

RALPH NADER RADIO HOUR EP 289 TRANSCRIPT

Steve Skrovan: Welcome to the *Ralph Nader Radio Hour*. My name is Steve Skrovan along with my co-host, David Feldman. Hello, David.

David Feldman: Good morning.

Steve Skrovan: And we also have the man of the hour, Ralph Nader.

Ralph Nader: Welcome everybody.

Steve Skrovan: First up on the program today, we welcome back old friend Robert Fellmeth, the original Nader's Raider. He is not only one of the leading, if not the leading child welfare advocates in the country, He has also been campaigning for quite some time now about the hazards of anonymity on the internet. In a recent open letter to the founder of Facebook, Robert Fellmeth wrote to Mark Zuckerberg, that: "We need to know if that message popping up on a device eight inches from our faces is from a Russian bot or the Koch Brothers, House Speaker Nancy Pelosi, or our favorite pizza place." A couple of years ago we spoke to Bob about this topic and Ralph wanted to know if there was a way to draw a line [to] protect whistleblowers and other speakers who criticize the powerful without fear of retaliation while also protecting the readers or the listeners' right, to know who's speaking to them.

We'll get an update on all of that with Mr. Fellmeth and as a bonus, we welcome back Richard Newman, who is the Executive Director of the Museum of Tort Law, which you may have heard us mention on this show a few times. He's going to tell us about the first annual Tort Law Day being celebrated at the museum this coming October, and how having one's day in court is such an essential component to a functioning democracy. Somewhere amidst all of this, our corporate crime reporter, Russell Mohkiber will come by to give us his latest intel on the crime in the suites, but first, our first guest recently wrote an open letter to Mark Zuckerberg arguing that it was his responsibility to change Facebook's policy about accurately identifying speakers who use the platform. David?

David Feldman: Robert Fellmeth has had a long and distinguished career as a public advocate. As a graduate student in the late 60's, he became the original Nader's Raider, investigating the Federal Trade Commission. He then went on to work as an attorney in Ralph's office, the Center for the Study of Responsive Law. In 1980, he founded The Center for Public Interest Law at the University of San Diego Law School and also founded the Children's Advocacy Institute, an organization that specializes in reforming the child protection and foster care systems and improving outcomes for youth aging out of foster care. Welcome back to the *Ralph Nader Radio Hour*, Robert Fellmeth.

Robert Fellmeth: Thank you. Glad to be here.

Ralph Nader: And among other things you've done, you are a prosecuting attorney; you've written a ton of books and reports, so we call you Fellmethian. Whenever somebody writes a long book, we say that was a Fellmethian performance. Welcome again, Robert Fellmeth.

Now, I think our position against anonymity on the internet is a minority position. The people who want anonymity and want to develop their most aggressive statements without attaching their name to it, of course oppose what you're about to say. There are civil liberties people, some of them in Public Citizen where you're on the board, who thinks that anonymity protects whistleblowers, protects minorities, protects people for example, in the South during the civil rights struggle in speaking out, and you have taken a more nuanced position. In an open letter to Mark Zuckerberg, the CEO and founder of Facebook who controls Facebook as any dictator would control a country. He has the majority of voting stock. Other stock is non-voting and he controls the board of directors with an iron fist, which is why you laid your demand on him. But before we discuss your demand on him, which was published on August 25th in the San Francisco Chronicle, "An Open Letter to Mark Zuckerberg" by Robert Fellmeth, tell us your argument on anonymity.

Robert Fellmeth: Well, I understand the benefits of whistleblowing and there are situations where undoubtedly, there is an advantage in anonymity for someone who's blowing the whistle, where they're likely to receive some kind of horrible reprisal for doing that, but we have anti-SLAPP laws in many states that kind of perform some of that function. But more important than that is the fact that the First Amendment is not just a question of talk; it's also listening. The audience has rights too under the First Amendment as I see it. You have the right to decide who you want to listen to and hear and see. You have the right to judge credibility and judge expertise.

In this day and age, it's particularly important that you have information about who is communicating with you or trying to communicate with you so you can exercise those audience rights and functions. And that's especially true with the internet and with people able to communicate really in a costless basis to a million or two million or ten million people instantly. That means the audience really has to know who's talking. Is that a Russian bot? Is it the Koch Brothers? Who is talking to me? Who was trying to reach me? Who should I listen to? Who should I hear? And that's a right people should have.

Ralph Nader: And if you look at it daily, the viciousness that comes on the wings of anonymity all over the world, massive volume, is basically destroying the whole concept of credibility and truth. Who are you going to believe? And I once talked to a newspaper editor and I said, "You know, I've never read a letter to the editor in your newspaper that doesn't have a name attached to it." He said, "You're right." I said, "Well, how come you allow all kinds of slanderous, defamatory and crazy prevarication by anonymous feeders into your website?" He says, "Because we want to generate a lot of clicks." Your reaction.

Robert Fellmeth: [laughter] Well, I think that what's happening is we're diluting the value of communications. When it reaches the point where all sorts of self-interested groups and the hate mongering groups and so forth; when they can, with impunity, communicate and massively without any check at all, you have a problem. I mean, the First Amendment is not just bleating and belching. It's information. It's truth. You've got to be able to ascertain the truth. The audience has to know that. You know, when I first started looking at this and I thought to myself, you know, Ralph Nader criticizes people all the time. I've never heard him do anything anonymously. He always says, yes, it is I. I am talking. You can believe me or not. You know who I am. And that's important. You've always been that way and I think that should be the standard.

Ralph Nader: Well, it also has terrible repercussions. I mean, anonymity in circles of teenagers, for example, has produced suicides, have produced severe depression, has produced drug addiction. In other words, it moves from vicious words in a torrent day after day into physical disasters. That's one. And the second is it destroys other people's right to speak out because they're intimidated. They're fearful. If I speak out, if I write this letter to the editor, I'm going to get a torrent of anonymous slanders. So, you want to go into that further arena and comment on it?

