

RALPH NADER RADIO HOUR EP 394 TRANSCRIPT

Steve Skrovan: Hey, everybody. Mark your calendars because on October 17th, that's a Sunday, we're having a Congress Club virtual town hall. Ralph, David, and I want to hear your stories and share strategies to keep holding Congress accountable. So if you're a Congress Club member, look out for an invitation from us. And if you're not a member, become a member. Go to nader.org to sign up and join the Congress Club.

[Music “Stand up Rise up”] It’s the *Ralph Nader Radio Hour*.

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

David Feldman: Good morning.

Steve Skrovan: And the man of the hour, Ralph Nader. Hello, Ralph.

Ralph Nader: The unique hour it's gonna be. Listeners, I don't think you've ever heard what we're gonna cover today.

Steve Skrovan: So true, Ralph. We have spoken a lot on this show about how corporate power, whether through forced arbitration or all the other subtle restrictions contained in fine print contracts has closed the door for ordinary people to have their day in court. These are all ways to force you to settle your legitimate complaint for far less than you deserve or to discourage you from even making a claim. Having one’s day in court has always been one of the bedrocks of our constitutional system and it is being slowly chipped away in the name of efficiency and convenience. Whether you've been poisoned by [the herbicide] Roundup, hooked on opioids [prescription pain relievers] or a victim of painful a transvaginal mesh implant or have been damaged by any other faulty product or procedure, you will want to pay close attention to this program.

Our first guest today is Professor Elizabeth [Beth Chamblee] Burch. She's co-author with Margaret S. Williams of a recent study that exposes yet another technique that is reshaping our legal system, a procedural shortcut that is leaving many plaintiffs feeling they have been treated unfairly, thus undermining our faith in the courts. It's a mechanism called MDL [Multi-District Litigation] and Professor Burch will be here to explain how corrosive those three letters are to civil justice.

Then we're gonna shift gears and talk about another one of our favorite topics, the news media. Our second guest will be Jane Hall, an award-winning journalist and professor of politics and the media. She has written a book on the ways in which media and political institutions interact. We'll dig into how political forces influence media institutions, how the media influences

political decision-making, and how that shapes public opinion. If we have time, Ralph will answer some more of your listener questions. As always, somewhere in the middle, we'll check in with our corporate crime reporter Russell Mokhiber. But first, how does our mass tort system add insult to injury, David?

David Feldman: Elizabeth Burch is a professor at the University of Georgia School of Law and co-author of *Perceptions of Justice in Multidistrict Litigation: Voices from the Crowd*. Welcome to the *Ralph Nader Radio Hour*, Professor Elizabeth Burch.

Elizabeth Burch: Thank you so much for having me. It's such an honor to be here.

Ralph Nader: Thank you very much. And you've given us permission to call you Beth. So let's get underway with a framework here. We've talked a lot on this program about the law of wrongful injury, otherwise known as tort law. And we've talked about its three functions. One is to compensate victims for wrongful injury and make the perpetrators pay. The second is to provide deterrence so other possible wrongful doers take heed and clean up their act, whether it's in the auto industry or the pharmaceutical industry, or what have you. And the third is public disclosure of what the litigation comes up with so people are alerted. When they go into the stores, they can be more careful and avoid certain products. Or legislatures or regulators can say, Yeah, we've got to do something on a more comprehensive basis by establishing mandatory safety and health standards.

Now, Professor Elizabeth Burch is one of the few law professors who have looked at the role of plaintiff lawyers from the standpoint of the injured clients that they represent. And this cannot be done unless you look at the whole system where people who are injured in large numbers, say to people who took Pfizer's drug Vioxx, or people who took a product called the acid reflex medicine, Propulsid, or tens of thousands of women who were operated on with pelvic mesh.

The courts look at this and they say, we really can't have a hundred thousand people filing in every court of the country. Why don't we consolidate these cases in one court by one judge and appoint lead plaintiffs so we can be more efficient? And this is the issue that Professor Burch has researched -- efficiency at what cost to the plaintiffs. So with that background, Beth, could you tell us what your research has accomplished in terms of informing people all over the country?

Elizabeth Burch: Sure. Absolutely. I think the setup point is important, that this is part of a system to begin with. And the trial lawyers are having to react to caps on punitive damages, caps on noneconomic losses like pain and suffering. And so we're working within a system that essentially focuses on a volume business. And my concern in all of it is that the defendants are essentially getting a volume discount, that the plaintiffs aren't able to achieve adequate compensation, that may not ultimately be deterring the Mercks [& Co., Inc.] or the Johnson & Johnsons [Services, Inc.] of the world. And that the plaintiffs don't feel like they've had their day in court. There are so many people who are involved in the system that it's very deindividuated at this point. A number of the plaintiffs that I talked with said they felt like just a number on a spreadsheet. And I think, for them, that's certainly not what they anticipated when they signed up with a law firm to represent them in court.

Ralph Nader: Well, let's talk about a case involving Renée – that was not her real name; you tried to protect her privacy – in the pelvic mesh litigation to really make it concrete for our listeners.

