

RALPH NADER RADIO HOUR EP 292 TRANSCRIPT

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

David Feldman: Very good. We have an important show today.

Steve Skrovan: We have an important show, exactly. Well, we have . . . most of our shows are very important. I would say all of our shows are very important, but there's a lot of stuff going on and this is the place you come to sort it out. We also have the man of the hour, Ralph Nader. Hello, Ralph.

Ralph Nader: Hello, everybody. When do we ever not have an important show?

Steve Skrovan: That's what I was trying to say, yeah.

David Feldman: I was talking about we have tickets to go see the Rolling Stones, that's all I was talking about that.

Steve Skrovan: Oh, that's important.

David Feldman: That show, yeah.

Steve Skrovan: No, no. That's a whole different thing. On this show today, we continue to discuss the soap opera that is the impeachment inquiry into President Donald Trump. Now, just to provide some context here as new developments continue to unfold almost on an hourly basis, you might have guessed a few things have happened since we last left you. The president has publicly called on China to investigate Joe Biden.

President Donald Trump: China should start an investigation into the Biden.

Steve Skrovan: Right there on the White House lawn. In an apparent attempt to normalize his behavior by doing it over and over again out in the open. Text messages between diplomats have emerged that suggests that there was in fact the quid pro quo that an investigation of the Biden's and the 2016 election take place before a meeting between Ukrainian presidents Zelensky and Donald Trump would be scheduled. Also there are reports of a second whistleblower coming forward, this one with more first-hand experience with the phone call to the Ukrainian president. And as of this recording the White House is refusing to cooperate in any way with the inquiry, setting up a very real constitutional crisis. It's hard to keep up, but here to help us sort it all out is a friend of the program, Bruce Fein. Regular listeners know that Mr. Fein is a constitutional scholar who has written a number of books on constitutional law, and he's no flaming liberal. He's worked in the Reagan Administration and for the Heritage Foundation. So, we look forward to that discussion. Also, on the show today we welcome for the first time, Hassan El-Tayyab. Mr. Tayyab

is the lead lobbyist on Middle East policy for the Friends Committee on National Legislation [FCNL]. He's going to be talking to us about the tragedy that is the war in Yemen. What should American policy be? What can the United States do to stop the killing? And as always, we will take a short break in between to check in with our *Corporate Crime Reporter* Russell Mohkiber, who will tell us about the latest shenanigans going on in the world of corporate crime. And if we have time left, we will try to answer more of your listener questions, but first, let's continue our analysis of the issue that is sweeping the nation. David?

David Feldman: Bruce Fein is a constitutional scholar who was associate deputy attorney general under Ronald Reagan. Mr. Fein has been a visiting fellow for constitutional studies at The Heritage Foundation, and an adjunct scholar at American Enterprise Institute. He has advised numerous countries on constitutional reform including South Africa, Hungary, and Russia. He is author of *Constitutional Peril: The Life-and-Death Struggle for Our Constitution and Democracy* and *American Empire Before the Fall*. Welcome back to the *Ralph Nader Radio Hour*, Bruce Fein.

Bruce Fein: Thank you for inviting me.

Ralph Nader: And in addition, David, Bruce Fein has testified about 200 times before the US Senate and House of Representative committees and subcommittees. So he's a doer and he litigates. He has appellate cases now pending regarding violations of international law, U.S. statutes and the Constitution. And so, he's the whole menu. He's written. He's thought. He's done. He's litigated. So, Bruce, let's get down to educating all of us here, because the whole impeachment inquiry has been obfuscated by misinformation, deceived information, and other things. So, here's my first question. A Trump voter in Upstate New York was quoted on NPR recently when he was confronted with the Ukraine situation. He would say again and again, "where's the crime? Where is the crime?" Well, we know that offenses against the Constitution don't have to be crimes. There could be constitutional violations according to our framers of the Constitution back then. Why don't you answer that question in twofold, Bruce--where's the crime in what Trump did based on his transcript with the president of Ukraine, Mr. Zelensky? And what are other crimes apart from constitutional offenses that Trump can be credibly accused of committing?

Bruce Fein: We need to begin with the impeachment clause, which is the subject of the investigations by Congress, and it refers to treason, bribery, and other high crimes and misdemeanors. Those categories were described by Alexander Hamilton, a framer, as political crimes, crimes in violation of some public trust that would shake confidence that the occupant of the White House was no longer a trustworthy steward of our liberties. And it isn't a criminal standard; in part, an impeachment and a trial is not a criminal trial. The result is simply that the occupant of the White House loses power. He doesn't go to Siberia. He doesn't go to prison. He becomes an elder statesman like Richard Nixon who resigned rather than becoming impeached. So you don't have the standards of the criminal justice, that is the Constitution doesn't tolerate someone in the White House simply because they're not a criminal. That's too low a standard. The second thing to observe about the impeachment clause is that the typical rules of proof beyond a reasonable doubt don't apply either even if the president comes close to violating the spirit of the

