

RALPH NADER RADIO HOUR EP 325 TRANSCRIPT

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

[Music] 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: Good morning.

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

Ralph Nader: Hello.

Steve Skrovan: All right, the gang's all here. Let's put topics on the table. After five years of war, Yemen's health infrastructure is in ruins. After these many years of hunger, disease and violence, much of their population is immunocompromised, and now coronavirus is spreading quickly through Yemen and taking a huge toll. As if this wasn't enough, recently, the Trump administration slashed the food and medical aid that went to Yemen. Our first guest is Hassan El-Tayyab, who is an expert in Middle Eastern Policy and part of a peace-advocating lobby called the Friends Committee on National Legislation. He was on our show last October to talk about what the US could have done to stop the killing in Yemen. Now he'll be able to tell us, with even greater urgency, what we need to do to stop this added tragedy.

Also on the show today, we welcome back James Zirin. He was on the show just a few months ago, to tell us about his book, *Plaintiff in Chief: A Portrait of Donald Trump in 3,500 Lawsuits*. His book details the many ways President Trump has taken advantage of the legal system. Although Trump likes to file lawsuits, there have also been many lawsuits filed against him. Many of these cases are still pending. They involve his tax returns, campaign finance, defamation, all sorts of stuff. And they are taking a long time to move through the system. Mr. Zirin will update us on why that's taking so long. And of course, somewhere in between, we'll take a short break and check in with our corporate crime reporter Russell Mokhiber. And if we have some time left over, we'll try to answer some listener questions. But first, let's talk about the catastrophe in Yemen. David?

David Feldman: Hassan El-Tayyab is the lead lobbyist on Middle East policy for the Friends Committee on National Legislation [FCNL]. Previously, he was co-director of the national advocacy group, Just Foreign Policy, where he led their lobbying work to advance a more progressive foreign policy in the Middle East and Latin America. He played a major role in the successful passage of the War Powers Resolution to end US military aid to the Saudi-UAE coalition's war in Yemen. Welcome back to the *Ralph Nader Radio Hour*, Hassan El-Tayyab.

Hassan El-Tayyab: Happy to be here. Thanks for all you do.

Ralph Nader: Yes. Welcome back, Hassan. Let's get right to the nub of it. The Obama administration and the Trump administration supplied all the advanced weapons to Saudi Arabia and UAE in their war against Yemen. They claim the Yemen civil war is a threat to their national

security. But there is no legitimate claim for targeting hospitals, schools, buses, civilian areas repeatedly with bombers and shelling made in America, so this makes the Trump administration complicit in a war crime. You are not supposed to, under the laws of war, target civilian facilities and civilians knowingly, not to mention negligently. What's happened now is the spread of the coronavirus in one of the greatest humanitarian crisis in the world today, according to the United Nations, in Yemen, in the southern part of the Arabian Peninsula with some 25 or more million people suffering horribly from blockades, from restrictions on medical equipment and medical services; you name it, in terms of devastation in Yemen and the Yemeni people are suffering from it. Now I want to ask Hassan a very important question, which is Donald Trump announced that he is going to withhold humanitarian aid from Yemen. That's medical aid and I assume some food aid. And question number one is how much was involved in that aid, how many dollars, and has he actually done it or has he just announced it?

Hassan El-Tayyab: Yes, great question. In March 26, the US officially suspended about \$73 million to USAID funding that was allocated to North Yemen. And this is Houthi-held controlled territory and this is where 70% or so of the population lives.

Ralph Nader: Hassan, when you say Houthi-held, those are the rebels that are the adversaries, or viewed as the adversaries, by. . .

Hassan El-Tayyab: By Hadi and the Saudi coalition, exactly. We're supporting the Saudi coalition as they try to reinstall Hadi as the leader of Yemen and ousting the Houthi rebels. So that's exactly what's happening. And the Trump administration, we fear they're politicizing food aid. So there's a 73 million in USAID funding but the administration, as we all know, has put a lot of pressure on the WHO, the UN, World Food Program, other institutions that are providing support for Yemen, and trying to get them to also slash aid to the Houthis and other parts of Yemen. So that is happening simultaneously on top of the USAID suspension. And World Food Program is devastated. They cut about half of all food aid to Yemen recently, and basically they're serving about 12 million people. The UN has closed 31 out of 41 programs and the WHO has also scaled back some of their healthcare services. So [it's] a really desperate situation and the Trump administration is politicizing aid and putting pressure on these other donors to also cut back.

Ralph Nader: Our listeners might want to be asking at this point, why such vicious cruelty? Why withholding from totally innocent refugees, families, children, a rather small amount of aid through the USAID agency that has been flowing for years in that direction?

Hassan El-Tayyab: That's a good question. And I want to be clear that Houthi obstruction of humane assistance is the reason that they're cited. And so prior to the onset of COVID-19, the suspension obviously would have a dire impact, but now it's just terrible. The Houthi obstruction of aid has posed a significant challenge to providing principal humanitarian assistance without a doubt. But that said, other international donors and aid agencies have been able to work through the UN to successfully push back against this Houthi obstruction, including securing a walk-back of a 2% proposed tax on humanitarian assistance and biometric accountability measures to stop fraud. And they did that without resorting to unilateral near-blanket suspensions of these vital programs. So our message is that is unacceptable regardless of whether by the coalition or Houthis. But the brunt of this suspension is going to be borne by vulnerable civilians, not Houthi officials and commanders, so now is just not the time.

