

SPECIAL REPORT

Ace trial attorney says be “as vicious as you can” and run “a totally brutal and aggressive offense”

Controversial consumer group targets majors, marketers on temp comp issue

Harvey Rosenfield says he’s a consumer advocate. He doesn’t shrink from taking on power companies or insurance firms, or suing cell phone giants like Sprint and other big corporations that he thinks are cheating the Average Joe. His campaigns against insurers alone have saved policyholders nearly \$1 billion, he says.

Others, including former allies, are less charitable. They claim he is a “shill” for trial lawyers, a serial exaggerator who makes his living launching lawsuits and collecting intervenor fees from the state.

Rosenfield is the lawyer who created the **Foundation for Taxpayer and Consumer Rights**, the group now pushing Weights and Measures officials to adopt automatic temperature correction at the pump.

FTCR is part of a network of non-profits affiliated with Rosenfield over the years. Among the group’s major targets in the press and in Congress is Big Oil “price-gouging” and refiners’ “market manipulation.”

FTCR’s motto: “We fight corrupt corporations and crooked politicians every day.”

Between them, Rosenfield and FTCR have scored several wins in recent years, pushing privacy legislation, fighting for lower insurance and utility rates, and campaigning in 2004 to force Shell to keep open its Bakersfield, Calif., refinery. They have also earned less than flattering press coverage. For example:

- Trial lawyers funded 73% of the budget of one Rosenfield group that was campaigning to block lawsuit reform, according to the *Los Angeles Times* – those attorneys included a long-time Rosenfield ally and a donor to his campaigns who is about to go to prison for his role in a scheme to pay plaintiffs to file class-actions. His recent targets have included ex-BP CEO John Browne and Shell, for misstating oil reserves in 2004;
- While FTCR attacks marketers for ripping off consumers at the pump, it has accepted grants totaling nearly \$500,000 from a Rosenfield group that has earned profits from trading Big Oil and Enron stock;
- FTCR hired a professional skywriter to disclose part of the Social Security number of ex-Citigroup CEO Charles Prince over New York City as part of a privacy campaign, and published “Wanted” posters for California lawmakers who opposed its position on the issue.

FTCR’s top executive, Jamie Court, just wishes his group could garner more from trial lawyers – contributions from them have been “shrinking in the last couple of years,” he told Oil Express last week.

As for the money that was invested in oil stocks and Enron, Rosenfield says that is now in mutual funds. And the former allies who call him “a shill” for trial lawyers are just “trying to undermine my credibility.”

Rosenfield’s modus operandi is simple. Identify a pocketbook issue, make a few inflammatory remarks to gain press attention, start a fundraising campaign and then sue or launch a ballot box initiative.

“If it plays, he’ll say it,” an official with the Personal Insurance Federation of California once remarked.

Rosenfield is proud of his prowess. “We try to play as vicious as we can...,” he said in a speech in 2005. “...[If] I had an hour, I could raise \$1,000 in donations. I’d collect no more than \$10 a person from people walking down the street, from the guy selling bagels, and the cab driver, because people are angry.”

FTCR’s latest campaign targets Big and Little Oil, alleging that they have overcharged consumers by more than \$1.5 billion by selling “hot fuel” – gasoline above the 60 degrees Fahrenheit standard.

It is one of many battles against the oil industry waged by the group.

In 2000, it issued a study that claimed “oil industry profiteering” caused the Midwest price spike in the spring and summer of 2000. A subsequent investigation by the Federal Trade Commission found “no credible evidence of collusion or other anticompetitive conduct by the oil industry.”

In 2005, FTCR put out another study alleging that refiners manipulated markets by reducing refinery capacity after Hurricane Katrina, and prompting Congress to call for another FTC investigation. The FTC found “no instances of illegal market manipulation...or price-gouging practices.”

FTCR also delights in going after lawmakers who oppose its agenda. It claims to have revealed conflicts of interest and insider trading by former U.S. Sen. Bill Frist, R-Tenn., who drafted a medical malpractice bill in 2002 that trial lawyers opposed. The group accused Frist of having a conflict of interest for selling stock in a hospital management firm run by his father and brother. The Securities and Exchange Commission investigated the allegations for 18 months but brought no charges against Frist.

