

## RALPH NADER RADIO HOUR EP 478 TRANSCRIPT

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

**David Feldman:** We have a virtual studio audience today.

**Steve Skrovan:** Yes. And we're celebrating Law Day. I bet a lot of people didn't know it was Law Day, but that's what we're celebrating. And to help us celebrate it, we have the man of the hour, Ralph Nader. Hello, Ralph.

**Ralph Nader:** Hello, everybody. When you listen to this program today, you will feel empowered and you will feel able to exercise your rights.

**Steve Skrovan:** That's right. Today we're celebrating Law Day in conjunction with the American Museum of Tort Law. We'll be joined by a distinguished trial attorney and law professor, Shanin Specter, and of course, the live virtual audience we have today. Law Day was established by President Dwight D. Eisenhower in 1958 to celebrate the American heritage of liberty, justice and equality under the law.

Each year, community organizations, bar groups, courts, schools, and of course, this program, conduct Law Day programs advocating for civic education and a deeper understanding of the rule of law in society. This year's Law Day theme is Cornerstones of Democracy: Civics, Civility, and Collaboration. And we're excited to collaborate Professor Shanin Specter for today's show.

Today's show, as I said, is co-sponsored by the American Museum of Tort law. And we'll hear from the museum's director, Melissa Bird, then we'll bring our virtual audience into the conversation for a live Q&A. As always, somewhere in the middle, we'll check in with our corporate crime reporter, Russell Mokhiber. But first, let's kick things off with the director of the American Museum of Tort Law, Melissa Bird. Melissa?

**Melissa Bird:** Thank you, Steve. Happy Law Day from the American Museum of Tort Law. Law Day is providing us with an opportunity to help the public understand how the law protects our freedoms. The American Museum of Tort Law is proud to co-sponsor today's discussion live on the *Ralph Nader Radio Hour*. Thank you all for joining us for a compelling discussion with our guest, preeminent American Trial Law and Law Professor Shanin Specter. He is a founding partner of Kline & Specter, one of the leading catastrophic injury firms in the United States. Beyond winning substantial monetary compensation for his clients, many of Shanin's cases have prompted beneficial societal changes. He has also taught law for many years, and this academic year is teaching tort law at UC Law SF, Drexel Kline and How to Ask a Question at Stanford Law School.

But before we introduce Shanin, we here at the museum would like to take this opportunity to invite all who are listening to visit our website, which is [www.tortmuseum.org](http://www.tortmuseum.org). You can take a virtual tour. You can check out our online gift shop, where you can also purchase books, which

have been published about Kline & Specter cases. We have all of them in our bookshop. And now, it is my pleasure to introduce our speaker for today's discussion, distinguished trial attorney and Professor Shanin Specter.

**Shanin Specter:** Thank you, Melissa. I'm delighted to be here. I'm looking forward to conversing with Ralph.

**Ralph Nader:** Thank you very much, Shanin. Let's first describe your practice, because I don't know any other tort law firm in the country that takes it full circle. Describe the full circle of your practice, starting with representing wrongfully injured people.

**Shanin Specter:** Well, thank you, Ralph. And first of all, may I just say it's a great pleasure for me to be able to take part in these Law Day events with you and with the Tort Museum, which is a very important museum in this country that we should all visit whenever able to. So our practice concerns people who are very badly injured, whether it's through a defective product or medical negligence, or a motor vehicle accident case, or sexual assault, or improperly maintained premises. But we look for more than just simply to compensate our clients. In the appropriate case, with client approval, we insist on remediation as a condition of settlement. Remediation means that the defendant fix that which went wrong that caused our client to be injured. All of our clients want what happened to them to never happen again to anyone else. So we routinely have no problem getting that authorization from our clients. And surprisingly, perhaps to someone on this call, defendants are amenable to discussing safety improvements. They don't want to have a repetition. They don't want to pay multiple claims. They don't want to have their insurance rates go up. So we are able to achieve remediation in a substantial percentage of those circumstances where we try. That may mean a change in a hospital policy; it may mean a change with respect to police practices; it may be something as simple as a shopkeeper fixing a defective sidewalk. But these are all important, because they make our society safer.

And from my standpoint and from our firm's standpoint, that teaching about the law is very important. I've been teaching law students for 24 years, and many others at Kline & Specter are heavily engaged in the teaching of law students. My law partner, Tom Kline, has been extraordinarily generous philanthropically to American legal education and has given the naming (rights) gifts at both Drexel University's Law School, which is now Drexel Kline, and Duquesne University's Law School, which is now Duquesne Kline. So we are doing our best to provide as much of a contribution as we can to the American legal system and to the legal educational system.

**Ralph Nader:** Well, let's talk about the underutilization of the law of torts by millions of wrongfully injured people in our country, something that isn't often discussed. My father used to say, if you don't use your rights, you're going to lose your rights. When you use your rights, you give the rights muscle for other people, and you become more aware. And if you don't use your rights year after year after year, those who want to reduce or diminish or eliminate your rights, have an open sesame to do so.