Ralph Nader: Let's ask a more fundamental question. Where does Trump get his authority to suspend aid to Yemen, humanitarian aid, when Congress appropriated it? Where does he get his authority?

Hassan El-Tayyab: Yeah. So the State Department, they're in charge of allocating a lot of those programs; so that decision has come down from Secretary Pompeo probably in coordination with the rest of the Trump administration. And that's where they're citing Houthi obstruction. But I will say that there is some cause to have a little bit of hope. We've been doing a lot of advocacy on the Hill, getting members to speak out, and we have seen the administration budget. It started off with a \$500,000 check to Yemen, then 1.7 million. And then just a few weeks ago, they actually released 225 million to supplement World Food Program assistance in Yemen. But it's just not enough. That USAID funding is absolutely critical because that funds not just food but also healthcare, and that's what Yemen desperately needs. Fifty percent of Yemen's healthcare infrastructure has been destroyed by either the blockade or the airstrikes and the bombings by the coalition. So we have a direct hand in the destruction of this healthcare crisis.

Ralph Nader: Not to mention supplying all the advanced weapons and the intelligence and the surveillance of the terrain there. The Trump administration is waist-deep in this war, which is targeting civilians, not just the rebels, the fighters. I mean these are actually planes, US planes with foreign pilots targeting civilian infrastructure, including schools and hospitals and other areas that are totally vulnerable to these bombs and these missiles. All right, let's see what can be done about it. Let's have you tell our listeners what is being done by citizen groups, by members of Congress. Go for it.

Hassan El-Tayyab: So there is a lot being done and we need a lot more to be done because Yemen can't wait. It's an emergency! They are going to be facing probably some of the hardest next six months humanly imaginable. So what FCNL has done is we led a 84-organizational sign-on letter to [Capitol] Hill. We targeted members that are chairs and ranking members of Foreign Affairs, Oversight and Appropriations [Committees] urging that they do everything they can to reverse the suspension and get the money flowing into Yemen. And not just South Yemen, but also Houthi-held territory. Do whatever it takes; come up with diplomatic solutions; engage with the Houthis and come up with a scenario where this humanitarian assistance can be delivered safely into the parts of Yemen that need it the most. So we're doing that, we're reaching out to [congressional] members. I will also flag for folks that Senator Cardin recently led a dear colleague letter which we supported, urging that the administration answer some serious questions. I'm really happy that Senator Young, a Republican, also joined that letter effort. But the thing is what folks can do at home is just to get their members to speak out for Yemen, to urge that they not only release the suspended funding to Yemen but also introduce new legislation to end US military support and weapons for the war, because obviously the humanitarian crisis is impacted not just because we're suspending aid, but that we're fueling the war. And that needs to stop.

Ralph Nader: Well, the United Nations agency reported that "this conflict in Yemen directly and indirectly has claimed the lives of 140,000 children under five by the end of 2019, a stunning number that will only increase if aid remains suspended at this crucial moment." I'm quoting from a letter that you all sent to chairs and ranking members of Congress. What about the private sector here? Do you see any activity beyond what the Friends Committee for National Legislation,

probably the Unitarians, are doing to try to restore this critical amount of humanitarian aid? We're talking with Hassan El-Tayyab, who is the legislative manager for Middle East policy at the Friends Committee for National Legislation, a long-time advocate for peace and opponent of war.

Hassan El-Tayyab: Yeah. So that's a great question. We're trying to get humanitarians to speak out, so that's really important. And there are private NGOs working in Yemen having these programs. So having those folks speak out or just having civil society, private companies, just any voices to speak out against these atrocities right now is really needed. And I think if we get enough members of Congress in particular to speak out, that is really what's going to move the needle here. So that's kind of where we're focusing our attention on [Capitol] Hill, trying to get Chairman Engel and . . . well, I should say, to Chairman Engel's credit, he did release a letter early on in this process, calling out the administration for this. But we're trying to get folks to not just do a one-time letter, but also to re-engage and continue to engage with USAID until this funding is unsuspended.

Ralph Nader: Well, your Friends Committee on National Legislation just released a letter on May 21st to key members of Congress and it was signed by a lot of national organizations, including the group Bread for the World, Charity & Security Network, Chicago Area Peace Action, Evangelical Lutheran Church in America; you have the Health Alliance International, Indivisible, Institute for Policy Studies, Islamic Society of North America, the Jewish World Watch, the Libyan American Alliance, some Libyan immigrants speaking up, the Minnesota Peace Project; MoveOn has signed on; Peace Action, a terrific group has signed on, Students for Justice in Palestine, The Episcopal Church, The United Methodist Church, the Union for Reform Judaism, the Veterans For Peace, a great organization based in St. Louis, Win Without War; and of course a number of Yemeni freedom, relief and alliances. So that's quite a formidable group that you've organized. Are you getting any media attention from this?

Hassan El-Tayyab: Well, happy to be on this show, obviously. That's wonderful. *Al-Monitor* also did a write-up on the letter as well, which we were really happy about. There's a great reporter there, Bryant Harris, who has just been covering this from the start and putting out some really important work. And, yeah, I think we just got to keep hammering, keep raising this to the Hill and raising this to the inter-agencies as well because, like I said earlier on, the US has been directly involved in the destruction of Yemen's healthcare system and it's unconscionable for us to back away now and not give them the support they need, and not work to end our military support for the war.

