

## RALPH NADER RADIO RADIO HOUR EP 446 TRANSCRIPT

**Tom Morello:** I'm Tom Morello, and you're listening to the *Ralph Nader Radio Hour*.

[Music]

**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:** Hello, Steven.

**Steve Skrovan:** It's good to have you here. It's always good to have the man of the hour, Ralph Nader. Hello, Ralph.

**Ralph Nader:** Hello, everybody. Get ready.

**Steve Skrovan:** We've got a great show for you. But before we get to the meat of the show, Ralph, you have an update on the Congress Club. Tell us about that.

**Ralph Nader:** Yes, we've just sent to Congress Club members a draft letter to your senators and representatives demanding the establishment of a corporate crime database by the Justice Department. They have a street crime database, but year after year they've been avoiding a corporate crime database. And such a database will increase the coverage of corporate crime. It will involve more law schools in teaching corporate crime. It will inform the victims of corporate crime what's been happening, what the trends are. It's all up to the Congress as usual. And we've got some Republican and Democratic support for this, but it takes a push from back home. That's you, Congress Club members. So if you like the letter, and you want to add a personal touch, send it to them by e-mail, by postal, and then let us know what the response is.

**Steve Skrovan:** Okay, Congress Club members, you have your assignment. Now let's get to the show. Our first guest today will be David Enrich, the Business Investigations Editor at the *New York Times*. In his new book, *Servants of the Damned*—I love that title—he investigates the relationship between corporate interests, conservative politics, and the big law firms that represent them. The book focuses on one in particular, Jones Day, one of the world's largest law firms, and their rogues gallery of clients: tobacco company, RJ Reynolds; alleged insurrectionist, Donald Trump; alleged drug pusher, Walmart; alleged drug pusher, Purdue Pharma; alleged serial assaulter, the Catholic Church; alleged baby poisoner, Abbott Laboratories, Russian oligarchs and others. Mr. Enrich argues that Jones Day encapsulates the changes that have swept through the legal industry in recent decades. How Jones Day and other law firms like it have "become enablers of the business world's worst misbehavior."

Our second guest will be Dr. Michael Jacobson, co-founder of the Center for Science in the Public Interest. He'll be joining us to talk about a troubling trend that's emerged during the COVID pandemic, a rise in alcohol-related deaths and one strategy consumer groups are pushing to combat it—taxing alcohol sales. We'll speak to him about the longstanding policies that favored low taxes on alcohol sales, COVID-era policies that made it easier to access alcohol, and other forms of serious substance abuse. And he will propose policies that seek to reduce the harmful results of excessive drinking.

As always, somewhere in the middle we'll check in with our corporate crime reporter, Russell Mokhiber. But first, let's find out which corporate law firm has been advocating for the devil. David?

**David Feldman:** David Enrich is the Business Investigations Editor at the *New York Times*, and the bestselling author of *Dark Towers: Deutsche Bank, Donald Trump, and an Epic Trail of Destruction*. His latest book is *Servants of the Damned: Giant Law Firms, Donald Trump, and the Corruption of Justice*.

Welcome to the *Ralph Nader Radio Hour*, David Enrich.

**David Enrich:** Thank you for having me.

**Ralph Nader:** Welcome, indeed, David. As one who is associated with two prior books on corporate law firms, your book has delved deeper and in more detail than any book I've ever read on a giant corporate law firm, in this case, Jones Day, with about 2500 lawyers. It was started by Tom Jones well over a century ago in Cleveland, Ohio, and has branches and offices now all over the US and Europe, Asia. They like to call themselves a global law firm. And your analysis has gone deeper and you are careful to note that Jones Day is not the only law firm that engages in immunizing corporate misbehavior or corporate crime and facilitating legal systems that enable corporations to get away with so much that we've discussed on this program over the years. But as sometimes is my custom, just to give listeners a sense of your style, I like to read a little excerpt from your book before we get into the meat of it.

And this, by the way, Jones Day, the title is *Servants of the Damned*; the subtitle is *Giant Law Firms, Donald Trump, and the Corruption of Justice*. Reason for Donald Trump is because this law firm was Donald Trump's firm from 2015–16 on, and a lot of its partners went into the White House, went into the Justice Department when Trump was selected by the Electoral College, and then they went back to their lucrative law firm practice after Trump left office. So what I want to point out here in your book, the corporations are represented by these law firms, whether they're criminal corporations or grasping for unfair tax benefits and ripping off consumers, the law firms are often asked, why do they defend these people. And you have an interesting response starting on page 9.

They usually say everybody deserves representation under our system of law, and you can't tar the lawyer with what client is being represented though you say, "These arguments are packed with holes. While down on their luck humans deserve access to high-quality legal services, which they don't often get because so many of the best lawyers are lured to giant law firms that overwhelmingly represent corporations. The same is not automatically true of companies or other institutions. The Sixth Amendment of the Constitution guarantees the rights of the accused in a criminal trial to "have the assistance of counsel for his defense." It says nothing about civil cases, much less about out of court legal services like helping companies skirt regulations or silence whistleblowers or dodge taxes. Almost by definition, the right to counsel is geared toward protecting the poor and weak, not the rich and strong who can fend for themselves.

