RALPH NADER RADIO HOUR EP 385 TRANSCRIPT

Steve Skrovan: Welcome to the *Ralph Nader Rader Hour*. My name is Steve Skrovan. David Feldman is on assignment so he's not with us today, but we do have the man of the hour, Ralph Nader. Hello, Ralph.

Ralph Nader: Hello, everybody. What an hour it's going to be.

Steve Skrovan: Yes. What could we do when the people who are supposed to heal us are the ones doing us harm? After heart disease and cancer, the third leading cause of death in the US [United States] is iatrogenic, a fancy word that means unintended yet avoidable harm done by a doctor. Research suggests that hundreds of thousands of Americans die every year because of failures in patient safety. In their new book, *Closing Death's Door*, Michael Saks and Stephan Landsman break down how our healthcare system enables these failures. They will be our first guests today and we'll be asking them about what threatens patients' safety, why our medical malpractice laws don't do enough to protect patients, and how we can incentivize doctors and hospitals to make patient welfare a priority.

If that's not enough show, America's number one populist, Jim Hightower, will join us to give us a report on something you probably won't hear about on your commercial news outlets. In Beaumont, Texas, some oil refinery workers asked their employer, ExxonMobil, to institute some safety measures, and for their trouble, they got locked out. And this has implications for the labor movement nationally.

As always, somewhere in the middle, we'll check in with our corporate crime reporter, Russell Mokhiber.

But first, in a healthcare system that prioritizes profits, how can we lower the risk of harm for patients?

Michael Saks is Regents' Professor in the College of Law and the Department of Psychology at Arizona State University. Stephan Landsman is Emeritus Professor of Law and Organizer and Director of the Clifford Symposium on Tort Law and Social Policy at the DePaul University College of Law. Their new book, *Closing Death's Door: Legal Innovations to End the [Epidemic] of Healthcare Harm*, is available at your local bookstore. Welcome to the *Ralph Nader Rader Hour*, professors, Michael Saks and Stephan Landsman.

Stephan Landsman: Well, thank you very much. We're delighted to be here.

Ralph Nader: Well, thank you for coming on, both of you. You're in the honorable tradition of people who've tried to bring attention to this mass morbidity and mortality epidemic called "hospital caused" or "medical profession caused" disease, trauma, and of course a lot of economic damage. Now in your book, you estimate that about 400,000 people die in the United States every year from problems that are presumably preventable in hospitals, and hundreds of thousands more receive injuries and diseases because of carelessness. Hospital-induced infections have been reported to take about 250 or 300 lives a day. Where do you get the figure 400,000?

Michael Saks: This is Michael Saks. First of all, I'll say there have been a series of studies since the 1970s. Most of those studies are based on looking through medical records and those studies have come up with a number of deaths, at this point in history, of about 250,000 deaths a year. But other studies realized that when something goes awry in the treatment of a hospital patient, the staff do not write it into the record: We screwed up and the patient is now a quadriplegic. That, if anything, they try to conceal what went wrong. So other methods have been developed, computer-assisted methods, to scan through those records and do a somewhat better detective job. And those add up to a number around or higher than 400,000 deaths. And then I want to say it's a pretty conservative number, because if you then consider that there's a lot of healthcare being delivered outside of hospitals, errors are made, which also contribute to deaths and injuries.

Ralph Nader: You're talking about clinics and doctors' offices?

Michael Saks: Right.

Ralph Nader: Clinics and doctors' offices.

Michael Saks: Right, or even freestanding surgical centers. But when we're talking about doctors' offices and clinics, now the problem isn't going to be so much a slipped scalpel, but it'll be a misdiagnosis, a mislabeled test tube, or slides that lead to maybe it's the right diagnosis, but it's attached to the wrong patient, or drug errors, mistakes with medication. So my rough, almost back of the envelope calculation, is that the number of deaths and injuries that occur outside of the hospital setting approach the number inside, because there are so many, many more contacts between healthcare providers and patients outside of hospitals.

Ralph Nader: This is truly staggering. And let's bring it down to where people can relate to it as you do in your book in a variety of ways. The 250,000 figure you mentioned, I think, comes from the Johns Hopkins [University] study of about six years ago and the physicians who did that study said that was the rock bottom minimum estimate. And that was just in hospitals, not in clinics and doctors' offices. So dealing with the 400,000 figure, that is over a thousand deaths a day, 365 days a year; it's over a thousand deaths a day, most of them preventable! Not to mention serious injury and disease, which is always a total larger than the number of fatalities. More than a thousand a day can be compared to the number of people police kill in the US for a variety of reasons is about a thousand. And look at publicity about that. I mean, some of it is exonerated. Some of it is police brutality. Some of it is error, untrained police, whatever. But in one day more people die from preventable problems in hospitals in the United States than the result of police violence. Also, compare workplace-related diseases and injury, [which] according to OSHA [Occupational Safety and Health Administration], [is] about 60,000 deaths a year, about 40,000 deaths a year on the highway. And you know, we really have a massive preventable human-made epidemic here. And the question, I suppose, our listeners are now asking, is why haven't we heard more of it? Why don't NPR [National Public Radio] and PBS [Public Broadcasting System] and *60 Minutes* and the newspapers write about it when they write a lot about trauma and disease that is much smaller in number?

