

## RALPH NADER RADIO HOUR EP 370 TRANSCRIPT

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

**David Feldman:** Hello, everybody.

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

**Ralph Nader:** Hello, everybody. Sounds like David, doesn't it?

**Steve Skrovan:** It does.

**David Feldman:** I think I stole your opening, Ralph. (chuckles)

**Steve Skrovan:** Well, let's do a show. What do you say, gentlemen? Regulatory agencies like the FDA [Food and Drug Administration] exist to protect us, the American consumer, from dangerous or ineffective products, and nowhere is that need more obvious than in the medical field. The snake oil salesman is one of America's oldest professions and for every part of the human body, it seems like there are countless ineffective or downright dangerous cure-alls on the market. So what happens when one corner of the medical industry evades enforcement? In the first part of today's show, we'll be joined by Trudy Lieberman to discuss her recent report in *Harper's*. In it, she tells the story of hernia mesh – something we've discussed on this show before. This is a new development. But hernia mesh, as you may recall, is a medical implant with well-documented complications for patients and a dubious history with the FDA.

In the second half of the show, we're going to talk about the election process. Georgia lawmakers recently passed a voting law that is making headlines, in part for how crucial the state was in tipping both the presidential election and the balance of the [US] Senate in favor of the Democratic Party. But Georgia's bill is just one of more than 200 bills proposed in 43 states that would make it harder for Americans to cast their votes. Why is there so much momentum behind these so-called election integrity bills? How did so many Americans become convinced that their votes weren't safe? How can we fix the real problems with our election systems without resorting to reactionary policies of voter suppression like we see in Georgia and other states? That's what we'll be asking our second guest, Professor of statistics Phillip Stark. Then if we have time, Ralph will answer some of your listener questions. As always, we'll check in with our corporate crime reporter, Russell Mokhiber. But first, what to do when a hernia repair becomes a pain in the neck and everywhere else, David?

**David Feldman:** Trudy Lieberman is a journalist who has written for the *Columbia Journalism Review*, the *Rural Health* news service and *Consumer Reports*.

and has served on the board of the Medicare Rights Center. She is the author of several books, including *Slanting the Story: The Forces That Shape the News*. Welcome to the *Ralph Nader Radio Hour*, Trudy Lieberman.

**Trudy Lieberman:** Thank you.

**Ralph Nader:** Welcome indeed, Trudy. In addition to talking about the hernia situation, there are millions of people who have various stages of hernia problems and about a million operations a year in the United States. We also are going to talk a little bit about Medicare dis-Advantage and the increasing corporate takeover of Medicare about which you've written early on reports in this area. But right now, let's talk about hernia repair. This article in *Harper's* magazine that you authored appeared in March and is very meticulous. You are a very meticulous reporter about exactly how these mesh repairs came about and how most doctors put mesh in the bodies of people when they conduct hernia repair operations. But I want to preface it by saying, listeners, if you know anybody, or if you have a hernia problem, get yourself to Toronto, Canada. The gold standard in the world is the Shouldice Hospital, right outside of Toronto. We're going to give the contact numbers. And they have done it right all along. They almost never use mesh except in serious complications. Less than 2% of the cases do they use mesh. They use the old-fashioned tissue repair, which has a much lower recurrence problem and a much lower infection problem compared to the mesh repairs now.

I know this from personal experience, and Dr. Sidney Wolfe, who has been the watchdog of the hospital and medical industries for over 45 years, had two hernia repairs there with complete satisfaction. It also comes in much cheaper and you stay there for four or five days so they can check and see if there are any problems. You have three meals a day. You walk around the garden-like atmosphere where the hospital is located. You make a lot of acquaintances and what's not to like? We'll talk a little bit more about that. But right now, Trudy, describe the scene that has prompted over 30,000 lawsuits in 2011 an over \$180 million settlement with the companies that manufacture these petrochemical-based medical devices called meshes, and please use proper names as you do in your article.

**Trudy Lieberman:** Well, I think that we have to really go back to the mid-1950s to kind of look at where it all started. And as your listeners may know, there was a great explosion of new products coming on the market after the war. And one of those products was the polypropylene that had been discovered in a laboratory and began to be used in many, many things, including hula hoops. But then it was subsequently tested by some very enterprising doctors who thought that maybe this was a way that they could make a better hernia repair by coming up with these mesh products that could be implanted in men mostly, but in some women who also get hernias and establish a new way of doing hernia repairs. And so as many medical innovations, and I use that word kind of advisedly, because some things are truly innovative and are good for humanity and good for patients and some things are not. And I think as the years have gone on and we've watched sort of the consumer movement over the last decade, we've seen that a lot of these products have turned out to not be so good for people. And I think the hernia mesh is one of them.

So what happened after it was discovered that this product could be used to work on people who had hernias, a lot of doctors started to use it. But the thing that's significant in terms of how it got into the mainstream medical tract here, I think is very instructive because it's common to very many other devices and drugs for that matter, that doctors are recruited to be opinion leaders for the new drug or the new device. And I think patients don't know that this goes on. And the

doctors are given money; sometimes they're given dinners. They're given honoraria. They're given lots of goodies to come along and essentially shill for whatever new product the manufacturer is producing.

