

## RALPH NADER RADIO HOUR EP 400 TRANSCRIPT

**Steve Skrovan:** Welcome to the *Ralph Nader Radio Hour*. My name is Steve Skrovan. David Feldman is having technical issues so he won't be joining us today, but we do have the man of the hour, Ralph Nader. And Ralph, this is our 400th program.

**Ralph Nader:** Yeah, 400 programs, many of them not replicated by any radio, commercial or nonprofit or public press or NPR [National Public Radio], right.

**Steve Skrovan:** You are correct, sir. And they're all archived at [ralphnaderradiohour.com](http://ralphnaderradiohour.com) if you want to catch up on the 400. But this is kind of a landmark episode for us. And today, appropriately enough, we're gonna talk about a subject that is most definitely in our wheelhouse, corporate crime. Our guest will be Mihailis Diamantis, law professor at the University of Iowa and the organizer of last month's *Imagining a World without Corporate Criminal Law* symposium. The symposium brought together top corporate crime scholars to explore what corporate punishment would look like if criminal liability was off the table. How would regulatory agencies and our civil legal systems step in? What could replace criminal prosecution for punishing corporate offenders and pursuing justice for victims? Do we actually have a system of corporate criminal law in the US or have we been duped?

We'll ask Professor Diamantis about what he hopes to accomplish with the symposium and delve into his own contribution to the argument which he coauthored with W. Robert Thomas entitled *But We Haven't Got Corporate Criminal Law!* Then we'll revisit another favorite subject, the Post Office. The US Postal Service delivers almost half of the world's mail annually. They serve 160 million addresses. At nearly 250 years old, after a couple of facelifts, they're on time more than 90% of the time. Pretty good for a semiquintennarian. Don't worry, I did the math on that.

Our second guest, historian Christopher Shaw, has written extensively about the vital role of the Post Office as a democratic public service. We'll ask him about his upcoming book, *First Class: The US Postal Service, Democracy, and the Corporate Threat*. As always, we'll check in with our own resolute corporate crime reporter, Russell Mokhiber. But first, if PG&E [Pacific Gas and Electric Company] can set fires, Takata [Corporation] can blow up people's cars, and Nestlé [S.A.] can use slave labor to harvest cocoa, does that mean arson, murder, and slavery aren't crimes anymore? Mihailis Diamantis is a professor of law at the University of Iowa, where he specializes in corporate crime and legal theory. Welcome to the *Ralph Nader Radio Hour*, Professor Mihailis Diamantis.

**Mihailis Diamantis:** Thank you, Stephen. Thank you, Ralph. I'm grateful to be here.

**Ralph Nader:** Welcome indeed, Mihailis. We see you as a rising phoenix from the often moribund law schools when it comes to teaching corporate crime and researching it. We're in a corporate crime wave in this country and around the world. It's been that way for many years because the law has never caught up with corporate criminality. The recent exposures of

financial crimes, the Panama Papers, the Pandora Papers, trillions of dollars being socked away, tax evasion around the world, major wealthy corporate interests involved. They set up hundreds of shell corporations. We have the Sackler opiate escape from corporate criminal law. Boeing [Company] has escaped for its killing 346 people with premeditated risky software trying to substitute for an aerodynamic problem with the 737 Maxes.

So here's my first question. Tesla[, Inc.] as the combined stock valuation of the top seven other auto companies, including GM [General Motors Company] and Volkswagen and Toyota [Motor Corporation]. Elon Musk runs Tesla. He has put on the road these autopilots and these autonomous car experiments. There are not that many of them, but they've already killed or injured 12 people. He has known about this. He keeps putting the same autopilot with a little software alteration. He refuses to recall the cars. He's being investigated by the Department of Transportation. Those cars are now a risk to life and limb on the roadways. He won't recall them as I noted. Is he a prospect for a manslaughter prosecution?

**Mihailis Diamantis:** I think Elon Musk might be. I would first, though, probably focus on Tesla itself as a corporation. Part of what you're getting at here is, as you mentioned in your opening remarks, that our law of corporate liability is ancient. It has not been updated [so] it is literally ancient. It's this old doctrine called respondeat superior, which literally dates back to Roman times. It governed the liability that slaveholders had for the torts and the misconduct of their slaves.

And one of the things which I find particularly concerning about the artificial intelligence driving systems and the Tesla automobiles that are causing these accidents is that they don't fit neatly into this framework that we have for corporate liability. Since it was designed in ancient times, it requires a human being to engage in the misconduct for it to be attributable to the principle – in this case, the corporation.

But what you see corporations doing a lot of times these days is when they have an algorithm, an artificial intelligence that ends up causing some kind of harm, you see the corporation saying it wasn't us; it was the algorithm. And since you don't have a person there, you have an algorithm rather than a human employee, these doctrines we have for corporate liability turn up short. We've seen prosecutors decline to pull cases/to pursue cases in circumstances where self-driving cars have run over people because they literally can't find the driver through whom to channel liability to the corporation. So given my interest in corporate criminal, that'd be the first place that I would focus. I think it'd be a fact-intensive case to look at Elon Musk individually, but I could see a case developing in there, particularly under some version, maybe of responsible corporate officer doctrine, which allows in certain circumstances attribution of corporate misconduct, or misconduct by subordinates within a corporation, all the way up to hierarchy to the executive officers.