So in the civil justice system, listeners and viewers, the United States is maybe the only country left in the world that has the right of jury trial in the Seventh Amendment to the Constitution and

the contingent fee. That is, when you hire a plaintiff's lawyer to sue, say, an auto manufacturer or chemical company or an insurance company or a hospital chain, you don't pay by the hour. You pay a contingent percentage if and when the plaintiff lawyer recovers for you, either in settlement or verdict. Shanin, give us an idea of this extraordinary lack of utilization. What are the causes of it? The Rand Corporation once put out a report years ago that over 95% of wrongful injuries never even reach a lawyer. What is this cultural reluctance? Is it lack of education? What is it that keeps the American people, from not only seeking compensatory justice for themselves, but, as you point out, deterrence, prevention, and publicity about the defect that may affect millions of people who buy the same product.

**Shanin Specter:** Well, Ralph, it begins with this. Obviously a very small percentage of Americans are legally trained. And among the 99% plus who are not legally trained, most people have an inadequate understanding of the legal system. They don't understand the concepts around our fault-based system in the United States. They don't know lawyers. They may see a billboard or a television ad, but they feel disconnected to the lawyer on the billboard and in the TV ad. If something bad happens to them, they do not know who to call.

Interestingly, Ralph, a lot of people that seek tort recovery are among the most privileged in our society. The doctors and the company presidents and even the attorneys. They know something about the legal system and they know to call an attorney when they have a problem. But those who are low-income or otherwise less privileged in our society probably don't have sufficient understanding of their ability to access legal services. You're right, only a small percentage of wrongful injuries are pursued in the legal system. There are a bunch of studies; you have cited one of them. If I may point your viewers to what I think is the single best document ever written on the tort system, it would be your article in *Harper's* from April of 2016, which is readily accessible online. It's titled "Suing for Justice." There has been nothing written that's been better than that article in terms of explaining, as you start with, the proposition that people don't know their rights, and relatively few claims are actually pursued.

**Ralph Nader:** Well, a Johns Hopkins School of Medicine's study a few years ago estimated conservatively that 5,000 Americans die every week from what they call preventable problems in hospitals. They didn't include clinics or doctors' offices, just hospitals. That's 250,000 fatalities a year and only a fraction ever reach a lawyer or get into court. We have seen, listeners and viewers, a marked decline in jury trials and in trials in the civil justice period, and that doesn't auger well for the civil justice system. Shanin has a prospectus for law students. The law of torts is an instrument of civil justice. And one of the problems, I think, Shanin, is a lot of these cases, for example, malpractice against elderly, is they don't have that many damages. They don't have years of wage loss, for example. And they don't interest a lot of plaintiff lawyers because it's expensive to bring medical malpractice. Explain the cases that trial lawyers can't take because the system is so expensive.

**Shanin Specter:** Well, Ralph, you've given a good example about the elderly who may not be working gainfully and do not plan to be working outside the home so there won't be a wage-loss claim and who may have a diminished life expectancy to begin with. And so those claims are felt by some to be unattractive. When you consider the interplay between such a claim and the law in certain states, which limits pain and suffering, and loss of life's pleasures awards, so-called non-

economic damages to an arbitrary preset cap of, let's say, \$250,000, which is the law, for example, in California; it's the law in Texas. About half of our states have severe tort defamation statutorily that makes the claims essentially economically impossible to bring. You can't find an attorney in California to bring a wrongful death case for a senior citizen.

We see the same thing, for example, Ralph, with respect to women who are not working outside the home. Roughly half of women between 18 and 65 do not work outside the home. So they may have, let's say, a misdiagnosis of breast cancer circumstance, and they want to bring a claim for that. Those cases are very expensive to bring because you need an expert. Let's say if it's a blown mammogram case, you need an expert in mammography. You'll need an expert in oncology to testify about the loss of chance of life and the like. These experts are very expensive. With the 250 cap, as we have in many of our states, again, those cases are not economically viable. So who can bring a claim?

You know, ironically, Ralph, it's not hard to find a lawyer to bring a malpractice claim for another attorney because the attorney who's the victim of medical negligence will have lost a very large earning capacity, and so the claim is now economically viable, thus we have this peculiar circumstance, really perverse circumstance, where those who may need access to justice least have the most access to justice, and those who need access to justice the most have the least access to justice. And that's just not useful in our society, is it?

**Ralph Nader:** Not at all. I mean, let's talk about the attack on the tort system by the insurance companies and the corporate lobbyists, what I call the tortfeasor's lobby. Why don't you describe this assault on the tort system by lobbyists who don't want to argue their case in court—that's too open, too full of cross-examination, too fair in terms of the procedures. They want to lobby lawmakers in states all over the country so the lawmakers, in effect, enact laws that tie the hands of juries and judges—the only people who actually see, hear, and evaluate the cases in the courtroom. Talk about that, will you?

**Shanin Specter:** Well, it begins with this, Ralph. No one in this country thinks they're going to be a victim of a tort. No one thinks they're going to be wrongfully injured. They just don't have a perception about that. People think it'll happen to somebody else. And so the only people in America who are out there protecting consumer rights are attorneys who represent people who were badly injured. So it is a very difficult proposition for the trial bar (professional regulatory and advocacy organization) to try to beat back various tort defamation legislative acts. Those are pushed by the Chamber of Commerce, by the Insurance Federation, by the medical industrial complex, by Fortune 500, by the polluters, by the cheaters, and who's left to protect America and the civil justice system.