Elizabeth Burch: Sure, absolutely. So, you know, what tends to happen is a woman gets pelvic mesh implanted. Not all of the women - and there were over a hundred thousand women who sued over pelvic mesh - even knew that they were getting pelvic mesh. So some of them went in for bladder suspension surgery. The men don't have to deal with this quite as much, but after women have children, things start to sag, gravity takes over, and there can be some incontinence involved. And so a lot of people go in for this sort of surgery. Renée, I called her, was one of them. She went in, had the surgery, and then she realized that it was actually worse, that the surgery didn't help. And in fact, now there was pain and infection. Sometimes the pelvic mesh when it's inserted actually can have biofilms on it, which can cause a number of inflammatory diseases. So she signed up with a law firm. She anticipated that the law firm would represent her best interests. And instead, it seemed like the lawyers in her case were kind of trying to bully her into settling. So they offered her a number of kind of low-ball settlement offers. They told her that if she refused to settle, that they would no longer represent her case, and good luck finding someone else because there are all these statute of limitations issues. And I think that that was a recurring theme among a number of the women that I spoke with.

Ralph Nader: Who was the company that was being sued by so many thousands of these women?

Elizabeth Burch: Sure. Yeah. There are several companies that make pelvic mesh. These are actually seven separate MDLs, all of which were pending in front of Judge [Joseph R.] Goodwin in the Southern District of West Virginia in Charleston, West Virginia. The majority of the cases are against Johnson & Johnson through their Ethicon[, Inc.] division or through their Boston Scientific division. But there are also suits against American Medical Systems [Inc.], against C.R. Bard[Inc.], Coloplast [A/S]. Those are some of the lesser known companies, but Johnson & Johnson is probably the biggest one.

Ralph Nader: Now MDL stands for multidistrict litigation. We grow up in law school believing that we have a system of individual justice. People aren't lumped into some big roundup of wrongfully injured people. Describe the pro and cons and first define multidistrict litigation.

Elizabeth Burch: Sure. Multidistrict litigation is the way similar claims are handled at the federal level. There's actually a judicial panel on multidistrict litigation that's made up of seven judges from around the country. When factually similar cases bubble up then on their own motion or by a motion of the defense or the plaintiff's lawyers, they decide whether to coordinate those cases in front of the same judge, and if so, where to send them. And so you can end up with, like in the pelvic mesh example, over a hundred thousand cases in front of one single judge and one single magistrate judge.

Ralph Nader: Well, how can people get individually treated in cases like that in court? Because you mentioned that the offers of settlement that the plaintiff lawyers brought to their client ranged from \$70,000 before the fees are deducted for rather horrific injuries, which is almost an

insult, to hundreds of thousands of dollars. What determines the variation other than the degree of the injury?

Elizabeth Burch: Well, so there can be different factors. I think one of the more troubling factors is it's almost a lottery. Have you picked the right lawyer? And the right lawyer in any given case will be a different lawyer and law firm. As you mentioned, judges empower a handful of the lawyers in these cases to represent the group as a whole. When they're doing that, they're looking at things like who has the biggest war chest who can bring resources to the table, which is of course important, but they're not looking at things like differences among the plaintiffs. So I'm sure you've talked a lot on this show about class actions. In the class action context, judges have to make sure that plaintiffs that are differently situated from each other each have their own lawyer and someone at the table who is going to represent the interest of that particular group. But nothing like that tends to happen in the MDL context. And just to give you kind of some context for all of this, in 2020, the MDL caseload tripled that of the federal criminal caseload. One out of every two cases that was filed in federal civil court was part of an MDL. So we're not just talking about a small number of cases. We're actually talking about half of the newly filed federal civil docket at this point.

Ralph Nader: Well, in your article, you described in some detail the agony that Renée went through and she had to wait six months for a surgeon who was a thousand miles away who promised to remove the mesh, which is a very, very difficult operation. And she wanted something more than compensation. You quote her as saying, this is Renée now, "I would rather risk losing the case in order to be able to tell the impacts this mesh has done by ruining my life and my family." She longed to look those who wronged her in the eye, to show the Johnson & Johnson executives what they had done to her. Well, in the middle of this, some surgeons might have been medically malpracticing these patients, wouldn't you say?

Elizabeth Burch: Absolutely. And I think that's one of the troubling features of mass torts is that in order to make these claims economically viable for the lawyers, you essentially have to forego claims against individual doctors and hospitals to try to pursue the manufacturer instead.

Ralph Nader: And by the way, listeners, you know, over a hundred thousand women who have been victimized, this has gotten very little media. Even Jane Brody in the *New York Times*, she did a column several years ago on this and never returned to it. And of course, men who have hernia problems are overwhelmingly exposed to their own mesh surgery, which the gold standard hospital, Shouldice Hospital in Ontario, Canada refuses to do. They do tissue repair, which is more skillfully needed and not able to rush patients through throw the mesh into him and jack up the fee. So it's really a pretty messy situation to put it mildly. But then there is other multidistrict litigation. Tell us about Vioxx. What it was supposed to do and what it actually did do when Pfizer was promoting it?

