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**Ralph Nader Radio Hour Ep 322 Transcript**

**Steve Skrovan:** It's the *Ralph Nader Radio Hour*. Welcome to the *Ralph Nader Radio Hour*. My name is Steve Skrovan along with my cohost, David Feldman. Hello, David.

**David Feldman:** Hello. Good morning.

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

**Ralph Nader:** Hello everybody. Fasten your seatbelts. This is going to be quite a show.

**Steve Skrovan:** Yeah, the gang's all here and today, we're going to talk with former governor of Alabama, Don Siegelman, whose three-decade career in public service ran afoul of Republican opponents who used the Federal judicial system to take him out of contention in Alabama and nationally. This involved Karl Rove, as I understand. Mr. Siegelman spent five years in Alabama prison after being convicted on dubious corruption charges. We will talk about how all of that happened and also how Mr. Siegelman has been drawing attention to poor conditions in prisons, especially in the age of coronavirus where these facilities are becoming the true hotspots. Rikers Island, for instance, in New York City, has a coronavirus infection rate nearly eight times higher than the rest of the city. Mr. Siegelman has been drawing attention to those poor conditions and advocating for inmates to be released.

Our second guest is one of the Ralph's favorite Republicans. He has been on the show nine times. Regular listeners know Bruce Fein is a constitutional scholar; he is here to talk to us about how Congress has gone AWOL during this pandemic. Despite Congress putting its nose to the grindstone for its usual two and a half days a week under normal conditions, during this pandemic, most have not been showing up to work while health care workers, grocery store employees and delivery truck drivers have been endangering their own lives to keep society functioning. Congress has deemed themselves non-essential workers, as true as that may sound, and as tempting a joke as that is. We'll hear from Mr. Fein about how Congress should be conducting themselves during this crisis. And as always, 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 to our first guest about his own imprisonment and the state of our prisons. David?

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**David Feldman:** Don Siegelman was the 51st Governor of Alabama; serving from 1999 to 2003, he is the only politician in Alabama history to hold all of the state's top constitutional offices-- governor, lieutenant governor, attorney general, and secretary of state. He was the longest running Democrat in the Southeast. He was convicted in 2006 of federal bribery charges in what many think was a wrongful conviction brought about by Republican politicians. Governor Siegelman wrote about this in his soon to be released book, *Stealing Our Democracy: How the Political Assassination of a Governor Threatens Our Nation*. Welcome to the *Ralph Nader Radio Hour*, Governor Don Siegelman.

**Don Siegelman:** Hey David. Thank you. And Ralph, I'm pleased to be with you. I want to say something about your next guest, Bruce. I think I could make an argument that members of Congress are performing a nonessential function and it may be better for our democracy if at least a good part of the US Senate stayed at home.

**Ralph Nader:** Well, you wait, stick around and listen to what he says. He's testified over 200 times before Congress and he knows what he's talking about. Anyway, welcome. I'm going to call you Don. You were considered one of the most progressive governors in the South. They made comparisons of you with Jimmy Carter in Georgia. You got all kinds of things started, heavy emphasis on education, but I want to tell our listeners what some people think of what happened to you and why. We start with John Lewis, the famous Congressman and he says, "Don Siegelman, Alabama's first progressive governor was elected with a majority of black and white voters. He advanced the cause of justice for African Americans and women appointing more African Americans as judges than had been elected or appointed in Alabama's history. This drove Republicans crazy. The coup de gras was that governor Siegelman was going to give free college education and free early learning to all Alabama children." And as far as the prosecutorial misconduct, to put it mildly, that they hurled against you because you were thinking of running against George W. Bush in 2004, here is what the premier researcher, Professor Bennett Gershman of Pace University School of Law, said about you; he's the author of *Prosecutorial Misconduct: Trial Error and Misconduct in Prosecution Stories*. "Of the thousands of prosecutorial misconduct cases I have written about, the government's bad faith described in *Stealing Our Democracy*," that's your new book, "stands out and maybe without parallel. The governor's story," that's you, "reveals a continuum of government misconduct, which leaves the reader shaking in disbelief." And listeners should know that prosecutorial misconduct is almost as American as apple pie. All over the country they have been documented as going after people who are vulnerable, who can't really defend themselves, who don't have the best lawyers and using manufactured evidence, perjured testimony. And the honest prosecutors have been unable to get that message across as it should be. Governor Cuomo said a while back that 70% of the people in New York City prisons didn't even have charges filed against them. They were waiting in prison without any charges being filed against them for what they supposedly did wrong. So you're coming out with a new book, *Stealing Our Democracy*. You're using your experience only as a forward, I might add, to your broader critique of our criminal

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injustice system, which seems to be invulnerable to all exposes, whether in the *New York Times* or *Washington Post* or *Los Angeles Times*. But you're going to make another effort to mobilize people. So can you just tell our listeners what was the political motive after you finished your first term as governor of Alabama? What did you do that got them so angry and even involved Karl Rove to getting the [US] Justice Department to be part of this prosecutorial misconduct?

