

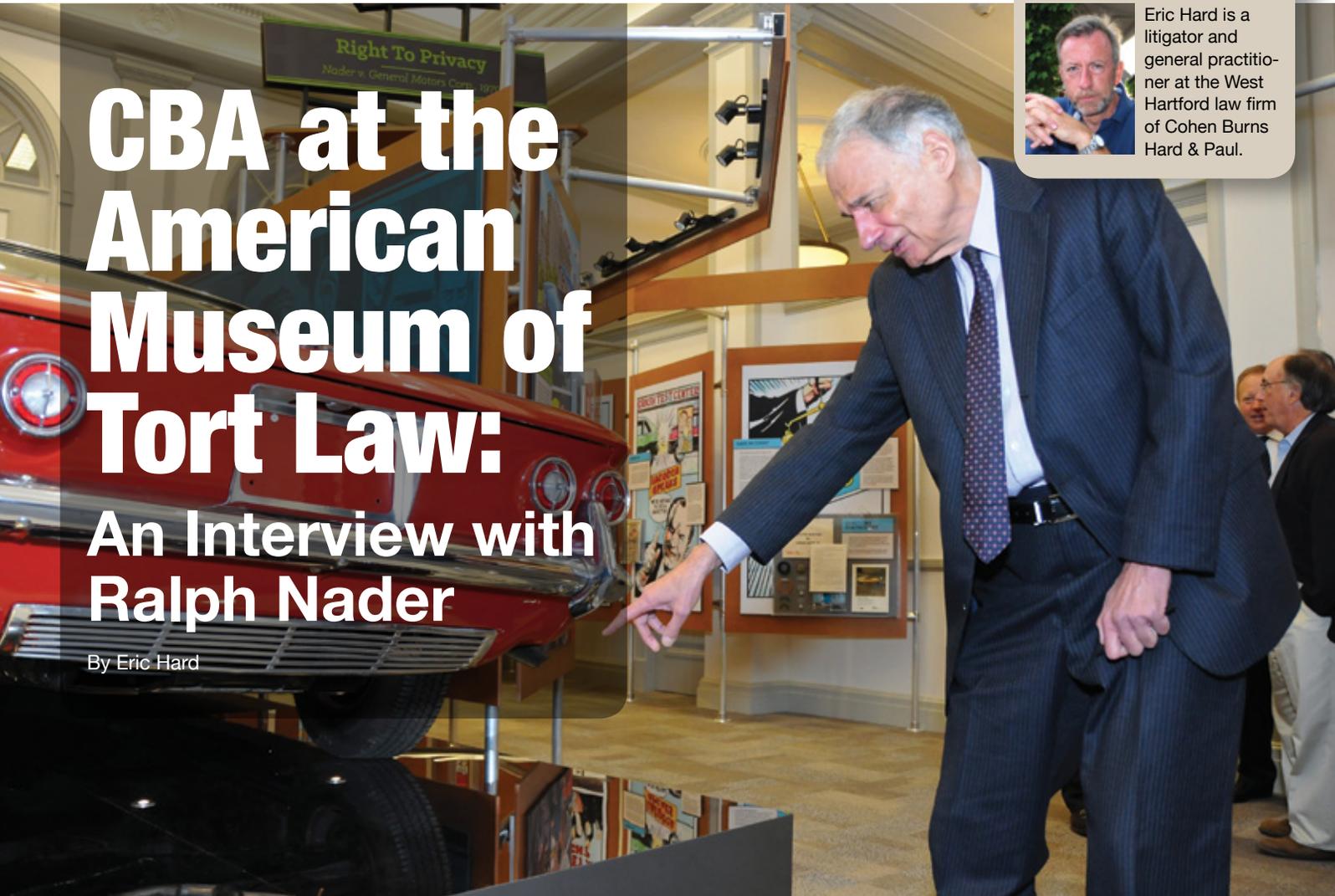
CBA at the American Museum of Tort Law:

An Interview with Ralph Nader

By Eric Hard



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Attorney Eric Hard spoke with consumer advocate Ralph Nader on occasion of the Spring Awakening, the reopening of the American Museum of Tort Law in Winsted, with guest speakers, including trial lawyers Jan Schlichtmann and Mitchell Garabedian. With concerns awakened among civil libertarians and others about the recent presidential election, the lessons offered by each of these advocates may provide some clues as to how to keep constitutional liberties in the public discourse and connect people to popular and well-known lawsuits, such the toxic tort case in Woburn, MA that led to the movie *A Civil Action* (Schlichtmann) and the work of a trial lawyer (Garabedian) in Boston as depicted in the movie *Spotlight*. This is the first interview in a three-part series.