Robert Fellmeth: Well, your mention of the child aspect is important because we did contest a Facebook settlement. They actually included, in a national settlement applicable to adults for invasion of privacy, a subclass of children who were subscribers. Children 13 to 18 can subscribe to Facebook. As a part of the settlement, they actually achieved the agreement of an attorney getting \$4 million for it to them, including a provision in the terms and conditions that nobody ever reads, that anything posted by the child can be copied, edited, and retransmitted by Facebook to whomever they choose without prior approval of the parent and without prior notice to either the parent or the child. And you're talking about suicide and so forth. Well, if you send something to, you know, to your best friend or to your three friends on Facebook and Facebook can grab it and send it to other parties; it can be just other people at your school. Maybe they're trying to market... not necessarily venal, they just may be trying to market something, market a product, and they see a relationship there with all of the research they do on correlations. And there you are with your kid sister, that photograph you took of her falling down in the bathroom, ha-ha-ha, or a comment about the captain of the football team or whatever, and all of a sudden, you're humiliated at school. That's the kind of thing that I'm worried about.

Ralph Nader: Well, you're known for your solutions. Whenever you point out a problem, an abuse, especially in the arena of children, which is your expertise; I've called you the leading child advocate in the United States. You've gotten all kinds of legislation through in California. You've won court cases in California that could be a model all over the United States and in other foreign countries. In your open letter to Mark Zuckerberg, you proposed a solution. Describe it in detail to our listeners and to Steve and David.

Robert Fellmeth: Well, Zuckerberg is not the state and he can do things in terms of the commercial enterprise he runs. And one of the things he can do is to say, if you want to post something on my communications media here, tell us who you are. So, give us your name and the city or state you're from and if you don't do it, we're not posting it. And if you do it inaccurately, we're banning you. So that change right there simply says, everybody who's talking, you all will know who it is; you can choose to read it or not read it. You have rights too, audience. And Zuckerberg can do that and if he does it, I think it will catch on with the other media; the other media will do it as well. And we'll have a new standard here where people will...and if you want to criticize someone, say who you are and stand up for yourself. Don't be a coward. And if you're the audience, you have the right to choose who you want to listen to and the credibility you're going to give the speaker.

Ralph Nader: Well, how about that protected zone of people who fear reprisals, they want to blow the whistle--civil rights, civil liberties, corporate crime. How do you deal with that if you don't allow anybody to put anything on Facebook without attaching their name?

Robert Fellmeth: Well, you have anti-SLAPP laws in some states including California, where if someone goes after you, because you said something, because as you say, hey, it's a lie; you lied to me, how dare you? How dare you? How dare you? And that kind of thing does happen. We have laws which allow the person who made the whistleblowing statement to collect their own attorney's fees if it's not liable, if it is truthful. And if in fact that's the case, fine, you're not going to be injured because you're going to be defended and even the cost of your counsel are going to be paid for. That is the way to handle that. And by the way, if you have a special circumstance, maybe you can define as special circumstance where someone who legitimately fears death or something and is talking about a prospective nuclear weapon or something about to explode. I mean, there may be circumstances where you want to allow an exception but it should not be the rule.

Ralph Nader: Well, let me propose a subsolution, because you got to deal with this issue of people who have legitimate information to share, legitimate experiences, but they fear reprisals the way African-Americans did in the civil rights movement in the South--real reprisals. What about a corner of Facebook that would basically be considered a whistleblowing corner so that there could be an exception for the small number of people who really deserve anonymity if they're going to alert millions of people to a toxic hazard or to a government corruption or corporate crime or local police abuse?

Robert Fellmeth: I don't have any problem with that at all because you're making a choice as the audience to look at it or not look at it. If you're saying, I'm not even gonna bother looking at anything from someone...on the other hand, if someone says, hey, someone's just posted something that has a lot of documentation as a part of it and it really makes sense. I don't know who the author is, but it speaks for itself. Go to that corner and look at it. I have no problem with that.

Ralph Nader: Okay. The other thing you said--because Zuckerberg is not the state, he's got the power to do that--might've puzzled some of our listeners, Professor Fellmeth. I think what you meant was if your proposal was put to the state of California or to the federal government, it would be seen as an infringement on free speech--violation of First Amendment. Is that correct?

Robert Fellmeth: Yes, I think it would be and that there is some doubt about exactly where the line is now drawn on the role of the state in identifying speakers. Some anonymity is certainly a part of the First Amendment and the problem I have is we're not just talking about the village green; we're talking about someone able to communicate to a ten million people at a device eight inches from their face. It's a different kind of environment we have now and I think we have to recognize that.

Ralph Nader: Well, let me ask you an associated question here, which is, you know, as they used to say in the old days, "the cat's out of the bag". It's uncontrollable globally. If Facebook does this, something else will crop up to be specializing in vicious anonymous commentary. If Facebook is broken up, you lose the full impact if Zuckerberg adopts your proposal and says nobody can use Facebook without attaching their name to it unless they go into the whistleblowing corner. So, you I think would like to break up Google and Facebook, I suppose under the antitrust laws. You're an antitrust expert. How do you deal with alternatives that would evade you and Zuckerberg agreeing on the solution that you just described?

Robert Fellmeth: Well, here's the thing about it that I count on. I think it's a competitive advantage to do this. I think that if you're a consumer or not, consumers listening to this show, will, I think confirm this, that I would prefer to know who was talking. I prefer to get that information. And if I have a choice between some kind of media service that's going to provide them, some that's not, it's going to just flood my phone or my TV or whatever with nothing but anonymous messages or a lot of anonymous messages, I'm going to choose the other because I think it's a competitive advantage. So, I'm not too worried. Once Zuckerberg does it, I think the others are going to have to in order to maintain their market share and yes, I'd like to trust bust everybody. You know, I'm a prosecutor. I've got Teddy Roosevelt in my blood.

