

RALPH NADER RADIO HOUR EP 418 TRANSCRIPT

Tom Morello: I'm Tom Morello and you're listening to the *Ralph Nader Radio Hour*.

[Music] "Stand up, Rise up"... you've been sitting way too long.

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

David Feldman: Hello, Steve.

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

Ralph Nader: Hello, everybody.

Steve Skrovan: Today we're going to revisit Boeing's blighted 737 MAX. It's been one year since the FAA recertified the MAX. The MAX, of course, needed to be recertified after two of the planes were essentially hijacked by a software system called MCAS that took control from the pilots and crashed the planes. So is the MAX safe to fly now? Boeing and the airlines and the FAA say, "Absolutely." They say, "Hey, we fixed the sensors. And this time we're not going to keep it a secret from the pilots that the MCAS software system actually exists. After all, the only problems with the MAX were the MCAS system and the untrained pilots." They contend that the recertification process was the most comprehensive in history. They say, "Sure, you might notice some malfunctions on some 737 MAXs, but that happens with every plane. Don't get hysterical." So does the data back them up?

Our first guest today, former Boeing manager and current Boeing whistleblower, Ed Pierson, says, "Absolutely not." He has published a new report, *Boeing 737 MAX – How is it Really Going?* That report uses FAA data to paint a troubling picture of current problems with the Boeing 737 MAX that includes reports of 43 malfunctions and failures aboard the planes, including six flights where US pilots declared emergencies. He outlines how these things happen because Boeing prioritizes profit and production speed over quality control and safety. After that, we'll welcome friend of the show and international law expert, Bruce Fein, for a segment we're calling "The Bruce Fein News Brief". Today, Bruce will help us connect the dots between the current conflict in Ukraine, US state secrets, America's 10-year long unconstitutional war in Laos, the 80 million tons of unexploded munitions we left behind there, and Article 5 of the NATO treaty. As always, somewhere in the middle we'll check in with our corporate crime reporter Russell Mokhiber, but first, let's hear from the Boeing manager who, despite all the assurances from the powers that be, says that he will not let his family fly on the 737 MAX. David?

David Feldman: Ed Pierson is a graduate of the US Naval Academy and Navy Flight School and served in the Navy for 30 years. Mr. Pierson worked for Boeing from 2008 to 2018. He was a production manager in the 737 Program, and in 2019 he testified before Congress as a whistleblower. Throughout his career, he has served as a volunteer and chair of safety committees. Welcome to the *Ralph Nader Radio Hour*, Ed Pierson.

Ed Pierson: Well, hello, and thank you very much for inviting me to join you today.

Ralph Nader: Well, we're very pleased to have you. I remember that you testified in detail before the House Transportation Committee on December 11, 2019, pointing out one issue after another that the Boeing Company and FAA have neglected to address relating to the 737 MAXs, which are up in the air again, over 200 of them, and which are now under an accelerated production at the Renton plant where you were one of the managers in the State of Washington. In your testimony before the House Transportation Committee, it was in December of 2019 . . . and just to get the timescale, the Indonesian crash of the 737 MAX was in late October of 2018. The Ethiopian crash was just a few months later of the 737 MAX on March 10, 2019. Three hundred and forty-six people died in those two crashes, and one Indonesian diver died trying to retrieve parts of the crashed plane in the Java Sea. In between that, you retired from Boeing. What date did you retire from Boeing?

Ed Pierson: I retired at the beginning of August of 2018.

Ralph Nader: All right. So you had been very troubled about the production lapses, the accelerated pace, the fatigue of the workers, and neglecting various internal reports. So, you take us right back to the plant where the 737 MAXs were manufactured, where the mass of the media attention and congressional attention, the FAA attention after these crashes focused on the planes and on the software system. So let's go back to where the planes were produced and address the concerns that you had.

Ed Pierson: Right. Well, back then in 2018 when those planes were being produced, I actually spoke with the general manager a couple of times and wrote him. And my concerns were that there were widespread issues going on in the factory. All those problems that you described, Ralph, with the backlog of unfinished airplanes, really horrific supply chain issues; we had shortage of skilled staff, workers were being asked to work ridiculously long hours, all of our metrics, our health metrics in the factory were at record-low points and trending in the wrong direction. And there was just a lot of evidence of warning flags. All the information was there to say that the factory was dangerously unstable. As an airplane is built, there are situations where, if there is a problem with the airplane, there's a write-up that is written and then there is supposed to be a team of people helping to fix it. Well, things were going so fast that people were losing track of stuff. And there was legally required functional testing that was required to be performed and it was being done in a haphazard manner. It was certainly not being done in accordance with the production plan that was approved by the FAA. So all those concerns, and this is what I brought to Congress, is that it was a lot more concerns than just the software. Obviously the software is getting all the attention because it was covered up and the pilot training was also not there. But my point all along has been that there is evidence of production quality issues, and that's been my concern since day one. And I've always felt that way and in my reports I showed that production, in fact, did play a role in these accidents or these crashes.

Ralph Nader: Well, you have a remarkable record of putting out reports and letters. You have first written letters right after you retired to Boeing officials all the way up to the CEO, Muilenburg, and then you wrote to the board of directors which was headed at that time by Calhoun, who is now the CEO of Boeing. And not getting adequate response after you went up the chain of command as a retiree, you went to the FAA, you went to the National Transportation Safety Board, you communicated with congressional committee and they had you testify in

December of 2019. So you've touched all the bases and you've written three reports on the MAX crashes, their investigation, recertification and current incidents. Now, most people don't know and they're flying the 737 MAX in the US and around the world--what they don't know is that there are other problems that were not publicized. And of course you went into the production deficiency problems and the electrical circuit problems but there's also the generic problem of aerodynamic instability. Because in order to rush the 737 MAX to production to cope with the Airbus competitor, they had to mount larger engines on an old fuselage design, and that created a potential stall problem, which Boeing recognized and tried to deal with a software called the MCAS system.