Law firms don't even really believe in the principle that they often invoke when it suits them. They trumpet their decisions to avoid impolitic work. And then the punch line, as I see it a few lines down, "citing the constitutional right to counsel is a convenient way for giant firms to

rationalize this representation and to preempt criticism or even scrutiny of whom elite lawyers serve and how they serve them." Okay, with that background, David, can you tell us what got you interested in writing this book in the first place? Because most reporters say it's impossible to get anybody to talk about these firms, inside or out. What got you interested?

**David Enrich:** Well, I've been covering business and finance for almost 20 years now for the *Wall Street Journal* and now for the *New York Times*, and I've covered countless big business scandals over the years. And every time I'm covering one of those, there's always at least one, often more than one, big corporate law firms kind of lurking in the background. And the dirty little secret, as a journalist covering these things is that the partners of those law firms are often whispering to us as reporters, and they spend a lot of time spinning us and providing us documents and other materials and access to people and information that we wouldn't otherwise get access to.

And it always struck me as a little bit slimy, honestly, and it always made me a little bit uncomfortable. But it was very clear to me the vast power that these law firms were wielding, and not only defending their clients in and out of court, but also shaping the public's perception of how these fights were transpiring—in large part through the media. And you've alluded to this. 8 min/25 sec It is more or less taboo, in the mainstream media in particular, to really pull back the curtain on the way that those law firms are operating. And it doesn't really sit well with me to be honest with you, and it has always mystified me a little bit why there has not been greater public and media and political scrutiny of these terms, which after all these are... and Jones Day is one of the largest in the world but not the largest, and it's raking in more than \$2 billion a year in revenue. And so this is a huge multibillion dollar industry that receives almost no outside attention, so I was very eager to find a way to dig into this in a book-length fashion.

And I don't say it wasn't really on my radar at all until 2020 when I noticed the work that they had been doing, and for years at that point, working for not only for Trump, but also this array of right-wing causes and clients. And so that piqued my curiosity, especially given the events of January 6<sup>th</sup>, it just seemed like the perfect opportunity to marry my long-term fascination with these giant law firms and how they operated in the shadows with this political and constitutional crisis that the country was facing.

**Ralph Nader:** Well, you're a real reporter hero. Reporters have told me, when I asked them, why don't they cover, they said, well, you know, we go to the editor, and the editor says it's a good story, but it's not worth being threatened with a lawsuit and that these law firms are very quick to do that. But there's no excuse for the newspapers to continue referring to these giant law firms as prestigious such as the prestigious law firm of Covington and Burling. What kind of prestige? They were the fixers for the tobacco and the drug industry among other things. So they still use that. I've never heard the Public Citizen litigation group be viewed as a prestigious public interest entity.

**David Enrich:** Well, I view it as prestigious.

**Ralph Nader:** Thank you. Okay, let's get down to your book. I thought one of the best chapters in your book, in terms of the endless cruelty of these corporate lawyers, was when they represented Abbott Labs that produced an infant formula that the plaintiffs claimed was contaminated and deadly. Can you describe that?

**David Enrich:** Yeah, incidentally that's my favorite chapter of the book too. And so the world now knows about some of the issues with powdered infant formula because it burst into the public stage this year. But just as a refresher, powdered infant formula, unlike ready to pour liquid formula, is not sterile, and there's been this pattern going back decades of a type of very deadly bacteria that basically breeds in the powdered formula. And bacteria is not harmful to most people, but for babies, like under a month old, it can be deadly. And so there's a whole pattern of babies consuming this formula, and on rare occasions contracting a type of meningitis that can either kill them or leave them just catastrophically brain damaged.

So I focused on a case that was brought by the family of a baby who was severely brain damaged after consuming Abbott Labs' powdered formula. And this was a kind of a routine product liability case, or at least it started out that way, and no one disputed that the girl, Jeanine, had indeed suffered this terrible fate after contracting a type of meningitis that is caused by a type of bacteria that's known to breed in powdered formula. But Jones Day, the law firm that long represented Abbott, engaged in a series of hyper aggressive legal maneuvers that the federal judge presiding over the case described as the "worst by a factor of 10" he had ever seen in his career as a federal judge. And it involved everything. It was straight out of the playbook of aggressive corporate litigation, and it started off with basically snowing the plaintiffs with tens of thousands of pages of supposed evidence, that according to the plaintiffs and the judge, had little, if anything, to do with the actual facts in the case. And it's a very effective maneuver because the law firm like Jones Day has, for all intents and purposes, unlimited resources to throw at a case like this compared to the relatively small-time lawyers who were representing Jeanine's family and her interests, did not have unlimited resources nor the time because the family was poor. And caring for a child with this kind of severe brain damage is extremely expensive. So that was step one.

