

Ralph Nader Radio Hour Ep 356 Transcript

Steve Skrovan: It's the *Ralph Nader Radio Hour*.

*"Stand up, stand up
You've been sitting way too long"*

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

David Feldman: Hello. We have a great show today.

Steve Skrovan: We certainly do and to join us in that show as usual - it actually wouldn't be a show without him – is the man of the hour, Ralph Nader. Hello Ralph.

Ralph Nader: Hello, welcome listeners.

Steve Skrovan: David is right. On the program today we're gonna cover two very important issues, police reform and worker safety. This past summer as we all know, cities across the country erupted in protest over police brutality. Portland, Oregon became such a hot bed of protest that for weeks demonstrators occupied a city block prompting Donald Trump in a constitutionally questionable move to deploy federal forces in camo gear and unmarked vans to break it all up. Controversy and rallying cries [ensued] to abolish the police [and] to defund the police entered our political debate. Our first guest is attorney Jason Kafoury. Now Mr. Kafoury and Ralph go back a long way. Jason worked on Ralph's presidential campaigns in 2000, 2004 and 2008. He is now an attorney at Kafoury & McDougal in Portland, Oregon and has joined forces with longtime police reform advocates to come up with a plan to create a commission made up of civilian volunteers who would have the power to investigate deadly force by police and allegations of police misconduct. We look forward to him joining us to tell us how that campaign happened, what's the status of it, and when it will be in full force. Then we're gonna switch gears to worker safety. The year was 1970. The president was Richard Nixon. The signing ceremony that took place created the Occupational Health and Safety Administration we all know as OSHA, an agency that has been protecting the health and safety of workers on the job for 50 years. Although Nixon signed the agency into existence after it passed through Congress, it was the work of consumer advocates like Ralph and Dr. Sid[ney] Wolfe as well as labor leaders like Anthony [Tony] Mazzocchi [deceased 2002] and Jack Sheehan [deceased 1996] and many other unsung heroes who helped pushed the idea through to the end of Nixon's pen. So, in the second half of the program, we welcome back Dr. David Michaels who was the longest serving head of OSHA under the Obama administration from 2009 to 2017. Dr. Michaels is an epidemiologist who came on the show earlier this year to talk about his book *The Triumph of Doubt: Dark Money and the Science of Deception*. He'll join us today to help celebrate OSHA's 50th birthday. As usual somewhere in between we'll take a one-minute sabbatical to check in with our corporate crime reporter Russell Mokhiber. But first let's talk about one city's fight to hold their police force accountable. David?

David Feldman: Jason Kafoury is an attorney at the Portland, Oregon law firm Kafoury McDougal where he has participated in nearly 50 jury trials. Mr. Kafoury's legal experience includes working for the Environmental Law Foundation in Oakland where he helped draft a strategic plan to protect and expand California's public trust doctrine. He's on the campaign

steering committee for a measure that would amend the City of Portland's city charter to include the creation of a new commission made up of civilian volunteers who would have the power to investigate police misconduct. Welcome to the *Ralph Nader Radio Hour* Jason Kafoury.

Jason Kafoury: Thank you so much for having me.

Ralph Nader: Yeah, welcome indeed Jason. You know, one of the big stories in 2020, along with Covid-19, relates to excessive violence used by police in cities around the country. The notorious homicide of George Floyd and many others around the country have made headlines and have led to calls for police reform and changing the burdens on the police in terms of social services that they shouldn't have to deal with, that should be the responsibility of agencies, and holding the police accountable. The Portland voters did just that with a groundbreaking referendum that you were very much involved in generating and managing. This is big news that didn't make big news. The news out of Portland as you know were these daily demonstrations in downtown Portland sometimes involving clashes with police, sometimes involving white supremacists coming into the city. Tell us about this remarkable victory which I think can be a model for cities all over the country. So, listeners wherever you are, pick this one up because the voters approved it. At what level Jason?

Jason Kafoury: Well, we had 81.7% pass this measure. I've been working on police reform. Our law firm handles a lot of different police excessive force cases. We've had six or eight high profile jury trials in my 11 years as a lawyer here. We have knocked our brains out in my entire career to try to have real police reform. We had an amazing moment this summer with the Black Lives Matter movement and the killing of George Floyd. We have an African American female Commissioner Jo Ann Hardesty here in Portland who led this effort and has been an advocate for decades, trying to get real police reform. We sat down with a bunch of experts, legal experts and tried to figure out how do we create a system that has the financial ability to actually investigate, the power to investigate, and the power to discipline. Those are the three main pillars of police reform. There are lots of different models around the country for independent citizen review boards of police excessive and deadly force, but most of them fail at one or two of those major prongs. So here in Portland we sat down and said, okay, first we got to make sure it has the money. We put into the charter and the amendments, so basically Constitution of our city that it has to have at least 5% of the police bureau's annual operating budget, this new commission. That equals about 12 million dollars. So, it's gonna have a serious amount of money to hire investigators to do the investigation and to have a true civilian board. Number two, we can't have police officers investigating police officers. That's what it's been here forever, and I as a civil attorney, when we file these lawsuits, we get to read what's inside the internal affairs investigations. Shocking, citizens never see what happens, but 99.9% of the time [when] a citizen complains about excessive force or deadly force, internal affairs says "unsubstantiated, not enough evidence" and shoos it away. That's what keeps bad officers on the streets. So, we now have an entity that we're going to create over the next 18 months to two years which will not have any police officers on the civilian review board, and will not have any family members that are involved with law enforcement. It will truly be independent citizens. It will have the power to go compel document production from the cops. It will have the power to have subpoena power. So, for example you got a 7-Eleven on the street; there's a police excessive force claim. Right now, 7-Eleven will say, "We don't have to give you the video because you have no power." But this entity will have the power to, without litigation, be able to get those types of, what it needs to conduct its investigation.

