

RALPH NADER RADIO HOUR EP 422 TRANSCRIPT

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

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

David Feldman: Hello, Steve. This is very exciting. We have a full audience.

Steve Skrovan: Got a full house here for our live Zoom event, which we always appreciate. And we've got the man of the hour here, Ralph Nader. Hello Ralph.

Ralph Nader: Hello, everybody around the country and the world who is watching.

Steve Skrovan: Yeah, we've got Germany. We've got Cape Town, South Africa as well as all across the country. And you're here on a great day on a great program. Our guest today will be Attorney Josh Koskoff, who has taken Remington [Arms] and other arms manufacturers to court on behalf of victims of the Sandy Hook in Las Vegas mass shootings. Mr. Koskoff's work has held the manufacturers accountable in court. It is also forced a reckoning with the insurance companies, right-wing media and others who have been profiting—let's just put it that way—off the dangerous marketing strategies of gun manufacturers.

Holding negligent or malicious companies accountable isn't just about the money. It is, of course, partly about the money because profit-driven corporations only change when their bottom line is threatened. But taking companies like Remington to court allows the victims, their families, plaintiff's attorneys, and the public at large to access internal documents that not only prove wrongdoing in the past but help prevent harm in the future. And that is the importance of torts that if you're a listener of the show, you know we talk about all the time.

So first, Ralph and Mr. Koskoff will go through the case, then we'll invite our live Zoom audience to ask Mr. Koskoff some questions. As always somewhere in the middle we'll check in with our corporate crime reporter, Russell Mokhiber. But first, let's hear from the man who secured a landmark settlement in a case against the firearms industry that everyone thought was “a losing proposition”. David?

David Feldman: Josh Koskoff is an attorney specializing in medical malpractice and personal injury at Koskoff & Bieder. His work includes a recent \$73 million settlement on behalf of families of the Sandy Hook shooting in a case against Remington, the company that made and marketed the AR-15 used in that shooting. Welcome to the *Ralph Nader Radio Hour*, Josh Koskoff.

Josh Koskoff: Thank you very much to you, David, to Steve, and of course, to one of my idols growing up, the first person I ever voted for, actually, Ralph Nader. It's a little bit surreal to now be on a program with Ralph and I truly treasure it.

Ralph Nader: Well, thank you very much, Josh. And before we get into your groundbreaking case, let's talk a little bit about history. Ever since the Columbine massacre in Colorado about 20 years ago, there have been increasing numbers of these massacres by young men largely who were known as loners by their associates or neighbors and who harbored some grievance, had rather implicating websites to indicate how deep their torment was or their disassociation from their normal community.

How do you explain that in almost all Western countries, for example, there are no such massacres? Japan has fewer arms related deaths in the entire country of 120 million people than in a mid-sized town in the US. How do you explain this? And does it have anything to do with the enhanced weaponry? And does it have anything to do with the enhanced social media and the enormous publicity one massacre is given that tends to arouse some young person to do the same thing in another community? Give us some context here.

Josh Koskoff: Sure, Ralph. And this is not an area that I knew much about ten years ago. In fact, I was somewhat ignorant about the gun industry, and I certainly didn't know anything about gun laws, but I had to do my homework over the last ten years. And I do think that—first of all, there's a lot to your question, not surprisingly, a lot of the factors. To point out one obvious factor is the sheer number of firearms available and in private ownership in this country, something along the lines of 400 million firearms. And firearms, unlike other products that we know deteriorate over time, firearms don't. So, I mean, that's what—just ask Alec Baldwin. Firearms, once purchased are useful to kill forever.

So there's just that fundamental fact. But I think the interesting thing I took from my deep dive into the issues in the Sandy Hook case is that there were in fact always available AR-15s, for example, or what we would commonly call assault rifles, in this country. When we were growing up, there were AR-15s, but we didn't know about them as kids or as young adults because the industry had no access to us. They couldn't reach us. They couldn't market to us. But they were always available, and we didn't have the mass shooting problem that we now do.

And I think you touched on it, and I think we would all agree, and all your listeners would agree that being a troubled loner, a young kid, going through the turmoils of adolescences or being bullied, that definitely we had when I was growing up. And I remember being on the wrong end of that kind of situation. But the gun industry couldn't take advantage of that. They couldn't try to acquire me as a future consumer or promised me an end to all of my problems with a glorious combat mission. And that did change.

It actually really changed in about the mid 2000s, but it was probably changing before then. The Columbine kids got their hands on some pretty nasty firearms, but it was pretty much of an exception. Because really, if you and your audience think about it, the mass shootings that we're seeing that we think of have really all occurred in the last 15 years. And that's as a direct result of the ability of the firearms industry to reach minors and troubled young adults going around the parents through the internet, through first person shooter games. And it's also because of a deliberate effort to sell lore in these combat missions of lone gunmen. And so it's no secret. You have been on this issue for years, Ralph. If you market a product for a particular use, it's going to be used by certain people in that way. It's just human behavior. And it's why marketing is a multibillion-dollar industry.

Ralph Nader: Well, the arms industry used to sell primary customers of Pentagon for use in wars than they would sell to hunters, and they would sell to marksman. And now they're micro selling more and more to different groups of people, including direct selling to what they must have known are troubled young men with fantasies. And you dug up the marketing messages for that in your suit regarding the Sandy Hook massacre against Remington. Can you describe just how detailed and tailored these advertisements were?