Step two was that when it came time to depose witnesses before the trial, it was the plaintiffs who were deposing witnesses, including employees from various Abbott factories and headquarters and things like that. During those depositions, which are supposed to be the plaintiff's to use as they want, and they have a limited amount of time to interrogate the witnesses, the lawyers for Jones Day, threw up a series of obstacles that the judge presiding over the case described as completely beyond the pale. And the primary thing was that they were just lodging objections to basically every line of questioning that the plaintiff's lawyers put forward. But they were also doing that in a way that not only interrupted the flow of the questioning and consumed lots of time, but often had the effect, arguably by design, to coach the witnesses on how to respond to the questions. And in some cases even leading witnesses to amend their answers after they had already given them. And this happened in a course of a couple of depositions hundreds of times, not just once or twice. This was a repeat thing that was on display for anyone watching it. And it was so egregious that not only were the plaintiff's lawyers and the judge upset about it, but so were some of the lower-level Jones Day associates who were working on the case on the depositions just basically as observers. And they were worried about it.

And I talked to one who said that he and his colleagues, after one of these depositions, had been stating privately among themselves that they were really uncomfortable with the aggressive tactics being used.

**Ralph Nader:** Describe the six or seven hour brutish deposition of the poor parents by Jones Day lawyers.

**David Enrich:** So the types of things I just described are things that I think arguably and certainly in the eyes of the federal judge were improper. What happened in the deposition when the family members of the mother and father were deposed was not improper, but it was actually very much par for the course in these corporate litigation cases. And they basically tried to destroy the parents. And with the father that meant digging into his past. By his own admission, he had had a history of drug abuse, which was brought up over and over and over again. He'd had an affair at one point, which his wife knew about, and that came up over and over as well. And it, from the father's account, her perspective, it was meant to destabilize him and keep him off balance and also to put him and his lawyers on notice that were they to take the stand in the trial that Jones Day and Abbott would do their level best to destroy his credibility, not just behind closed doors and deposition, but in the light of day with reporters in the room and his reputation at stake.

And it was in some ways what happened to the mother was even worse. Although the mother didn't have that personal baggage to contend with, basically Jones Day, over the course of, I believe, about seven hours asked...the mother was the one who prepared this formula, which entails scooping out a couple of scoops of powder, putting it in a bottle, mixing it with water, and then serving it to the baby. And this was a 30 to maybe 60 second process that was probably, in hindsight, the worst moment of her life. And it had resulted in her child nearly dying and being in a condition where she would never walk, talk, sit up, or swallow. And it was a tragedy that she had undoubtedly relived a million times in her mind. And Jones Day seized on that **26 min** and basically over and over again--as this woman got more and more tired, more and more flustered, more and more frustrated--to ask her the same questions in different ways, saying—trying to have little inconsistencies in her stories start to appear. And then when those inconsistencies began appearing, really seized on them and exploit them and make them seem bigger than they were. And the rationale for that was not simply to be cruel and destructive, but it was that they wanted, and this is what they did. When the trial came about, and the mother was on the stand testifying, they could seize on the kind of tiny little details in her story during the deposition that had changed slightly and use that to really destroy her credibility on the stand.

**Ralph Nader:** Yeah, and for this they were paid handsomely. And of course, it's all deductible by Abbott Labs as ordinary, necessary business expense. How did the case end up for these poor parents and the child who had to be cared for the rest of her life?

**David Enrich:** They lost. Yeah, Abbott was found not liable. The jury apparently was unsure about where these fateful bacteria had come from and whether maybe somehow the mother had introduced it into the bottle as she was preparing the bottle. And this is I mean; Jones Day and Abbott have a remarkable track record of success here. Although I've not spent a lot of time talking to people who worked on these cases on both the plaintiff side and the defense side, no one can recall a single case that Abbott, or any other formula maker for that matter, when taken to trial has lost. They win every single time. And in the cases that they don't think they're going to win, they reach out-of-court settlements that have these very stringent confidentiality provisions attached to them so that no one can talk about the cases. And it's impressive in a gruesome sort of way. Up until this year when a bunch of babies died after consuming powdered formula produced by Abbott, this was below the radar. And I think that is in large measure a

testament to the success of Abbott and other formula manufacturers and their lawyers at preventing big jury verdicts that would have grabbed the public's attention and made a lot clearer to not only the public but also to the government regulators, that there was a pattern here. And again, there's not even a dispute the individual circumstances or particular cases, but there's no question, and there's been a tremendous amount of scientific and academic peer-reviewed research that shows that in cases of infants getting this type of specific meningitis, it is extremely rare for them not to have consumed powder formula. And that is—it's a fact pattern that is certainly an aggregate no one disputes. And so I think that the odds or the likelihood that they could coincidentally could have never lost a case in court is a very powerful example to me of how lopsided, skewed and unbalanced the system of justice can be when it comes to big companies versus individual, ordinary people.

**Ralph Nader:** Jones Day is so brazen. You turn on NPR and they say one of our sponsors is Jones Day. Now, from what you talk about and write about and document about, Jones Day has more than pushed the envelope. And I'll leave it to the readers to find more of the details, but we'll get more in the rest of the interview with you.

**David Enrich:** In fairness to Jones Day, they have 2500 or so lawyers. And a lot of them do good stuff not just from representing companies and other things, but they've got an expanse of pro bono effort on the US-Mexico border where they're helping undocumented migrants deal with the extremely complicated and unpleasant immigration courts down there. And so this is not a monolith, and it's not a place that I regard as evil. But really to give a classic example, it's a place where even well-intentioned lawyers go to make a living or to repay their debts or whatever and they sometimes really push the envelope.