law. It could be impeachable even if maybe in a criminal trial he couldn't be convicted. Now, the last thing to observe, it makes no sense when the Department of Justice has, for long years, said you cannot criminally prosecute a president for a crime while he's an occupant of the White House. And to have a criminal justice standard would mean the impeachment clause is meaningless because you can never prosecute the president and prove in a criminal case, guilt. So, putting those things aside even assuming that you're looking for criminality that's not prosecuted here because the president under the current Justice Department guidelines is immune. The conversation that the president himself revealed indicates two crimes. One, it is a felony to solicit something of value from a foreign government for the purpose of influencing the outcome of a political campaign. And the evidence and the inference, the circumstantial evidence is overwhelming. When you read the transcript, that President Trump was basically saying, if you do something for me of value to me personally, not to the United States Government, to me in my personal capacity, namely a candidate for the 2020 election campaign for president, mean that would consist of investigating a possible opponent, Joe Biden and his son, in exchange for that there will be two things for the government that I will do. I will, one, give you an invitation to the White House, and two, I will release 400 million dollars of military or diplomatic aid. But even without the so-called quid pro quo, that is the assistance in the 2020 campaign in exchange for a White House visit and this release of money, the solicitation without more, even if it's not successful, is a crime and it almost is impossible to read that transcript without understanding that the president was soliciting aid for the 2020 campaign, because he nowhere says, "I'm just concerned in general about corruption in Ukraine. We don't want to give aid to a country which is just going to waste it or squander it." The only persons mentioned as possibly complicit in corruption that deserve investigation are Joe Biden and his son. Anyone who knows the history of Ukraine, since its independence from the Soviet Union and the gas industry, knows that it's filled with perhaps tens of thousands if not millions of corrupt individuals. And Trump only singles out the Bidens amongst all others to be focused on. I mean, it's obvious . . .

Ralph Nader: Bruce, let's go to others like dragnet surveillance and others.

Bruce Fein: Well . . . yes, we . . . this is where it seems to me that the country is missing the forest for the trees. Remember impeachment is to enforce the Constitution as regards presidential action where we know the courts are going to be sidelined because of political question, doctrine or otherwise. And if you look at simply the clauses in the Constitution that Mr. Trump has violated and unfortunately, if not Mr. Trump, many, if not most of his predecessors have. The situation with Ukraine is really a flea. The elephants in the living room are one, he's fighting nine illegal unconstitutional wars never declared by Congress including in Yemen which you'll be discussing later. He has violated the Treaty Clause, which requires Senate ratification, if you will, of exit of a treaty as opposed to unilateral president engagement or disengagement of an executive agreement, something that . . . I believe that Mr. Obama did as well when the nuclear agreement with Iran wasn't treated as a treaty. He has violated the Appointments Clause by appointing individuals who have never been confirmed by the Senate to be his national security adviser, the second most important post in all of the United States Government. Half of the cabinet is serving who were never confirmed for their positions by the United States Senate. He is violating the

clause that requires that he take care that the laws be executed by simply refraining from enforcing laws that he doesn't like and not even having going through the notice and rulemaking process to change regulations. Indeed, not only is he not taking care that the laws be faithfully executed by these invocations of executive privilege, state secrets--far beyond anything that the courts have accepted. He's obstructing faithful execution of the laws including his refusal to answer any questions of Mr. Mueller, except those that related to his capacity as a candidate, not after he was in the White House. Now, I was involved in the Nixon impeachment, and one of the articles that was voted against Mr. Nixon was his defiance of a subpoena. Because the impeachment power becomes totally deflated if the prime target who has most of the information refuses to surrender documents or to testify. There's nothing in the Constitution that gives the president a privilege to resist testifying before Congress. Indeed, in our lifetimes, Ralph, we remember that Gerald Ford, then president, testified before the House Judiciary Committee on his pardon of Nixon when there was suspicion there was a quid pro quo. The world did not tumble. People did not stop talking to the president. So this blanket effort to stifle investigations is another violation of the cause that requires that he take care to execute not undermine the laws. His alterations . . .

Ralph Nader: Let's move to power of the purse and dragnet surveillance, spying.

Bruce Fein: Power of the purse, yeah. Yeah. The appropriations power, only Congress has the power to appropriate funds to spend. Indeed, this Constitution says that any revenue measure, that is a measure that's designed to get money into the treasury, must originate in the House. And we can see all these things Mr. Trump is doing--quotas, tariffs, whatever--China, Russia, European Union--our friends, Canada, Mexico; those decisions did not emanate in the House; they emanated out of the White House. He's also spent money for the wall that was not only refused, but was repeatedly refused by the Congress of the United States. And James Madison described the power of the purse as the most effective mechanism to prevent executive abuses in Federalist 62. And then we have surveillance; the Fourth Amendment is shattered. Under the Executive Order 10333, the president spies on Americans as foreigners, not pursuant to any federal statute. He simply claims that he has inherent Article 11 power to conduct surveillance, not even to ferret out crime, which is the purpose of the warrant requirement in the Fourth Amendment, but anything that he says is connected to national security. Ralph, that term, national security, is so elusive and so open-ended you could spy for any reason under the sun that's related to national security--balance-of-payments problems, whether or not you have exports going to this place or that place. And that means that he has limitless power to conduct dragnet surveillance against the American people. Unfortunately, we don't know about that because Congress does no oversight. We don't know what the NSA is doing under this executive order. It all remains in secret. But if we can try to make a deduction from its notice disclosures, we can imagine that they're intercepting and at least storing, if they don't have the capacity to interpret, virtually everything we say and do in the digital age.

Ralph Nader: Dragnet surveillance, spying . . . Bruce Fein, explain how this is a violation of the FISA law.

Bruce Fein: Yeah. The FISA statute, called the Foreign Intelligence Surveillance Act, it specifically says it is a crime, I underscore, a crime, for the government of the United States to surveil any American citizen unless authorized by statute. This executive order is not authorized by statute. All the spying done on Americans under the executive order is a crime! And those crimes came out in the tens of thousands in the aftermath of 9/11 with President Bush's terror surveillance programs and they continue today.

Ralph Nader: Tell me, what did Trump mean when he said, "Under the Constitution, I as president can do anything I want."