**Ralph Nader:** And by the way, just to interrupt you for a moment, Trudy, at the annual convention of hernia surgeons, the manufacturers are everywhere.

**Trudy Lieberman:** Oh, yes.

**Ralph Nader:** They're wining and dining and promoting, you know, asking which doctors would go further, as you described in your *Harper's* article, when they go back home and promote this product. Go ahead.

**Trudy Lieberman:** When this happens, the product in question, in this case, hernia mesh, becomes the standard of care rather quickly. And when it is sold, and I mean sold as the standard of care by these doctors making visits to doctors through what's called detailing. And the representative from the manufacturer goes to the doctor and says, "This is a great new drug or a great new device. We think you ought to use it. By the way, we're going to take you to dinner tonight too and we'll talk more about it." And so the doctor says, "Gee, I think that maybe I'll try it," especially if he's getting some kind of remuneration. And so the doctor tries it and it doesn't take long before this device, in the case of the hernia mesh, becomes the standard of care. And as one doctor who kind of bucked this trend says, "It's very hard to go against the standard of care." It takes a very brave physician to do that. And that's why in the US right now, we find very few doctors doing traditional repairs. I think a few of them are, and I think maybe we're going to see more of them, hopefully as a result of this story. But when I started working on this a few years ago, there were very few people for me to call to even ask about this. That's how few doctors there were that were doing it the old-fashioned way. And then I had to resort to Canadian doctors to kind of give me the nuts and bolts of how all of this works.

**Ralph Nader:** Well, tell us about one of our heroes here, the late Dr. Robert Bendavid, who was a physician surgeon in Shouldice Hospital right outside Toronto. He had done 15,000 surgeries. And then he became very concerned about the pain, the recurrency infection of hernia patients all over the world. And he traveled everywhere trying to show that the tissue repair, the old-fashioned way was the way to go, and that putting a foreign object like that to repair a hernia created unnecessary pain, agonizing pain, as you described in your *Harper* [sic] article, and infections and all kinds of follow-up corrective surgeries far, far greater than the tissue repair.

So now you have physicians who don't know how to do tissue repair. They just slap the mesh in, and it's a way to quicken the assembly line. You get the operation done quicker, but the charge is greater. I had a person in Connecticut who had a hernia repair at a hospital. He was charged \$15,000. I think the copay was \$5,000 and he had some pain afterwards. Whereas people went to Shouldice in Toronto and in US dollars, it cost \$5,000. They stayed a few days, had good meals, as I mentioned, and had a much safer procedure. Tell us about Dr. [David] Bendavid.

**Trudy Lieberman:** Well, he indeed was the hero of this, and he was very instrumental in me even understanding this product. It was kind of a long process. It was very hard for me to get my

arms around it for a long time. And Dr. Bendavid was very patient. And finally, we had a real breakthrough a few weeks before he went to Germany for an event. He became very ill and had to come back to Canada. And I remember that conference call, how very clearly he was explaining everything very simply. And at that point, I knew I had it. I was so grateful to him and I was extremely shocked especially - a few weeks later - when I learned he had passed away, because we had ended up our conversation with the discussion of opera and Dresden where I was going for a visit. And he was just such a learned man about many things other than hernias. It was just a pleasure to interview him.

But anyway, he had a colleague named John Morrison in Chatham, Ontario, who I turned to after Dr. Bendavid passed away. And Dr. Morrison really shepherded me through the project over the last year and a half. And he was also a disciple of the Shouldice method and very down on a lot of the practices in the US, particularly the use of robots in hernia repair. And this was a new twist that I came across sort of late in my research. I had seen all these ads for robotic hernia repairs that were being shown on TV ads. They were really advertorials all over the country by local television stations. And when I started looking at these things, I'm saying, well, this is just untrue. And what the TV stations who are complicit with the local hospitals were offering people to come in and test drive the robot. And they were offering people this experience of playing with the robot and then coming in for a test to see whether you needed a hernia repair. And of course, if you did, the hospital was very willing to set you up for one and put a mesh in you. And of course, the consumer was very uninformed about any of this or knew that there was even an option in Canada and an option with a few surgeons here in the US that could have done a non-tissue repair. And so these people got suckered in by the television stations. And I remember one young lady who was a TV anchor in Amarillo, Texas was just gushing all over the place saying, "Oh, this is so nice," in her Southern accent, which I can't do, calling people to come in and test drive the robot and then get your hernia looked at if you had one. And so that was a very pernicious aspect of the marketing of this sort of thing. And I don't know [whether] the pandemic may have put an end to it since hospitals were kind of unable to do that kind of marketing in the beginning of 2020. And I don't know that they've resumed that. But certainly in 2018, 2019, when I was doing a lot of the research for the story, that was a major way that they were reeling people in to have hernia repairs.

**Ralph Nader:** Which is, by the way, rejected by the Shouldice surgeons as unnecessary and expensive. It's a much simpler operation and it doesn't need that kind of fancy technology. By the way, listeners, you should also know that the surgeons at Shouldice have written dozens of articles in reputable medical journals all over the world, including by Dr. Bendavid and others. And they have been at times excluded from participating in the national convention of hernia repair surgeons because they are putting forth the Shouldice method, which is the gold standard. I must say, Trudy, in your article, you mentioned that some wealthy people traveled to Shouldice. Actually, my experience is a lot of blue-collar people traveled to Shouldice, especially the ones living near the Canadian border in Buffalo and elsewhere, because they wanted to save money. Because they either didn't have health insurance or they had a big deductible or a copay. And it isn't just wealthy people. You actually go there to save money as well as to have a very safe procedure underway.