So let's back up here and start with the aerodynamic problem, because the engines on the 737 are exactly the same size and exactly the same manufacturer as on the Airbus, but the Airbus had a different kind of fuselage and they didn't have the mismatch. So weren't you concerned about the aerodynamic issue to begin with, before we get into the substance of your reports?

Ed Pierson: Ralph, I really can't . . . I'm not qualified to speak about the aerodynamic issues associated with the plane. I think that's been really well-discussed by a lot of people a lot smarter than me on aerospace. You bring up a great point that I just want to mention here if I could, and that is that just like the MCAS system was not shared with the pilots and the customers, inside the factory, we had no specialized testing. I never heard the word MCAS mentioned. So when we did testing of the flight control system in the factory, we checked the control surfaces and we had electrical checks and continuity checks and things like that. Not once did I ever hear anybody ever mention the word MCAS. And so, it wasn't just that our customers and the pilots were not aware of it, our own people apparently were not aware of it. Again, it was never ever mentioned. So, I just want to make a point of that.

Ralph Nader: This is really astounding, the way all these groups you wrote to, some of them were polite and responded, others didn't respond – the government, the Congress, and Boeing. It was a very frustrating time for you because you really laid out the facts from your experience and it was a time when most people were not paying attention because the 737 MAXs were grounded. Well, they've been ungrounded for over a year and there's a hotline that NASA has developed to receive pilot concerns as they fly these planes up and down and to protect the pilot's identity so the pilot is encouraged to further report these defects. Could you tell our listeners a little bit about the NASA data and whether it receives similar complaints from pilots on foreign airlines or is it just US airlines?

Ed Pierson: Yeah. The NASA system is called the Aviation Safety Reporting System and as you mentioned, Ralph, it's actually an anonymous system, so it's designed to encourage reporting. And I actually haven't seen any reports from any other countries in the system. But it always makes you wonder if a pilot feels like they have to anonymously report something that is safety related; that always makes you wonder like what's going on in that organization that causes that pilot . . . because of course the airlines are telling us the airplanes are perfectly safe. Boeing is saying the plane is safe. And so for pilots to not use the legally required reporting system, which is the FAA's Service Difficulty Reporting System that's under Title 14, and it requires US aircraft certificate holders to submit these reports if certain systems are affected in an airplane, and it's very concerning when you have a bunch of US pilots feeling that they have to anonymously submit reports.

One of them just came out two days ago. The NASA system is unfortunately lags about three months behind. And there was a report that came out yesterday. The incident actually occurred in December of 2021, so several months ago, and it was scarily similar to the accident flights. The pilots were fumbling around for checklists. These are US pilots that went through recent training. They were getting indications on their flight control system that was showing instrumentation failures and instrumentation. They struggled to find the checklist. They actually had controllability issues. And the first officer reported that he was just thankful that they had such a short distance to go because it occurred on approach. And this is not an isolated situation but this situation . . . and if you like, I can kind of just give you a quick overview of what I found in the data. Is that okay?

Ralph Nader: Yeah, go ahead. Listeners, these are the defects, deficiencies, close calls involving the flying 737 MAXs since they were ungrounded by the FAA over a year ago. So we're talking recent events here affecting the deficiencies of the 737 MAX. Go ahead.

Ed Pierson: First of all, I never even heard of the Service Difficulty Reporting System. It sounds like some sort of customer complaint system and I actually just got wind of it when talking with a member of Congress. And then I found and I looked into the system and I was quite surprised to see reports in there about the MAX since the plane has been ungrounded, as you said. And I looked at that system and then I looked at the anonymous reporting system, the NASA system, and I combined them together and there's over 40 reports of in-flight malfunctions that occurred on MAX airplanes since the plane has been ungrounded and put back in service in the US. In fact, those 40-plus reports actually occurred in about a 10-month period of time because the MAX was grounded again in April for about a month and a half. So the reports, the 42 . . . people always ask, well, is that statistically relevant and how does that compare to other planes, and I just want to kind of put some color commentary around it. First of all, there's no real way to compare these. This is not an apples to apples comparison. There's been no other plane in modern history that's had two fatal crashes on brand new planes within a couple of months apart, certainly none that have had a 20-month, almost two-year recertification and as you mentioned, as Administrator Dixon said was the most comprehensive, most scrutinized transport airplane in history. So when you look at this and you think, okay, how does this match up? Those 42, 40-plus incidents, occurred on approximately 170 airplanes or 25%. So in the US, when I did this report, which was at the end of the year, this past year in 2021, I looked at it and those reports reflect 25% of the airplanes. So put in a different way, 25% of the airplanes in the US alone already had to make a legally reportable report on an in-flight malfunction. I didn't even look at the stuff on the ground. I just wanted to look at the stuff from the air. But the stuff on the ground wasn't necessarily pretty either. And what's really disturbing about those reports is that more than half of them had to do with the flight control system. And as you know, the flight control system was the primary focus of the entire recertification effort. And as Steve mentioned in the beginning, on six of those flights, US pilots declared emergencies. I don't know about you but I haven't heard a peep out of this from any reporter or anybody in the news about this. And I looked at the data. Actually I looked at the data just the other night and even since I've written my report, at least three or four other incidents have occurred.

Ralph Nader: These are just US pilots reporting, not foreign pilots around the world.

