

RALPH NADER RADIO HOUR EP 359 TRANSCRIPT

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

David Feldman: Hello, everybody.

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

Ralph Nader: Hello, everybody.

Steve Skrovan: Well, Joe Biden has been inaugurated as the 46th President of the United States with a call for unity and healing. Certainly, a welcome message. Especially in contrast to four years before when the theme was American carnage. But before the healing can begin, there needs to be a reckoning. You can't put a band-aid over a festering wound and expect to get well. We need to apply some medicine and that might sting a little. We have another provocative show for you today with two great guests. But before we get to that, we want to talk about how even though the Trump Administration has finally come to an ignominious end, the "Trump Era" still looms large. And one of the first tasks of the new administration will undoubtedly be assessing the mess they left behind. I know Ralph has some strong ideas on this. David, why don't we start by having you read one of Ralph's recent tweets.

David Feldman: Okay. "As Biden's nominees move into federal agencies/departments, they will find stunning wreckage, waste, Trumpian lawbreaking, dismantled health/safety enforcement, corrupt cronyism, and devastated civil servants. They should report these findings to the American people fast."

Ralph Nader: Yes, because there really needs to be a marker that separates what the Trumpsters did in all these agencies: EPA and FDA, and the auto safety agency and OSHA, and what Biden wants to do. Because what will happen is the spillover from the wreckage that will take a long time to roll back and cleanup, will start to be on the backs of the Biden successors who take these agencies more seriously. Let's face it. Biden has a very easy act to follow, but he doesn't want, I wouldn't think, the spillover on the things that are going to come out, the corruption, all the stories and the reports—wait and see—to in effect start afflicting his nominees because they can't reverse everything so quickly. And that's why I think a marker, putting out a report to the people [i.e.,] here's what they found at the EPA; here's what they found at OSHA, the lack of any enforcement of job safety and health standards, not even having standards for the frontline workers in the present pandemic and so forth. So that's what I hope they will do.

Steve Skrovan: Right. In contrast, there was a book written by Michael Lewis called *The Fifth Risk: [Undoing Democracy]*, which started as a *New Yorker* piece, then became a full book about the transition from [Barack] Obama to [Donald] Trump. And the thrust of it was how little interest the Trump people took in manning those agencies. The Obama people were all there with their briefing books and nobody was showing up.

Ralph Nader: Well, that's what we have to face up to. Our civil service has been degraded, devastated, hollowed out; a lot of great scientists and other professionals in the federal executive branch have been pushed out or just retired in disgust, because they were basically either overridden like a lot of the scientists in the Centers for Disease Control [and Prevention], or they were given window jobs. In other words, they were putting an empty office and shunted aside and not allowed to do anything and they were collecting their pay. So there's going to be a lot of waste, a lot of corruption, a lot of dismantling of health and safety law enforcement, a lot of corporate cronyism, passing out all kinds of contracts to cronies and subsidies/giveaways. There's going to be a lot of that. And we've got to see what it is. Because if the [US] Senate doesn't do its job, Mr. Trump will be looking for a second act in 2024, which brings us to the first quote.

Steve Skrovan: Yes. Well, this is something quite interesting, Ralph, you sent us. Because the storming of the [US] Capitol on January 6th resembled another historical event that took place in Germany, in 1923, called the Beer Hall Putsch, which was a failed attempt by [Adolph] Hitler and his fellow Nazis, about 2000 of them, to overthrow the government of Bavaria and was supposed to be the first in a series of steps to overthrow the entire Weimar Republic of Germany at that time. It ended with Hitler being arrested and sent to prison where he dictated his manifesto, *Mein Kampf*. Just to give you an idea, the mindset back then, I'm going to read you an item from *The New York Times* from 1924; the headline is "Hitler Tamed by Prison". See if you can identify any parallels with what could happen today. It says, "Hitler Tamed by Prison, Released on Parole, He's Expected to Return to Austria in 1924. "Adolf Hitler, once the demi-god of the reactionary extremists, was released on parole from imprisonment at Fortress Landsberg, Bavaria today and immediately left in an auto for Munich. He looked a much sadder and wiser man today than last Spring when he, with his Ludendorff and other radical extremists, appeared before a Munich court charged with conspiracy to overthrow the government. His behavior during imprisonment convinced the authorities that, like his political organization, known as the Völkischer, was no longer to be feared. It is believed he will retire in private life and return to Austria, the country of his birth." That was from 1924, about what would happen to Hitler after the Beer Hall Putsch.