Josh Koskoff: Well, it should come as no shock that because you see the tip of the iceberg of the marketing, which is of course the promotional material and the slogans and the emotional

connection they're trying to make with a potential consumer, and the iceberg itself reflects a very deliberative effort to reach, to your point, and target an ever-expanding audience, notably a younger audience.

Because, again, I can't emphasize enough, the normal barriers that would've restricted an inappropriate or immature consumer in the days prior to the internet were obliterated. And the parent's role has been obliterated, such that the industry has taken full advantage of courting these young users with ferocious military weapons and promoting what is essentially a criminal use. And the parent has no idea what's going on.

And so what we found in a general way, and we'll be releasing the documents to the public over the next three months or so, is what you'd kind of expect, as if they were selling widgets-- spreadsheets, PowerPoint presentations deliberate efforts to target, as you note, a more micro target, different segments that had previously been unavailable to the industry. And of course they sell different messages to different target markets.

Ralph Nader: Tell us some of the phrases they used, which they knew would reach these troubled young men in their late teens and early 20s.

Josh Koskoff: One is "Consider your man card reissued". I think people have seen that. Many people who are at least maybe peripherally familiar with the type of marketing. Prior to Bushmaster's acquisition. Bushmaster was a major manufacturer of AR-15s. There were only two Bushmasters in Colt. And their marketing, I think, Ralph, you and I would even say was sober, responsible marketing prior to their acquisition by a private equity fund. And then there was an inflection point where they started a more aggressive promotion of not the weapon per se, but the emotion and the masculinity that the weapon conveyed. And so they equated ownership and use of an AR-15 with masculinity. So one of their ads said, "Consider Your Man Card Reissued." And in fact, you could even earn your "man card". You would get a card if you purchased one of these AR-15s.

Another one was something that we made great use out of in a very tragic situation, which is they had a weapon called the Adaptive Combat Rifle and their promotion of that was "Forces of opposition, bow down. You are single-handedly outnumbered." "Forces of opposition, bow down. You are single-handedly outnumbered" for a product that is being sold to any civilian kid, really, that wanted one. So that's clearly the promotion of a lone gunman mass shooting. There's no non-criminal use that could be described in that way in civilian life. That's an ambush.

And then that finally I'd say, and this will strike you all, I think, as harrowing. They had a promotion that said, "Clear the Room, [Cover the Rooftop], Rescue the hostage," but clear the room. And when I put that question about clearing the room, I mean, what could that possibly mean when you're talking about the commercial sale of an AR15? How can you clear a room? And I asked them to describe, Ralph, "take as much time as you want, Mr. Gun executive, describe how you can clear a room with a commercial use in a noncriminal way." And they couldn't do it. It was like a deer in the headlights. And when I asked them whether they could think of an instance of criminal use of one of their weapons in which a room was cleared, invariably, they had to agree that the Sandy Hook school shooting fit that description.

Ralph Nader: Well, describe for our listeners how much more powerful the AR-15 is compared to its predecessors. And also tell them that it was once banned in the United States and what happened.

Josh Koskoff: That's right. Well, let's start with the first question, which was very pivotal to my understanding of what an AR-15 was and its relationship to a regular firearm, to uncover declassified field tests of the AR-15 in the jungles of Vietnam and reading about actual reports from soldiers who rated military weapons. The military was looking for a new battlefield weapon to sort of compete with the Kalashnikov rifle or what folks known as the AK-47, which is sort of like the gold standard assault rifle. So this company ArmaLite developed the AR-15. And Ralph, there are actual ratings by soldiers in different categories. The tactical efficacy of the weapon, the lethality of it, the ease of use, whether it jams or not, its use in an ambush, and all these types of things that would be very helpful in the battlefield and taking on the enemy. And the AR-15 destroyed its competition, including something called the Thompson submachine gun or the Tommy Gun as folks may know of it.

And what I think is so telling about that is that the Tommy Gun was effectively banned in 1934 by the government. It was really taxed into oblivion, but the concern was that it was too dangerous for our communities. And in fact, gangsters like Al Capone and Pretty Boy Floyd had used the Tommy Gun in some very notorious mass shootings that today would hardly rate. They wouldn't even be on the front page of a paper. But everybody was freaked out about the Tommy Gun's threat to public safety. And Democrats, Republicans, the NRA [National Rifle Association], and even Colt, the manufacturers, all got together to figure out a way to effectively ban the Tommy Gun. So that's important when you consider that the AR-15 destroyed the Tommy Gun in terms of its desire to be used to kill enemy combatants at war in these field testing. So what does that tell you about how dangerous this weapon is?

Ralph Nader: And when was it banned by Congress and why is it no longer banned?

Josh Koskoff: Sorry, the Tommy Gun is still banned and led to the ban on automatic rifles. The AR-15—what we'll call Assault Rifle AR-15 type rifle and there are others in that category, but for the purposes of this conversation, we'll just call them AR-15s—they were banned in 1994, not just by [Bill] Clinton and Democrats, but with the help of President [Ronald] Reagan, former President Reagan, who was very concerned about their use by criminals to effectively outgun the police. The concern at that time wasn't so much about mass shootings because, again, there really weren't any mass shootings with the AR-15 at that time. Of course you didn't have the ability to promote crime essentially to sell the weapon that you do today.