**Ralph Nader:** We're talking with David Enrich, who has just come out with the best book ever on a giant corporate law firm, *Servants of the Damned: Giant Law Firms, Donald Trump, and the Corruption of Justice*. He also was the bestselling author of *Dark Towers*, another exposé of Deutsche Bank, which you may want to read if you want to know about these large banks that are often represented by large corporate law firms. Let's go into your natural segue here, the chapter that is titled "Dirty, Dirty, Dirty". What's that about?

**David Enrich:** Yeah, this is a reminder to everyone that Jones Day is the focal point of the book but it is not alone. And they're in fact, some of the tactics that other law firms use are even worse than what Jones Day uses. And this ranges from helping to whitewash the policies and laws of some really terrible kind of fascist regimes in Eastern Europe to intimidating and bullying reporters in ways to basically get them to censor themselves and intimidating people and threatening them. And this is my attempt through telling with a few vignettes about different law firms, different big law firms, to really make the point that this is the book is about Jones Day. This is a problem that is endemic to the legal industry right now, where even supposedly liberal law firms like Paul, Weiss (Rifkind, Wharton & Garrison LLP) engage sometimes in practices both in representing their companies and defending themselves that are not in line with the values they espouse.

And there's a whole bunch about another law firm that on its website talks very proudly about how the clients we represent are a reflection of our values and blah, blah, blah. And we need to be able to say no to clients. And then you find out that they're representing money launderers, drug traffickers, multibillion-dollar fraudsters who have ripped off entire countries. There's a lot

of lip service that the leaders of the legal industry pay to being good corporate citizens and being public-spirited officers of the court. And you often scratch a little bit beneath the surface of these giant law firms, and you realize that is just not true.

**Ralph Nader:** Well, not only not true, but when they say "We believe in the position of the clients we represent..." that was a comment that Lloyd Cutler of Wilmer Cutler and Pickering made to Mark Green when Mark Green wrote his book *The Other Government: The Unseen Power of Washington Lawyers*, which is on Covington Burling and Wilmer Cutler and Pickering. But it really isn't true. I mean, they don't believe in all the positions of their clients. And when you nail them on that issue, they say "We're required by the professional code of ethics of our profession to "zealously represent these clients. It's not up to us to expose their Achilles heel—that's what the adversarial system is for. It's up for the opponent's lawyer to do that."

**David Enrich:** That's a fine sentiment for a courtroom, but that has nothing to do with helping a money launderer set up shell companies to hide their money. That has nothing to do with helping a big hedge fund or private equity firm avoid taxes, or trying to basically intimidate reporters so that they won't write negative stories about your own [unintelligible]. So, they use this notion that everyone is entitled to a robust zealous defense or representation in court, which is true, to cover a whole range of activity that no one has any obligation to provide or any entitlement to receive.

**Ralph Nader:** Or rigging the courts by using political influence to get their favorite federal judges nominated and confirmed. But the other point that elaborates off of what you just said, David, is this constant sending letters threatening litigation against people who had no interest in going after their clients, for example, or just wanted to make public policy in their own town and discuss this wonderful chapter you had on what Jones Day did to this little town in Massachusetts called Marion, Massachusetts, 5000 people. And some of the civil servants there wanted to protect their citizens from the ravages of tobacco, why don't you discuss that?

**David Enrich:** Yeah, so Jones Day, first and foremost, has been representing RJR, the giant tobacco company, for this point, about 40 years, and it's one of their biggest clients. It is one of those that historically and probably still to this day, has churned out \$100 million, sometimes more in revenue a year for Jones Day. So it's one of their most important clients. And so I tell the story of Marion, Massachusetts, which is a small community just right next to Cape Cod that decided a newly elected member of the Marion Board of Health, which is in the town and it's empowered to do a wide range of things that are aimed generally at protecting its citizens' welfare. And they decided... this is a guy, who was a pediatric oncologist, and so he had seen just through his studies and reading the terrible things that tobacco can do, especially to young people and how addictive it could become. And so he decided with his colleagues on the Board of Health to basically impose restrictions on the sale of flavored tobacco products. So this was not banning the use of flavored tobacco products, it's simply saying that inside our little town where there's like three stores, you cannot sell things like candy flavored tobacco. And it also said, in fairness, that you can't sell any flavored tobacco, so that includes things like menthol cigarettes. Around 26 min/30 sec And no one really thought this was going to amount to much or that anyone would notice because again, it's a very small town. And they were wrong about that. And Jones Day got wind of this probably through the local town newspaper, *The Wanderer* that carried a couple of stories about the Board of Health and what they were doing. Jones Day got wind of this and one of their top lawyers, a guy named Noel Francisco, who would go on later to

become Trump's first solicitor general, wrote a letter on behalf of RJR to the town of Marion, including the Board of Health and the Board of Selectmen, which is like mayor by committee in Massachusetts' towns. And the very lawyerly letter sent was a three or four-pages advancing some pretty hollow legal arguments as to why Marion did not have the right, or the legal authority to impose these restrictions on the sale of flavored tobacco. And it warned that if Marion went through with their plans to enact these laws, then Jones Day would likely initiate litigation on behalf of RJR against the town.