**Trudy Lieberman:** Right. No, no, I think what I pointed out, Ralph, was that a lot of people that were well known, [such as] you and Dr. Wolfe, and then interestingly enough, Senator Rand Paul went there too!

**Ralph Nader:** That's right.

**Trudy Lieberman:** And the thing that's ironic about him, of course, he was not too interested in chatting about this, but he is no fan of the Canadian National Health Service. And he went up to Canada saying that the kind of repair he wanted was not available in the US. And so he probably had done his homework and decided that he wanted a non-mesh repair and went up the Shouldice to get it.

**Ralph Nader:** That's exactly the case. He knew that the Shouldice system was superior. He didn't want mesh in his body and he came back and everything was fine.

**Trudy Lieberman:** Yeah. And I think that the Louisville paper who had written a story about his visit to Canada didn't really get into any of those specifics. They didn't really talk about the mesh. They were just pointing out that how ironic it was that he went to Canada after railing against the national health service up there.

**Ralph Nader:** Tell me the names of some of these manufacturers who are doing this promotion and not revealing some of the risks and paying doctors to promote it and all that. Who are some of the major manufacturers?

**Trudy Lieberman:** Well, I think Johnson & Johnson is one of them. They were instrumental in making the mesh that was harmful to Michael Ransford, who was the patient that I used in my story. But there are other ones. LifeCell [and] Allergan, I think, is one company now that does it. And I think that people, if they want to know, the Ethicon is a Johnson & Johnson subsidiary that has made these mesh. Bard is another one. But they can go on the ProPublica website and look at the doctors and look at which companies that make hernia [repair mechanisms] give money to the various doctors and hospitals. And I think that just a few hours on that website, not even a few hours, because it's a real easy website to use, they will tell you a great deal about the money that is sloshing around and how doctors and hospitals are the recipients of it. And that may guide people's thinking in where they want to go for care.

**Ralph Nader:** Give that website again.

**Trudy Lieberman:** ProPublica. It's a journalistic site that does very good investigative reporting. And one of the things they do is have a website called Dollars for Docs. They were invaluable to me in researching this story because I was able to find [that] the doctors, big hernia at doctors, got a lot of money from these companies and they have to disclose all of this. So you can find the money that Ethicon and Allergan and Bard and other manufacturers have given to doctors over whatever year you want to look at. And it's pretty current. I would guess that they'll have 2020 data pretty soon.

**Ralph Nader:** You mentioned in your *Harper's* article, “What patients do see on hospital websites are promotions for hernia surgeries and the doctors who perform them. In a non-scientific survey of the websites of sixteen hospitals and two physician practices, I...” meaning Trudy Lieberman. “...found very little useful information about the risks of hernia mesh.” But there was one exception: Cleveland Clinic. Tell us about that.

**Trudy Lieberman:** Well, the Cleveland Clinic was a little more honest in what they were disclosing, noting that you might have pain afterwards, and they described it as challenging that sometimes it had to be fixed with a partial or complete removal of the mesh. But I should say one thing that was positive that came out in the story that I saw on a website and I saw it in a tweet, and that sent me to the website. I believe it was the Ohio State University Hospital, Wexner Medical Center is now offering a non-mesh repair. And I found that very interesting because I had looked at their website a year ago before the article was published and they were not doing that. They were just sort of talking around long-term pain and not being very forthright. But they decided now to offer both mesh and non-mesh repairs. And they were beginning to market it. And I thought that if that continues, that would be a real breakthrough, because people would then know that they had a choice.

**Ralph Nader:** Well, there are physicians who were trained at Shouldice from the United States and they've come back and they still use the tissue repair, the old-fashioned tissue repair. A friend of mine just had two hernia repairs at a hospital in Long Island where the doctor was formerly a surgeon at Shouldice and he took the gold standard procedure and is using it on his patients at the present time to beneficial effect. It works.

**Trudy Lieberman:** Yeah. So it is possible to find the few that do it and hopefully there will be more. And if that is the result of this article, I think that will be very beneficial to people because I don't think we're going to get any change out of the FDA in terms of its regulation of this.

**Ralph Nader:** Steve, can you give the contact numbers for Shouldice? So people [who] are interested in looking at their website or calling them can do so.

**Steve Skrovan:** Sure. The contact number for Shouldice is 905-889-1125. And I guess in Canada, that's 1-800-291-7750. In US international, it's 1-855-328-3423. And you can email them at [postoffice@shouldice.com](mailto:postoffice@shouldice.com). Shouldice is spelled SHOULDICE.com. But if you couldn't get that, you're in the car, whatever, we will link to that at the *Ralph Nader Radio Hour* website.

**Ralph Nader:** Thank you very much, Steve.

**Steve Skrovan:** Trudy, in your article, it seems like the risk reward for this mesh is infinitesimal. It's like a 1% difference for recurrence using mesh versus using the traditional method. But with the traditional method, you don't have the side effects. Explain that a little bit.