But putting that aside, there was a lot of concern about the police being outgunned and they got it past Congress, but that had a ten-year sunset provision. So it would have to be renewed after ten years. Ten years later in 2004, we were at war with Iraq, and we had a different administration and there wasn't a lot of energy, and the NRA, they do a good job lobbying. It's not a moral job, but it's an effective job. They did a good job lobbying Congress not to renew the assault weapons ban.

It is also questionable whether the assault weapons ban had had the desired efficacy. It wouldn't be surprising if it wasn't the most effective legislation. Because one of the problems I've seen is that elected officials are busy. They've got a lot of issues to deal with and most of them don't understand what makes a weapon dangerous and what doesn't. So the assault weapons ban was in large part they banned things that looked scary, right? Like a grenade launcher or certain stock, but they didn't really ban the core features of the weapon that make it so lethal. But in any event, there was just no appetite to renew it in 2004. And that of course helped sales as well.

Ralph Nader: Listen, I'm sure listeners want to zero in on your case, your celebrated case that you brought against Remington. Nobody thought you had a chance. Go through the sequence, but first describe the massacre briefly that occurred in Sandy Hook in Connecticut. And then there were other cases that were filed before you entered the litigation just briefly and then go into your litigation.

Josh Koskoff: Okay. Sure. First, the description of the shooting is brief because it was a brief amount of time. Four minutes and 59 seconds, 156 shots fired, 26 killed, 20 children, all first graders between the ages of six and seven, and six adult educators. It's noteworthy that although from the first shot to the last shot was about four minutes and 59 seconds, the shooter wasn't shooting that whole time. Probably the shooter was shooting for two minutes or less. And that tells you all you need to know about the fire power of this weapon.

There was one lawsuit filed right away that was instantly, and I think appropriately, excoriated by legal community and the general public as being one of those opportunistic type things. There was another lawsuit that was filed against the school because there were issues about the failure of one of the classrooms to lock. I did not handle that case. It was not really a case that I was comfortable with. But as a principal of tort law, I couldn't say it wasn't a valid case. But somebody else filed that case. And we were really looking at whether or not there were any legal causes of action as it related to the weapon and its manufacturer and sale effectively. And as it turned out, its marketing.

Ralph Nader: Now, there were laws that protected the arms industry, including in Connecticut. They shielded them from any kind of civil action for the use of their weapons. And you found a statute in Connecticut that went into one of the exemptions under this Connecticut state law shielding the arms manufacturers, which is they had to not violate the marketing rules of the state of Connecticut. And that's where you found your entry.

Josh Koskoff: Effectively. Exactly. And I think this goes back to your original sort of observation, Ralph, about how it's more and more becoming a problem and when and where and why it happened. So in 2004, remember this, so you have the assault weapons ban lapsing. In 2005, you have Congress passing, giving the NRA and the gun industry was effectively a Christmas present and providing a thumb on the scale of the industry in what otherwise would be settled in courts, right? And we've seen this in other industries from time to time, but not quite like the gun industry. So they provided what was thought to be an immunity and is an immunity of sorts, but it's not an absolute immunity. And it never was.

I think there was a perception prior to our lawsuit that you couldn't sue a gun manufacturer. I heard that time and again. I was luckily naive enough and ignorant enough and hadn't been involved in any cases to be sort of weighed down by the pessimism. And what the immunity says is that—it's called the Protection of Lawful Commerce in Arms Act. And it has a lot of protections like it basically obliterates your common law negligence causes of action, but it's the protection of lawful commerce. It doesn't protect unlawful commerce and arms.

And so what you're talking about is Connecticut had a state statute that prescribed a certain marketing conduct. Every state has these statutes, consumer protection statutes. And we said, "That's a statute that is applicable to the sale or marketing of firearms, and you, Remington, et al,

broke that law.” And that allegation withstood the challenge by the defendants to dismiss the case pursuant to the immunity. So we effectively got through that immunity.

Ralph Nader: And you found that Remington appealed it to the Supreme Court of Connecticut. You won there. They appealed it to this US Supreme Court, which denied to take the case.

Josh Koskoff: Yeah. I think if I gave the impression that this was a motion that was filed that was just granted or that they lost and the case went forward, then I gave definitely the wrong impression. What I just described took years and years to sort out before we even engaged in really meaningful discovery. And in fact, the trial court did dismiss the case and it was the Supreme Court of Connecticut that reversed in part because there was another part of the case that we don't have time to get into, I'm sure, but which I thought it was a valid claim, but the Supreme Court agreed with the trial court that it wasn't.

But it didn't matter because we were green lit and got through the immunity, which meant we got to a place that none had really been before in terms of a manufacturer. And that was discovery. So if you can imagine, it's like opening the doors to a cave, a dark cave that's never been explored. And that's how I kind of looked at it.

Ralph Nader: Well, listeners should know that Josh Koskoff is a very rare trial lawyer. Most trial lawyers would've been daunted by the corporate law firms representing Remington. And even after winning the legal issue, they would've settled for far less than Josh settled for for his families at Sandy Hook or his clients. But he also demanded the production of documents, the internal memos, the marketing shenanigans, the boasting, and Remington resisted that. But he held firm, and he got over \$70 million settlement, but he also got—what—30,000 documents, which you are now empowered by the settlement to release to the public as you wish and when you wish to further enlighten the marketing shenanigans of the industry.

