get hurt. He had to be breaking in. I figured it would knock them down on the pavement.” He said, “You just never think of everything.” And that some people had been sympathetic to his position. But he said, “In lots of people's minds, I'm a villain.”

[tense music]

The county sheriff said he wasn't planning to file charges because he said he, quote, “Knows of nothing illegal A.C. Wade had done”. The sheriff said the death was accidental. He said the dynamite itself wasn't powerful enough to kill someone, and that Robert Joel McKinsey had died because a piece of the machine had come off and cut his leg, and he bled to death.

David Rainwater: Nobody was willing to prosecute this man for doing this. And so we then filed the civil suit.

Phoebe Judge: David Rainwater represented Robert Joel McKinsey's mother.

David Rainwater: One of her relatives insisted that she talked to a lawyer ‘cause it wasn't right for her son to be killed over stealing quarters, which is basically what it was.

You might remember back then the machines were not sophisticated enough to take dollar bills. So it was just quarters.

Phoebe Judge: A.C. Wade estimated there had been four or five dollars in the machine. David Rainwater thought Robert Joel McKinsey's mother had a good case.

David Rainwater: The wrongful death statute, number one, did not limit it to non-criminals. It applied to everybody. It didn't matter what your conduct was even if you were a trespasser, even if you were a criminal, you still could use the wrongful death statute to collect damages from somebody that had a willful and wanton and intent. He expected the trespasser to come back. He laid a trap for him. And at least in Georgia, you don't owe a trespasser any duty, except not to leave a mantrap for him, that's the way our law was written. The defense kept saying, well, you know, we had no intent to kill him. We were just trying to protect our property, trying to scare him and whatever, but that wasn't good enough because the law held that anytime that your conduct is willful or wanton, intent is inferred.

Phoebe Judge: A.C. Wade was found liable. The judge wrote, “He had an abandoned and malignant heart. He set a death trap with dynamite, never testing it to determine how many innocent persons might be killed if within a hundred to 200 yards of it, and thus sought to protect his several dollars in the vending machine. He had a conscious indifference to consequences.” A.C. Wade was ordered to pay a small settlement to Robert Joel McKinsey's mother.

[to David]

How did people react in town to the events and the decision?

David Rainwater: Very negatively. They couldn't believe somebody could collect that was in the process of stealing from you.

Phoebe Judge: So they weren't showing outward sympathy for what had happened to this 16-year-old?

David Rainwater: No, not at all.

[as narrator]

Phoebe Judge: David says that people in town thought of Robert Joel McKinsey as a thief.

David Rainwater: He was a criminal. What happened to him was irrelevant. He was in the process of committing a crime. And there are people out there that still believe that property and the right to enjoy it is the highest right you have. But that's not exactly true, and this case really illustrated that even a criminal in the state of Georgia can recover for damages if he was injured or killed as a result of a mantrap.

Phil Connaghan: Well, my back was against the wall.

Phoebe Judge: This is Phil Connaghan. In the late ‘80s, he was living in Denver, Colorado. He had a construction firm and did building repairs for a living. And he stored all of his equipment and tools in a warehouse in a nonresidential part of town.

Phil Connaghan: Well, I kept my snowplow in there, and my service truck that had all my carpenter tools in it, and it had all my concrete tools in it and my roofing equipment, and all my hand tools, my mechanic tools that I repaired all my equipment. I've done mechanical work most of my life.

[to Phil]

Phoebe Judge: So everything you needed to do your job was in that warehouse.

Phil Connaghan: Absolutely.

[as narrator]

Phoebe Judge: One day, Phil decided to take a road trip into the mountains.

Phil Connaghan: I had a little MG car. Weather was perfect and top down — it’s just incredible driving through the mountains in a little convertible. And I stopped by the warehouse just to have a look. It was a Sunday. And I saw that my back door had been broken into. And that's when it started.

[tense music]

[to Phil]

Phoebe Judge: When you walked in, what did you see?

Phil Connaghan: I saw that I was doing a welding job and I had it all laid out — had all my equipment there. And every piece of my welding equipment was gone. That job just came to a halt. And you can’t imagine the feeling of it, it's like, you know, your stomach just falls. It was awful.

Phoebe Judge: What did you do when you saw that all of your things were missing?

Phil Connaghan: Well, I called the police and I repaired the door. I reinforced it the best I could. And I just built a new padlock system for it. And that was the best I could do. And cops got there and looked everything over and took the report and that was it. It wasn't maybe two or three Sundays after that I got there and found out that the door was smashed in again and more of my equipment was gone.

Phoebe Judge: Were you surprised that it happened again?

Phil Connaghan: Oh sure. Oh yeah. I thought, you know, one time deal. But it was just the start of many. And after about the second or the third, I got used to it. I didn't know what to do. I can't remember how many times they came through that back door until I finally rebuilt the door. And then I put sheet metal there. And then I backed it up with more wood. And the next time I got there to work, he had taken a hatchet or an ax or claw hammer or something, and tried to break in. And he absolutely just shattered the wooden door until he came to that piece of metal. And he didn't have any way to get through that metal.