**Ralph Nader:** Well, let's turn to the Sackler family in the opiate epidemic. There's a huge public record on that. And the settlement allowed the Sackler family to avoid criminal prosecution. They had to pay \$4 billion over time. They have \$13 or so billion left. It raises the question: Can you really have corporate criminal law enforcement unless you also have corporate criminal executive enforcement? In other words, not just the artificial entity of the corporation chartered

by the state. Financiers don't create corporations; the state provides charters for these corporations; their birth certificate financiers fund them. But can you really have one without the other?

**Mihailis Diamantis:** Well, as a matter of legal doctrine, you can't really have one without the other. In order to have a corporate prosecution, as I said, you gotta find some individual criminal within that corporation. But just as a matter of common sense and good enforcement policy, you can't have effective corporate criminal regulation without pulling the one-two punch of both pursuing the corporation and any responsible identifiable individuals within the corporation. It's individuals that run corporations [so] you got to get at them. It's their interest. If you're gonna be able to move them to move the corporation, that's the first fulcrum of influence that you have.

**Ralph Nader:** How do you analyze the Sackler prosecution and their corporation? Give us your view on that.

**Mihailis Diamantis:** So I would say there's, again, probably a pretty good case against some individual Sacklers involved in the management of Purdue [Pharma L.P.] under the responsible corporate officer doctrine. Just one amendment to your opening about the description of the Purdue case. I don't believe as part of the bankruptcy settlement the Sacklers got immunity from criminal prosecution. I think it was just from civil suits related to opioid distribution. So there's still some remote possibility that DOJ [Department of Justice] or some attorney general somewhere is gonna pick up a case against individual Sacklers, so it's becoming an increasingly remote possibility.

One of the frustrating things about this case as well is that through the bankruptcy, as you know, the Purdue Pharma is now basically in public trust. Or if the bankruptcy proceeds, it's gonna be in public trust operated for the benefit of the victims. And there's no way that we're gonna get a criminal case against Purdue Pharma either given that it's now being operated for the benefit of the victims themselves. So this, to my mind, is one of the most egregious corporate violations in American history. And we are unlikely to see criminal prosecution of either individuals within Purdue, within the Sackler family or of Purdue itself.

**Ralph Nader:** We're talking with Mihailis Diamantis, full professor of law at the University of Iowa. We're now in an era of no-fault corporate criminality. We're now in an era where corporate thieves almost never go to jail. The crooks in Wall Street in 2008 were given a pass by [Barack] Obama when he became president. Only a few years earlier, 800 executives in the savings and loan rackets were prosecuted and sent to jail. So the situation is getting worse and worse.

I remember in 1970, I wrote a letter to President Richard Nixon urging him to have the Justice Department put out a report on corporate crime. In those days, the phrase 'corporate crime' was never used. It was all white-collar crime like a bank teller cheating the bank instead of the banks ripping off their customers Wells Fargo [& Company] style in the hundreds of thousands of fake accounts that they established. I got no answer. In the subsequent years, we have failed to get any comprehensive congressional hearings on corporate crime. Once in a while, there'd be a bill introduced by Congressman John Conyers on endangerment, but it wouldn't go anywhere. Both parties would never talk about corporate crime--how it affects consumers, workers, the

environment, communities, patients, children, you name it, in their campaigns. It's a taboo. And as I noted, the immunity and impunity of corporate crime and corporate criminals running these corporations has only increased as the brilliant strategies and tactics of their corporate law firms become more and more embedded in the reality of the enforcement system at the federal and state level.

So let me ask you this question. Before we get to the lack of any corporate criminal code to speak of, how many of these settlements, these non-prosecution agreements [NPA], deferred prosecution agreements [DPA] or not bringing any grand juries to the pursuit of these corporate crooks at all, are due to the total understaffing of the Justice Department – federal [District Attorney] DAs around the country, state DAs [District Attorneys] around the country and state attorney generals? One law firm, Baker Botts [LLP], for example, has more lawyers than the entire number of lawyers working environmental crimes and antitrust crimes in the Justice Department--just one Houston law firm of hundreds of that size. So how much of it is a deliberate budget squeezing by a corporate lobbyists at the state and federal legislative levels to make sure there are very few federal cops on the corporate crime beat?

**Mihailis Diamantis:** I wouldn't be able to put a number on the number of deferred prosecution and non-prosecution agreements that are attributable to lack of budget. And just for the listeners out there, a deferred prosecution or non-prosecution agreement is basically a kind of settlement that the DOJ/Department of Justice will cut with a suspected corporate criminal to basically keep the corporate criminal out of trial so they never have to plead guilty to a crime, and so they never have to face a jury or be convicted by a jury. They can negotiate particular terms, whatever the DOJ wants to extract, some combination of fines or suggestions of compliance reform. I don't think the absolute number of deferred prosecution/non-prosecution agreements is really the number that we should be focusing on. Rather, it's the number of DPAs and NPAs that go to the largest corporate criminals. We have a fair number, still a piddling amount, but a relatively large number of prosecutions against small and mid-sized corporations engaged in localized crime. But it's really these biggest corporate criminals – the ones we've been talking about on this show and that you talked about in previous interviews that are getting the deferred prosecution and non-prosecution agreements.

Now there's several reasons for that. One, as you certainly point out, is budgetary restrictions. It takes a lot of money to investigate a corporation and corporations are a lot of times willing to shell out money to outside law firms to conduct the investigation proactively themselves, rather than have the DOJ come in and do it. And the DOJ, because of budget restrictions, is happy to defer that responsibility to the corporations. But I think in addition to budget squeezing, what we also have is a lack of expertise within the DOJ, that I don't know if they'd know how to carry out an investigation like this; [or] if most of the prosecutors in the DOJ would even know what to look for. So there's also a lack of expertise within the DOJ in terms of conducting these investigations. So that's another reason that I think they're happy to defer to outside law firms paid for by the corporation suspected of crime to basically do the investigation themselves, and then put up in some polished memo to the DOJ [as] an explanation of the corporation's story about what happened to lay the groundwork for negotiating one of these prosecution agreements.