Josh Koskoff: Correct. I mean, it was closer to probably now 70,000 individual documents, some of which have many pages. Of course, a lot of the documents you get, as you know, Ralph, don't help advance any understanding of what happened. You get everything dumped on you. And so part of the process is curating those documents so that you are actually helping in the understanding to the general public and helping—although I appreciate the kind words, really, when you have families like this, they're resolve to get this done and to not settle for anything short of a) the full amounts of the available coverage and b) but more importantly, the documents so that they could achieve the families' one main unifying goal because they're all different people, remember, was to do whatever they could to help prevent the next Sandy Hook. So I know I grew motivation from their determination.

Ralph Nader: Kudos to those valiant families for persisting. And a lot of plaintiffs would've said, this has been an excruciating multi-year litigation; were really impatient; we can't take the pressure anymore. But they really wanted the public to know. And they wanted the case and the settlement to be a deterrent, as you say. That's one of the purposes of tort law, not just compensation, but public disclosure of the wrongdoing and deterrence against future repetitions. Well, do you see any deterrents among the arms manufacturers? Are they cleaning up their act?

Josh Koskoff: No, I don't think they are cleaning up their act. From what I can tell from my early look at the Uvalde case and the Highland Park case and the Buffalo case, which is the same weapon that was used at Sandy Hook, so I already knew about that. What I can tell from these other companies is they're drawing a page out of the same Bushmaster Remington playbook that delivered the Sandy Hook shooting and played a role there. I can establish, really, that it played a role. So, look, I don't think it's a secret that the gun industry is not known for self-reflection or flexibility or even consideration of public safety. It's not just an industry....

Ralph Nader: How about its insurance companies? Like Liberty Mutual was one of the insurance... are they putting pressure on their clients, the arms manufacturers, because they have to shell out the money?

Josh Koskoff: Yeah. You know, what's interesting, Ralph, to understand how this industry, the scale of the industry is really, really small industry—the gun industry is. We think of it as a massive industry because of the harm that it causes and the damage it does. 40,000 deaths or something like that a year. And of course it has a presence in our daily life, almost unlike any other industry. But that is a perception that is at odds with the reality. It's about 1/50th. For every dollar of the tobacco industry, the gun industry is about 2 cents.

So, the reason I'm saying that in response to your question about the insurance industry is the insurance doesn't collect a lot of premiums from the gun industry. And I don't think that they were—from what I can tell, they are more hands-off of the gun industry than they are certainly of my driving/my auto rates. I hear from my insurance carrier every time I get a speeding ticket. But I don't think that—from what I understand, the insurance industry until our case really didn't look into the practices of their insured. And I'm hopeful that one of the results of this will be that they will do that because they are a great free market. Of course, we all have issues with the insurance industry as well. But one thing the insurance industry can deliver is free-market help in the face of public health crisis like the gun epidemic by creating a free-market incentive to cleaning up the act of the gun industry. So I'm hopeful that happens. But I think that remains to be seen.

Ralph Nader: Well, are there going to be similar lawsuits or are there similar lawsuits in the Buffalo massacre, the Highland Park massacre, and the Uvalde massacre against the arms manufacturers?

Josh Koskoff: Well, I think that right now they're all under investigation is my understanding. And full disclosure - our firm represents families in all of those instances - one thing I think is a step in the right direction. And I think this will sound like maybe deja-vu of a nature to you. But ten years ago, we had no competition for this case. No lawyer wanted to touch it. Even some of my partners, the best they could sort of muster was “Good luck with that.”

And ten years later, I'm finding that in the Uvalde situation, there are lawyers who really want to be involved, who see a possibility or a path, no longer believing it to be impossible. And I think that one of the legacies I hope of the Remington case is that it did shatter that perception of invulnerability and engage trial lawyers who could be such a part of the solution here and who historically have been. And I'm talking to you, of course, as the poster (man) child of what trial

lawyers can do. And we stand on the shoulders of people like you who have taken on other cases. I'm not just saying that because you're interviewing me. I'm saying it because it's true. And people listening, I think many of people listening will be lawyers and many won't, but I think when trial lawyers are doing the best of work they can, they are having an effect that helps communities and holds corporate America to task.

Ralph Nader: We're talking with Josh Koskoff, the plaintiff lawyer who brought the case against Remington Rand involving the Sandy Hook massacre and broke ground in this area. One last question before we go to the audience. I'm sure some of our audience are wondering about the lack of impact of public opinion. The vast majority of people in this country want background checks. They want safety locks. A smaller majority wants a ban on these automatic semi-machine guns. Even some members of the NRA want background checks and other gun safety controls. And yet Congress is still under the influence, at least for a workable opposition to gun safety laws under the NRA. When do you think this logjam is going to break? Because we used to think that if there was a massacre every year, it would put pressure on members of Congress to change their minds. But when do you think that's going to break through since you've been in touch with members of Congress?

Josh Koskoff: Well, first of all, I don't want to give the impression that I've been involved in the political process. The reason I was in Washington recently was really just to support the Uvalde families and shepherd them. I actually by design stayed away from politics in this case. And in fact, one thing I think I would've been aware of even ten years ago was that the government had been almost historically impotent at dealing with this issue that we have, this shameful issue we have. And I don't think it is going to resolve anytime soon. And I do think that there could be—and there have been mass shootings, not just once a year, but once every other month and it hasn't moved the needle. And I think it is a parallel to the extremism that is the tail that's wagging the dog of politics, especially on the right today.