**Trudy Lieberman:** Yeah. That's the key thing. One doctor in California who uses non-mesh said that the recurrence rate is about 3% with the mesh, 4% with non-mesh, and for the risk of long-term pain it's around 15 to 16%. So why would you trade off that 1% point difference for

the possibility of 15% chance--which is high--of a lifetime of pain? And if you explained it that way to people, I don't know who would go in that direction.

**Ralph Nader:** The Shouldice experience in their thousands and thousands of surgeries is that there's a huge difference between the recurrence and infection under the Shouldice method compared to the mesh in the United States. It isn't even close. And so the 3% and 4% figure that you've got in your article may be a much smaller sample than the Shouldice comparison.

**Trudy Lieberman:** Well, that may be, because these are American numbers, you know, and they're still primarily Canadians using the Shouldice clinic. But I do think that that calculation is really not explained to people. They hear that you can go into the hospital, you can be in and out, the complications are minimal and they don't get explained anything. It's like poor Mr. Ransford. He didn't know about any of this. He was in pain. He just knew he wanted this fixed until he was one of the ones that got it really bad.

**Ralph Nader:** One of the problems in the US is even the doctors who try to use the tissue repair haven't been trained as well as the Shouldice doctors. So starting in the mid-80s, as your article points out, the doctors were induced to go into the mesh approach and they lost the art of tissue repair. So I think that the best statistics on comparing mesh recurrence and infection with the Shouldice method are the medical journal articles written by these surgeons at Shouldice.

**Trudy Lieberman:** Well, I think that people, if they can be accepted at Shouldice, they should definitely look into it. Not everyone is accepted. I guess they have requirements and so forth, but everybody should look at all of their options. The Shouldice and who does the non-mesh repairs here and sort of weigh the costs and the benefits. And I mean, this is a time when we really have to tell people to do their homework because it's really a matter of your future life.

**Ralph Nader:** Lifetime of agonizing pain or a lifetime of pain-relieving medication is what you say in your article in *Harper's*, March 2021. Well, unfortunately, Trudy, we're out of time. We have been talking with Trudy Lieberman, consumer reporter extraordinaire. This one relating to her article in the March 2021 edition of *Harper's* magazine on hernia repair and the pitfalls of procedures used in the United States, and how Canada does it differently in their Shouldice Hospital outside of Toronto. Thank you very much, Trudy.

**Trudy Lieberman:** Thanks, Ralph. My pleasure.

**Steve Skrovan:** We've been speaking with Trudy Lieberman. We will link to her article in *Harper's* at [ralphnaderradiohour.com](http://ralphnaderradiohour.com). Let's take a short break. When we return, we're going to welcome man with a plan to earn the trust of the American voter. 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 April 9, 2021; I'm Russell Mokhiber. For Kim Gwang-ho, it has been 1,700 days since he first told US regulators that his then-employer, Hyundai Motor Company, was failing to address a design flaw linked to engines seizing up and at times catching fire. Kim, a former safety engineer at the Korean auto maker,

said the days he has counted will be worth it if he receives a reward he believes he is entitled to as part of a whistleblower program [US] Congress ordered the National Highway Safety Transportation Administration to create in 2015. One problem: The agency never set up the program. That's according to a report in *the Wall Street Journal*. After going public with his concerns, Kim lost his job, was sued by Hyundai for allegedly leaking business secrets and had his house outside Seoul searched by police. For the *Corporate Crime Reporter*, I'm Russell Mokhiber.

**Steve Skrovan:** Thank you, Russel. Welcome back to the *Ralph Nader Rader Hour*. I'm Steve Skrovan along with David Feldman and Ralph. Let's hear what real steps we need to take to reform our electoral process, David?

**David Feldman:** Phillip Stark is a professor of statistics at the University of California [UC], Berkeley. His research includes earthquake prediction, gender bias in academia, the US Census, food equity and election integrity. Welcome to the *Ralph Nader Rader Hour*, Professor Phillip Stark.

**Phillip Stark:** Thank you very much.

**Ralph Nader:** Well, in your article, one of your articles on the subject, you say, "The existence of vulnerabilities in elections is not evidence that any particular election outcome is wrong, but the big picture lesson from 2020 is that ensuring an accurate result is not enough. Elections also have to be able to prove to a skeptical public that the result really was accurate." And that is what you have been proposing in a completely non-partisan way. Tell us about it.

**Phillip Stark:** Well, the underlying idea was dubbed evidence-based elections in a paper that I published, I think, in 2012, with David Wagner, who is in the computer science department at UC Berkeley. We've rephrased this a number of times, including last year in a paper with Andrew Appel. And the idea is that it isn't enough for an election official to say, "Abraham Lincoln won", the official should also be able to provide convincing public evidence that Abraham Lincoln really did win. And currently, the way that we run elections in the United States are more procedure-based than evidence-based. The analogy I like to use is elections are run using equipment that has been certified by the state and/or the federal government following regulations that the state has set out. And at the end of the day, they say, "We used certified equipment; we followed the procedures; therefore you can trust the answer." And I think that's like a brain surgeon saying, "I used a sterile scalpel and I followed proper surgical procedure. Therefore the patient is fine." We need to look at the patient in the same way we need to look at the election outcomes and do things in such a way that we can actually give convincing evidence that the reported winners really did win.