**Don Siegelman:** Well, Ralph, your introduction evokes several thoughts and I want to start with answering your question. Most people know I brought five automobile plants to Alabama in three and a half years. I started over a thousand new school construction projects; got a lot of people working, building roads and bridges. But I also filed, over the course of my career, more environmental lawsuits than any public official in Alabama's history. I stopped the Army's attempt to dispose of all their nerve gas in Alabama, stopped herbicide spraying, deep-well injections, disposing of hazardous waste in Mobile Bay; stopped Chemical Waste Management's attempt to incinerate hazardous waste in the Gulf of Mexico, and the list goes on. One of the proudest moments was when I was crossing a bridge going over the Mobile Delta and I saw International Paper clearcutting part of our natural forest and I picked up the phone and called my conservation officer and I said, "We've got to put together a group to buy the entire Mobile Delta." And we raised enough money to buy 150,000 acres and put International Paper company out of business and we stopped the clearcutting of this beautiful, sacred, pristine Delta. I sued Exxon and Shell. I challenged corporations that they could not contribute to campaigns without a vote of their stockholders because it was an ultra-vires activity and they had to go back and amend their articles of incorporation in their purposes.

**Ralph Nader:** So that one is something for everybody to try to do in state after state. They always want to make workers and labor unions able to step out and step away from having any of their dues being used. But it's okay for corporations to get into politics without getting any affirmation of their shareholders. But you really had a very progressive record. There's no doubt. There was a *60 Minutes* program on you in 2018. There's a new documentary on you, and what intrigues me is what went on in the court and who got away with what. Now, the judge in your court was Mark Everett Fuller; remember that name. Judge Mark Everett Fuller, a George W. Bush appointee, is the one who sentenced you to seven years in prison and a \$50,000 fine. The main witness against you was someone named Nick Bailey who provided the cornerstone testimony upon which the conviction was based, and he was subsequently convicted of extortion and facing 10 years in prison; Bailey had cooperated with prosecutors to lighten his own sentence. That's another aspect of widespread prosecutorial discretion. So where is the judge right now? Is he still presiding over a court?

**Don Siegelman:** He was able--after the United States Judicial Conference recommended to John Boehner, Speaker of the House, that Bailey be impeached for perjury and for habitually beating his wife violently--to walk away from the bench with his retirement and he's probably drinking scotch and playing golf with some of his, you know, Southern white buddies down in

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Montgomery. But the story behind Fuller goes much deeper. He was the owner of a company called DOSS Aviation. It's a military supply company and defense contractor and he was up for a \$175 million contract per year renewable for 10 years. After my conviction, he was awarded that contract. He sold the company [now called L3 Doss Aviation] for \$2 billion. But I wanted to go back to something you were talking about because the heart of my story is not about me; it's about saving our democracy and exposing what has been going on in our court system. There's a reason why the majority of people behind bars are young men and women of color, but the government gets 99% of the indictments they seek. Roughly 97% plead guilty, many of them, most of them actually, before they even get a lawyer. But there's a reason for this. You know, getting 99% of anything is a pretty high probability. I'd like to have those odds during March Madness or during football season or something. But the reason they get 99% of the indictments they seek is because of the secrecy of a grand jury, where there's no judge and there is no lawyer for the defense or the target or the witness. In 2010, January the 4th, 2010, according to the *Los Angeles Times*, David Savage, the legal correspondent, reported that President Obama's lawyer argued to the United States Supreme Court and I quote, "US citizens, United States citizens do not have a constitutional right not to be framed." This is Elena Kagan, her deputy, argues to the US Supreme Court that US citizens can be framed and there's nothing you can do about it.

**Ralph Nader:** Let me interject here. She is now a justice of the Supreme Court, of course, Elena Kagan.

**Don Siegelman:** Yes, yes.

**Ralph Nader:** She was referring to the sanctity of the grand jury system, which under US law, it has been said, prosecutors could indict a ham sandwich and what they mean by that joke is that when a prosecutor impanels a grand jury: A, it's all secret, B, all the witnesses are for the prosecution. The target doesn't get any witnesses in return; it doesn't get any chance to cross examine, doesn't get any chance to have a lawyer. That's why 99% of grand juries end up in indictment, not conviction then it goes to the courts. And Sol Price, who started The Price Club, you might be interested to know, was strongly opposed. He put ads in newspapers to reform the grand jury because he just thinks it's a recipe for prosecutorial abuse and denial of due process of law. Now I know some listeners are saying, but what was Governor Siegelman charged with and convicted? Can you just briefly discuss that and then we can go on to the broader issues here?

**Don Siegelman:** Well, I'd like to put in for a repeat performance so we can get into a little more depth. But yes, I was charged with bribery for soliciting a campaign contribution to a ballot referendum designed to benefit public education. There was no allegation of any self-enrichment scheme, nor was I accused of benefiting personally by a single penny. The money went to the Alabama Education Lottery Foundation, which was an organization put together to promote a