Your point is well taken. A majority of the voting electorate would favor tighter regulations along the nature of what you said, but we're not in a majority. We're in a minority-controlled capitalist situation right now and that's not changing anytime soon. I mean, it's very equivalent in my mind to the purism that would kick out one of the most conservative people that I've been aware of, which is Liz Cheney from a party because she won't back an extremist theory. This is an industry and the NRA is a lobbying agency that caters to its most extreme members. Because to be honest, they would sacrifice every person who buys one or two weapons in favor of the people who buy ten, 15, 20 weapons. And so they're not about to hack off their most luminous buyers. That's a fact. I've seen the numbers. So that's your answer, Ralph. And the NRA, so one more thing. Because I think that one of the things that listeners may want to take from this, the perception versus the reality--the perception that the industry is a big industry, the reality that it's a small industry; the perception they can't be sued, the reality that they can; the perception that you have to abide by the NRA edicts or you're not going to get re-elected also may be inconsistent with the reality. But it's a strong and dangerous perception.

Ralph Nader: And the perception that the NRA and others pour campaign money into the coffers of these politicians is also a reality. Let's go to the audience. And people who are outside the country watching this should remember Josh Koskoff's estimate, which is pretty accurate,

that about 40,000-gun related deaths occur in this country every year, which is far, far greater than all the gun related deaths that occur in all Western countries, including Japan and Taiwan.

Steve Skrovan: We've been speaking with Josh Koskoff. We will link to his work at ralphnaderradiohour.com. Up next, an exciting update about the *Capitol Hill Citizen* and 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, August 26, 2022; I'm Russell Mokhiber. A \$1.7-billion jury verdict against Ford Motor Company involving a fatal truck crash called into question the roof strength of older-model Super Duty pickups sold by the company over a roughly 17-year period. That's according to a report in the *Wall Street Journal*. Last week a jury in Georgia reached a verdict in the case involving a 2014 rollover of a Ford F-250 pickup truck that left two people dead. The jury determined that punitive damages should be imposed on Ford for selling 5.2 million Super Duty trucks with what the plaintiff's attorney said were dangerously weak roofs that could crush passengers in a rollover accident. For the *Corporate Crime Reporter*, I'm Russell Mokhiber.

Steve Skrovan: Thank you, Russel. Welcome back to the *Ralph Nader Radio Hour*. I'm Steve Skrovan along with David Feldman and Ralph and Hannah Feldman. Hey, the September 2022 issue of the *Capitol Hill Citizen* is going to the printer. David?

David Feldman: For a donation of \$5 and more to cover shipping and handling, we'll mail you a copy of the [*Capitol Hill*] *Citizen* hot off the press. To order your copy, go to capitolhillcitizen.com. You'll love the September issue. 40 pages of articles on the nonprofit industrial complex, a military industrial complex lobbying group you've probably never heard of, and the Presbyterian Church condemning Israel as an apartheid state. It also features an article entitled "The Black Hole" explaining our decision to go print only and the reaction to it. Again, for a donation of \$5 or more, we'll mail you your copy of the *Capitol Hill Citizen*, go to capitolhillcitizen.com.

Ralph Nader: Thank you. Indeed, this is a very unique pilot newspaper. It's getting rave reviews from around the country even from people who like print only newspapers. And as a few more will come out in succeeding months, the editors hope that it will be self-sufficient and teach the mainstream press that covering Congress is not just official source journalism that covering this metropolis on Capitol Hill with 33,000 people where everyone has a job, and the enormous power Congress has to do well or bad for our country in the world is full of stories that need to be covered. And *Capitol Hill Citizen* does that in its 40 pages every pilot edition.

Steve Skrovan: All right. Let's take some audience questions. Hannah, why don't you start us off?

Hannah Feldman: This question comes to us from Jerome Jacobs.

Jerome Jacobs: Can the principle of holding manufacturers of certain products more responsible for injuries be applied to providers of various services?

Josh Koskoff: I think that there's an often-litigated issue about the providing of products versus the providing of services and oftentimes we get into this in what is generally known as a product's liability case. And there are some things where there, of course, the line is kind of fuzzy. And so defendants sometimes want to label a case against a service rather than a product so that they can escape strict liability. But that's a general answer. And maybe if you were more specific about what you're thinking about, if anything, about the gun industry, I could probably answer that maybe a little more closely.

Steve Skrovan: Okay. Thank you for your question, Jerome. Who's next, Hannah?

Hannah Feldman: This next question comes to us from Margaret Walsh.

Margaret Walsh: Good morning. Hey, guys. Hey, Josh. Have you seen any state shine reporting, reduced violence due to sophisticated system of gun injury and gun death data collection, perhaps motivating the CDC to study this? Thank you.

Josh Koskoff: Have I seen data supporting—because we're all under the impression that there's been nothing but an increase in these things. And so have I seen any data indicating a decrease? And I think the answer is no. My personal answer is no but it's not the same thing as saying that there isn't any. It's really hard to measure whether a law that regulates something more tightly is effective or not because you only know what happens, right? You know about the affirmative instances of gun deaths, but it's very difficult to measure on an epidemiological level what's been prevented. And so there's a little bit of a challenge in assessing the numbers. The thing they remember, though, is if you look at gun deaths over the course of decades, the deaths are certainly rising. But the other thing that happened over the course of decades is the advent of medicine. So more people are surviving serious gunshot injuries and previously would've died. So you have to look not just at the number of deaths, but the number of injuries. And so I think it's clear that we are seeing a steady rise over the course of the years and it's only getting worse. And I do attribute not all of it but certainly much of it to the conduct of the gun industry and the failure of the United States government to reign in that conduct.