Bruce Fein: What he meant was that he now is an elected King, an elected monarch, that he is no longer subject to the law; he can invoke privilege. He can defy laws; he can defy court decisions, and Article II empowers him to rule as if he were a dictator, a Caesar. In my judgment, that simple statement alone, is subject to impeachment because you don't have to wait till the country has been destroyed, separation of powers has collapsed, until you react when it's too late. Somebody, a president who makes such an outrageous statement that "I am above the law I can do whatever I want" is not a trustworthy steward of our liberties and he's done something similar and said "I can go to war whenever . . . I could kill" he says, "ten million Afghans on my own in a week, but I'm generous right now so I'll refrain." He doesn't have any, we've never declared war against Afghanistan and Congress can't delegate the war-making power to the president, so making these statements by themselves is sufficiently menacing to the rule of law in our regime of Liberty. In my judgment, to say we're not waiting around now till the bomb drops, we know we have a sword of Damocles over our head, to mix the metaphors, and we're getting rid of someone now who is an untrustworthy steward of the Constitution. And I want to underscore Ralph, that doesn't mean that the election of 2016 becomes canceled. If the president is removed from office, Michael Pence, who if anything may be more conservative than Trump, would take the Oval Office. That is not a switch from republican to democratic control, so these claims that it's a coup d'état and a total repudiation of 2016 vote it is simply wrong.

Ralph Nader: What about lying? Of course, all presidents lie, but nobody has lied as often as Donald J Trump. *The Washington Post* and others have chronicled over 12,000 lies and serious false statements. Is that an impeachable offense under Alexander Hamilton's definition?

Bruce Fein: Well you know all these issues are relative matters of degree. You know it probably does reach that level. In the Watergate case, Article II of the Impeachment Articles of Nixon identified lying to the public as at least part of an overall effort to obstruct justice and to manipulate agencies for his political advantage. Here, because Mr. Trump has never been put under oath, you can't say he's committed perjury, but certainly statements he made that were clearly lies, if you will, with regard one . . . how many seven stories you got as to why he fired Mr. Comey? If they accumulate to such an extent that no longer can we expect truth out of the White House, it could be impeachable, but I say there's not a hard-and-fast line, because you're correct, all presidents lie on some occasions, but is it so central to our need to have full information so the American people can make an adequate and informed judgment at election to say this is no longer acceptable. Of

course one of the problems that we have Ralph, in all these situations is the Congress--that's the accuser in the House [and] the trier in the Senate, and in many instances the members of the House and the Senate are in *pari delicto* [in equal fault] with Trump.

Ralph Nader: We're gonna get to that.

Bruce Fein: They do the same thing in their political role as the president does so they

Ralph Nader: We'll, get to that, but before that I want to connect chronic lying with obstruction of justice. Spell out obstruction of justice, how serious it is, because people say what do you mean obstruction of justice--doesn't Donald Trump have a right to defend himself? Spell it out in terms of what it does to the whole enforcement process and what the Mueller report said about this.

Bruce Fein: Well first of all, certainly the president doesn't lose his constitutional rights if he's a target of the investigation. The president may invoke the Fifth Amendment privilege and remain silent, so we're not trying to say that he ends up with less rights than anyone else, but he's supposed to be under the rule of law. Obstruction of justice are efforts made to obstruct the truth-finding process of an investigation through invocation of privileges, firing investigators like Archibald Cox during Watergate, making misstatements, holding out, for example, the prospect of pardons for people, if they don't cooperate with law enforcement. The reason why obstruction is such an important crime to prosecute is because the heart of the rule of law is a truth-finding process that's neutral and even-handed; you can't have law without the ability to examine facts in an impartial way and so you're basically undermining the entire third branch of government, which is the judicial system and law enforcement when you accept obstruction of justice as an acceptable course of conduct in the White House. And that's why, in one respect, it was one of the counts of impeachment against both Mr. Clinton and Mr. Nixon.

Ralph Nader: What about the Mueller report? Ten obstructions of justice they documented?

Bruce Fein: I think we need again go back to the standard that's impeachment. It's true that under the existing policy you can't have a trial, which is what we customarily use to determine whether someone is guilty or innocent, since that can't happen with the presidents in the White House, but if you take the efforts which seem open and clear that the president is taking actions, for example openly saying, "I fired Comey because this Russia thing was hurting me"; those are clear examples of obstruction and presidents can err, you know to err is human to forgive is divine, but the critical element here is we don't have a president who says I overstepped my bounds, I did something wrong, which would ameliorate the nature of the criminality here, but when the president openly boasts, it says I'll do this again I'm above the law, that much makes it clear you're dealing with someone who if not contained, will utterly destroy the Constitution's checks and balances and we clearly will be back to King George the Third in the White House rather than a president.

Ralph Nader: We're talking to attorney Bruce Fein who is an appellate lawyer on international law issues and a scholar on constitutional law and has testified many times before the Congress.

Bruce, before we get to the Congress and what the House is doing, because I know our listeners are eager to see some of the granular characterizations of what's going on, there are 1.1 million attorneys in this country; there are thousands of law professors, over 200 law school deans. Collectively, what are they doing about this? Shouldn't the country rely on these first responders, these officers of the court?

Bruce Fein: Well they should, but unfortunately there's not a professional ethos that encourages such action. The legal community is largely silent. The idea is, well you don't want to criticize the president; the government might not return your phone call. Many of them vie to get into nice plush positions, and it's not limited just to the lawyers at this time, and I don't want to just single out one, but Ralph and I we know a very prominent professor at Yale Law School ended up totally flipping in favor of limitless executive power and war-making once he became legal adviser to Hillary Clinton, so it is a, what I would call, a professional pathology that the lawyers find it better to be part of the military-industrial complex to defend the status quo and the people who have all the money in the violence.