Look, it's not just that the civil justice system is the best check on the free enterprise system. It's the only check on the free enterprise system. What you accomplished in the 1960s in terms of getting NHTSA (National Highway Transportation Safety Administration) established and the NTSB (National Transportation Safety Board) established was fantastic. But many of those agencies have been hollowed out by budgetary considerations. So it's left to the shoulders of the trial bar to protect Americans from defective products and bad care and the rest of the conduct that gives rise to these claims. And it is a very uphill battle.

May I also add that we trial lawyers have done a god awful job of explaining to people why the civil justice system is important. Regrettably, the image of the trial lawyer is largely limited to the late night television ad or the billboard, and not to the conceptualization of utilizing the tort system to compensate badly injured people, to punish those who act recklessly, to publicly disclose important facts about wrongful conduct so we can all democratically assess each other. And especially large actors in our society, be they governments or be they corporate actors, and the role of a trial lawyer to remediate, to fix that which went wrong and caused a harm. People don't understand that.

So those of you on this call who are listening to this either now or later and who are attorneys or law students thinking about a career in the law—a career, for example, in a wrongful injury practice—I respectfully suggest to you that you should give strong consideration in your representation of people to insisting on fixing problems as a condition of settlement. And if that word gets out to the American public that what trial lawyers are doing is making our cities, our states, and our nation safer, it will lift the tide of all of our votes as advocates, and it will level the playing field for us in the legislatures and in jury selection and in the trial of a case.

**Ralph Nader:** We're talking with Shanin Specter of the law firm Kline and Specter in Philadelphia, and who is a professor who teaches at various law schools coast-to-coast. You make two good points, Shanin. The legislative and executive branches at the state and federal level are heavily under the influence of these corporate lobbies. The one area they can't buy are judges and juries. They can buy state lawmakers. They can buy regulatory officials who want to go into their industries after they retire. They can spend endless money delaying honest regulators of health and safety, like environment, food and drug, and Federal Aviation Administration, but we're at the stage in our history when the foothold has to start in the courts, because once these cases are litigated, all kinds of information is revealed.

The media does cover the opiate scandals, a lot of GM (General Motors) defects, or contamination of water, for example. All that came to the American people's attention from lawsuits, from depositions, and from trial. And then the regulators heard about it, and sometimes they engage in preventive mandatory standards, like for the tire industry years ago. The other point you made on the trial lawyers is right on. I'm very critical of the lack of vigor to defend one of the great rights in our country. We should be proud before the world of the civil justice system and a contingent fee.

People come from all over the world to see the Tort Museum, because they've heard about trial by jury. They've heard about all the disclosures that then go to Europe and Asia. And once in a while, the law enforcement authorities come in. Maybe it would help if we taught tort law in high schools. The Tort Museum has a high school curriculum, very simple, doesn't take that long. That ought to be an opportunity to teach these students about the great pillars of private law, tort law being one of them.

You represent Boeing clients, and with your colleague Bob Clifford, last October, you pointed out, which is very rare for trial lawyers, a statement, relating to the crashes in Indonesia and Ethiopia, which took the life of our grandniece in Ethiopia, Samya Rose Stumo, You, in effect,

said, look, we're pursuing civil remedies, but Boeing should be investigated for criminal violations. You actually say, "At issue are the actions of Boeing and its CEOs, relating to the 737 MAX 8 aircraft. The issue is between Boeing and their behavior, "which reveals a deliberate pattern of covering up a dangerously flawed aircraft design, particularly after the first 737 Max 8 crash on October 29, 2018, that killed all 189 persons aboard." And you make a very compressed case about the findings of a Delaware court, and findings of the Securities Exchange Commission about Boeing and the National Transportation Safety Board when you basically assert that Dennis Muilenburg—who was the CEO of Boeing at the time, and was given a \$65 million severance retirement, and David Calhoun, who is now the CEO, and was on the board of directors—that they and Boeing should be criminally investigated, saying, "Such irresponsible conduct—if proven in criminal court—needs to be punished, both for the memories of the deceased and for the safety of the general public. It's time for the criminal justice system to look at the behavior of both Muilenburg and Calhoun." Where is that at the present time?

**Shanin Specter:** Nowhere. Ralph, a lot of money is going to change hands and is changing hands between Boeing and the victims of those two airplane crashes, one in the South Pacific and one in Africa. Everybody on board perished, and Boeing is paying a lot of money in settlement to those families. But the people who were responsible for leaving the planes in the air after it was clear there are going to be more crashes, which recklessly endangered every single human being in the world who flies on a MAX 8, which, of course, is so many of us, those people are getting off with nothing. I'm not going to say a slap on the wrist. They're getting off with no ill consequences.

And Mr. Calhoun and Mr. Muilenburg made the decision to leave the planes in the air after they knew that more were going to crash. That's a form of homicide, given the additional crash that occurred in Ethiopia, and they should go to jail. And if a taxicab goes at 90 miles an hour in one of our city streets and strikes a pedestrian, that cab driver is going to go to prison. Maybe not 20 miles an hour, but 90 miles an hour sure. Because it's clear that something like that's going to happen if you go 90 miles an hour on our city streets. Why does the cab driver go to prison but the CEO doesn't? That just seems fundamentally wrong to me. So that's a very significant issue. But I am regrettably pessimistic about the chances that a prosecutor is going to take up that matter and they're going to instead leave it to a financial compensation as all that's going to occur. And that is just simply insufficient.