Ralph Nader: Yeah. Josh, also by comparison with Canada, it's like night and day. Our Canadian viewers might want to ask you a question. They're probably stunned at the difference, not only between Canadian gun safety laws and US laws, but the compliance. And Canadians like to hunt. They like to do a lot of the things, but their casualties per capita are far, far less than in the United States.

Hannah Feldman: Our next question comes to us from Elizabeth O'Nan.

Elizabeth O'Nan: Hi. First, I'd like to thank you for your heroic lawyering. And I'd like to ask-if Mr. Koskoff could do for the victims of chemical, mainly pesticide injury, disability, and deaths what he's done for the victims of guns. And of course there are a lots of other things I could put on your list. Thank you.

Josh Koskoff: Thank you. Thank you for adding something critical to my list. That's exactly what I need right now. But I appreciate that, Elizabeth. Thank you so much for that kind suggestion. There are parallels in what I and my colleagues did here in this case to what Ralph did decades ago, to what they did in opioids, to what they did in tobacco litigation. We're not

reinventing every wheel here. And I do think that the chemical industry—talk about a big industry that does a lot of harm, yeah, that's right up there. I can only focus on so many things, but I think that especially if there's a particular issue, a particular chemical particular conduct you are concerned about, you should email me. And I do have a lot of colleagues who really focus on those types of cases. But I think gravity has pulled me in the direction of gun litigation in addition to the cases that I really have handled throughout my career, which are the medical malpractice cases.

Hannah Feldman: Our next question comes to us from Elizabeth Lerer.

Elizabeth Lerer: Hi. My question is: Is there a Supreme Court ruling that you identify as paving the way for so much gun ownership, or as you say, this gun epidemic? Thank you.

Josh Koskoff: Yeah. I mean, I think that, obviously, the Second Amendment, which we can't escape in any conversation about guns even how much we try. Obviously, that's a problem in the way it's been interpreted and that has moved, of course, as we all know to the very hard extreme. I think the Second Amendment is treated in a more absolute way than any other amendment I can even think of. And I certainly think the *DC v. Heller* case in which Justice [Antonin] Scalia decided all that originalism and original intent he talked about for decades. Well, for every rule, there has an exception, I guess, in his way of looking at it because he really bent over backwards to find a private rite of ownership of a handgun in the home. And he relied on things like law review articles. I would fault *DC v. Heller*. But the truth is the *DC v. Heller* case is as much a reminder about the constitutionality on the limits of the Second Amendment as it is an expansion of the Second Amendment. And I think Scalia put in as many limits as he could because he knows he was kind of departing from his longstanding orthodoxy.

And then the recent decision in which they struck down the New York law, I think, is deeply problematic mostly because it continues to reflect this false narrative, but strongly held belief that if you have a handgun on you are safer. Whereas there's no data whatsoever to support that. And in fact, the data would, at least the anecdotal data, would suggest otherwise; this idea that you're going to be mugged, and therefore in New York, putting aside the racial undertones of that, and whatever the Supreme Court was imagining New York City is like, there's this idea that's just false and that idea is so detrimental. Because until we decouple the idea that you're safer with a gun than without one, we're going to have a problem persuading people who could be persuaded.

Ralph Nader: Yeah. There are thousands of accidental gun deaths in the United States because of the prevalence of guns in homes and kids get ahold of it. And one sibling, five years old, will shoot an eight years old inadvertently. And I understand in Canada and elsewhere you have to lock up your arms in your home. You have to lock it up so it cannot be easily accessed by children or others.

Josh Koskoff: You wish the right would treat five-year-old children with the same degree of protection as they treat one day old fetuses! But that's not the way it works.

Hannah Feldman: Our next question comes to us from James Press.

James Press: Thank you so much for your very important work and for taking my question. I have a specific question with regard to something I read in the February *New York Times* article on this case. I think you called the checkmate moment in the case, a piece of what it looks to be evidence from *Call of Duty*, the video game. And so I guess my question is kind of growing up around the controversy of violence in video games and even a Supreme Court decision that declared that free speech. What was the approach and strategy around like the legal culpability of a video game developer? Is that something that factored into it?

Josh Koskoff: Thank you. That's a great pickup. And I'm aware of the Supreme Court decision you're talking about, but only because I recently looked at it. It played a role because but the way I looked at the video game part of the case was almost like that was the vehicle that the industry used to promote its weapon and reach these miners and irresponsible users that could be prone to violence. The more I've thought about it, the more I have come around to the idea that it's more than that. Because the video games not only promote products that the user, mostly kids, can then go out and purchase at your local gun store, they are also working on a repetitively autonomous system that gets activated in stressful situations.

And because I had played *Call of Duty*, I understood that more than, I think, any lawyer who hadn't played *Call of Duty*. I'm not proud of the fact that I played *Call of Duty*. In fact, what I was ashamed of it, even when I was playing it because I was a grown man. But I was even more ashamed of it after the Sandy Hook shooting, and I stopped playing it. But as it turned out, my understanding of that game helped me to draw the connection between this marketing of this Bushmaster product and how that was checkmate moment because I knew it reached the shooter because the shooter used a tactic from *Call of Duty*. And it's no accident that of the 30 manufacturers that were making AR-15s during that time period, the shooter wanted the Bushmaster brand because it was the Bushmaster brand that was in *Call of Duty*.