Ralph Nader: We're talking with professor of law, Robert Fellmeth at the University of San Diego School of Law. This open letter to Mark Zuckerberg was delivered in late August. Have you received a response from Facebook or Zuckerberg?

Robert Fellmeth: No, but I have now sent it to the members of the board of Facebook. So, we'll see if that spawns anything. I'm sure he knows about it.

Ralph Nader: Yes, because it was in the *San Francisco Chronicle* near where he works. Yes, of course.

Robert Fellmeth: Yes, near where he works.

Ralph Nader: Now let's say you're nothing, if you're not persistent. In fact, that's your middle name--Robert Persistence Fellmeth. Let's say the board doesn't respond, next step?

Robert Fellmeth: Well, we just keep on going. I mean, if someone else other than Facebook does it, I think Facebook may be required to do it because I really think that it's a competitive advantage that will drive others to do it once one does it. It's kind of a conspiracy of silence now not to do it, which is the only reason it exists, because obviously you're going to have a higher market share if you have an advantageous program.

Ralph Nader: Well, before I push Robert Fellmeth even further listeners, I want to point out that his assertion that the audience has First Amendment rights is grounded in judicial decisions. The famous *Red Lion* decision that said: You who look at television, you have a First Amendment right, not just the people who are on television speaking or the owners of the television station. And I know the *Red Lion* decision has been frittered away by subsequent Supreme Court cases, but the essential point, I think is well-taken and well-grounded, that the audience has a freedom of speech right. And that's very important to your argument because I've talked to a lot of people who now have shut up; they're afraid to talk because of all of these anonymous slanders that are coming in on them. They're withdrawing from the village square. They're not showing up on town meetings because although they confront people they know in town meetings in New England, they don't know what's coming on the local newspaper website or the local radio and TV station website. So, having said that, is there any state and federal agency that has any jurisdiction to push Facebook to do what you're asking it to do?

Robert Fellmeth: I don't think so. I would like to see that happen. There is an issue of unfair, unlawful competition that little FTC acts are in all the states. California has a strong one. So, there's someone that does something that's unlawful or unfair in terms of competition, you can maybe hit

it and that is an interesting theory. Is it unfair to flood somebody with messages without letting them know that it may be a commercial-only inspired message trying to get their business or it may be a foreign nation trying to influence you or whatever. That's an interesting issue. Is it unfair to have a competitive environment or competitive tactic that involves that? That's an open question and it's something that might be appropriate for litigation.

Ralph Nader: I think some of our listeners would want me to ask you this question and that is, is there a way, in any instances, where you can locate the author of the anonymous vicious defamation?

Robert Fellmeth: If you're law enforcement, you have ways. I mean, you can look for the source in terms of the ID of the transmitter and so forth. You can even go and get, I guess, photos or videos of the person buying the phone or whatever.

Ralph Nader: Is there any app that could help out these people who do it as a repeated practice day after day?

Robert Fellmeth: I think there are apps that will filter out things and I'm not sure exactly whether or not they're able to get the anonymous thing. The problem with the anonymous thing is that you fake being somebody you're not. It's not just the question of saying, I'm Joe Blow who doesn't exist obviously; it's calling yourself Ralph Nader and putting that in the message and you don't know who it is and a lot of people are assuming fake identities. That's another problem.

Ralph Nader: How do you deal with that? If somebody fakes a name, let's say Zuckerberg reasonably imposes the system you're proposing, but they start faking names.

Robert Fellmeth: Well, I think when my article, this op ed on this, the letter to him basically asked him to try to enforce it and if you find out that someone is doing it because only they'll be doing it over and over and over again, you ban them. You ban the source where it's coming from--I'm sorry, you no longer get access. And there are ways they can do that. They can do that and the government can do that. But the average citizen really cannot.

Ralph Nader: Well, people all over the country get anonymous violent threats to them and they can report that to the police can't they, and would the police go after and try to identify the anonymous threat purveyor?

Robert Fellmeth: Yes, increasingly, they are. The DA's office here in San Diego and in LA and in other places is very active in the area of cybercrime and cyber threats, very active and it's getting more active all the time. It's a serious problem.

Ralph Nader: All right. Let's say Zuckerberg doesn't reply; the board of directors do not reply. The vice presidents of Facebook do not reply. There's no federal or state government you can ask to force Facebook to do this. What are your next steps before surrender, which you don't know the meaning of?

Robert Fellmeth: Well, the first thing I do is I call Ralph Nader and ask him for ideas.

Ralph Nader: [laughter] That's a cop out. California is your realm, your realm. Go ahead. Would you ask Governor Newsom to help you? Would you ask the legislature to use their legislative stature or what would you do? Would you have committee hearings in Sacramento?

Robert Fellmeth: I think legislation is a possibility and I think in California, an initiative is a possibility too, because I think the position we're discussing here I think is widely held and I think if you had an initiative in California that involved some kind of the right to know who is talking, you know, it would be in the California Constitution. You'd still have perhaps a conflict with the U.S. Constitution, maybe or maybe not, but you can draw some lines in the direction of audience knowledge, I think without offending the U.S. Constitution's First Amendment, and I think you can do that by initiative or by statutory enactment, either way.

Ralph Nader: Do you think you can go after Facebook's charter? Explain that.

Robert Fellmeth: Well, I mean Facebook, theoretically, it headquartered, you know, Menlo Park right here in California and it is required to obey California law and it's admitted that in the case we filed. We intervened against the settlement that they did affecting children, which I mentioned earlier. They conceded that they must comply with California law. So, if California law changes, they're going to have to comply with it.