Ed Pierson: Yes, that's right. In fact, at the time, there was a little more than 300 airplanes operating outside the US. And if you just take the same rate, the 25% rate and you apply it to the

300, that's another 80 incidents. And so you add those 80 to the 40 in the US, and that's 120. In other words, there's an in-flight malfunction occurring, on average, every three days across the globe. And that's assuming that they have the same rate that we have in the US. You can make the case that they probably have a more significant rate because they're so far away from the United States and from tech support, et cetera. So the fact that people don't know about this is just astonishing to me. I've really racked my brain, like how come I'm having to push this information out there? The FAA should be doing this. This is their job

Ralph Nader: When the pilots declare an emergency, how bad is it? What does that mean? You say that six of these flights, US pilots declared emergencies.

Ed Pierson: When they declare emergency, they need to get special handling from air traffic control. It's basically telling air traffic control and everybody else on the radio, we need you to get out of our way and we need immediate assistance right now. There's a serious emergency occurring. On some of these flights, by the way, I'm glad you brought that up, Ralph. On some of these flights, it happened so quickly, right after takeoff. They had to immediately turn around and land. They didn't even have time to declare an emergency. And again, this is just in the US. Overseas, there's commercial reporting systems out there like the aviation record, I think it's called. There's commercial systems out there that you can go and you can see there's evidence of foreign pilots having difficulties as well. So this is very concerning. And of course, the FAA administrator, before he ungrounded the planes, he kind of caveated . . . I said this in my report . . . he kind of caveated everything and said, "Even though this is the most heavily scrutinized and I'm going to fly my family on it," and all that. What he said was this doesn't mean that there's not going to be an occasion when there's going to be a situation where a MAX airplane is going to have to return to base or divert, because those things kind of happen. He certainly made it sound like it was a relatively rare event, certainly not 42 in the first year.

And I have to ask you and your listeners, if this is acceptable in the first year, what are we going to accept when the airplane is 5 years old, 10 years old, 15-plus years old, right? At what point does the aviation authority say, okay, that's enough; we're going to step in. I challenge people to read those reports and I think they'll see that these pilots are dealing with issues that they shouldn't have to deal with, and none of them have to do with MCAS software. That's my whole point.

Ralph Nader: Well, I have a flurry of questions provoked by your statements. And listeners, we'll tell you how to get Ed Pierson's reports later in the program. Number one, these pilots declaring emergencies and others, aren't the unions upset here? They rose up and criticized the Boeing Company after the 737 MAX crashes. Are the pilot unions taking up the cause of the pilots here?

Ed Pierson: Ralph, I actually think that that's a great question, but my short answer is I think that a lot of them are not aware of this themselves. Again, you have to go looking for this information. I don't think these pilots are getting this information as part of their daily briefings and it's certainly not coming out from Boeing or the FAA. And so they have to go look for it in these obscured government databases.

Ralph Nader: Now, isn't the NASA database available to the public?

Ed Pierson: Both of these databases are available to the public. The NASA database, as crazy as it sounds, even after two fatal crashes and all this attention on the MAX, they don't even have a pull-down selection on their NASA system for the 737 MAX airplanes. That's not even available so you have to . . . this is one of the reasons it took me such a long time to crack the code on this because you need to put it in a special query, like "percent sign, 737, space", just crazy query that you have to put in to get the results out of that system.

Ralph Nader: On your website, do you inform people how to pursue that trail so they can look at the anonymous pilot reports to NASA?

Ed Pierson: Yes. On my homepage there's a copy of the report. There's also a copy of the spreadsheet that went along with the report. And in the spreadsheet, there's the search query instructions with the link to these government sites.

Ralph Nader: All right. We've been talking with Ed Pierson who was one of the managers at the Renton plant that manufactured the 737 MAXs. He's been reporting as a volunteer retiree of Boeing again and again. He's put out three reports. Ed, give them a way that they can access your materials. And if you don't catch it on this round, listeners, we'll repeat it before the end of the program.

Ed Pierson: Yeah. It's on the website. It's edpierson.com. It's pretty straightforward.

Ralph Nader: That's P-I-E-R-S-O-N. [Edpierson.com](http://edpierson.com). Now, a lot of people don't know that after the FAA ungrounded the 737 MAX fleet, about five months later, that is last year, Boeing suddenly recommended to the FAA that these planes be grounded. Now, why did they do that?

Ed Pierson: Ralph, this is an incredible turn of events. I mean, it was stunning. After all this attention, after all this time, after all this recertification and all the promises of thoroughness and transparency and everything else, the FAA received a phone call from Boeing in April of 2021 and said, "Hey, we're telling you we need to ground these planes again." And of course it caught the FAA off-guard, like, "Why?" And Boeing said that it was because it was production related, electrical bonding and grounding issue. And over the course of a month or two, they struggled to get the scope of this thing. It grew from just being one standby power unit behind the first officer seat to the overhead panel and also the main instrument panel on the flight station. So this electrical problem that CEO Calhoun completely downplayed at the financial call . . . the financial call occurred right around that timeframe and he was asked about it and he really downplayed this. He made it sound like it was a very small problem and it was something that was going to be handled quickly. And again, they didn't even have an idea how to fix it. It took a month before they got a plan. But my point in this was this was by no means the first time that there were electrical problems with this airplane. The production records and even in my testimony and the other reports that I had written, I pointed out that these planes had electrical issues. And there was electrical installation and test issues, serious electrical installation and test issues in the factory when these and other planes were being built. And so, for them to not have caught this, it really just kind of underscores the fragility . . . that's a word that somebody said that I thought was accurate of the FAA's recertification. How could they have missed something like this, which really kind of angers me and I feel like this is an ongoing concealment of the truth is that these problems pre-existed the building of both planes. And there's plenty of evidence in records that these kinds of issues were happening and people were having difficulty

with our electrical system. First of all, we had a shortage of people that were qualified to do electrical work and when we got backlogged in the factory, these individuals were stretched out working ridiculous hours. Many of them didn't have adequate supervision and they were fatigued. And fatigued people make mistakes. I know this from my military experience and in aviation.