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ballot initiative to establish a lottery so that we could give every child in Alabama--regardless of where they're born or the color of their skin, whether they're immigrants or citizens--a chance to get early learning and an opportunity for higher education. So I was indicted for a bribery of receiving a campaign contribution from a CEO of a Fortune 500 company who had actually supported my opponent. But he had been on a state health board for 12 years, appointed by three previous governors and had resigned from the board. I asked him if he would serve again and I've got my right hand raised and I'm asking God to strike me dead if I'm lying. But when I asked him, he said, Oh, governor, do I have to? I just resigned from that board. Can I just give you the name of somebody that—and I said, no. If you leave the board now, it's going to look like you're running away from me as a Democrat. I was interested in building bridges, trying to build political bridges to the other side, to Republicans, to try to get ready for a rerun in 2002. And you know, it would have been a compliment to me to have this CEOs continue to serve on this board. [He] finally agreed to serve for one year, but there was no evidence of a quid pro quo unlike the president's impeachment trial where there was an expressed quid pro quo, as you stated earlier on one of the radio hours. Yet there was no evidence of a quid pro quo, much less an express one or an explicit one. But the judge, Mark Everett Fuller, with whom I had a political conflict back in 2002, when I caught him trying to bilk the state retirement system out of \$300,000. So I was prosecuted on the basis of an implied or an inferred quid pro quo. The judge told the jury that they could consider the campaign contribution to the ballot initiative a thing of value to me, because I had supported the ballot initiative. So the judge ordered the jury to bring him a verdict or a partial verdict after we had two hung juries and they brought a partial verdict on a bribery charge. But my purpose in writing this book is not to tell my story, but to tell the story of how our criminal justice system is weighted in favor of prosecutorial power, and it needs to be balanced. You can't allow prosecutors to willfully and intentionally present false evidence as they did in this case that I've mentioned and that was argued before the Supreme Court in 2010. President Obama's lawyer was arguing in favor of protecting the government and the government prosecutors and investigators in a case where two men had served 25 years in prison for a crime they did not commit. The witness against them was promised a light sentence if he would point the finger toward these two black men instead of a white suspect who was a friend of the investigators.

**Ralph Nader:** That's a pattern of course, that has been repeated throughout American history and continues to this day. When police want to get somebody and prosecutors don't want to prosecute somebody, they go to work to the same office and they just are very, very worried about contradicting the police recommended charges because they have to work with them day after day; there's a great need for criminal justice reform. We're not getting much support, with few exceptions, from law professors and deans of law schools. The law schools should be alive with this travesty of justice that has been institutionalized, especially against minorities and vulnerable people. But the other side is that corporate criminals get away with it! The political criminals like Bush and Cheney, the criminal, unconstitutional invasion of Iraq, which has slaughtered over a million Iraqis and blown apart the country. And here they are getting big speech fees and getting awards and living the life of royalty. And the same time, the heads of Wells Fargo bank that created millions of false accounts, credit card accounts, auto insurance purchases without even getting the consent of the customers; they put their employees under quotas to do that. That's a clear premeditated, planed corporate crime [yet] not one prosecution.

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They have to leave their jobs, with all their nice severance pay and golden handshakes, but they got away with it. So this whole mythology that nobody is above the law, I mean, Trump is above the law every day. He's violating laws, statutes, not responding to congressional subpoenas, violating the Constitution, most impeachable president [in history] and there he is, you know, just doubling down and doing more of the same, lying his way until November. When are we going to face up to the fact that injustice/violations of law by the powerful are the norm? They're not the exception; they are the norm. They've institutionalized their immunities and their privileges. And when they do, once in a while get caught by a good prosecutor, and you know, they hire these big law firms and they say to the prosecutor, how many staff do you have? You got other things you got to enforce. Do you want to assign your whole office to this? And so they get out with copping a plea and pretty soon, they're in wealthy retirement. So I think what you need to do, connecting with other people, I know you dealt with good Southern public interest lawyers like Stevenson, Morris Dees, who founded the Southern Poverty Law Center. I think it's a mission that has to become a prime political campaign issue by local, state and national candidates; it's got to be dealt with systemically. Otherwise, you know, you go into one bad case after another and it's like being on a treadmill; the faster that you run, the more you slip behind. Are you looking at it from that point of view? And listeners should know that Don Siegelman has two stalwart children who are now lawyers and they're on the same wavelength here. Is that correct?

**Don Siegelman:** Well, one is a lawyer; one is a public advocate. My son is a lawyer; my daughter is the advocate. I wanted to go back to something that shattered my faith in the Obama administration was when he said he was going to look forward not backward, and I thought, so that means we're not going to investigate being led into war under false pretenses; we're not going to hold those people accountable for torture. That means we're not going to repeal the Patriot Act. We're going to give up our rights under the Fourth Amendment. You know, people in America don't want to believe that elections are stolen or that presidents can abuse their power. But if I were asked to prove that presidents can abuse their power, the first person I would call would be Donald J. Trump. He fired James Comey because he wanted to end the Russian investigation. He fired Sally Yates. He fired Andrew McCabe [and] hired is Southern white-boy buddy, Beauregard Sessions, and then fired him when of course Sessions was in a conflict because he had lied before the Senate committee about not meeting with Russians. And then he hired Bill Barr who does everything he can every day to protect the president or to advance his political causes. You know, so it goes on and on.

**Ralph Nader:** Yeah. Well, let's focus on how they stole your election. This is an amazing story. You were running for re-election, second term, governor of Alabama, and you were declared on election night the winner by all the national networks, by the Associated Press. "The results were in; the votes were counted; the media and poll workers were sent home." Those are your words. And to continue, you said, "And then in one Southern Republican-controlled county, 6,000 of my votes simply disappeared. I requested a hand count of the precinct, which was in question. The probate judge granted me that. I was headed to that county in South Alabama when I was told that the state attorney general, Bill Pryor, who is now in the Eleventh Circuit Court of

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Appeals, had seized the ballots and had taken everything to Montgomery, the capital, where they certified my opponent, Republican Congressman Bob Riley, as the winner.” You can't challenge the outcome of an election unless you can prove to the judge that there were enough illegal votes cast or enough legal votes not countered to make a difference in the outcome. You couldn't do that because the attorney general had the ballots.