Ralph Nader: Well, let's look at today with Donald Trump. And by the way, Hitler and his cohorts were elected before they seized power in the Reichstag. Donald Trump right now can run for reelection in 2024. He got tens of millions of votes. The only way to stop him is to have the Senate convict him by two thirds. And I think more Republicans are starting to lean in that direction, led by Mitch McConnell's recent statement. And after that, by a simple majority vote, they can strip him of the right ever again to run for any federal office, whether it be the president or any other federal office. And that's what has to be done. This idea of, oh, you know, he's out of office, the healing process, why be divisive... He basically led an assault on the Capitol, storming the Capitol, and more and more is coming out, that it wasn't totally spontaneous, and his own ally, Mitch McConnell, attributed the mob to what Trump did—speaking to them and goading them. And so this is a trial that's coming up very shortly presided over by the [Supreme Court] Chief Justice Roberts. And he has to be convicted. Some of the Republicans, I think, are going to vote for conviction because they don't want him to torment them and trash them and undermine them and insult them in the next four years all over the country. So there is a lesson from that quote in *The New York Times* for the present day.

Steve Skrovan: I think it's interesting how all these MAGA politicians spent the last four or five years looking backwards, Make America Great Again. And then as soon as they're called to account, it's like, "No, it's time to look forward. Let's look forward".

Ralph Nader: Yeah. Well, of course that comment of yours, Steve, reminded me of Barack Obama, who came into office after the war crimes of [George W.] Bush and [Dick] Cheney and the crimes of Wall Street. And he said he wanted to look forward. He didn't want to look backward when he was asked whether he would like the [US] Justice Department to initiate criminal prosecutions. Well, [chuckle] criminal prosecutions always look backward, and he forfeited a huge opportunity to install the rule of law and constitutional observance. And we don't want this to happen again.

Steve Skrovan: That's excellent segue, Ralph, into our first guest. We're going to be welcoming back Professor Adolph Reed, who has written extensively on political science and the history of American liberal movements. He will join us to discuss the end of the "Trump Era" and some burning questions about the future, especially of the American left. Now that the Democratic Party has some power in the federal government, how will the progressive wing of the party, after getting on the Joe Biden train, keep from becoming marginalized yet again? What should the American left demand for its support? We'll be talking to Professor Reed about that and many more things. Our second guest is constitutional scholar and good friend of the show, Bruce Fein, who came on our program last October to outline 14 reasons President Trump posed a clear and present danger. We're happy to be a stop on his I told you so tour. And as usual, somewhere in between, we will take a break to check in with our corporate crime reporter, Russell Mokhiber. But first, what does the future hold for American democracy in general and the American left in particular? David?

David Feldman: Professor Adolph Reed is professor emeritus of political science at University of Pennsylvania. He was a volunteer on the Bernie Sanders presidential campaign. He is the author of numerous books and articles dealing with race and class in American society and writes regularly for *The New Republic* as well as *The Nation*. Welcome back to the *Ralph Nader Radio Hour*, Professor Adolph Reed.

Professor Adolph Reed: Hi, David. Thanks for having me. It's always good to be back.

Ralph Nader: Thank you again, Adolph. Let's talk about the Biden nominees at the present time. He has nominated more women to high posts and Hispanics and African Americans than any other president so far, and there's no indication he's going to stop doing that. And this of course is very important, not just symbolically, but to show that upward mobility, professionally and occupationally, the doors are opening to higher positions of power in the executive branch. But I always thought that diversity had to be more than that; that diversity had to mean a difference in policy, and not simply have more diverse people in high positions of power producing the same corporatist, the same obstructionist, the same bureaucratic results, whether it's military policy, foreign policy, Wall Street, or otherwise. What's your view on the argument that we're seeing more diversity, but we're not likely to see more diversity that makes a difference?