**Ralph Nader:** And the hand count twice in Georgia isn't enough?

**Phillip Stark:** Well, the Georgia count is a complicated thing. There was only one hand count. And the issue in Georgia is that a number of counties didn't do a good job of keeping physical track of the underlying paper ballots. They relied on the electronic voting system to tell them how many ballots were cast. And in the course of conducting the hand count, it was discovered



that some thousands of ballots either had never been scanned or they had been scanned but the data cards, the memory cards containing those scans had never been uploaded into the voting system for tabulation. So what Georgia didn't get quite right that time around was just physical custody of the paper, keeping track of it separate from the voting system. But right now, we don't know whether there were additional ballots out there in Georgia that still haven't been tabulated, nor whether those ballots would make a difference to the reported outcome.

Another problem with the way Georgia conducted its election is based on its choice of voting systems that it made in 2018. They moved to a system that requires every in-person voter to use a ballot marking device, a touchscreen device, where they make their selections and then the device prints what's supposed to be those selections onto paper. The issue is that voters generally don't check whether the printed paper matches what they did. And when they do check, they're often not good at finding problems. There've been a couple of studies on this that have shown that fewer than 7% of voters notice errors that were deliberately introduced by malicious technology into the printout. Even if voters do notice, there's no way that they can prove to a poll worker or election official or the media or anybody else that the equipment misprinted their votes. The best thing that can happen is they get a new opportunity to mark the ballot but there's no way to show that the equipment malfunctioned, and conversely, there's no way for an election officials to tell the difference between the machine malfunctioned, the voter made a mistake or the voter is falsely claiming that the machine made a mistake when it didn't.

**Ralph Nader:** Well, let's go back to your evidence-based election. You have basically six steps for an evidence-based election. Wanna go through those?

**Phillip Stark:** Well, [chuckle] I had to call up the article to remember what we outlined in these six steps. But generally speaking, we need to be voting on paper by hand for voters who have the dexterity and vision to be able to do that, with assistive technology for voters who benefit from assistive technology to be able to mark and cast a ballot independently. Then we need to curate those ballots. We need to take good physical care of them, maintain physical security in a way that can actually be documented and checked, and then tabulate the votes on those ballots any way you like. It's fine to use scanners and electronic tabulations to do that. Then we need what I call a compliance audit, which is to go back and verify that you've accounted for all the ballots, that eligibility determinations were made correctly, that the ballots were kept secure and so on. And then one can conduct what's called a risk-limiting audit to confirm whether the reported election outcomes, the reported winners, really do correspond to the paper trail that's been kept secure and trustworthy. The risk-limiting audit is my main intellectual contribution in this area.

**Ralph Nader:** And your last step was election officials check the results when an audit has a known large probability of catching and correcting wrong reported outcomes and no chance of altering correct outcome.

**Phillip Stark:** Yes, that's an essence that definition of a risk-limiting audit. It's procedure that uses a trustworthy paper trail. It looks at the paper trail. You can think of it as an intelligent, incremental recount that looks at more and more ballots selected at random until there is strong evidence that continuing is pointless; that if you were to do a full recount, it would show the same winners as the reported results. If it never developed strong evidence that a full recount

would give the same winners, it continues and becomes a full hand count, which then reveals who really won, if the paper trail is trustworthy.

**Ralph Nader:** Canadians I know have considerably greater confidence in the electoral vote outcome there, and they rely entirely, I understand, on paper ballots being counted. What do you think of the Canadian system?

**Phillip Stark:** I actually don't know what technology is used in Canada to tabulate the votes. I know that they have experimented with some online voting and generally rejected that, I'm happy to say, because that's the least secure way to vote. But one of the major manufacturers of voting systems, Dominion, which we've heard so much about, used to be a Canadian-based firm; I think it is based in the US now. So I would imagine that they use that technology in Canada, but I just don't know.

**Ralph Nader:** Well, apparently, by 11 o'clock at night from the Yukon to Nova Scotia, they know the outcomes of their election and it's entirely paper ballots--the old-fashioned way. You mentioned four states that have statutory requirements for risk-limiting audits. Do you want to mention that?

**Phillip Stark:** Yeah. So the two states that now require them routinely, I believe, are Colorado and Rhode Island, but there are also laws that either authorize risk-limiting audits or require risk-limiting audits under some circumstances in California, Virginia, Washington, and Oregon. Georgia has a law that's a little bit confusing. I think they're intending to pilot risk-limiting audits, but then only do them once every two years on only one contest, which doesn't inspire a lot of confidence in outcomes.

**Ralph Nader:** Well, you actually had an article in *Barron's* financial weekly, which is a very conservative publication. And you ended it by saying, "Let's make sure all states adopt evidence-based elections with hand-marked paper ballots, demonstrably secure chain of custody, thorough canvasses, compliance audits, and risk-limiting audits. That way, we all win." What was the reaction?