**Don Siegelman:** The attorney general was Karl Rove's client, and it was the attorney general that started my investigation. It was kicked into high gear by the US attorney who was married to Karl Rove's business partner in Alabama, Billy Canary, who used to be president of the American Trucking Association and also part of the Bush machine and was working with Rove in the '92 campaign. When they lost that campaign, by the way, they came, both Rove and Canary, to Alabama, married Alabama ladies and Rove moved to Rosemary Beach, on the Gulf Coast and Billy Canary moved to Montgomery where they continued their political operation in Alabama. I ran afoul of them many, many times during the course of the next 10 years. But the investigation was started by Karl Rove's client. It was kicked into high gear in the federal courts by the US attorney. I was brought to trial one month before my re-election and while the US attorney's husband was running my opponent's campaign. You were talking about the election being stolen in 2002; it was Karl Rove's client, the attorney general, as you mentioned, who seized the ballots and refused to let anybody see them much less have a recount.

**Ralph Nader:** There was a House Democratic committee hearing, was there not? Can you tell us briefly about that?

**Don Siegelman:** Well, the United States House Judiciary Committee, under the leadership of John Conyers and strong Democratic committed members of that committee, held two hearings, one on selective prosecution and one on prosecutorial misconduct. The committee was torpedoed by the Department of Justice that refused to turn over information about my case. Later, the Department of Justice revealed—well, actually, it was revealed by an unknown, anonymous whistleblower from the House Judiciary Committee staff who leaked a letter, which had been sent to John Conyers by the Department of Justice, in which the Department of Justice admitted that the lead prosecutor in my case, who worked for Karl Rove's client and was also cross designated to work with the Bush-appointed US attorney, was emailing my Republican opponent's campaign manager, giving him updates on the investigation and explaining why both he and a group of likeminded conservative prosecutors were so frustrated they couldn't move my investigation forward fast enough.

**Ralph Nader:** We're talking with former Governor Don Siegelman of Alabama. This is clearly a political prosecution and it's so well documented and yet you were put in prison. You spent five years there, sometimes solitary confinement; you were in solitary confinement, and you have no

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remedy. You have no remedy against Karl Rove, no remedy against the people who violated laws in order to get this prosecution. Have you thought of any remedy at all in court?

**Don Siegelman:** Ralph, if you should find a purpose in every situation in which you find yourself, then I found a purpose here. My purpose is to fight for criminal justice reform. I can't dwell on what happened to me. It's over, but—

**Ralph Nader:** No, I understand that. But for all the other people who are “railroaded”, as they used to ~~you~~ say into court, people serving time for crimes they didn't commit with subsequent DNA evidence, for example. People in jail for 25 years because they were caught in possession of marijuana. It's not just you in terms of a remedy, as there should be as part of criminal justice reform, remedies against this. I know some of the people who've been in prison and released after decades for crimes they didn't commit, managed to get compensation, so much per year in prison, so that in their post-prison life, they could maintain some kind of livelihood. But I think there needs to be a broader reform here, so that the prosecutors, the political railroaders, the people who get away with it are subjected to justice here. I mean, otherwise there's no deterrence. Like you steal an election and you'll get away with it. And even if you're caught, nobody goes to jail. I mean, this happens again and again in this country. Oh well, you know, it's just politics as usual.

**Don Siegelman:** Well, Ralph, that's why I was hoping that during the Obama administration, they would hold Karl Rove accountable for the abuse of power, subverting the Department of Justice and subverting our democracy and weaponizing the Department of Justice to go after Democrats and protect Republicans. They didn't hold him accountable for the abuse of power. And now we see it going on again today in this current White House. But there are three practical reforms that I want to mention while I've still got a few minutes.

**Ralph Nader:** Yeah, go ahead.

**Don Siegelman:** First of all, Alex Kozinski, Chief Judge of the Ninth Circuit, retired now, said that the withholding of exculpatory evidence by prosecutors is epidemic in America. Well, and it is epidemic because you have this shield or umbrella of protection over prosecutors. You have the pronouncement by President Obama that US citizens do not have a constitutional right not to be framed. But then you have the Federal Torts Claims Act, which gives immunity from prosecutors for being sued for willfully and intentionally presenting false evidence or eliciting false testimony or withholding exculpatory evidence so that they are free, with legal impunity. to frame people and it takes place first in a grand jury. So what do we do? First, we repeal the

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immunity clause in the Federal Torts Claims Act. So prosecutors can be held civilly liable for willfully and intentionally putting somebody in prison for 25 years when they know they didn't commit the crime. Secondly, we need to record every interview with every witness and target so that there is a record of if someone's testimony is morphing over time and changing over time as it did in this case that I referred to in 2010, or in my case where the witness was interviewed 70 times, not seven but 70 times, over a period of four years and made to write and rewrite his answers over and over until he got his testimonies straight, according to Scott Pelley on *60 Minutes* [so] that the record would reveal how a person's testimony changed over time. And it would also serve as a deterrent from prosecutors for pressuring, cajoling, and coaching witnesses to lie. In my case, we had a DOJ employee who filed a formal whistleblower complaint saying she was present when this witness against me was pressured and cajoled into remembering things he clearly did not recall.

**Ralph Nader:** That was devastating testimony to be sure. There's another aspect you might want to add to your list of reforms.