Professor Adolph Reed: Well, I think that's right. I mean, as you say, Ralph, you can't really quibble with the significance of demonstrating that the ceiling on aspirations has been raised, or maybe even dissolved for women as women, and generically for blacks, generically, Hispanics

as Hispanics, gay and transgender people as those categories, et cetera. But if this comes with acceptance of a framework in which the society overall is becoming more and more unequal, then it's cold comfort to know for a black postal worker whose job is being squeezed to the limit or possibly outsourced or privatized, to know that yeah, pick a black person in the cabinet is the black person in the cabinet. And it's interesting that we could sort of peel back, you know, the origins of diversity as a sanctified ideology, and recall for instance, that it really was ultimately like a corporate intervention that's a concession to legitimize affirmative action plans in the face of a conservative tactic in court, that was inclined to reject them as in the racial preferences. The ideal of diversity has largely, I think, been built on a castle in the air basically, right? I mean, because clearly most of us would think automatically that a radically unequal, neo-liberal world that's committed to diversity as a value is less bad in some ways than a radically neo-liberal world that intensifies inequality, but is not committed to diversity as a value. But it just seems to me that the vast majority of people in this country, the real preference would be for a broader set of choices.

Ralph Nader: This has its precedent. I mean, we used to have an all-white [US] Congress. And then there was a time a few years ago when some of the major chairs of major committees in the [US] House [of Representatives], for example, Ways and Means [Committee], Judiciary [Committee], were in the hands of African American elected officials, and there wasn't that much difference. And we had President Obama who gave Wall Street a free ticket, and didn't seem to do much shifting of power for African Americans or other minorities, although his rhetoric was more reflective of his experience growing up, but it's a touchy subject. I remember going to the offices of African American legislators and couldn't get them to have hearings on the economic exploitation and the black ghettos.

I mean, you would think, you know, that payday rackets and rent-to-own rackets and food deserts and lack of police security because the police were patrolling upper-income areas more in cities around the country. What do you think needs to be done here in terms of the groups that get this point around the country? I mean, it's sort of like a time when everybody is self-congratulating themselves as Democrats; look what they've done; they retired the tyrant to Florida. There's a period of smugness, self-satisfaction, and just another round of Clinton and Obama.

Professor Adolph Reed: Yeah. I think that's probably right. Well, I mean, I don't think we really ever expected Biden to be anything more than that. And he's told us from the very beginning, from practically the day that he filed for the nomination, that his greatest virtue was being able to reach across the aisle and find points of unity.

Ralph Nader: He vetoed single-payer of universal health insurance.

Professor Adolph Reed: Right, no. Absolutely.

Ralph Nader: Do you subscribe to the idea that “Biden two” is going to be better than “Biden one” because of Trump?

Professor Adolph Reed: Well, what I have seen, Ralph, is that he gave a couple of speeches in the last week and a half, in which he laid out policy positions that give the likes of us reason to have some optimism or at least to be open, right? That it might be possible to move around the

edges in a Biden Administration. Certainly, [Marty] Walsh's appointment as [US] Labor Secretary is a big plus, or at least potentially. But how many times have we been through this before? And in fact, I say in particular, like I remember a guy I played basketball with in New Haven, an American Studies graduate student, who during the run up to the Clarence Thomas confirmation hearing was joking one day about all those people who were saying that Clarence Thomas had been poor at one point and was black. Despite his record, once he got the job for life, he would pivot and do good things. And my buddy described this as the "He is Due" theory from baseball, right? Like you send the guy to the plate as a pinch hitter because he was 0 for 27, on the theory that because he hadn't had a hit in 27 times at the plate, he'd be due to get a hit on the 28th. And the world doesn't work that way, right? And the probabilities don't work that way. I mean, I think when you get down to it; Biden, like any one of these elected officials at any level, is going to be as good or as bad, as strong or as weak as the political forces that he feels he has to respond to. And I've said this about everybody from my old friend, Paul Wellstone, to Martin Luther King [Jr.] on down, that public officials ultimately to some extent, unless you're a confessor or biographer, are holograms that are produced by the political interests and the forces that they feel that they need to respond to. The left in this country is so, so weak that it barely makes sense to talk about there even being a left. And from that perspective, like we can assert a little moral force in public. But the real challenge is going to be what force we can present that the Biden Administration believes that it needs to respond to in some concrete ways. And I don't see us getting much closer to Medicare for All in the first Biden term than we have been so far, or to other kinds of reforms like that. I'd be happy to be proven wrong and want to be part of trying to prove myself wrong.