**Ralph Nader:** Yeah, that's one of the scandals of so-called corporate crime enforcement. They let the law firms report back. They might be considered a little biased. Let's look at the role of these corporate law firms. They're all officers of the court. They're supposed to adhere to professional codes of conduct. Do you think that they engage more often than is generally reported in criminal enterprises that they're actually in collusion [that] they actually devise the strategies, the arguments, the lobbying power for evasion of criminal laws, evasion of tax laws, evasion of environmental laws?

**Mihailis Diamantis:** If we are talking of about complicity of the law firms in their negotiation with the DOJ and the formulation of a responsive strategy on behalf of the corporation, I would be hesitant myself without strong data to impugn the professional integrity of the lawyers. I was one of them. I worked as corporate defense attorney. It's how I got into this area of research in the first place. They have a professional responsibility and I'm willing to give people the benefit of the doubt that they take it seriously.

Now, as part of taking it seriously, there's obviously gonna be a lot of cognitive bias. There's gonna be a lot of sympathetic relationships that develop in the course of an investigation compounded by the fact that these attorneys are hired and they have a professional obligation to zealously represent their clients – in these cases, the corporations that they are investigating. So part of what they're supposed to do is to formulate a sympathetic story about the misconduct that the DOJ suspects might have taken place. I do think it's problematic to outsource so much of this investigative responsibility to private law firms hired by and paid for by the corporations who are suspected of engaging in misconduct in the first place. So that'd be one of the first places that I would look.

**Ralph Nader:** Well, you know at law school, we're all taught that attorneys should zealously advance the interests of their clients. But I'm not asking the question on when the companies get in trouble, how do these corporate law firms try to defend them? I'm asking a more basic question, which is almost all of these corporate crimes globally and nationally and locally involve schemes that are drafted, conceived, sometimes brilliantly, by corporate law firms. The financial schemes behind all these reports that we read about in the press [and] payday loan rackets. They're schemes; they're contractual impositions on their victims – small print contracts. There are finance schemes in terms of monopolizing markets. You have schemes behind Google [LLC] and Facebook and Pfizer [Inc] and ExxonMobil. So we're not talking about defending when they're caught or when they're under investigation. What kind of responsibility do they have for these schemes? Because these schemes not only deal with tax avoidance or law avoidance, they deal with evasion. Outright criminal behavior is enabled by these schemes including destroying documents. They have a fancy word for it in corporate law firms called document retention. Go ahead.

**Mihailis Diamantis:** Yeah, I suspect and I have a high level of confidence that there are some attorneys who are engaged and complicit in their corporate clients' criminal misconduct. Again, without a good amount of data, I'd be hesitant to impugn the profession more generally. This might be a little Pollyannaish of me, but my first place that I go to when I see a problem is not to blame individuals, but to look for perhaps systemic problems that are pushing individuals to behave in ways that are concerning to us.

So what we have in white-collar criminal law generally is a very ambiguous and poorly drafted code. You look at false claims; you look at mail and wire fraud; you look at insider trading; you look at many of the statutes that corporations are routinely suspected of violating. And what you see is a few words on a piece of paper, which courts then expanded into a very complicated doctrine that still has a lot of gaps in it. It's a fundamental problem of unclarity in our white-collar criminal law. And so there is a fuzzy boundary between what counts as a sharp dealing and what counts as criminal misconduct. And it's a boundary that I think Congress needs to firm up.

Now, as far as the attorneys are concerned, they have this ambiguous law that they're dealing with and trying to advise their clients about how to comply with it. And they themselves face a fuzzy boundary between zealous representation of their client in the face of an ambiguous law, giving them meaningful advice, and crossing over that line into something which borders on complicity in the corporation's misconduct. And it's hard to say – because the line hasn't been defined for us yet – what's on one side and what's on the other. So I think we need more clarity there as well.

**Ralph Nader:** Well, you know, we've just compiled 35 book titles documenting corporate criminality, very well footnoted. One just came out on the Sackler family, for example. There'll be ones on Boeing. There'll be ones on the oil industry, Wall Street. There already have been. I mean there's plenty of existing documentation and the manslaughter charges have been on the books for years. If you drive a car erratically because you're inebriated down a road and you kill a pedestrian, you can be prosecuted and go to jail. Corporations can refuse to recall cars with lethal defects, which result in death or injury, and they're almost never prosecuted. And I don't understand why some DAs do not use traditional manslaughter law. It's not first degree murder; it's not second degree. It's involuntary manslaughter against these corporations or corporate executives. What's the reluctance?

**Mihailis Diamantis:** I think the reluctance is that we're both against corporate executives and against the corporations themselves. I mean, you've pointed here to a clear law that we've had on the books. You kill someone with criminal negligence and you're on the hook for manslaughter. The problem here, I think, goes back to a) the antiquated doctrine we were talking about, and b) the standard of proof the prosecutors have to meet. So in order to prosecute an individual, the prosecutor has to be able to show or believe they'll be able to show beyond a reasonable doubt that the elements of the crime were satisfied. And that turns out to be really difficult when you're engaging with a corporation, which is an information black box if the corporation decides not to cooperate; and an information black box where anytime you pull open the lid, all you see is people pointing fingers at each other. It's very hard to reconstruct where the lines of responsibility are. And oftentimes what you'll see is that maybe there's no single individual responsible. You have kind of a diffused responsibility, and so maybe there's not any individual that is solely responsible for the catastrophe that resulted. Now, this has important implications for whether prosecutors can pursue these kinds of cases against corporations themselves. Because under that antiquated rule, respondeat superior or let the master answer, the prosecutor has to be able to find some individual who satisfies the elements of the crime and then be able to, through them, attribute the crime to the corporation. But when you have these distributed types of crimes where each person is contributing maybe just a little bit to a catastrophic harm, you can't find that individual. It's a real case.