Michael Saks: One reason: is that it does not take place in public. So, if you think about planes crashing or buildings collapsing or police shootings of citizens, some of those are inescapably

obvious. You can't *not* see a building collapsing. The deaths that take place within the healthcare setting are pretty much invisible except to the families, and they are spread out across the country. They happen across the country and across time and they happen one-at-a-time. It's hard for journalists to see them. So I used to think it was almost unique in public and media indifference to it until COVID-19 came along. And now it seems there are a lot of people who don't mind losing 600,000 or million more people who need not have died.

Ralph Nader: Yeah. That may have been true a few years ago. You're trained as a psychologist. AIDS patients die in private, horrible death. And they, after being neglected in the media for three or four years, received consistent coverage. Does that have something to do with the protest comparison? There's really no protests by next of kin in medical malpractice or medical error. But the AIDS people really organized and they picketed and demonstrated and demanded hearings. We don't have congressional hearings here on the third leading cause of death in America after heart disease and cancer. Would you attribute [that] to the lack of organized protest here?

Michael Saks: I think that has a lot to do with it. And you need a splashy event. When in the year, 1999 or 2000, the Institute of Medicine came out with a report about this problem, that made a big splash and President [Bill] Clinton made some speeches about it, and I think some hearings were held. But that was one little burst of interest and then that just faded away

Ralph Nader: Johns Hopkins' work was a one-day story in the *Washington Post* and *New York Times*. This has puzzled us. We can't really understand; the media here reports on latent casualties, especially when they're covered up, and there's a lot of coverup. In your research, did you interview doctors who participated in the issue committee meetings in hospitals, which were supposed to be very, very candid, brutally frank?

Michael Saks: No, we did not.

Stephan Landsman: I would add about that. This is Stephan. About those post-mortem kinds of examinations, that the literature suggests that they're not brutally frank, that they really are often a passing off of responsibility from whatever unit of the hospital is meeting to other units within the hospital. So, that you really don't have a kind of tough critique that you ought to have.

I'd add about the bigger problem, that, you know, this is an equal opportunity killer. It kills black, it kills white; it kills rich, it kills poor; it kills old, it kills young. There is no affinity. There is no identity. There is no sort of gathering together where people can say, "Gee, this has been happening in our community." It happens everywhere. It happens to everyone. And a funny thing is when Michael and I speak, often people will come up to us or ask us questions saying, "Gee, I have this story; gee, I have that story". And quite frequently, those stories are medical error of a very clear sort, yet they're scattered around. There's no connection between the people who are suffering. And I think that's part of the problem.

Ralph Nader: You make a very important point. Discriminatory injustice or violence gets far more attention than indiscriminate injustice and violence that doesn't break down by disproportionate impacts on by race, gender, et cetera. However, it is true that even though the rich and famous have been suffering loss of life—you have some examples in your book—due to ~~a~~ medical

malpractice or a combination of prescription drugs or the wrong drug prescribed or what have you. It is true that poor and low-income people, the Medicaid mills, for example, and the poor quality of hospital care, does have a disproportionate impact. But somehow the Black Lives Matter people have never picked this up.

Stephan Landsman: Now I think it's a very challenging issue, because what you're describing connects to a larger problem, which is about economic disparities, about disparities in social services, about things that sort of are a broader spectrum kind of challenge or problem, and that makes it pretty hard to focus, I think.

Ralph Nader: Well, I've written to the American Medical Association [AMA] occasionally over the years, and said, "Do you have any data on medical malpractice or what you call medical error? Have you ever done any report?" I mean, your profession is - let's look at it without criminal intent, that is inadvertently - because of all of the decisions they have to make with millions of people throughout a year is causing the death of hundreds of thousands of people. And they've never done a study. Nor have the other medical societies, to my knowledge, ever done a study. So let's ask about the insurance industry. They're supposed to be interested in loss prevention. So the less malpractice deaths and injuries, the less they pay out and the more profit they make. What'd you find out in your research in the insurance industry other than they're making a whale of amount of profit underwriting medical risks? We're talking with Michael Saks and Stephan Landsman, the authors of the new book, *Closing Death's Door: Legal Innovations to End the Epidemic of Healthcare Harm.* So tell us about the insurance industry.

