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David Feldman: From the KPFK Studios in Southern California, it's the Ralph Nader Radio Hour.

[Music]



David Feldman: Welcome to the Ralph Nader Radio Hour. My name is David Feldman along with Steve Skrovan and the man of the hour, Ralph Nader. This week we're going to talking about driving and flying. And the second half the show, we're going to be talking with Paul Hudson, the President of Flyers Rights, the largest nonprofit consumer organization for airline passengers. He's going to tell us about what you should know about what airlines are putting into their fine print contracts. We'll also be checking in as always with our Corporate Crime reporter Russell Mokhiber and then we'll talk a little bit about a soiree I attended last week in Ralph's hometown of Winsted Connecticut. I'm talking about the grand opening of the American Museum of Torts. If we have time, we'll get to some listener questions but before we do any of that, Steve Skrovan, tell us about our first guest?

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Steve Skrovan: We talked on the show about the idea of driverless cars and computers in cars and the potential for hacking and other mischief. Today we have on the show an expert on software. Eben Moglen is a Professor of Law and Legal History at Columbia University and is the founder, director counsel and chairman of the Software Freedom Law Center whose client list includes numerous pro bono clients such as the Free Software Foundation. He's been gracious enough to take time out between teaching classes to talk to us about these Volkswagen scandals as well as other things. Professor Moglen welcome to the Ralph Nader Radio Hour.

Eben Moglen: Thank you it's a pleasure to be here.

Ralph Nader: Pleasure to have you Professor Moglen. You have made a real record over the years of pressing for free software. You've said that the idea of proprietary software is as ludicrous as having proprietary mathematics or proprietary geometry. You've also said that free software is a fundamental requirement for democratic and free society in which we're surrounded by independent technical devices. Only if controlling these devices is open to all via free software can we balance power equally. Before we get into the automotive area, those comments of yours provoked a widespread concern about some people regarding the upcoming elections relying on these complex voting machines that have been purchased in most voting districts in the United States by Municipalities but to proprietary software is owned by the companies. What risk do you think this is going to pose especially since most of our Presidential Elections come down to three or four states like Ohio and Florida with a winner take all electoral card system? Can you give us some idea of whether you've had concern over this in recent elections and what should be done about it? I noted often that Canada uses a paper ballot and by 11 o'clock at night on Election Day, they know who won and who didn't.

Eben Moglen: We need Ralph to understand that who counts votes in every election matters enormously. Most of the advanced democracies in the world, have non partisan as public agency that conducts elections. In the United States, electoral administration is conducted by elected officials with partners and affiliation. As we learn in the 2000 that National Election in which you were a candidate, the identity of the Secretary of State in any particular State and the partisan affiliations of that Secretary can matter enormously to the outcome of Local or National Elections. As Earl Long, Huey Long's brother, the Governor of Louisiana said once about voting machines, "Give me the right commissioners, I'll make them machines play home sweet home." So who counts and how they count is the crucial matter in the administration of democracy on the ground. If we use a voting machine that doesn't produce a voter verifiable paper ballot as an audit trail, we will never be able to trust the count created by software we can't

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read and which might have been modified in practice. As the Volkswagen case itself and we're going to be talking about shows. It's easy to make software behave one way when it's being checked and one way when it isn't, and that's a real problem in voting machine software. Even if we're not going to rely entirely on counting paper ballots as the Canadians do, we certainly want the electronic machines that people use to leave behind a paper record that the voter can verify and that we can use to audit the eventual count.

Ralph Nader: Is that widespread now?

Eben Moglen: It's not widespread but it's not from an engineering point of view very difficult to make widespread and a number of University Computer Scientists around the United States who worked on the issue of voting technology have recommended it. It's relatively simple to make a machine that either prints something a voter can see or presents a copy on a screen of a piece of paper which can then be kept in a roll by the machine even if the votes are electronically transmitted to a central location for faster counting. There is at least an audit trail. The idea of the voter verified paper ballot that leaves behind something that can be recounted is not incompatible with the convenience and speed of electronic voting but if we leave behind no written record that history can judge of the votes cast in new election, we are asking for democracy controlled by the machine.

Ralph Nader: Indeed. There are people who claim that the election was stolen in Ohio in 2004 by this process you're describing. Our listeners should be very alert and ask their election officials whether there's a paper trail well before they go down to the voting precinct to vote in next year's election, is there a paper trail that provides verification, is very central question for voters to ask especially in Florida, Michigan, Ohio and some of the swing states. Let's move over to the VW, debacle to prep us at -- I was impressed by a quote by Chris Gerdes, a Professor in Mechanical Engineering at Stanford University who said, "Cars these days are reaching biological levels of complexity." The same article said that the new car that you're buying has about 100 million or more lines of computer code which compares with 60 million lines of code in all of Facebook. This is an incredible situation, could you elaborate on just how vulnerable, never mind the cars are, how vulnerable the drivers are who think they're in control of the wheel and what can happen way beyond the situation of Volkswagen which we'll get back to. Give us some of the worst scenarios of hacking or manipulating software that can totally wreck a car in a highway.