**Don Siegelman:** I've got one.

**Ralph Nader:** Years ago, a famous professor of administrative law, Kenneth Culp Davis, took note of how prosecutors failed to prosecute the big boys, the corporate criminals, that people have influence in politics. And he thought that prosecutors should always be under a duty to explain why they didn't prosecute, why they didn't further the prosecution. They couldn't just drop it and it's all secret; they'd have to explain to the public. You might want to get that in Lexis [2003].

**Don Siegelman:** Well, I kind of have that included, because the third element of my package to reform and to balance the scales of justice is to allow the target or the witness to have a lawyer present in the grand jury to object to testimony or evidence. Look, we do this in a civil deposition. You've been in hundreds, probably thousands of them. And you can object to proposed testimony or evidence and a magistrate/a judge decides whether it's admissible or not.

**Ralph Nader:** Yes, indeed.

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**Don Siegelman:** Surely where monetary damages are at stake, if it's okay there, it ought to be okay when somebody's liberty is at stake. And so when you have cases, for example, when police officers shoot and kill an unarmed black man and it goes to a grand jury and the grand jury "no bills" [when a grand jury does not find probable cause for an arrest], you want an explanation. And if that defendant, in this case, the victim had the right to have a lawyer present, it would help bring some measure of accountability to the grand jury process. And in a way, you know, if there is a charge against a corporate wrongdoer and if it's taken to a grand jury, then there should be some public-interest entity that has the right to have a lawyer present, maybe an inspector general or someone, to be there to report back to the public why this corporate executive was not indicted.

**Ralph Nader:** For sure. That's exactly what Kenneth Culp Davis meant in this book, *Discretionary Justice*, which I'm sure you would benefit from if you read it. We're running out of time. We're talking with Don Siegelman, former Governor of Alabama [with a] very progressive record whose career was cut short by a political prosecution that we've been talking about as well documented on *60 Minutes* program and also in his forthcoming book. We just have just a few seconds left. How about a question from Dave or Steve?

**Steve Skrovan:** Yeah, Mr. Siegelman, I have a question. And I just want to move it off to prison conditions. What kind of prison were you in? What was the population, the conditions? And talk a little bit about your advocacy in the age of this pandemic.

**Don Siegelman:** Well, as everyone probably knows at this point, it is virtually impossible for inmates to socially distance. You can't get away from inmates. We were over double capacity and when you're in a room where beds are stacked three high, not just two high and the aisles are so close, you can reach out and touch one bunk and the other when you're lying down in your bunk. When there's only one door in, one door out, no windows, it's impossible for infections or viruses not to spread rapidly. When you're sharing showers or soap or urinals are only inches apart with no separation, you know, it is going to spread. What I find amazing, the pronouncement by Bill Barr on April 3rd was, that he said, okay, you know, "We've got to release these nonviolent inmates who are not a threat to public safety." Well now they're releasing thousands of inmates who are not a threat to public safety, which raises the question, why in the world are they in there in the first place? Ralph mentioned a man sentenced to 25 years for marijuana; he was my bunkmate, Juan Garcia. I've got a section in my book about him. A half ounce of marijuana--felony, probation; half a pound s of marijuana--felony, probation. Another conviction, felony for no amount of marijuana charge, no amount charge. And he was careered out, given 25 years. He serves 19. I wrote a petition for commutation for him and he gets out after 19 years, but it's insane. So we've got a lot of work to do in changing our criminal justice system. It is my hope that out of this Covid-19 crisis that has brought attention to the conditions of prisons and also has resulted in innovative ways to make goods and sell goods and provide things and services to the public, that out of this creativity that we're seeing bubble up, I

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hope we also are willing to accept changes in our criminal justice system that can radically change the way we deal with violations of the law. And we could go on talking about it, but I thank you for the opportunity to be with you today, Ralph. It's a pleasure to meet you.

**Ralph Nader:** I might add, and those changes have to be made by state legislators and members of Congress. So, any movement that expands its influence for criminal justice reform has got a zero in again on those handful of lawmakers who can turn this around. We've been talking with Don Siegelman, former Governor of Alabama and his forthcoming memoir out next month is called *Stealing Our Democracy: How the Political Assassination of a Governor Threatens Our Nation*. And it's not just about him, but it's about him speaking from his experience--not a theoretical memoir--from his experience in detail and then telescoping it to the whole criminal injustice system that afflicts so many people unfairly and allows so many other powerful people to escape the rule of law and the embrace of remedial justice. Thank you very much, Don.

**Don Siegelman:** Thank you Ralph. I appreciate it very much. Thank you, guys.

**Steve Skrovan:** We've been speaking with former Alabama governor, Don Siegelman. We will link to his book, *Stealing Democracy* at [ralphnaderradiohour.com](http://ralphnaderradiohour.com). Now we're going to take a short break. When we return, we will try to figure out where 535 indispensable lawmakers have been hiding. But first, let's check in with our corporate crime reporter, Russell Mohkiber.

**Russell Mohkiber:** From the National Press building in Washington, DC, this is your corporate crime report, Morning Minute for Friday, May 8, 2020. I'm Russell Mohkiber. Texas-based ice cream manufacturer Blue Bell Creameries will plead guilty to charges it shipped contaminated products linked to a 2015 listeriosis outbreak, and the company's former president was charged in connection with a scheme to cover up the incident. Blue Bell will also pay \$2.1 million to resolve civil False Claims Act allegations regarding ice cream products manufactured under unsanitary conditions and sold to federal facilities. Blue Bell's former president, Paul Kruse, also was charged with seven felony counts related to his alleged efforts to conceal from customers what the company knew about the listeria contamination. For the Corporate Crime Reporter, I'm Russell Mohkiber.