So it's just stunning. It was a stunning turnaround. It should have been like top news. I don't know what else was going on at the time but just imagine that Boeing . . . and supposedly what happened is the plane rolled out of the factory and they had difficulty starting the plane. That's a pretty bad problem, right? Plane coming out of the factory and you can't start it. And so, this was a really scary event. And again, we had issues in the factory. I remember issues where people were reporting issues with electrical testing, bonding and grounding issues, et cetera. And as I mentioned in my January 21 report, both airplanes, both the ET302 and the JT610 airplanes had electrical problems and it was buried deep in these reports. But in my report, I referenced the page and paragraph, and I've always felt, and I showed it in this report, that these defects occurred. And people don't know about it. All they hear about is MCAS and pilot training.

Ralph Nader: Well, they're going to know about it pretty soon. I think the media has got to do another round here because you point out that the emphasis was on the software, the MCAS, but that was triggered in the wrong way by a sensor on the Boeing 737 MAX that gave a wrong signal, what they call the angle of attack sensor, giving the wrong signal to the software, which led to a string of events and the crashes. And that sensor relates to the electrical problems that you pointed out. Isn't that correct?

Ed Pierson: Right. The angle of attack sensor provides information basically to the flight control system, the autopilot and the other systems. And that sensor is dependent on stable electrical power. And there's lots of electronics here, too. If you've done work with electronics, you know how easy . . . if you have electrical issues, how they can fry electronics, and there's surface that could be damaged, et cetera. As an example, and I don't want to get into too much detail; you can read my report. But in the case of the Lion airplane, much has been said because if you pay close attention, you'll hear people say that the plane, the day before the crash, they replaced the sensor out, right? Again, this is a two-month old plane, so first question, why is a two-month-old plane having all these problems in the weeks before its crash? It shouldn't happen. It's a brand new plane. But they decided to remove the sensor and they replaced it with a refurbished sensor. And then the next flight, they almost crashed. And then on the next flight, they did crash.

Ralph Nader: This is Indonesian airline.

Ed Pierson: That's right. This is Lion Air. And they never recovered those sensors that were embedded in the sea floor, I imagine, destroyed. But they still have that sensor that was the original Boeing-installed sensor that they had removed.

Ralph Nader: Let's ask some obvious questions probably occurring to our listeners. You really went through the chain of command. I mean, you're reflecting your military experience. You went to officials and managers at the Boeing Company, then you went up to the CEO, then you went to board of directors, then you went to the FAA, then you went to the Congress. Two questions. Why didn't you go to the media faster? And the second is why didn't you go to FlyersRights headed by Paul Hudson who lost his daughter in the Pan Am crash over 30 years

ago in Scotland and would have I think been very receptive at an earlier time to your disclosures? You just felt that you had to go through official sources?

Ed Pierson: No. Actually, Ralph, my driving factor was I tried to . . . I wanted to do it as fast as possible. And I first went to the Boeing leadership, as you mentioned. I went to the CEO, I had several communications with the general counsel of the company and I communicated with the board of directors, and of course they never responded. So my thought was, look, I know that there's production problems in the factory. I just finished working there and I know that those planes were pumping out 50-plus a month. And so, I was trying to get Boeing leadership to act. I was pleading with them and I offered to fly to Chicago and I offered to help them in any way I could to go out and investigate the factory, to involve the international investigators so they could see right away. And that was ignored. And so then I went to the next fastest source I thought would be the NTSB because they were leading the investigation. So I tried to get the NTSB to go out and investigate and it took me three or four months just constantly communicating with them and getting my attorneys to write them. And at the same time, I'm like, okay, now I got to talk to the FAA. So I started talking to the FAA. I'm trying to get them because here's what I'm thinking is I could go to a reporter and have them do something. But as soon as I do that, they're going to deny everything. Everything is going to be denied like they have been denying. And then it's I'm stuck. So I wanted to do the channels through the people that are responsible for this, the people who have the authority and the resources that could turn around and say, "Stop." And that was my urgency. And in hindsight I probably should have done both. I probably should have tried to do it in a parallel manner, but I was urgently trying to get them to act. And after the second crash, of course I continued to do that and that's when I decided . . . that's when Congress contacted me because they had heard I'd been doing my best to try to get people to do their jobs.

Ralph Nader: Right, In the summer of last year, after the sweetheart settlement by the Justice Department just before Trump left office in January of 2021, with Boeing, you went to the FBI in Chicago in the summer of last year, did you not?

Ed Pierson: That's right. I did. Let me back up and explain what happened without going into some very specifics. But I was communicating with a former colleague of mine who worked at Boeing with me in the factory. And this individual shared information with me that was incredibly disturbing. And what he told me I immediately knew hadn't come out in the public. And it also sounded to me like a deliberate concealment and a withholding of information, a cover-up. And so, I immediately contacted the authorities. I contacted Congress. I contacted the Department of Justice. I wrote to Attorney General Merrick Garland a couple times. I tried to call . . . you can't get a hold of anybody in the federal government, it seems like. I tried to go that route. I went to the FBI app center. They contacted me to Seattle and then eventually to Chicago. And when I talked to the Chicago office, finally an agent called me and I said, look, I've got a lot of information here I need to share with you. And I can tell you that this is important information, that this involves the safety of these airplanes.