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Eben Moglen: All right. We have two sets of concerns, right? We have failures which result from errors in software and we have failures that result from opening the opportunity for malicious misbehavior. We computerize automobiles very heavily in the first place primarily in order to deal with air pollution and other environmental concerns. By controlling combustion much more closely than could be done with a mechanical carburetor, it was possible to achieve the kinds of emission limitations that Clean Air Act enforcement in the United States, shall we say after Ralph, later required. We went into the business of turning cars into very complex fuel injection and ignition control and combustion control systems in which real time measurement of temperature and air pressure and humidity was used in order to achieve exactly the right mix of gasoline and air or diesel fuel and air in a combustion chamber. We went from there to all the other kinds of computerization, anti-lock brakes and the forms of ignition control and transmission control that are computerized and we wound up as you say with an extremely dense collection of software. If it fails you could have unintended acceleration as we have verified happened in Toyota Priuses, you could have loss of braking or changes in braking behavior if the anti-lock braking software which pumps the breaks for you when you press down on the pedal on wet or slippery terrain fails. You can have sudden loss of power to the entire automobile, this happened as we now know in many general motors, cars as a result in the defective spring but once you make the whole electrical system of the car dependent on a push button ignition system, it doesn't have to be a spring in key, it could be a failure in the code. We also do have enormous difficulties of hacking and this is true the more we move towards the forms of door locks and collision avoidance systems which are controlled from inside the car by radio fobs or other little devices sending that radio waves and can be controlled from outside the car by the same kinds of radio signals maliciously generated. Lots of car companies around the world have moved towards higher and higher levels of radio frequency automated control. We all are accustomed to the fact that you press your button halfway across the parking lot and the horn goes off and lights blink and the door opens but you also have radio control actual ignition and engine warming particular for cars in cold climates. Once you begin to turn all of that into a consumers expectation of convenience you're also turning it into crackers paradise because generating all those signals and controlling the car from abroad can be easily enough accomplished. A hacker team in the United States recently showed the ability to take over a Jeep brand automobile on the road and turn of its drive train and its ignition remotely by radio signals. That really means the opportunity to kill the occupants of the car.

Ralph Nader: This is a good background to get into the VW situation. Describe that briefly, what was the incentive for whoever in VW rigged the software in order to hide the fact that the pollution emissions from so far 11 million Volkswagens was much higher than the Government standards provided for, give a description of that?

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Eben Moglen: Suppose that the bottom of the price level of VW automobiles in Skoda and in VW and at the top, in the Audi line of more luxury cars, VW was building and selling more cars than anybody else around the world, it's great ambition, in part on the basis of so called clean diesel technology. The problem with diesel cars is that they are either very underpowered, you press the accelerator and a little time later you'll begin to move or they are very dirty because combustion of heavier fuel produces more particulates and more undesirable gases output from combustion. VW, Audi, Porsche was building and selling a lot of cars around the world that were supposedly comparatively in expense if because diesel are cheap to build and very clean. Of course it wasn't really very clean but they needed it to appear to be very clean and it is apparent that with the complicity of a fairly large number of engineers and other servants of the VW empire, cars were built through software was designed to determine whether the engine was being emission tested and if it was being emission tested to turn on a whole bunch of features that would make the engine burn clean but would not be economical or fun to drive. When it is on the road it becomes more economical and more fun to drive by emitting large quantities of poison gases which the regulations don't permit. If I may risk a joke at which you and I share, we have gone from unsafe at any speed to poisons bystanders regardless how slowly you drive. Once again as many decades ago when you first brought all of this to the world's attention, we are dealing with auto maker subterfuge cover-up and refusal to admit facts. The nature of VW's code were clean when tested and dirty when driven was discovered not only by researchers in the United States operating more or less by accident, we now know that it was also discovered by crucial VW suppliers, Bosch the maker of among other things, the spark plugs and other ignition gear in VW cars which reported to VW. We are told many years ago that there was a problem with emissions and with the record of the emission control software about which VW did nothing. It was a business strategy. Make cars which look and feel great, say they're clean, make them behave conveniently and let them dirty everybody's lungs every other part of the day.

Ralph Nader: We're talking with Professor Eben Moglen of Columbia University Law School and listeners should know that in the United States, the certification of cars to meet EPA pollution control standards is done in a laboratory owned by a private company and it is not real world testing, it's lab testing and when the car hits the real world with you behind the wheel, the emissions are considerably higher than what is sent to EPA by the manufacturer as a certified product. In Europe apparently the auto companies are allowed pick their own private tester. Either way the problem starts with this outsourcing of testing in part because EPA has such a tiny budget and they really don't have the specialist or the equipment to do it themselves. Let me ask you this question Professor Moglen, let's say you're an owner of one of these cars, you like its relatively good mileage, power, torque, you get a recall notice from VW and you say to

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yourself, “I don’t want to take this car back, I don’t want to lose those advantages and return for some reported reduction of my auto emissions,” how would you deal with that? With an incentive payment required by the government on VW, how were you able to these cars recalled and then what do you think VW can do by way of a fix or should they be required if the owners are willing to buy back these cars?