And company law firms send letters like this all the time. I talked to one former tobacco lawyer at Jones Day who told me that the letter Noel Francisco sent to Marion officials was just completely normal. He said we did this everywhere. And it had its intended effect, and it set off this chain reaction where the town took a threatening letter from a major law firm on behalf of a major company very seriously. They needed to line up legal counsel. The town was, like many small towns, didn't have a whole lot of money, and even when they found a group that was willing to represent them on a pro bono basis, that had to be advanced; they just needed a bunch of other town bodies to sign off on the legal representation that got all tied up in this lobbying campaign the tobacco interests put forward in this tiny little town. Eventually, after a couple of years of this, the guy, who had just been elected to the Board of Health, a very idealistic, high-energy optimist, gave up and withdrew from public office because he had lost all faith and all hope for being able to achieve anything after the power play that he had just seen Jones Day execute.

**Ralph Nader:** Even though they were getting free legal representation by some outside public interest group, isn't that so?

**David Enrich:** Yeah, it was offered. And they actually ended up not being able to retain this outside group even though it was going to be for free because the Board of Selectman in the town, which had been the subject of this huge lobbying campaign by Big Tobacco, wouldn't sign off on it for reasons that I think are still a little unclear. And so the town basically collectively, or at least the elected officials in the town, collectively decided that they did not have the appetite to go up against a giant law firm, which... even the stationery that Noel Francisco sent this letter on that caught people's attention was a this cream color rich card stock that had a list at the bottom of each page showing all the cities in which Jones Day operated all over the world, something like 35 or 40 different cities. And the letterhead itself intimidated town officials. Putting aside the legal arguments that were being advanced. And it worked exactly as intended.

And just a reminder again, of this huge power imbalance did not cost Jones Day very much - or RJR very much - to have a couple of associates at Jones Day draft a letter, which they were using all over the country, submit it to Francisco for signature, and stick eight or 10 copies of it in certified mail and send it up to Marion, Massachusetts. And not only did it kill his plan in Marion, but to anyone who was paying attention in the public interest community, or in the tobacco community there was a very loud and resonant message that we, the tobacco industry, are not going to take anything lying down. If you go after us, even if you're a tiny little town and even if the restrictions you're imposing are not about our core product, we are going to fight it tooth and nail and we are going to drag this out in a way that at best will be just terribly expensive and distracting for you over a period of years.

**Ralph Nader:** Well, fortunately the tobacco industry - as you know - lost its base in Congress and it was subjected to hundreds of billions of dollars in settlements when the state attorneys general took them on and they hired plaintiff lawyers to represent them. And the incidence of smoking has dropped from about 45% in 1965 to, I understand, under 14% now, and in places, like California, even lower. But what doesn't have a more encouraging ending is what you describe in your chapter "redefining shamelessness", and they're representing Purdue Pharma and the opioid industry. Can you tell us something about that? This is Jones Day.

**David Enrich:** Yeah, so Jones Day is representing not only Purdue Pharma, which is the manufacturer of oxycontin, but also Walmart, which most people don't realize that Walmart is the largest pharmacy company in the United States. And one of the things its pharmacies have been doing for many years is dishing out oxy and other opioids to customers basically with abandon. So a doctor who is basically running a pill mill would send in hundreds, sometimes even thousands, of prescriptions to his local Walmart. The drug dealer could go pick it up at the Walmart. And when Walmart pharmacists and even people at headquarters expressed concerns about this pattern of pill mills using Walmart as basically a distribution hub, it kept going and going and going. And so starting in 2017–2018, federal prosecutors in Texas, along with the DEA, started investigating Walmart's practices. And the US attorney who was leading this investigation was a guy who was actually a Trump appointee. But the criminal and civil investigation in Texas and Jones Day got wind of the investigation and was representing Walmart, and one of the strategies they used was to call in their political connections that they had throughout the Trump administration. And the reason they had all these connections, without going too far down this road, is that Jones Day had been representing Trump's presidential campaign. And when he won, this whole kind of army of Jones Day lawyers went from the law firm into the Trump administration, including at many various senior positions at the Justice Department.

And so Jones Day's lawyer, who was representing Walmart, was herself a former federal prosecutor, again reaching out to, among others, the people who had until recently worked at Jones Day and were her former colleagues, and were now occupying various central positions at DOJ and Washington. And those people proceeded to, I don't want to say interfere in the criminal investigation because I think that's a particularly legal meaning that I'm not trying to convey. But they basically issued a bunch of directives that had the result of initially slowing the criminal investigation and then stopping it altogether. Then when the civil investigation was still going on, they managed to slow that down as well. And this is something that, as you can probably imagine, infuriated the federal prosecutors in Texas who had been at the DEA and spent years pursuing this case and promising justice to the families of people who had overdosed on opioids and died from opioids that they had procured at Walmart. But it wasn't just that.