Michael Saks: Well, let me offer what I think is the 30,000-foot view of that. The healthcare industry represents about a little under, a hair under 18% of our nation's GDP [gross domestic product]. You would think that an industry that represents 18% of the dollars being spent and earned, all things equal, might account for about that same amount of money spent on liability insurance premiums for the accidental harm that may result. But instead, the healthcare industry pays only 2.4% of all the liability insurance premiums that are paid for all activities in the US. So they're paying a fraction of what you might expect them to pay if they were as dangerous as other industries. But in fact, the healthcare industry causes more serious accidental injuries and deaths than all of the other human activities combined. So there's this huge disconnect between the amount of harm done compared to the amount of money made, compared to the amount of insurance expenditures it takes to cover the costs of the harm. And this leads me to the conclusion that the tort system is, I'll say, beloved by the healthcare industry, though they act as if they hate it.

Ralph Nader: Okay. Let's talk about the disciplinary commissions in all the states. They're supposed to look out for incompetent doctors. Once years ago, it was estimated by medical profession sources that 5% to 10% of the licensed physicians in this country are either so incompetent or addicted to something, substance or what(ever), that they shouldn't really be practicing. Of course, that's a lot of patients--5% to 10% of several hundred thousand physicians.

The Health Research Group of Public Citizen years ago did a survey of this. And they found that the disciplinary agencies in the medical area, state by state; most of the very few reprimands and license revocations were due to economic violations—stealing money, things like that. Some actual

criminal activity; there was, for instance, that physician in Rhode Island who made a lot of money implanting devices in elderly patients that didn't deserve to have that implant. There was no indication they needed it. He went to jail. And so the Health Research Group said that these examining or disciplinary agencies should have more budget, more investigators, and they should go beyond the mere realm of financial abuses or violations. What did you find in your research about that?

Stephan Landsman: Well, this is Steve Landsman. And there's a whole series of difficulties with discipline. First of all, you're asking doctors to discipline other doctors, and the frequent reaction unfortunately has been "there but for the grace of God go I." And there is not a strong willingness to place blame or to focus in a way that protects patients in a very robust manner. Second, we established in this country a national registry [NPDB, National Practitioner Data Bank] with respect to malpractice findings. And what's happened to that registry is it's been avoided; it's been dodged; it's been defeated by the healthcare industry and doctors generally. There haven't been very good filings. Most settlements of malpractice claims require that they *not* focus on the doctor, so that the registry doesn't get the name of someone who has messed up.

And you've also got the interstate kind of movement of physicians. And New York, many years ago, focused on surgery involving the heart replacement of arteries. And they published their findings and it focused on particular doctors. You think the doctors were drummed out of the business? No. They moved from New York to other states. So, that you've got a whole range of difficulties that inhibit effective self-policing

Ralph Nader: And the registry, I understand, is not public information.

Stephan Landsman: That is correct.

Ralph Nader: Well, this leads to something that really outrages people, which is that there are some really bad physicians and specialties. There was in Massachusetts one neurosurgeon that accounted for over two thirds of the malpractice claims against neurosurgeons. 5/10% of really bad physicians are incompetent or they're addicted to substances or what have you, alcoholics, who account for a much larger proportion of the claims, and presumably of the trauma and the injuries. At the same time, you don't—as you pointed out, you have a very concessionary regulatory process that doesn't really go after these people. And when they do, once in awhile, they just moved to another state and their record doesn't follow them. And as a result, the insurance companies do not engage in experience loss rating. I mean, if you're not a good driver, you pay a higher auto insurance premium. But if you're a bad doctor, and you're in a subspecialty, you pay the same premium as a good doctor, like the better neurosurgeons at that time in Massachusetts. Any movement for applying the sting of higher premiums or refusal to insure, so that the insurance companies uphold their responsibility? It's not just social responsibility. They presumably could make more money by policing the profession. Any movement in that direction?

Michael Saks: None that I'm aware of. Michael speaking. I've heard of no such moves. And in fact, I have been at meetings of doctors where they've been talking about malpractice insurance and the carriers that they buy it from. And they, when you talked earlier about a group like AIDS patients who would get together and organize, doctors are certainly organized and well-organized.

And they would cause a lot of trouble for an insurance carrier that proposed to experience-rate the physicians. The physicians worry even more about being denied insurance coverage. So they really insist upon, and probably pay extra for the ability to all pay the same premium if they are in the same specialty in the same geographic area. So they like it that way and they would probably enforce the current system.

Ralph Nader: Some of the insurance companies are owned by the doctors, aren't they? They're doctor-owned.

Michael Saks: Yes, there are mutual insurance companies.

Ralph Nader: They're powerful enough in California to sway the Jerry Brown administration, - presumably a liberal Democratic administration - with huge Democratic majorities in the legislature. Now, I can never get Jerry Brown to put in the bill to repeal the notorious $250,000 cap for a lifetime of pain and suffering that he signed when he was governor the first round in the 1970s under big pressure by the medical lobby. Tell our listeners what these caps do to the most serious type of injuries.

Michael Saks: Steve, do you want to take that?