Then the big one, officers are going to have to testify and do it under oath. If they won't come testify under oath they can be disciplined or terminated as part of this review process. Then of course the most important one is that we have to have the power to discipline. What happens in Portland police history, for as long as my dad has been practicing for 46 years can attest to, is that every time there is a police officer who is actually disciplined, they've gotten their job back through arbitration process. So, this board is I think the best model and we've looked at this all over the country. I think this is the best model for independent citizen review board in the country. And, yes, we'd love to have other cities and municipalities follow this model. The measure was 26-217, Measure 26-217. It's available on the City of Portland as a charter amendment that passed with the, like I said, almost 82% of the Portland voters.

Ralph Nader: How did you pull off 82%? I mean did the police union oppose you? Were there law enforcement constituencies opposing you or what? How did you pull this off? But before you answer the question just tell us what the rough population of Portland, Oregon is.

Jason Kafoury: Portland City population is around 700,000. It is a very liberal population. I think it's only maybe 11% registered Republican, something like that. We did some polling with the ballot title and the language early on. I'm guessing the police did, too. Our polling had us at around 66% yes vote or leaning yes on the initial polls. I think what happened was that the police decided to just not oppose the measure. So, we ended up getting something like 21 different citizen organizations to file voter-pamphlet statements in support. The police union didn't file any; no opposition at all to the measure. Then we put together a huge coalition of organizations. We raised something like 350 or 400 thousand dollars including a lot of national organizations and money. We were able to, even though we only had about 90 days, this was passed as a referral to the voters at the end of July and we had only 90 days to put together a campaign team. But we raised a lot of money. We did excellent marketing, I think, digital marketing, which is the way they can reach voters now, targeted marketing to figure out who is a registered voter in Portland and how they lean, and then sending them... We did a lot of high-quality videos. A lot of people have asked, "Why didn't the cops oppose this?" I mean I wish they came out and opposed it. I think they knew it was going to pass, and so they decided to save to save their resources to try to battle it in the courts. They have already filed a grievance through the arbitration system saying that they were not allowed to bargain in good faith over these changes. But we consulted with city attorneys and outside counsel and looked at this really closely. We think that if it's going to survive any legal challenges, we still need to make some changes to state law because right now discipline does have to go through arbitration. So, we have a bill at the legislature that we're working to pass now that would say explicitly, independent citizen review boards of police misconduct are not subject to that mandatory arbitration process.

Ralph Nader: Does the governor support this bill?

Jason Kafoury: She does, yes. The governor [Kate Brown] supported this and we had the major leaders of the Democratic Party. House Speaker [Tina] Kotek supported this, so we feel somewhat comfortable that we're gonna be able to get what we need done at the legislature. I will say though, I worked my tail off for the last four or five months at short sessions with the legislature to try and do police reform. The police are so good at coming into these sessions with their hired lobbyist and saying, "Why, legislators, you just don't understand why this would be devastating to police" that have a database created for example, to look at excessive force claims and see which officers around the state are having more excessive force claims. Why? That would be a burden

financially, and accusation of excessive force if that got put into a database that constitutionally, doesn't give the officers their due process to fight it if it's only an accusation. Well, the police unions know darn well that since 99% of all those internal investigations say, "No Discipline," that the database would be pretty empty if it only included the officers that were disciplined and not the ones that were accused [were] disciplined. It's that kind of thing that we are gonna be battling at the legislature. Frankly the police are really good at getting the legislature not to do anything about police reform. But if we can't capture this moment now, then, when can we?

Ralph Nader: Well, the politicians have supported your referendum in Portland. Are they supporting from the governor on down the legislation that you're proposing?

Jason Kafoury: They are. We have the city attorneys and the city lobbyists that are going to be pushing for this at the legislature. We are now in the process; we've developed the bill and we're going to be shopping it around to get support. We've been told by leadership at the legislature that it's going to get passed, although everything is a mess. I don't know if you've seen in Oregon, but the Republicans here have walked out now in the last two sessions to not pass global warming and tax raises on the rich. So, it's gonna be a mess. It's a little uncertain as to how we're gonna operate as a full legislature next session. But we're hopeful that we'll get what we need done, and then the next big fight will be the police union contract. That is up for renegotiation this summer. Boy are the police good. I mean they've got national union lobbyists that come in and do these negotiations. The contracts are so one-sided that they basically give the police a "get of jail free card" on discipline and force into these arbitrations. This is really the first time in my career that I have felt hopeful that we might be able to get some true independent citizen review board that sticks, and I'm excited for it.

Ralph Nader: One thing you alluded to in the 47-year legal career of your illustrious father Greg Kafoury, not one policeman has ever lost his job.