Ralph Nader: Well, just to run this by a little more, have you been on NPR, PBS, any of the talk shows in the commercial television and radio media? Have you been written up in *The New York Times* and *[The] Washington Post*?

Hassan El-Tayyab: I personally have not been written up in *The New York Times* or *The Washington Post* or Democracy Now! on this issue. And it would be great to do that. I know that there has been a lot of good *New York Times* coverage on US support for the war in Yemen in the recent weeks, so we're really excited to see that as well.

Ralph Nader: Yeah, that's been true. Some listeners may be wondering how can they get a copy of this comprehensive, fact-filled letter that you sent to leading members of Congress.

Hassan El-Tayyab: Absolutely. If you go to fcnl.org, it's right up there. Just type fcnl.org and in the search bar, just put Yemen and you can find it right there. And I would definitely encourage people, check that out and send the letter to their member of Congress and ask, "Well, what are you doing about this?"

Ralph Nader: That's exactly what people should do. They get the letter from fcnl.org, and that's Friends Committee for National Legislation, so fcnl.org. Get the letter, download it, and just send it to your senators and representative--two senators and one representative, and ask for a serious response in writing. They don't pay any postage to send letters to members of Congress; just send it in writing. When you make it a demand to send in writing, they take it much more seriously than if they think you're just expecting some email.

Hassan El-Tayyab: Yeah. I think that would be wonderful if your listeners were able to support with that, because after five years of unimaginable suffering, Yemen just can't wait any longer. And Congress just has to put pressure on the administration to resume USAID funding and work to end US support weapon sales for the war. And we spoke last year about the National Defense Authorization Act and that's coming up for a vote as well. It's getting marked up probably later on in June. So that's another bite at the apple here where members can attach legislation to the NDAA, the annual Pentagon spending bill, an authorizing bill to end US support for the war. They have the power to do that.

Ralph Nader: It's very important listeners, for all of us to do our part. It doesn't take long. And if you belong to a place of worship, you belong to a civic group, if you belong to a service club, if you can add their name, that's even more powerful. I can't emphasize the impact on two senators and representatives getting this letter from constituents back home because there's a lot of support in Congress [although] it's often too passive to alleviate the humanitarian crisis which the US government is very implicated in, in that end.

Hassan El-Tayyab: And bipartisan support, too.

Ralph Nader: That's right. And it's bipartisan. Steve and David, are you looking for any comment or question of Hassan?

David Feldman: I was just asking Hassan to very quickly sum up what this war is about, what the civil war is about so Americans can understand what's going on there.

Hassan El-Tayyab: Yeah, absolutely. So in its sixth year, the Yemen conflict has created the world's worst humanitarian crisis on the planet [with] ten million people plus living on the brink of famine, and those numbers are rising due to COVID. Beginning in 2015, Saudi Arabia, assisted by a bunch of other Gulf states, as well as the United States and the United Kingdom and others, they've been conducting a military campaign aimed at ousting the Houthi rebels who captured Sana'a, that's the capital of Yemen, and reinstalling President Hadi back to power. With US military help, the Saudi coalition has been starving and terrorizing the Yemeni people into submission through bombings and civilian targets including hospitals, schools, water treatment plants, and the blockading of Yemeni ports and the airport in Sanaa. And we've been supporting the weapons; we've been supporting the aerial campaigns through intelligence sharing, logistical support. And over time, members have been speaking out, so that's one important thing to know,

that in the spring of 2019, for the first time in US history, Congress in a bipartisan way, passed the Yemen War Powers Resolution to actually end military support for this coalition's war. Unfortunately, that got vetoed, but I think it's important to note that members of Congress stood up in defiance of the formidable Saudi lobby, the Trump administration and the military-industrial complex. And I think it's no coincidence that we were able to move things on the ground a little bit. The same day that that War Powers Resolution passed for the first time, we saw the Stockholm Agreement paving the way for the ceasefire in Hudaydah, signed the same day as that legislation was passed. And following that ceasefire, Congress forced more votes to help push the UAE to draw down its forces in Yemen. They've spurred a reduction in cross-border attacks by Saudi on the Houthis and they were able to revive some negotiations. But unfortunately, that pressure was let off at the end of last year and since that happened, there's been really a major spike in violence. And that's where we're at now. We've got COVID, escalating violence, and we've got to do our part here.

Ralph Nader: Well, with that summary, and it's your tax dollars that are building these weapon systems that are used to commit war crimes against tens of thousands, if not millions, of innocent Yemenis in that ancient land at the southern part of the Arabian Peninsula. We've been talking with Hassan El-Tayyab, the legislative manager for Middle East policy at the Friends Committee for National Legislation, a venerable peace advocacy organization. Thank you very much, Hassan. One last thing. Is there a website you want to give our listeners beyond the one you gave for getting the letter that you sent to members of Congress?

Hassan El-Tayyab: I want to keep it simple. Fcnl.org is probably the best way to get plugged in to all this activity. Find that letter and send it to your member, and that'll be wonderful.

Ralph Nader: Okay. Thank you very much, Hassan. Keep up the good work.

Hassan El-Tayyab: Yeah. I appreciate you guys.