This also enraged some people inside the Justice Department, including people high up in the Justice Department who had been appointed by Trump himself. And they viewed this as a federal investigation being sabotaged because folks at Jones Day were so adept at pulling strings within the administration. And to me, this Walmart example is so powerful because Trump comes into office vowing to drain the swamp, and we've heard so many things about the revolving door between government and the private sector. And yet this, to me, is the swamiest thing I've ever heard. It's people who, until very recently, had worked together at a private law firm representing private companies going into public service at a senior level, and it helped their former

colleagues do things that, at least in the eyes of the federal prosecutors in Texas, really thwarted their investigation in a way that allowed Walmart to continue for years doing what it had been doing. And I should note here, by the way, that Walmart defends itself and disputes the allegations as I've outlined them and says that it wasn't doing anything wrong and it shouldn't be up to its pharmacists or its executives to police the prescriptions that doctors write. That's something that should be up to the DEA and the federal government more broadly and it's not their responsibility. And so people can judge that for themselves, but there's no question about that Jones Day used the connections it had inside the Justice Department, and those are people that previously worked at Jones Day, in an effort to try to undercut and slow down this very serious investigation.

**Ralph Nader:** Well, the chapter that shows how far they're pushing the envelope is called "No Vacancy Left Behind" and these corporate law firms do it all over the country. Notably in Texas, they got changes to turn the Texas Supreme Court around on personal injury and worker and consumer issues. In some states, they elect judges so they can take contributions from law firms like Jones Day. But Jones Day has had a huge role, and they bragged about it, of getting their people into the federal judiciary as judges from the District Circuit Court all the way up to the Supreme Court. And that's like more than tipping the scales of justice beforehand. That is the ultimate corruption of the federal judiciary with the Justice Department's cooperation, and of course Senator McConnell's role in the Senate on confirmation. Tell us a little bit about this.

**David Enrich:** Yeah, well, Don McGahn, who was a partner of Jones Day, and he was the one who in early 2015 took on the Trump campaign as a client, and even before Trump got elected, McGahn and some of his colleagues at Jones Day were helping the Trump campaign draw up lists of people they might appoint to the Supreme Court and other courts if Trump won the election. And Trump, of course, does win the election. And McGahn gets named Trump's first White House counsel. One of the things McGahn sought and received, as he was offered that job, was that he wanted full power inside the White House to be the single person who was responsible for selecting the nominees that the White House would make to various federal courts. And Trump gave him that power, and McGahn is someone who, and probably his defining trait professionally anyway, is that he has this visceral hatred of a liberal court or liberal courts and of the so-called administrative state, which is basically federal regulatory agencies having power to oversee private companies and individuals.

And he set out through judicial appointments to just completely remake the federal judiciary with judges who were very conservative and wanted to interpret the Constitution as it was written in the late 18th century. And I think McGahn was successful at that beyond anyone's wildest dreams, and that's in part because the Trump administration was blessed with three Supreme Court vacancies to fill. But it's also in part that McGahn attacked this in part with his former Jones Day colleagues with his systematic, focused, precise approach, and he was devoted to this in a way that was extraordinary and unprecedented. For example, a quarter of the appellate bench turned over during the Trump administration and a third of the Supreme Court. And those judges who have lifetime appointments, and these are Federalist Society judges who have a very distinct worldview, and a very distinct view of the role that judges should play and of what the Constitution means and how it should be interpreted and enforced.

We've seen that obviously with *Roe v. Wade* being overturned, and in a slew of other cases in the religious space, and also in the regulatory space, I think are going to have really dramatic effects

on the ability of the federal government to regulate everything from consumer products to the environment and climate change, even to things like whether you have to wear a mask on an airplane. The judge who overturned that earlier this year was someone picked for the federal court from her seat at Jones Day. So this is a pattern we've already seen playing out. And it's only going to continue playing out in the years to come, in part because the federal court system under the Trump administration, thanks to Don McGahn and some of his former Jones Day colleagues, was extremely effective.

**Ralph Nader:** Every day the results of their Jones Day's handiwork is coming down decisions by federal judges on innocent, vulnerable people--workers, consumers, patients, communities--all the time. And that has to be a big follow-up. I've got to ask you one last, more reflective question, David. What do you see as the future; is there anything that can stop these giant law firms beyond grinding innocent and victims into the ground in courts, but from reshaping the entire legal system, which reverberates and reshapes the political system into a corporate state in Washington, which Franklin Delano Roosevelt described in a message in 1938 to Congress, as the definition of fascism? Certainly you're not going to get big giant firms fighting other big giant firms except in certain antitrust lawsuits. I've been watching their growth and they just seem unstoppable and more brazen and more penetrating into our democratic society, or what's left of it, and more able to rationalize it and excuse themselves and elevate themselves into high public office, and then they come back to their law firms at higher pay. What do you see?