Elizabeth Burch: Yeah. So I think Vioxx is actually a Merck drug and it was manufactured in order to deal with pain from things like arthritis. So if you had tennis elbow or if you had runner's knee, that you could take Vioxx instead of having to take Advil or ibuprofen, which after a while is pretty hard on your stomach. So it was marketed as a pain reliever for pretty active people. It just turns out that it had a pretty horrible side effect that it could cause ischemic

strokes and heart attacks. So you might not be in pain, but you might have a stroke instead. And all of these cases were centralized through multidistrict litigation in the Eastern District [of Louisiana] of New Orleans in front of Judge [Eldon E.] Fallon.

Ralph Nader: And I might add, there were people who died as a result.

Elizabeth Burch: Absolutely.

Ralph Nader: So, listeners, I hope we've given you a brief review of this before we dig in to the original research that Beth has done. Tell us about your survey of these wrongfully injured plaintiffs and what they experienced with their own lawyers.

Elizabeth Burch: Oh, absolutely. So, well, first of all, this is a study that nobody wanted us to do. We reached out to a number of lawyers over 40 different lawyers who were involved really heavily in these cases, and the large majority of them never responded to us. So we essentially had to go straight to the people, which was a frustrating enterprise for us because so many of them were under confidentiality provisions, either with their settlements or their lawyers were telling them, don't talk to anybody about your case; don't put anything about it on Facebook. That didn't just make it hard for us, but made it hard for them as well, particularly when they were looking to connect with other victims through Facebook and share their stories and have that kind of group experience.

But we ended up talking with 217 plaintiffs. They were represented by 295 different lawyers from 145 different law firms. 54% of their lawyers were actually the ones that were chosen by judges to help lead their respective MDLs. So the plaintiffs, demographically were in 42 different states. They had diverse backgrounds, educations, and races. Their cases were originating in 32 different state and federal courts. And when we talked to them about their experience with their lawyers, it was incredibly disheartening. 64% of them were somewhat or deeply dissatisfied with their lawyer. 50% of them didn't even feel like they could trust their attorneys to act in their best interests. Very few of them received status updates from their lawyer. Some of them went years without hearing back from their firm. And a number of them, only 16.6% ever even spoke to an attorney in their law firm. Most of the time they were kind of pawned off on case managers or paralegals or legal aids, some of them said, which meant that 67% of them said they didn't understand what was happening with their lawsuit. They weren't sure where their case was. 60% of them then ultimately felt like their attorney's fees and costs were unreasonable. Some of their quotes were particularly heartbreaking. I mean, one of them said, "I absolutely feel like I don't matter. I would even kind of say I feel like my attorney just wishes I would die so they could forget about the whole thing." Others told us things like "I was bullied by the law office. Take it or you receive nothing with regard to the settlement." They said, if I didn't agree to settle, then they would drop me as a client. And so of course, that's not what we tend to think about when we think about what our experience with the justice system should be.

Ralph Nader: Well, listeners should realize that the disgruntlement of the plaintiffs wasn't that they were getting hourly billing charges. They were on a contingent fee, which often is one-third to 40% of the recovery. In other words, the plaintiffs only pay when their attorneys actually

recover through a verdict that is upheld in court or through a settlement. But that isn't the reality anymore. The corporate attorneys representing these giant companies have developed close relationships, and cases after cases with the same plaintiff attorneys and they have gamed the system, so that at some point down the line in the litigation, the plaintiff attorneys begin developing a conflict of interest with their own clients under the pressure, or one might say the seduction, of the corporate attorneys. Could you describe that kind of cycle?

Elizabeth Burch: Sure, absolutely. Some of our previous research actually looked at this system as a social network and we tried to figure out who is getting these leadership appointments over and over again on both the plaintiff's side and the defense side. And what we found is that the same lawyers were holding about 62.8% of all the leadership roles. And in fact, just 50 attorneys were named as lead lawyers in five or more MDLs. And essentially, those same 50 lawyers occupied 30% of all of the leadership positions on the plaintiff side. Same sort of thing with the defense side. On the defense side, it's more about the repeat player law firms than it is the actual defense lawyers. Repeat player defense firms held about 82.3% of all the leadership roles on the defense side. And so what ends up happening in settlements is that the settlements tend to be more about the lawyers and those continued relationships than they do about the actual client interests. For the defense side, they want closure. So if you're Johnson & Johnson in these pelvic mesh cases or the new tort cases, for you it's about how do we end this litigation so that we can reassure our shareholders and protect our stock prices. For the plaintiffs' lawyers it's about how do we give them our entire group of cases so that we can provide to you the closure that you say you want so that you will settle with us. And so there've been a number of provisions that have developed over the years. And I'm happy to get into kind of the technical aspects of them, but they're essentially anti-competitive provisions that require the lawyers to recommend that their clients take the settlement, 100% of their clients, so they can't just recommend the deal to the handful that they think it would be really good for. They have to say to all their clients, "This is a great deal. You've got to accept this." Some of the settlements between the plaintiffs' lawyers and the defendants, not between the plaintiffs and the defendants, then require the lawyers to actually take the step of withdrawing from representing clients who refuse to settle. So, in ethics we call this the hot potato rule. You can't just say, you'll have to settle or I'm gonna drop you like a hot potato. That's unethical, but that's what's happening over and over again in these mass tort deals.