**Steve Skrovan:** Thank you, Russell. Welcome back to the *Ralph Nader Radio Hour*. I'm Steve Skrovan along with David Feldman and Ralph. We have been doing this program remotely for over six years. It works pretty well, but can Congress function as effectively remotely or should they physically be in the capital to do the people's business? I think I know how our next guest would answer that question. David?

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**David Feldman:** Bruce Fein is a constitutional scholar who was associate deputy attorney general under Ronald Reagan. Mr. Fein has been a visiting fellow for constitutional studies at the Heritage Foundation and an adjunct scholar at American Enterprise Institute. He's advised numerous countries on constitutional reform, including South Africa, Hungary, and Russia. He is the author *Constitutional Peril: The Life and Death Struggle for Our Constitution and Democracy*, and *American Empire: Before the Fall*. Welcome back to the *Ralph Nader Radio Hour*, Bruce Fein.

**Bruce Fein:** Thank you for that effusion. I always remind listeners that nothing is said in introducing a guest that's under oath so it's fine to exaggerate.

**Ralph Nader:** [Ralph chuckles] Before we talk about the AWOL Congress that must view itself as not essential service like delivery-truck drivers, grocery clerks, healthcare workers, sanitation workers, police and others who are exposing themselves daily to the risk of coronavirus because they're doing their duty, why don't you explain why historically, Congress has held itself in such low regard in so many ways vis-a-vis the Executive Branch under the Constitution and why you call Congress an ongoing inkblot?

**Bruce Fein:** Yeah. Well, really, Ralph, it goes back almost more than a century and it's been a steady erosion or a disappearance of Congress until it's like the Cheshire cat; it doesn't even have a smile when it's disappeared. And I think in part, it comes from twofold influences, but there are others as well. First, as the partisanship has become greater and greater, and as the government has grown in size, the members view the presidency as everything for their party, and so all they want to do is trust all the power—when their man is in the White House—to the Executive Branch. They escape accountability. They figure that with that person in the White House, they'll get bridges built or hospitals or roads; they'll get some special grant in their district. And by not making any decisions, they make it more difficult for a challenger to come oust them because they haven't done anything to criticize other than giving away their power.

**Ralph Nader:** Let's start with war and then we'll go to define subpoenas.

**Bruce Fein:** All right. The war power. The fact is that every single member of the constitutional convention, every participant in the ratification debate, every president [from] the first--all understood that only Congress could declare war; only with Congress could take us from a state of peace to war. Now I need to underscore this because it's often misunderstood. That doesn't

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mean, and the framers said, if we're in fact subject to a sudden attack or an imminent sudden attack, the president can respond because the aggressor has already broken the peace. But the framers were unanimous. We can never trust the war power to the president who will concoct excuses to go to war to aggrandize power. That's been the history of every republic since the beginning of time. And the Congress did exercise that power up until, you know, after World War I. It was the Treaty of Versailles was defeated in part [by] the League of Nations, because that would have entrusted to the president alone, the authority to go to war without any congressional declaration. But since that time, presidents have run virtually hundreds of wars without congressional declarations. The only one that really wasn't needed [was] after Pearl Harbor; there was a declaration that recognized that we were at a state of war because Japan had attacked. Same thing after Hitler declared war on the United States. But certainly beginning with Korea and for the ensuing 70 some years, presidents have just gone to war on their own and Congress has simply sat there. Occasionally, they've delegated the power to go to war, like the Gulf of Tonkin Resolution even though President Johnson lied about the so-called second torpedo attack on the USS Maddox and Turner Joy. Presidents have repeatedly lied in times of war, even when they've gotten declarations. President Wilson lied about the Lusitania, which was carrying munitions for the allied powers and said it wasn't justified; they sunk because there were only passengers on it, no ammunition. President Polk lied about Mexican forces killing American soldiers on American soil. And we know with Korea, President Truman lied that this was just a police action that he was engaged in; it wasn't really a war even though it involved, you know, millions of soldiers and the threat of nuclear war against China.

**Ralph Nader:** Well, let's move to defined congressional subpoenas and obstruction of justice. Nixon was about to be impeached and removed for defying one subpoena and one obstruction of justice in the Watergate. Here we have dozen or more obstructions of justice documented by investigators and Mueller Report by Trump, and all kinds of subpoenas he just laughs at and doesn't abide by, coming from Congress.

**Bruce Fein:** That's correct. And we need to underscore for the listeners, Ralph, the power of subpoena, the power of oversight, is perhaps the most important power that Congress possesses; sunshine is the best disinfectant. The power of information in Washington is enormous, and the only way you can check an executive out of control is by knowing what the executive can do. That's why the framers wrote in the Declaration of Independence; we need to have government by the consent of the governed. You can't consent to something [when] you don't know what's going on. And it has become really epidemic, if you will, maybe pandemic is the word, that the Executive Branch at present simply doesn't show up to testimony or it shows and doesn't ever answer questions. It wouldn't even answer questions as to what the so-called peace accord with Taliban is, to try to remove ourselves from Afghanistan even though Taliban knew what the terms of the peace accord was. I mean that is utterly ridiculous.