Ralph Nader: Well, you know that the 800-pound gorillas are not part of the discourse of the Democratic Party and that's corporate power. It's amazing how even left discourse talks about racism, talks about empire, talks about exploitation. They never talk about corporate crime in particular. They almost never understand that this is a corporate-dominated society, that this is a corporate state in Washington; Wall Street merging with government and turning government against its own people. And that's the real tragedy. I mean, single payer is an issue because corporations, largely health insurance companies and hospital chains, have blocked the people from having universal health coverage. As a result, over a hundred thousand people a year die, according to Yale [University] study because they can't afford health insurance to get diagnosed and treated in time. And hundreds of billions of dollars are defrauded every year. We've talked about that in the program.

When it comes to labor, the 800-pound gorilla are the corporations, not just the gig economy. It's the freezing of the minimum wage; that's corporate power. And blocking of union organizations to defend themselves and advance themselves as workers; that's corporate power. The looting of pensions by corporations; that's corporate power. The looting of investors in the 2008, 2009, Wall Street collapse, trillions of dollars; that's corporate power. The distortion of public budgets, Adolph. I mean, who controls more than any other force, the allocation of public budgets so, so much goes to empire and the military and so little goes to public works and infrastructure here at home?

How do you account [for] the lack of even simple phrases like corporate welfare, corporate crime, corporate domination? It's not part of the discourse, even among the new leftists that are coming up and putting out the material. And look what corporations are doing to children: exploiting them, sidelining parental authority, feeding them junk food, junk drink, which Mark

Bittman in an op-ed in *The New York Times* a few days ago, said was deadly, lethal, killing people prematurely, high blood pressure, youth diabetes, et cetera. And even the [Congressional] Black Caucus almost never talks about what corporations are doing in low-income areas. What do you think about all this?

Professor Adolph Reed: Well, here's the thing. I mean, once you accept and even sort of find a way to like craft a simulacrum of a left politics around a fundamental mindset, that corporate power is just nature and there's nothing we can do about it, except maybe make some little penetration against, I mean, the very edges of it, or reshuffle allocations within the fundamentally unequal regime of corporate power, then you can't go anywhere, right? I mean, you can't do anything. You can't win anything. You can't challenge anything. And this is one of the reasons, since you want a provocation; I've got a provocation for us. I see what I've been calling, you know, the "Great Awakening", the politics of the last six months, as being at bottom the opposite of left politics. And if anything, it's much closer to a club that corporate power can use to beat left aspirations over the head, politically. And when you think about it, I am sure you recall back in the summer, when some of the most egregious corporate predators in the world were falling all over themselves to pony up large sums of money to show their commitment to some version of racial justice, right? And some, in fact of the Black Lives Matter activists, pointed to the relative willingness of corporations, and again, some pretty terrible ones like Uber and [Jeff] Bezos, their willingness to support a race-first political agenda more lustily than nominal leftists were as a sign of that the corporations, to put it crudely, are like better citizens than those of us who want to try to challenge corporate power and to recapture like the wealth of the American people for the American people. And I think that there's a political tension there, and it's not just that people are, you know, some people are mistaken. I think there are people who have chosen their sides accordingly.

Ralph Nader: Well, do you know the corporations, in all those full-page ads you mentioned last summer, basically they sounded like the NAACP or the ACLU.

Professor Adolph Reed: Oh yeah, they did; they definitely did.

Ralph Nader: The whole strategy behind that is number one is to just let these minorities in and become good consumers, have them have a piece of the pie and have them be part of the capitalist, the corporate capitalist system. That's one. And the other is, this is really pretty stunning, Adolph. There is a recent poll that asked the people who do you look on most favorably. Do you look on non-profit groups? Do you look on labor unions? Do you look on academics? Or do you look on business? And business came in on top. I mean, the whole rape of the economy, the destruction of the federal lands, the corporate-sourced climate disruption, the corruption of our campaign system with corporate money. And they've got a sheen of Madison Avenue benevolence around them. They're even doping people who answered to these polls.

Professor Adolph Reed: Right. Well, and that makes sense, because this is all people have been hearing for like the last 40 years in a bipartisan chorus. And that's why I think that in addition to doing whatever we have to do to try to stop the bleeding and contain the worst excesses, and the only way that we're going to get the movement that we need to try to change the center of gravity in American politics is by a renewed campaign of actual civic education. That may sound hokey, but I mean, conducted in neighborhoods and not just in schools and in union halls and workplaces, and not just questions like, you know, how a bill becomes a law, but...