Eben Moglen: Now we have of course Ralph a global problem and not just the US problem and the regulatory environment differs. The EPA does not have the power to takes cars off the road, it can under these circumstances stimulate a recall acting with NHTSA, the National Highway Traffic Safety Administration but they can't bench the cars. In Germany the regulators do have the power to order noncompliant cars off the road. If this is going to cause for the VW empire an enormous problem in their own home world. If in the United States we have the power to tell people look you can't just drive it, it's not California road safe, that would cause people to have the recall work done and the software replaced. But I must tell you that although I think you're right, that there are a lot of consumers who will think, “Why should I take this in, it's only going to make my car worse.” There are also a lot of consumers who bought these cars because of the clean diesel promise. I was in Los Angeles this weekend which we can think of as ground zero of this issue and I was talking to a lot of people around UCLA, many of whom bought VW clean diesel cars because they thought that they were part of the improving the environment for everybody and they don't even just want the software repaired, they want VW to give them what it sold them which was a clean diesel automobile. It is very difficult for VW to deliver that. As you say they can fix the software so it runs all the time clean as advertised but consumers will get a very different performing car. Their engine will last less long because they will run substantially hotter, they will buy more fuel and they will pay more for it, particularly let us say in the California market, where all automobile fuel is very high priced for reasons we are constantly sure have nothing to do with market manipulation. The consequence of which is the VW is going to have a lot of dissatisfied customers. Moreover in the United States and in California in particular, they're going to have a lot of legal problem. Every contract in California implies a duty of good faith and fair dealing. I have no doubt whatever that there are California class action orders doing the Lords work in this instance who are going to be out there asserting that VW has breached its duty of good faith and fair dealing every single time it sold a so called clean diesel car in California. This is why the estimates of the cost to VW which are based on the EPAs fining capacity which seems extremely large that is, it amount to 18 billion dollars if you assume the maximum \$37,000 fine from EPA per automobile are nothing to the actual damages to irate consumers. You're right that stimulating the ones who simply want a diesel that's fun to drive to go in and get their software replaced maybe part of the problem. The bigger problem is the enormous angst created among a population particularly in the most car conscious

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part of the United States that wanted cleanliness and cheapness and have been cheated on the deal.

Ralph Nader: Professor Moglen on this issue which almost nobody has talked about and you're a Law Professor, you've worked on damages, apart from the damages to the consumer, they're damages to breathers of dirtier air and they're not exactly going to have explicit standing to sue, how would you as a policy matter advise EPA or NHTSA to deal with the damages that Volkswagen should pay for the indeterminate number of respiratory diseases or even statistical fatalities from massively polluting the air more?

Eben Moglen: It is going to be very difficult as you know it is hard to establish the kind of colorization [ph] necessary to put a law suit like this in the Museum of Torts. We are beginning to get some proxy measurements for how many deaths might be caused by putting so many extra tons of nitrous oxide into California's air. I would not be totally surprised if we got some law suits by California Municipalities on the basis of harm to natural resources which is the most likely form of claim concerning this. In which, the harm to natural resources would be strong by raising the background rate of asthma and respiratory failures and so on that comes from excess nitrous oxide in the atmosphere. From a regulator's point of view, this is like the ozone rule that the EPA is now going to be forced to announce late in the president's second term instead of early in his first one. If you set the ozone requirements at 70 parts per billion, you're going to have a certain number of industrial costs to pay and a certain number of excess deaths avoided. If you drop with a few more parts per billion, you will get a lot more asthma out of the system, a lot fewer children having asthma attacks and a lot fewer deaths, but you will also raise regulatory costs substantially. I think the way regulators are going to look at this may ultimately turn out to be, is there such a thing as clean diesel and should there be diesels on American roads. Diesel is not a very big part of the American overall automotive drivetrain picture.

Ralph Nader: That's true.

Eben Moglen: As you know, every time you look at the picture of a California highway, you see more and more hybrids there.

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Ralph Nader: That's right.

Eben Moglen: My guess is that what really is going to come out of the VW situation for US regulators is that the US landscape will tilt even more strongly in favor of hybrid and even more strongly against diesel. What is now 3, 4, 5% of the US automotive market for diesel drivetrains, will simply go close to zero.

Ralph Nader: Yup. Let me ask you this before we get to your proposed reform which is making automotive code public, which the EPA doesn't want to do and the auto manufacturers don't want to do. Let me ask you a more basic question. Are we seeing an expansion of the potential for tampering or manipulating software with automotive fleets all over the world by various manufacturers? Are we entitled to ask the question, just like there is too much style over safety years ago in motor vehicle design? Are we entitled to ask the question, is there too much over computerization, given often minor and trivial benefits and conveniences? And should we open up that whole can of worms before the driver is just a robot behind the wheel and is subject to all these computerized systems outside his or her control?

