

RALPH NADER RADIO HOUR EP 416 TRANSCRIPT

Steve Skrovan: Hi, this is Steve Skrovan. We have another in-depth, provocative, great show for you today on the *Ralph Nader Radio Hour*. But before we begin, I'd personally like to mark the passing of and pay tribute to someone I had the pleasure of interviewing about 16 years ago for the documentary I co-directed about Ralph entitled *An Unreasonable Man*. His name is Joe Tom Easley who was a Nader's Raider in the early 70s.

Like so many of the young people who cut their teeth working for Ralph, Joe Tom went on to carve out an important career of his own in the public interest. Look up his obit in the Washington Post for more details. But Joe Tom Easley became a prominent gay rights activist who was instrumental in helping repeal the Don't Ask, Don't Tell law banning gays in the military. He worked on behalf of civil rights organizations, consumer rights groups, and mentored law school students.

And that's not even the half of it. Ralph said of him, "He was a real networker, an outreach, a great forensic speaking talent." And personally, he was a pleasure to interview. His nuanced outlook contributed a tremendous amount to our film. And I wanted to take just a little time out to express my appreciation for the brief time I got to spend with him. Thank you, Joe Tom. And now on with the show. "Stand Up" music plays

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

David Feldman: Hello... Steve...

Steve Skrovan: It sounds like you forgot my....

David Feldman: You were doing Marty Allen, but I didn't want to do a Steve Rossi.

Steve Skrovan: Okay (chuckle), very good. And we also have the man of the hour, Ralph Nader. Hello, Ralph.

Ralph Nader: Hello, everybody.

Steve Skrovan: Welcome to the show. And before we get to the body of our show, Ralph, you wanted to pay tribute to another great person who has passed in the last few days, Paul Farmer. Tell us about Paul, Ralph.

Ralph Nader: Well, Dr. Paul Farmer was a world renowned doctor for the people, incredible courage. He started opening clinics in Haiti, hands on, expanded it to Africa and elsewhere. He passed away at age 62 on the grounds of the hospital and university in Butaro, Rwanda that he helped establish. It's a tremendous tragedy. The head of CDC [Centers for Disease Control and Prevention] said, "There are so many people that are alive because of that man."

And the *New York Times* said, "He was a practitioner of "social medicine," arguing there was no point in treating patients for diseases only to send them back into the desperate circumstances that contributed to them in the first place. He said, "Illness, has social roots and must be

addressed through social structures.” His work with Partners in Health, “that’s his organization, “significantly influenced public health strategies for responding to tuberculosis, HIV, and Ebola. During the AIDS crisis in Haiti, he went door to door to deliver antiviral medication, confounding many in the medical field who believed it would be impossible for poor rural people to survive the disease.” Tremendous loss. But we should remember him and stimulate people to establish a global health institute in his name to further his work and invite young physicians to realize that their greatest work is not done in front of a computer, it’s done in the field.

Steve Skrovan: Thank you for that, Ralph. As consumers, why are we overcharged for items we purchased? Why are we subjected to crippling interest rates we never agreed to? Why are we surveilled by our own electronics, our private information sold and weaponized against us? Why is it so complicated to return defective items? How did the American legal system end up reprogrammed to favor corporations and the elites?

Our guests today are Harvey Rosenfield and Laura Antonini from the Consumer Education Foundation. They have co-authored a report entitled *Reboot Required: The Civil Justice System Has Crashed*. This report exposes the 50-year long campaign by big business and its allies to seize control of every branch of the US government and cripple consumer protections. We'll ask them about the *Reboot Required* report and the Represent Act, their proposal for a system that would reconfigure that balance between people and corporations.

If we have time, Ralph will answer some of your listener questions. As always, somewhere in the middle, we'll check in with our corporate crime reporter, Russell Mokhiber. But first, how could we debug America's legal operating system, David?

David Feldman: Harvey Rosenfield is one of the nation's foremost consumer advocates and founder of the advocacy group, Consumer Watchdog. Among many other accomplishments, Mr. Rosenfield authored Proposition 103 that has saved consumers hundreds of millions of dollars in auto insurance premiums and countless lives. He has also co-authored groundbreaking initiatives on HMO [health maintenance organization] reform and utility rate deregulation, and is the author of the book, *Silent Violence, Silent Death: The Hidden Epidemic of Medical Malpractice*. He is co-author of *Reboot Required* and the accompanying Represent Act.

Also joining us is Laura Antonini. She is an attorney and the Consumer Education Foundation’s policy director. Laura focuses on reforming deceptive practices law and class action litigation procedures. Previously, she was a staff attorney at Consumer Watchdog where she worked on complex litigation in federal and state court as well as California insurance regulatory issues. She is co-author of *Reboot Required* and the accompanying Represent Act. Welcome back to the *Ralph Nader Radio Hour*, Harvey Rosenfield and Laura Antonini.

Harvey Rosenfield: Thank you, David.

Laura Antonini: Thank you, David, and thank you Ralph for having us.