This was on August 3rd this summer. And I explained to the individual, I gave him my background because I didn't want them to think I was just some crazy person calling off the street. And I provided him this information. He said he was going to talk to his colleagues because they had been involved in the criminal investigation of the company. And he went back and I didn't hear anything back from him. A week or two went by. I called him again and asked

what's going on? He said, hey, I've taken this information; we're dividing it and conquer; we're going to divide it amongst our agencies here and we're going to pursue this and look into it. And I said, look, if for some reason you guys decide not to investigate this, which I said it's unbelievable if you don't, but if for some reason some decision that the FBI decides not to investigate, please let me know and I'm going to go public with this information because this is urgent safety information the public needs to hear.

And so I kind of got promised that, yeah, we'll certainly let you know if that happens. Well, it went another couple of weeks and then I got contacted by another Boeing employee who worked as a senior mechanic in the factory. And this individual provided some details . . . he was an individual who worked very closely every day with these aircraft systems and stuff and he described testing and things like that that were not being done or not being done properly, et cetera. And these are federal aviation regulated type testing. And so, I contacted the FBI again to share it . . . to contact . . . and both these individuals were cooperating witnesses. They both were willing to talk to the FBI, and the Department of Justice, and the Department of Transportation Inspector General's Office, and Congress. But you know what? FBI never contacted them, neither did the Department of Justice or Department of Transportation Inspector General's [office].

Ralph Nader: Well, to bring the listeners up to date, there's something really murky going on in the Biden Justice Department on this Boeing 737 situation, because the families of the victims filed an intervention. Under federal law, victims are allowed to file intervention when the Justice Department is engaged in criminal proceedings. And this is very recent. And they asked, in effect, to reopen the investigation. And Merrick Garland was on the phone with the families and he listened to it and he was very polite. And then in a short time afterwards, the Justice Department announced that they were rejecting the petition by the families and there may be an appeal from that. So here we go from the Trump Justice Department to the Biden Justice Department, there's something very, very murky going on there. And if the FBI is sending the information that you and others have given them up the line of command, Merrick Garland has got to be asked about this by the chairman of the Senate Judiciary Committee and the House Judiciary Committee, and there ought to be an investigation.

There are several lawsuits by the families against Boeing, of course, underway, but it's the criminal lawsuits and the criminal indictments and lawsuits that Boeing is really afraid of because they can always pay out to the families and it's insurable and deductible and it's just a business expense. What they really worry about is being prosecuted and sent to jail. And the Justice Department is extremely secretive here. They don't explain their decisions at all. And it's important that people like you continue to persist and try to get another round of congressional investigation. Before I turn this over to Steve and David, let me ask you what is on the minds of all the listeners. Would you ever fly the 737 MAX, you and your family?

Ed Pierson: No. I have no intentions of flying the MAX and I've told my family and friends that. And it pains me to say this, Ralph, because I actually want Boeing to be successful. I'm proud to have worked for such a great company. And most of the people I worked with were just amazing employees and they did everything they could to do the right job. It's just when you get individual leaders in key positions that have their priorities out of whack, it pollutes the whole organization, and so that's where I have great issue. I want the company to be successful but right

now, I believe the airplane is unsafe. I'm confident in saying that based on my personal experience and the data that we're seeing now in the service of the airplane.

Ralph Nader: The next question is give the listeners an idea how many of these planes are up in the air now, how many are contracted to be built, and are they all going to have the same problem? Give them numbers.

Ed Pierson: Ralph, I'm ballparking; there's over 500 airplanes out there in the world. Right now there's a couple hundred they still haven't gotten rid of that they're going to try to sell, and they're producing airplanes. And what's really scar is Reuters just announced the other day that the company is planning to double production by the end of 2023.

Ralph Nader: How many orders do they have on-hand?

Ed Pierson: They have thousands. I don't have the exact numbers.

Ralph Nader: This is another way, listeners, of saying you're going to have problems avoiding the 737 MAX because there are going to be so many of them, unless of course, heaven forbid, there's another crash and they ground them. But advise our listeners, if they're in LAX or they're in Newark or they're in Miami and they're flying to another destination, what's the best way for them to avoid flying a 737 MAX? Can they ask the airline or the reservation beforehand so they don't. .

Ed Pierson: Yes. My daughter asked this question two days ago, Ralph. If the airline that you're flying lists the plane that you're flying--if it says 737-8 or 737-9--those are MAX airplanes. A lot of people get confused because the bigger numbers, people assume, are the newer planes, like the 737-800 or the 737-700. Those are actually the older version of what we call the next-generation plane. But the MAX airplane designation is 737-8 or 737-9. And they should ask, if it's not on their ticket. If they haven't purchased their ticket, they can call and talk to their customer service rep and ask the question. And unfortunately, you can get to the airport and all of a sudden you get your gate switched and you don't even know they swapped planes out. So there are times you don't even know that you could have been booked on one plane and then moved to another.

Ralph Nader: You can ask the person what equipment before you go on. You can ask the person behind the desk there.

Ed Pierson: Right.

Ralph Nader: Are they dropping the name MAX?

Ed Pierson: I don't know. I haven't heard many people mention the word MAX in airports. I've had family fly in and out but I haven't heard that. But I think, Ralph, I got to step back here for a second because there's a part of the US government that is completely absent in this thing, and that's the Department of Transportation. The Department of Transportation oversees the FAA and Secretary Buttigieg has been completely off on the sidelines this whole time. I don't know the gentleman, obviously. I've heard very nice things about him. But in this regard, he's been absolutely standing on the sidelines. He's not involved. He's not demanding the FAA answer these questions. All the questions that the families have been fighting for . . . it's actually insane when you think that the families who've lost loved ones and are grieving are the ones that are trying to get these changes and are pushing the hardest to get these changes. And they're

reminding the FAA that these malfunction reports are important and that it needs to act upon these things. It needs to look into these things, investigate them, and be decisive.