Steve Skrovan: We have been speaking with Middle East policy expert, Hassan El-Tayyab. We will link to his work at ralphnaderradiohour.com. We're going to take a short break. When we return, we're going to talk about the many lawsuits against President Trump and why they are taking so long to resolve. 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, May 29, 2020. I'm Russell Mokhiber. In 1921, Blair Mountain in Southern West Virginia was the site of the country's bloodiest armed insurrection since the Civil War, a battle pitting miners, led by Frank Keeney, against agents of the coal barons intent on quashing organized labor. It was the largest labor uprising in US history. Ninety years later, the site became embroiled in a second struggle as activists came together to fight the coal industry, the West Virginia state government and the military-industrial complex, in a successful effort to save the battlefield from destruction by mountaintop removal mining. Now comes Charles Keeney, a historian and great grandson of Frank Keeney, out with a new book later this year from West Virginia University Press titled, *The Road to Blair Mountain: Saving a Mine Wars Battlefield from King Coal*. 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. In 2016, Mr. Trump said, "Does anyone know more about litigation than Trump?" He was referring to himself in the third person. I think our next guest might object to this post. David?

David Feldman: James Zirin is an accomplished lawyer and the former Assistant US Attorney in the Southern District of New York. He is the host and producer of the talk show "Conversations with Jim Zirin", which discusses politics, foreign relations, national security and culture. He has written multiple books, including *Plaintiff in Chief: A Portrait of Donald Trump in 3,500 Lawsuits*. Welcome back to the *Ralph Nader Radio Hour*, James Zirin.

James Zirin: Well, I'm delighted to be here, David. Delighted to talk with you and Ralph.

Ralph Nader: Thank you, Jim. We're going to bore deep here in ways that probably no other program has reached. The question is not the president is not above the law, which members of Congress keep saying, of course Trump is above the law. He has violated the law, civil laws, criminal laws, obstruction of justice, you name it, and he's gotten away with it. So let's stop saying President Trump is not above the law. The law has never caught up with Trump. Even in his serial failed business career as a gambling tsar and a upscale builder of condominiums, he has been sued repeatedly. He's settled some of the suits. He had to pay \$25 million to the students who were fleeced when they enrolled in so-called Trump University. But basically, as president, he has escaped. And we want to ask Jim Zirin, who knows more about the lawsuits against Trump than anybody in the country, that's his book. We want to ask him two questions. There are civil cases that have been filed against Trump, some of them four years ago, accusing Trump of sexual predation, assault and battery, or defamation, and they have not reached a point where he has been deposed under oath prior to any trial or negotiation for settlement. He's escaped any deposition under oath, and that included the Mueller investigation. The second category of lawsuits come from officials, New York state officials and other officials, accusing Trump of very serious constitutional violations, statutory violations and much else. So the question first, let's start with the civil tort lawsuits, Jim, Zirin. What is keeping these lawsuits, which are represented by some pretty tough trial lawyers, from reaching at least the deposition stage for this chronic liar who, even on deposition, would have trouble telling the truth? In a very granular way, Jim, because you're a former prosecutor, lawyer; you've written a lot of books; what are the techniques that Trump's lawyers are using to delay, delay, delay until after the election?

James Zirin: Well, first place, delay is a time-honored tactic in every defense lawyer's bag of tricks, and Trump is no exception. He realizes that these lawsuits could do him political damage if the information that's alleged in the lawsuits were to come out in the form of sworn testimony. And there's really nothing for him in these lawsuits except a way out the other side and to delay them until after the election. And there are only two lawsuits that I know of that are pending right now. Both are kind of sexual harassment based or sexually assault based. One is brought by Summer Zervos who sought a business relationship with Trump and who claims that he sexually assaulted her. And then when he said it wasn't true and defamed her, she sued for libel because that brought the lawsuit within the statute of limitations. The second lawsuit is brought by E. Jean Carroll, the writer, who claims that Trump raped her in the dressing room of Bergdorf Goodman's many years ago. And then Trump, while he was president, said that he never met her, something

which she's prepared to disprove, and that she wouldn't be his type anyway, which is something he said about other sexually-based lawsuits brought against him. Now, he hasn't testified before trial in either of those lawsuits, which are pending in the state courts of New York. He has produced, in the Zervos case, documents, at least the Trump organization has produced documents, which tend to corroborate Zervos's allegations in that they show from Trump's diaries that he was exactly in the place where she claims he was and at the times that she claims he was there and where she met with him, and further buttresses her lawsuit. But as for testimony before trial, they've raised the claim that a sitting president cannot be compelled to testify in a state court civil action, a question which was left open by the Supreme Court in the Paula Jones case. And the Paula Jones case involved a federal action. Most lawyers think there's no difference. And the matter has gone up to the New York State Court of Appeals, the state's highest court, and the Court of Appeals received briefs on the issue on May 12th and will eventually hold argument and decide the question. And probably, they'll try to seek certiorari from the conservative-leaning Supreme Court if the Court of Appeals orders him to testify because this is an open question.

Ralph Nader: So he's in the clear now until the election. These two cases are not going to reach deposition stage. There was a tort law case against Bill Clinton and he had to undergo a deposition under oath. Why did they reach him but they can't reach Trump?