Ralph, may I comment briefly on what you said previously about judges and juries being the bulwark against corporate America? I wish I were as optimistic about that as you are, but I can't be any longer. I see what's happening state-to-state with the election of judges who are sympathetic to corporate interests, particularly, for example, in Texas, where the Texas Supreme Court has become very hostile to the interests of consumers. I see what's happening with the spending in races for state supreme court, there was just \$25 million spent in the race for state supreme court in Wisconsin. That was won, fortunately, by a pro civil justice candidate. But those who care about this can't keep up with that kind of funding state-to-state and race-to-race.

With respect to juries, you are right that we have a provision in our federal Constitution that protects the right to trial by jury. It's also true that that right exists in the constitutions of 48 of our 50 states. Yet last week Monday, I found myself in Washington, D.C. at the Federalist Society debating the resolution that America should abolish the right to trial by jury, which is being advocated by a distinguished professor—I should say, otherwise distinguished professor at George Washington University School of Law, Professor Lerner. She has taken the position and written about extensively that we should be abolishing the right to trial by jury in the United States. You don't have to scratch the surface of her argument very much to see that it is based upon the statistics of the American Tort Reform Association and the like. It's essentially a Trojan horse for the Fortune 500.

And why did I go and debate this? Well, because it's being discussed, and if I don't accept the invitation, then it's going to be a one-sided matter, isn't it? So we trial lawyers now find ourselves debating the very question of whether we're going to have the right to trial by jury.

**Ralph Nader:** Well, you make a point. I think there's still a majority of states, maybe slim, that have appointed judges. They're appointed by the governor and confirmed. But where they're elected, you have the same cash register politics as you do with candidates for legislative office. And Texas, a perfect example, had a great supreme court on civil justice, and other matters, and the money boys came in and they turned the whole thing around from the Supreme Court onto lower courts. There's no doubt, Shanin, that the corporate power brokers are trying to crush the civil justice system. Tell us some of the successes they've had in state legislatures, not all of them, on restricting damages, the role of the jury, other procedures. Give people an idea of what "Tort Deform" is all about so they can be ready for the counterattack.

**Shanin Specter:** It's such a depressing topic on what otherwise is a very celebratory day, May 1, Law Day in America. And so I'm going to speak about this extremely briefly. In roughly half the states, there has been horrific deformation of tort law with respect, for example, to medical malpractice. So I mentioned earlier, California and Texas, Nevada, Idaho, and some other states—I could give you a long list—have a cap of a quarter of a million dollars on claims against healthcare providers for non-economic damages, and that essentially keeps 95% of claims from being brought to begin with.

Many other states have immunities for various actors, partial or complete. Pennsylvania, where I practice predominantly, has a cap of a quarter of a million dollars for state authorities and \$500,000 for state governmental entities, including townships and cities and the like, for any kind of a tort action that could possibly be brought. And even there, they've immunized all but seven categories of conduct. So it's extremely hard to bring a claim against the government of any type in Pennsylvania. New Jersey has a cap of a quarter of a million dollars for a claim against the hospital of any type—a hard cap. So wage loss claims, medical expenses claims, non-economic damage claims altogether are capped at a quarter of a million dollars against hospitals in New Jersey.

Indiana has a hard cap of a million dollars in a medical malpractice case; you can't bring a claim beyond roughly a million dollars. Virginia also—the list is endless. It's sickening; it's nauseating.

And we have to fight against it. We have to explain to people that these are their rights that are being sacrificed at the altar of—it's not just probably the corporate profits—it's a matter of corporations and other powerful people in our society just not wanting to be accountable for what they do. They just don't want to have to answer to anybody. They don't want to have to have their conduct examined in a courtroom. And that's very, very distressing.

Ralph, may I say on this subject a word about the *Dominion (Voting Systems v. Fox (News Network))* case, because that's an archetype of what we're talking about here today. So if you think about that case, and I think everybody who's listening today knows that case—Dominion, the voting machines, they were good machines. They were lied about on television repeatedly by Fox, and they brought a lawsuit. Good for them. And if you think about the tort system, that case worked out well in terms of certain aspects of the tort system. It worked out well with regard to compensating Dominion. They got \$787 million which is a hell of a lot of money. And I think it probably will have some deterrent effect on Fox and others like Fox in terms of what they will say about others on television fearing a successful defamation case of this type. So with respect to those two aspects, it was a good piece of litigation.