**Phillip Stark:** I probably should've looked at the comments to see what kind of responses it got in the media, but I got a few people reaching out to me. I mean, generally sentiments are in favor of it. The people who pushed back against it partly, I mean, I can understand that a statistical argument isn't terribly compelling to a lot of people. And the idea that you could actually confirm the outcome of an election involving millions or tens of millions of votes by looking at a relatively small number of ballots, dozens or hundreds or perhaps thousands, is a little hard to swallow for some people. So there's an issue of science education here to try to explain what does and doesn't constitute convincing evidence.

**Ralph Nader:** Did you hear it all from the Democratic National Committee, the Republican National Committee, or any members of Congress? Because this really is not a partisan plan you have. This is a plan for honest, confidence-building electoral outcomes.

**Phillip Stark:** Yeah. It's not a partisan plan. I have not heard from either of the major parties about this. I have been involved in legislative efforts at the state and federal level. I'm currently on the board of advisors at the US Election Assistance Commission. I was House Speaker Pelosi's appointee to that. But again, it's not a political position. It's really trying to ensure that elections are trustworthy and then to try to get the message out so that they will in fact be trusted on the basis of their being trustworthy.

**Ralph Nader:** Stealing elections is an American tradition; it has been going on back generations. There've been books written on it. Given the new technologies and the software and proprietary access and hacking, do you think the risk level of false outcomes, erroneous outcomes, is increased in recent years or stayed the same or decreased?

**Phillip Stark:** I think that elections have become more vulnerable to manipulation by a smaller number of people and vulnerable to remote manipulation rather than in-person manipulation. So stuffing ballot boxes, substituting ballots, things like that--there's long tradition of that in the US, as you mentioned. But to actually alter the paper or steal the paper, substitute paper, whatever requires physical access; to change a lot of votes that way requires accomplices as well. In contrast to the extent that we are making technology an integral part of the casting and tabulating of votes, that then makes it possible to alter the results from a distance with just one or a small number of people through hacking.

**Ralph Nader:** We're talking with Professor Phillip Stark of the University of California, Berkeley. Is it possible for sophisticated hackers, given our winner-take-all system in Electoral College, where a national election for president can pivot on a handful of votes in one or two states, to actually hack it in a way to reverse the outcome of the election?

**Phillip Stark:** Absolutely. And that's why paper is such an essential component. The security properties of paper turn out to be just right for elections. Paper is tangible. It's accountable. You can keep track of: how many ballots were sent to each polling place, how many came back, how many were sent out to voters, and how many came back. It's tamper evident, and it can't be altered sort of remotely and wholesale. That said, the tabulation of the paper can. And that's why it's important to double-check the tabulation with an audit. So creating a trustworthy paper trail, keeping it trustworthy, and then manually inspecting some of the ballots as a double-check on the electronic tabulation is the way to go.

**Ralph Nader:** Do you have any comment on proprietary ownership of software by corporations who in past elections have been run by CEOs that favor one presidential candidate over another?

**Phillip Stark:** Yeah. I think that as a nation, we should own our voting system. I'm a big advocate of open-source election technology. I've actually recently joined the strategic board of advisers at the Open Source Election Technology Institute. That said, it's possible to conduct evidence-based elections regardless of who is programming the computers or who controls the software, provided we have these other elements in place--that we do use primarily hand-marked paper ballots, we keep good track of them and we make sure that they stay secure. And at the end of the day, we audit the electronic tabulation using a risk-limiting audit, which involves eyes looking at the paper ballots, eyes looking at the same artifact that the voters generated.

So, from a security standpoint, the fact that vendors who may be partisan are programming the machines and own the software and whatnot isn't necessarily a problem. From an economic standpoint, it's a very big problem, because this largely we could be voting using what amounts to off-the-shelf office equipment rather than made-for-purpose voting equipment. And that commercial off-the-shelf hardware could be running open-source software. We could have a robust set of businesses competing with each other to provide support for election officials instead of having an almost monopolistic situation that we do now, where local jurisdictions really are at the mercy of vendors for support programming for specific elections and so on. So I think that we can end up in a place that's much better for taxpayers and promotes evidence-based elections if we had open-source technology. That said, using open-source voting systems is not essential to getting secure elections.

**Ralph Nader:** And what are the prospects for success here?

**Phillip Stark:** Right now, I think both sides or both of the major parties are motivated to do something to produce more secure elections or demonstrably more secure elections. I'm concerned by the efforts in Georgia and Florida and elsewhere that are restricting voter access rather than improving the security of the elections. But I'm hopeful that H.R.1, [117th Congress] with suitable amendments, could put us on a better footing at least for federal elections.

**Ralph Nader:** The problem with all these election reforms like H.R.1 – Connecticut passed one two years ago, New York state – was embedded in this so-called reform where there are higher barriers to third parties like Green Party and Libertarian Party. H.R.1 increases the amount you have to raise from 20 states, \$5,000 each state in order to get federal matching funds, to \$25,000, among other hurdles. Do you see a problem here with election ballot access hurdles affecting what you're concerned about, or is that pretty much different?

**Phillip Stark:** I agree. This is outside my specific expertise, but that does sound like it will tend to decrease the viability of third parties or anything other than the two major parties. I'm concerned about access to the ballot both from the side of candidates and also access to the ballot from the side of registered voters. That's not what I work on. It's something I care about, but not something that I work on professionally.