Ralph Nader: Well, in your article, you have a paragraph that I want to read, a short paragraph. You say, "Defendants settle on the cheap." In other words, the companies settle at a low-dollar volume, "with volume discounts in hand, ethics out of mind. And state bar associations often fail to take client complaints seriously, leading to the occasional public indictment of such titans as Tom Girardi – the now disbarred lawyer behind Erin Brockovich – and the bar itself." It's pretty rare for that to happen, wouldn't you say?

Elizabeth Burch: It is very rare. Absolutely.

Ralph Nader: Let's talk about the corporate law firms themselves. The plaintiff firms get battered by the insurance companies. They're called ambulance chasers and greedy people. But the corporate lawyers, they get paid by the hour, whether they win or lose. They take very few risks and they tap into the deep pockets of the big corporations like General Motors [Company]

or Merck or Kennecott [Utah] Copper [LLC], you name it. Tell us about the ethical or lack thereof behavior of the corporate attorneys, who when they settle with the plaintiff lawyers, want all kinds of quite possibly unethical sub-agreements like gag orders, non-disparagement clauses, trying to get the attorneys never to take another case in this area, making the plaintiffs sign away all their rights; even if after the settlement very incriminating information is subsequently disclosed, they can't sue the company again. Tell us about that.

Elizabeth Burch: Well, it's been a real troubling development, not just in mass torts, but I think in cases in general, that it's much less about the public interest these days and much more about the parties and the system and perpetuating these types of secret settlement agreements. Reuters did a study a few years ago right after the tort cases got started, where they found that there were all these different confidentiality provisions, not just even in settlements, but even for discovery itself. So it used to be, and I'm sure you remember this, that up until 1980, there was a presumption of public disclosure--not just of the information that typically comes out and motions for summary judgment or things that are on the judicial record--but actually of all the material that you unearthed during the litigation process, all of your discovery documents. All of those used to be filed in courts. And then there was a change in 1980 under the federal rules of civil procedure, because courts were getting inundated by the volume of the information that they were supposed to keep track of. And so the switch was ostensibly to deal with the volume problem, but the effect of the change in the rules was to allow corporations and plaintiffs' attorneys to agree to keep all types of information secret. And so I think what we're seeing at this point is not just secret settlements, but we're actually seeing a number of judges who are agreeing to seal briefs and information that is filed on the record. So if you go on to the opioid MDL, for example, and Judge [Dan Aaron] Polster, and you search for sealed, you're gonna get hundreds of hits on all this information that's sealed, even in a case that went all the way up to the 6th Circuit when the *Washington Post* and the *Charleston Gazette-Mail* were seeking information about the DEA's [Drug Enforcement Administration] ARCOS [Automated Reports and Consolidated Ordering System] database. The ARCOS database is what keeps track of who gets what opiates and when. And even after the 6th Circuit said, "You've got to unseal, not only this information, but a whole bunch of other information," information still gets routinely filed under sealed that doesn't necessarily meet what we would think of as the high threshold for, say, trade secrets. So it is very troubling.

Ralph Nader: Well, it's deteriorating the whole system. It's corporatizing it. It's making it secret. It's keeping the American people from getting the information that is propelled into courts from this kind of litigation. Now, James Sturdevant, who is a very fine plaintiffs' lawyer out in San Francisco, wrote an article a few years ago titled *Provisions that should be prohibited in settlement agreements*. And he said, "Confidentiality clauses do not simply seek to make secret between the parties the amount and other specific provisions of the settlement which is permissible. Instead, they seek to conceal from the public and the press voluntary disclosures of relevant evidence to other litigants and prohibit a settling plaintiff from further disclosure of the allegations in the pleadings filed in public courts." And he says, "These are violations of two provisions of the Model Rules for Professional Conduct – Rules 3.4(f) and 5.6(b)." So why don't plaintiffs' attorneys say to the corporate attorneys representing these big companies, we're not gonna have our clients sign all these secret and suppression agreements, because it would be a violation of our professional code of ethics to do so?

Elizabeth Burch: So I would love to see that happening more regularly. I think the difficulty in that is that you have the code of ethics on one hand and then you have the norms that have developed between repeat players on the other hand. And the norms really push against that. So in the Vioxx litigation that we were talking about earlier, the settlement had a mandatory recommendation provision. In other words, all the lawyers had to recommend the deal to all of their clients. Then they had to withdraw from representing clients who refused. And so a number of lawyers objected to Judge Fallon to say, "We're really troubled about this. We really think that this is against the ethics rules." They also included things like new suit deterrent provisions, which James talks about in his article as well. And essentially, the new suit deterrent provisions say that I don't have any present intent to represent any new Vioxx plaintiffs. So, essentially saying, I promise not to take any future cases. But Judge Fallon said that all of this was fine. And there were a number of ethics opinions that were written that were conflicting about whether these are ethical. And because it serves the system; the system itself is pro-settlement-- settlements clear dockets for judges; settlements pay defense attorneys; settlements pay plaintiffs' attorneys--these tend not to get litigated as heavily as they should. But I agree with you 100% that these raise very troubling ethical provisions.

Ralph Nader: And it comes down to the court budgets, which are very closely scrutinized by corporate lawyers lobbying state legislatures. Most people have no idea [that] the courts at the state level claim only 2% of the budgets accorded state governments. In other words, you have the executive branch agencies, all the departments, and you have the legislature in every state, and you have the court. And the courts only get 2%. So this feeds the argument that, there's too much congestion so we've got to push for settlement; the courts' dockets are overburdened.