But let's talk about the other aspects that are important in the tort system. First, the public disclosure aspect that you have said many times, correctly, is so important. Well, here it was mixed because, yes, there were a lot of facts that came out about pretrial discovery with respect to the emails of on-air personalities and the like. And Rupert Murdoch was deposed, and he admitted that his underlings did not act the way they should have. That was reasonably useful. But we didn't get to have a trial. We didn't get to have all these folks take the witness stand and be under the crucible of cross examination, which is the greatest lie detector known to man and woman. And it would have been very beneficial for all of us in our society had all these folks been brought in, defended themselves through questioning of their lawyers, but then again been subject to cross examination by the lawyers for Dominion. And then with respect to remediation, that is to say, fixing the problem, the case was an abject failure. Dominion simply took the money and ran. They did not insist, as a condition of settlement, that Fox admit wrongdoing. Nor did they insist, as a condition of settlement, that Fox take job actions with respect to their reckless and intentionally wrongful employees. We now know that Tucker Carlson was fired for other reasons. We see that Maria Bartiromo, who was the chief progenitor of the bad conduct, has maintained her job. There has been no change with respect to the policies and procedures at Fox, at least not that we know of.

So that was a failure. And we, all of us, should be critical of a plaintiff, be they a corporation or individual, that where the public interest would be served by insisting on remediation, the plaintiff simply takes the money and runs. And that's what happened here. So when we look at the tort system and we think about what I would call the four pillars of the purpose of the tort system—compensation, deterrence, public disclosure, and remediation—that case was only a partial success. And those who think otherwise really need to think some more about it.

**Ralph Nader:** Well, right now, there's a trial underway. I don't think there's going to be a settlement by a plaintiff who was sexually assaulted—she alleges—by Donald Trump. And Trump is not appearing in court to defend himself in New York City. Tell us a little bit about that.



**Shanin Specter:** Well, that is the tort system in action, isn't it? And God bless, Ms. Carroll for being brave enough to come forward and be subject to the stress and to the brutal nature, frankly, of the tort system when making a claim such as this. She's a brave person, and I admire her very much. I'm not present in the courtroom. I don't know what's going to happen. The case is only midway through. But I think it's great for America that she can come forward. She's able to hire an attorney because, as you say correctly, Ralph, we have a system where a person who claims that they've been wronged can hire a lawyer without having to mortgage their home. The lawyer will be paid a percentage of the recovery if there is one. And if there's no recovery, the lawyer will be paid nothing by anyone, including the plaintiff. And so that is the key to the courthouse for her. It gives her a chance to be able to be heard. And, yes, it's true that apparently former President Trump is not going to appear. It's not 100% clear he's not going to appear, but he has been deposed, so his deposition will be played for the jury. They will be able to see his defense of himself, such as it is, and there'll be determination. And I believe in the jury system. Juries get it right nearly always. And so it's going to be the great leveler, isn't it, in terms of Mr. Trump and Ms. Carroll. I understand the two other alleged victims of Mr. Trump are going to be testifying as well in terms of his pattern and practice behavior of this nature. And of course, that grotesque Access Hollywood videotape is going to be played where Mr. Trump bragged about his propensity to commit sexual assault. So it is a great thing in America that this case is going to trial. It's a great thing for America that we do have that level playing field with respect to this adjudication. I hope that people's minds about Mr. Trump will be affected by the trial, be it good, bad, or indifferent. The burden of proof is on Ms. Carroll, not on Mr. Trump. And let's see what happens. But if he is found to have committed this rape, if he is found to have defamed Ms. Carroll, I hope that the American public will take that into account with respect to assessing Mr. Trump's fitness for the presidency again.

**Ralph Nader:** That case, Shanin, touches on a very important thing before we go to questions. Most crimes are also torts. So when you have police brutality taking the life of a young Black man, as we've repeatedly read about all over the country, and the prosecutors being close to law enforcement don't bring a case under the criminal laws, the parents or the next of kin have learned to use the tort law to sue the city. And they've gotten, in some cases, millions of dollars in civil justice compensation. This overlap between crimes and torts—and the same is true with the Boeing situation and the opiate situation—where the prosecutors don't want to go after corporate crooks, and they certainly didn't. In the Boeing case, the Justice Department, just to fill out what you said, filed the case against Boeing and ended up with a sweetheart settlement called deferred prosecution and didn't include Calhoun or Muilenburg. They went after a low level test pilot and lost the case. But when crimes are also torts, that is a very important educational insight because people read about crimes, but they don't say, well, if the prosecutors don't move, that's the end of it. No, it isn't the end of it. A lot of times, the people who have been wrongfully injured or the next of kin can file under civil justice. Haven't you found this to be an important aspect of public education?

**Shanin Specter:** Yes, it is. But more needs to be done than just simply have money change hands. So, for example, my law partner in a police brutality case in Philadelphia with authority from his client, insisted on changes in the policies of the Philadelphia Police Department, as I did years earlier with respect to the same department with regard to the operation of police vehicles.

And it's very important to do that to make our cities and our police department safer. And frankly, it's appreciated by the police because they want to have appropriate policies and protocols themselves so that they know exactly what it is they should and should not do. So these are important things to occur, but only if they occur in the light of public examination and public understanding.

**Ralph Nader:** Well, broader public understanding leads to a movement to roll back some of these restrictions and destruction of civil justice law for wrongfully injured people. Anyway, we want to go to questions. To reintroduce you, we're speaking with attorney and law teacher Shanin Specter from Philadelphia, who has won cases that have been produced in book form because they have been so exceptionally detailed, courageous, and conclusive in terms of representing the client.

**Steve Skrovan:** We've been speaking with trial attorney and Professor Shanin Specter. Up next, a Q&A with our virtual audience. But first, let's check in with our corporate crime reporter, Russell Mokhiber.