**Ralph Nader:** That's a very important point you make because they're both reciprocal functions of each other. If you have candidate protection to get on the ballot, you give more voices and choices to the voters and make their vote more meaningful. So that the candidate rights and voter rights are inextricable if you believe in higher standards of democratic elections, small d. Steve, David?

**Steve Skrovan:** Yeah. Professor Stark, it seems like, as you describe it, whenever technology comes into play, that's where we have an issue. So you say there is a role for technology as long as you've had these safeguards. Is that a fair statement?

**Phillip Stark:** Yes. So whenever you've got something that is a programmable device, it can be misprogrammed, either deliberately or accidentally. And so whenever we're relying on electronic technology, we need to have a way to make an end run around that technology to confirm that it

did what it was supposed to do. But technology isn't the only thing that can fail in elections. I mean, human beings make mistakes. Some human beings are malicious. And the largest errors that I have seen in reported election results were the results of forgetting to scan a box of ballots, or scanning a box of ballots twice or something like that. It was a procedural problem, which again, needs some extra procedural double-checks to make sure that things like that are detected and corrected before the results become final.

**Steve Skrovan:** Right.

**Ralph Nader:** David?

**David Feldman:** Yeah. I'd like to circle back to your conversation about Dominion Voting Systems. They're suing Fox [news media] for a billion dollars or two. And I find myself rooting for Dominion Voting Systems, which is an odd place to be. How do you see that trial shaking out? If this were ever going to go to court, would they look into Dominion Voting Systems and their reliability?

**Phillip Stark:** So I think the claims are the allegations that Dominion is taking issue with are around Venezuela and Smartmatic and votes getting routed to Germany and all of these other things, which are patently false. I was kind of amused by Sidney [Katherine] Powell's defense that "No reasonable person would have believed me."

**Steve Skrovan:** I call that the Santa Claus defense.

**Phillip Stark:** yeah, okay; good to know. So I have no idea how that's going to play out. I don't know if that means that everyone who believed her is unreasonable, but certainly a lot of people believed her and Rudy Giuliani and Lin Wood and others who were making these claims quite publicly.

**Ralph Nader:** We're out of time, unfortunately, Professor Stark. Do you have a website or some sort of information access system you want to share with our listeners?

**Phillip Stark:** Sure. So the URL for just my homepage is [www.stat.berkeley.edu/~stark/](http://www.stat.berkeley.edu/~stark/) STARK, my last name. Or if you google Phillip Stark Berkeley, you'll find me. The Open Source Election Technology Foundation Institute is [osetfoundation.org/](http://osetfoundation.org/) They're doing work, again, on this open source election technology that I think is probably a better way for the nation to go eventually.

**Ralph Nader:** Well, thank you very much. Thank you for your work, practical work out of Berkeley, California. To be continued. I'm sure, this is not going to go away, this problem. Thank you.

**Phillip Stark:** Thank you so much.

**Steve Skrovan:** We've been speaking with Professor Phillip Stark. We will link to his work at [ralphnaderradiohour.com](http://ralphnaderradiohour.com).

Let's do some listener questions. Stephen Fournier, and he says, "Ralph Nader's name first became familiar because of his success in lawsuits against powerful commercial interests. He took advantage of the rule of law. Today with our central government holding people without legal process, waging wars and occupying foreign countries without declarations of war, spending money without congressional appropriations, assassinating foreign officials, spying on US citizens, do we still live under the rule of law? If not, can it be restored?"

**Ralph Nader:** Well, for the rich and powerful, the answer is they live under the law of their own choosing. They get the right laws passed. They get lawyers who provide immunity if they get caught; and drag on any kind of enforcement process. When it comes to the executive branch of the US government, I think the predominant ability, when it comes to the rule of law, is to get away with violating it systematically as in [Donald] Trump violating the Constitution, violating federal statutes, violating executive orders, which is illegal to violate federal statutes, and violate international treaties that we've signed on. So best I can do to answer your question Steve--Steve Fournier, by the way, can be described as a super listener. We need more people like you, Steve--is to go to our website [nader.org](http://nader.org) and download Bruce Fein's report, which we just put out a few weeks ago, called *Restore the Constitution: Model Congressional Resolutions, Rules, and Legislation to Reclaim the Constitution from [Unconstitutional] Executive Supremacy to Benefit the Health, Safety, and Welfare of the American People*. So, it's not just a critique of lawlessness; it actually drafts what Congress needs to enact, to straighten out the separation of powers under our Constitution and end the abdication of congressional authorities, such as the declaration of war clause to the whims and aggrandizement of the presidency, whether under Republican or Democratic control.

**Steve Skrovan:** All right. Thanks for your question, Stephen.

**David Feldman:** Our next email comes to us from Kevin Lively and it's about Pramila Jayapal's push back on Ralph's comments concerning Nancy Pelosi and Medicare for All. "Hi, Ralph. In a recent interview with Congresswoman Jayapal on *the Intercept's Deconstructed* podcast, the host asked about your comments concerning Nancy Pelosi discouraging members from signing on to the Medicare for All bill that Mrs. Jayapal introduced. Congressperson Jayapal said in response, "That was ridiculous. That was just ridiculous. It just wasn't true. Nancy Pelosi has not said anything to me about it." Just wanted to hear your feedback on this exchange. Many thanks for your important work, Kevin Lively."