**Ralph Nader:** How about a solution? What if we had a law that required large corporations to appoint a compliance officer, who is responsible for the conduct of the corporation? And so the prosecution can be focused on the compliance officer's negligence, indifference, corruption. So you pinpoint an office in a corporation and try to avoid the very real problem you pointed out, which is diffusion vertically and horizontally, of responsibility for any particular decision, like building a Corvair or the 737 Max. What's your view on the compliance officer approach?

**Mihailis Diamantis:** So, I think they have something similar to this, not necessarily a compliance officer, but in Japan, and I had a student once told me from Guatemala, so maybe in Guatemala as well, that there's the executive officer responsible for going to jail if the corporation commits a crime. And so you do have somebody, some token figurehead, who can take the fall if the corporation does something bad. So presumably they're gonna be incentivized to really investigate and find out any problems. I'm not aware of this being an effective system of prevention, in part because there's nothing that one individual can do to manage a corporation that has hundreds of thousands of employees. I think that a lot of these problems are systemic rather than necessarily the responsibility of individuals. And I'd be hesitant to throw someone in jail when maybe even despite their best efforts, there are malicious employees through the corporate hierarchy who perhaps even subvert the compliance mechanisms that the individual put in place. What I think we need is...

**Ralph Nader:** To be sure, yeah, you have to have evidence of culpability, indifference, collusion on the part of the compliance officer. Let's go to another approach here. Do you think that we should revive the pulling of the corporate charter, throwing the company into a kind of environmental bankruptcy, creating a trustee, removing the rulers of the corporation, the officers, the board of directors? And there's precedent for that. In the late 19th century the Standard Oil [Company] of Ohio got its charter pulled and they didn't think it was that big a deal. You don't shut down the corporation; you just reconstitute it with the new governance. You see any opportunities there to pick some corporations and file at the state level for revocation of the charter?

**Mihailis Diamantis:** Absolutely. Absolutely. I would hesitate to say revocation and threatened dissolution because I think that would exacerbate some of the problems we have already with prosecutors not wanting to bring cases against corporations for fear of driving them out of business. But in terms of perhaps even temporarily nationalizing certain egregious corporate criminals for the purposes of revising their governments and having some mandatory compliance review and reform directed by a government entity rather than by a law firm or private compliance company hired by the corporation itself; I do see a lot of promise there.

**Ralph Nader:** It's not putting them out of business, Mihailis.

**Mihailis Diamantis:** Yeah.

**Ralph Nader:** It's putting the corporate crooks at the top out of business and reconstituting/reforming the structure with a trusteeship and then putting it on the straight and narrow path. Anyway, that's one approach. In one of your articles, you have a very seminal paragraph I wanna read to our listeners. It's very short but listen carefully and you'll see how important the insights

are. This is a paragraph by Professor Mihailis Diamantis, full professor of law at the University of Iowa, College of Law in Iowa City.

“Criminal justice has four distinctive features. 1) utilizes uniquely demanding procedure, 2) to target the worst defenders with 3) the harshest penalties, and 4) society's deepest moral condemnation. The United States's purported system of corporate criminal justice lacks all four features. The biggest corporate criminals routinely sidestep all criminal procedure and any possibility of conviction by cutting deals with prosecutors, trading paltry fines and empty promises of reform for government press releases praising their cooperation. The real question is not whether the United States should retain corporate criminal law, but what it would take for the United States to have a corporate criminal justice system in the first place.”

Now I remember the government took Pfizer to court for promoting off-label uses of its drugs. Now doctors can do it, but corporations who sell the drugs can't do it, and they settled for several hundred millions of dollars. And I remember people came to me and said, See, the system works. And I said to them, Well, Pfizer probably made far more than that. And the fines, given the size of Pfizer and the volume of sales, is nothing more than tollgate slap on the wrist.

So wouldn't you say now, even at the highest levels of crackdown on corporate crooks, that what it really boils down to [is] nobody goes to jail, except maybe the janitor, and there's a tollgate by the Justice Department under pressure of corporate law firms. And said, if you pay this much, you're clear. Isn't it really a tollgate system? A commercial dollar tollgate system, and in some instances, even deductible.

**Mihailis Diamantis:** I couldn't agree more, Ralph. The fact is that corporate crime pays in the United States. The average fine for corporate criminal resolution with the DOJ is just 0.04% of market capitalization. The DOJ gets to represent when it publishes the press release about these deferred prosecution agreements that, Hey, we have pulled/extracted \$100 million, maybe a couple billion dollars from one of these corporations. And it impresses people like the listener who came and said to you, look it works. But the fact of the matter is that these numbers, which seem astronomical to us individuals, are drops in the bucket when we're talking about these massive corporate behemoths--the ones who are most likely to a) engage in this type of criminal conduct and b) the most likely to get some of these sweetheart deals from the DOJ.

And so, the conclusion that I take, if I was just a corporate exec without a moral compass, or if I could embody myself as a corporation without a moral compass, it is in my economic interest to engage in the type of conduct that Purdue engaged in [and] engage in the type of conduct that you described Pfizer engaging in.