Ralph Nader: Well, there was a bright time, the American Bar Association had a panel of lawyers both conservative and liberal, in 2005-2006 and you were part of that and they drew up three white papers that they sent to President Bush and Vice President Cheney. Can you explain that?

Bruce Fein: Well yes, I mean I do think that was maybe the high-water mark, the last gasp of the legal community actually making a systemic, organized protest of these unconstitutional usurpations, but we've deteriorated a lot since 2006; these violations have become normalized if you will, and to some degree, I think it was quite a disaster that the things that were quite unprecedented under George W. Bush after 9/11, became normalized under President Obama.

Ralph Nader: The ABA panel under ABA president Mr. Greco, a Boston corporate attorney no less, basically said George W. Bush and Dick Cheney were engaging in three unconstitutional patterns of behavior, can you quickly spell those out?

Bruce Fein: Yes, they are 1) the detention without trial down in Guantanamo Bay, which basically is a life sentence even though you've never been accused of a crime, [2] the signing statements where presidents would sign legislation and say, in the line-item veto, 'I'm not going to execute the laws that I don't like even though I've signed them into law' and [3] the surveillance which is the terrorist surveillance program; without any warrants they're intercepting American international and even domestic calls in violation of the Fourth Amendment, even lying to the US Supreme Court about the magnitude of these violations and now we have basic silence out there--radio silence from the legal community and we have, I think that the Mandarin class [chuckle] is now acquiescing in a return to monarchy, which is what we have.

Ralph Nader: Trump is no fool; he's given the business community what it wants pushing aside regulations giving them a huge tax break, not enforcing the corporate-criminal laws and he's flattered the military and the police deliberately he once said that's his base if he gets in hot water.

So, let's go to the House of Representatives. The first question to ask is the people who are skeptics in the House and the Democratic Party say what's the point; if the House impeaches Trump the Senate under Mitch McConnell, dominated by Republicans, will acquit, and then Trump will brag that he wasn't engaged in all this wrongdoing because he was cleared by the Senate--your answer.

Bruce Fein: Well there are two parts to the answer. Number one the Senate's members swear to uphold the Constitution and their obligation is to discharge; they have the sole power of impeachment. Impeachment covers treason, bribery and other high crimes and misdemeanors. It doesn't say in article 1, the House should only go forward if the Senate will convict. They have independent duty to impeach if there are impeachable offenses. The second thing is that you don't know whether or not the sentiment in the Senate would stay static irrespective of the evidence. I think the Nixon case is quite telling on that score. In that situation you started out with only 19 percent of the American people contemplating the possibility of an impeachment and by the end of the seventh month investigation, it was overwhelming and the Senate was virtually 100% in favor of voting of conviction. Barry Goldwater then...

Ralph Nader: In the televised hearings, day after day, reaching millions of people, changed public opinion against Nixon, right?

Bruce Fein: Yes, hugely, hugely, exactly and so that just means that they've given up the futility of changing opinion. But the reason why you have politics is to change opinion in an enlightened way, not to just be an echo chamber. If you're an echo chamber you might as well have computers occupy the seats of the House, because you're not going to try to persuade anyone. We don't need the human beings. We can save on their salaries.

Ralph Nader: The second question Bruce, is Nancy Pelosi has often said "Let's wait for the courts to decide." The lawsuits that we filed in the courts against the Trump administration to find subpoenas and witness appearances, etcetera. What's your response?

Bruce Fein: Okay first of all, that's not what happened in Nixon's case. Nixon was independently charged for the defying a subpoena as an impeachable offense without going to court, so 1) the precedent is against it and 2) it's simply not practical. The United States Supreme Court will always give the president a hearing, just out of respect for a co-equal branch of government, and that means from the time you file a lawsuit by the time you get a Supreme Court opinion we've already got the 2020 presidential campaign and at that point people will say okay the election is the verdict on impeachment, why we're going forward? The judicial process is lead-footed, even at its best, and therefore it can never be a substitute from the obligation of the House itself to decide. Defy the subpoena--that itself is impeachable.

Ralph Nader: Okay, another objection is American people are worried about table-top issues, kitchen-table issues, livelihood issues--health insurance and wages--and other things, and they don't want the Congress be distracted and the media to be distracted by impeachment. What's your

answer to that? I mean the impeachment is not unrelated to the well-being of the American people practically every day as well as their freedom. What's your answer?

Bruce Fein: Well, a couple of things Ralph, first history doesn't bear out that argument; that is during Nixon's impeachment ordeal and Bill Clinton's, the government functioned. There were many landmark pieces of legislation that were enacted. The executive branch and Congress can chew gum and walk at the same time so it's simply not true, that experience suggests that impeachment gobbles up all the oxygen [or] that it immobilizes the Congress from any other exercise. The second observation is, if you don't have the rule of law, don't worry, all of your other so-called table-top issues become irrelevant. What happens when you have now a pure dictator? Whatever gains you had in the short run will be eliminated as soon as you have an opponent in the White House who says I can do whatever I want; I'm above the law; so what you have today you don't have tomorrow. Just revoke them unilaterally like Mr. Trump is doing in many respects on immigration and elsewhere, so your short-term gains will be completely elusive without the rule of law to accompany them.