Eben Moglen: In some sense, if we do that, we will wind up compromising parts of what we really do want by way of safety and environmental outcome. If we're going to build all electric automobiles, even if we're not Elon Musk Tesla with 47 computers per car, we're still going to wind up using much more digital technology to make battery powered zero emission vehicles work. Whether we wind up with driverless cars or not, as Google and Uber both hope, we do need work in collision avoidance systems. We've spent all the times since Ford Motor Company pioneered seatbelts under McNamara in the 1950s basically trying to prevent the consequences of collisions without preventing collisions. Anti-lock braking, which made bad drivers brake as though they were good drivers is the best we ever did on that subject. We now have the opportunity using various forms [indiscernible 0:23:36] or actually to begin making [indiscernible 0:23:38] possible in automobiles and a lot of lives will be saved by that. I'm not sure that the result is to go downward in computation power of cars. It may or may not work. But what we ought to do is make sure that cars are built of safe materials however they are powered and controlled. If we have bad steel that rusts quickly in automobiles, we will take people's lives because rust kills. If we have bad software that can't be inspected by anybody except the manufacturer, one way or another, we will have bad software. It is true as you say that regulatory agencies are under-funded and under-staffed. But when it comes to inspecting software, the problem is even worse than it is in other places. Software engineering is expensive for government to acquire and keep because software engineers can earn good money in private

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business. Having enough software expertise in EPA to do emissions control software and in NHTSA to do steering control software or ignitions and so on becomes overwhelmingly duplicative. When NHTSA tried to investigate whether software was causing unintended acceleration in Toyota Priuses, one model of car, one possible software failure, they did not have enough engineering to accomplish that task. NHTSA borrowed 50, five zero software engineers from NASA, the space agency, in order to have enough in-house capacity to solve one software inspection problem.

Ralph Nader: This is a very important point that Professor Moglen is making. Let me illustrate it. The entire budget for NHTSA that deals with tens of thousands of deaths and hundreds of thousands of injuries every year, the entire budget is smaller than the budget that the State Department expends on guarding the US Embassy in Baghdad and its personnel. \$650 million to guard the US Embassy and its personnel in Baghdad, Iraq and NHTSA's budget is under \$400 million dollars a year. This is a very serious problem next time you, listeners, have an opportunity to contact your members. Make that point very clear. There are a very few federal cops on this corporate crime and deceptive beat. Let's get in our closing minutes, Professor Moglen, your proposal for automotive code being made public as a safeguard against the repeat of what is probably going to happen with other manufacturers and software unable to resist temptation or otherwise hacking through it by others.

Eben Moglen: We're just making terrible mistakes. What we need to do, Ralph, is to make the software in cars like the steel in cars and the wire in cars inspectable. It won't work to have any government agency even if Ralph Nader is present and he moves the defense budget into NHTSA. It won't do to believe that a government agency can do a better job than the whole of civil society. We got a lot of engineering talent and a lot of programmer talent out in the world. It could see that the pinto gas tank mounted outside the frame rails up against the sheet metal of the back of the pinto was not a good way to make a car. Everybody could see why it was that rear-end collisions produced fires. We need to be able to make software inside things. As obviously available for civil society to inspect as physical devices and the materials are. We're not only talking about cars, we're talking about medical devices, pace makers, and insulin pumps and other things from software failures can kill a person within seconds. We have [indiscernible [indiscernible 0:27:43] that by accident found the mistakes in VW code. But as pretty much every academic and industry commentator not working for the automobile industry has said in the last 10 days, if the code had been available for inspection this would've been found years ago. Precisely because it would have been found years ago, Volkswagen would never have taken the risk. We're talking about transparency as a regulatory strategy. Everybody knows that disclosure is a good regulatory strategy under certain circumstances and this is one.

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Ralph Nader: And one of your champions is Senator Richard Blumenthal from Connecticut, who is co-sponsor of the Computer Security Bill that he would open up access to vehicle source code so that deceit could be prevented. Are you in touch with him and what's going on given this brouhaha?

Eben Moglen: I haven't spoken to Senator Blumenthal but I recognize that crusading Attorney General is still in the senator and I deeply hope that he succeeds in calling attention to the problem. You understand that regulatory agencies like EPA often oppose transparency. They think of the user as the person who needs to be regulated. The EPA justified assisting the automobile industry in concealing code in cars by saying that if code in cars was readable, individuals would use that opportunity to make illegal modifications. This is a regulatory position which makes sense only until you catch a car company cheating. There is no possibility that revealing the code in automobiles would have caused 11 million drivers illegally to modify their cars to create smog. Only a failure at the center can be as damaging as that. Regulators have to stop regulating consumers and start regulating businesses. But that's the problem of regulatory capture. Consumers sit out here. There's one in a house. Industry sits inside the agency with high paid people doing their work, explaining things to the agency. At the end of the day, it's much easier for regulators to sympathize with manufacturers than it is for them to sympathize with individual users.