Consumer group made money trading stock in Enron and Big Oil

Judy Dugan, the research director for the Foundation for Taxpayer and Consumer Rights, has a long list of oil boogymen she likes to slam in her Web blog, but Enron is one of her favorites.

“When is the oil industry most like Enron? When it’s draining supplies of gasoline instead of building them, guaranteeing record pump prices that empty your wallet into their profits,” she wrote on July 23, 2007.

Dugan does not disclose that the **Consumer Education Foundation**, another activist group set up by Rosenfield, made a profit trading stock in Enron and major oil companies.

Rosenfield branded power companies like Enron “pirates and bullies and crooks” in 2001 when California consumers suffered from a series of electricity blackouts. That same year, CEF’s tax return declared a gain of \$10,617 on the sale of Enron stock it acquired for \$6,806 – a return of 55.99%.

CEF tax returns from 1999 to 2001 also list stock investments in Mobil, Chevron, Phillips, and Exxon.

Rosenfield told the *L.A. Times* that he was “out of the loop” on CEF’s financing. After the newspaper’s story, CEF stopped reporting its individual investments on its tax returns.

“We had an amount of money we needed to invest and put it in the stock market through a regular brokerage,” Rosenfield told Oil Express. The brokerage did “a crummy job” of managing the stock portfolio so the investment was moved into mutual funds. “I don’t see any issue of hypocrisy,” he said last week.

In its 2006 tax return, CEF says it has more than \$3.56 million of “publicly traded securities” through 22 bond and equity funds. It has made grants to the Foundation for Taxpayer and Consumer Rights totaling nearly \$500,000 in recent years. FTCR shares offices with Rosenfield in Santa Monica, Calif.

FTCR chief Jamie Court and Rosenfield say CEF funds FTCR’s consumer education programs, not its work on energy issues. Dugan says she has never heard of CEF and knows nothing about the stock trades.

Dugan says W&M officials should name those who pick up the tab for their entertainment

FTCR recently demanded that the National Conference on Weights and Measures disclose who funds its social activities, but it is less than forthcoming about the identity of its own supporters.

A former deputy editorial page editor at the *L.A. Times*, Dugan is now the public face of FTCR in the battle over temperature compensation. At a recent W&M conference in Lake Tahoe, she spent much of her time lobbing verbal grenades at marketers and W&M officials via a blog on FTCR’s OilWatchdog.org.

In one column, she described “a touristy dinner cruise” on Lake Tahoe. “It was a little luxury amid a conference so tightly budgeted that there was no coffee or Internet access in the meeting rooms. And it was possible only because companies that the state Weights and Measures regulate paid much of the bill.”

The implication was that marketer groups had picked up the tab. She was wrong. Equipment firms had paid for the shindig, she acknowledged the next day, before continuing with her theme.

“The petroleum marketing lobbyists... were not among the sponsors. But they had other funding opportunities... If the Petroleum Marketers Assn. of America wants to hire a room and serve free drinks or meals to regulators, no one can stop them,” she wrote.

“But should the regulators be asking them for the money and offering formal membership in the conference where big public policy issues (including fuel temperature compensation) are being decided?”

“Shouldn’t the drinks, the late outings and the gala dinner be reported in public documents as gifts, naming the givers and the occasion? ...”

FTCR stopped naming individual donors after the trial lawyer donations became public.

Accidental disclosure of trial lawyer donations leads to name change

The role played by trial lawyers in Rosenfield campaigns became clear in 1996 when California officials accidentally included in public tax records a list of donors to another of his groups, **the Network Project**.

The records, stamped “Not Subject to Public Inspection,” contained the names of individuals who had donated more than \$5,000. Each was a trial lawyer and they contributed at least \$219,700 – 73% of his then-\$299,000 budget, according to press reports at the time.

Bill Zimmerman, a former ally of Rosenfield, released the documents. At the time, he was managing a ballot campaign calling for limits on trial lawyers. Rosenfield was on the other side of the issue.

“Harvey is a shill for the trial lawyers,” Zimmerman claimed. “Harvey has said he gets insignificant funding from trial lawyers. Harvey is a liar,” he told the *L.A. Times*.