Ralph Nader: Well, welcome. This is gonna be a big picture story, listeners. We're talking hundreds of billions of dollars a year cheated, ripped off. The computerization of the economy helps that. They can cheat you a few pennies here and a few dimes there in the millions of customers and make it efficiently worthwhile.

I thought that one way we could proceed, Harvey and Laura, is that you've been working on this for four years. You've documented in over 200 pages one corporate crime, fraud, abuse after another, where people are charged for things they never wanted to buy or knew about or billing fraud in a health insurance business, in the healthcare business, or all kinds of things that the *Los Angeles Times* pointed out in their article on your magnum opus, your great report.

Going through all of this, some people would be discouraged. They would be outraged but paralyzed in not knowing what to do, but you're both activists. You've won victories; you've lost causes like everybody. What kind of impact did this have on you personally? Before we get into the nitty gritty, which listeners, is not only a panorama of corporate crime, fraud, and abuse, but a detailed state model reform statute that any state--your state, your state legislatures-- can introduce and have hearings on, from Oregon to Florida and California to Maine.

What kind of personal impact... I mean what kept you from being totally discouraged? Because you talk about the collapse of the law, that the law is not representing people, that it is being gamed, twisted, manipulated, turned into its reverse purpose; actually using it as an instrument of repression, taking over small claims courts by landlords and creditors. What I'm looking for is why do you keep going like this? But what kind of impacts did it have on you emotionally?

Laura Antonini: Well, for me personally, it actually had the opposite impact of discouraging me. It made me so angry that it motivated me. I started by reading the Powell Memo from 1971 and I thought, oh my God, this whole plan by the corporate machine has been in place for 50 years, and that's why we're here where we are now. And it's time for us to do something similar. We can't keep letting them get away with this. So instead of being discouraged, I felt actually inspired. It's time to bring consumer rights back on the map. It's time to talk about going to court to hold these companies accountable. We see corporate greed disaster after corporate greed disaster; whether it's Boeing, whether it's the Sacklers, whether it's Volkswagen. And it's time for us to take the power back. So in drafting this report, that was what I walked away with. It's more motivation than discouragement.

Ralph Nader: Harvey, how about you?

Harvey Rosenfield: Yeah. Well Ralph, you and I go back a long way, right? So I think one thing we've had in common all these years is a sense of outrage when we personally see these everyday indignities. And I've experienced them; I know you've experienced them as well--being put on hold while trying to rectify a mistake on a credit card bill. I mean, you can't go through life as an average person in this country -- I'm not talking about the elites or the wealthy. They don't care. They're taken care of. But the rest of us can't go through our daily lives without getting hammered and trying to figure out what the limited time we have. So, for me, working with Laura on this report, *Reboot Required*, for representing consumers, was the sort of

culmination of a career in which we've fought some very, very big battles, but now it was time to fight for the small battles that every day Americans face, which is – and I personally... I'll add one more thing. I personally think that public confidence in the legal system has collapsed because the law no longer protects them. And we document that in our report, *Reboot Required*. And when people lose faith in the rule of law. All of us on this radio hour, all work based on the premise that the rule of law is the way to order our affairs in our society--when that rule of law collapses, because people no longer believe in it, we face anarchy and violence.

Ralph Nader: Well, underneath most of these rip-offs and crimes, and by the way, listeners, just in the healthcare so-called industry alone, this year, they're gonna rip Medicare, Medicaid, and you off a total of \$360 billion with a B dollars. That's according to the estimate by Malcolm Sparrow, the applied mathematician, Harvard [University] professor, who has done the work on this, and an agency of Congress that basically said 10% of everything that's spent goes down the drain--billing fraud and abuse. Just to give you an idea, \$360 billion is almost half the military budget. You can imagine what good use all that could go to. It's eventually paid by two categories of people: taxpayers and consumers. But underneath all of this are these fine print contracts. Because when you object or complain they'll say, you agreed to this on page 120 of the Airbnb contract, or you agreed to give up your rights to go to court and have a trial by jury; you waived it. They have destroyed the great pillar known as the freedom of contract, which the conservatives made a big deal out of years ago. But they don't do much criticism of these corporations that have taken away these rights of contract. So these companies have become their own private legislature. They actually override or undermine or circumvent laws on the books by saying, “Oh no, you waived it. You agreed to compulsory arbitration. You can't go to court.” Or “you agreed to abide by a \$35 bounce check fee”, which cost the banks less than a dollar. So tell us about the fine print contract racket, Laura?