Ralph Nader: What are your next steps going to be as a practical matter?

Robert Fellmeth: Well, I think the next step is to find out, first of all, what he's going to do. He is responding to some extent. I mean, he has done some things on the term and condition I mentioned that indicates to me he's concerned about it; he's concerned about the impact. There's been an initiative proposed here by Alastair Mactaggart that would have impeded Facebook's abuses enormously, particularly on invasion of privacy side. And the legislature responded by enacting a California Consumer Privacy Act, which takes effect on January 2020 and Facebook gave in to it because they saw that the initiative was much harsher on them. In order to avoid the initiative, they agreed to the statute and the statute is now subject to attack and amendment right now, as we're sitting here; the deadline is this Friday. In any event until January 2020, they're gonna have to abide by some new, at least privacy provisions, but I'd like to see the disclosure part I'm talking about also a part of the state law.

Ralph Nader: What if people have ideas on how you can get Zuckerberg to respond? How do they contact you?

Robert Fellmeth: Well, I mean, my email is cpil@SanDiego.edu; cpil@SanDiego.edu is my personal email. I'm happy to entertain any thoughts or ideas or tactics that anybody might offer.

Ralph Nader: What if they urge you to stand up at a shareholders meeting after you've bought a couple of shares and challenge them directly?

Robert Fellmeth: I have to buy Facebook. [laughter] Is that... I guess to have standing. Okay.

Ralph Nader: What about another open letter where you list all the steps you're going to take to get an answer if he doesn't answer you?

Robert Fellmeth: Well, okay. Oh, that's a possibility. Although what I'd like to do maybe is find somebody who will do it. I mean it doesn't necessarily have to be Zuckerberg. If you find it, it can be you know, LinkedIn or you know any of the other, Myspace or any of the other people who are engaged in this kind of activity. I guess my next step would probably be to get someone to do it--to ask all around.

Ralph Nader: This is a rhetorical question. Why wouldn't the giant WhatsApp or Instagram do it?

Robert Fellmeth: I think that's a good idea also.

Ralph Nader: Well, that's because they're owned by Facebook.

Robert Fellmeth: Well, I know, but I mean, I mean there are applications that aren't owned by Facebook, but Facebook definitely needs to be broken up as does Google. But the fact is that there are some competitors out there and we could maybe get them on the ball. I mean, if a competitor comes in with something that solves this problem, I think they'll achieve a lot of market.

Ralph Nader: Well, what if WhatsApp and Instagram are subsidiary corporations. Wouldn't they have a board of directors you could appeal to, and a president or CEO?

Robert Fellmeth: Well, they would, but if they're subsidiaries, they're going to be under the control of the parent.

Ralph Nader: Just another irritation to get his attention.

Robert Fellmeth: Yeah, sure. I think what'll get his attention is if LinkedIn and one of the others does it, then that'll get his attention big. So that would be my first option, would be to do that and then to go after/try to appeal to them in other ways. And maybe even ideally through statute or as you mentioned, through initiative or statute, that would get anybody's attention.

Ralph Nader: Well, what about a Facebook user's group? Could you organize a Facebook user's group? Facebook sued to stop a Facebook user's group a couple of years ago from using the name Facebook, but what about a Facebook user's group?

Robert Fellmeth: Called FB, a Zuckerberg friend's group. [laughter]

Ralph Nader: I want to bring in Steve Skrovan and David Feldman. They're known for their imagination and they never use anonymous commentary. They put their John Hancock behind their comments. What do you want Bob Fellmeth to do?

Steve Skrovan: I don't want to interrupt the brainstorming session here, but how Bob... do you... you know, Facebook has hundreds of millions of users--hundreds of millions of users.

Ralph Nader: Billions of users.

Steve Skrovan: Over a billion. Just like McDonald's hamburgers. How do you verify a billion people's identities and wouldn't that even exacerbate the privacy problem?

Robert Fellmeth: No. You have the standard and presumably, if someone it doesn't exist and they're making something up, someone calls them on it and Facebook has a procedure and will have a process for verifying and there's a possible verification process that you can, you know that you can engage in and you can have. It may be possible to evade-it in some way, shape or form. It may be possible to have a false identity, but you could make it really hard.

Steve Skrovan: So, you're saying that it's not everybody is pre-verified. It's only when somebody raises a complaint and then you try to verify that person's identity.

Robert Fellmeth: Well, I think, no, I think you want people to basically begin with an identification process that is required as a pre-condition of posting. They're attesting to their identification; that's the term.

Steve Skrovan: Right. But how do you practically do that? Do you have to send us your passport or you have them send you a letter at your snail mail address or how do they verify all of those identities?

Robert Fellmeth: No. I don't want it to be a bureaucracy here. I don't want to have anything like that. I'm saying that you have an initial requirement to disclose who you are with some initial information about name and location and so forth and then maybe a few more facts perhaps, but not much. And then if someone says, wait a second, I don't think that's that person, then you do an inquiry; the Facebook will do an inquiry and then you would say, demonstrate who you are, give us the following, you know, or we would at some point cut you off. And if they do it, fine and if they don't, fine. I mean, that's the system. I'm not saying this system will achieve a hundred percent compliance, but it will be probably a much higher compliance than we have now. Instead of getting huge numbers of anonymous communications, there'll be a few here and there maybe, but there'll be an incentive not to do it and there'll be a system to clamp down on it when it happens in extremis.

Ralph Nader: David?

David Feldman: Yeah. I'm just wondering how much longer Facebook itself has, in terms of the market. I hate to sound like a republican, but could the market just take care of this where people get so disgusted by Facebook, they stopped using it?

Robert Fellmeth: In lieu of what?