Well, the truth is there aren't enough lawyers representing people. There aren't enough judges judging people. And there are too many potential jurors who want to get out of jury service. And so we need to put this front and center, I think, Beth, and write more popular articles and get some legislative hearings and get the bar associations more active, if that's possible, including the trial lawyer bar associations. Now you've written quite a bit on all these subjects. Has *Trial Magazine*, the national magazine for the plaintiff lawyers, ever reported what you said or interviewed you?

Elizabeth Burch: I don't think that trial lawyers like me very much, at least when I come out with studies like this, but I'd be more than happy to talk to them and to write about these issues. I think they're incredibly important. And I think you're right that this is very much a systemic problem, that this is a budgetary problem for the courts, that we need more resources being funneled to state and federal courts alike. We need more judges.

One other concerning thing that I found in previous research is that given the shortage of judicial hands, so to speak, that many of these judges are outsourcing judicial functions to private special masters, and private special masters are paid by the parties. We have the same sorts of agency problems that you have with revolving doors between, for example, the Food and Drug Administration and big pharma, that you have these long term interests that tend to feed off one another. And anytime we privatize something in the judicial space, it can raise corresponding troubling questions. And so the answer isn't to send things to arbitration. It isn't to outsource to

special masters. It's to hire more judges and hire more magistrate judges so that the system can function like it should.

Ralph Nader: We're talking with Professor Elizabeth Chamblee Burch, who is a professor at the University of Georgia School of Law in Athens, Georgia. I do want to have you back sometime soon to elaborate more of your research. What would you like to tell our listeners in conclusion?

Elizabeth Burch: I think that we have a very important system that is being ignored in different aspects. It's being deprived of the resources that it needs in order to function optimally. The plaintiff's trial lawyers are unable to take cases on what we think of as an individual basis that would allow for some of these traditional participation ideas that plaintiffs have when they sign up with a lawyer. I think that the public doesn't understand, as you mentioned, the ability to sue and that there is a negative impression when someone files a lawsuit, as opposed to being able to vindicate a right that our system has given them. So there are a number of things in a number of failings, both in corporate America and the way that the system has run, that lead to the statistics that we found. I mean, I think the most troubling statistic that we found was that only 1.8% of all of the people that we talked to felt like their lawsuit accomplished what they hoped it would. And that doesn't bode well for the future of our justice system.

Ralph Nader: Before we close, any questions from Steve or David?

David Feldman: What happens if you decide not to go into the civil courts like with medical malpractice? What happens if you go to the police?

Elizabeth Burch: I don't think the police will do anything about it. I mean, I think they sort of say, "So what?" I mean, unless this is happening... so I don't know if you followed, there's been sort of a scandal in the mesh litigation where some of the lead generators, the ones that are advertising for these claims, were calling women they had gotten--my understanding of it at least is that they had gotten their medical records illegally through a data breach. They started calling and soliciting plaintiffs that they knew who had had mesh, who hadn't yet had it removed. And the way it all went down was they would call and say, "You basically have a ticking time bomb inside of you. You've got to have it removed. There's only a couple of doctors in the country that can do it. We'll pay to fly you down there. You can have it removed, but we don't take any Medicare or Medicaid. We don't take any insurance." And essentially, they would create a medical lien on your recovery and then send you to a strip mall in Florida to have your mesh removed. And it would jack up the litigation value of their claim, which meant that both the attorneys and the lead generators who are now – for lack of a better word – in cahoots with one another.

DC actually has a rule that says that lawyers and non-lawyers can form law firms together. And so there was this outfit called Alpha Law, which was helping to advertise and gen up a bunch of these claims. And there was a guilty plea just last week against [Wesley] Blake Barber and Chris Walker. Chris Walker was the doctor who was involved in the mesh removal surgery. Blake Barber was part of the lead generation firm that was calling and soliciting these clients. So long answer to your question, the long answer in this--well, I guess the short answer is that there's not

much repercussion unless you can actually prove that there is some criminal activity that's going on in all of it. And that seems to be a really high bar.

David Feldman: In a civil trial, doesn't criminal activity spill out? Isn't it obvious that there's been a cover up?

Elizabeth Burch: I think a lot of the times the answer to that is yes. And yet we don't really see much happening. I mean, you look at the opiate cases. A bunch of the opioid lawsuits seem to have uncovered a whole bunch of criminal activity, including by the Sacklers. And yet, Purdue Pharma [L.P.] has just gotten the judge, at least at the bankruptcy court level, to sign off on a deal that at least civilly protects all of the Sackler family. That doesn't protect criminal charges from being filed, but we certainly haven't seen any criminal charges being filed against the Sacklers.

Ralph Nader: But, you know, David, you make a good point for churning up the complacency of the police and the prosecutors who focus so heavily on street crime and domestic violence. But if you went to them with a complaint, say, a real botched medical malpractice, and you have some hospital records, and you went to the local police station, they would either say, well, that's not their business, or they would say, go across the hall and give your complaint to the local prosecutor. And you know, who knows some local prosecutors may pick it up. It's a good little civic activity to remind people that criminal law is not just for street criminals. It's for criminals in the corporate suites as well.