James Zirin: Well, first place, they may eventually reach Trump. When Clinton was sued by Paula Jones, he had about four years left in his term, so he really couldn't delay things until after he left office, number one. And number two, the judge in that case, the federal judge in Arkansas, who later dismissed the case, by the way, ordered him to testify on deposition. That was stayed pending appeal, and eventually the Supreme Court said that the president is not immune from civil litigation, particularly when it arises from the time before he took office. And in the case of Zervos and E. Jean Carroll, the alleged defamation of Zervos occurred before Trump was president, although the alleged defamation of Carroll occurred after he was president. So the courts will have to grope with those issues, no pun intended.

Ralph Nader: There have been about 20 very credible accusations by women against Trump in terms of his sexual assaults. Are you telling us that none of those other women brought any cases in court? I mean, they were represented by very aggressive trial lawyers.

James Zirin: Even Gloria Allred represented Zervos and perhaps represented some of the others, but those cases were not brought to trial. You have Stormy Daniels, which I think has resulted in a settlement, and there are no other cases that I know of where the women, although they made allegations, actually brought a lawsuit.

Ralph Nader: What do you think the hesitancy is?

James Zirin: Well, I think Me Too helped dissolve some of that hesitancy, but I think women historically were shy about bringing claims of this nature. And it involves the intimate, gory details of a sexual encounter; perhaps they were ashamed of bringing them and they thought it would cost them a lot of money to bring the case.

Ralph Nader: Well, why did they make the open accusation and endure the brickbats of hate email and all that? I mean, they already exposed themselves to this kind of pressure. The next stage

was to get a contingency lawyer who only charges when the lawyer settles or wins the case, so there isn't a matter of \$500 an hour lawyers they have to pay. It just defies imagination, especially since, as you know Jim, some of these lawyers are extremely aggressive representing these women.

James Zirin: Well, that's true but Trump also has lawyers. He had Michael Cohen early on and he had Roy Cohn very early on, and they were very aggressive. And then when Trump's back was against the wall, he always settled. And some of these claims may be the subject of confidential settlements, so we don't really know why they weren't brought or how they ended. So it's quite possible that Trump negotiated with the women and paid them off and there was a non-disclosure agreement.

Ralph Nader: Well, that's the answer, listeners, to civil lawsuits against a sitting president. Let's go to the official government-based lawsuits and assertions of criminal liability, violation of constitutional duties and standards.

James Zirin: Yes. Well, there are no criminal charges, to my knowledge, pending against Donald Trump at this time. Mueller investigated [and] he declined to bring criminal charges because of the justice . . . he was a creature of the Justice Department. And there was a Justice Department edict, if you will, or memorandum that said you cannot indict a sitting president, so Mueller did not indict him. That was probably the overriding reason why he did not indict him, because he said quite clearly in his report he was not exonerating him of obstruction of justice. Barr, who was really at the top of the apex in the Justice Department, in fact exonerated Trump and said that he would not bring criminal charges because there was nothing to the obstruction of justice anyway, and also because of the policy of not indicting a sitting president.

Ralph Nader: Those were serious criminal charges. I think there were about 11 citations of obstruction of justice in the Mueller report, and Barr misinterpreted and downplayed the Mueller report and he got away with it.

James Zirin: And the real remedy that the Constitution provides against a sitting president, I guess the two remedies; one is political damage that he'll be voted out of office, and we certainly hope that'll be the case here. And the other is impeachment, where Trump, because of the Republican majority in the Senate, was able to escape impeachment or removal from office. He didn't escape impeachment, there was impeachment by the House of Representatives.

Ralph Nader: What about the New York State legal actions against Trump?

James Zirin: There is an investigation being conducted by Cy Vance, who is the District Attorney of New York County, who issued a grand jury subpoena to Trump's accountants and also to the Trump organization. And in connection with an investigation of the payoffs, I guess among other things, the payoffs that Michael Cohen testified he made to Stormy Daniels and possibly to Karen McDougal, and Trump moved to quash that subpoena on the ground that a state prosecutor could not constitutionally investigate a sitting president. The allegation was really preposterous. I mean, suppose Trump went out on Fifth Avenue and murdered someone. You mean the police in New York couldn't investigate it? Trump said he could get away with it. But could the district attorney investigate it? Of course he could. And that would be unofficial conduct.

Ralph Nader: Isn't that issue being decided soon by the Supreme Court of the United States?

James Zirin: Yes. They heard argument virtually, I think about two weeks ago, and they will probably decide it in June.

Ralph Nader: And the rumors are, the guesses are that actually Trump's going to lose that case, although he may not lose the required disclosure of his tax returns.

James Zirin: Well, they want, among the documents they seek from his accountants, are the tax returns, which Vance says are necessary for his investigation and also necessary to see if other people are involved in the alleged criminality that the grand jury is investigating. The subpoenas were not issued to Trump. The grand jury subpoena was not issued to Trump. It was issued to the Trump Organization under Trump's accountants who have custody of the tax returns and other financial records. Trump doesn't have to do a blessed thing. So they went up to the Supreme Court and argued immunity. The Supreme Court didn't seem to think much of that argument. But they also talked about distraction and dislocation of the President who would have to be preoccupied with the subpoena when he has to deal with matters of state. And of course that argument is preposterous when you look at the number of days Trump spent playing golf since he's been President of the United States, so the physical production of the documents wouldn't take Trump anytime at all because that would be done by the accountants and for Trump . . .

Ralph Nader: Over 140 days playing golf, by the way, since he was inaugurated.