Ralph Nader: Another way of putting it Professor, everybody is smarter than any of us in opening up the code even if someone wants to be malicious, they'll be check mated by others who will catch them. You know Thomas Dullien, a well-known security researcher, I think put the gravity of the impending future here that's coming on fast illustrated by the VW debacle. He said, "The reality is, that more and more decision, including decisions about life and death, are being made by software." Your comment.

Eben Moglen: Yes, more and more decisions about life and death and who we need and what we say to them and how our world is constructed. We are becoming human beings living inside an enormous network of machines which serve us until they don't. The only way to make that society just and fair, as well as safe, is to put human beings in control of the technology they use in their lives. The automobile is the single densest collection of software you're not allowed to read, study, modify, fix or understand in most people's lives. They leave behind a tablet or a personal computer they barely understand. They put a smart phone in their pocket, they walk out

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the door with an awful lot of technology tracking them and following them. But when they get in to the car, they are surrounded by technology which understands them far better than they will ever know it. And if it's cheating them, good luck.

Ralph Nader: Welcome to the future listeners. How can they reach you Professor Moglen if they want to comment or get in to your website to learn more?

Eben Moglen: moglen@softwarefreedom.org. <http://softwarefreedom.org>. May you live a thousand years Ralph and thank you for the time.

Ralph Nader: Thank you very much and to be continued. This going to be a continuing situation and we've got to be on top of it. If we aren't, who's going to be on top of it? Thank you again Professor Eben Moglen of Columbia University Law School.

Eben Moglen: Thank you so much.

Steve Skrovan: We've been talking to the Eben Moglen who is a professor of Law and Legal History at Columbia University and is the founder of the Software Freedom Law Center. For more on the work they do over there, got to softwarefreedom.org. Now Ralph I wanted to ask you about an area which is probably more your wheelhouse. Last week the CEO of Volkswagen, Martin Winterkorn, he resigned amidst this VW scandal and at the time of his resignation, this kind of stuck out to me. He said and I quote: "I am not aware of any wrongdoing on my part." Which I thought was an interesting way to phrase that. He kind of leaves the door open. There could be wrongdoing on my part but I am going to leave that to others to find out. With your knowledge of Auto Company bureaucracy, is there any chance he didn't know what was going on?

Ralph Nader: Well that's lawyer talk to their client. In the United States, the linguistic version of what you just cited is when CEO say, "to my knowledge," I wasn't responsible for this problem. "To my knowledge," that's the exit phrase. It's really doubtful. Obviously this was done by people who are expert inside Volkswagen on software. There's some evidence that other people inside Volkswagen blew the whistle internally and were ignored. But when you're

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dealing with 11 million vehicles and you have a distinctive marketing profile of diesel engine cars, if you're not aware of it at the CEO level, you're not aware of the company you're running. What's interesting though is the tradition in Asia and Europe of resignations by CEO is much more robust than it is in the US. You didn't see heads of the auto companies resigning in the US or oil companies or chemical companies. They're much more resistant to resignation.

Steve Skrovan: Very good. Now let's go to the National Press Building and check in with Russell Mohkiber for the latest corporate crime minute.

Russell Mohkiber: I'm in the National Press Building in Washington, DC. This is your Corporate Crime Reporter morning minute for Wednesday, September 30, 2015. I'm Russell Mohkiber. The Brookings Institution is forcing one of its top economists to resign amid questions from Senator Elizabeth Warren about an economic study funded by the business community. Robert Litan will formally submit his resignation, the Hill Newspaper reported. Warren sent a letter to Brookings suggesting that Litan used his Brookings affiliation to peddle an industry back study that's critical of the Obama Administration's proposed regulations for financial advisers. Obama and Warren have pushed for new disclosure requirements to ensure that consumers understand that their financial advisers might receive payment from financial institutions after selling them advice. For the Corporate Crime reporter, I'm Russell Mohkiber.

Steve Skrovan: Thank you Russell. Before we get to our next guest, David last week you went to Ralph's hometown of Winsted, Connecticut for the opening of the American Museum of Tort Law. What was that experience like for you?

David Feldman: Well as Ralph has pointed out it's the only law museum in America, which I find shocking. It's fantastic and I can't recommend it enough, especially with the leaves changing, people who are visiting New York City should drive up to Winsted, Connecticut and get a lesson in the history of law. Ralph when we were driving out I took my daughter, we were driving up and there was a horrible car accident. There was a car flipped over and there was rubbernecking. I tried not to look but I turned to my daughter and I said we're on the very roads that Ralph Nader drove on. How many lives in that accident have been saved because of Ralph Nader? What did you see growing up? I'm just curious on those roads.

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Ralph Nader: They weren't divided highways and people would barrel along. I can't tell you how many times in my own high school that students were seriously injured or killed on these roads. It was like a common occurrence. They would be injured. They'd miss school. They'd lose their lives and the death toll now per hundred million vehicle miles is about 1.2. That's statistically per hundred million vehicle miles traveled. When I was running on safety and speed it was 5.4, that's per hundred million vehicle miles traveled. So you can see the progress.