David Feldman: Well, is it that we're convinced that Facebook is essential? We can't live without it, but we did ten years ago. How integral is Facebook to our existence? Do we really need Facebook and are people gonna somehow lose interest in this kind of social media?

Robert Fellmeth: Well, that could happen, but when you've got a market, a service market that involves communications and it has a billion users, you've got a very critical, large, huge market that dominates a large share of our communications. And there it is. You can say, well, you can always say, stop using Facebook. You really don't need it; you can use something else. But the fact is people, you know, enter something like that and they develop reliance. They have friends, they communicate regularly that choose a barrier to entry for anyone else to come in and do it, in fact, because I've got 25 friends on Facebook. I communicate with them all the time; we share

photographs; we do this, we do that. Once you've got that market established, you've got a lot of market power. And to say, well, you can always leave Facebook, that's really not realistic.

Ralph Nader: Called transaction cost. Listen, before we conclude, tell us about the Children's Advocacy Institute over the years and its marvelous accomplishments. I don't know any public interest group with such a small budget that's accomplished so much. So, it does encourage people who get a little discouraged about changing things. Give our listeners some panorama of some of the things you've achieved out of that San Diego Law School enclave.

Robert Fellmeth: Well, we have an office in Sacramento and we have an office in DC and we have very good lobbyists and we have students who work very hard. We have lots of graduates now, alumni. We've been doing this for 30 years and on the child side and we have the statute that provides a safety swimming pools in California is our statue. They just did a study just about three months ago, which found that that statute had achieved halving of child deaths by drowning, half as many attributed to the statute, which is very rewarding to us. We have a Kids-N-Cars statute. We have a playground safety statute. We have a child support collection statute. We have child welfare statutes, about 20 of those involving the child welfare system--from reporting child abuse deaths to all sorts of inspection issues and so forth and child care and so forth. So, you know, we've done some a hundred plus statutes, about 10 or 12 major court appellate decisions, some of them federal, some of them state. And we're very active. And the reason we're able to do that of course is because we have students. I mean, it's kind of utopian. Not only do you have students who are very intelligent and very bright, but you don't have to pay them. They pay you.[laughter]

Ralph Nader: Well, they also get incredible experience for their life's work. How would people get access to your annual report? So, they see in great detail what you've been doing. Children's Advocacy Institute.

Robert Fellmeth: Well, we have a website, www.caichildlaw.org, cai child law, all one word. CAI is the acronym for Children's Advocacy Institute, caichildlaw.org and you can see in there kind of what we're doing, our pleadings. We have two cases underway right now--one involving the extraction of children at the border by our immigration agencies. We have a FOIA [Freedom Of Information Act] case there going on right now. We have a case in Indiana, a pilot case there, trying to establish the right of children in foster care children to counsel, the constitutional right to counsel; that's underway right now. We're getting help from Morrison & Foerster in that case, which is very helpful. And from Sheppard Mullin in the FOIA case. So, we are able to draw upon sometimes former students of ours who are in these large law firms that have pro bono entities and they do some very, very fine work.

Ralph Nader: One way you multiply your efforts. Before we leave, how do people get access to your seminal article in the *British Journal of American Legislative Studies* on "Cartel Control of Attorney Licensure and the Public Interest"?

Robert Fellmeth: Well, I think it'll be published imminently, very soon and it'll be out from the British Journal and you'll be able to get it from the British Journal any moment now.

Ralph Nader: And you'll post the link on your own website?

Robert Fellmeth: Yes. That website is on www.cpil.org. CPIL stands for Center for Public Interest Law. www.cpil.org is the site where we have that posted so you can see it. You know, you can get the link to it on that site.

Ralph Nader: Well, thank you very much professor of law, Robert Fellmeth, citizen advocate for children extraordinaire. To be continued. Thank you very much for your work, Robert and those of your associates and the valiant students who you're training for the next generation.

Robert Fellmeth: Thanks, Ralph.

Steve Skrovan: We've been speaking with Robert Fellmeth. We will link to his work at ralphnaderradiohour.com. We're going to take our usual one-minute break and check in with our corporate crime reporter, Russell Mohkiber. When we come back, we're going to talk to Richard Newman of the American Museum of Tort Law. Stay tuned for that.

Russell Mohkiber: From the National Press Building in Washington D.C., this is your corporate crime report "Morning Minute" for Friday, September 20, 2019. I'm Russell Mohkiber. The Justice Department has opened an antitrust inquiry into the four major automakers: Honda, BMW, VW, and Ford. The company struck a deal with California earlier this year to reduce automobile emissions. The Open Markets Institute said the probe was an effort by the Trump administration to deter carmakers from working with government officials in California to regulate emissions standards, air quality, public health, and pollution, and ensure a safe, healthy, and habitable planet. Just as outrageous, the department may be aiming to undermine support for antitrust law at a time when it is especially needed to address America's monopoly crisis, Open Markets Institute said. This investigation is unlikely to have any effect, however, because individuals and businesses have a legal right to petition the government and Congress. For the *Corporate Crime Reporter*, I'm Russell Mohkiber.

Steve Skrovan: Thank you, Russell. Last time we had our next guest on, he spoke to us about the myth of the litigious society. David?

David Feldman: Richard Newman is Executive Director of the American Museum of Tort Law. He is a consumer attorney who practices in Connecticut. He has served as the president of the Connecticut Trial Lawyers Association. Welcome back to the *Ralph Nader Radio Hour*, Richard Newman.

Richard Newman: Thanks. It's a pleasure being with you.

Ralph Nader: Yes. Welcome back, Rick. It's a big event, the first of its kind in American history coming up at the Tort Museum in Winsted, Connecticut. It's titled "Tort Law Education Day" and for those of you who are listening and are near your computer screen, you might want to just visit tortmuseum.org while Rick is explaining how he would like people to learn how to defend themselves by knowing about this great law of wrongful injury that affects everybody but most people don't even know about it even though it's 250 years old, inherited from England. Tell us about Tort Law Day.