[as narrator]

Phoebe Judge: Phil says he'd set up an alarm that would call 9-1-1 when it was tripped. But he says, “whoever was breaking in somehow knew to turn off the electricity”. He says that each time he saw that there had been a break in, he called the police and made a report. Eventually he was calling them so much that they asked him to just mail them a list of the items that were stolen.

Phil Connaghan: The place was so off the beaten path that. They just couldn't seem to get a patrol car to go down in there and check the place. They were too busy where there was business and people and cars and so forth.

Phoebe Judge: A columnist at *The Denver Post* wrote an article about all the robberies and some readers felt so bad for Phil Connaghan that they sent him money and replacement tools. It didn't take long though for those donated tools to be stolen too. Phil Connaghan says that he had no idea who was doing this.

Phil Connaghan: But he was incredible. He was an incredible mechanic at getting into things. The final, the thing that broke my back was the fact that I had rebuilt the back door to where he couldn't get in that way anymore. And so he tied his vehicle to my front doors and pulled the front of the building down to get in. And then he took everything he wanted at that trip, I guess. I thought, I can't get any help. Figure it out, Connaghan.

[low tense music]

I remember getting that shotgun and going back to the backroom and sitting on that stool and putting it all together and testing it, make sure that it was gonna work. And I ran a trip wire about a foot off the floor and then loading it and get getting it ready to do its job. I didn't really plan on it. I just did it. I guess it was the only thing that I thought would catch him.

[to Phil]

Phoebe Judge: Were you worried about it shooting the wrong person and someone who wasn't doing anything wrong might get hurt?

Phil Connaghan: Never did. He and I were the only ones that ever went back in that room. There wasn't any reason for anybody else to go in there. They couldn't get in there.

Phoebe Judge: How did you hear that something had happened?

Phil Connaghan: It was Easter morning and I had worked to put the front of the building back together. And I got my little MG and headed for Kansas City and was gonna spend Easter with some friends over there. And we were at my friend's farm and telephone rang and they said it was for me. It was my daughter.

[soft pensive music]

She told me that she was with the police, and they wanted to talk to me. And I don't know if you've ever had dry mouth, but I almost died of dry mouth that day. It was awful.

And police got on the phone and wanted to know if I was Phil Connaghan. I said, yep. They said, well, we're at your warehouse and there's been a problem.

Phoebe Judge: Did the police tell you anything? What did you learn had happened?

Phil Connaghan: Well, I kept asking this cop, what division are you with? And he'd say Denver Police department. And I said, no, you know, what division are you with? And he finally said, I'm with homicide. And that's when I about came undone ‘cause I knew then.

[as narrator]

Phoebe Judge: Four people had broken into the warehouse the night before. One of them, a 19-year-old, set off the shotgun and was killed. His three companions ran away. Police waited until the morning to go inside the building and retrieved the body because they were afraid of another booby trap going off.

Phil Connaghan: And they were searching for me. They charged me of first-degree murder. And I hid out several places in Kansas. And finally I realized I was gonna have to face up to what was going on over there. Soon as I got back, I called the police and told 'em I was in town, what I needed to do. And they told me just to come down to police headquarters and turn myself in. That'd be the best thing. So that's what I did.

Phoebe Judge: The owner of a restaurant near Phil's warehouse told reporters that the victim had terrorized the area and that he was a skinhead with a visible tattoo that said white pride. The restaurant owner said if I would've faced a situation where I asked and asked and couldn't get help, I would've done the same thing to protect my property. Business owners in the area started putting up signs saying their buildings were booby trapped too. One of them burned down because firefighters refused to enter it until they could determine that it was safe. Phil pled guilty to manslaughter. He was fined $2,500, placed on probation for six years in order to pay $7,000 to the family of the victim.

Phil Connaghan: You know, the punishment I got was really nothing compared with taking a life. I realized that. I just did it to put a stop to it. I never thought about killing anybody...I don't know why, I guess maybe I blocked that part out as a way of justifying what I did.

[to Phil]

Phoebe Judge: Did you ever see the family of the person who was killed?

Phil Connaghan: Never did.

Phoebe Judge: You never heard from them?

Phil Connaghan: Nope. Not a word.

Phoebe Judge: What would you say to them if you could talk to them?

Phil Connaghan: Oh, that I was sorry that I hurt their son, that I killed him.

[soft contemplative music]

[as narrator]

Phoebe Judge: Criminal is created by Lauren Spohrer and me. Nadia Wilson is our senior producer. Katie Bishop is our supervising producer. Our producers are Susannah Roberson, Jackie Sojico, Libby Foster and Samantha Brown. Our technical director is Rob Byers. Engineering by Russ Henry. Special thanks to Matt Spohrer.

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I'm Phoebe Judge. This is Criminal. [music fades out]

END OF EPISODE.