Laura Antonini: Now that online commerce has shifted to the internet, these contracts have gotten a lot easier to slip by consumers. So there are still paper contracts, which again are these long contracts, fine print written in legalese. Nobody reads them, not even the lawyers. I think there are judges who have said (chuckle) they don't read them. But now we have them online and they're presented to people in all sorts of different ways. Either you just click a box to agree; you have to click it if you want to buy your rake from Amazon [.com, Inc.], you got to agree to the terms. Nobody reads them; sometimes it's just a link at the bottom of the page. So basically, what these contracts do is give the corporations all the power and they get to dictate how they're gonna treat you. They include terms that say we can change these terms at any time. So, for example, let's say you sign up for a monthly streaming music service at \$5 a month. And you're happy with the \$5 a month, and then suddenly, it's \$20 a month. And you're like, I didn't agree to that \$15 price increase. And then the company tells you, “Oh, well, it's in our contract that we can raise the price or change the terms at any time.” So that's one of the more egregious terms. Another one is the one that you mentioned, Ralph, which has been blessed by the Supreme Court, which are forced arbitration clauses that basically say you can't bring a case in court. You have to bring it in a private arbitration proceeding where consumers have absolutely no power

and you can't bring a class action. And these terms are showing up in really funny ways. Recently, I saw a picture of a big jug of protein powder. You know, those plastic jugs of protein powder, where someone had opened the lid, and the protective layer on the lid, that also look like what's on the top of pill bottles, said, "By opening this lid, you agree to our terms of service including a mandatory arbitration clause." And then it had a link to where you could view the terms of service. Now, is any consumer who is making their protein shake in the morning actually gonna stop before they open the lid, go to a website and read the terms of service and decide, hmm, I don't agree to these. I think I'm not gonna have my protein powder. So, the business industry is just finding more and more creative ways to impose terms on people. And Harvey, I think even you bought a refrigerator or I saw someone that bought a refrigerator that had a sticker on it that said, "You agree to the terms and services." So now they're not even presenting the actual documents to people. It's just like a sticker on a product that says you agree to these terms, here's the link. So it's getting worse and worse the way they're imposing terms on people.

Ralph Nader: Well, it is getting worse. And listeners should understand that these contracts are contrived and drafted by anonymous corporate lawyers. There's a lawyer in a Philadelphia firm, who is known to be the contract peonage leader. He goes around the country to bar associations and other groups, and he says, "Here's something else you can put--American Express or Citibank or Prudential Insurance-- in your contract to tie up your customers even more. So that's one area of coercion. We ought to expose these corporate attorneys because they're the ones who brag about it. They're the ones who create these and sell them to their corporate clients.

The second form of coercion--we ought to start talking about corporate coercion--is if you're an active consumer and you listen to Harvey and Laura and *Consumer Reports* and all the things the consumer groups put out to make you more alert, more informed, if you are aggressive, the car dealer can in effect say, "You know, you've been calling a lot about this car and we're a little tired of it and you can have your credit rating damaged; or "you can have your credit score lowered," because all this data is compiled on people by name. So the system has reached a level of tyranny, corporate tyranny here, and the only way really to turn it around is to get the legislatures not only to establish bills that are really enforceable with severe penalties as Professor [Rena] Steinzor at the University of Maryland Law School wrote *Why Not Jail? [Industrial Catastrophes, Corporate Malfeasance, and Government Inaction]*, her book. These corporate executives think their underlings can get away with anything. And it doesn't rise up to the level of the executive suite. It's got to be criminal penalties, not just civil restitution, et cetera. Because even when they're caught, they disgorge less than what they have stolen, and all these complex crimes that people can't figure out. As one prosecutor in Ohio once said, "Listen, no matter how complex these commercial crimes are, they all come down to lying, cheating, and stealing." Those old fashioned vices. So what extent can you get these corporate bosses' attention by saying, " You know, you continue this, the arm of the law is gonna prosecute you and put you in jail." Do you think anything else less than that is gonna change the situation? Just be a cost of doing business, Harvey?

Harvey Rosenfield: This proposal that we've made as part of our report, *Reboot Required*. Our proposal actually changes the incentives that you just mentioned. So imagine if you're a corporation and you're operating under the law that we propose, the consumer protection powers and remedies that we suggest, if you do something that requires a consumer to spend an hour of their time rectifying a billing error, you, the corporation, have to pay them a hundred bucks per hour. If you do something that really just takes 10 cents from a consumer, you have to pay a minimum penalty of \$1,000 per consumer per violation. And finally, in addition to things like punitive damages, our proposal, the Represent Act as we called it, will allow consumers to sue under civil laws the corporate executives who are responsible. They can be held personally liable for the damage that they've done--the financial damage, the cost and time that they force people to spend rectifying these problems. And I believe, Ralph, that that is going to really strongly disincentivize corporations from engaging in these abusive tactics. They're allowed to do it now, because as you point out, they really don't get punished.

Ralph Nader: Do you have criminal penalties in your draft model consumer bill?

Harvey Rosenfield: We strictly focused on civil justice, remedies and rights. We did not venture into the criminal justice area. The civil justice arena is... criminal justice depends on whether a prosecutor somewhere is willing to go after a big corporation. And as we point out in our report, prosecutors and other politicians are all kind of indentured to the corporations for campaign contributions. So we wanted to create a model law in which citizens come first and citizens have the power to bring civil litigation. At the end of the day, only prosecutors can put people in jail, but they never do.