Jason Kafoury: Never lost their job for yeah, excessive deadly force on a citizen ever. There has been a couple of cases where they were disciplined, even terminated and the arbitrator came back and overturned it. You know why the arbitrator overturned it? They said, well, we have no history where we've ever disciplined for someone. For this we have no precedence. So therefore, we can't discipline here in this case either. So, the arbitration system is totally rigged. It's an interesting situation because historically labor has been on board with arbitration because they don't want to see teachers and other public sector workers not have the ability to grieve their discipline. But in this particular ballot measure we were actually able to get SEIU, AFSCME, OEA-Oregon Education Association; a lot of the major unions endorsed our measure. So, I think the Black Lives Matter Movement has helped carve out I think an exception for police excessive force cases and gotten it to a point where unions are on board with it, too, which is a huge step for the movement.

Ralph Nader: Well, very few law firms will take these cases first of all. They're very, very difficult cases. Imagine trying to bring the police department to justice in a situation where citizens were brutalized by police excessive use of violence. Your firm Kafoury McDougal is now known in the Northwest as one of the few firms that takes these cases. After years and years of frustration, even though you've gotten significant awards sometimes on behalf of the victims against the police department, you said we can't continue just doing this. We have to reform it with the citizen review board. Tell our listeners, what is the official name of this review board and when does it go into

operation?

Jason Kafoury: We are going to take a very deliberative 18-month process. We actually had some money left over from the campaign. We raised a lot of national money to support this from around the country. We've hired a full-time organizer who's just going to be working to implement this at the legislature and with the police union contract. The process will be community. So we've passed the charter review, which gives the big picture sort of the constitutional changes. Here's what needs to happen. Now we have to get city council to put the guts into it. We're working to craft that. For example, when can people apply to be on the board? What sort of process will there be for [Portland] City Council to appoint the board? Those kinds of steps are the next phase. Then I anticipate that applications, sometime in the next 60 days, will be available after the City Council passes the guts of this. We called it Real Police Accountability Board. I think it's a community police oversight board. Like I said, if folks want to see what we passed, it is Measure 26-217, 26-217 and it's available on the City of Portland website as a charter amendment. I think it's gonna be a long-term haul. I think the police are gonna fight it like crazy behind the scenes and the union contract negotiations are gonna come full bare to try to stop it. But I feel confident with our current City Council. It's hard to stand against 82% of your constituents that want this to happen. So, I'm feeling more and more confident that we're going to have the best independent citizen's review board in the country by 2022.

Ralph Nader: Doesn't this type of board actually help the good police stand up against the bad police inside a department of police and cities around the country? I mean there's so much intimidation, and there's so much conspiracy of silence. The good police are afraid to speak up and say to the captain, this guy really couldn't be held accountable. He should be run out of the force. Isn't it gonna have a beneficial impact on the positive forces inside City Hall, inside the police department for highly maintained standards of professional policing?

Jason Kafoury: I couldn't agree more. Kind of like the Trump administration, right? Like you have this toxic thing at the top that leads to toxic environment within. In the Portland Police History, the bad officers that do excessive force over and over again--there's one guy, he was an officer now he's a sergeant, Sergeant Besner. He has cost the city over a million dollars in lawsuit payouts. What has happened? He's gone nowhere but up. I could give you three or four other examples. We had a top Lieutenant Kruger. He got in trouble for putting up Nazi memorabilia and still rose to the top. The second in command, Lieutenant Chris Davis, we had a case where jurors ten years ago said he's lying a hundred percent and yet he became the head of Internal Affairs for years and years and now he's second in command in the Portland Police. I think we have to completely restructure the Portland Police. I think you're right. I think good officers will support this because they don't want to be lumped in with the guys that are using excessive force. We did have, under the Obama administration, the DOJ came in and made a finding that police used excessive force here in the City of Portland in relation to mentally ill folks. So, when the DOJ came in, they did put some new restrictions on the City of Portland. For example, every time a use of force happens that has to be documented, and a sergeant has to actually come to the scene and sign off on that documentation. Just anecdotally, at our law firm, we used to get thee to five calls a week five, six years ago for police excessive force for the City of Portland. Now we get maybe one a month, or one every couple of months. We're one of the lead lawyers that do these police excessive force cases. I think the DOJ investigation steps have reduced the excessive force claims to some extent, but I think that this charter review commission that we're going to create, I

think, is the final step. The Portland Police went berserk this summer on the protest movement. I mean it was, I don't know if you guys saw the national media, but there are now probably if not dozens and dozens of cases, maybe even hundreds of lawsuits or claims being made for police excessive force during 120 days of straight demonstrations that were after the George Floyd killing.

Ralph Nader: Does this Citizen Review Board have the authority to put out regular reports on the status of policing in Portland, Oregon?

Jason Kafoury: Yeah, it has the ability to do that. It also has the authority to make policy and directive recommendations to the police bureau and city council. If the police bureau refused to do it, it has to go to City Council for a vote. I think that's one of its understated powers. Yes, we're gonna be looking at excessive force cases. But if this board finds that there is something we could do to change policy within the police bureau and the police refuse to do it, it's gonna create a public vote that City Council has to take. Right now, I think City Council, we had all of City Council. It was a unanimous vote by City Council. All five members voted to send this to the voters. I think that in this current climate I think we probably still have five votes to do a lot of changes to the police department moving forward. There has also been some talk, which I think is not crazy, of taking the Portland police... and you know Minneapolis after George Floyd talked about just destroying the entire department starting from scratch. There has been some talk about taking the Portland Police Bureau and having it be taken over by the Multnomah County Sheriff's Department. I could see that potentially happening in the next couple of years also. It's basically saying, Portland Police Bureau, you got too many bad apples at the top. You're not fixable. We'll start it over by having you be taken over by the Sheriff's [Department] in the country. That's another idea that's been floated by some of the county commissioners recently.