Stephan Landsman: Yeah, certainly. It's certainly been a focus of ours that the $250,000 cap on sort of non-out-of-pocket damages is a gross sort of harm to specific groups of patients. That if you're a working person and you have a clear sort of income stream that's interfered with, you're going to be able to recover if you're harmed in ways that take you out of the workforce. If you are elderly, if you work at home and take care of your children, if you are indeed a child, you don't have a stream of income. Therefore, the only kinds of claims you're going to be able to make are claims for the actual treatment costs and for pain and suffering. If you make that limited to $250,000--and that was in the early 1970s, so you can imagine what inflation has done to it--you don't have a claim that is worth litigating with respect to the perspective of almost any lawyer. So, that what you're saying is if you're elderly, if you're a child, if you're a work-at-home mom or dad, you are not going to be able to go to court no matter how bad a job was done in treating you.

Ralph Nader: Let me put a personal face on this in what you're saying, Steve. I was outside Senator [Dianne] Feinstein's Senate office one day with a family from California. They had a seven-year-old child who climbed a tree, fell down, and part of the twig went right through his nose, and as it turned out, [went] into his brain. And his mother, [who] was a nurse, rushed him to a hospital. The hospital looked him over, said, "You'll be okay, here's some aspirin," and sent him back without a CAT scan. And within a few days, he became totally disabled for life. He's brain damaged; he couldn't fend for himself. They went to court and got a $7 million verdict. The judge had to say to the jury, "Thank you for your service; you're dismissed." And then say to the parents that because of this MICRA [Medical Injury Compensation Reform Act] law, the $7 million had to be cut back to $250,000. And they had to take care of this child for their rest of their lives. And that didn't get through to members of Congress.

That's why I was so interested in Michael being a psychologist and very familiar with the law, because there are obviously styles of violence of much lesser magnitude that get huge coverage

and demands for action by lawmakers and editorial writers, and other styles, which is the subject of your book (medical error, medical malpractice, hospital negligence, et cetera) that just get almost no attention. I suppose you have—I hope—been interviewed for this book, Oxford University Press, called *Closing Death's Door*, on PBS and NPR. Have you been interviewed?

Michael Saks: Not yet. [chuckles]

Ralph Nader: Well see, there you are. So can you drill down on this peculiar cultural aversion, which I think is more than cultural; It's [got] a lot of economic aspects to it, which we'll get to in a minute with the tort system. Has that intrigued you to a point where you could talk to reporters and legislators and say, "Hey, get real here." We're talking about massive lives lost in a process that was the title of Harvey Rosenfield's book in 1994. He is a leading consumer advocate in California. He called his book *Silent Violence, Silent Death*. Have you ever drilled down on this and got people in positions of authority to react to you?

Michael Saks: This is Michael Saks. Let me respond, but first, let me just say one more thing about those caps, like MICRA. You described a case that should be quite upsetting to people, but you said that didn't get the legislators' attention. But if you think about what the healthcare industry and their insurers were trying to do, it was obviously to save money. But there are other ways to push the financial burden back on the patients, other than to do the maximum harm to the very most seriously injured patients, like that child you described. They could have said whatever the reward is, whatever the judgment is that the court is ready to assess against the defendant, you could do a percentage of that. You could say, we're going to lop off 50%. And then you could do it across the board. You don't just have to have a cap that does the worst to the people who are harmed the most. So I find that an astonishing thing, and I don't have an answer to it. This is done by the lobbyists of a profession that exists to help people reduce suffering, cure disease. And yet they find this one way to keep more money in their own pockets by hurting the people who've already been hurt the most. So that's one thing I'm fascinated by. And I am fascinated by the lack of interest in this most damaging - single most damaging area of human activity in the United States and the public - the media, the government, do so little about it. I'll give you a somewhat more psychological spin on it, other than what we said before, which is that it's so spread out and diluted that it it's not salient; that's one. But here's another one. Each of us would dread the thought—we're frightened enough if we have to go in for surgery or any intrusive, risky procedure. We want to believe it will all turn out just fine. And we don't want to spend a lot of time thinking about the risk that we are facing.

Ralph Nader: I think people are in awe of their doctor and they respect their doctor and a lot of people who are [victims of] malpractice don't want to sue their doctor. And I know of a person in Connecticut, and she was having a colonoscopy, and the doctor perforated it. And he admitted it, and he apologized. And she could have got a slam dunk settlement without a trial or deposition. And she just refused to file the suit, even though she knew she was harmed and was in considerable pain. That seven-year-old boy case, by the way, did get a lot of publicity in California. And the lawmakers in Sacramento knew about it very well. So did Governor Brown and his predecessors. But MICRA still is on the books.

I think people should also know that there are different varieties of medical error. One of them is over prescribing antibiotics, which for over 60 years has been leading to resistant mutations by the germs and overcoming the antibiotic medication. And the estimate there is over a hundred thousand deaths a year; I think in some medical journal article estimates. That's 2000 a week. And there are some bacterium now that cannot be treated by any existing antibiotic. It hasn't come along yet to be more virulent and more effective. And I think the doctors are extremely culpable here because when you talk to them about it, they agree there's over-diagnosing. They give it for people who have viral colds and antibiotics don't do anything with viruses. But they blame it on the patient. They say, "Patients look at all these ads on TV, and they come in, and if I don't give them a prescription, they think I'm not doing my job." Well, that's a cop out. Wouldn't you agree? Isn't that a problem?