Ralph Nader: What if listeners are saying, how can we even see these fine print contracts? Because when you click on or when you sign on a dotted line, you don't see the contracts. Even when you sign on a dotted line, you often just see a brief summary. But isn't it true that if you contact your credit card company or your bank or your insurance company, they have to let you see the full contract on your iPhone or on your computer? You're not allowed to download it and reprint it, but they have to let you see it. Of course you can always relay it by voice and have it recorded where you are. But isn't it true that they have to show it or they are willing to show it to you, if you want to see the 160-page Airbnb contract, for example?

Harvey Rosenfield: Well, you can download it. That's not the problem. The problem is, Laura, how long does it take to read one of those contracts?

Laura Antonini: I think someone; at the *New York Times* did a study of this. And I think it took nine hours to read Amazon's terms and conditions. But there are certain types of companies, like my auto insurance company that would not let me see my policy recently. They would only mail it to me even though I was corresponding with the agent via email. He said, "I don't know; it's just our policy. We can't send you your contract." So they sent it by mail.

Ralph Nader: You know, we had a project over the years. You can go see it at faircontracts.org and get a good education on this whole contract servitude situation. It's at the bottom of so many of these commercial crimes and frauds. And when the person who was working on the project

wanted to get these contracts and copy them, the company said, “Oh no. They're copyrighted. You can't do that. You can't copy them.” So, you see, every time you think you've made a move in the direction of consumer justice, they have some trap door or some obstruction. The reason why I asked this is because what about putting these contracts up and try to you get them written in simpler and more consumer just form by crowdsourcing. Would that work? And you know, all kinds of people can help rewrite some of these credit contracts, these bank mortgages, these insurance policies. Is that a way to get people involved more? Because you'll get a law student here, a law professor there, a business student, a regular informed consumer who is fed up saying, “Yeah, you got to get rid of this one and you can simplify it in that way.” There's a professor at Suffolk Law School, Professor [Michael] Rustad, who has embarked on a readability project, which would involve sort of like the plain language contract movement of a few years ago. What about that to start breaking open this contract tyranny?

Harvey Rosenfield: We sort of took a different approach in our proposal, Ralph. Instead of assuming that people have the time or energy or the interest in looking at it and revising these contracts, we went back and targeted the fundamental problem, which is that the law, the current legal system, presumes that when people read a contract, they consent to it. Even if they actually haven't read it, it's presumed that you've consented to it. So we basically eliminate that legal doctrine, which dates back to the 1800s, in favor of a system in which if you didn't really agree to it, if you weren't presented with it, and if you couldn't read it quickly, it can't be used against you if the company violates the contract or if the product doesn't work and you don't pay. It's another way of coming at this, which is to recognize that these old 18th-century legal doctrines aren't really valid, don't really apply in 21st-century commerce.

Ralph Nader: So that's the doctrine of unconscionability, where a judge says, “This is nonsense. Consumers didn't agree to this. It's so coarse and cruel and vicious and self-serving for the vendor. We're gonna invalidate it.” Is that what you're talking about?

Harvey Rosenfield: That's correct. And here's a really great 21st-century example of that. Everybody knows that their private information is being stolen on a minute by minute, second by second basis online. And we're all presumed to have consented, as a Laura mentioned earlier, when we click “I agree” or even just by visiting a webpage. So, the solution is, from our point of view, to require corporations to truly get your consent before they can do anything with your private data--sell it, give it to somebody else to misuse it. Our data is now being used to determine whether we can get a job, go to a college, get housing, medical, healthcare, medical care. So rather than pretend that we consented to the use of our data, the Represent Act that we propose mandates an assumption that we didn't consent and that we can't consent and they just can't give it away.

Ralph Nader: Harvey, I love the way the *LA Times* wrote up your report, which is called *Reboot Required*. They started out with examples. And one of them was: You were so badly mistreated by a bank or retailer that you wanted to sue but discovered in fine print that you can only go to arbitration. You bought a bag of potato chips or box of cereal and discovered that two-thirds of it

was air. Your personal information was stolen by hackers from a business where you're a customer, or even a business you didn't have direct dealings with, exposing you to identity theft. You spent hours on the phone to resolve a billing dispute or complain about a damaged product, and finally gave up. You booked a hotel room and discovered when you checked in or checked out that the hotel added an undisclosed daily "resort fee" to your bill, for services you never would or did use.

And being in California, you know, about Wells Fargo, they in effect billed millions of their customers over years for auto insurance policies they never wanted or ordered or credit card business they never wanted; they issued credit cards in their name. No one went to jail and Wells Fargo is making a lot of profit again. Some people resigned. Wells Fargo paid some money out. Basically, they got away with it. How would they have been treated if your bill was law in California?

Laura Antonini: So one of the prohibitions of our law is you can't charge people for something that they never ordered. So, consumers would get their money back for that. Harvey was talking about some of the financial penalties that our law would impose. But another one that he didn't mention was disgorgement of profits, which is never actually utilized in litigation. But under our law, Wells Fargo would've had to disgorge the profits they made. Not only pay people back for the charges that they were unlawfully charged for, but they would have to disgorge profits derived from that whole scheme.