Ralph Nader: Tell me Jason, we're talking with Jason Kafoury of the firm Kafoury McDougal, has this victory in Portland gotten national press? Have you been on NPR, PBS, the news media? Because this is one of the hottest issues in cities all over the country.

Jason Kafoury: Yeah, I am saddened that it has not gotten more national attention. Given the climate, and given the fact that Portland has been a national story for the protest movement. And yet I feel that the protest movement has dominated the media chatter nationally about Portland, and ~~are~~ our actually doing something to fix the problem has gotten very little attention. So, I'm hoping in the coming weeks to try and get some more national attention for this. I know Commissioner Hardesty, City Council woman here told me she was interviewed by the *New York Times* at length last week, so I'm hoping there's some additional coverage that comes out of that. But I think that this is an issue that we should try to get more attention to, and I would love would love to see other cities take our model here that we created and do something similar in their local municipal areas.

Ralph Nader: We're almost out of time but Steve, David, do you have any comments or questions?

David Feldman: Yes, I thought there was a development in the treatment of the mentally ill in Oregon. There's a town in Oregon that instead of sending in the police when somebody is having mental health issues, they send in a group called CAHOOTS [Crisis Assistance Helping Out On The Streets]. They're not law enforcement officers. They don't carry weapons. They're mental

health experts.

Jason Kafoury: Yeah, you're right. The famous City of Eugene, Oregon. I know why you're talking about.

David Feldman: Yeah Eugene. It's been going on like three decades, right?

Jason Kafoury: Yeah, it has been going. Portland is trying to implement something similar right now where you would have trained mental health people responding to non-emergency 911 calls, and to non-criminal calls. I don't think that we, in Portland, have set that up. It hasn't started yet but I know that that's a work in progress. I believe that the City of San Francisco just passed a law saying that police are no longer going to respond to anything that's noncriminal, and make sure that they're going to have non-sworn officers, mental health counsellors, and those kind of things responding. But yeah, I think that Eugene model is the model that we really need here in Portland.

David Feldman: Has anybody poked holes in it yet? I'm just curious if anybody has come out and said, it doesn't work, that it's ineffective. I would assume people have attacked it because it seems too good to be true.

Jason Kafoury: I don't have statistics on that, or critiques of it. I'm aware of it but it's not something, Eugene is an hour and a half from Portland, and I haven't followed how well that works or how many people they actually touch on. But that is the model to move forward to for sure. Police are trained. My dad has great analogy for it, the police are trained to use force to prevent any physical injury to themselves or others. Whereas the fire department goes in and risks life and limb to protect mere property, right? We need a whole retraining of how our non-emergency and our emergency calls are dealt with. Portland has a huge, huge problem with mental illness [and] homelessness on the streets. There was a stat recently from a year or two ago, half of police contacts by the Portland Police [that] half of them were homeless folks or mentally ill folks. So, the system is currently not working and we have a new District Attorney who is very progressive, Mike Schmidt here in Multnomah County. I'm excited to work with him and excited to get the civilian review board in. Then I think, yeah, sort of the next phase is stopping police being the first responders to people having mental health crisis, or just homeless on the streets.

Ralph Nader: Well, we're out of time. We've been talking with Jason Kafoury of the firm Kafoury McDougal that specializes, among other tortuous actions, in excessive use of police against innocent victims. Thank you very much, Jason and thank you for your work on this measure. We hope it will be emulated in cities all over the country, and our listeners have a role in seeing that that happens.

Jason Kafoury: Yeah. I appreciate you guys having me on, and onwards to 2021, and making it a safer, better place for folks in our community.

Ralph Nader: Very good.

Steve Skrovan: We've been speaking with Attorney Jason Kafoury. We will link to his firm at RalphNaderRadioHour.com. Let's take a short break. When we return, we're gonna celebrate the 50th Anniversary of a much-maligned federal agency that has saved countless lives. 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, December 25, 2020. I'm Russell Mokhiber. In the early hours of New Year's Eve 1969, in the small coal mining burrow of Clarksville, Pennsylvania, long-time trade union insider Joseph "Jock" Yablonski and his wife and daughter were brutally murdered in their own stone farmhouse. Seven months earlier, Yablonski had announced his campaign to oust the corrupt president of the United Mine Workers of America, Tony Boyle, who had long embezzled UMW funds, silenced intra-union dissent, and served the interest of big coal companies. Yablonski wanted to return the union to the coal miners it was supposed to represent and restore the organization to what it had once been, a powerful force of social good. The story is told in a recent book by Mark Bradley, *Blood Runs Coal: the Yablonski Murders and the Battle for the United Mine Workers of America*. For the *Corporate Crime Reporter*, I'm Russell Mokhiber.

Steve Skrovan: Thank you Russell. Welcome back to the *Ralph Nader Radio Hour*. I'm Steve Skrovan along with David Feldman and Ralph. You know more people have die and get injured from trauma and toxins in the workplace than in our country's wars. Fifty years ago, the Occupational Health and Safety Administration known as OSHA was signed into law to help stem that tide. There are few people more qualified to help us celebrate that 50-year milestone than our next guest.