Stephan Landsman: This is Stephan Landsman. You know, I have a slightly different take than you do, Ralph. And that is that doctors face a very challenging sort of job and that our own appraisal of where the damage often arises from is not because of the individual doctor so much. It is because of the system. They're tied into a system that doesn't take care, that doesn't gather data, doesn't share problems, doesn't honestly discuss. And that then if there is a problem, and if it becomes salient, then the doctor has to stand alone. She's going to be blamed in a medical malpractice suit, when the reality is that with better support, with better feedback, with better training, with sort of more decency, you would not have those kinds of errors with a system that was striving to correct itself. But the doctors have created a culture, a system, where now they are exposed and not effectively supported. Our book is an argument, not for malpractice, because we don't think it's ever going to get there, but to look at ways to encourage the system to do better.

Ralph Nader: Well, you make an important point. The practice of medicine has become commercialized and corporatized, and the corporations have really taken over hospital chains, drug companies; Walmart [Inc.] is getting into it. Doctors have lost their independence. In fact, one labor leader speaking to a medical convention said, "Welcome to the assembly line." And they all knew what he was talking about [guest chuckles]. So they're losing their own ability to exercise their own judgment. You know, they have to call the insurer, some outfit in Pennsylvania, to get an okay indirectly through their own insurer to recommend a procedure. It is a nightmare. They have their own legitimate complaints to be sure, but let's talk about how to reduce it very briefly. I understand that when some of these articles - rare as they are - came out, some hospital administrators started saying, "Look, let's require washing hands by doctors, nurses, nurses' assistants." And lo and behold, they actually saw a reduction in hospital-induced infections [with] something as simple as just washing your hands between patients. Do you have a list of some of those that you mentioned, a professor at Johns Hopkins?

Michael Saks: This is Michael. Let me give what I think is a concrete example. And then maybe we can come up with a list after that. A hospital wanted to reduce the number of medication errors that were taking place in the hospital. Their goal was to cut it by 50%. What they had to do to accomplish that was to bring in a team of systems engineers who studied the prescription and drug delivery process from the beginning to the end--when the made the prescription through the pharmacy filling it out to it being delivered to the patient. And they came up with an extensive redo of how this process was done in the hospital. So, I'm building on what Steve said a moment ago, that any given individual in that process, doing the thing that they were doing, was not in the

best position to prevent errors. But when they changed the entire system, they redesigned the system to make errors very difficult to get to the patient. So that's an example of a systems approach to reducing errors; not to lay it on the individuals, but to try to redesign the system. Now redesigning the system is what the corporate managers need to do, but the financial incentives work completely against doing that. They would have to invest a lot of money like bringing in systems engineers. They would have to invest a lot of money to fix these problems, and their reward for doing so would be to watch their revenue drop, because when patients are harmed, the patients need additional care and that additional care is additional revenue to the healthcare system. So the overall hospital—

Ralph Nader: That's the perverse incentive as you call it.

Michael Saks: Right.

Ralph Nader: Well, this is where the insurance companies have failed so totally. Because they don't know their own history, because they're now investment companies more than underwriting engineering safety companies - as they were in the 19th century when the Hartford [Steam] Boiler [Inspection and] Insurance Company would go to these new factories and they would establish standards for boiler safety, which was then a big hazard. And if the factory didn't meet it, they didn't get insurance. Now, can't insurance companies take these systems successes in XYZ hospital and basically use it as a loss-prevention standard for the level of premium and in some cases for not insuring at all? Or do they have a perverse incentive? And here we move right into your discussion of the tort law system.

Stephan Landsman: This is Steve. I wanted to take a slight detour because of something Ralph had mentioned about a doctor at Johns Hopkins, whose name actually was Peter Pronovost. And what Dr Pronovost did was he looked at treatment in the intensive care unit [ICU] and found a grossly high infection rate primarily related to the insertion and removal of central lines that bring in or take out various things into the patient's body. And Dr Pronovost said, “Gee, you know, if we follow a simple set of very careful procedures to avoid infection, we can cut this rate dramatically.” And he created a checklist to do that and later wrote a book about checklists in medicine. That particular innovation was one that he introduced to Johns Hopkins. And he wiped out the infections in the ICU saving substantial number of lives. It was then adopted eventually in Michigan, and it saved 66% of infection fatalities in the state. It's now mandated throughout the nation.

But other things that would follow the same kind of approach--a checklist and nationwide adoption and incentives--have simply not been used, have not been funded, have not been identified. And checklists still are treated by organized medicine as totally anathema. So that we're in this in-between period, and we really need to do better and we can do it with government support, government regulation. But that, too, is anathema.