Ralph Nader: Here's one that I've heard on Capitol Hill—the Ukraine travesty, the extortion, the dangling of aid if the Ukrainian Government doesn't investigate one of his prime opponents, Joe Biden, in the coming presidential election. Let's just go with that because we have transcripts and people understand that kind of underworld-type behavior by our president. Let's not go with all the others--the power of the purse, the war-making declaration, their surveillance, the obstruction of justice, the refusal to faithfully execute the laws. What's your strategic response to that?

Bruce Fein: That argument is very dangerous, because if you go only for the flea and you let the elephants in the living room go undisturbed and untouched, it normalizes all these other violations. It'll be said by any successor, well obviously what Trump did in these other areas, which are even more dangerous to our constitutional dispensation, weren't impeachable offenses because you didn't go down that route. So, it basically, by inaction, endorses their legality and it makes it virtually impossible in the future to go after a president who duplicates Trump's violations here. We got the argument well, you didn't impeach Trump for that, why are you impeaching me for it? So when you single out just one of a huge menu of violations you're then basically endorsing and giving the green light to the enormous violations that you're not prosecuting.

Ralph Nader: We didn't have the self-enrichment, the Emoluments Clause; quickly explain that.

Bruce Fein: Yes, well the Emoluments Clause was designed to prevent, you know, foreigners, in fact even local governments, from having excessive influence with the president by permitting him to accept gifts, unless Congress has consented. And the Emoluments Clause, we've never had a president like this before where he's basically running his business without any blind trust and we can see enormous instances where the president who prides himself on the art of the deal, clearly is attracting people to his businesses without an express quid pro quo, but expecting that there will be some kind of favorable action that he takes as president down the road because they're patronizing his businesses. And it's not quite treason, but it becomes close to that when Congress

hasn't authorized the acceptance of this money or remuneration, and of another terrible precedent that's being set, that again, if it goes addressed. Congress, in my judgment, should pass a criminal law saying you accept an emolument without congressional statute--it's a felony.

Ralph Nader: Yeah, I mean he's basically urging foreign governments to spend money in his hotels, even wanted to have the G7 come down to Mar-a-Lago and make more money for him at a meeting. I mean he's writing the articles of impeachment for Congress. Congress has that right, but he's brazenly, openly writing the articles of impeachment and actually he said on more than one occasion he hopes Congress will move to impeach him--daring at the Congress to do so. Let's put to rest this nonsense that a sitting president cannot be criminally indicted, which is based only on an opinion in the Justice Department, of some years standing, that has never been ratified or legitimized by the federal courts, not to mention the Supreme Court.

Bruce Fein: Well that's correct; the dilemma that we confront under the Constitution, Ralph is that the Department of Justice is the department that prosecutes and if it says unilaterally, we're not going to move forward ever against the president, how do you ever get a case, because Congress can't indict the president. The judicial branch can't; only the Department of Justice can and if the department says we're never going to prosecute the president, even though you're correct, it doesn't have the authoritative status of a court decision that comes through an adversarial relationship, it de facto does become the law because there's no way to challenge it.

Ralph Nader: Well, on October 7th, Federal District Judge Victor Marrero, in New York City, basically called it total nonsense. He said, "No president is above the law and presidents can be criminally charged while they're sitting in the White House." And that's the first move by the federal judiciary; we'll see what happens on appeal. Before I let you go, Bruce Fein, I have to ask what's going on here with the conservatives, the so-called conservatives, the outfits that you have associated with from time to time, such as the American Enterprise Institute and the Heritage Foundation and conservative columnists and conservative thinkers? How can they sleep at night knowing that Trump is overthrowing the constitutional order that they have stood for ideologically for centuries?

Bruce Fein: Well I don't think that the . . . what Trump is doing it would be nice if it was a huge break from background, but we've had presidents now for decades slowly encroaching more and more on separation of powers, whether republican or democrat, you know whether it's HW Bush, I don't need to get Congress to tell me I can throw Saddam Hussein out of Kuwait, the greater expansion of executive privilege, state secrets, the spying without surveillance, the illegal wars. President Clinton went to war, because he couldn't get a declaration from Congress. HW goes to war based upon these illegal delegations. Obama goes to Libya, into Syria, without declaration, so the reason . . . I'm not trying to justify any of this, but it's not just the conservatives, who are in my judgment derelict here. I think the entire political class now has conceded that we no longer have a constitutional dispensation. Both parties, if their guy is in the White House, say do whatever you want to do. Take these executive orders, you know. Obama once said, "I can't change immigration laws by executive order; need Congress to change it." Then he used executive orders. Trump

comes in and says I can't change the immigration orders or executive orders, but I'll do it unilaterally and we have even the candidates in 2020 saying "Oh yeah, if I'm president I'll use executive orders to undo the bad things I think Trump did." But there shouldn't be any executive orders [because] we have a legislative process, Ralph, that's Article 1. The whole idea of an executive order, where can you find that in Article 11? There are no such words that the president has power to issue executive orders. This is totally concocted arguments made up late in the game when we had become an empire. So, if it was only the conservatives, I'd sleep far better, though not easily, than the fact that I think it's penetrated the entire political culture.

Steve Skrovan: So, Bruce, you would, if you were in charge of this impeachment, you would lay out all of these articles, which sound like you would have get into the---

Bruce Fein: Yes, it would be one article, because he's violated his oath of office, Article 11, to uphold and defend the Constitution and--

Steve Skrovan: And you would say, "damn the politics," lay out all of this, many of which have been normalized under previous administrations, as you've said, and let the chips fall where they may.