Richard Newman: Tort Law Day is an innovative new program. This is our first year of doing it and we hope it will be a model for cities and communities all around the country. The idea, as you

just said, is that tort law affects, directly or indirectly, everyone in this country because of dangerous or defective products, unsafe conduct, malpractice. Whatever it might be, people are at risk and tort law is the mechanism that lets them defend themselves from wrongful injuries. So, we're doing a fantastic program on October 5th with a handful of remarkable, nationally known speakers, on really cutting-edge legal topics in tort law. We have topics such as sexual assault in the "Me Too" era because that, as you know, has become a huge national story. Victims of sexual assault, they can go to the police because sexual assault is a crime, but it's also a tort and tort law allows them to sue the wrongdoer, the rapist, the attacker directly. We have another speaker on police violence. You know, there's been a big controversy about "Black Lives Matter" and then the rejoinder was "Blue Lives Matter" and then people said all lives matter and it's true. All lives matter! And that's why the police have a duty to act with reasonable force. When they use unreasonable force, that too is a tort and the wronged individual or his family or her family can take them to court. We have climate disruption, climate change, one of the nationally known speakers is Tony Roisman who's going to talk about cutting-edge issues in climate disruption. Polluters are ruining the climate and they should be held to account; what can be done about it. At the same time, as you know--tell me if I'm talking too long, but I get excited about this--tort law has been under real attack and Joanne Doroshov from the Center for Justice and Democracy is going to come and speak about looming threats to the civil justice system.

Ralph Nader: Before you continue on this whole menu of great speakers coming in to the museum, it's going to be October 5th Saturday from 11:00 AM to 5:00 PM with refreshments and tell us—okay, so people sue, you know, they sue for a harmful bullying. They sue for defamation. They sue for medical malpractice or toxic chemicals. They sue for product defects like automobiles or flammable fabrics. They sue for certain kinds of workplace injuries. What can they sue for, what can they get and what benefit is it to the rest of our society?

Richard Newman: Good questions. The people that are injured can sue for monetary compensation. They can use money, as best as we can, to make them whole. Now that's not what they want. People that are wrongfully injured really want a time machine. They want to go back in time to before they were maimed or crippled. But since we don't have a time machine, we use money as best as we can to compensate them. But tort law also benefits people that are not directly injured in two ways. First, evidence that comes out during trial discloses the whole pattern of wrongdoing. It's all subject to cross examination. It's under oath; it's under the review of a judge. But stuff that has been hidden in the shadows suddenly sees the light of day and trials are open to the public and the press. So, the whole world can find out about wrongdoing and a systematic pattern of wrongdoing and then a jury verdict, or in some cases a substantial settlement, can serve as a huge deterrent. It can stop bad conduct from recurring in the future.

Ralph Nader: Yeah. It can produce recalls by the auto companies, for example, and you know, the footsying around by the legislatures and the executive branches of our federal and state government on the tobacco industry years ago, and more recently on the opiate drug manufacturers and the way they pushed those drugs to the doctors and to their intermediaries; none of that would've come out. The pedophiles scandal of the Catholic priests starting in Boston. None of that would have come out unless a plaintiff went to a lawyer on a contingent fee and filed a tort lawsuit. It wasn't the legislature, hearings; it wasn't the executive branch that broke these stories. It was somewhere in the country, someone filing a lawsuit and then getting in depositions, as you say, all this information, which is public, and then when there's a trial, it's public. There's nothing secret

about it. And I don't think people appreciate that enough. And certainly, the power brokers don't. So, who else is going to be there?

Richard Newman: Well, we have speakers on, as I said, sexual assault, on police violence, on climate disruption. But the keynote address will be delivered by Rhode Island Senator Sheldon Whitehouse. He was a practicing attorney before he became a U.S. Senator and he has been a strong advocate for preserving trial by jury, for strengthening and expanding the civil litigation system. He has really been a leading voice trying to protect the rights of everyday people against big, powerful corporate interests that want to limit access to courts and want to take away people's rights. So that alone makes this program worthwhile--an opportunity to hear Senator Whitehouse. It's a great opportunity. In addition, we have Ken Reed, President or Sports Policy Director, I should say, of League of Fans, talking about sports and torts and that's been newsworthy. We've been reading it and hearing about football players suffering not only physical injuries but brain injuries due to concussions and whatever it's called. CTE (Chronic Traumatic Encephalopathy), head injuries, brain injuries due to helmets and the violence of the sport. And baseball fans are getting injured or killed because netting doesn't extend along the follow lines and follow balls rocket into the stands and injure spectators all too often. So, we have a whole smorgasbord of cutting-edge leaning speakers, talking about all sorts of interesting topics.

Ralph Nader: By the way, people might think that concussions are reserved for professional football players. No, they're wide spread in college and high school football players. One study had almost 20% of high school football players, sometime during their career, suffering at least one concussion, so it's going to affect people at the local level as well. Who else do you have?

Richard Newman: We also have Mark Rotenberg from the Electronic Privacy Information Center talking about privacy online in the internet era. He's talking about the return of the tort of privacy. You know, we keep reading stories and hearing articles about data breaches. People's personal information has been shared with the underworld. Hundreds of millions of people lose their data. Equifax was a big financial scandal about credit-monitoring scores. What safeguards are in place? What recourse do people have? If you're interested in learning about how to preserve your privacy online, c'mon up to the Tort Museum on Saturday, October 5th for that part of the program. It's really an outstandingly good day.

Ralph Nader: You know, Rick, our program, the *Ralph Nader Radio Hour* is carried in Bridgeport by WPKN and so listeners to WPKN Sunday six to seven in the evening, drive up Route 8, it's the wonderful foliage, early fall, pretty Litchfield County, great restaurants and take in a course. It's equivalent to a full-day advanced course in the law of torts. Tell us about what you're trying to do with your high school curriculum.