Rosenfield’s response: “I’m not on the trial lawyers’ side. They’re on my side. If I could raise a couple of million from these guys, I would.”

Shortly thereafter, in 1997, the Network Project was renamed **Foundation for Taxpayer and Consumer Rights** and stopped reporting the names of individual donors. FTCR’s 2000 tax return disclosed the amounts donated – between \$15,000 and \$85,000 each – but masked the identity of the contributors. In 2005, FTCR listed just \$1.43 million in unspecified “direct public contributions.”

Rosenfield has slammed California state insurance and law enforcement officials who accept campaign donations from insurance companies, calling it “bribery, extortion and corruption.” Trial lawyer donations to his campaigns fall into a different category, he says. “I’m not an elected official,” he told the *L.A. Times*.

Dugan, FTCR’s research director, says much the same of her call for W&M to name its donors. “Weights and Measures is a regulatory body, we’re not,” she told Oil Express last week.

FTCR recently joined the National Conference on Weights & Measures. Asked if she planned to introduce a motion calling for NCWM to disclose its funding, Dugan said she could not do so.

“Associate members can’t put up motions,” she said. “All we can do is urge them to do the right thing.”

FTCR exec Jamie Court says the group does not name its donors because that would “make it easier for our enemies to hurt us.” After an accountant mistakenly filed a list of supporter names with a state office, former California Gov. Gray Davis (D) “called people on the list,” telling them not to donate to FTCR. Over the last two years, a third of FTCR’s money has come from individuals, the rest from grants and legal fees, he said.

Rosenfield is a master of image and media manipulation

Rosenfield cultivates an image of the little man up against corporate titans.

He testified at one California Senate hearing with his tie pulled down, his collar open, shirtsleeves rolled up. For one of his campaigns, he based himself in an unheated warehouse with concrete-floored offices and tattered furniture, including an old car seat with seat belts still attached. He told reporters that the “lucky” red tie he wore cost \$1, while his \$2 white shirt came from a Salvation Army thrift store.

When critics scoffed at the image he was trying to portray, Rosenfield told the *L.A. Times* the public did not trust men in three-piece suits and his clothes and offices were “a metaphor for grass roots democracy.”

FTCR and Rosenfield are without equal when it comes to capturing press attention.

- FTCR published partial Social Security numbers for California lawmakers who did not back its position on a privacy bill. The group also announced on public radio that it had bought the numbers of President George Bush, his adviser Karl Rove, former Attorney General John Ashcroft and ex-CIA chief George Tenet. Court says the move was successful – the California legislature passed the privacy bill.
- In another stunt, FTCR posted old western-style “Wanted” posters on the Internet bearing the names of eight California politicians, accusing them of being “soft on corporate crime.”
- Rosenfield posted armed volunteers at a press conference he called to display petition signatures he had gathered, saying he feared “possible tampering” by the insurance industry.
- On another occasion, he tried to deliver a truckload of cow manure to State Farm Insurance in L.A.
- Earlier this month, FTCR tried to take TV cameras into a San Francisco meeting to film itself giving Chevron CEO Dave O’Reilly its “Golden Nozzle Award” for price gouging. The footage of them being stopped from entering with cameras is now posted on one of the group’s Websites.

Rosenfield’s network of consumer groups and projects:

The Campaign for Consumer Rights
Consumer Education Foundation
Consumer Watchdog
Election Watchdog
The Network Project
Voter Revolt
Proposition 103 Enforcement Project
The Foundation for Taxpayer and Consumer Rights
Access to Justice
Consumers for Quality Care
Citizens Against Utility Taxes
Citizens for Corporate Accountability and Individual Rights

Compared to consumer groups, majors and marketers are publicity neophytes

While the American Petroleum Institute and marketer groups rely on press releases and TV ads, Rosenfield has mastered a new way to communicate his position on issues – “e-advocacy.”

Through its ConsumerWatchdog.org Web site, the Consumer Education Foundation launches videos, blogs, animations and e-mail alerts in English and Spanish. Consumers also are able to contact their public officials with a letter or fax written on-line.