James Zirin: Yeah, that's right. Exactly.

Ralph Nader: Let's be clear about the crimes issue here. When a president spends money to build the wall on the Mexican border that was not authorized by Congress, that is a violation of a federal statute. That's a crime. When a president pays hush money or has paid hush money before he was president, to a woman to keep her silent, that is an illegal campaign contribution. That is a crime. There are lots of crimes literally that he has committed, Jim Zirin. Where are the prosecutors?

James Zirin: Well, you raised two issues, Ralph. The first issue on the wall, if the expenditures were unauthorized by Congress and it's a criminal act, the remedy is impeachment. They haven't impeached him on that, so that is the only remedy, except for the press to publicize it and influence people to vote.

Ralph Nader: No, but it's also a violation of federal statute.

James Zirin: Even so, if the president violates . . . it's a usurpation of his power as president because he didn't have the authority to do it . . .

Ralph Nader: That's right.

James Zirin: . . . whether it's criminal or not. And as a usurpation of his power as president, the remedy is impeachment, and that is . . .

Ralph Nader: That's one remedy. The other remedy is he's violating a criminal statute. He has committed a crime, so where is the prosecutor for that remedy?

James Zirin: Well, yes, but that is official presidential action. That's an entirely different kettle of fish from what he did before he was president. And he is immune, the Justice Department would say, from criminal prosecution while he's president. I guess it remains open that they might indict him afterwards for doing that, after he leaves office. But while he's in office, he is immune.

Ralph Nader: You're making an important point. This is a legal opinion in the Justice Department. It's not a statute. It's not even an executive order. It's a legal opinion that says a president cannot be criminally prosecuted while he is sitting in office. That's not much authority. And that opinion, by the way, preceded Trump. That's not much authority but it does stifle all the federal prosecutors, correct?

James Zirin: Well, that's correct because under our Constitution, the executive branch is charged with criminal prosecutions and it's delegated to the Justice Department. And if the Justice Department decides a matter of policy, it's not a broad prosecutorial discretion. And every day in the week crimes are brought to their attention, which they decide not to prosecute for one reason or another. But they have decided and there are hosts of memorandum, both Republican and Democratic administrations, since what's sauce for the goose is sauce for the gander, that they will not indict a sitting president.

Ralph Nader: All right. Some listeners may be asking this question, what about all the state prosecuting attorneys, are they excluded because it's federal jurisdiction or is there parallel jurisdiction in some special cases?

James Zirin: There could be. I mean, for example, if you hold up a bank, that's a federal crime and it's a state crime, too. And the state prosecutors are not bound by the Justice Department memorandum. That's absolutely right. But the question is, as a matter of comedy and as a matter of federalism, would the federal courts want every district attorney in the country to be indicting the president over one thing or another? Now that was the parade-of-horribles that they aired before the Supreme Court in the Vance case. And of course I think it's totally farfetched because Trump was not operating in 50 states and there's no indication that anyone other than Vance is interested in investigating these financial records.

Ralph Nader: Well, if you add that he is, with Senator McConnell's support of course, putting autocratic pro-presidential power judges on the federal bench from the district court to the circuit court of appeals to the Supreme Court, and you add up what you've just described over the last few minutes, isn't the conclusion that President Trump has demonstrated that he's above the law? He's going to get away with it past the election.

James Zirin: Yes. I think that he may well be above the law. We have to see how it plays out. I mean, I'm not a metallurgist, so I can't tell you whether he's the Teflon Man or not, but he appears to be the Teflon Man and was throughout his business career, either by threatening people, by suing people or making it very costly for people to oppose him. And by badmouthing them and trashing them in the press--and the press was eager to repeat what it was that he had to say because it was so colorful--he was able to keep his enemies at bay.

Ralph Nader: Well, you make an important point here, too, that he carries on a parallel scurrilous attack publicly against all defendants when he was in his business career, as well as president. And

speaking of that, the papers are full of another one of his accusations against Joe Scarborough, former Republican congressman who's now on MSNBC, accusing him of homicide without any evidence, using two techniques, one saying, "People tell me." What people, he doesn't say. And "There'll be more evidence coming out." I mean, this would embarrass Joe McCarthy in the 1950s. Is there any actions that Joe Scarborough can take? Because although he is a public figure, this meets the Sullivan case of being malicious and woeful, and therefore, he could file a defamation suit.

James Zirin: I agree that he could file a defamation suit. I think that a cause of action for libel, the Sullivan case notwithstanding, would lie. Normally it's the president who would invoke Times against Sullivan, but here, Scarborough is, I think, as you say, completely makes out the Sullivan test. I think there's either actual knowledge of the falsity of the charge of murder, or else reckless disregard for the truth. He doesn't care whether it's true or false; he just puts it out there. So I think that Scarborough's suit would survive a motion to dismiss that Trump might make under Times against Sullivan. Trump would claim that his statements were part of his official action. He was in office at the time, and therefore he is immune from a civil suit. And that was Supreme Court case of Nixon against Fitzgerald, which figured prominently in the subpoena cases before the Supreme Court. And he might be able to get Scarborough's suit stayed until . . . it would certainly not materialize until after the election. The problem with a libel suit, Ralph, as you know, is it's a double-edged sword. If you sue someone for libel, you better be, as Roy Cohn observed in his book, you better be pretty damn sure you have a good case because Alger Hiss sued for libel, to his great regret, and he was trapped in perjury, and Oscar Wilde sued for libel in England and it was his undoing because the truth is a complete defense. And I think the last thing Scarborough wants is a thorough inquiry into his background and his relationships with staffers and what his relationships were with this woman. He said a number of things i.e., he was never alone with her and he was miles away, but the question is, what are the facts? And I don't know that he wants to drag all that through the courts in a suit with Donald Trump. It'd be very interesting to see if he brings a suit.