David Feldman: Dr. David Michaels is an epidemiologist and professor at George Washington University School of Public Health. He was the longest-serving head of the Occupational Health and Safety Administration [OSHA]. Dr. Michaels has won many awards for his science advocacy and has authored *The Triumph of Doubt: Dark Money and the Science of Deception*. Since the Covid-19 pandemic began, Dr. Michaels has focused on improving the protection of workers exposed to SARS CoV-2, has written and consulted extensively on the topic and is a member of the Biden-Harris Transition Covid-19 Advisory Board. Welcome back to the *Ralph Nader Radio Hour*, Dr. David Michaels.

Dr. David Michaels: Thank you David. It's great to be back on this show.

Ralph Nader: Welcome indeed David. We couldn't be talking in a worse time for occupational health and safety. Not only has the Trump administration announced gratuitously that they weren't gonna enforce mandatory safety standards for Covid-19 workplaces. They weren't gonna issue new standards to cover this pandemic. But generally, they have announced they're not gonna enforce any regulations, food and drug regulations or auto safety regulations making the Covid-19 an excuse instead of a reason to double down and enforce and save lives. That's one. The second, terrible climate, is that all over the country the Covid-19 pandemic is producing a tort epidemic in its own right with all kinds of people being unprotected by equipment, health workers, various other workers. They don't have the necessary protection from transmission of this virus. There are companies that are selling hazardous nostrums under false pretences. There are all kinds of tortious impacts on people, wrongful injuries. What is the Trump administration doing? They've been working with Senator McConnell to get what they call liability reform, and what I call immunity from negligent damage to health and safety by vendors in the Covid-19 pandemic arena. So, can you as the most knowledgeable person on this subject of occupational health and safety, give us a contemporary review of all this?

Dr. David Michaels: I wish I could say I'd be happy to do this. I certainly can give you this review; there's nothing happy about it. This is a worker safety crisis like no other in any of our

lifetimes. Obviously, the pandemic is hitting many populations. It's devastating the patients living in nursing homes. But this is having a direct and really terrible effect on workers in many industries. Hundreds of thousands of workers in the healthcare industry, in nursing homes and hospitals, have been infected; tens of thousands in the food supply, and many thousands have been killed. Beyond the ones who have been killed there are plenty who have been made very sick with some long-term health effects. Just the anxiety and difficulties going to work every day knowing that you could be exposed, that you've been deemed essential and you must come to work, and you care about your work, and you care about taking care of patients or making sure there's food on everybody's table. The mental health impacts are huge as well. The impact on people's lives will go on for such a long time. This tragedy is compounded by the fact that the current administration, the Trump administration has done really very little to try to improve protections, essentially letting things go on, saying the most important thing is to keep the economy running, when in fact by doing that and by letting workers continue to get exposed and to get sick, we're just helping pump the pandemic; we're driving the pandemic. It's gonna last longer and hurt more people, and hurt the economy even more.

Ralph Nader: Well, it's all exacerbated by the inaction of President Trump at the beginning when the Covid virus came over from China. Then he scoffed at it saying there may be ten, fifteen fatalities [and] it will go away. Then he actually began to override the scientists and undermine the scientists in his own administration, from CDC, to FDA, to NIH, and actually abetting the spread of the pandemic, which is why I think it should be referred to as "Trump's Virus". He even offered perhaps the use of bleach and unapproved drugs for treatment, behaving like a quack doctor. In addition to all this, is the plight of OSHA. Now one reason for this program is that this is the 50th anniversary of OSHA, the job health and safety protection agency. I was working on this bill item by item to get it through with others in 1970. It was vigorously opposed by industrial lobbyists. The unions were, with few exceptions, not that aggressive on its behalf. The Steelworkers were good but a lot of other unions were otherwise preoccupied. At that time there were 14,000 traumatic deaths a year. And there wasn't really any good data on a far greater number of deaths from particulate matter like coal dust or toxins in the workplace. But later OSHA put out an estimate that 59,000 workers died due to workplace hazards a year, 59,000. Can you give us an idea of the range of this Occupational Health and Safety pandemic itself? I mean can we come to grips with any data?

Dr. David Michaels: Well first let's go back to the beginning because I have to say when I first got into occupational, one of the first books I read was *Bitter Wages*, which was written by two of your former staff people about the important work that was done by you and the Nader research groups and the unions to get this law passed. It was signed by President Nixon in late December 1970. That's the 50th anniversary of that signature. He said, and this was somewhat hyperbole, but he said that this may be the most important piece of legislation at the time, 55 million workers covered by it, that Congress has produced. Now it's 130 million but it really is important. We take it for granted now but it's like a new amendment to the Bill of Rights. It says that workers have the right to a safe workplace. Before that your employer could say "go up on that roof with no fall protection. You do that job or we'll fire you." Now you can't do that. Workers are still not adequately protected; OSHA is under resourced. It's very difficult for it to do some things it really needs to do. But that basic right is there, and the basic idea that employers have a legal responsibility to provide a safe workplace really is a revolutionary concept in our history. It's 50 years old. It should be implemented much better now, and certainly we see the weakness of OSHA

in this current pandemic. But OSHA did have a big impact, and continues to have one. There was, 50 years ago, there was carnage in the American workplace. You talk about these numbers, you know, I saw one estimate that said there were 37 deaths every day in the American workplace from trauma, from those injuries we talked about. The Bureau of Labor statistics has just put out the numbers for 2019, and it's close to 15 deaths a day. So, it's still way too high but we're doing much better. We've gone from 37 to 15, but with a workforce that's more than twice as large.