The two groups, CEF and FTCR, have an army of trained volunteers who are taught the ins-and-outs of campaigning at a special three-day retreat in the mountain resort of Lake Arrowhead, Calif.

Every campaign, every stunt is carefully orchestrated and almost guaranteed to strike a chord.

In 2004, for example, CEF organized two chartered train trips, the “Rx Express,” taking 20 seniors from California, Washington and Oregon to Vancouver, Canada, to buy cheap prescription medicine. The result was more than 300 TV appearances, 60 press articles and more than 100 radio interviews.

Rosenfield and his non-profits use the media to huge effect. They offer editorial board briefings, “town hall” events, and press conferences to push for legislative hearings, then testify, making more headlines.

In its 2005 tax return, FTCR says it was quoted more than three times per day, on average, made more than 150 radio and TV appearances, and had more than 1.5 million visitors to its Web sites.

FTCR does not like opposition. If a reader posts an adverse comment on Dugan’s Web site blog, a note is

appended to their name: “This commentator has been flagged as a suspected shill for Big Oil.”

Dugan says she does not post the “shill” remark herself— it is done by someone else at FTCR. The group believes that oil companies may be paying the person to post the remarks, she adds.

Rosenfield: “Be brutal...we are vicious and proud of it”

On his personal Web site, Rosenfield says he has fought to “protect consumers and taxpayers against rip-offs and abuses” for nearly three decades. In 2005, he told New York-based policy group the Drum Major Institute that he has learned several “lessons” in his years as an activist:

- **“Offense, not defense.** I think it should be a totally brutal and aggressive offense,” he advised. “If you want to see how we, as an organization, talk about our stuff in California, go to ConsumerWatchdog.org.We try to play as vicious as we can. We never lie, we don’t deceive, we tell the truth, it’s based on facts, but we are vicious and proud of it.”
- **“Pocketbook issues trump ideology any day,”** he said. “We could get back most of the voters in this country just by talking about meaningful pocketbook issues and the need to regulate the big corporations who are responsible for this...”
- **“Complex issues can be made simple, it’s just a matter of messaging,”** he said. “We should talk about the need to regulate companies... whether it’s insurance companies or energy companies.”
- **“Ju-jitsu.** We use the power of our opponents against them. We take advantage of their strength and their resources and use that against them, and prevail.”
- “I’m suggesting we investigate everybody, on everything. We should use any conceivable angle to get these people. We gotta get them. Right?”

Insurance rate rollback law a cash-cow for consumer groups

Over three years, Rosenfield collected \$570,000 in attorney fees and expenses for challenging insurance rate increases on California, he told the Drum Major Institute.

In fact, he was able to set up his main consumer group after AllState Insurance paid him to go away.

AllState agreed to donate \$5 million to a non-profit foundation if Rosenfield would drop a lawsuit alleging it had altered engineering reports and falsified claims to lower payments to policyholders.

Rosenfield used the money to set up in 1998 the **Consumer Education Foundation**, naming as directors himself and two others. The board then appointed him executive director at a salary of \$100,000/yr.

Since then, CEF has paid him an annual salary of at least \$100,000. In 2006, he also received \$10,800 in expenses. There are now four CEF directors, according to the group’s 2006 return.

The Foundation for Taxpayer and Consumer Rights also pays Rosenfield. He received around \$100,000/yr until he resigned as FTCR president in 2003. These days he receives fees for providing legal services to FTCR – \$150,000 in 2004, \$167,757 in 2005.

In 1998, California voters passed Proposition 103, an insurance reform initiative written by Rosenfield.

The initiative included a provision requiring insurance companies, via the state’s insurance department, to pay the fees and expenses of any consumer group whose lawyers initiated or intervened in rate cases.

Rosenfield intervened a lot. Through 2000, two of the groups he started – **Voter Revolt** and the **Proposition 103 Enforcement Project** – received more than \$1.32 million in intervenor fees, according to the Personal Insurance Federation of California. Through 2005, FTCR’s tax returns show that group received more than \$1.33 million in intervenor and other litigation-related fees.