The Importance of Tort Law and the Museum

EH Why do you think the average American doesn't know what a tort is?

RN Well, we're not taught anything in school about civil justice remedies, the law of wrongful injuries, but the closest we get to it is the Latin phrase in loco parentis, which allows schools to discipline students in the place of the parent and not be held liable.

EH It is part of our constitutional system of justice, right?

RN It is one of the two pillars of our privately-invoked legal system; the other being the law of contracts. Those were the liberation movements coming out of medieval England that were shipped to the US and developed. They are extremely important to liberty and justice, and almost never focused on as such. We now have fine print contracts, and we are losing our freedom of con-

tract in a variety of ways. With "tort deform," we are losing our access to the courts and right of trial by jury for many wrongfully injured people.

EH Why do you think the public appears to have a limited understanding of the positive qualities of tort actions?

RN Because they challenge concentrated power, local, state, regional, and national. Any subject that challenges concentrated power is going to be diluted or excluded from the cur-

riculum. When I was in law school, there was no course on corporate crime. The criminal law courses were all street crime.

EH Can you think of a popular misconception about tort law in our country?

RN One myth is that it is easy to get a big verdict for a small injury. People don't realize how hard it is to get a successful verdict. In some states, one juror says no, and the defendant wins.

EH What's important about having a Museum of Tort Law?

RN More people have to realize that tort law defends them against wrongful injury, and provides a remedy for people against the perpetrators of their harm. Tort law means that people are not alone. They need not simply absorb whatever harm is dealt to them; they can get recompense, and they don't have to pay their lawyer by the hour. The contingent fee opens the door in a way that other common-law countries, Australia, England and the like do not have. The Museum of Torts showcases how people's daily lives have improved as a result. Our goal is to educate and empower people.

EH People seem to be able to understand why a contingent fee lawyer might be up to no good, but they seem to have a much harder time conceiving of a company that wants to sell something being ethically compromised, and they view anybody regulating that as impeding a free market.

RN There is a massive propaganda campaign that has been underway for decades, the insurance industry, the tortfeasors' lobby, to escape accountability for recklessness or criminal negligence that kills, injures, or sickens people.

EH What has happened to the American popular perception of an attorney, from Clarence Darrow to Atticus Finch?

RN I recently published an article on suing for justice in Harper's Magazine that describes the distortion of popular perception of the lawyer's role in preserving freedom. Nobody likes

to be sued, but corporations and government agencies that operate in a harmful way against innocent people have erected a phalanx of privileges and immunities from accountability for the consequences of their reckless or criminal behavior—GM with the ignition switch, VW with the premeditated alteration of the software, Toyota sudden acceleration, drug companies marketing products for FDA-unapproved uses, drugs killing people from the very causes they are prescribed to prevent, Vioxx leading to heart attacks, toxic waste, radioactive dumps. The only real privately-invoked defense that people have, to obtain compensation, to propel media disclosure of the wrongdoing, and to generate deterrence of future harm, is the law of torts. When it is invoked, it informs the regulators and the legislators so they may establish across-the-board safeguards. For example, I gave Senator Gaylord Nelson from Wisconsin information from a product liability case against a tire company in Akron, and he used it on the Senate floor to show how inadequate the inspections of tires were, as part of an effort to get the Tire Safety Bill through. Tobacco, lead, and asbestos litigation provoked the EPA and Congress to take lead out of gasoline and paint, to crack down on the uses of asbestos and to regulate tobacco. The sequence is that a wrongfully-injured individual seeks out a contingent-fee lawyer, who only gets paid if he wins, going to open court, highly refereed, far more than the executive and legislative branch decisions—which are often private wheeling and dealing—with great potential to bring powerful companies accountability. It is ferociously opposed for that same reason. Companies can buy lawmakers, delay regulatory action for years. The one area that they don't completely control is an open court of law with a right of trial by jury.

A History of Advocacy

EH What made you go from an ivy-league background to become an

advocate for people who otherwise had little voice?

RN I relish justice more than huge wealth. I was in on the ground floor as a law student, talking to lawyers. In the words of Daniel Webster, "Justice is the great work of man on Earth." I was lucky in my parents, I grew up in a small town where I didn't have to be in awe of skyscrapers, where I had a connection with nature, fields, forests, lakes, streams. My parents taught that what comes with freedom is civic responsibility.

EH Consumer advocacy was not much of a concept before you came to Washington, DC. Where did you arrive at the insight that there was a neglected dimension to our culture?

RN I went down to South Boston and saw how the tenants were treated. Out of the facts comes the law, goes an old Roman adage. If you expose yourself to the facts, and they demonstrate mistreatment of people, the next step isn't that hard. But if you seal yourself off from reality, you go to a corporate law firm, and you represent perpetrators against victims, you don't have that sequence.