Ralph Nader: Well, that's the optimistic note throughout your book. And let's talk about your astounding finding that only a tiny fraction of seriously injured patients, due to medical malpractice or medical error, ever see a lawyer or get any compensation. So, surprisingly, you say the doctors and insurance companies like this. They like this. In other words, they like a system that they often

attack and try to restrict under the guise of tort deform and limit damages. Can you go into that and sort of enlighten that aspect for our listeners?

Michael Saks: This is Michael. Well, I'll start with the patients. You talked about a friend of yours who did not want to sue after an obvious negligent injury. This is the case with many, many patients. They do love their doctors and for good reason. But good people can make mistakes. And the victims of the mistakes ought to be compensated. But a lot of patients do not want to take any action. Many times they don't even understand what happened to them. And they have to talk to a lot of friends and neighbors and the nurse who lives down the street. So, it's hard for them to figure out that something happened that should not have happened. And if they get to that point, and they go talk to a lawyer to bring a malpractice action, the lawyers - plaintiff's lawyers - screen cases. They only want to take into their portfolio of cases, cases that stand a good chance of winning and winning a decent amount of damages, so that the lawyer is earning an amount that justifies the time and the effort that's been put into the case. So, many prospective claimants are turned away. I'll just give you a number. In a state with a population of about 10 million with about 1.1 million hospital admissions, 36,000 of those patients will suffer an adverse event, another name for iatrogenic harm. One third of those will have been a negligent adverse event. How many total payments in that state will there be for those thousands and thousands of cases? Only 282. When I say total payments, that's settlements and that's verdicts of which there are very, very, very few verdicts. Tort “deform,” as you prefer to call it, has made it even harder to bring the cases. So, lawyers want to bring fewer of the non-blockbuster cases. It's just not economically affordable. So doctors still hate the tort system, because it's a big annoyance to them, not because it prevents any serious financial harm to them, nor enough of an incentive for the healthcare industry to invest in those improvements that will reduce the chances of harm. I think the people who look at the numbers know that the tort system is really a good friend to the healthcare system because it makes it so hard for patients to receive any compensation.

There was a proposal in the legislatures of Georgia and Florida to abolish medical liability and replace it with an administrative system so doctors would not have to be bothered with lawsuits. People would file claims and an administrative agency would process them and pay some compensation to the patients. The doctors down there loved it, because it meant no more lawyers sending them subpoenas. But the AMA came to Georgia and Florida legislatures and lobbied against making that change. With all of the anti-lawyer rhetoric that comes out of the AMA, you'd think they would like that. But they saw that this was going to do at least two things that they would really hate to see happen. One is it was going to actually pull a lot more money out of the healthcare system and more of the externalities of the system were going to have to be compensated to its victims. And second, it would probably make the fact of medical error much more obvious to many more people, because there would be so many more cases that were coming into a system that was publicly observable, assuming those records would be made public.

Ralph Nader: This is a tradeoff. You have a workers-comp type system. So much for an arm; so much for a leg as they used to say in the “meat chart.” So, many more people who are malpractice [victims] would get some money. but they couldn't get significant, big settlements as a very few people get under the existing tort system. So the powers that be like it that way. They'll endure a few large settlements and exclude 95% of the wrongfully injured or negligently injured victims.

Stephan Landsman: This is Stephan. We think that a lot could be done. There are great doctors out there. Peter Pronovost is not alone in saying, "There's a lot we can do," but we have to have a national conversation and then we have to have a national commitment to do it better. And you know, in the end, I think even the doctors will thank us because they're in a tough situation as I think we've said before. And you know, we're hoping that this book and this conversation is going to help start a greater focus on this and a commitment to try and improve.

Ralph Nader: Well, as you say, the majority doctors want this situation resolved, and they need help in getting out of their profession the incompetent, addicted, or even criminally negligent for-profit doctors in their midst, like any other profession. And they are not disciplining their ranks and they need to be disciplined by outside regulatory and legislative initiative. We want to thank Michael Saks and Stephan Landsman for their prodigious contribution here. *Closing Death's Door* is the title of their new book, Oxford University Press. The subtitle is *Legal Innovations to End the Epidemic of Healthcare Harm*. So they diagnose the tragedy and they also provide potential prescriptions, and they also give examples that work and are working in hospitals around the country and explain why these improvements don't diffuse more rapidly throughout our country. Thank you very much, Steve and Michael.

Michael Saks: Thank you for speaking with us.

Stephan Landsman: Thank you for having us, Ralph. We appreciate it.

Steve Skrovan: We've been speaking with Michael Saks and Stephan Landsman. We will link to their new book, *Closing Death's Door*, at ralphnaderradiohour.com. Let's take a quick break. When we come back, America's Number One Populist, Jim Hightower, will join us to give us a report on something you probably won't hear about on your commercial news outlets. 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 Thursday, July 22nd, 2021; I'm Russell Mokhiber. A jury in Green Bay, Wisconsin returned a verdict of $125 million in favor of the [US] Equal Employment Opportunity Commission [EEOC] on three claims of disability discrimination against Walmart. The jury found that the retailer failed to accommodate Marlo Spaeth, a longtime employee with Down syndrome, and then fired her in July 2015, because of her disability. The EEOC presented evidence that a change Walmart made to Spaeth's longstanding work schedule caused her significant difficulty. When she requested her start and end times be adjusted by 60 to 90 minutes and to be returned to her prior schedule, Walmart failed to act on the request and instead fired her. For the *Corporate Crime Reporter*, I'm Russell Mokhiber.