**Russell Mokhiber:** From the National Press Building in Washington, D.C., this is your *Corporate Crime Reporter* "Morning Minute" for Friday, May 5, 2023. I'm Russell Mokhiber. Senator Elizabeth Warren released a report finding nearly 700 instances of former high-ranking Pentagon and other government officials now working at the top 20 defense contractors. Warren said the report shows the need to close the revolving door for ex-government and military officials hired to executive board and lobbyist positions at large defense contractors.

"When government officials cash in on their public service by lobbying, advising, or serving as board members and executives for the companies they used to regulate, it undermines public officials' integrity and casts doubt on the fairness of government contracting," Warren said. "This problem is especially concerning and pronounced by the Pentagon and the U.S. defense industry," she said.

For the *Corporate Crime Reporter*, I'm Russell Mokhiber.

**Steve Skrovan:** Thank you, Russell. Welcome back to the *Ralph Nader Radio Hour*. I'm Steve Skrovan, along with David Feldman, Ralph, and Hannah, and our guest, Shanin Specter. And we're going to take some questions from our live audience. Take it away, Hannah.

**Hannah Feldman:** So, our next question comes to us from Dennis Smiddle who has a question about Right-To-Know requests.

**Dennis Smiddle:** Hi, I'm Dennis Smiddle, and I do have a question. I've been writing Right-To-Know laws, and it's a very complicated, convoluted process. I think we could all use a little guidance on how to do it right.

**Shanin Specter:** Well, right-to-know laws are very important and they exist in most, if not all, states. And of course, there is also a federal Right-To-Know law called the Freedom of Information Act. And the laws do permit much information that is available in government files,

online and otherwise, to become public through the making of requests. The lead story in yesterday's *New York Times* online, for those who took a look at the *New York Times* yesterday, was about Scalia Law School in the Washington, D.C. suburbs and how the Scalia Law School has been influenced by, and perhaps has influenced U.S. Supreme Court Justices.

How was that article written? Oh, my goodness, it was a long article. I read the whole thing, but I had to take a couple of breaks. How was it written? It was written because some enterprising folks made Right-To-Know act requests of the Scalia Law School, which is a government funded law school. And so it's very important to shine the light of day on what's happening in our public institutions. So I commend you, Dennis, for being involved in that area of work. And you're right, it is very complicated.

**Ralph Nader:** I think Dennis also is talking about, Shanin, legal requirements. For example, homeowners, have to disclose, when they sell their home, things like asbestos and other contamination of the home. Or corporations have to disclose certain ingredients in their products or what they put in the air, in addition to the Freedom of Information Acts that are in the state and federal governments. So the right-to-know struggle never ends, and it shouldn't require the burden on the consumer to file a lawsuit or file a petition. More and more, right-to-know laws should impose an immediate obligation on the vendors.

**Hannah Feldman:** Our next question is from Margaret Walsh, and she's asking a question I think has been on all of our minds.

**Margaret Walsh:** Thank you for this. You got any brief comments on the ethics of the Supreme Court of the United States historically? Is there hope in the history? Thank you.

**Shanin Specter:** Well, I'll take a stab at that, Margaret. Thank you for your question. Supreme Court ethics. I would hope that the critical mass has now been achieved such that the Chief Justice will cause the enactment of a code of ethics for Supreme Court Justices. Unfortunately, this issue is essentially non-reviewable. There is no way to force the Justices to have a code of ethics, short of impeaching them for not having one, which is unrealistic. And we have a similar issue, and we've had it for decades, about the issue of having television cameras in the courtrooms at Supreme Court hearings. My goodness, wouldn't it be better for America if their proceedings, their arguments and what they say from the bench were on television for all of us to see? But it's not, and it can't be forced. They are a co-equal branch of government, and they get to run their internal business the way they choose. And since they are unelected, we are left with the Constitution. The constitutional provision for impeachment is the only remedy, and it's obviously insufficient.

So it's not that I think we can force the outcome, except through moral persuasion. And I think at this point, particularly with the conduct of Justice Thomas, I think that Chief Justice Roberts understands at this point that confidence in the institution is being threatened and that it's necessary, therefore, for there to be a code of ethics. But that's just an optimistic guess on my part. Ralph, what do you think?

**Ralph Nader:** Well, some groups are demanding the resignation of Justice Thomas, referring back to 1960s when Justice Abe Fortas was subjected to demands even by the Democrats under

Lyndon Johnson, to resign. He resigned because he took a \$20,000 foundation grant from a politically active businessman. And what Clarence Thomas has been receiving in terms of lavish gifts and trips and other emoluments is far greater. So I think the drive for ethical rigor and standards on the court will be enhanced by public demands for Justice Thomas's resignation.

**David Feldman:** Can you bring a Supreme Court justice into a civil court? Is that possible?

**Shanin Specter:** Like if he's in a car accident?

**David Feldman:** Yeah.

**Shanin Specter:** Absolutely.

**David Feldman:** So why can't a reason to sue Clarence Thomas in the civil court figured out?

**Shanin Specter:** For this?

**David Feldman:** Or for something.

**Shanin Specter:** For the issue of accepting things of value from this Texas businessman? No, it's not "justiciable" as we lawyers say. And David, that's because in a car accident case, if God forbid, he were in a car accident and injured someone, and someone has a concrete harm individually from his conduct in driving the car negligently. None of us have a concrete harm that we can articulate from him taking this gift from this Texas businessman.