EH At some point you got interested in automobiles, and you advocated for a "cocoon of safety" for the occupants, crashworthiness. Where did you come up with the idea of protecting consumers from an accident, an unintended use of the product?

RN I hitchhiked a lot, and the truck drivers who picked me up would often be the first at the scene of a crash, before the police and ambulances. At Harvard Law School, I wrote a third-year paper on unsafe automobiles and legal liability. That's what led me to do the research, some of which was sponsored by the US Air Force, who realized they were losing more airmen on the US highways than they were in Korea. They subsidized research at Cornell Medical College and the Harvard School of Public Health that taught me about crashworthiness. It isn't just the driver, it's the vehicle, highway, and driver.



EH It's an educational project to take someone of average intuition and encourage them to see that it makes sense for a vehicle to have an airbag, for instance. Until it happened, it seemed like a fantasy, right?

RN If you can't prevent the crash, for reasons like bad brakes, drunk driving, and others, you can still provide the occupants with seatbelts, padded dashboards, side impact protection, collapsible steering columns, and the like. Safe crashes.

EH What does the modern American court room represent to you?

RN A severely under-utilized space, where the rule of law and justice are supposed to be dispensed.

EH I heard a story about you starting out in Washington and being in a phone booth with a dog calling a member of Congress, and being asked "Who are you with?"—meaning what big company or organization did you represent that would justify a meeting with that member.

RN I picked the dog up, and, almost on cue, "Ruff! Ruff!" I'm so tired of that question, "Who are you with?" I'm a citizen. Who am I with calling my senators, representatives? You had to be with a trade association or a big union, or a corporation. I heard a click after the dog barked. They were not amused.

The Jury Crisis

EH What is the "jury crisis" you have identified?

RN Tort reform—"tort deform"—is restricting the role of jurors to hear the evidence. They restrict who gets qualified as an expert, or the

judge dismisses the case before a jury gets to weigh the merits. Fewer people are serving on juries, many of them throw the summons away. They don't understand that this is one of our greatest freedoms in a democratic society, to judge powerful interests. The jury decides the facts; when the judge reads them the law, the jury applies them. In Washington, DC, about 70 percent of the people throw the summons away.

EH Why are juries good for America?

RN They are the ultimate empowering of people to judge powerful interests. In a court of law, they have no further ambition, no ax to grind. Afterwards, the jury is dismissed. Where else can people matter, where can they make more of a difference? Voting is very diffuse, and the choices are very narrow on the ballot, and money talks. But in a court room, money is not supposed to talk, everyone is supposed to be judged equally before the law. If the jury goes off the charts, the judge can engage in remittur or additur. The judge controls the court room as a safeguard.

On Washington

EH Have politics changed since you first arrived in Washington?

RN Yes. It has gotten worse. It's harder to get anything heard in Congress, passed, signed by the White House. Regulatory agencies are tied up in knots. Corporate lawyers have tied up the regulatory agencies in red tape. It takes 15-20 years to get a regulation through, and then it is so diluted it is worthless or obsolete.

EH In the U.S., we the people are the sovereign. Do you think we are

uncomfortable in that role, that we don't like to take responsibility for the people we elect?

RN Erich Fromm, the Yale psychologist, called it "escape from freedom." There are people who like to delegate their constitutional rights, "you do it for me, father Trump," that sort of thing. That's part of Trump's appeal. "Don't worry, I'll take care of it. There'll be more jobs, I'll beat off the terrorists, I'll do it for you." People are so overwhelmed with their daily lives that they feel somebody has got to take care of this; they don't have time for it. Marcus Cicero in ancient Rome defined freedom as participation in power.

Parting Words

EH What do you think is your legacy to this country?

RN Citizens can change things far easier than people think. Learn civic skills, develop confidence, start young in the schools, you'll see how many solutions are taken off the shelf and applied to daily life.

EH If you could leave future generations with one thought, what would it be?

RN Separate some time, regularly, for your civic duties. Local, state, regional, national. If you spend all your time on your private life, work, family, sleep, recreation, you will enjoy none of them as much as you will if you add civic participation.

EH Do you have any words for the attorneys of Connecticut?

RN Please come to the Museum of Torts. This is the Constitution State, and we haven't seen enough lawyers with their families and friends. For tort lawyers, it is a way of informing their children what their parents do.

In the next two issues, we will hear from Jan Schlichtmann, who Ralph Nader classified as having "pioneered a very controversial area of tort law. He showed courage under great pressure to stop doing what he was doing on behalf of the children," and Mitchell Garabedian, who Nader characterized as having "great stamina and persistence, overcoming personal troubles, before prevailing." **CL**