Ralph Nader: I might add, the occupational safety in mines has improved until recently, but there are fewer coal miners. The black lung disease or coal miner's pneumoconiosis was at a horrendous level with thousands of coal miners in effect losing their ability to breath, and being asphyxiated by the deposits of coal dusts as they go deep in the mines every year with very little protection, very little water to damp down the dust. And after 1970 things began to change. There was also a compensation law passed for widows and orphans in the coal mine territories after their breadwinner lost his life. These are really spectacularly brutal deaths. They are construction site collapses burying workers alive. There are workers being scalded alive in industrial so-called accidents. I remember once I was talking to the head of Armco Steel at a luncheon in Washington. I said to him, well what do you think of the coal mine situation? He said, "Well, it's funny you ask, because we had a board of directors meeting and I took my members of the board down to visit a coal mine. They went down, down, down. They stayed there about 15 minutes and they couldn't wait to get back up. After they got back up, I asked them, I said, "What do you think now after you went down into a coal mine?" They said, "We'll never say again that coal miners are overpaid." This was a rare instance of the bosses actually being temporarily exposed to what American workers are exposed to all the time in. You have the migrant workers, and you have the exposure to pesticides and other toxics. It's been off the mass media screen far too much. Once in a while you get a feature story in the *New York Times* and once in a while you get a feature on public radio or PBS. But by and large, illegal wars overseas give far more publicity to the mass media than what's happening here among American workers. So how would you characterize the scene now at OSHA with the advent of the Joe Biden administration? I don't think Obama was all that great on occupational health and safety. Are we gonna get something more vigorous? And who do you think is being considered to head OSHA?

Dr. David Michaels: Before I get to that, what you said earlier really is an important point about this pandemic that, just like going down in the coal mine exposed these executives to what that work is like, I think for the first time we are cognizant of the important and hazardous work done by these invisible, underpaid workers who we call essential. But now we see that the farm workers and poultry workers, and nursing aides who are paid miserable wages are keeping this country going, and are paying the price for it with their own exposures, and getting sick and bringing the disease home to their families. I just read a study that, it's estimated that of the Covid-19 cases in nursing homes, 40% of all Covid-19 deaths are in nursing homes, [that in] almost half of those deaths, the exposure can be attributed to workers moving from one nursing home to another. That's how the disease is being spread from nursing home to nursing home, and within the nursing home to the patients. The reason for that is that nursing aides are paid miserably. Their median salary is less than \$30,000 a year, so of course they have two jobs.

Ralph Nader: That connection is very rarely made. And at the same time Trump's regime has been trying to weaken nursing home regulations. They haven't even dropped that effort now. It's still pending at a time of pandemic travesty. The fact that they even dare do something like this,

illustrates I think, a less than vigorous watchdog by the unions. The AFL-CIO with its great building on 16th Street has one person [who is] full time. They used to have one person half time, working on occupational health and safety, and monitoring OSHA and the Department of Labor. I have never been able to understand that. I've put it before the heads of the AFL-CIO, I said, "How can you not a whole group that does this [with] lawyers, epidemiologists, occupational health specialists? I think it's part of this malaise around the country that accepts these kinds of hazards as just the price of doing business. That's the ethos of corporations. The workers' compensation system is also seriously deficient in how much they pay for workers' compensation awards. Can you tell us a little bit about that?"

Dr. David Michaels: All of these issues are ones that are important to cover. First, it's worth noting that right now the AFL, which has gotten much smaller over the years, actually has two full-time people and some lawyers working on this. It's a small staff. You asked before about the president-elect, and I think because of what's gone on with Covid and the profile of it, the illumination of what all these workers are going through, he has made a real commitment around OSHA. He said that one of his first activities will be to put out an emergency temporary standard to require employers to protect workers exposed to Covid-19. This is long overdue. I went back and looked at what I was doing. I think it was January 25th when I first put out a tweet saying that OSHA needed to issue an emergency temporary standard for airborne infection, and we didn't even have cases in the United States yet. It was just clear from what was going on in China we would need to do that. So, it would be more than a year when President-elect Biden becomes President Biden, we'll see that. He has also committed to doubling the number of OSHA inspectors, which obviously he's got to get the money from Congress. But that will make a big difference. Workers' comp, it's a morass. Workers shouldn't have to get sick on the job if we do the right thing to protect them. But when they do get sick, when they do get injured, they should be provided workers' compensation, which says they shouldn't lose pay and all their medical bills should be covered. There are thousands of cases of Covid-19 that become workers' compensation cases where workers say, look I got this exposure at work, I should be compensated; I lost wages, medical bills, et cetera. Some states are this is a state-based system, and some state workers are doing a little better. But some of the meat packing companies like JBS, which is a giant multinational; it's based in Brazil. But it's a huge multibillion dollar company that operates a lot of the meat factories in United States. They've got one plant in Greeley, Colorado where at least six workers have died, and hundreds have been sickened. They are fighting every single workers' comp case to make sure people don't get compensated, it's just outrageous. So many things about this pandemic have shown how the support we provide workers in terms of safety at work, workers' compensation, fair wages, the right to a safe job and reasonable pay--all of those are just exposed as failures in the current system. It says what we need to do now is figure out how to fix those things, so as we move forward, not just wait for the next pandemic, but improve the lives of all these underpaid workers who make sure that the rest of us can work at home, and that there's food on everybody's table, and the elderly are taken care of. I mean it's really remarkable what's become clear because of this pandemic.