**David Enrich:** I mean, as a journalist, I have maybe a slightly more modest view of this, which is that my role as a journalist is to provide as much transparency as I can into big, powerful institutions so that they can be--not just law firms but any institution, and that's the definition of journalism here. My hope and my goal with this book is that it will provide an opportunity for greater transparency and more scrutiny from everyone who is involved, whether it is people already at big law firms, or people who are in law school or considering going to law school, or people who are teaching people at law school. And I think it would be really healthy for our country and for the legal profession to be more reflective about the work that they do, the work that they should do, and thinking about the role they play in the society beyond just finding, or using the reflexive response to everything, which is that everyone is entitled to robust legal defense. There's a lot of room to discuss this and to think about it. And again, this reflects my biases once again, but I think that journalism, and this is certainly my goal of this book, could play a really useful role in pulling back the curtain, and letting people see how it really works inside these law firms. My hope is that, as Supreme Court Justice Brandeis said, sunlight is the best disinfectant.

**Ralph Nader:** Well, listeners should know that David's writing style is really gripping. In fact, there was a comment on his book on Deutsche Bank by the *Philadelphia Inquirer*, which called his book *Dark Towers*, "a jaw-dropping financial thriller." So don't think this is a dry book on a giant corporate law firm. And it's a book that really dug deeper than any other book I've ever read, as I said, on corporate law firms. Well, we're out of time, unfortunately, David Enrich, the author of the new book, *Servants of the Damned*, just out, published by HarperCollins. The subtitle gives you only a glimmer of what's in this wonderfully recounted narrative. It's called *Giant Law Firms, Donald Trump, and the Corruption of Justice*. Thank you very much and good luck on the book.

**David Enrich:** Thank you so much for having me. It's been great talking.

**Steve Skrovan:** We have been speaking with David Enrich. We will link to *Servants of the Damned* at [ralphnaderradiohour.com](http://ralphnaderradiohour.com). Up next, Michael Jacobson joins us to talk about taxing alcohol. 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, September 23, 2022. I'm Russell Mokhiber.

A lawsuit by five Hertz customers has accused the rental giant of faulty inventory tracking that caused the drivers to face wrongful arrest for car theft. The lawsuit, filed in Delaware Superior Court, said the five named customers were stopped in the past year by police and held at gunpoint for renting and driving vehicles that Hertz incorrectly reported as stolen; that's according to a report in the *Wall Street Journal*. Such instances have been a continuing issue for Hertz, according to the plaintiffs' lawyer, with at least 300 since 2015. A Hertz spokeswoman told the *Journal* that the company has already sent almost 60 confidential settlement offers to individuals "who had a negative experience with our company."

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 and Ralph. Studies have shown that increasing taxes on tobacco has been a powerful tool for reducing smoking. Could it do the same for excessive drinking? David?

**David Feldman:** Dr. Michael Jacobson holds a PhD in microbiology from MIT and has dedicated his life to advocating sound nutrition and food safety policies. He co-founded the Center for Science in the Public Interest, was its long-time executive director and senior scientist. Welcome back to the *Ralph Nader Radio Hour*, Dr. Michael Jacobson.

**Michael Jacobson:** Thank you very much. Glad to be here.

**Ralph Nader:** Welcome, Michael. I remember interviewing you at MIT. And I said this is a long-range job invitation and you said, "I'm ready for it." And here you are decades later. Readers may be interested to know that Michael established the widely circulated *Nutrition Action*, which comes out 10 times a year, which in very clear terms helps you and your family achieve nutritional awareness and nutritional foods. We're going to talk today about something you raised almost as a lone voice decades ago, that the alcohol industry—whiskey, rum, beer, wine industry—has been successfully dampening down their taxes. And there's a new article in the *New York Times* that said the following: "For example, even as alcohol-related deaths soared to record highs in the last few years, alcohol taxes have fallen to the lowest rates in a generation."

Before we get into the tax diminishing phenomena that's going on at various states, especially in Oregon and elsewhere, tell people about the ravages of alcoholism and how many deaths there are a year.

**Michael Jacobson:** Well, the Centers for Disease Control and Prevention recently estimated that the alcohol-related deaths are now at 140,000 per year. It's just astonishing. Yet that's really

the tip of the iceberg. The iceberg consists of all the mayhem that alcohol causes to society and to millions of individuals. People become alcoholics at the age of 20 and they can't keep a job for the rest of their lives and then they'll die early; there are all kinds of travesties--domestic violence, auto crashes that don't result in fatalities, rape, and this list goes on and on. And I think because the average person may drink a little, they think "Eh, what's the big deal?" But alcohol-related problems are an enormous deal in the United States.

**Ralph Nader:** And just as higher taxes on tobacco reduced, according to many studies, tobacco use, because the price of a pack of cigarettes went high, this has not happened in the year of alcohol, even though similar studies have shown around the world that higher taxes on alcohol-related products reduce consumption and would reduce some of the alcoholism epidemic. Can you talk about that?

**Michael Jacobson:** Yeah, well, there's no doubt that raising alcohol taxes would raise the price of alcoholic beverages, and consumption would decline. For any kind of imaginable tax increase, alcohol problems and deaths would not go to zero. But there would be a significant decline in proportion to the increase in tax rates.