Richard Newman: Well, the whole idea there is that if high school students attend the program, they will be given a certificate of attendance suitable for framing; I mean it's that nice. But it will also be something they can put on their resume. These are high school students that if they have an interest in becoming lawyers or getting into the field of law in some way, they'll already have tremendous education under their belt. This is going to be a substantive day that will educate high school students about this very important, often overlooked branch of the law.

Ralph Nader: Now you have an expert coming in from St. Louis on medical malpractice, which I'll repeat: The Johns Hopkins University School of Medicine Study over three years ago estimated 5,000 deaths a week in the U.S., 5,000 deaths a week due to preventable problems. That's what they called it, in hospitals, like hospital-induced infections or incompetence by some of the staff and that isn't even counting casualties in doctor clinics--just in hospitals, right? What are we going to hear there?

Richard Newman: Well, Professor Phil Peters from the University of Missouri School of Law is coming to talk about, and we talked about medical malpractice. People often think, oh it's a bad doctor and very often, it is a bad doctor, but what about the liability of hospitals, the institutions themselves? Are they doing proper oversight? Do they do proper training of their staff? What precautions do they have in place to minimize the risk of harm from bad doctors? Phil Peters, Professor Peters is a nationally known expert on hospital accountability and he should be a fascinating speaker.

Ralph Nader: By the way, you also are preparing, with social studies teachers around the country, a high school curriculum. You think that high school students are perfectly able to learn the rudiments of the law of wrongful injury, of tort law and to defend themselves and to understand this part of justice in American society and how it deters so many unsafe practices. Tell us about that.

Richard Newman: Yeah, you know, you make a good point because high school students, like all of us, we're consumers; any high school student who rides in a car is subject to the vagaries of the safety of that car or consumer products or whatever. And it's important that everybody, including high school students, know what their rights are. If you don't know what your rights are, you can't assert them. If you don't know about tort law, you can't defend yourself. So, we think that the high school student curriculum that we prepared is a valuable tool to help high school students as well as college students, or lay people of whatever age, understand what tort law is, how it works, how they can use it to protect themselves if they are wrongfully injured.

Ralph Nader: The museum has been called an art show. The reason why it's the only law museum of any kind in the world, never mind the only tort law museum; people come from all over the world because we're the number one tort law system in the world. The reason why there haven't been any tort or law museums is that ____ ? couldn't figure out how to make it interesting. You can't just have a bunch of statutes and regulations under glass for people to peer at. Tell us about this art show in terms of some of the leading cases that are portrayed. They're tremendous human-interest cases in the museum, Rick.

Richard Newman: Yeah. Well, all of tort law involves human lives and human-interest stories. It's always an injured individual who, just a regular person, who didn't look for the injury and suddenly found themselves in real trouble. So, the question is how do you convey those human-interest stories to the lay public without using the tedium of law books and the fine print. The museum designers, Eisterhold and Associates came up with this brilliant idea of hiring artists, illustrators, cartoonists to do sketches, colorful, beautiful artwork about the cases. And then there's a text block, a paragraph or two that tells the story of the case, so people can see it visually and then read about it as well. It's just a tremendous museum.

Ralph Nader: Just go to tortmuseum.org, listeners, to get more details. And again, listeners in WPKN area, break the routine of your normal Saturday. You'll have a totally memorable experience and it also includes the tour of the museum; they can tour the museum itself. You know, you've given hundreds of these tours to all kinds of people from retirement centers to middle-school students, to paralegal students to workers. Have you ever seen anything grab their attention? I mean, it's just amazing. They never yawn. They never get bored. Even 12-year old kids with short attention spans, right?

Richard Newman: Yeah, yeah. It's really remarkable. What I always notice is the change in body language. People come in perhaps apprehensive, perhaps not even sure what tort law is or why they're there, and by the end of the tour, they're just fired up and ready to go serve on a jury. They understand what the law is, how it works, how important it is, why it's worth protecting and defending. It's a tremendous educational opportunity. Very often at the end of tours, they start clapping. They're not clapping because of me; they're clapping because they finally understand this important aspect of the law.

Ralph Nader: And when the good guys win against the tobacco industry or the auto industry, that's what's great about it. I mean, they see justice vindicated in an open-court trial with right of trial by jury. Tell our listeners a little bit about the Seventh Amendment and the right of trial by jury and our founders.

Richard Newman: Well, you know, it's very interesting. One of the most important grounds for the Revolutionary War was the allegation that the British king, King George III, was stripping the colonists of the right of trial by jury. They listed "no taxation without representation" in the Declaration of Independence and then they listed "taking away our right of trial by jury" and it was so important that when they got to do the Constitution, they wrote a special amendment, the Seventh Amendment, which says that everybody has a right to a trial by jury in a civil case. It's in the Bill of Rights. It's central to our democracy, to our system of government. It was worth fighting and dying for then; it's certainly worth preserving and defending now.

Ralph Nader: It's a barrier against tyranny. The early colonists in our country saw it as a barrier. They wanted to be judged by the peers in their community. They didn't want to be judged by King George and his Tory emissaries and you're trying to resurrect greater awareness all over the country.

Richard Newman: Yeah, and I should jump in here and say, by the way, that Senator Sheldon Whitehouse, who will be speaking there on Saturday, October 5th, has written a law review article tracing the importance of the jury trial to the colonists. It's a brilliant article and he interviewed the world's experts on the importance of trial by jury because it is exactly that, a barrier against tyranny.