Ralph Nader: There are no institutions that give recognition of what workers have lost throughout American history because of workplace hazards. I mean, far, far more workers have given their lives for their companies. Whether they're steel companies, textile companies, chemical companies, coal mining companies, than have died in all the wars of the United States, by far, by far. I had an estimate from someone who knew a lot about coal mine health and safety and I said,

“Since 1890 how many workers have died from black lung disease--coal miners pneumoconiosis in the coal mines?” He said to me, “at least 400,000.” Well, that’s about the number of deaths in World War II on the U.S. side, combat and combat-related deaths. And that’s just one company. There is no institution in Washington or elsewhere that recounts this history. We have museums on all kinds of subjects but not on this devastating situation in the workplace. And new technologies, tell us about some new technologies that are producing hazards like carpal tunnel syndrome and others.

Dr. David Michaels: Well clearly, we know that a person’s body can be worn down by work. Repetitive work in certain conditions, doing the same cut over and over with a knife where you have to go through force is what, for example, poultry workers have to do. Those jobs wear the muscles out. They cause all sorts of problems, musculoskeletal disorders to get things like carpal tunnel or tendonitis. We know that the instance of these conditions is huge. There’s one poultry factory in South Carolina which the National Institute for Occupational Safety and Health, that’s the research arm of the CDC which is like OSHA’s sister agency. They sent experts into this one plant when I was in OSHA, and found that 40 something percent of the workers had carpal tunnel syndrome. They went back a year later and they found still 40% had carpal tunnel, but it was new people because the old people couldn’t work there anymore. They became crippled and left. These are factories, that aren’t just producing chickens, they’re producing cripples. They’re hurting people. One of the things that has happened during this pandemic is that the poultry companies, many of them have asked for permission to actually run their poultry lines, the slaughter lines, the cutting lines faster in order to produce more chickens. They say there’s a food shortage. Of course, there really isn’t one.

Ralph Nader: Tell our listeners how fast. They’ll find it hard to believe but it’s true.

Dr. David Michaels: Right now, the US Department of Agriculture sets a limit speed of 140 chickens per minute to go past these workers.

Ralph Nader: You’re an epidemiologist and an MD; we’re talking to Dr. David Michaels who ran OSHA under President Obama. Isn’t it impossible to physically pass on 140 chickens a minute? I mean these chickens, first of all, often have cancerous lesions. They have very bad conditions. I mean isn’t that impossible physically?

Dr. David Michaels: Yes, you can’t actually do your cut 140 times a minute but you have to do a lot of them, and you have a few people standing right next to each other, each trying to cut the chickens as fast as they can. The problem of course right now with Covid is they’re right next to each other in a cold environment without any fresh air coming in. So, the virus spreads very easily and we’ve had terrible outbreaks in all the poultry plants. But at 140 birds a minute, you’ve got a couple of workers working as fast as they can to make the same cut over and over. But then the industry has said, well let us run the line at 175 birds per minute, which is the same number of people are just gonna have to cut that much faster. For those individual workers it’s a disaster. They don’t get paid any more. It just burns out their body that much quicker.

Ralph Nader: You have a situation in this country under corporate supremacy that the most essential workers--the workers that harvest our food, the workers that process our food, the workers that take care of our elderly, the workers that service us in food installation, the workers who are doing the most critical work to keep society going are the least paid, the least respected,

the least insured, the least protected. Until recently, as you pointed out in the Covid-19 media glare, the least awarded and recognized. These are the heroes, day after day, unsung heroes. Fortunately, the healthcare workers, among others are getting widespread publicity for what they're doing during the Covid-19 as many of them are getting sick, many of them dying, many of them so under pressure that they've quit their life's work. These are people who love to help people, love to save lives, love to nurture the ill. But as you know better than anybody, you can have a strong OSHA law, you can have a strong OSHA administrator, you can have strong OSHA standard-setting personnel, but the corporations have ways of distorting science and delaying the processes. This is what you pointed out in your book, one of the greatest books ever written on the corporate manipulation of science and the strategy of endless uncertainty and delay. Can you tell our listeners something about your book?

Dr. David Michaels: Certainly. My most recent book is called *The Triumph of Doubt: Dark Money and the Science of Deception*. It's essentially how when corporations produce dangerous materials, they use products or pollution and there are clear indications that it's making people sick, rather than saying let's figure out what the problem is, and if we're making people sick, we'll stop doing that. What they do instead is they manufacture uncertainty about the science. They hire these product defence specialists who are the very mercenary scientists, whose job it is to say, "nope, the science isn't there; we need more studies." It's really not happening. It's the tobacco model, and the tobacco industry did it for years. It's most well-known, right now we're on climate change where the fossil fuel companies paid the small group of really questionable scientists that gave them a platform. So, you could easily have fooled the public. You have these big Republican politicians saying, "Look, I just don't believe it; there's too much dispute in the science." That approach, that playbook has been used by corporations around automobiles, the diesel exhaust. Volkswagen did it when they hid essentially the pollution impact of older diesel engines. DuPont did this around the forever chemicals, the PFAS [Per- and polyfluoroalkyl substances/man-made chemicals]. The National Football League did this around concussions. The book really goes through a lot of examples and talks about how they're doing it and what we can do about it.

Ralph Nader: It's a book that really names names, as listeners might have gleaned from the companies' names, and the industry name. But you also named people who are a part of this sowing of doubt. This is a kind of book that should be in law school courses, medical school courses, journalism courses. It's a book that you wait a generation to be written. Dr. Michaels you wrote this not just from your experience with OSHA, but you have a deep, moral revulsion as a scientist about what has happened to the concept of scientific integrity and truth. Can you give that title again?