Ralph Nader: *The New York Times* said that no president in history has made charges, totally baseless, out of thin air charges, against people committing homicide against other people. I mean, during the debates in 2016, the Republican primary debates, he said that Ted Cruz's father was involved in the assassination of John F. Kennedy. Totally baseless. Cruz hit the wall on that, answered back, and then of course began to be a supporter of Trump once he was elected, ambition taking over pride, clearly. But there's something wrong with the legal system when people can be accused of a Class 1 felony, totally baseless in the accusation itself, bringing forth no evidence whatsoever, out of the blue, and he gets away with it.

James Zirin: I don't think there's anything particularly wrong with the legal system because someone has to bring the lawsuit. If Scarborough brings the lawsuit for libel, and if he's right, eventually he has a damage remedy against Trump.

Ralph Nader: That's a civil lawsuit.

James Zirin: That's a civil lawsuit.

Ralph Nader: There's an argument, Jim, to be made that when you accuse someone of committing a homicide, especially the President of the United States, in front of millions of people, and all the retaliation, et cetera, that can come on the innocent victim, that should be a criminal violation.

James Zirin: Well, in Old England, there was something called criminal libel, which is what Oscar Wilde was charged with, but we don't have it here. We only have civil libel actions.

Ralph Nader: What's your sum-up here? You're a law professor, let's say hypothetically, and students listen to what you've just said and they say, "Mr. Zirin, you're really depressing us. We came to law school believing that no public official is above the law, no corporate crook is above the law, and that's not just the case. Why are we going to law school?"

James Zirin: Well, I think we're going to law school . . . first, it was unintended to depress anybody. There are limitations to the law, Ralph. The law can't solve every problem we have in society, number one. Number two, the legal system is badly in need of reform. And number three, our federal court system is rapidly becoming more and more politicized, particularly the Supreme Court, where justices are relying on preferred policy choices and political choices that have no basis in the Constitution to come to conclusions. And you could see, that I mean even in the most recent case, where a prisoner who said he was being subject to exposure to the COVID virus in prison and wanted to be transferred somewhere else, brought a claim. And the Supreme Court, for the time being, allowed him to be transferred with three justices dissenting, Thomas, Alito and Gorsuch. Now, Thomas of course is way out there as the conservative, and Alito as well, and Gorsuch, who's a Trump appointee. So it's interesting that all three were appointed by Republican presidents and confirmed by Republican senators, and they tend to vote when issues are presented in accordance with their political views and not in accordance with the Constitution or even with the law. I think that's unfortunate. I think, rapidly, we're losing confidence in the Supreme Court, which the Chief Justice recognizes because he says he doesn't want them thought of as a partisan body but as a court of law and there's no Republican court or Democratic court and not a partisan way to decide cases, but they decide cases in accordance with law.

Ralph Nader: That doesn't pass the laugh test. These nominees for the federal courts by Trump are chosen for two basic reasons. They prefer a corporation's power over individuals, and they prefer vast extensions of presidential power vis-à-vis Congress and vis-à-vis the citizenry.

James Zirin: And third, they think abortion rights are unconstitutional.

Ralph Nader: Yeah. That's another test. So to say they're politicized is almost an understatement. They're basically chosen for being politicians themselves. And of course the legal system is broken; we've all known that. The criminal and justice system is broken; who gets prosecuted and who doesn't is depending on race, economic class. We see that all the time. But the law should be at its finest moments when it deals with public officials of immense power who are abusing their trust daily. I mean, Trump's lies have deadly consequences. His lies and fantasies regarding the coronavirus, that delayed for eight weeks his acting, has cost tens of thousands of lives directly. We have great comparative information from South Korea and New Zealand, countries that acted early. A Columbia University study just said that if he'd acted just two weeks earlier, in early March, it would have saved over 80% of the now 100,000 deaths. So his lies now are not just subjects of derision by liberal and progressive writers; his lies have deadly consequences. The

legal system cannot handle that and the political system is for sale in terms of the impeachment remedy in Congress.

James Zirin: Yeah. And what about his encouraging people to take Clorox as an antidote to the coronavirus, which caused many hundreds of people to be admitted into emergency rooms? And what about his encouraging the quinine drug, which he says he takes, which the FDA says presents a danger to citizens who take it?

Ralph Nader: Yes. That unfortunately does not qualify as a tortuous act. It's not a wrongful act because it's just verbal. He doesn't grab somebody and force them to take this anti-malarial drug that has bad effects on the heart and it doesn't work for COVID-19 patients.

James Zirin: But Ralph, did Jim Jones commit a tortuous act at Jonestown when he encouraged his followers to drink poison-laced, cyanide-laced Kool-Aid?