**Ralph Nader:** If it was a bribe, it would be a criminal case, David.

**Hannah Feldman:** Our next question is from Samuel Simon, and the question is about how injured consumers can find resources.

**Samuel Simon:** Hi, Ralph. I'm just curious whether... or how people... people struggle to find good representation and get lost in the systems of often large scale tort cases that are generated by trial lawyers, which may be good because they can see larger patterns. But you're hearing a lot of frustration. Is there a resource, and might not that be the Tort Museum, where you can get safe, reliable advice on where to get trial lawyers, how to proceed as well as being, maybe even to the lawyers themselves, encouraging them to seek the larger, corrective actions.

**Shanin Specter:** Well, this is a complicated question. I'll tell you one place to go if you need representation, if you're badly injured or someone in your family has died from improper conduct, and that is to go to the website of the Inner Circle of Advocates. That is a group of the hundred allegedly finest plaintiffs' trial lawyers in the country. And there are members of the Inner Circle of Advocates from nearly every state. And it's organized geographically. So you can go on and you can read about the lawyers and their accomplishments in those individual states, and you can contact them and see if they'll take your case. And if they won't take your case, they'll often refer you to someone else locally who can take your case. That's a very good resource.

One other place, if I may suggest is really as simple as working your way through lawyers' websites. One thing many of us have become good at is reading the website of a business, be it a physician or a lawyer, and being able to make an assessment of whether they are for real. That is to say, with lawyers, do they have verdicts? What are their verdicts? What are their accomplishments? I'm talking about something more than simply a trust me website...I'm a lawyer with a blue suit. I'm talking about a lawyer who can cite what he or she has accomplished in their field.

So let's say you're in Chicago and you're the victim of medical negligence, and you type into Google, Chicago medical malpractice lawyer. A bunch of sites will come up, and you can read those lawyer sites and see what they have to say for themselves, which is a reasonable way to research a lawyer. Those are ways I would recommend—the inner circle of advocates, and your own Google research.

**Hannah Feldman:** This next question comes from Marie Johnson, and it is regarding NDAs.

**Marie Johnson:** Hi, everybody from San Diego. You've discussed nondisclosure agreements in the past. They've always been a big problem from my point of view. I wanted to know if there is ever a time or an area in which NDAs are necessary.

**Shanin Specter:** Necessary? No. Insisted upon by defendants as a condition of settlement? Yes. And it puts the lawyer for the injured person in a difficult position. So, hypothetically, let's say that a lawyer represents a very badly injured child from a birth injury, for example, and the child needs a lifetime of medical care. And there was improper care during labor and delivery which led to that injury. And the hospital comes forward and offers an amount of money which is sufficient to take care of that child for life. And let's say the plaintiff's lawyer identifies policy changes that should occur within the hospital to keep this from happening again, and that's also bargained for as a condition of settlement. That would be a very good thing, wouldn't it? But then the hospital says, but now wait a second, before we seal this agreement, you have to agree to keep the amount of money that we're paying to you all confidential, because we don't want to invite more lawsuits. And then if the lawyer goes to the family and says we think this ought to be public, not private, and the hospital says, we're not going to settle the case if it's public. Then we have a situation where the wellbeing of the child is risked because the case may go to trial and there may be a defense verdict. And now the child's lifetime care needs are not met.

So I would rather not have such NDAs in those types of cases. But I understand why defendants insist on them and where my clients need to have the case be brought to resolution because of the risk of not being able to provide for someone's lifetime care needs. I really can't ethically get in the way of that, can I? I don't think I can. So we have them, but we don't like them, yet we understand them. It's part of the tapestry of the litigation of some tort actions. It is true that we could make them unlawful. A legislature could pass a law saying that you cannot condition settlement on nondisclosure effects. That could happen.

But then what might happen, and we don't know this one way or the other for sure, is that more defendants might push cases into the courtroom because they don't want these facts to be

disclosed, and we might have tort victims uncompensated as a result. So it's a very complicated issue. And if I were a legislator, I don't mind saying to you, I'm not sure how I would vote on that issue because I see the issue from both sides.

**Ralph Nader:** And also, there's the delay factor. The defense attorneys representing corporations, know how to say to plaintiff attorneys, if you don't settle now and you want to go to trial, we can prolong going to trial and then prolong the trial and prolong the appeals. And years will pass and your desperate clients won't get anything they need in terms of compensation, and you're not going to get your fee. So the system is to the advantage of the corporation because they have endless money and it's deductible, and they're not desperate to pay their medical bills or other needs that the wrongful injury person incurs. Now, that's a big question. I'm glad you raised it. We're going to have a program someday just on some of the ways that the defense bar have curtailed or suppressed, and unfairly treated procedurally as well as substantively, wrongfully injured people, and put the plaintiff lawyer in a very conflicted situation between doing what's right for the client and doing what's right for the public's right-to-know.