And you said something, Beth, that reminds me I neglected to point out. When millions of people are wrongfully injured and they have all kinds of medical bills, when they can't get justice in the courts and get compensated from the wrongdoers, the companies, the perpetrators of their harm, then Medicare and Medicaid pays the bill, or other social service programs have to pay the bill. So the taxpayers end up with paying the bill, which is another argument to clear the deck and open the courts for many, many more trials. Why should we ration justice? Judge Learned Hand once said a key element in a democratic society "thou shall not ration justice."

That's at the beginning entry at the American Museum of Tort Law. And listeners, you can take a virtual tour of this museum wherever you are in the country/in the world, to become more informed about your rights here should perpetrators wrongfully injure you.

Elizabeth Burch: Yeah, I would just add one final point in relation to your point about Medicaid and Medicare, that just because MDL is supposed to promote efficiency, it doesn't mean it actually is efficient. And there are so many plaintiffs who end up having to file bankruptcy because of their medical costs. The tort system is not fast. It's not efficient for them. With the story that we were talking about with Renée, her case was pending in court for 1,980 days. MDLs last an average of 4.7 years, which is four times as long as an average civil case. And of course, for the people that we talked with, 73% of them said it was way too long. It was way too long for them and yet a number of them, 59%, were actually willing to wait even longer if it gave them an opportunity to tell their story in court and try to accomplish what it is that they hoped to accomplish when they filed their lawsuit.

Ralph Nader: Well said. Well, we've been talking with Professor Elizabeth Chamblee Burch. Her major book on the subject came out in 2019, Cambridge University Press. It was titled *Mass Tort Deals: Backroom Bargaining in Multidistrict Litigation*. That's the title of the book if you want to go deeper into this, listeners. Otherwise, corporatereporter.org covers articles that Professor Burch has published from time to time. And I hope we'll hear you on public radio or see you on public broadcasting at last because you're really talking about problems affecting hundreds and hundreds and hundreds of thousands of people who are wrongfully injured and don't get their full day in court. Thank you very much, Beth.

Elizabeth Burch: Thank you so much for having me. It's been such a pleasure.

Steve Skrovan: We've been speaking with Professor Elizabeth Burch. We will link to her work at ralphnaderradiohour.com. When we come back, Professor Jane Hall will tell us about the politics of the media and the media of politics. 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 24, 2021; I'm Russell Mokhiber. How much corporate wrongdoing is committed by major American corporations? You might estimate, based on the public data, that each major American corporation engages in substantiated misconduct maybe once every four years or so. But what if you had a chance to peek behind the corporate curtain and look at wrongdoing reported inside the corporation itself? Harvard Business School Professor Eugene Soltes did get that chance and he published his findings in the *Journal of Financial Crime*. What did he find? More than two instances of internally substantiated misconduct per week per firm. Not once every four years, but once every three days or 121 times a year. Or more than 500 times every four years instead of just once during that time period. 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. Let's talk about how the media and political institutions interact to shape public thinking, David?

David Feldman: Jane Hall is a professor in journalism and media studies at American University. Her new book is *Politics and the Media: Intersections and New Directions*. Welcome to the *Ralph Nader Radio Hour*, Jane Hall.

Jane Hall: Thank you. It's great to be here.

Ralph Nader: Welcome, Jane. We've talked in the past about the media and you know that I think that educating people about who owns the public airways is very, very important. And if they don't have a sense of ownership, maybe they won't have a sense of having a say and improving the quality of the media. And on page 19, you mentioned that the public airways are owned by the people and the Federal Communications Commission [FCC] is the administrator and enforcer of the 1934 Communications Act, which puts an obligation on radio and TV stations to act in the public interest, convenience, and necessity. That's the phrase. "Public interest, convenience, and necessity." And it's the view of many media critics that the FCC is

asleep at the switch and we've lost our property, our public airwaves, to a handful of increasingly concentrated giant media conglomerates, which you go into great detail describing.

So let me ask you this question, Professor Hall. Characterize what the state of education is for college students, university, community college, [and] graduate about the media. How right now are they being educated about the media? Because this book is very targeted as a classroom book. It has questions at the end as if the teacher is using it in the classroom.

Jane Hall: Yes, I wrote it inspired by a class I teach called Politics and the Media. And because I wanted to help students and other professors had students understand how the media actually work and not be anti-media or pro-politics, but really understand how the media work. And I am delighted to be talking with you about this because I hope the book has general interest appeal as well, but I did write it primarily for educating students.