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**Ralph Nader:** But of course, I know Trump has said, “With Article II, I can do whatever I want as president.” And he proceeds to do that every day larded with lies. He's breaking the checks and balances like other presidents did, but more forcefully and boastfully. He's breaking the checks and balances in our Constitution and he's breaking the separation of powers. Now why is Congress letting him and prior presidents get away with it and then we'll get to the AWOL Congress in the pandemic.

**Bruce Fein:** Okay, well, you know we're trying to get a psychology here, Ralph. And you know we both probably have a combined more than a hundred years dealing with Congress and I think there are several factors that are at work. One that the members of Congress now, I say, their loyalty and their oath that they take psychologically is to their party, and so they don't really care if the Constitution assigns them responsibility. If they can get reelected by assigning it to the president, they will sit and give away their power. Secondly, I know the Congress is hyper, hyper risk averse. They really don't want to do anything. And they fear, you know, an adverse tweet by President Trump. It's truly amazing how frightened they are. And also, they're totally unschooled, Ralph, in what their real powers are under the Constitution. I almost—

**Ralph Nader:** Let's pause on that. This is the most amazing observation Bruce has. You know, his office is one block from the Congress; he's in and out of the House and Senate all the time. And you conclude they don't even understand what their duties are under the Constitution, including the staff.

**Bruce Fein:** Including the staff. The staff after Gingrich, you know, downgraded the pay scale. The staff, don't even remember what the Vietnam War was or what Watergate was or Nixon's Enemies List. I once was asking, why don't you demand that Congress enact statutes that determines what gets classified and not, and don't have to encounter this spurious claims of the Executive Branch that we've called to declassify. And the staff said, “Oh, we don't have any power to decide what's classified or not”. And it's ridiculous. In fact, there are House Resolutions that are currently in place that authorize both the House and Senate to declassify any document they want. It was done a couple of times during the Church Committee hearings in 1975-76. Most of the staff members in Congress wouldn't even know who Senator Frank Church was. And so they're so clueless about how real power is allocated under the Constitution, they feel they're helpless and can't defend themselves, because they're completely ignorant. How you overcome that, I don't know. I've been up there so many times and said, “I'll do seminars for you. We can do staff sessions, whatever.” They just want to raise money and just be lazy is what they want to do. They are not serious people who devote serious time to understanding how the Constitution is supposed to work with checks and balances!

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**Ralph Nader:** Well, you know, as you pointed out, they work two and a half days a week when they're in session before the Covid virus, and part of that time is they leave their office, which they have to under law and go to the nearby office space to raise money, dialing for dollars in little cubicles, both the Democrats and the Republicans. So now we have the trillions of dollars of relief and bailout and they come in and they vote and then they go back home. There are no public hearings on trillions of dollars, no detailed debate on the floor, no requests for information. In fact, you say that the drafts of these bills are actually written by who?

**Bruce Fein:** They're written either by the Executive Branch or the intelligence community or their subcontractors. The members, to be candid, the staff isn't even competent to write these bills; they don't even know enough. It's like you or I trying to jump into a first-year physics program and understand what equals MC squared is. It is so above their intellectual universe; they don't know what to do. So they get bamboozled and they accept the things that are utterly outrageous. As you pointed out in one of our recent discussions, Ralph, they wrote into these coronavirus relief and aid acts waiver authority for the [US] secretary of treasury. He can just waive all the limitations on declaring dividends and executive compensation wherever he feels it would help to open up the economy. There are no standards. He can do it for his friends and not do it for his enemies. This is utterly, completely unacceptable and ridiculous. This is 2 to 3 trillion dollars; you know, that's a huge amount of money.

**Ralph Nader:** And that's why so much of it is going into the wrong pockets and the press is saying there's chaos, because they're not drafting these bills tight enough. The corporate lawyers are all over getting exemptions for this and tax breaks for that. The *New York Times* reported in the 2.2 trillion bill, they got something in there that's going to let the corporations escape, listen to this, \$178 billion over time.

**Bruce Fein:** That's right.

**Ralph Nader:** Now most of the members don't even glance at these bills. They just vote up or down depending on...

**Bruce Fein:** [Depending on] what the leadership tells them. Yeah, exactly right, and this is... there's a huge, what you would call intellectual imbalance here. The corporate lobbyists and the Executive Branch people who consult with them, you know, they're the Harvard/Yale; they're the Mandarin class. They get paid huge amounts of money. They know this stuff; they're smart. The members of Congress with Newt Gingrich, they pay their staff like \$60,000 to \$70,000 a year. These people are 25-26 years old. They're not bad people; they don't have a clue of what's going

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on. You know, this is like having the Chicago Bulls with Michael Jordan and Scottie Pippin playing an amateur basketball team. They don't know, and Congress refuses to increase the salary level. They say, "Well, we don't want to spend any of the money; we just care about who is in the White House; they'll help us out. And it's their own character that's so deficient that makes it almost impossible to get them to do anything constructive. And this is Republicans and Democrats; it's not a party issue. It's an institutional failing that..."

**Ralph Nader:** There are necessary federal workers going to work every day. They don't do it by remote or virtual reality. What's the case for telling the members of Congress they should come back to work? They can take all the personal protections and more, advised by Centers for Disease Control. Some of the staff can work at home, so it isn't as much congestion. What is your argument against Congress working remotely from back home, voting from back home?