Dr. David Michaels: Yes, it's *The Triumph of Doubt: Dark Money and the Science of Deception*. It was published by Oxford University Press earlier this year. I really tried to be very careful. Oxford of course doesn't want to be sued and so I documented everything. I named names but there's a footnote, a reference for everything I say. In fact, any of the documents are available either easily on the web or there's a website called Toxic Docs, which is run by the Columbia University and the City University of New York. I put a bunch of documents on there, so if you want to know the memos I talk about saying, this is exactly what they did, it's all available. I think, because I really want to show this isn't just me making it up. But I've seen it up close because I've been in a couple of different government agencies where I saw companies come in and try to essentially pull the wool over the eyes of the agency.

Ralph Nader: Do you have any suggestions as to who Joe Biden should nominate to head OSHA?

Dr. David Michaels: I know he's talking to some people who have some very strong backgrounds. I'm not gonna say anything who they are. I'm impressed with some of the names that are being thrown around. I assume he'll make the right decision.

Ralph Nader: I think all of us who are engaged in this effort of advancing occupational health and safety should push some of these groups, these environmental groups, to pay more attention to the workplace area than they have been, and to push the labor unions to put more personal to watchdog the Department of Labor, and to watchdog OSHA. Before we conclude Dr. Michaels, I want to give Steve Skrovan and David Feldman a chance to ask you some questions.

Steve Skrovan: Yeah, doctor, obviously in the debate over the stimulus programs, one of the sticking points for the Republicans is corporate liability. I think that will probably be an ongoing issue, or whether things are resolved by the time this airs or not. I'm gonna ask you the question this way, is there any merit to McConnell and the Republicans' arguments about freeing corporations from liability?

Dr. David Michaels: To me it's a Get Out of Jail Free card. It's saying, you don't have to worry about making people sick because nothing will ever happen to you. The worst part of that legislation, and I hope it doesn't last for long, is buried at the bottom of that, is not just immunity from lawsuits, but it actually says that if an employer makes any attempt at all to address Covid-19 exposures in the workplace, they are totally exempt from labor law including OSHA. OSHA can't go in and issue a citation even if people are dying as long as the employer can say, "Well, you know I thought about I might be able to fix things this way," even if they didn't fix it at all; it is really pernicious.

Ralph Nader: Commercial greed has no finite limits. Commercial greed feeds infinite cruelty. After all, there hasn't been that many generations since corporations - called plantations - had slaves. It's really astonishing how these fangs, these corporate fangs come back just when you think that they've withdrawn and tried to be more respectful of the workers that provide them with all their profits.

Steve Skrovan: Well, I'm gonna take that as a "no" from both of you.

Dr. David Michaels: Okay.

David Feldman: Can I get a historical perspective on OSHA because social security I always thought was an American idea, and then I read that Bismarck invented social security in Germany in the 19th century. OSHA, is that an American idea?

Dr. David Michaels: I don't know if it's an American idea. Workers' compensation system also dates to Bismarck though I like to think of it as a Kafkaesque system, and actually Franz Kafka worked for the Austrian company that was the workers' compensation company that actually its descendant is now the Austrian government's workers' compensation company. He was an attorney who dealt with these issues of worker's being injured and should they be paid. I'm sure that influences thinking and helped shape this word that we use about programs that really are unintelligible or contradictory, this Kafkaesque concept. So before federal OSHA there were state plans, and actually England, Great Britain, had factory inspectors in the 1800's. OSHA is not an

American idea. It's also not a well-formed idea. I think if we could start it again and think about ways to do it differently, there are certainly lots of ways we could do it. But it is what it is and we need to make sure it gets stronger and more protective of workers.

Ralph Nader: Well anyway, we're out of time. Thank you very much Dr. David Michaels. I think we can count on you to be an outside watchdog from your post at GW University and your other advisory committees, which I hope you'll be on under the new Biden administration. Anyway, this is a subject to be continued but I thought we'd try to inform our listeners about the enormity of this wave of violence that courses through the workplace and can be increased by new technologies that have all kinds of hazards that aren't documented until it's too late for a lot of workers. Nanotech may be one of them. Thank you very much Dr. Michaels.

Dr. David Michaels: Thank you so much, and thanks for all you do.

Steve Skrovan: We've been talking to Dr. David Michaels. We will link to his work at RalphNaderRadioHour.com. I want to thank our guests again Jason Kafoury, Dr. David Michaels. 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 the show will appear on the *Ralph Nader Radio Hour* website soon after the episode is posted. The producers of the *Ralph Nader Radio Hour* are Jimmy Lee Wirt and Matthew Marran. Our executive producer is Alan Minsky.

David Feldman: Our theme music "Stand Up, Rise Up" was written and performed by Kemp Harris. Our proofreader is Elisabeth Solomon. Join us next week on the *Ralph Nader Radio Hour*. Thank you, Ralph.

Ralph Nader: Thank you everybody and help the grieving but organized families in their fight for airline safety and to keep the 737 Max grounded. You can go to Nader.org to get buttons described as "Axe the Max" to support and spread the idea of a consumer boycott. You won't fly that plane if it's allowed to get into the air.

[Music]

*"Well, well
Say you're tired of trying
You think you have no choice
Say you're just one person
And who will hear your voice
Don't let them fool you
You have the power in your hand
I'm only trying to say..."*