Steve Skrovan: Thank you, Russel. Welcome back to the *Ralph Nader Rader Hour*. I'm Steve Skrovan along with David Feldman and Ralph. We're going to check in with our old friend, Jim Hightower, of the *Hightower Lowdown*, who is going to fill us in on some news you're probably not hearing about in the commercial media. Welcome, Jim Hightower.

Jim Hightower: Hey, great to be with you, Steve and Ralph all the wonderful listeners out there who are activists and who are ready to agitate on the big issues of our day.

Ralph Nader: Well, I think more than a few listeners subscribe to your newsletter, your monthly newsletter, *Hightower Lowdown*, and they know where you come from and they may not know that you were elected Secretary of Agriculture in Texas, had a great record there and would have been governor of Texas if it wasn't some shenanigans from the early [George HW]Bush administration. You told me yesterday that there was a huge labor dispute in Beaumont, Texas that is getting no coverage either in Texas or the rest of the country. Tell us about it.

Jim Hightower: Well, it's astonishing. It is a story about an all-out assault by corporate America on labor unions that's a story of grotesque, corporate greed, of inequality and where that comes from in our country and about the media failure. And then at the end, uplifting about the union spirit and how we can actually fight this. And people are rallying to fight it. It's a battle down in Beaumont, Texas at the ExxonMobil refinery there, the largest Exxon refinery in the United States. And you know, Exxon is a $191 billion a year corporation. But they are engaged in a labor action. This is not a strike; it is a corporate lockout. And what that means is the corporation can go through a bargaining process, which they did with the United Steelworkers Union there. And then they can say, Well, we don't agree with any of this, so we're just going to dismiss our workers. So you just go home. And that means they get no paycheck; they lose their health care. You know, they lose their power, their voice within the corporation, you know, et cetera.

So there's 650 workers plus their families that have been locked out by ExxonMobil in Beaumont, Texas. They're now into their third month of the lockout. And in my writing up this story for the *Hightower Lowdown*, I go into what that means. You know, you think of unions as collective bargaining agents, political organizations, et cetera. But fundamentally, they're a social unit ~~s~~. They're a group of people daring to try to fight excessive corporate greed and to gain a little bit of control over their own economic destiny. And in this action, the union was not asking, in their early negotiations, for any more money. They were not asking for added benefits. They were asking for safety precautions, more safety precautions. Making gasoline, making kerosene, et-cetera, is—to put it bluntly—an explosive activity. In this very plant in Beaumont, Texas, just a few years ago, two workers were killed with a gas explosion that happened there. Leaks happen; stuff happens. It's a very, very dangerous thing.

And our corporations, all corporations, have a very poor record in the global oil industry of protecting workers in these refineries. So, the union was standing up for them. And then when the date came that they were supposed to do a contract, which happened to be May 1st, that's International Workers' Day, ExxonMobil slammed the door, shut on their gate at the Beaumont factory and shutting these people out.

Ralph Nader: How did they run the refinery?

Jim Hightower : Well, they have replacement workers. That's the other little tidbit that we don't know about under our weak labor protection laws is not only can they just lock out workers, but they can then replace those workers with cheap, unskilled replacement workers. They can also circulate among the other workers information on how they can decertify the union, which is to say disband the union. So, the labor laws in our country are written against labor. And that's what this corporation is doing. And by the way, this is, again, $181 billion a year corporation. The CEO, a guy named Darren Woods, Darren is in charge of this negotiation. Usually the local refinery

managers would handle a negotiation like this, but this is going clear to corporate headquarters where it's being dictated in a blunt effort to get rid of the union.

Ralph Nader: Is the refinery operating full time with low-skilled, inexperienced workers?

Jim Hightower : Yes, with supervisors also on the line. So they're having to make some actions here, but they don't care because they've got the money in the bank so they can weather it. But if you're a union member, three months without wages means you begin to have trouble getting food. And again, you've lost your health care; you've lost your pension, et cetera. So the balance here is overwhelmingly in favor of the corporation. And that's why the ExxonMobil knows a lockout is all about trying to force workers to take a raw deal, and in this case, actually to break the union. And if they can do that in Beaumont, the biggest Exxon refinery in America, then they can do it in all their other refineries. And the other oil corporations are taking note of all of those actions going on. So this is an effort to break the union movement in the oil industry in America.

Ralph Nader: Is there daily picketing? Are there any lawsuits by the union filed?