**Ralph Nader:** Well, obviously, Nancy Pelosi is not going to try to go after the main sponsor of single payer and discourage her. That's not the way it's done. What happened was that Nancy Pelosi and her subordinates let it be known that they prefer people to concentrate on expanding Obamacare; that's no secret; and not raising the visibility and practicality of single payer. And the further evidence of that is that Congresswoman Jayapal had announced that she was going to put the bill in with all the co-sponsors by February 1 and she didn't put it in until the middle of March, because there was so much reluctance by members who had listened to Nancy Pelosi to cosign as they did two years ago. So I think Congresswoman Jayapal fell into what we call a reporter's trap. He asked, "Did Nancy Pelosi discourage members?" and she took it as discouraging her. Well, you don't mess around with the prime sponsor of a bill undermining a supporter of yours, but you put the word out to make the rank and file more reluctant to sign on

and take the focus away from expanding Obamacare without any price restraints and all kinds of complexities.

**Steve Skrovan:** Is part of that, Ralph, Congressperson Jayapal's unwillingness maybe to take on Nancy Pelosi and challenge her at this moment, and so she's being politic about it?

**Ralph Nader:** I think that's correct. It's not just Nancy Pelosi. It's [Joe] Biden. Biden has declared an opposition over time to single payer, said he would veto it when he was campaigning last year. And so she wants to get on the Pelosi and Biden team. In fact, during the announcement, the rollout, a few days ago of her single-payer bill with Congresswoman Debbie Dingell, they actually clashed in a strange way, because Representative Jayapal said she was going to do the foundational principles of single payer. And Debbie Dingell said, "I want the whole thing. I want single payer. I want it now in memory of my husband, John Dingell, who proposed it decades ago." So you can see that there's a bit of a conflict in the political calculation of Representative Jayapal on this point. She's not as strong behind her own bill as she was when Trump was in the White House because Biden doesn't want single payer.

**Steve Skrovan:** And there you have it. This next one comes from Randall A. Hayes, and he says, "Hi team, thanks for the great show. And for the new corporate crime letter to Congress template, please have another look at it. In the fifth paragraph, it jumps into "the legislation should", but there's no mention of introducing or supporting any legislation. It seems to be phrased poorly," you know, I urge you to support legislation which I think is the suggestion he makes, "or it seems to be out of order with the next paragraph. Please update the template ASAP." What do you say about that, Ralph?

**Ralph Nader:** A good comment, Randall. There is no bill in the Congress. That's the problem. You can't say support H.R. or S. 1242 when there is no bill. So the letter basically says the legislation should have a strong enforcement budget, et cetera, et cetera, and those were some principles of a bill. But maybe we can stick in a phrase saying there is as of yet no specific bill, which is the purpose of our listeners sending this specific letter to their two senators and representatives. And we're very eager to hear who did that and whether there was any response from Capitol Hill.

**Steve Skrovan:** Well, thank you for catching that, Randall. We'll take a look at that. Thank you all for your questions. I want to thank our guests again, Trudy Lieberman and Phillip Stark. For those of you listening on the radio, that's our show. For you, podcasts listeners, stay tuned for some bonus material we call "The Wrap Up." A transcript of this show will appear on the *Ralph Nader Rader Hour* website soon after the episode is posted.

**David Feldman:** Subscribe to us on our *Ralph Nader Rader Hour* YouTube channel. And for Ralph's weekly column, it's free, go to [nader.org](http://nader.org). For more from Russell Mokhiber, go to [corporatecrimereporter.com](http://corporatecrimereporter.com).

**Steve Skrovan:** And Ralph has provided two separate form letters to send to your representatives demanding they take action on corporate crime and taxing the rich. Just click on the clearly marked boxes on the right-hand corner of the *Ralph Nader Rader Hour* landing page

and it's all laid out there for you to fill in and personalize any way you want. Go to [ralphnaderradiohour.com](http://ralphnaderradiohour.com) and take action.

**David Feldman:** Please support Whirlwind Wheelchair. Visit [whirlwindwheelchair.org](http://whirlwindwheelchair.org). They do great work showing people in the United States and around the world how to build sturdy, economical wheelchairs from local materials. [whirlwindwheelchair.org](http://whirlwindwheelchair.org),

**Steve Skrovan:** And for an independent news source that believes people are more important than corporations, go to [populous.com](http://populous.com) to read or subscribe to *the Progressive Populist*.

**David Feldman:** The producers of the *Ralph Nader Rader Hour* are Jimmy Lee Wirt and Matthew Marran. Our executive producer is Alan Minsky.

**Steve Skrovan:** Our theme music “Stand Up, Rise Up” was written and performed by Kemp Harris. Our proofreader is Elisabeth Solomon. Our associate producer is Hannah Feldman.

**David Feldman:** Join us next week on the *Ralph Nader Rader Hour* when we welcome Steven Markoff, author of *The Case Against George W. Bush*. Thank you, Ralph.

**Ralph Nader:** Thank you, everybody, and thank you for your engagement and try to get more radio stations to carry the show.