Ralph Nader: Well, shouldn't they disgorge more? Shouldn't they end up in the red? In antitrust law, there's something known as treble damages. Do you have anything in your statute that would make them more than give up their profit and give up what they stole and restore what they stole, but something like treble damages?

Laura Antonini: We have punitive damages and then we have treble damages if the victim is a senior, disabled or a minor.

Ralph Nader: Or what if someone listening to this program wants a copy of your statute and your report, how would you tell them to get it?

Laura Antonini: They can go to our website, www.representconsumers.org, and they'll find our law. And there's also a fact sheet and a Q&A that breaks it down in case you don't want to read all 143 pages.

Ralph Nader: Can you imagine, listeners, how Laura and Harvey have empowered you? You meet these state legislators from the assembly and state senate places like Missouri and Georgia and Connecticut, Massachusetts, Arizona. They come back and they want to shake hands and they go to clambakes, and they go to festivals. Imagine if you went up to them and said, "I want to give you something and I want you to think about it. And I want you get back to me within a couple weeks, because I want you to introduce this protection of consumer statute in your legislature, in the state senate and state assembly." Now, you know, we've often asked listeners to do a lot that takes some time. This is so easy, listeners. All you got to do is download it, print

it out, and look in your local paper or on some website as to when your state legislator is gonna be in the area. And you don't want to just send it to him or email it to her because you never know if it's ever gonna get there. You want to do face to face. And they do a lot of handshaking. They do a lot of things of that sort. How easy is that, Laura or Harvey? Isn't that something you want to encourage people to do? And can you get it done in your State of California? You can have people hand it to dozens of members of the Assembly and the state Senate, which is dominated by the Democratic Party, by the way, with a Democratic Governor [Gavin] Newsom.

Harvey Rosenfield: So in our representconsumers.org, there's a place where you can enter your email address and we'll keep it confidential and get updates on what we're doing. We'd love to see this introduced throughout the country. It's a radical, radical revision of the legal system to take the thumbs of the fat cats off scales of justice and restore the rights of regular consumers to have their day in court and trial by jury. The problem is, as we document very carefully in this report, for the last 50 years, the corporations have basically seized control of our legal system by paying off politicians, by installing friendly judges, by sponsoring their own ballot initiatives. And so I think what we really need here, there needs to be a peaceful revolution in people's thinking where people demand to regain control of our legal system. Our goal is to inspire this debate. Ralph, I don't know if you're aware of any other efforts like this, but we're all so busy. We, as consumer advocates and environmental advocates and civil rights advocates, are all so busy trying to defend our rights [that] people haven't taken time to recognize that our rights have basically been stolen from us. They're not enforced. And we as people need to be able to take matters into our own hands through the legal system and regain control. So I think the best option here is for people, as you suggest, to go to their elected officials and say, "Why aren't you protecting me when I have to spend hours on the phone with customer service, trying to fix something. And why aren't you protecting me when an airline overcharges me and I can't reach them?" I think these daily indignities have become such a burden on Americans, on the regular people, that a lot of folks listening to your show will probably be willing to go to their elected officials and say, "Focus on something pocketbook, practical problem, which is corporations control our legal system." And maybe here in California, where we do have the initiative process, Ralph, as you have used it very well in the past to save California motorists \$153 billion on their auto insurance. We could put something on the ballot here that gives the people of California the right to vote for themselves and not have to be dependent on politicians in state legislatures.

Ralph Nader: Yeah. Well, in your press release, when you release this report, Laura and Harvey, you have some interesting examples that show the inadequacies of the present system. For example, AT&T was discovered in 2018 to be throttling smartphone data speeds, slowing performance even for customers paying for unlimited data. AT&T settlement of a class action lawsuit and the Federal Trade Commission complaint returned--get this, listeners--an average of \$22 to consumers even though they had been paying \$30 a month for their service. So even when they're caught, they still end up with a profit.

Sidney Wolfe's Health Research Group of Public Citizen has been compiling data about fines on pharmaceutical companies. And over a period of decades, they've had to pay back \$40 billion with a B dollars in getting caught, for example, for promoting unapproved uses for their pharmaceuticals to make more money and have doctors use these drugs beyond the limits of scientific verification. But the \$40 billion was not anywhere near what they took in. So even when you have this kind of government enforcement, it's almost always too late and too little, which is why Laura and Harvey have got a bill that gives you, the consumer the direct power to move on this directly and through reformed class actions. Tell people a little bit about class actions and their limitations because of legislation and right-wing judges curbing the right of consumers to band together and pool their complaints into a sizable dollar amount so they can retain competent lawyers to pursue justice.