David Feldman: Because of you, not to embarrass you but because of you. Winsted, Connecticut the other thing I thought, I don't mean to be glib, is there are two famous men from Winsted, Connecticut you and David Halberstam and he died in a car accident.

Ralph Nader: Yes. He survived the wars in the Congo, Vietnam, the riots and the civil rights and police brutality in the south. Then he was being driven by an already proven reckless driver, who made the wrong turn, and David was struck in the side of the car and lost his life. This is one of the reasons why the American Museum of Torts is so important because it relates to everybody's experience. Whether they take medicines, had bad side effects. Whether malpractice in the hospital, breathing toxic pollution in the work place, eating contaminated foods. The kind of massive experience that people have and having to address risks and when they materialize and they're attributed to a wrong doer or perpetrator, the law of torts kicks in for them. They can go to a lawyer on a contingent fee and file a case in court and nobody can stop them. If you want to get something from the legislatures, you got to beg or pay. When you want to get something from the executive branch, you got to beg and delay and bureaucracy. But if you want to get justice in the court of law, you make the decision. You make the decision and you can get that case filed. It doesn't mean you're going to win, but you're in the arena where it's all open, verbatim transcripts, judge, jury, lawyers, press there. It's the best direct democracy decision system in the world.

Steve Skrovan: In this week's New Yorker, David Shapiro wrote a very nice account of the opening this weekend. He mentioned something I'd never heard of and I've done a lot research on you Ralph, for the movie and everything. He said there were some EMT workers who came across the street and wanted you to, I think sign their manual, because you were responsible for this thing called the Nader Pin. What is the Nader Pin?

Ralph Nader: It may surprise you but that was news to me. I don't know what the Nader Pin was.

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Steve Skrovan: Really?

Ralph Nader: It just gets into the colloquial context of emergency workers like the Nader Bell, is when those vehicles start backing up, right? Trucks start backing up, they -- so that someone isn't run over in their rearward moving vehicle, and they call that the Nader bell. I don't know where it came from.

Steve Skrovan: But that's the pin that keeps car doors from flying open on impact. Correct?

Ralph Nader: Yes. Yes. To an emergency worker, that is extremely important because if you're ejected from a car, your chances of being killed are many fold greater than staying in the car especially if you're restrained by a seatbelt and an airbag. So live and learn. The amazing thing is that people visited the museum, came out. They were edified. It didn't tender to them. It didn't over electronically razzmatazz them. They just stood there looking at the graphic portrayals and the descriptions of the cases and then looked at the portrayal of that's called questions for thought. These cases would ask the viewers, the visitors, what do you think of this? And would you think differently if this fact was changed. They went out of the museum with word of mouth aplenty which is more than you can say for most museums which concentrate on one subject matter.

David Feldman: I have one quick question that I was talking with my daughter about Winsted. It's a beautiful city and there's that cliché "think globally, act locally", you're very involved I would assume in Winsted, Connecticut. I would assume that if you don't like something that's happening in Winsted, you fight it, is that correct?

Ralph Nader: Well, I'm mostly in Washington DC but our family has really taken a great sense of responsibility. My brother started with a small group of citizens he conceived and started the first community college in Connecticut in Winsted when the factories were closing down and the industrialization was setting in and my sister started and supervises the community lawyer, a non-profit community lawyer to help people when they want to interact with City Hall and decide for the legal jargon et cetera. It also helped to reestablish the Winsted Health Center when the Winsted Memorial Hospital closed down after a hundred years and left 30,000 or so

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people in the catchment area without any urgent care. So that's now humming along very well. I think it goes back to caring for your community.

Steve Skrovan: Well now Winsted has the American Museum of Tort Law, make plans to visit that. It's very edifying. We're going to take a short break, and when we come back, were going to talk to Paul Hudson about your rights as an airline passenger. You're listening to the Ralph Nader Radio Hour. Don't go away.

Male Speaker: From Pacifica, you're listening to the Ralph Nader Radio Hour. www.nader.org.

Steve Skrovan: Welcome back to the Ralph Nader Radio Hour. I am Steve Skrovan along with David Feldman and Ralph. As many of our listeners know when US airways bumped to Ralph from a flight on his way to a speaking engagement in 1974. He sued and that's why to this day, passengers get compensated for being bumped off a flight. Our next guest also fights for the rights of airline passengers. David tell us about it.