Bruce Fein: Yes. I also think it important, however, to ensure that it doesn't look like - you can diminish the partisanship by saying we're going to . . . and I've got been up there for at least six years trying to get Congress--the House--to pass a resolution defining impeachable offenses prospectively so you can't say you're just making up these after the fact. I think it's important, going forward on impeachment, for the Congress to tell the president-- you do one, two, three, four, five--we're going to impeach you so you can't claim that all of this is just politics in what's good one day for one president is not good for the next president because you have a binding authoritative standard now in the House rules.

Ralph Nader: Bruce Fein, how can people reach you?

Bruce Fein: I have my Twitter account. I have . . . I'm on Facebook and have the email address a Bruce B-R-U-C-E at finepoints F-E-I-N-P-O-I-N-T-S dot com.

Ralph Nader: Thank you very much Bruce. The clarity of your presentation is I think one of the purposes of our radio show and we'll get questions from our listeners. Some of them may be critical and we'll try to answer them in future programs. Thank you very much Bruce Fein.

Bruce Fein: Okay, Thank You Ralph.

Steve Skrovan: We've been speaking with Constitutional scholar Bruce Fein We will link to his work at RalphNaderradiohour.com. When we come back, we're gonna talk to one of the foremost experts on Middle East foreign policy. Hassan El-Tayyab will be joining us, but first let's take a

short one-minute break and hear from our *Corporate Crime Reporter*, Russell Mokhiber. You're listening to the *Ralph Nader Radio Hour*. Back after this.

Russell Mokhiber: From the National Press Building in Washington, D.C, this is your *Corporate Crime Reporter* "Morning Minute" for Friday October 11, 2019; I'm Russell Mokhiber. The Southwest Airlines Pilots Association [SWAPA] has filed a lawsuit against the Boeing Company for deliberately misleading the organization and its pilots about the 737 MAX Aircraft. The lawsuit alleges that Southwest pilots agreed to fly the 737 MAX Aircraft based on Boeing's representations that it was airworthy and essentially the same as the time-tested 737 aircraft that its pilots had flown for years. "These representations were false", the union said. "Boeing's errors cost the lives of 346 people, damaged the critical bond between pilots and passengers and reduced opportunities for air travel across United States and around the world", the union said. "We have to be able to trust Boeing to safely disclose the information; we need to safely operate our aircraft," said Captain Jonathan Weaks, head of the Union. In the case of the 737 MAX that absolutely did not happen. For the *Corporate Crime Reporter*, I'm Russell Mokhiber.

Steve Skrovan: Thank You Russell. Welcome back. I'm Steve Skrovan along with David Feldman and Ralph. According to the Council on Foreign Relations "Global Conflict Tracker", 91,600 people have been killed in Yemen since 2015. 22.2 million are in need of assistance, presumably famine related and 2 million have been displaced as a consequence of the war. How can this be stopped? Here to give us those insights is our next guest, David?

David Feldman: Believe it or not, there are actually some good lobbyists. Hassan El-Tayyab is the lead lobbyist on Middle East policy for the Friends Committee on National Legislation [FCNL]. Previously he was co-director of the National Advocacy group, Just Foreign Policy [JFN], where he led their lobbying work to advance a more progressive foreign policy in the Middle East and Latin America. He played a major role in the successful passage of the War Powers Resolution to end US military aid to the Saudi-UAE coalition's war in Yemen. Welcome to the *Ralph Nader Radio Hour* Hassan El-Tayyab.

Hassan El-Tayyab: Thanks for having me.

Ralph Nader: Welcome indeed, Hassan. Before we get into the subject of the war in Yemeni, which the US is deeply involved in supporting the Saudi side, tell us briefly about the Friends Committee on legislation, which I think is one of the great civic groups in our country.

Hassan El-Tayyab: Yes so, the Friends Committee on National Legislation--we are a Quaker lobby in the public interest. We've been around on The Hill for about 76 years and basically, we don't believe in war. We think war is not the answer; we need to use negotiation and diplomacy. We've got about 50 employees and growing. I think we're the biggest peace lobby on The Hill; our office is right across from the Senate so we're in a, you know, a good spot to make outreach to congressional offices, and we've got a domestic and foreign policy team as well as thousands of

grassroots advocates all over the country. So we're out here trying to, you know, get constituents to meet with their members and make change.

Ralph Nader: And listeners, this is another example of a great and historic citizen group waging peace to try to prevent war, decade after decade, that gets no national media coverage with a few exceptions, and is not prominently on stations like NPR or PBS not to mention other radio and TV news outlets. Now Hassan, you got interested in the Yemen crisis, when you read an article in *In These Times*, a magazine and you say quote “Beyond the humanitarian catastrophe in a complex history of the Yemen War Shireen's description (he's the author) of Saudi Arabia's use of Al-Qaeda fighters and Sudanese child soldiers in their war against the Houthi Army really disturbed me.” end quote. Can you tell us about the parties in this complex war--invasions from outside Yemen--civil war inside, in a relatively brief way?