To answer your question, I think that we do a lot around media literacy. We talk about sort of the media ecosystem. I don't think we talk enough about who owns what. And it is my experience that when I tell students that the public owns the airwaves, they look at me kind of funny. I think we do have an awareness; most recently I think more about the internet, which is an interesting thing, as to the concentration of ownership. I mean, I put in a chart in there that says, who owns what? And you see who owns what and how concentrated it is. And that Facebook owns Instagram, in case you think Facebook is the white knight and they're increasingly not seen as the white knight. You see that Sinclair [Broadcast Group, Inc.] has been allowed to buy hundreds highly concentrated television stations. And there are no caps on regulations thanks to the FCC. Maybe there are some, but the deregulatory fervor led to an increasing and increased and ever increasing concentration. I find students don't really know that the public owns the airwaves because frankly, Ralph, they don't really watch television that way. They don't think of it as a scarce resource. I mean, you know very well that the whole argument was this is a scarce commodity and they are supposed to be doing something good with it in exchange for what used to be called a license to print money. That used to be the old definition of the television station license. So I find that they don't watch broadcast television. They're watching it on their computers. And there is the sense that there's a lot of choice out there. I think this is true of the general public. In my view, we have an illusion of choice. We have the same people owning everything practically. The right in this country under Donald Trump has tried to say that Facebook is discriminating against conservatives. And when you look at the top-rated online opinion people, they tend to be people who are right-wing and conservative. So there's been a drum beat from the right and there has barely been the drum beat from the left, in my opinion.

And so you really have a situation where students think there is a lot that they can watch and they don't really know who owns what. And I hate to quote Joni Mitchell, but I was thinking it's that line—"you don't know what you've got until it's gone." It's hard to show people what's not there.

Ralph Nader: Well, one thing is to raise their expectation level. And that's part of what education is about. You say to the students, "Do you ever look at network TV on CBS, ABC, NBC, Fox, CNN, or whatever on Saturday afternoon to see how your property is being used?" And they say, "What do you mean?" And then say, well, you and the rest of the American people

are basically renting free 24 hours a day your public airways to a bunch of giant conglomerates. And they are deciding who says what and who doesn't and what kind of programs you get, what kind of programs you don't get. So why isn't there a network that has a program on what's going on in colleges and universities all over the country? Some very fine, exciting things are going on other than football and basketball. Well, if they don't even have the expectation level, they don't even ask the question then it's easy to have them marginalized, right out of any kind of reform and more wholesome occurrent and reflective content on radio and TV. For example, you have college radio stations all over the country. Tell us about those. Now these are licensed stations run by students at University of Florida or University of Michigan or University of California. Can you describe to our listeners who may not know much about what the students are doing with that slice of the public airways, where in contrast to the big media giants they actually are in control.

Jane Hall: Well, it's an interesting point. I want to go back to something that you said before I continue about that, which is that I do assign the students to watch Fox News. I do assign them to watch broadcast television. They just don't know the origins of it. They don't know where it comes from. And the other thing is there are a lot of documentaries that are calling themselves documentaries on Netflix[, Inc.] that they think are documentaries that are more like reality television. So they've kind of been sold the bill of goods. I do think that the internet and the awareness that the internet may be causing harm is almost the next wave of people saying, Wait a minute, what is this doing to us? And what are these corporations doing? So I see that as sort of the next wave.

College radio stations are very interesting. There's a multiplicity; there's a lot of college journalism that's being done. And I think that there are a lot of voices of young people that are very interesting. They tend to come from, I think, the online space. They tend to come from outside the traditional media space. And sometimes they get picked up by the traditional media. Sometimes somebody who has a voice that is challenging and interesting will get on one of the CNN pundit shows. They are picked up, but the democratization, I think, is a very hard thing to see happening unless it comes from outside the mainstream media.

Ralph Nader: And how would you characterize the college newspapers? Some of which have pretty good circulations in college university towns.

Jane Hall: Well, I worked for the *Daily Texan* when I went to the University of Texas at Austin and the school had 42,000 circulation and I covered the Austin City Council. There are big papers like that. I will tout the *American Eagle* at my own university. One of my students did a wonderful investigative piece a few years ago on the diminishing benefits of our workers in our food service. The benefits had kind of been sold down the line the way a mortgage is sold down the line and American University made some changes because of this investigation. There are a lot of students. There's a lot of push for more diversity on campuses, for more diversity of voices. College papers are winning awards and those people are hopefully going on to other jobs. But there's also the decline of bigger newspapers. And so you can raise a great generation of college journalists, but if the capital companies are buying up newspapers, you have a diminution of newspaper jobs for these great journalists to go to.

Ralph Nader: That's true. There've been tens of thousands of reporters laid off in the last ten years as newspapers shrink or go out of business entirely, especially weekly newspapers. There've been going out of business. We've been talking with Professor Jane Hall of the American University in Washington, D.C. She's the author of the brand new book, *Politics and the Media: Intersections and New Directions*. What are some salient points you want to convey to our listeners who aren't students?

Jane Hall: Well, thank you for going through those chapters. I would say that the chapters on race and gender are probably the chapters that I have focused most on and that students care most deeply about. I write about George Floyd. I write about the new found popularity or the increased popularity of Black Lives Matter. And then how the slogan "Defund the police" was used in the last election. I write about the depiction of women in politics in the media. And I find that there are themes there from the 2000 election from the 2016 election, certainly. And then the 2018 with AOC [Alexandria Ocasio-Cortez] and then 2020 and beyond.

Students really relate to the things that are most current. And I try to go backwards and tell them about the civil rights movement. I back it up and say interviewing Julian Bond, here is how the broadcast networks light on abuses in the south, where what John Lewis said, the civil rights movement would have been like a bird without wings without broadcast television. So I guess a subtheme of this is always trying to say, this is highly important; this is consequential. What's covered? What isn't covered and why isn't it covered?