**Ralph Nader:** By way of exemplifying what you just said, the Justice Department under [Donald] Trump actually convened a grand jury on the Boeing 737 Max crashes. And it went on for months. Nobody knew what was being heard or ordered in terms of documents; it was pretty secret. And then suddenly on January 5th, 2021, just before Trump left office, the Justice Department announced a deal where Boeing admitted criminal conduct on behalf of two of its test pilots, but not Boeing executives, got wording saying “Boeing executive culture is not attached to this criminal conduct.” And they had a \$250 million fine, and about a \$1.7 billion



assignment of Boeing money to the airline, and \$500 million for the families who lost their loved ones in the two crashes in Indonesia and Ethiopia. Now, that's two and a half billion for a really massive corporate crime that has not finished its story yet. And in December 2018, at a board of directors meeting of Boeing, CEO [Dennis] Muilenburg proposed a \$20 billion stock buyback – one of many – and they approved it and later withdrew it after the Ethiopian crash. But here it is, just one year, [and the] pleased board of directors rubber stamped \$20 billion in stock buybacks [that] doesn't create any jobs, [is] totally unproductive, and usually done to improve the metrics of executive compensation. So that's what you're talking about. I mean, even when they do have a grand jury and they do come to a settlement, it's utterly trivial in terms of monetary bite. And also a lot of what Boeing is paying for these disasters is insurable, deductible, and under the strange nature of corporate accounting, in some respects, depreciable.

So, we have to look at all the fundamentals, which is pulling the charter, establishing a real corporate criminal code that requires structural vulnerability inside the corporation so we don't get this diffused problem; gets rid of mens rea for corporations, and more basically establishes for large companies a new federal chartering so that state chartering out of Delaware or Reno is replaced for large companies by federal chartering. We can bring up the birth certificate and the accountability of the constitution of the corporations, which is the charter, up to date. This was proposed by William Howard Taft over a hundred years ago, Teddy Roosevelt over a hundred years ago, and most recently, Senator Elizabeth Warren. What do you think of that?

**Mihailis Diamantis:** Ralph, I think you're going in exactly the right direction. In fact, I would double down on the direction that you're going. I think that focusing on the fines in a settlement, like the one that Boeing reached, is in some sense a misdirection. The Boeing fine ended up being about 8% of its annual pre-crash revenues. If you were an average American with an average salary that equates about \$4,100 for the 346 deaths that Boeing caused. It turns out that fines beyond the legitimate use that they have of making sure that victims of the corporate misconduct are adequately compensated, have very little impact on corporate behavior--not just because they're so small, but also because to have a fine big enough to move a corporation, you need a fine that will put the corporation out of business!

The thing that really ticks me off about the Boeing settlement is not the small value of the fine, which itself is just expressively egregious, but is instead the fact that Boeing, a repeat offender who had entered into a settlement with the FAA [Federal Aviation Administration] just less than three years before its first 737 Max crash over similar safety issues, got away from the DOJ without any oversight of the reforms that it promised to implement – reforms to its culture, which whistleblowers and investigations have revealed, put profits over safety. Instead, all the Boeing got away with with the DOJ was a promise to reform its compliant systems on its own and then to submit annual reports to the Department of Justice drafted by Boeing and their in-house attorneys that you were talking about earlier to the DOJ. That's just a promise to do better in the future. Boeing already violated the trust implicit in its charter to conduct business in a lawful manner. I think what we need to do in the criminal justice system, corporate criminal justice system, is exactly the direction that you're pushing. Perhaps deemphasize fines and emphasize instead mandatory government directed reform in the one mechanism of which might be the sorts of public trust that you were describing.

**Ralph Nader:** I mean, that's what federal chartering can do. It could embrace a lot of the kind of proposals that you and others are advancing just to come up to date. I mean, these state chartering laws are ancient. They cannot address global corporate power skipping out of different jurisdictions, pitting jurisdictions against each other. And by the way, the deal that the Justice Department met on January 5th with Boeing didn't even require a corporate monitor.

**Mihailis Diamantis:** Exactly.

**Ralph Nader:** It usually requires corporate monitors to report from year to year to see whether the deferred prosecution agreement should be ended or no longer deferred with a renewed prosecution. Well, we're out of time, unfortunately. We've been speaking with Professor Mihailis Diamantis of University of Iowa College of Law and a leader in the deliberative process about what are we gonna do with these gigantic artificial entities called corporations, who have been given by judicial decisions, all the rights of human beings. But they have immunities, privileges, and sheer capital power that no human being could ever attain. And [that] raises the question as to whether there can ever be equal justice under the law with these giant corporations unmoored from constitutional, statutes, and international treaties. Thank you very much, Mihailis.

**Ralph Nader:** Thank you, Ralph. Thank you, Stephen. It was a pleasure.

**Steve Skrovan:** We've been speaking with Mihailis Diamantis. We will link to his work at [ralphnaderradiohour.com](http://ralphnaderradiohour.com). Let's take a quick break. When we come back, why does Congress keep letting the dogs loose on the Post Office? 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, November 5th, 2021; I'm Russell Mokhiber. The Federal Trade Commission [FTC] is sending nearly \$60 million to more than 140,000 Amazon[.com, Inc.] drivers. The funds will serve as reimbursement for tips that Amazon allegedly illegally withheld from drivers between 2016 and 2019.