Jim Hightower: Yeah. So there's all sorts of actions filed and there's daily picketing. I was just down in Beaumont. Beto O'Rourke and I made a trip down there to stand with the steelworkers and went to their union hall, which they've converted into a food pantry--setting it up, not as a commodity distribution place because that's pretty depressing, but set it up as a market. So if you go in, your kids go in, then you've got some Oreos there. And then, you know, this is Cajun Country so you got roux and all kinds of wonderful little Cajun food edibles. So this is the human spirit that comes around and tries to make this as normal as it possibly can be with people who have been cast out of their jobs. But yes, those sort of actions are underway, but that's a very long process and very anti-union process. So the real pressure here has got to be publicity and congressional pressure, legislature pressure.

Ralph Nader: There's been no media? And what about the President Joe Biden, who calls himself "a union guy"? No media, no Biden?

Jim Hightower : I don't know that he knows about it. Literally, this is an unknown action. Its impact is so humongous that you can't imagine that we're not standing up to this because it goes way beyond Beaumont, way beyond Exxon, and way beyond the union movement even. This is about the middle class. If they can bust this union and in good-paying jobs like ExxonMobil has had and the other Chevron [Corporation] and the others who are also in this area of the country, then that's where inequality comes from. It's not by accident; it didn't come in on the breeze. It comes from actions by CEOs like Darren Woods, who said, "We're going to bust the union" and therefore that's going to be billions of dollars that Exxon will save, which will go to their shareholders—the wealthiest people on the planet.

Ralph Nader: Jim, let me suggest some union solidarity here. Unions have big pension funds like the UAW [United Auto Workers] and I'm sure they have stock in ExxonMobil and they can start the rumble from the shareholder base immediately on something like this. You know, union pension funds, I know a lot of them are controlled by the employers, but there are others that are

independent. And you're talking hundreds of billions of dollars in assets under union control, and they ought to be exerting their oft repeated motto of worker solidarity.

Jim Hightower : Other unions are throwing hands on this to support of the workers in the midst of this. But yeah, these other strategies have got to have got to be pursued. But the essential need is for the American people, the larger public, and particularly the Congress and the administration, et cetera, to even know that this is happening. And then for consumer groups to come in on this. So, that's the real pressure point on an outfit like Exxon. It's not the worker power because that's been diminished severely, as you know, by laws and executive action over the last several years. The real power has got to be us, people saying, "Wait a minute. This is not just about a few union members down in Beaumont, Texas. This is about the middle class itself and the inequality that is just siphoning the energy and vitality of our country."

Ralph Nader: Well, this is right up the alley of Public Citizen, who is part of a large coalition of consumer, environmental groups, worker groups, so they can increase the decibel level of the rumble here. And we'll give the White House switchboard number, so some of you listeners should pick up the phone and send a message to the self-described union guy in the White House, President Joe Biden. Any other websites you want to give us?

Jim Hightower: No. Well, just the hightowerlowdown.org. We will have all the details there of groups that are fighting this, that are standing up. So we'll have their websites and the information, as well as the suggestions of what ordinary folks can do.

Ralph Nader: Okay, listeners, just take a few minutes and get to the hightowerlowdown.org and call the White House. As Jim says, this is not just a Beaumont-ExxonMobil refinery problem; it affects efforts to break unions and break the middle class all over the country by these global corporations who have no loyalty to country or community other than to either control them or to abandon them to fascist and communist dictatorships overseas. Thank you very much, Jim Hightower.

Jim Hightower: Thank you, Ralph. Keep at 'em.

Steve Skrovan: I want to thank our guests again, Michael Saks, Stephan Landsman, and Jim Hightower. For those of you listening on the radio, that's our show. For you, podcasts listeners, stay tuned for some bonus material we call "The Wrap Up". A transcript of this show will appear on the *Ralph Nader Rader Hour* website soon after the episode is posted. Subscribe to us on our *Ralph Nader Rader Hour* YouTube channel. And for Ralph Nader's weekly column, it's free; go to nader.org. For more from Russell Mokhiber, go to corporatecrimereporter.com.

Ralph wants you to join the Congress Club. Go to the *Ralph Nader Rader Hour* website, and in the top right margin, click on the button labeled Congress Club to get more information. 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 Rader Hour* are Jimmy Lee Wirt and Matthew Marran. Our executive producer is Alan Minsky. Our theme music *Stand Up, Rise Up* was written and performed by Kemp Harris. Our proofreader is Elisabeth Solomon. Our associate producer is

Hannah Feldman. Our social media manager is Steven Wendt. Join us next week on the *Ralph Nader Rader Hour*. Thank you, Ralph.

Ralph Nader: Thank you, everybody. To have President Joe Biden learn about what's going on in Beaumont, Texas, as Jim Hightower has just narrated, the comment line for the White House is 202-456-1111. That's 202-456-1111. And just ask Joe Biden to brief himself on the Beaumont lockout by ExxonMobil that affects unions and the middle class all over the country and take a stand. After all, he calls himself “a union guy” period. Thank you.