And then there are different kinds of taxes. Right now, beer and wine are taxed at the federal level at a much lower rate than liquor. And at the state level it's similar. And some states have pretty high taxes. Washington State has, I think, the highest taxes. Other states have very low taxes. And what's happened, really since probably the last 70 years, is that increases have been rare, but inflation every year eats away at the effect of tax rate on alcoholic beverages. So inflation has gone up at a rate of, what, 8% in the last year? Meaning that alcohol taxes have gone down effectively by 8% and this goes on year after year. But federal and state regulators and legislators just close their eyes. I was going to say they close their eyes to this, but that's not the case. Their eyes are closed to this by campaign contributions and powerful lobbying at the state and federal level against raising taxes.

**Ralph Nader:** Well, the US Community Preventive Services Task Force, which as you know, is an independent group of experts, has endorsed measures to deter excessive drinking by raising the price of alcohol. And the *New York Times* goes on to say alcohol has never been more affordable. "As a share of average household income, a can of Budweiser in 2010 cost one fifth of what it did in 1950 after adjusting for inflation, one study calculated. And the cheapest available liquor cost one fifteenth the price." So how low are these taxes, federal and state? I mean, are they based on the price of a can of beer or a bottle of whiskey or are they based just on the volume?

**Michael Jacobson:** They're based on the volume, typically the volume of alcohol. And that's one reasonable way to do it, if the tax rates were increased. But we've become a much wealthier country in the last 75 years, so when your income goes up then expenses effectively decline proportionately. And I don't know how much the average income has gone up over the last 75 years, but alcohol prices have become a much, much smaller percentage of household's income. Just the same way with food prices; we used to spend maybe a third of our money on food, now it's down to 8 or 10 percent. So things that used to be a significant expense are now just a throwaway, and alcoholic beverages are like that.

But there's such powerful lobbying, so you get both Democrats and Republicans opposing tax increases. The beer wholesalers are big in big cities, big democratic cities. They're ferocious lobbyists. The wine producers are big in New York and California, democratic states along with Oregon, Washington, Virginia, and some other states. And this lobbying just prevents any real sensible public health actions from being implemented, taxes being the obvious example. Taxes isn't everything. And government could do a lot of other things, both to reign in the industry and to provide more services, like a better treatment services for people with alcohol problems. Instead of having bars open till all hours of the day or night, the hours could be more limited. A few decades ago it was difficult, if not impossible, to buy alcoholic beverages at supermarkets. And now, you see a whole aisle of beer and wine right next to seltzer and soda pop. So governments need to be doing a lot more, but the industry is really powerful. And there aren't the countervailing forces that there are in some other situations. Like with gun regulations, there are really now strong groups, the Brady group, Mike Bloomberg has a group and others. There aren't such groups with alcoholic beverages with problems of alcohol. National Council on Alcoholism doesn't deal with this. There have been little groups that have raised objections to what industry is doing and they disappear.

**Ralph Nader:** Mike, what would you propose in terms of taxes, federal and state? Give us some numbers, because to say higher taxes on alcohol somehow gives the impression that there are real taxes on alcohol, and they're so low as to almost be invisible in some instance in some states. So what would you propose?

**Michael Jacobson:** Well, in terms of a structure, there are several things one could do. One is that beer and wine are taxed at much lower rates than liquor. The rates should be equalized, lifting beer and wine taxes up to the liquor rate. That's an obvious thing because alcohol is alcohol, and you could become a wine alcoholic, a beer alcoholic, or a liquor alcoholic. So that's the first thing. And then there should be an inflation adjustment so that alcohol taxes would keep up with inflation. And then there could be just an overall increase in all of the tax rates for beer, wine and liquor. The Congressional Budget Office estimated that if beer and wine taxes were brought up to the liquor rate, and then the liquor rate was lifted a little bit, 10 or 20%, the government over 10 years would take in \$80 to \$100 billion more revenue. Can you imagine what could be done with that? You could talk about roads and bridges, or you could think about better treatment for people with alcohol problems, massive media campaigns discouraging excessive drinking, and education in schools.

**Ralph Nader:** Well, all we say is keep at it, Michael. The Center for Science in the Public Interest has a good reach throughout the country. Their publication, *Nutrition Action*, has well over 500,000 in circulation. I urge listeners to log into the website and sign up. And what is the website before we conclude?

**Michael Jacobson:** That's [cspinet.org](http://cspinet.org).

**Ralph Nader:** To be continued. Thank you very much, Michael Jacobson.

**Michael Jacobson:** Thank you, Ralph.

**Steve Skrovan:** We have been speaking with Dr. Michael Jacobson. We will link to his work at [ralphnaderradiohour.com](http://ralphnaderradiohour.com). I want to thank our guests again, David Enrich and, of course, Dr. Michael Jacobson. 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 program 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, you can get it free by going to [nader.org](http://nader.org). For more from Russell Mokhiber, go to [corporatecrimereporter.com](http://corporatecrimereporter.com).

To order your copy of the *Capitol Hill Citizen*, "Democracy Dies in Broad Daylight," go to [capitolhillcitizen.com](http://capitolhillcitizen.com). Join us next week on the *Ralph Nader Radio Hour*. Thank you, Ralph.

**Ralph Nader:** Thank you, everybody. And join other readers by obtaining a print-only copy of the groundbreaking *Capitol Hill Citizen*, which is yours for \$5 or more, first class delivery.