In 2021, the FTC brought a lawsuit against Amazon and its subsidiary, Amazon Logistics, alleging that the company failed to fully pay tips that drivers in its Amazon Flex program had earned. Amazon Flex drivers deliver goods and groceries ordered through programs like Prime Now and Amazon Fresh. The complaint alleged that the company secretly kept drivers' tips over a two-and-a-half year period and only stopped the practice after becoming aware of the FTC's investigation. For the *Corporate Crime Reporter*, I'm Russell Mokhiber.

**Steve Skrovan:** Thank you, Russel. Welcome back to the *Ralph Nader Radio Hour*. I'm Steve Skrovan along with Ralph. Why does the Postmaster General keep trying to slow down the mail? Well, we're gonna ask that question of our next guest. Christopher Shaw is an author, historian, and former project director at the Center for Study of Responsive Law. His latest book is *First Class: The US Postal Service, Democracy, and the Corporate Threat*. Welcome back to the *Ralph Nader Radio Hour*, Christopher Shaw.

**Christopher Shaw:** Oh, glad to be back.

**Ralph Nader:** Thank you, Chris. I think a lot of people who have been watching the Postal Service in recent months have been wondering why the Democrats, who now have a majority on the Board of Governors of the US Postal Service, have not tried to ease out Louis DeJoy, who is Trump's nominee and who had business dealings profiteering off the Postal Service and who was accused by the very Democrats that now are not easing him out of trying to disrupt the collection and transmission of absentee ballots.

**Christopher Shaw:** Well, first off, you raise a really good point, which is that the Postmaster General is no longer and hasn't been for 50 years directly appointed by the president. It is by the Board of Governors that as oversight of the US Postal Service. And the thing is, is that that body was the one that selected Louis DeJoy and it has affirmed its support of his policies and they still hold a majority. Those first Board of Governor members who picked this guy in the first place still have a majority on the board. So, practically speaking, he's there until they decide to get rid of him, until we have some more governors rotate off and some new people maybe come on, [and] we get a different mix, a different perspective on DeJoy's tenure. But until that happens, he's still there. And DeJoy has been very combative in saying that he intends to remain in place and get used to him, and he'll be there for a long time. So he's not interested in leaving either.

**Ralph Nader:** Am I missing something? Clearly, DeJoy was Trump's nominee. He was a big supporter financially of Trump's campaign. And he was Trump's nominee. And it went over to the Board of Governors, which was controlled by Republicans. And they installed him as Postmaster General. But I thought there were three or four new nominees by [Joe] Biden who have been confirmed by the Senate and that was supposed to give the Board of Governors a majority in the hands of the Democrats.

**Christopher Shaw:** Well, so right now, there's four Republicans, there's one Independent, and there's four Democrats. But in total, there's still the six governors that picked DeJoy the first place; all six of them are still there. So even though you have the three new governors there, they still definitely hold a majority. Now, there are two spots opening up in December and there's a potential that Biden could pick two new members of the board. And they could come in and send the leadership in a different direction and pivot away from DeJoy. That could happen, but we'll have to wait and see what happens in December when those two spots open up. Otherwise, what could happen is the existing board would just go on and continue those expiring terms for an additional year.

**Ralph Nader:** Well, I stand corrected. How long is this term?

**Christopher Shaw:** DeJoy can be in there as long as the governors want him to be. There's no specific expiration date.

**Ralph Nader:** What do you think of his October 1st decision to slow down First-Class Mail? Why would he think that it's more expensive to send letters from California – airmail – to the East Coast than it is to put them in trucks taking three and a half days on the highway to get them to the East Coast?

**Christopher Shaw:** DeJoy comes out of the trucking business. I think he's a big believer in the trucking business and there have been issues with air transportation, especially in the last year or so with commercial flights being canceled and things like that. But what is happening here is this is a very short term calculus. And the thing is if you're a postal official, you have direct immediate control over the expenses. So you can always cut those. And then it looks like your financiers are getting better. So they tend to look at that side of the ledger more than the revenue side of the ledger. And how do we generate new revenues, where you have to be innovative and creative to do that. And you don't necessarily have complete control over what happens.

So DeJoy has moved in the direction here of cost cutting like so many Postmaster Generals before him. But what it means is that, for instance, if you're in the Northeast there, you used to get First-Class Mail. It would be three days coast to coast, anywhere in the country. Now, if you're mailing a letter from the Northeast, once you get West of the Mississippi River, it's going to be four days also down in the Deep South in Florida. And then once you get to the Rocky Mountains and to the West Coast, it's five days. And it used to be that that mail that now takes five days to get down to the Rockies and out to the Pacific Coast. That used to be the time to get a letter out to Guam. So it's definitely a major slowdown and it's especially impacting certain areas of the country, particularly the extremities of the country. Anytime you start reducing service, that's gonna discourage people to use this agency. So I think there's definitely a potential for revenues actually to decrease because they're cutting service.

**Ralph Nader:** Well, the right-wing approach to destabilize and diminish the Postal Service and try to privatize more of it, or corporatize more of it, was you cut the service and you raise the postal rates, which is really not a very good business strategy if your interest is in expanding postal services, modernizing it, and doing what many of us, including you, Christopher Shaw, in supporting the reemergence of postal banking. Now, as a flicker of light here, on taking postal banking, which was operating for the first 60 some years of the 20th century, and then under commercial banking pressure, it was ended around 1967. But now because there's over 30 million people who are unbanked or underbanked, because they just can't afford the fees of banks and banks don't think they're profitable enough to provide them with accounts, they would be natural customers of the reentry of the postal banking service at 33,000 post offices and branches all over the country. Tell us what's going on in that area.