Ralph Nader: Well, that you see more proximate in space and time. He's standing there with them with huge influence over them. I'm not arguing that Trump didn't commit a tortuous act, I'm just saying that we have to start talking about organized public sentiment, in Abraham Lincoln's words. We have to start not just relying on the limitations of the law. We have to start using the elections. We have to start demanding that Congress invoke the impeachment authority that our founding fathers thought was absolutely necessary between elections to avert the prospect of another King George III or monarchy.

James Zirin: Well, that's right, Ralph, except there is an interpretation that is at least kind of the courts. And that is: here we have a rogue president, in my view, a criminal president, and the courts should respond to that, which they haven't. But the institution of the presidency has to be safeguarded against the political attacks where the president is doing things that are unpopular. After all, the president was elected, not popularly, but through the Electoral College. And so he becomes the individual at the summit of our constitutional system and he deserves respect and he deserves protection from the courts when unjustly accused, and deserves not to be distracted by litigation, if litigation is merely brought for political purposes.

Ralph Nader: That's the dilemma, of course.

James Zirin: That's the dilemma.

Ralph Nader: And that's why Congress has been so abdicatory because the founding fathers did not view the impeachment authority as something that should be invoked once every century. They viewed it as an authority of Congress to fire, not penalize or prosecute, just to fire principal officials of the federal government. So it's not just the president or vice president, it's cabinet members, subcabinet members, heads of agencies like the EPA and OSHA that are running the agencies into the ground.

James Zirin: And don't leave out judges because judges have been impeached.

Ralph Nader: Yeah, good point. Yeah. And I think there's a solid ground for urging the House and Senate to establish permanent committees on impeachment to engage in granular oversight of the executive branch because the executive branch just thumbs its nose at Congress. They defy

subpoenas, dozens of subpoenas, requests to testify. They've reduced Congress to an ink blot, in the words of constitutional law specialist, Bruce Fein. Well, unfortunately, we're out of time. We have been talking intensively with James D. Zirin, author of the book, *Plaintiff in Chief: A Portrait of Donald Trump in 3,500 - and counting - Lawsuits*. I'm holding the book in my hand and, listeners, you should too. These are big stakes here. We're not dealing with some minor governor of a small state, bad as that may be. We're dealing with the most powerful person in the world, with his finger on the nuclear trigger, unstable, unreliable, ego-obsessed, fact-deprived, fantasizing president. Thank you very much, James. To be continued

James Zirin: All the best, Ralph, and thank you very much.

Steve Skrovan: We have been speaking with James Zirin, the author of *Plaintiff in Chief: A Portrait of Donald Trump in 3,500 Lawsuits*. We will link to his book at ralphnaderradiohour.com. Let's open up the mailbag. David, why don't you take the first one?

David Feldman: Speaking of mailbags, this comes to us from David Coles and he writes, "I value the US Postal Service and hope that it survives and thrives long into the future. That being said, some of the criticism seems valid to me. Why should the United States Postal Service undercut UPS and FedEx on partial shipping rates? It functions as a subsidy to Amazon, which is destroying mom-and-pop in-person retail and the vitality of Main Street all over the country. Trump's critique of this giveaway may be motivated by his disdain for Jeff Bezos and *The Washington Post*, but it still has merit. Also, I do not think we should mourn the steady decline of mail volume. My Amazon unwanted junk mail go straight into the waste bin and it comes at a giant environmental cost. The shift toward email should be welcomed and consumer protections against unwanted junk mail should be beefed up. If the United States Postal Service has to reduce service to five or four days a week, so be it."

Ralph Nader: Well, you raised two issues. One is we don't know if the contract negotiation was between the US Postal Service and Amazon, so we don't know to what extent they low-balled the price to Amazon, if at all. The issue is not going US Postal Service, or USPS, and FedEx. The issue is how fast is the Postal Service going to lose Amazon's business to Amazon's trucks. Already half of Amazon's shipments are on Amazon's own transportation system and they want to go to 100% if they can. So consider the US Postal Service just hanging on and hoping that it can continue getting 30%, 35% of its revenues from packages, not all Amazon packages but packages. The second is on the commercial mail. If your argument is no more paper, go email; you're making an ecological point. If you don't care that some people do like this commercial mail, that's why it keeps being sent to them, and if one or two people buy something from each commercial mailing, that justifies the mailing. So something has to substitute. It doesn't work to start reducing the post office to four days a week. That is a slide toward oblivion and it's supported by a lot of right-wingers in Congress who want to wreck the post office. Anyway, it's a subject for further discussion. Thanks, David, for raising these issues.

Steve Skrovan: And we assume everybody has email but not everybody is wired and has email, right?

Ralph Nader: That's a good point. Tens of millions of people.

Steve Skrovan: Well, that's our show. We want to thank our guests again, Hassan El-Tayyab and James Zirin. For those of you listening on the radio, that's it. For you podcast listeners, stay tuned for some bonus material we call "The Wrap Up". A transcript of this show will appear on the *Ralph Nader Radio Hour* website soon after the episode is posted.

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

Steve Skrovan: 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. Our intern is Michaela Squier. Join us next week on the *Ralph Nader Radio Hour*. Thank you, Ralph.

Ralph Nader: Thank you, everybody. And listeners, try to get another radio station in your community to pick up the show. After all, the more listeners, the more action, the more the democracy produces for all people in this country. Thank you.

[Music]

Stand up.

Oh, you've been sitting way too long.

Oh, step up.

You know what's right and you know what's wrong.

Rise up.