Harvey Rosenfield: So let me just start by introducing this, because most people know of class actions only that they get a postcard in the mail. A little tiny postcard that says, "Hey, you've been a participant in a class action and it's settled. And if you go online and fill out a lengthy claim form, you might get some money back." And I'm gonna hand it over to Laura to explain exactly how we deal with that mess. I think the two of us are most proud of the ways we've eliminated all these obstacles and barriers that lead to terrible settlements. Go ahead, Laura.

Laura Antonini: So, you know, there have been bad Supreme Court decisions, federal legislation, state legislation that have just made it harder to bring class actions, and so plaintiffs have less leverage going into it. And some of the remedies that Harvey mentioned before, like the automatic minimum damages of \$1000 per consumer per violation automatically gives plaintiffs under our law way more financial leverage going into it. But some of our reforms first require, and this is pretty radical, that the plaintiffs conduct discovery on the merits before they even enter into settlement talks. And what this means is you have to really find out about the corporate conduct and how they violated the law and what happened before you go into settlement. And again, that gives plaintiffs way more leverage, because usually they're going into negotiations sort of empty handed and they never really find out what happened. And so here you would be entering into negotiations with a bigger picture of what happened, and that would give you way more leverage, on top of the financial threat I just mentioned, to negotiate a good settlement for consumers. And then the next thing, you know, Harvey mentioned those postcard notices. That's what most of your listeners are probably familiar with when they hear class actions. And those notices are very important because they tell you what steps you need to take to get your money, what your rights are, how you can tell the court if you don't like the settlement, but most people gloss over them. And they're in 11-point font, or they don't tell you how to get your money. So what our model law does is creates detailed requirements for how these notices need to be sent, what they need to say, and people will actually know what the settlement is about, and if they need to take any steps.

And then the next big thing are claims-made settlements, which a claims-made settlement is a settlement that requires you to submit something to get your money. And a lot of times these settlements are negotiated, even though a defendant corporation knows how much money you

lost, they know your name and your address, and they could just send you their money. But they create these claims processes that require you to submit forms either over the internet or in the mail as a way to diminish participation in settlement. And the average claims rate in a claims-made settlement is between 1 and 4%. An amazing claims rate is considered 20%. So just think about that. That means that if one in five consumers get paid from a class action settlement, that is a roaring success [chuckle]. So, to an average person, that's absurd. Why is 20% the bar? So what our model law does: first, it requires that money be sent directly to consumers, eliminating the claims process. If you know who these people are and how much money they lost, which often companies do, and send them a check directly. There are some situations where these claims may actually be necessary. Like if you don't know who your customers are. For example, if the lawsuit is over a deodorant that said it had no aluminum in it and it did have aluminum, you might not know who those consumers are because they bought it at a grocery store or something. Then a claims process might be necessary. Or you don't know how much money people actually lost. So in those situations, our model of the law sets minimum benchmark claims rates so that we can get above this 20% being the goal.

Ralph Nader: Before we talk about a little optimism here from Washington, tell our listeners again slowly how they can get your report and your model consumer protection statute they can get introduced in their state legislature.

Laura Antonini: You can find our materials at representconsumers.org. It's right on our home page. There are links to the report and the model act.

Ralph Nader: That's representconsumers.org, listeners. In your presentation when you release this epic report and statute, it's important to note that none of the big consumer groups like Consumers Union or Consumer Federation of America have ever gone this far in terms of the big picture. And when Harvey talks about radical change on the existing legal system that is controlled by corporations, radical just means fundamental. It's returning the law to what it's supposed to be, which is justice defending the people. So radical in this context does not mean extremist. It's restorative to the ideal of the rule of law. Anyway, let me just read this one paragraph because there seems to be some promise coming out of Washington. So many people are upset with these bounced check fees and all these bank fees, which amount to tens of billions of dollars for the banks' profit every year, that some banks are getting skittish. Capital One [Financial Corporation] announced that it may not charge anymore for a bounced check under many circumstances. And that's sort of a break in the wall. But under the new director of the Consumer Financial Protection Bureau under the [Joe] Biden administration, he is Rohit Chopra, who was formerly a federal trade commissioner and formerly a public interest lawyer. He has begun to assemble a case against financial junk fees as he calls it. These are late fees, overdraft fees, non-sufficient fund fees, convenience fees for processing payments, minimum balance fees, return item fees, stop payment fees, check image fees, fees for paper statements even, fees to replace a card, and so on. These commercial crooks are working overtime. You can't believe there are 300 different kinds of bank fees operating in this country; 300 according to the US Public Interest Research Group that years ago totaled them up. So maybe the sheriff is coming to

town, as Harvey likes to say, from the Consumer Financial Protection Bureau. So look it up, give them their support, and in some ways, publicize what they're doing. We're talking tens of billions of your dollars that can be saved by getting rid of these "junk fees."

Last thing before we go to Steve and David, Harvey and Laura, is with all the press publishes from the trivial to the serious around the country--the *Washington Post*, *New York Times*, *Wall Street Journal*, NPR [National Public Radio], PBS [Public Broadcasting Service], CBS, NBC, ABC-- how come they didn't find time and space to publicize your report when you released it a few days ago in California, which is often a bellwether of what's gonna spread around the country? What do you think's going on? They do have consumer reporters.