**Christopher Shaw:** We've had a significant breakthrough. It's the first major step. Or really, at this point, it's actually just a minor step, but it looks major because it's the first thing that has happened at all since the Post Office stopped accepting savings deposits back in 1966 when they got rid of the savings bank the Post Office used to operate. And so it's small. There's four post offices--one in the Bronx, one in Baltimore, one in Washington, D.C., and one in Falls Church, Virginia. And they are now open to cashing payroll checks and business checks. And so you can go into these post offices and you can cash those checks and you can get the money put on a debit card and it's a single-use debit card, and then you can use that debit card at any location that would accept it. So this move into accepting cashing checks is actually a major step. And there's definitely already resistance from existing check cashing outlets that charge very high fees and also the banking lobby has also voiced its complaints about this. And there's hope; the idea here is that going forward this will be expanded to new and greater things. So for one, the card could be made reloadable. It could be possible then if they put a no-fee ATM machine in the post

office that you could use it to actually draw out cash using the card inside the post office and domestic money transfers from one post office to another and also potentially bill payment services. These would all be under the legal purview, a lot of experts think, of the Post Office-- offering these without having major legislative change. So these are definitely the first steps we've seen towards Post Office banking. And the interesting thing here is that it's happening under Louis DeJoy. Because if you look at his predecessor, Megan Brennan, the American Postal Workers Union, this has been age priority for them for years. And they actually had in their collective bargaining agreement that she should explore this. Well, she did not do that. If you look at her predecessor, Patrick Donahoe, he flatly rejected the idea. And, Ralph, if you remember, 15 years ago, when we spoke to John Potter, who was Postmaster General then, he never followed up on the idea either. So it's actually Louis DeJoy where we're seeing the first step towards anything like reviving the bank at the Post Office.

**Ralph Nader:** You know, I circle in Congress and a lot of people in Congress don't really use the Postal Service. You see in the garages trucks from UPS [United Parcel Service] [and] trucks from FedEx [Corporation]. They don't even prefer US Postal Service trucks! Tell our listeners why you think the Postal Service or the old US Post Office is so critical in the future. I mean in the past they bound the country together; they were known for reliability. You could send a letter 3,000 miles or 30 miles and it's the same postage stamp in terms of cost. They even delivered eggs overnight. People would put a letter in the morning in their town and the person received it in the afternoon. And now we have far fewer post boxes on city streets. You have far fewer postal workers. But tell us how relevant, especially in the era of emergency and rural areas, the Postal Service still is.

**Christopher Shaw:** Well, I think that history that you're describing, that history of being an agency that binds the nation together, that history of providing uniform universal service to everybody on a democratic basis, which is an affirmation of democratic ideals in this nation, I think that's still very relevant today and it can be something that we should see going forward that the Postal Service continues to promote. And specifically, if we look at democracy, the Post Office from the very beginning, the idea is it was going to transport communications, so we're going to have better educated citizens in this new experiment and republican government distributing newspapers at a lower cost. People are better informed. While they still do that today, there's no reason why we can't have...we're still doing this, but we should be looking towards perhaps having the Post Office offer email accounts, perhaps having a postal search engine. There's no reason that can't transition to electronic services--that same idea of a well-informed citizenry and the Post Office as an agency of government that helps that to happen. Also, the fact is that there are lots of people who are postal dependent. They do not have access to broadband internet, for instance. And the Postal Service is the one universal communications system that is accessible to everybody. And so the Postal Service provides service in rural areas where a for-profit business never would go, because the profit just wouldn't be there. And so if you took away the Postal Service, these places would be left out of communications; these individuals would not be able to participate and communicate with others. So these are things the Post Office is doing now. It needs to continue to do it. And also, the financial services we were just talking about--banking for all these people who are being left out. There are 8 million unbanked households without any bank account who have to pay very high fees just to do basic things like cash a check. These are people too that the Post Office can serve. So the Post Office

has a great tradition of helping democracy, of serving everyone in an equal manner, of disseminating information and news. And these things are all just as important in the 21st century. So I think it's important to have a reimagining and an updating and an expansion of what the Post Service is.

**Ralph Nader:** And that's what your new book is all about. Your new book is *First Class* published by City Lights in San Francisco, a progressive publisher. We're very proud to be a part of your long-term effort, having worked with you on a prior report on the Postal Service. You have a PhD in history from University of California, Berkeley. And I think that more radio stations should interview you at the local level. And there is a group in Washington that is coordinating this. Just contact area code (202) 421-6858; that's (202) 421-6858. And they can arrange an interview with Christopher Shaw on all these matters. Just by way of proportion, Chris, the Democrats and Republicans in the House committee recently added \$20 billion to the military budget [that's] \$20 billion more than President Biden asked the Congress to give. Give an example of the size of the Postal Service, what's its revenues, and what \$20 billion would do to the Postal Service upgrade and expansion.

**Christopher Shaw:** The Postal Service's annual revenues are around \$70 billion/\$80 billion. It's a lot of variance that's been going on because of COVID[-19] and how that has changed everything in terms of how the society is operating. It's had a lot of financial problems that has everything to do with this mandate to pre-fund its retirees' health benefits 75 years into the future at the tune of 5.5 billion over 10 years that no other government agency attempts to do; no other private corporation attempts to do. So, that's really responsible for maybe as much as 90% of the Postal Service's financial losses.