And so, here you have the people who've lost the most doing the most to try to help and help all of us. And so, I think that the listeners need to put pressure on the Department of Transportation leader because he can turn to the FAA administrator Dixon--who I realize just resigned and they're waiting to get another one--but he can turn to that new FAA person or the existing person who is leading the organization and demand answers. He could demand to know why these planes are having problems and what's being done about it. For example, why these planes haven't been grounded again; why an investigation hasn't been demanded of these electrical issues and other issues that are associated with the plane that are showing up and that are clearly production quality related. We need to get that arm of the government to do their job. And I think he feels like . . . it almost seems like he doesn't want to get involved because he doesn't want to get muddled by it. But that's his job.

Ralph Nader: That's his job. And we have listeners who are extraordinarily active when they're confronted with that kind of opportunity to contact the Secretary of Transportation, Pete Buttigieg. And you know how to reach the Department of Transportation, listeners, in an internet age.

Ed Pierson: I actually wrote to him myself a couple of times and emailed his special advisor. I never got a response, ever.

Ralph Nader: Well, as for his chief of staff who comes from New York. She was a leader in pedestrian safety and she is the point person on the 737 MAX relations with the families. So if you want to call the Department of Transportation, ask for chief of staff to Secretary Pete Buttigieg. Unfortunately, we're out of time. It's edpierson.com, P-I-E-R-S-O-N. And it's Pete Buttigieg, Secretary of Transportation, who has political ambitions keeping quieter than he should in the unfolding tragic history of the 737 MAX, which is up in the air at the present time. It's often called the 737-8 and the 737-9. Thank you very much, Ed.

Ed Pierson: Thank you, Ralph, and thank you guys for inviting me to join you today.

Steve Skrovan: We've been speaking with Ed Pierson. We will link to his work at ralphnaderradiohour.com. Up next, the Bruce Fein News Brief. But first let's check in with our corporate crime reporter, Russell Mokhiber.

Russell Mokhiber: From the National Press Building in Washington, D.C., this is your corporate crime reporter "Morning Minute" for Friday, March 11, 2022; I'm Russell Mokhiber.

Dozens of beef jerky brands were recalled in New Jersey and seven other states due to listeria contamination. That's according to a report in the *New York Post*. "At least 70 types of meaty snacks made by Boyd Specialties in California and shipped around the country were yanked from the shelves after tests found they were likely contaminated," the Food and Drug Administration said. Health officials urge people to toss any dried beef made on February 23 due to the bacteria, which can cause fever, stomach problems and convulsions and poses an increased threat to pregnant women, unborn children and the elderly. The brands in question include Bacon Mamma Jamma, Durbin Farms [Meat] Gold Mine Jerky and Jerked Out. For the *Corporate Crime Reporter*, I'm Russell Mokhiber.

Steve Skrovan: Thank you, Russell. Welcome back to the *Ralph Nader Radio Hour*. I'm Steve Skrovan along with David Feldman and Ralph. Let's connect some dots with our friend Bruce Fein. David?

David Feldman: Bruce Fein is a constitutional scholar and international law expert. Mr. Fein was Associate Deputy Attorney General under Ronald Reagan and he is the author of *Constitutional Peril: The Life and Death Struggle for Our Constitution and Democracy* and *American Empire: Before the Fall*. Welcome back, Bruce Fein.

Bruce Fein: Thank you for inviting me back.

Ralph Nader: Welcome back, Bruce. Let's go right into three areas that you were concerned about, the breakdown of international, constitutional and federal law. The first one is Joe Biden talking constantly about Article 5 of NATO that an attack on one inch of NATO country territory means an attack on all NATO members, which is a cause of war. And what you're saying, "No, no, Joe. You can't make that decision." Who can?

Bruce Fein: It's up to Congress under the Constitution, indeed under the NATO treaty itself. Mr. Biden wrongly cites Article 5 of the treaty. But Article 5 states that it'll be the constitutional processes of the respective signatories of the NATO treaty to decide how to respond to an attack on one of the members. And under our constitutional processes, it's only Congress that can take us into war. That's not only what Dean Acheson testified to, then Secretary of State, when Article 5 was before the Senate Foreign Relations Committee before ratification, but Congress in the UN Participation Act of 1945 explicitly described the constitutional process of the United States in this context as meaning the president must come to Congress for a joint resolution or act in order to use the United States military force offensively. So Mr. Biden, and he's been echoed by his Secretary of State Tony Blinken recently in NATO countries, is clearly wrong. He stated that he would respond with the full force of all the military arms the United States possesses, which I think is a subtext for saying he's not ruling out nuclear weapons. And what makes this very, very worrisome, I say a little bit like Sarajevo before World War I, is that we are already in discussions with Poland to supply Ukraine with MiG-29 jets. And if that happens, that makes Poland a cobelligerent with Ukraine. And Mr. Putin has already threatened that he would attack a country that was systematically providing arms to Ukraine. And Poland is a neighbor of Russia. It could well be the next Sarajevo flashpoint that could trigger then Mr. Biden's response in defiance of the Constitution. It is only Congress that can take us from peace to war.

Ralph Nader: Yeah. The NATO treaty is subordinated to the US Constitution which accords only Congress having the right to declare war. You pointed out that Joe Biden in 2008 when he was running, I guess, for president, he was on the *Chris Matthews Show* and he said repeatedly that if George W. Bush invaded Iran without a congressional declaration of war, he would immediately urge the House to commence impeachment proceedings against George W. Bush.

Bruce Fein: Yeah. So under his own definition, he's threatening to commit an impeachable high crime and misdemeanor.

Ralph Nader: All this is described, listeners, in a letter to President Biden by Bruce Fein, Lou Fisher and me. It'll be on the website nader.org. Bruce, there were two mistakes, I think, you have to do. One is it was Article 11 that did that, not Article 5, correct?

Bruce Fein: They work in tandem. Article 11 just says we implement all the provisions according to the constitutional processes.