Hassan El-Tayyab: Yeah, thank you for that. Obviously, it's a really complex situation. I do encourage everyone to read Shireen Allah Demi's work. She's an amazing writer and scholar and activist on this subject, so I think we've got to go back to 2011. The Arab Spring happened, and the people of Yemen overthrew their 30-year-plus dictatorship and they deposed President Saleh. Saleh was allowed to live in Yemen and continue to operate and they raised up Hadi; he was the vice president then became the interim president as they moved to a more representative form of democracy. It was a national dialogue; there was talks about how we're going to, you know, change the directions conversation in this country. In 2015 though, the interim president did not leave; the Houthis in the north of Yemen were essentially being gerrymandered out of power. They rose up and they basically deposed Hadi and sent him running to Riyadh for support and thus started the Yemen's Civil War. So, Hadi went to Riyadh and talked to Saudi Arabia and they formed the Saudi-UAE led coalition. They brought in other partners and allies with us. It's essentially the Hadi government, the UAE [United Arab Emirates] and Saudi Arabia and they basically led up five going on six years siege of Yemen and they've cut off the flow of food, fuel, medicine and clean water and they've done air strikes trying to you know get the Houthis to surrender the territory they've captured in the north of Yemen particularly in Sanaa, which is the most populous area of Yemen and the US has been involved through logistical support, weapons sales, spare parts transfers--keeping these planes in the air and continue, you know, and the bombs just keep falling from Saudi warplanes and that's what I'm here to spread the word about and try to stop, hopefully.

Ralph Nader: And the bombs are falling on hospitals, on jails, on clinics, on schools, on innocent civilians and there's an embargo that has starvation impacts on many, many Yemeni children and adults. Why is Obama and why is Trump implicated in supporting this war?

Hassan El-Tayyab: Well yeah, so just briefly on the humanitarian suffering, I mean it's tremendous. The UN calls this the worst place in the world to be a child. A child dies every 12 minutes in Yemen unfortunately, a hundred thousand children under the age of five maybe more have already starved to death and died of hunger and disease; 14 million people on the brink of famine; 1.3 million cases of cholera, 10,000 new cases each week, all perpetuated by the de facto blockade by Saudi Arabia and the UAE. Now why are we involved, so it goes way back, I mean

our relationship with Saudi Arabia; you can trace it far; it was kind of cemented when FDR shook the hand of King Abdulaziz in 1945 in the Suez Canal and basically the arrangement was for security assurance by the US, we would get oil and that oil would be tied to the US dollar so this relationship has, you know, gone on ever since, so I would say part of this is just inertia looking at why we joined this war, I think it's kind of, you know, the timing is unfortunate; the Obama administration was negotiating the Iran Nuclear Deal and I think/I believe they were in a vulnerable position with that deal and I think they were throwing Saudi Arabia a bone, in a way, and giving them logistical support in their war against the Houthis to kind of get them to back off a little bit and not be so opposed to the Iran Nuclear Deal.

Ralph Nader: What are the Houthis?

Hassan El-Tayyab: Yeah, they are an indigenous tribe in Yemen. They are Shia; their religion is Shia in a Sunni-majority country, but I think it's important to note that they were an oppressed indigenous minority. They do practice a slightly different religion than Iran where they practice Zania Shia Islam and the Iranians practiced Twelver Shia Islam so there's a little bit of difference there but they are a Shia sect in Yemen.

Ralph Nader: Well, Bruce Fein would say the Congress has never declared war on Yemen so this is an unconstitutional military support of war against the Yemeni people. The Saudis would say Yemen is on our southern border; it's a security issue just like Mexico say would be on our southern border if it had a civil war and the Saudis have a prime-security interest and that's why they're intervening and they say that Iran is supplying the Houthis with weapons and support and they see Iran as a threat to their own security, the Saudi's, what's your response to that?

Hassan El-Tayyab: Yeah, so it's at first I think it's important to note that the Houthis explicitly reached out to Iran for support and said help us overthrow Sanaa and Iran was working on the nuclear deal with the Obama administration; they were trying to assist Assad for better or worse in Syria and they just didn't want to get involved and so the Houthis basically said, "Okay we're going to do it anyway." even though the Iran regime said, "Please don't do this." So, over time, you are absolutely right, they have gotten more involved and that's a result of a proxy war that's been going on and that there's been so much human suffering, so I think it's important to put it in context. As far as national security, one thing I do try and let people understand is that Saudi Arabia is indeed working with Al-Qaeda forces in training, arming and supplying them in their war against the Houthis. So, it's hard to see how this is in any way benefiting Saudi Arabia's national security, Iran's national security or the United States' national security.

Ralph Nader: Well, I thought Trump is opposed to Al-Qaeda, which we've seen is behind the 9/11 attacks in 2001 on the US.

Hassan El-Tayyab: Yes, there's a lot of hypocrisy to go around in the Yemen War and I think the United States and we've had this position of well 'the enemy of our enemy is our friend' and Saudi Arabia has pursued that policy in Yemen, unfortunately, and we are not trying to say here at FCNL-

-we're not condoning Houthi behavior; we're not condoning Iranian behavior, but the reason why we're focused on the US logistical support to Saudi Arabia and the UAE is because that's the one piece that we're responsible for and that's the piece that we can actually affect because Saudi Arabia is our ally and we are supplying them with weapons.

Ralph Nader: Let's get to that. We're talking to Hassan El-Tayyab, who works with the Friends Committee on National Legislation. He's one of their lead lobbyists on Congress for peace. You wrote a few days ago an article which is optimistic from the US foreign-policy point of view. The article was titled "With Grassroot Voices, Change Can Happen in Congress." What change has happened in Congress regarding the Yemeni War?