Ralph Nader: But I don't think it's hokey at all. You remember from our history, Adolph, the Populist movement started with farmers becoming lecturers. They called them like going from farmhouse to farmhouse in terms of educating people about the brutal role of railroads and banks to their livelihoods. They knew that—the farmers, but the education was what to do about it. And they launched the biggest progressive Populist movement in American history.

Professor Adolph Reed: And that's exactly what we need now. And what I think you know, Ralph, that at the Debs-Jones-Douglass Institute in concert with The Labor Institute, this is the kind of worker training model that we've been developing and taking into the labor movement and elsewhere. And that's the only way we're going to turn this around. And the unfortunate thing is that while I detest 12-step ideology, but one thing that I'll share just for a second, is that the first step to being able to build the kind of movement that we need to turn this around is to acknowledge that we don't have it yet, right? And one of the problems is that progressives, leftists, whatever, tend to focus way more on mobilizing, which means as Jane McAlevey puts it brilliantly, “getting the people who already agree with you to move on something,” but not very much on organizing, which is talking to people who don't already agree with you and to trying to bring them along. The mobilizing route has won victories for us, obviously. But it's been pretty skimpy on populist outcomes lately. And by lately, I mean, probably as long as most of our listeners can remember. Part of what we've got to do, is like in addition to trying to mobilize outrage and awareness and whatnot, is at the same time, on the other leg, basically, to do the more slow-drip kind of work of trying to build a constituency for the perspective that's embodied, like in the politics that we're trying to pursue. Now, does that make sense?

Ralph Nader: And you have people thinking sequentially, you know, making connections. Like there's a direct connection from the crumbling of schools and public transit and drinking water systems and back in communities all over the country and the public money that's going into the trillion-dollar military industrial complex. There's a direct connection between all these tax escapes of the super wealthy and the corporations supported by too many Democrats, not just Republicans. And the starvation of public health departments that rendered our country so unprepared, apart from Trump's expansion of the virus, pandemic lies, neglect, and ignorant actions.

Professor Adolph Reed: Absolutely.

Ralph Nader: The starvation of these local resources. And that's part of education. Education means making connections; not just one impulsive response to some symbol that people don't like or some phrase or word that people don't like.

Professor Adolph Reed: Exactly. I mean, I've been saying this since [Hurricane] Katrina, and to be honest, I mean, it's a kind of tribalist perspective, but the way that the coronavirus has exposed how hollowed-out public health infrastructure is around the country just makes me think of what happened after Katrina. And it's like the same thing. Like you remember, you're going back to the Exxon Valdez spill, right? It turns out that the company skated on having the permanent cleanup crews to put to work in emergencies like those spills. That's what's happened on a bipartisan basis from, I mean, local government to the national government for 40 years again, where the Republicans say we're cutting services period. The response from the Democrats is, well, we don't really need to fund them at what seems like the adequate level, because we're so much smarter and we can do more with less. While doing more with less means

fundamentally, you're not prepared when a crisis happens. And I mean, here we are. And it's vitally important that we help people see the connections. I mean, just like at the municipal level. Tax giveaways, tax increment financing or other tax breaks that encourage rent-intensifying redevelopment over funding public services shows up in the same way, right? And people don't understand why there's not enough money to fund public education adequately. And the politicians, no matter what party they belong to, have a vested interest in shifting the public's attention away from where are the actual sources of revenue drain are.

Ralph Nader: You know, the word “corporatism” has to be right up there with racism. Corporatism is an equal opportunity injustice that pervades our entire political economy and our elections. And we've got to get stronger muscular language here to deal with the reality on the ground. You know, we're running out of time, Adolph. I know we wanted to discuss a column I wrote a few weeks ago called “Why Do Americans Give Away So Much Control to Corporations?” You know, they own the public lands; they give it up. They own the public airways; they give it up. They own the research and development [that] built all these industries coming out of the government to build Silicon Valley and aerospace and biotech and so on, and they give it up. They own the pensions, trillions of dollars invested in Wall Street securities, and they let the corporations control it. So, if listeners want to read the column and maybe we can discuss it in another interview, just go to nader.org.