So, we talk a lot in lawsuits about reasonable inferences, and I can say in malpractice cases, you almost never have that degree of a connection. You have to have a few more steps in between. Is it a what we would call the smoking gun? Probably not because nothing is, but it's pretty close. But to directly answer your question, I'm increasingly thinking that they are in an unholy alliance. The video game, particularly *Call of Duty*, promotes their product much in the same way that the gun industry promotes theirs. Now of course you can't go out and shoot somebody with a video game, but this would be along the lines of a type of a conspiracy in my view.

Ralph Nader: Well, the video game business is getting closer and closer to proximate cause incitement. So maybe it will be a defendant someday.

Hannah Feldman: This next question comes from Benjamin Moulton. He's asked me to read it. "Given what Josh and Ralph are saying about deterrents, what would it take for the courts to increase the settlement payouts such that they would actually provide deterrence?"

Josh Koskoff: Well, it's a great question. It's confusing because although—and to speak from the settlement of this case, right? \$73 million, I think everybody would say that is an enormous amount of money. But of course we are used to reading about verdicts of hundreds of millions of dollars. So is it really a deterrence? And I think the answer in this case is yes. I mean, I know the answer is yes because the \$73 million wasn't really a settlement so much as it was a collection of

every bit of the available insurance coverage because Remington itself had gone into bankruptcy. So they could not contribute—there was no company left to deter in essence. But more than that, there was no money from the company. They were broke.

So it was important to the families and to us to make sure we got every dollar from every insurance company and of course of documents, because we wanted to establish that basically you cannot insure your way out of a mass shooting. And every time you sell an AR-15, especially in the way that you're marketing it and increasing the risk, you have just bought yourself an almost uninsurable event. And it's going to put your company on the line if such an event occurs. But it does take a sophisticated, thoughtful, responsible industry to respond to that. And I think that's where the difference is between the auto industry that Ralph dealt with for so many years and the gun industry. The auto industry is no icon of responsibility, but they are a more credible industry that did make changes and are now promoting safety features, largely because of the work that Ralph did, and responded to those bottom-line issues that were also in keeping with a moral sort of compass. The gun industry just isn't like that. I can't describe it. It's a very threadbare, very unsophisticated industry

Ralph Nader: And about punitive damages. Josh, was there any possibility of that in these cases?

Josh Koskoff: Had we gone to trial, Ralph, we would've been entitled to punitive damages under Connecticut law under violation of the Unfair Trade Practices statute. Connecticut doesn't have the most robust punitive damages, but yes, we would've been able to get that. And I know those are not dischargeable in bankruptcy. Again, it wouldn't have been collectable because there was no pocket to collect it from. But of course that's not the most important thing. If we didn't get the deal on the documents, it was no documents, no deal. That was what we said to them.

At some point it's rare, but I thought that this settlement by combining all the possible amount of coverage and restitution and compensation plus all of the documents, and I got additional depositions, I didn't think that spending another two years in court was enough of a payoff for the families given that we'd already accomplished so much and certainly didn't want the Supreme Court to get another crack at this case.

Hannah Feldman: Our next question comes to us from Rachel Branch.

Rachel Branch: Do you know of any other legal avenues that can go after gun manufacturers? And for example, RICO [Racketeer Influenced and Corrupt Organizations Act]?

Josh Koskoff: Did you say RICO?

Rachel Branch: Yeah.

And for example, RICO [Racketeer Influenced and Corrupt Organizations Act]?

Josh Koskoff: Ah, yeah. Well, you kind of are speaking my language.. I do think that conspiracy, RICO, aiding and abetting, these types of torts that we don't often litigate, but that are useful tools in tort law to get at a problem caused when you have these relationships. And certainly I have thought about you have to both zero in and with the lens and also pull the lens

way back, right? So I've thought about the gun industry sits at the center of a network of industries. Guns have to be shipped. They need the shipping industry. They have to be paid for. They need the credit card industry, and more recently these layaway plans. They have to be promoted. Our discussion about first person shooter games. And they have to be insured. So, usually insurance companies are off limits, but as you know, you still are required a conspiracy case to prove an underlying tort or wrong. And so, you still have to get through—if you're going to reel in the gun industry, you have to get back to the problem of having to get through the not absolute immunity. But I've thought about it. And more than thought about it; I'm looking into it.

Hannah Feldman: Our next question is from Doug Weissman. He's asked me to read it for him. “Is there any type of legal action or breaking of the law that the running politician in Missouri could be faced with because of an ad showing him breaking into a home with law enforcement or military personnel, supposedly to take care of “nonconforming Republicans”?”

Josh Koskoff: This gets into the inherently fuzzy area of the limits of the First Amendment and the exceptions thereto. That's something we're dealing with right now as we prepare for trial against Alex Jones here in Connecticut in a couple weeks. So I'm pretty familiar with the cases and the answer is maybe. You have to have plaintiff withstanding to bring a lawsuit. As you probably know, just simply by the fact that it's abhorrent conduct and inciting violence, as Ralph alluded to, can be the case, promoting violence, threatening and harassing are all things that depending on this very specific to the facts, you may or may not bring a lawsuit over, but you always need to have a plaintiff or a person who's alleging an injury of some kind to have standing to pursue that lawsuit. We can't just sue him because we think the conduct is reprehensible or tortious.