Hassan El-Tayyab: Yes, so there's been a lot of movement in Congress led by Senators like Bernie Sanders, Mike Lee, Chris Murphy and Representatives Ro Khanna and Mark Pocan, [Representative] Massie and [Representative] Jones [now deceased]. We've seen tremendous movement so they invoked the War Powers Resolution several times. In the 1973 War Powers Act, just for a little bit of context, was passed in response to the fact that Nixon was bombing Cambodia in secret. Congress voted in bipartisan/bicameral majorities to basically create a mechanism to enforce war powers and they could, within 15 legislative days, force a vote whether or not we should be engaged in hostilities That could mean either our troops on the ground or us supporting foreign forces into hostilities such as a Saudi warplane flying over Yemen. And so they forced the question over and over and over again until in December 13, 2018, they actually passed it for the first time in 45 years since the original passage of the 1973 War Powers Act. And they voted; it didn't get ratified into law. We didn't have enough time at that point in the calendar year to get a House version, but they were able to secure a bipartisan majority in the Senate and on that same day, I think it's significant to note, that UN Special Envoy to Yemen, Martin Griffiths, was able to secure a ceasefire in Yemen's largest port of Hudaydah so that is totally significant. Flash forward into April, the House and Senate both voted to end the Yemen war with SJ Res 7, and that was eventually vetoed by the Trump administration. We didn't have the votes to overturn that veto but soon after that we actually saw the UAE who's watching their reputation deteriorate in Washington, D.C. We saw them draw down their forces in Yemen so...

Ralph Nader: The UAE is what? Spell it out.

Hassan El-Tayyab: The United Arab Emirates and they're a coalition partner in Saudi Arabia's war in Yemen.

Ralph Nader: And they pulled out.

Hassan El-Tayyab: Not completely but they have drawn down their forces significantly especially in Hudaydah Province. They still have proxies but they are trying desperately to distance themselves from this war and that's a significant achievement. It weakens Saudi Arabia's position and makes peace and a negotiated ceasefire more likely.

Ralph Nader: Well, the attack on the Saudi oil refineries a few weeks ago was presumably from the Houthis who took credit for, but that probably brought even more pressure on Congress, wouldn't you say, in the second round, because this resolution that you helped get through had some republican involvement in the Senate and the House so is it possible that they could override a Trump veto in the coming weeks or months?

Hassan El-Tayyab: Well, so the fight has kind of moved into the NDAA the National Defense Authorization Act; this is an annual defense policy bill. There have been several provisions attached to that, which would do a similar thing. It was introduced by Representatives Khanna, Smith, Schiff and Jayapal and that would basically do exactly what the Yemen War Powers Resolution would do, which is cut off logistical Aid the coalition. There's the Malinowski Amendment, which would also cut off arms sales, so we're really, you know, watching those two House provisions that passed and trying to get them to stay in the NDAA [National Defense Authorization Act] through joint conference negotiations happening with the Senate and that's going on now, so in essence, we could overturn the Yemen War Powers veto, by, you know, attaching these provisions to the NDAA in this must-pass bill. [It would] be very difficult for the president to veto an entire defense policy bill like an annual spending bill just for this one provision or two provisions.

Ralph Nader: Well there are people as you know associated with the Quakers and the Friends Committee on National Legislation and Unitarians and other peace groups around the country who are supporting your efforts to end our involvement in the Civil War and external war in Yemen, and to bring a peace treaty to bear. We're out of time, Hassan El-Tayyab. Can you tell our listeners how they can reach you and get more information about this situation because their tax dollars, among other things, and also the concern for the huge humanitarian crisis in Yemen. The UN has called it the greatest humanitarian crisis in the world today. Yemen is a country of about 27, 28 million people. How can they reach you?

Hassan El-Tayyab: Yeah, absolutely. Folks can go to fcn.org and they can contact us through that and feel free to follow me on Twitter [@Hassaneltayyab](https://twitter.com/Hassaneltayyab) and as far as what people can do, they need to reach out to their legislators. Their rep and their two senators need to hear from you and let them know that you don't want the US to be participating in the Yemen War any longer. Say, end our support for this war through the NDAA and do it as soon as you can.

Ralph Nader: And spell out the website slowly and also spell your name.

Hassan El-Tayyab: Yeah, so F-C-N-L dot org and my name is Hassan H-A-S-S-A-N last name E-L dash T-A-Y-Y-A-B.

Ralph Nader: And your ancestral home is Jordan. You came over as a child or were you born in the US?

Hassan El-Tayyab: Yeah, so I am Jordanian, Italian, and Finnish. I was born here, but my dad came from Jordan. We come from a long line of nomadic Bedouins actually.

Ralph Nader: Well, thank you very much Hassan El-Tayyab for your work. And thank the Friends Committee on National Legislation. I don't think there are more in 250 thousand Quakers in this country and what an impact they've had on our country. We can forgive them for giving us Richard Nixon who was a Quaker and a warmonger [lots of laughter], but people listening to this program should learn more about how a small number of dedicated people for decades and decades have fought the good fight against wars. Thank you very much, Hassan.

Hassan El-Tayyab: Ralph, we believe the spirit's in everybody.

Ralph Nader: Thank you again.

Hassan El-Tayyab: You got it. Take care.

Steve Skrovan: We've been speaking with Middle East policy expert Hassan El-Tayyab. We will link to his work at RalphNaderradiohour.com. I want to thank both our guests again, Bruce Fein and Hassan El-Tayyab. 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. The 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 a *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: Ralph has got two new books, the fable, *How the Rats Re-Formed the Congress*; to acquire a copy of that go to Ratsreformcongress.org and *To the Ramparts: How Bush and Obama Paved the Way for the Trump Presidency and Why it isn't too late to Reverse Course*. We will link to that also.

David Feldman: Join us next week on the *Ralph Nader Radio Hour* when we welcome a member of "The Squad", Representative Rashida Tlaib. Thank You Ralph.

Ralph Nader: Thank you everybody. In the National Tort Law Education Day on October 5th there was a great success. David Feldman was there and many others--students and all kinds of people coming to learn how important a tool the law of torts can be and has been in the area of wrongful injury. You can look up more information about it.