Harvey Rosenfield: You know, I think what's going on with the consumer reporters is the same thing that's going on with consumers in this country. They're just so busy trying to stay afloat, cover the most immediate stories, the latest daily outrage, that they don't have time to step back, or at least they haven't in the last few days, since we just issued the report, *Reboot Required*. They just don't have time to step back and look at the big picture. And some people don't even understand the big picture. And by the way, this would be a good moment to thank you all for having us on your show, Ralph. We really appreciate this opportunity to talk to your listeners. But I think this is gonna take off. If we can keep this momentum going on the release of this report that took us four years for Laura and I to write, I think people will start talking about this and all those reporters who are in the trenches trying to figure out what to do with all the bombs that are being thrown at them on a daily basis to step back and say, "What's wrong with the law in our country?" And the truth is that corporations have corrupted our civil justice system and it has to be fixed.

Ralph Nader: I want to see pictures in weeklies and newspapers all over the country of citizens handing this model state statute as a gift to their state assembly person or their state senator, and as a gift that must be disclosed by their putting it in the legislature and having public hearings where consumers, people with complaints that are well documented, and consumer groups and others testifying. Good heavens, I mean, that shouldn't be that hard, listeners. Let's get going here. Especially the hundreds of members of our Congress Club who have been informed and who have informed us about their resolve that they want to do more than just hear about rip-offs here and there, and they want to get going and roll back the corporate crime wave. We just have two to three minutes left on this. Steve, David, you want to pitch in here?

Steve Skrovan: Yeah. I'd like to ask--you both have talked about the fat cats having their thumbs on the legal system. when have the fat cats not had their hands on the legal system? Was there something that happened 50 years ago? What was going on 50 years ago where it was more of a consumer friendly?

Harvey Rosenfield: Well, this guy named Ralph Nader showed up [laughter] in the late 60s.

Steve Skrovan: Not familiar; not familiar with him.

Harvey Rosenfield: And that started to change everything--starting with auto safety, environmental protection, open government. And Laura mentioned this much earlier in the show, but the Chamber of Commerce in the United States had created a blueprint to strike back and it started in the 70s and I actually have to say they've been largely successful in seizing control of the legal system and the political system so that we can't get justice.

Laura Antonini: And I'll add, the federal rule that governs class actions was kind of shaped into what it is now in 1966. And it was intended to empower plaintiffs to fight back systemic abuse. And it was approved with no controversy; there was like no opposition to it. Fast forward now the business industry's number one goal is to kill class actions. But I think it's really strange that in '66, it just sort of floated through and everyone was like, yeah, this is a great idea.

Ralph Nader: Well, your report is called *Reboot Required*. Give the website again then we'll have David pitch in.

Harvey Rosenfield: It's representconsumers.org. representconsumers, one word, (dot)org.

Ralph Nader: By the formidable Harvey Rosenfield and Laura Antonini who are giants in the field because they're looking at the big picture and not at snippets and skirmishes, but at fundamental change here, where consumers are supposed to be in charge; ah, remember the consumer is always right phrase? Consumer sovereignty has been shredded and it's got to be restored. David?

David Feldman: You write a whopping 73% of all US companies have been hacked, including Facebook and Equifax whose business model is collecting as much data about us as possible. Most Americans aren't terrified of their personal information ending up in the hands of a hacker. But if someone hired a detective to investigate me or Steve or Ralph and do oppo research given even all these hacks, what could they learn about me and how long would it take?

Laura Antonini: I'm sure, if we are active on the internet, all of our at least contact information is on the dark web somewhere. People can buy profiles on the dark web for twenty bucks. So a private investigator, if they can access the dark web, would probably find some details about you on there. If you've been a victim of one of these hacks, which if you're online, you have been...

Ralph Nader: David, if you paid by cash or check, and were not part of the incarceration called the credit card economy with credit scores and credit rating, and they control your money, they can penalize you and charge you 35 bucks for a bounced check, et cetera, you wouldn't have much for that detective to find out, which is why we're gonna be leading a pro cash/check movement to fight the effort, which is more than on the horizon by the corporations to get rid of cash and check so they can control you completely and invade your privacy, Harvey?

Harvey Rosenfield: I was just going to say, David, there is so much information about you online that with the sophisticated computers and algorithms that are really already available, they can pretty much predict your behavior. That's how scary this situation is. As in China, where they have something called the social score that determines what access you have to public benefits, to government transportation, to interact in the Chinese society, they can determine

what you will do next. And they make scores about you that they sell to other companies who decide whether they want to let you return a product that you bought at the department store. The future is really a very grim prognosis for human beings in a world run by corporations and algorithms.