Ralph Nader: I might add that Supreme Court Justice Stephen Breyer visited the Tort Museum almost two years ago and he went meticulously over the various exhibits and as he finished, he looked at you and said, "this museum is an excellent educational institution." And a former retired high jurist from India in Mumbai visited it, and after he toured the museum, he said to you, I know what your people are trying to do, and you said what? He said, "you're trying to bring the law to the people". So, let's ask two people. Steve Skrovan and David Feldman to weigh in here.

Steve Skrovan: Well, I am interested in, I was listening to *Democracy Now!* yesterday. Naomi Klein was on and she was talking about how this opioid judgement where the judge said that yes, people can hold the actual pharmaceutical companies responsible, opens up a whole new area of environmental law--a way to attack the climate crisis by actually being able to sue fossil fuel companies, who through the process of discovery, knew that they were damaging the planet and that this one case sets a precedent for possibly getting to the fossil fuel companies in climate disruption that way. Do you have any comment on that?

Richard Newman: Yeah. I think it's an interesting theory. This whole idea of public nuisance, which is already being tried in the Juliana case, where children are suing the federal government for not fulfilling its obligation to prevent public nuisances in the form of global warming and climate pollution and all sorts of stuff. And the idea that you can now hold the oil companies liable for spreading misinformation and denying the reality of climate change as a cynical effort to stave off any change, it really may open a lot of doors. Whether that will hold up on appeal or whether it can transfer to the climate disruption area remains to be seen, but it's certainly a promising development.

Steve Skrovan: Wasn't that the case with the tobacco companies and cigarettes is they found all the documents that the tobacco companies knew what harm it was causing? Isn't that even a precedent for the opioid, which then could be a precedent for the fossil fuel industry?

Richard Newman: Yeah. Some of the lawyers that worked on the tobacco litigation, Mike Moore in particular, have also gotten involved in the opioid litigation on this similar theory that these guys are knowingly, intentionally marketing something, downplaying and misrepresenting its harmful aspects and trying to induce consumers to use something that's harmful. So, it's a very similar theory. Now, one of the things that's different, I suppose, is there's direct causation. You take the opioid or you smoke the cigarette, you directly are harmed. How do you translate that to say that the oil companies' pollution caused harm? That's going to be the bridge that needs to still be built.

Steve Skrovan: The harder case to make.

Richard Newman: Yeah. Yeah. But, it's a good theory and it's worth exploring and it will be explored. Absolutely.

Ralph Nader: David?

David Feldman: What's the statute of limitations in most civil courts?

Richard Newman: There's no single answer to that; each state is different and there are exceptions for minors. There are exceptions in cases of sexual assault, for instance, or cases... You know, New York has just changed the statute of limitations for cases of sexual molestation by priests and other pedophiles. So, it's hard to say, but very commonly in a typical sort of automobile case, it's two years from the date of accident. But every state is different and anyone seeking legal advice should seek out a lawyer in the area where the collision occurred or the injury took place.

Steve Skrovan: Well, with the suit against ExxonMobil for heating up the planet, that goes back to the 50s.

Richard Newman: Yeah, but it's a continuing course of conduct.

David Feldman: Right, I see.

Ralph Nader: Well, we're out of time. Before we leave Rick Newman, we've been talking with Rick Newman, Executive Director of the American Museum of Tort Law, give us some vital statistics about October 5th, the first inaugural Tort Law Education Day, and we hope it will spread to other cities, which is why we not only want non-lawyers there, we'd like lawyers to be there.

Richard Newman: Yeah. Lawyers, representatives from state trial lawyer organizations or area bar associations--send a representative. You won't be disappointed. It's a program that's readily adaptable to every city or state or community in the country. The idea is: educate the people about this important branch of the law. That happens on Saturday, October 5th from 11 o'clock to 5 at the American Museum of Tort Law, 654 Main Street in Winsted, Connecticut. Tickets are available online on our website, www.tortmuseum.org. Tort Museum is all one word. So, look for all the listeners to be there on October 5th.

Ralph Nader: Plenty of free parking too, right, Rick?

Richard Newman: Oh, yeah. Ample parking; restaurants in town. It's going to be a wonderful day.

Ralph Nader: Thank you very much, Richard Newman.

Richard Newman: Oh, it's my pleasure. Talk to you soon.

Ralph Nader: Okay, Rick.

Steve Skrovan: We've been speaking to Richard Newman. Tort Law Day is Saturday, October 5th in beautiful Winsted, Connecticut. We will link to that at ralphnaderradiohour.com. I want to thank our guests again, Robert Fellmeth and Richard Newman. For those of you listening on the radio, that's our show. For you Podcast listeners, stay tuned for some bonus material we call the 'Wrap Up'. A transcript of this show will appear on the *Ralph Nader Radio Hour* website soon after the episode is posted.

David Feldman: Subscribe to us on our *Ralph Nader Radio Hour* YouTube channel, and for Ralph's weekly column, it's free. Go to nader.org. For more from Russell Mokhiber, go to corporatecrimereporter.com.

Steve Skrovan: And Ralph has got two new books out—the fable, *How the Rats Re-Formed the Congress*. To acquire a copy of that, go to ratsreformcongress.org. And *To the Ramparts: How Bush and Obama Paved the Way for the Trump Presidency and Why It Isn't Too Late to Reverse Course*. We will link to that also.

David Feldman: The producers of the *Ralph Nader Radio Hour* are Jimmy Lee Wirt and Matthew Marran, our executive producer is Alan Minsky.

Steve Skrovan: Our theme music “Stand Up, Rise Up” was written and performed by Kemp Harris. Our proofreader is Elisabeth Solomon.

David Feldman: Join us next week on the *Ralph Nader Radio Hour*. Thank you, Ralph.

Ralph Nader: You're welcome. Listeners, support your local community radio station, and in this case, especially WPKN in Bridgeport, to get people to go to the American Museum of Tort Law on Saturday, October 5th, the first National Tort Law Education Day.

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