David Feldman: Paul Hudson has been a ground breaking public interest advocate for over 30 years in the 1970s. He was doing it in energy and utility policy as attorney for the New York public interest research group. In the 1980's, he did it as a crime victim's rights attorney, he was chief attorney for the New York Crime Victims Board. In the 90s up until 2012, he worked for air travelers and terrorist victims leading the Pan Am 103 Lockerbie bombing victim family organization and the aviation consumer action project. He's a long time member of the FAA's aviation role making advisory committee. Representing the public and advice in the FAA on Air Safety Regulation and the FAA TSA Aviation Security Advisory Committee. From 2001 to 2013, he represented victims of lengthy tarmac confinements in a series of court cases. Thank you for that I've had some of the worst panic attacks waiting on the tarmac. Paul Hudson has been interviewed hundreds of times by the media on aviation consumer issues and is frequently quoted in major media including the Wall Street Journal of New York Times, USA Today, NBC News, ABC News, et cetera, et cetera. Welcome Paul Hudson.

Paul Hudson: Oh thank you for that long introduction. Glad to be still here.

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Ralph Nader: Good to have you on the program, Paul. Paul and I and others worked together over the years through a group called Aviation Consumer Action Project ACAP. Which I founded back in the 70s and he now wears two hats that one ACAP as well as the flyers rights organizations called flyersrights.org. I just want to tell the listeners how a tiny number of people can create such important services for airline passengers. One of the plaudits for the flyers rights group has this to say. In October 2008, airlines must report tarmac data for cancelled, diverted or multiple gate returned flights. In May 2008, flyers rights organization which is started by an angry passenger who was stranded on the tarmac with other passengers in Detroit, Kate Hanni. In 2008, bumping compensation doubled from \$200 to \$400 respectively to \$400 and \$800 dollars respectively. In December 2009, the three hour tarmac rule for domestic flights was established and many other things including in 2011, there was another increase in bumping compensation to \$215 and \$1300 dollars respectively. So it just goes on and on and I've talked with Paul about this and he can comment on it. I have no idea why airline passengers don't gravitate to these small groups and expand their staff and budgets by contributing membership dues. It's almost like airline passengers grumble and then figure well someone else would do it well. Nobody will do it. The airline passengers don't do it. What's your view on this Paul Hudson?

Paul Hudson: Well I don't know I mean I've been involved as you know for quite a while. The dues paying doesn't really seemed to work too well. Everything now is supposed to be free, and other people pay for it. But we are gratified that the internet has made organizing National, International groups much easier now and social medias added to that. We started with just really one person who put up a little blog in 2007 early, thinking, well maybe there's some other people that has similar experiences to being stranded and within a few weeks she got 10 to 20,000 people signing up. Today we have an office in Washington DC. We have a small staff but mostly we operate with dedicated volunteers and there is strength in numbers, and if some people will contribute, whether it's money, time, and effort, a lot as you say is really possible.

Ralph Nader: And what passengers can also do to help Paul Hudson and others do their work is send them a documented complaints when they are interacting with airlines, either up in the air or on the ground or at the ticket counter or on the phone. That helps and they can send these complaints to flyersrights.org, and send the same complaint at the Department of Transportation which actually tabulates them by airlines and releases them periodically and the airlines look at those rankings between themselves and turns their number of complaints quite closely. You've been focusing recently on the airline contracts, refined print that most airline passengers never see. Can you explain what you're doing in this area?

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Paul Hudson: So when you buy a ticket on the airline, you're really agreeing to a contract with the airline called the Contract of Carriage. Known in the law as a contract invitation, just take it or leave it. And unless there's some regulation otherwise, the airline can pretty much say or do whatever they want in these contracts and they're recently gone beyond the normal things and then now, getting into redefining what were always normal terms like the tax of God [ph] for instance. Which normally meant the weather, or war or something like that. Airlines are now saying in some of their contracts that Tax of God includes a storage of equipment or personnel which would normally be considered their responsibility. The other thing we're looking at in these contracts is that they don't alert passengers to some very basic rights that they have for instance for delayed compensation. Most people don't realize it but since 2003, you've had the right to get compensation for delays on International flights or International trips. Even if the delay occurs in the US and that amount runs off to \$2600. But you'll never know that from reading these contracts or even from going on the DOT website, were asking the FAA to require just some basic consumer information including these contracts.

Ralph Nader: Are many people taking advantage of that that you know of going for up to \$2600 if there's a long delay of a flight from New York Kennedy airport to Paris or Berlin or Tokyo?

Paul Hudson: No. We calculate it's well over a billion dollars in lost compensations. There are very, very few cases that I've got under this. Furthermore, the treaty provides that it's on a modified no fall basis. So it's the burden of profits on the airlines to prove that they took all [indiscernible 0:49:59] to avoid the delay. There's also a delay compensation rights you have under a new rule. If you're flying to or within Europe, there's a fixed schedule for delay compensation there. Once again, the airlines would not tell you that and neither will the DOT.

Ralph Nader: How long does the airline get the delay free? In other words, when does this compensation process kick in after 30 minutes or what?

Paul Hudson: No, it's has to be several hours and it typically, we're talking two to three hours minimum. However, the other thing most people don't realize, it doesn't just cover under the Montreal Convention you're out of pocket expenses. One of the features of these airline contracts since they disclaim all liability for were to call consequential bond just like you missed on appointment for a, could be a doctor visit, or it could be business, it could be something else,

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you've lost time from work. This treaty overwrites all new provisions that would normally not allow you to get full compensation for whatever the loss you suffered are.