Ralph Nader: Okay. So you don't have to change that Article 11?

Bruce Fein: I don't have to do that. No.

Ralph Nader: Okay. The other one is you said that supply MiG planes.

Bruce Fein: MiG, MiG-29s, yeah. Those are Russian . . . right now the idea is, Ralph, that the Poles would take their stockpile of MiGs that I guess they had left over when the Soviet Union collapsed and we would replace them with F-15s and then Poland will give them to Ukraine. That's the general idea of a swap.

David Feldman: Did we reject them today? That's what I read.

Bruce Fein: Well, it's still in . . . we may ultimately not go forth. We're clearly flirting with the idea. And in some sense . . .

Ralph Nader: I thought it was the F-22 they were going to give--

Bruce Fein: The Poles? I don't think--

David Feldman: It's a MiG-29.

Ralph Nader: Okay. You're sure of that, okay?

David Feldman: I'm positive.

Ralph Nader: Okay. I'll learn not to question Bruce and making mistakes. [lots of laughter] Go ahead. All right. The next one.

Bruce Fein: Ralph, let me just add, the reason why it makes a difference, some could say, well what does it matter whether Biden makes the choice or the Congress makes the choice? The fact is that historically we know over 234 years that Congress is likely to be far more thorough and cautious about finding an existential threat and sending our men and women to risk that last full measure of devotion than the Executive Branch is. They've done it only five times in 234 years and only in cases we are in fact actually attacked, like Pearl Harbor, or when the president deceived Congress into thinking we were attacked, like in the Spanish-American War, the Mexican- American War. And Congress is a more deliberative body. It thinks more carefully about war because there's nothing in it for Congress. It doesn't aggrandize power for itself; it doesn't get monuments built after it for voting for war. But it has to raise taxes. All those kinds of incentives to go to war are with the executive branch, which is why the founding fathers decided, "No, only Congress is going to decide that very, very most significant decision a nation can make."

Ralph Nader: And the deliberations are more likely to be public than they are in the White House.

Bruce Fein: Yes, exactly. All the dissent in the White House, we know, is completely suppressed. Just read the Pentagon Papers and even the discussions we know leading up to the Iraq war. All those who forecast exactly what was going to happen, silenced.

Ralph Nader: And the next issue we want to talk about is called the state secrets argument by the federal government. When citizens sue the federal government for illegal activity involving issues of war and foreign relations, the federal government doesn't want to go into open federal court. And what do they do?

Bruce Fein: Well, Ralph, a little bit of background here. The state secrets privilege is nowhere mentioned in the Constitution. We didn't even have a state secrets case in the US Supreme Court until 1875. That's like 85 years after the Constitution was ratified. And moreover, it concerned really a breach of contract. An informant made a deal with President Lincoln to spy on the confederate states and part of that contract said he was going to keep that information confidential. And then he sues and says, "Well, I want to breach the confidentiality." And the Court in a very summary opinion, only a page and a half, said, "Wait a minute. You already promised to keep it confidential. You can't sue for your money." It's not an alarming decision. If the government doesn't pay their informants, they're soon not going to have any informants because they're not going to be working for free. So it's nothing all that serious.

The next case comes over 70 years later. The next case in state secrets, called *Reynolds v. United States*. It's 1953, and it speaks volumes that at this particular time, Ralph, it came contemporaneous with President Eisenhower's Doolittle Memo, which recommended that the United States could no longer follow civilized rules in conducting itself against an enemy, the Soviet Union, that was ruthlessly and implacably seeking world domination. So things that were formerly unthinkable now became thinkable. And in the *Reynolds* case itself, the court takes judicial notice of the fact that we're in an arms race with the Soviet Union, "We really have to keep all of our secrets very, very confidential in order to survive against worldwide threat." And so, the court makes up a state secrets privilege and says, "Well, the secretary of Air Force can say that if we investigated an accident of one of their aircraft, it might expose secret military spy equipment." And therefore, without even looking behind the secretary's affidavit that said this could happen, it said the estates of people who were killed in the crash couldn't sue the government for negligence in operating the aircraft that resulted in killing their spouses.

It's a very, very terrible decision. And it wasn't even based on the Constitution. It was just kind of invented. We kind of felt nervous in 1953. And of course, later on, Ralph, this accident report that was allegedly sensitive, according to the Secretary of Air Force in his affidavit, was shown to show nothing more than that was riskless that there was negligence in the operation and design of the aircraft that caused the crash. And when it went on the internet, there was no security information whatsoever. But anyway, since 1953, the state secrets privilege has just burgeoned. It has blossomed to cover all sorts of things, including concealing government rules for assassinations, kidnappings, torture, all these kinds of things that conceal government crimes. And the US Supreme Court and lower courts have held even situations where what's being sought is the principles, the standards that were utilized to select people for what we call extrajudicial killings done by drones, is all classified. And so, the victim or the families of those who are killed by assassinations have no redress in federal courts.

Ralph Nader: So they go into federal court to try to hold the government responsible or accountable. The Justice Department lawyers come in, they say to the judge, "Sorry, we can't

participate because of state secrets," and so the judge has to dismiss the case and the federal government escapes accountability to our third branch of government which involves the federal courts. Is that a way to put it?

Bruce Fein: That is exactly right. And instead, my view has always been, Ralph, that if the government believes that the secret is so important they have to conceal it and prevent someone getting redress, they ought to have to face up to the liabilities and say, okay, you got to choose. Either you got to pay the damages you caused or disclose and we have a trial. But you can't have both ways. You can't have concealment and then say the damages you caused, you're immune from redressing. That makes no sense at all. It's not fair to saddle one person whose family is someone who is kidnapped or tortured or assassinated, that you've got to bear all the loss because the government wants to conceal a secret that helps everybody. That's a classic example of a taking without just compensation.