**Bruce Fein:** Well, first of all, there's the Constitution itself. In order to establish a quorum, you actually have to have a majority of members of Congress present and voting. So they have to be here under the Constitution. But putting that aside, Ralph, it's simply the nature of the species that you are able to debate and able to assess truth and falsehood in face-to-face encounters; you can, even if it's less or more than six feet away. That's how the mind works. Well, what do you think about X? What do you think about Y? It develops into esprit; it develops a team complex. No, you really think you would be able to develop esprit for a football team that had discussions by email or by Zoom or something like that? You have to see these people face to face in order to give them an emotional content to this. You have to inspire them with enthusiasm that they're willing to sacrifice; this really is important, and of course they are. I mean, they're superintending a \$5 trillion corporation called the Executive Branch. Millions of employees, tens of millions of contractors, trillions of dollars at stake in debt that could destroy the whole country that's now storing past 25 trillion. Going to war that could destroy, create more enemies in another attack like 9/11 by stupidly getting into other people's business. All these are huge things and you have to have people who are there, motivated and who are willing to sacrifice. And that requires face-to-face meetings in intensity. You can't duplicate the intensity of seeing somebody in the eye over an email or over some kind of remote system. It's like trying to court a woman. You really think you're going to do that successfully, you know, on the telephone or on the email as opposed to in person? Because that's what's ultimately going to be the salvation of the country. We need people where we are who will fight the Executive Branch overreach, take risks and make it their life's ambition and endeavor. And you're not going to get that inspiration by 50 people or hundreds of people all scattered around, you know, in their home districts.

**Ralph Nader:** There's a certain lack of courage involved here. I must say. We're running out of time, but there's a certain lack of courage by members of Congress here, given all the people who are putting themselves on the line day after day, providing necessities for the American people in this Covid-19 crisis. We're running out of time, but any comment by Steve or Dave?

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**Steve Skrovan:** Yeah Bruce, Anthony Fauci, who is the head of the CDC taskforce on this, their branch of it. He was asked to testify before the House and the White House said, “No, he can't testify before the House. We'll let him testify before the Senate,” which presumably in Trump world, is a more amenable place. Is that really legal? Is that within their power?

**Bruce Fein:** No. I mean if I were a member of Congress I'd say to Mr. Fauci, you show up to our subpoena, or we'll impeach and remove you from office. We'll have somebody else who will actually show up. No, you do not have the authority just to decide, oh, I don't want to show up for a hearing, and especially because you think you'll get questions you don't like to hear. Really? Can you imagine you're a witness in a lawsuit and say, Mr. Judge, I don't want to show up and answer questions I don't like, you know, you have to give me somebody who will ask me friendlier question. It is utterly and completely ridiculous. When I came to Washington, you know, years ago, John Dingell was Chairman of the House of Foreign Commerce Committee. If somebody said that his salary would be eliminated the next day and don't worry, there'll be an article of impeachment over his head like a sword of Damocles and then they would respond, and the fact that the House lets this go without any pushback is truly stunning.

**Ralph Nader:** All right, well, we're out of time. We've been talking with Bruce Fein, author of books on constitutional law, on empire, on the importance of checks and balances and reforms. Thank you very much, Bruce. To be continued as always.

**Bruce Fein:** Thanks so much, Ralph. I'm always eager to appear on your program.

**Steve Skrovan:** We've been speaking with constitutional scholar, Bruce Fein. We will link to his work at [ralphnaderradiohour.com](http://ralphnaderradiohour.com) including the 12-part series he did with Ralph about the impeachable offenses of Donald Trump. Now we have some time for some listener questions. David, why don't you do the honors?

**David Feldman:** This comes to us from Juan Gerardo. He says, “Ralph, I'm a ravenous listener to your podcast and I don't think Ralph Nader has responded to Mitch McConnell's attempt at tort reform. 45 already in his executive order to maintain the meat packing industry. Include this in it, to not hold them accountable for Covid-19 related injuries or death. We must keep informing the public about this denial of employees' right for their day in court.”

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**Ralph Nader:** Fully agree, Juan, and for listeners, his mention of 45 was referring to the 45th president who is Donald Trump. Well, we have responded, if you go to [tortmuseum.org](http://tortmuseum.org), you will see the letter signed by some prominent lawyers and law professors to Trump and the leaders in Congress saying this is not the time to allow recklessness in delivery of healthcare or defective products being sold as nostrums and phony remedies to be escaping from the accountability of tort law or the law of wrong wrongful injuries. The constitutional right of people to file a case in court, and the judges know how to throw out frivolous cases, is in the Seventh Amendment right of trial by jury. And McConnell is trying to take that away during the period of the Covid-19 and perhaps longer and give these corporations immunity from any kind of accountability. And you know what's going on in the marketplace; there's a lot of shoddiness, a lot of untested nostrums and the profiteering is at an epidemic level. So we're doing that. Go to [tortmuseum.org](http://tortmuseum.org) and you can see the whole letter.

**Steve Skrovan:** Very good. Thank you for your question. Keep all of your questions coming on the *Ralph Nader Radio Hour* website. I want to thank our guests again, Don Siegelman and Bruce Fein. 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 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](http://nader.org). For more from Russell Mohkiber, go to [corporatecrimereporter.com](http://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 like so many of our shows, the solution is to focus on Congress and state legislatures. That means all of you.

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