Ralph Nader: Here's how bad it is in this country, David. They're moving into this arena. If you complain persistently, they tag you and they send it all over because companies buy this data. And they start stratifying you and they'll charge you more for the same product in the same locale, because you're a troublemaker. There already is a medical malpractice database for many years, as Harvey knows, where people have sued negligent doctors who have injured them seriously are in the data bank. And if the person moves say from Phoenix to Missoula, Montana, that database follows him. And he wants or she wants to get a doctor, the doctor looks at the database and says this is a troublemaker. I'm not gonna take that person on as a patient. The book *1984* is obsolete. We're deep into *Brave New World* now of Aldous Huxley.

We're out of time, unfortunately. We've been talking with Harvey Rosenfield and Laura Antonini, the co-authors of this brand new report, *Reboot Required*, which is another phrase for saying, they're gonna put power in your hands, listeners, in more ways than one at last. So grab hold of it. Get the report; get the model statute; give it to your state representative by hand and demand a written response as to whether that representative is gonna introduce it with other representatives and have public hearings, and then you're on your way. Thank you very much, Harvey and Laura, for your great work.

Laura Antonini: Thank you so much for having us.

Steve Skrovan: We've been speaking with Harvey Rosenfield and Laura Antonini who want you to know if you've experienced a corporate abuse in your daily life, send them an email with the details to complaints@representconsumers.org. That's complaints@representconsumers.org. We will also put up a link on ralphnaderradiohour.com for that. Let's take a quick break. When we come back, Ralph is gonna answer some of your questions. 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, February 25, 2022; I'm Russell Mokhiber. Abigail Disney, the granddaughter of Roy Disney, has co-directed a new film with Kathleen Hughes that criticizes the way the Walt Disney Company treats its theme park workers. The film premiered at the Sundance Film Festival last month. "What I bring to this is a memory of who my grandfather was in the 1960s and early 70s--what kind of CEO he was, how he treated his people, how he understood them as partners and not as cogs in a machine," Disney said in a video from Sundance about the documentary. "It got extremely personal when I got reached out to by a cast member in Anaheim," she said, "because I don't think people think about workers at 'the happiest place on earth' going without food." Disney CEO, Bob Chapek, made \$34.5 million last year. 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. Hey, let's do a listen to question, David?

David Feldman: This comes from Greg Stukuls. He writes, "Hi, Ralph. I always enjoy your podcasts. I do feel that on the Ukraine crisis podcast, there was some missing feelings about NATO [North Atlantic Treaty Organization]. Ralph says rightly that Russia has lots of fear from Europe, stating how Russia was invaded by Napoleon and [Adolph] Hitler devastating its people. There is another side of the coin. I feel that Ralph should also mention the fear these former Soviet Republic people have of Russia. Russia has devastated and terrorized its former Soviet Republic countries and its own people for decades. Russia took over governments and property destroying lives. They sent countless people to "work camps" in Siberia, et cetera. The decades of tyranny they had to live through is as fearful to them as Russia's fear of NATO encroachment to its borders. NATO is a defense against those cruel decades of Soviet rule and future Russian aggression. The small countries who have recently joined NATO do so only from the fear of another Russian [Vladimir] Putin takeover. What other choice do they have to protect themselves? I think Ralph downplays or ignores Russian aggression and terror of the past and possible future terror. Keep up the good work. Thanks."

Ralph Nader: Thank you for giving a bigger picture, historically and geographically, Greg. My focus is on this immediate conflict between Putin, NATO, and Biden, which is beginning to sound like a deadly chess game; wherein Putin makes a move and Biden makes a retaliatory threat on sanctions. Putin makes a move, both of them don't want to feel weak before their domestic populations. And that's what I was really focusing on. There's no doubt Soviet communism was tyrannical in the ways you described. There's no doubt that the west empires were tyrannical. Millions of people dying of starvation in India due to the way the British ran the distribution of goods back in the old days of controlling India and many other circumstances. But we have to ask who's provoking who and it was basically Hitler provoking and invading Russia, running Russia over the Eastern European countries, slaughtering on the way in Poland and Hungary and Czechoslovakia. So we have to develop peace treaties. We have to develop neutral zones. We have to develop the kinds of protections that Austria got from the two super power conflicts after World War II. They were basically given a neutral status. Switzerland was given a neutral status. So we've got to work this out, because the fears of the Russian people from aggression from the West is very widely felt with NATO coming right up to the Russian border in some ways and very close to it with aggressive missile launchers within a hundred miles of the Russian border and other troop deployments. We have to have peace treaties in a word. Thank you very much, Greg.

Steve Skrovan: Thank you for that question, Greg. I want to thank you our guests again, Harvey Rosenfield, Laura Antonini. 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. Just look for the blue link above the audio player.

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. And be sure to check out their latest program on how advocates are going to court to confront the climate crisis. All that and more at tortmuseum.org.

David Feldman: Ralph wants you to join the Congress Club. To get more information, go to the *Ralph Nader Radio Hour* website, and in the top right margin, click on the button labeled Congress Club. We've also added a button right below that 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 proof reader 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*. Thank you, Ralph.

Ralph Nader: Thank you, everybody. And get ahold of that model statue from Laura and Harvey's website.