Critics say it is hard to track the money funding Rosenfield’s network because the groups donate to each other. One year Consumer Watchdog gave \$250,000 to Election Watchdog, another group in the network. Election Watchdog, in turn, paid FTCR \$131,500 for administrative fees and rent.

The Consumer Education Foundation, meanwhile, makes \$100,000/yr grants to the FTCR for another

consumer initiative known as The Oaks Project, which enlists and trains volunteer activists.

CEF has also aided other non-profits – in 2004, it donated \$100,000 to the Center for Insurance Research, a Cambridge, Mass., group that filed a class action on behalf of 500,000 policyholders.

FTCR also raises funds through an annual “Rage for Justice” awards dinner. The gala in June at a Beverly Hills hotel featured Annette Bening and Warren Beatty, as well as Elizabeth Edwards, the wife of presidential contender John Edwards. Gross receipts were \$594,550.

Soon-to-be jailed class-action attorney a major ally of consumer groups

One of Rosenfield’s friends and key allies is Bill Lerach, the king of class-action suits now facing 1-2 years in prison. Rosenfield and his groups have teamed up with Lerach for more than 10 years.

A brash, colorful lawyer given to cussing, Lerach was a major contributor, Rosenfield confirms. When federal authorities started investigating Lerach’s involvement in a scheme to pay off class-action plaintiffs, the FTCR came to his defense.

FTCR president Jamie Court said the government was railroading Lerach because of his fundraising for Democrats – he raised more than \$3.6 million in the past decade. Lerach is “fearless and uncompromising” and the investigation was “clearly a politically motivated move by the Bush administration,” Court said.

Lerach is the lawyer who invented the “strike” shareholder class action, in which an investor with a few shares in a company files a quick lawsuit when the firm fails to meet targets or the stock price falls.

In the ‘80s and ‘90s, lawyers who were the first to file usually gained control of the cases and earned the most in fees. Lerach was so successful that in 1995 Congress passed the Private Securities Litigation Reform Act to weed out such suits and confer lead plaintiff status on those who suffered the worst losses.

Not to be thwarted, in 1996 Lerach drafted – and Rosenfield and FTCR campaigned for – a new ballot box initiative in California. Proposition 211 would have reversed the federal law in the state, making it easier than it had been before to sue for securities fraud. The proposal also would have allowed plaintiffs to go after the personal assets of company directors and officers.

Critics said the measure would lead to “meritless shakedowns” and force corporations to pay “protection money.” President Bill Clinton announced he was opposed to the measure, and voters defeated it.

Lerach’s quick-strike suits gave rise to a new term – a company hit with a securities suit was said to be have been “Lerached.” At times, he filed so fast that he did not bother to change the names of his previous corporate targets, according to the *Washington Post*. He sued one Silicon Valley firm three different times.

He used the tactic to great effect in the Enron case and his former law firm is on track to receive 8% to 10% of a \$7.3 billion settlement of the case. Lerach also represented Alaskan fishermen in the 1989 Exxon Valdez case, sued Royal Dutch Shell in 2004 for its overstatement of oil reserves, and was the man behind the lawsuit that froze former BP CEO Lord John Browne’s \$140 million retirement pay in 2006.

Lerach pled guilty in September to conspiracy to obstruct justice and agreed to pay fines and penalties of \$8 million. Within days of Lerach’s plea, a federal grand jury indicted his former law partner, Melvyn I. Weiss, along with seven partners of the New York-based Milberg-Weiss law firm.

According to the indictment, the firm paid millions in secret kickbacks to people they enlisted to purchase stock and become named plaintiffs in more than 225 class action and shareholder suits.

The law firm received approximately \$250 million in attorneys’ fees over the past 25 years as a result. Three named plaintiffs alone received \$11.3 million, says the U.S. Dept. of Justice, noting that the cash was paid to plaintiffs through intermediaries.

Rosenfield says he still regards Lerach as a friend. “I feel very sorry for him. Whatever mistakes he made, he was subject to special scrutiny for political reasons and now he’ll pay for them,” he said.

FTCR chief Jamie Court says he thinks it is “ridiculous that the government should spend so much money to destroy a law firm.” Lerach’s guilty plea is “kind of sad, tragic in many ways.”