But if you're constantly operating under financial pressure and under these thin margins, then you don't invest in your infrastructure, and it begins to deteriorate. And you especially see this with the postal trucks. So they're trying to replace those now, but you have trucks on the road that are 30 years old, still. You have a whole network of post offices. And then you have all these ideas that could be pursued that have not been pursued. 20 billion dollars could go a long way in all kinds of directions here. One thing just to point out is the Postal Service has never been able to have its own airline. It's dependent on commercial passenger airlines and actually on his competitors, FedEx and UPS, to move anything by air. There's no reason the Postal Service shouldn't have its own airline just like FedEx and UPS have. So \$20 billion could go a long way, especially for an agency that's been starved for resources for a long time now.

**Ralph Nader:** And distribution of medical supplies in an emergency, for example. You got 33,000 outlets that far is greater than Walmart's [Inc.] or McDonald's number of stores. These are gathering places in smaller towns in an impersonal internet age. You actually can mix it up with friends and neighbors you meet at the post office. There are intangibles here. Postal delivery people going through residential areas. They've often saved lives. They talk with people. And it's a different quality of life that we should not forsake to put it mildly. I would like to end with this, Chris. How do you describe the mainstream media's reporting and public radio and public broadcasting? Have you been interviewed by any national media? This is your second book on the Postal Service.

**Christopher Shaw:** I'll just say that I think that media coverage has gotten better since 2020. Because in 2020, you had a lot of people who never used the Postal Service very much. I mean, there are some people in this country who tend to be wealthier, tend to live in cities, and they are not nearly as dependent on it as people who are lower income, who are older, and who are more rural. But in 2020, all of a sudden, they see the fact that, hey, I have to vote during a pandemic. We have a national election happening during the pandemic. Well, thank goodness that we have a national infrastructure here that is prepared and ready to step into the breach and allow this national election to continue. I mean, the presidential election of 2020, just the fact it could even happen logistically was not guaranteed. But the Postal Service was there and it stepped in and it got the job done, and we should be very thankful for that. And so I do think that there is more interest in reporting now on the issue than there was. But at the same time, for an agency that touches all of our lives six days a week, that has post offices in over 30,000 different communities in this country, and is the third largest employer, there ought to be more interest you would think than there is.

**Ralph Nader:** Well, the people rallied to the Post Office last year surprising some of the Washington media, not to mention members of Congress. They were taken aback by sort of almost a patriotic rally of people all over the country regardless of their political backgrounds. What years ago we thought one solution to preserve, protect, and expand the Postal Service was something we called POCAG [Post Office Consumer Action Group]. Can you describe that briefly?

**Christopher Shaw:** POCAG is a great idea. The Post Office Consumer Action Group was your idea, Ralph. And we can all be thankful for that idea. But essentially, it's a voluntary nonprofit organization. The Post Office would deliver a letter or a postcard four times a year to all the residential addresses and it would give people the opportunity to pay a small membership due in order to join the organization. And then that money could be used to hire a staff that would be an advocate for the public/an advocate for the American people in ensuring that they receive adequate and frankly a first-class postal service like they deserve. So, instead of just having the lobbyists for UPS and FedEx and the major mailers and these other groups here that are oftentimes talking about cutting service, closing post offices, or not interested in certainly improving services, you would have an advocate in a lobbying group for the average American citizen. So POCAG would really do a lot and go a long way towards giving citizens a voice in the management of their postal service, which is our people's Post Office.

**Ralph Nader:** And less than 1% of the people who join POCAG around the country can make this a formidable force, both locally, regionally, and nationally. And to read more about it, you should get Christopher Shaw's new book, *First Class*, and talk it up; get it for your local library and give it to your local postmaster. We're ordering a lot of Chris's books to give to various postmasters so they can educate the community and assure them of the critical importance of the Postal Service even in this automated, computerized internet age. Is there any last thing you want to tell us, Chris?

**Christopher Shaw:** I just wanna say that the Postal Service is part of our commonwealth. We all own it. It's our agency and we can make it what we want it to be. At one time, it did not offer banking. Grassroots lobbying got it to offer banking. At one time, the Postal Service did not

actually deliver packages, but there was a monopoly that was price gouging. People demanded and got it to do that. So it is there for our use and we can make it into a public service that we can all be proud of. And we can think well beyond letters and envelopes in terms of what this means to us as a nation.

**Ralph Nader:** And then we end up on Capitol Hill Congress so they can stop succumbing to the commercial mailers and other corporations and free the Postal Service to meet its great potential in the coming decades. [Contact] your members of Congress, once again, listeners. Thank you very much, Chris.

**Christopher Shaw:** Thank you. Good talking to you.

**Steve Skrovan:** We've been speaking with Christopher Shaw. We will link to *First Class: The US Postal Service, Democracy, and the Corporate Threat* at [ralphnaderradiohour.com](http://ralphnaderradiohour.com). I want to thank our guests again, Mihailis Diamantis and Christopher Shaw. 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 program will appear on the *Ralph Nader Radio Hour* website soon after the episode is posted.

For more from Russell Mokhiber, go to [corporatecrimereporter.com](http://corporatecrimereporter.com). For a copy of *The Day the Rats Vetoed Congress*, go to [ratsreformcongress.org](http://ratsreformcongress.org). And also check out *The Ralph Nader and Family Cookbook: Classic Recipes from Lebanon and Beyond*. We will link to both of those on [ralphnaderradiohour.com](http://ralphnaderradiohour.com). And join us next week on the *Ralph Nader Radio Hour* when we welcome musician and activist, Tom Morello. Thank you, Ralph.

**Ralph Nader:** Thank you, everybody. I hope this program will help some of our Congress Club members in sending the corporate crime letter to their senators and representatives and demanding specific replies. It was a good education, I think.