Ralph Nader: The episode that the caller, Josh, is referring to in Missouri was an ad placed by the former Governor of Missouri who was running for the US Senate. And he lost the primary after that ad.

Josh Koskoff: He did? Yeah, I'm familiar with the ad and I didn't hear that he lost it. I think that's welcome news especially to Missourians.

Hannah Feldman: This next question is from an anonymous listener in West Virginia. They say, “I live in the middle of Second Amendment country. Here there are responsible gun owners and irresponsible gun owners. 80% of my neighbors voted for [Donald] Trump and are 2A All the Way. What kind of law would allow responsible gun owners to keep their guns while making sure irresponsible gun owners are curtailed?”

Josh Koskoff: I'm going to answer that question. But the thing that I thought was interesting about what we learned in looking into the Sandy Hook case and bringing it was that you really didn't encroach on the Second Amendment debate because—look, there are extremists who we can put aside because you can't persuade certain people. But what I found is that, like what Ralph found in the auto industry, others found in other industries, at the end of the day, the problem was just as much about greed as it was guns. And it's really surrounding your question about responsible gun owners from irresponsible gun owners. Well, one of the things that could be done is the gun industry that talks all the time about responsible gun owners can start marketing their products to those people and not to the more likely class of people that are irresponsible,

and they should promote responsible uses instead of promoting irresponsible uses. So in that way—that I wouldn't say mythological because there are hundreds, millions of responsible gun owners in America. But in that way, the responsible gun owners should be able to say, “Look, why do I want some irresponsible gun owner to get acquisition to the weapon? Why do I want this gun company to market to irresponsible gun purchasers? That only threatens me and my family more and my kids.” So I do think that that ought to be a point of some agreement. And in terms of what laws could be passed, this is what I found to be shocking. Another example of just the dysfunction in Washington. You had three, what turned out to be three, but at the time there were two very highly publicized shootings occurring very close in time, Buffalo and Uvalde, both carried out by kids under 21 with AR-15s. Think about yourself when you were 18 years old. And if that's too uncomfortable, think about your friends. And if that's too uncomfortable, think about the 18-year-olds in your class that you stayed away from, the ones that were problematic; maybe you wanted to reach out to them, but you knew there was something off about them. Do you really want them owning an AR-15? And is that the responsible gun owner that is being protected by this? Or is that courtship of that demographic irresponsible to all of us?

So I'm getting to the punchline, which is just raise the age. Raise the age. I honestly think the age of all firearms should be 25 years old. Why? Because while we may be deemed adults at 18 by certain laws or 21 at others, those are just somewhat arbitrary. Biologically, we're not adults until we're 25. Don't take my word for it. Just ask the auto industry that won't loan you a car unless you're 25. Why? Not because they can't. They're prohibited from loaning you a car under 25 because the auto industry knows that you're not mature enough until you're 25.

So if you raise the firearm age to 25, if that's the only law you changed, I think you'd see some enormous decrease in the amount of deaths and injuries caused by guns. And when was the last time you read about a mass shooter at a school, or really anywhere, that was over 25. I mean, it occurs. But by and large, you would've solved a lot of the problem. And guess what? Responsible gun owners like your neighbors in West Virginia can still get their hands on their AR-15, but they have to earn it by becoming adults first.

Ralph Nader: And Congress still refuses to increase the age even to 21.

Josh Koskoff: It's a shocking and appalling lack of political will. That's all I can say.

Ralph Nader: We've been talking with Josh Koskoff, the lawyer from Connecticut who brought the groundbreaking case against Remington Arms in the context of the tragic Sandy Hook massacre that occurred with some 20 first graders who were killed along with six teachers or instructors. And those of you who listened in might contemplate talking to your friends and neighbors about this issue. I think that Congress is beginning to be more amenable to some of these changes, including background checks supported by a great majority of the American people, and raising the age to 21 at least, in terms of owning these automatic AR-15s. Thank you very much, Josh. Any last comments you want to make?

Josh Koskoff: Just how grateful I am for this opportunity and for the, really, interesting and engaging questions of listeners. I hope you found it as rewarding as I did.

Ralph Nader: Yeah. Thank you. To be sure. Very good perceptive questions over a broad range. Thank you, audience.

Josh Koskoff: Thank you.

Steve Skrovan: I want to thank our guest again, Josh Koskoff. 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 for free by going to nader.org. For more from Russell Mokhiber, go to corporatecrimereporter.com.

Steve Skrovan: The American Museum of Tort Law has gone virtual. Go to tortmuseum.org to explore the exhibits, take a virtual tour, and learn about iconic tort cases from history, much like the one we have done today. And be sure to check out the online gift shop. You'll find books, posters, and Flaming Pinto magnets and mugs for all the tort fans in your life. That's at store.tortmuseum.org.

David Feldman: To order your copy of the *Capitol Hill Citizen* "Democracy Dies in Broad Daylight", go to capitolhillcitizen.com. 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 feature another David vs Goliath court battle with Attorney Mona Wallace and Corban Addison, the man who chronicled the story that reads like a thriller entitled *Wastelands: The True Story of Farm Country on Trial*. Thank you, Ralph.

Ralph Nader: Thank you, everybody. It will truly be a gripping show on the giant pig conglomerates in Eastern North Carolina contaminating the lives of poor families there and it's on its way to being a Hollywood movie with probably the same title, *Wastelands*. The book is out. The show is next week.