But the system is really, really out of whack. In this particular case that was decided by written opinion by Justice Stephen Breyer, they say, well, to disclose the venue of a torture of Zubaida, who was one of the early Al Qaeda detainees after 9/11, would disclose a state secret even though it has been recognized in numerous publications; foreign officials have stated the same and the argument was facially, I think, facetious. It was stated by the CIA director, "Well, if we officially confirm what everybody knows, then we will not get the cooperation of foreign intelligence agencies in the future because we've breached a promise." Well, listen, these foreign intelligence agencies cooperate with the United States because we give them intelligence. It's not out of philanthropy or charity. They do it because it's good for them. They're not going to stop cooperating because we say, okay, now we're disclosing and confronting what everybody knows. It shows how naïve these judges are in believing there's really any national security issue at hand here. But the more important point I think, Ralph, is it really indicates how much we've degenerated into lawlessness at the highest levels. It's one thing to say, okay, the government can welch on its contract to pay an informant. We're talking about affirmative government assassinations, the worst crimes of all – extrajudicial killings and torture, which are universal crimes against mankind. And you can conceal them by just saying, "State secrets privilege." In a companion case where the FBI had targeted Muslims out in Southern California for spying because it was said they might be terrorists, they were so wrongheaded that these suspects turned in the informant to the FBI and said, "We think this guy is going to be a terrorist," because he's trying to entrap them. And nonetheless, they sue and claim, "You picked us out just because of our religion." And that's clearly what would be a violation of the equal protection clause. It goes back to a very old case you remember, Ralph, in law school, *Yick Wo v. Hopkins*, where they selected all the Chinese laundries in San Francisco to shut down because they didn't have proper fire precaution. And the US Supreme Court said, "Well, sorry, you cannot get access because it's a state secret as to how the FBI targets people for counter-terrorism activity," again, leaving the plaintiffs in the lurch. Well then, how else are we going to prove the motivation since that's the element that you need in order to establish an equal protection violation. But it's an egregious decision, and what makes it even more alarming, Ralph, is these decisions are written with virtually no dissent. There is Judge Gorsuch and Sotomayor, you got two dissenters in one case. In the other case, there weren't any dissenters at all, the companion cases. But you say, wow, this just covers the waterfront. All bought in to this total empire mentality that the government commits crimes to hopefully diminish risk to the people, but the crimes are the greater risk than anything that they're trying to prevent.

Ralph Nader: Tell our listeners something that they may not know about. What did we do in Laos, next to Vietnam, in the Vietnam War?

Bruce Fein: Yeah. Well, Laos is another example of how we use double standards. During a 10-year secret war in Laos from 1963 to 1973, an unconstitutional war never declared by Congress, the United States dropped 260 million bombs on a country of 2.3 million, or 120 bombs per person. It's something that the United States has never redressed. Still today, 80 million of those 260 million bombs are unexploded and they are maiming children and women and fathers in the hundreds per year. Since the end of the war, 50,000 have died from unexploded ordnance. And unfortunately, the United States has never made amends for these gross war crimes. And those are clearly efforts I think . . . under international law, it's a war crime when you use military power that's vastly greater than the importance of the military objective. And the military objective in Laos was a peppercorn at best. So when we commit these war crimes . . . and we've really never had a thorough hearing that is, in my judgment, should be required to account for how dastardly we acted in Laos, we give the standard for others to emulate. And unfortunately, it is an earmark of international law that is very cynical. I may recall Curtis LeMay, who was the head of our Air Force in the Asian theater in World War II. He was supervising the firebombing of Tokyo, which killed more than Hiroshima and Nagasaki. And he openly acknowledged, saying that we better win the war because if we lose, we'll be tried and convicted as war criminals. So, yeah, victor's justice. It's very unfortunate and that's what we're seeing.

Ralph Nader: Well, it's important to put the situation in Ukraine, tragic and disastrous as it is, in a broader framework because when we do these things and get away with it, there are dictators around the world who'll say, we can do the same thing and we can get away with it. Thank you very much, Bruce Fein.

Bruce Fein: Thank you.

Steve Skrovan: I want to thank our guests again, Boeing whistleblower, Ed Pierson; and Bruce Fein. For those of you listening on the radio, that's our show. For you podcast listeners, stay tuned for some bonus material we call "The Wrap Up". A transcript of this show will appear on the *Ralph Nader Radio Hour* website soon after the episode is posted.

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

Steve Skrovan: And the American Museum of Tort Law has gone virtual. Go to tortmuseum.org to explore the exhibits, take a virtual tour and learn about iconic tort cases from history. And be sure to check out their latest program on how litigation on brain trauma is changing the future of football. All that and more at tortmuseum.org.

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

Steve Skrovan: In two weeks, March 30th, we're going to do another live Zoom program with guest Jessie Singer, author of the Book, *There are No Accidents*. Go to ralphnaderradiohour.com to sign up and be part of the show.

David Feldman: Join us next week on the *Ralph Nader Radio Hour*. Thank you, Ralph.

Ralph Nader: Good news. The postal reform legislation is about to clear Congress and go to Joe Biden for his signature. It helps relieve some of the unfair pressures on the Postal Service and starts the process of expanding postal services in your community. So the work our Congress Club members might have done here is just another example that change comes from the people.

[Music]

I think you should step up

Rise up

Rise up and take on the power

Stand up, stand up

You've been sitting way too long

Stand up

Stand up

Oh, step up

Step up

You ought to step up

Rise up

Rise up, I know you ought to rise up and

Stand up

Yeah

Stand up

Yeah

You've been sitting way too long

Stand up

I think you should

Step up

Step up

I think that you should step up