**Hannah Feldman:** This next question is from Sharon Samoska, and it is regarding the statute of limitations.

**Sharon Samoska:** My problem in trying to figure some of this out is, for example, that statutes of limitations vary widely. Cases of sexual assault seem to be open-ended, yet cases of medical malpractice are curbed. And sometimes you don't know for two years or three years after an insult what's going to happen. And by that time, it's too late to bring a case. Why is there this wide variation and what do we do about it?

**Shanin Specter:** Sharon, with respect to statutes of limitations, almost forever, victims of sexual assault had the same restrictions as other persons in terms of bringing a claim. That area of tort law was broadened in recent years because of issues involving repressed memory, and because of issues involving reluctance to bring claims, because of societal pressure, family pressure, and the like. All other tort actions must be brought within prescribed time periods. Most states require that an adult bring her claim for medical negligence within two years of the injury occurring. But there is in nearly every state, an exception when the injury and the reason for the injury default involved, is not known or could not have been known within the exercise of reasonable diligence for whatever time period may have been involved, the limitations period is extended. So, for example, if someone has an operative procedure and there was, let's say, a sponge left behind and they didn't know about it for three years, the statute of limitations clock doesn't start to chime in terms of the until the fact that the sponge is there has been discovered. And so you'd have, in most states, two years from when the sponge is discovered.

So there are ways to get through the strict two-year statute of limitations that exist in most states under what's called the discovery rule. Anyone who thinks they have a claim should consult a lawyer, and that lawyer will tell them whether they do or do not have time to bring such an action.

**Ralph Nader:** Shanin, before we close, can you describe briefly the books you've written about your celebrated trials?

**Shanin Specter:** Ralph, that's very kind of you. I think all of us who practice in this field need to get the word out about what we do. And one thing that we've done in that regard is to have books written about our cases. They're available at the Tort Museum. There are four that have been written. There's a fifth that's in the works, and I'm glad that we're able to share that with the public.

**Ralph Nader:** Thank you very much, Shanin. We've been speaking with Attorney Shanin Specter from Philadelphia, who also teaches at several law schools and who's known for what I call "full circle civic law practice." He represents clients for compensation. He tries to get prevention of the wider exposure of people to the same defect that he focuses his attention on. And he tries to educate law students who often don't look back after their first year class of law and don't practice civil justice as a major lever for a safer and more healthful society.

Before we leave, Shanin, can you give us the best website so people who want to get more information can access?

**Shanin Specter:** Well, thank you, Ralph, very much. The first place I'd go actually about the tort system is the Tort Museum website, because that really tells us in a very central way what you need to know about the law of tort and about tort examples in our society. But if you want to get in touch with me or our law firm, that law firm is called Kline & Specter, K-L-I-N-E, and Specter, S-P-E-C-T-E-R. If you put that into Google, up we come. And I think we have a pretty accessible website.

I'm grateful to everyone for this opportunity, especially grateful to the museum, to Melissa. Go to the museum. It's a great place. Patronize the museum. Those of you who can afford to give, give to the museum. It's a very, very worthy enterprise. And thank you, Ralph Nader. There's no human being in the history of America who has saved more lives and more persons from severe personal injuries than Ralph Nader. We all owe you a huge debt of gratitude. God knows where we'd be without you, Ralph Nader.

**Ralph Nader:** Well, you're very kind, Shanin. And if we had better lawmakers over the recent decades, millions of more lives, injuries and illnesses would have been prevented. That's what we have to work for. People should know they can take a virtual tour of the Tort Museum from anywhere in the world—Singapore to Scotland or Sri Lanka to Siberia. Thank you very much, Shanin.

**Steve Skrovan:** I also want to thank our guest again, Shanin Specter, and a special thank you to the American Museum of Tort Law and everyone in our virtual audience. For those of you listening on the radio, we're going to cut out now. For you podcast listeners, stay tuned for some bonus material we call "The Wrap Up". Some of the questions we couldn't get to in the radio version will be there, and also our new segment, "In Case You Haven't Heard," featuring Francesco DeSantis. A transcript of this program will also appear on the *Ralph Nader Radio Hour* Substack site 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](http://nader.org). For more from Russell Mokhiber, go to [corporatecrimereporter.com](http://corporatecrimereporter.com).

**Steve Skrovan:** And if somehow you missed it before, the American Museum of Tort Law has gone virtual. Go to [tortmuseum.org](http://tortmuseum.org) to explore the exhibits, take a virtual tour and learn about iconic tort cases from history.

**David Feldman:** We have a new issue of the *Capitol Hill Citizen* out now. To order your copy of the *Capitol Hill Citizen* "Democracy Dies in Broad Daylight", go to [capitolhillcitizen.com](http://capitolhillcitizen.com).

**Steve Skrovan:** And remember to continue the conversation after each show. Go to the comments section of [ralphnaderradiohour.com](http://ralphnaderradiohour.com) and post a comment or question on this week's episode.

**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. Our associate producer is Hannah Feldman. Our social media manager is Steven Wendt.

**David Feldman:** Join us next week on the *Ralph Nader Radio Hour* when we'll welcome auto safety expert, Byron Bloch, to discuss the environmental impact of America's ever widening highways. Thank you, Ralph.

**Ralph Nader:** Yes, and it's a demonstration of a victory by citizen groups in Maryland. Don't miss it.