Ralph Nader: Well, after many years, Professor Hall, of the media not covering race and gender issues, because of the protests, the streets, now National Public Radio covers race and gender day after day after day and doesn't cover 60 million white underclass poor and what they're going through. So it's just a lack of recognition out there. If you don't protest, if you don't demand, you're going to get ignored. Isn't that the lesson?

Jane Hall: Well, one of the chapters in my book is about what I consider the true biases, the true operational cultural biases of the network. I mean, I think it's a red herring – this whole idea of, you know, and it has certainly taken hold, beating up on the media as liberal, attacking the very nature of the role of the media in this country. Donald Trump, and before that, Roger Ailes [were] highly successful. And so I think the media under the Trump administration had performed particularly well and withstanding those attacks. And during coronavirus, you see a lot of people saying, gee, maybe these journalists were telling us the truth.

So I see one of the biases as being a bias towards conflict, to your point. It's sad to think that the condition of a lot of people has not been covered. A lot of people...there are class biases in this country. The George Floyd video became the means by which a whole conversation which had previously happened and then was quiescent. Rodney King, I mean, something sparks the media to cover and it's the obligation of the media, in my view, to continue to cover. But those protests had a lot of young people, a lot of white people, a lot of people protesting, and calling for reform of the police. And I think the media had done a good job in relative terms on covering the racial reckoning in this country. But the idea that there are a lot of people who are poor and white and where are they, and workers in factories, there's a lot that goes uncovered. And I think it partially is the lack of resources. And I think it's also the idea of the spotlight of the media. I mean, I

quote Walter Lippmann, who came up with this idea of the media as a restless searchlight. I use that today, Ralph, in my classes because it's such a wonderful image of intense focus on something and then moving on.

Ralph Nader: We've been talking with Professor Jane Hall. Her new book, *Politics and the Media*, it happens to be a perfect book for your local library, listeners, because it's a very, very comprehensive, right up-to-date; it talks about the elections of 2020, 2016. I noticed in one page, Professor Hall, you have this. Democratic pollster, Stanley Greenberg, wrote, "The Democrats don't have a white working-class problem. They have a working-class problem, which progressives have been reluctant to address honestly or boldly." And the question is how much of that insight do we hear about on radio or TV or read about in the newspaper? So there are a lot of provocative issues in the book. And listeners, I urge you to get it and donate it to your local library and get your local high school and community college and university to adopt it as part of the course. Thank you very much, Professor Hall. Unfortunately, we're out of time.

Jane Hall: Thank you.

Ralph Nader: But can you just tell us one last thing you want to leave with the audience?

Jane Hall: Well, I want to say that there are experiments out there. There are people trying to cover state houses. I mean, they tend to be small and online, but I do believe they should be supported and can be supported. I think local news is in crisis and we do need to raise the alarm about that. One other thing I'll just say about the media and Donald Trump. I think that because the media felt they "missed Trump," they went about trying to cover Trump voters. And then later we found out that a huge percentage of people who voted for Donald Trump were people with incomes of over [\$]50,000. And I think there is an awareness that we need to be covering all different kinds of people, that there are class issues as well as racial issues, and obviously, they intersect. But I think sometimes we rush one way and then we rush another in the media. Even seeing stories about the unvaccinated today, I feel in a way is interesting because those are people that maybe wouldn't have been in the media spotlight had they not been in the midst of this crisis.

Ralph Nader: Well, on that note, thank you very much, Professor Hall.

Jane Hall: Thank you.

Speake 3: And I hope you get many more interviews [that] you get many more media interviews on your book, on *Politics and the Media*.

Jane Hall: Thank you very much. I really appreciate it.

Steve Skrovan: I want to thank our guests again, Professor Elizabeth Burch and Professor Jane Hall. For those of you listening on the radio, that's our show. For you, podcasts listeners, stay tuned for some bonus material we call "The Wrap Up". We got a lot of good stuff this week. A transcript of this show will appear on the *Ralph Nader Radio Hour* website soon after the episode is posted.

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

Steve Skrovan: For a copy of *The Day the Rats Vetoed Congress*, go to ratsreformcongress.org. And also check out *The Ralph Nader and Family Cookbook: Classic Recipes from Lebanon and Beyond*. We will link to both of those on ralphnaderradiohour.com.

David Feldman: Ralph wants you to join the Congress Club. Go to the *Ralph Nader Radio Hour* website, and in the top right margin, click on the button labeled Congress Club to get more information. We've also added a button right below with specific instructions about what to include in your letters to Congress. The producers of the *Ralph Nader Radio Hour* are Jimmy Lee Wirt and Matthew Marran. Our executive producer is Alan Minsky.

Steve Skrovan: Our theme music "Stand Up, Rise Up" was written and performed by Kemp Harris. Our proofreader is Elisabeth Solomon. Our associate producer is Hannah Feldman. Our social media manager is Steven Wendt.

David Feldman: Join us next week on the *Ralph Nader Radio Hour* when we'll welcome Professor Herman Schwartz to discuss the scourge on American democracy we call gerrymandering. Thank you, Ralph.

Ralph Nader: Thank you, everybody. And take a virtual tour of the American Museum of Tort Law from wherever you are. It's free. All you have to do is go to tortmuseum.org. Bring some students along for the view.

[57:52]

[Audio Ends]