Ralph Nader: Well tell our listeners some of the things you're working on to improve their services as they interact with airlines in every day?

Paul Hudson: Well we reached and we filed last month a very detailed rule making petition where the FAA can send minimum seat side standards and also for leg room. Presently the government does not regulate except to a very limited degree, anything to do with seats. So what's happened is the airlines have been shrinking seats, and they have been shrinking passenger space to the point where the average passenger cannot fit into many of the economy seats. And if you're oversized like you're over 6'2", which about 10% of the population, then the only way you're going to fit is if you overlap into your neighbor's space. So were asking if that be set, the airline thinks were designed in the 1950's and the average woman today weighs the same as the average man did in 1960 [ph] it's a 163 pounds. The average man now weighs 185 pounds. These seats were not meant for that kind of weight and were not meant for that kind of size a person. People have also gotten older. So this is another thing that's really caused a lot of problems. Not just for the comfort, but for safety. It's unclear if passengers can really evacuate under FAA rules in emergency situation with these cramped seats.

Ralph Nader: The FAA has a rule that says an emergency on the ground and the airliner has to be evacuated in 90 seconds. Is that still the rule? And look how impossible it is.

Paul Hudson: That is the rule and the rule based on actual experience where if you don't get out of the airplane within 90 seconds the chances of you dying from smoke or fire or water are very high. Most people survive a crash landing but they die because they can't get out in time. So the rules that we have to be able to evacuate all passengers within 90 seconds in low light conditions with half the access disabled. Now the way the airlines have gotten around that, if they don't require anymore actual tests. They just do a computer or analysis and of course when the airline does the analysis they never fail the test. However, even those this analysis test have not been done for some of the cramp seating which currently used on many airliners.

Ralph Nader: Moving to the area of airline passenger safety. Fortunately the records have been pretty good over the last decade or more domestically at least, but there's always safety standards

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that are absolutely or new safety signs are required for new kinds of aircraft and there is a difference as we all know between the safety of a large passenger jets and the feet of airlines they're going to the more rural areas of our country as well as pilot standards that tend to be different. Can you enlighten our listeners on some of those topics Paul Hudson?

Paul Hudson: Yes one area that wasn't deregulated in 1978 was safety. When the airlines were pretty much deregulated with everything else. And I think the cause of that, regulation still being in placed and processed, air travel especially for large airliners has gotten much safer. However when you go down the food chain to where we call regional airlines, they have generally left qualified pilots. Plane are more fragile, they don't until recently at least been required to meet the same stringent safety standards, and when you go down further into general aviation, to private planes, or into helicopters, the casualty rate and the accident rate in those days hasn't really budged.

Ralph Nader: Tell our listener your role on the FAA advisory committee?

Paul Hudson: Advisory committee in 1993. The idea was instead of doing back door lobby they would have a representative committee that would advise them on rule making, and what happens at workshop for perhaps fast tracking safety regulations. Well as many things, it hasn't quite work out that way but it does provide a forum at least where passenger representative such as myself, can sit around a big table every three months, and talk about really some of the major issues of concern to the public with regard to safety. People can get involved by going to flyersrights.org website. They can email us at paul@flyersrights.org. We also operate a hotline for airline passenger emergencies which is 877 flyer 6 also available on the website and we have a weekly newsletter which you can subscribe to and it's free. Comes out every Tuesday morning of interest to most airline passengers and finally you can sign online petitions if you agree with some of the reforms and volunteer or donate money to make sure that air travel is restored to at least partially to the way it used to be.

Ralph Nader: Thank you very much Paul Hudson of Flyers Rights and all your long work on airline safety.

Paul Hudson: Thank you Ralph so much.

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Steve Skrovan: We've been talking to Paul Hudson of Flyers Rights. If you've had a bad experience on a flight, and get no satisfaction from the airline, there is a place to go. Go to flyersrights.org. Well that's our show, I want to thank our guest today Eben Moglan founder of the Software Freedom Law Center. Go to softwarefreedom.org. And also thanks to Paul Hudson of Flyers Rights. Go to flyersrights.org. For Ralph's weekly blog go to nader.org. For the American Museum of Tort Law, go to tortmuseum.org. If you have missed any of these show on the radio, go to ralphnaderradiohour.com or subscribe for free on iTunes or Stitcher. All of our shows are archived there with valuable links to our guests and their work. There's also a link to Ralph's latest book, Return to Sender on answered letters to the President 2001 to 2015. The producers of the Ralph Nader Radio Hour, Jimmy Lee Wirt and Matthew Marran. We'll talk to you next week Ralph.

Ralph Nader: Thank you very much Steve, thanks David and for our listeners, connect with professor Moglan and Paul Hudson if you have information for them or you want information from them, it all starts with you the people.

[Audio Ends].



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