Professor Adolph Reed: Good.

Ralph Nader: And I want to give Steve and David just an opportunity to come in here.

Steve Skrovan: Adolph, obviously, Joe Biden has had a long career in politics in Congress and he is a creature of that institution. And he certainly, in that time, [has] not proven himself to be what you would call a great man. But in this moment, there seems to be an opportunity for him to have greatness thrust upon him, much like say Lyndon Johnson had after the [John F.] Kennedy assassination. Do you see that happening as an historian? Do you see those parallels? And what can we hope for in that sense? Could he be a Lyndon Johnson?

Professor Adolph Reed: Well, it's funny because a cousin of mine and I were talking about this a couple of days ago and like in the family, the metaphor, it wasn't Johnson was Pope John XXIII. [chuckle] But yeah, I don't know; I mean, what it would take would be for a balance of forces that he felt he needed to respond to, right? I mean, Biden is maybe better than some of the others in the sense that he's old enough to have a sense, like ironically, you know, the [Richard] Nixon Administration did, that the presidency is a kind of stewardship of the republic, basically. And you've got some sort of commitment, right, that's beyond yourself, or even, you know, more crudely just as, well, an understanding of the horse trading aspects of politics. So we got more from Nixon and a lot of ways than—and by we, I mean, people of our interest—than we have from any of the Democratic presidency since then. Biden could. And certainly the fact that his victory was so clearly dependent on minority voters and labor. But you know how that stuff goes, Steve too. You've been around the block. I mean, you know, the crucial vote is the one that the winner determines he most wants to listen to. So, if they want to tell us that The Lincoln Project is what turned the tide for Biden, then that'll be a sign of a Biden Administration that's going in one direction. So, I mean, I hope he does. I mean, I'm not... I mean, my watchword is always pretty much the same--optimism of the will, pessimism of the intellect.

Steve Skrovan: Right.

Ralph Nader: Well, thank you very much for coming on, Adolph. We're talking to Adolph Reed, professor, still teaching at the University of Pennsylvania, still writing and still grappling with the fundamentals of the structure of power and justice in our country. Thank you very much, Adolph, and to be continued.

Professor Adolph Reed: All right. Thanks, Ralph, Steve. I look forward to it, guys. Take care.

Ralph Nader: Thank you.

Steve Skrovan: We have been speaking with Professor Adolph Reed. We will link to his work at ralphnaderradiohour.com. Let's take a short break. When we return, our favorite constitutional lawyer stops by to say, I told you so. But first, let's check in with our corporate crime reporter, Russell Mokhiber.

Russell Mokhiber: From the National Press Building in Washington, DC, this is your *Corporate Crime Reporter*, "Morning Minute" for Friday, January 22, 2021. I'm Russell Mokhiber. Better Markets released a report last week that details for the first time the nearly 400 major legal actions against the six largest Wall Street banks over the past 20 years. "Wall Street's six biggest banks: Bank of America, Citigroup, Goldman Sachs, JPMorgan Chase, Morgan Stanley and Wells Fargo have been subject to almost 400 major legal actions and have paid almost \$200 billion in fines and settlements during the last 20 years," said Dennis Kelleher of Better Markets. "Every one of those major legal actions are detailed in the report we are releasing today, and they show that those banks have committed almost every conceivable type of financial crime or violation, often repeatedly." 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. Well, he told us so, David.

David Feldman: Bruce Fein is a constitutional scholar who previously appeared on this program in 2019 to outline 13 articles of impeachment for President Trump, and October 2020 to outline 14 reasons President Trump was a clear and present danger and should be removed from office. Mr. Fein was Associate Deputy Attorney General under Ronald Reagan and he is the author of *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 inviting me.

Ralph Nader: Welcome, Bruce. Let's get right to the forthcoming trial of Donald J. Trump in the US Senate. It looks like it's going to occur. It looks like Trump is losing some of his base among Republicans, notably [Republican] Leader Mitch McConnell, who excoriated Trump as a major factor in the storming of the Congress on January 6th. Give us some of your thoughts and how do you think this trial should be run?

Bruce Fein: Well, first of all, I believe that we need to have live witnesses. I think that if you compare the difference in the outcome, [and] there are many other differences too, between the Watergate that didn't ultimately end in a trial because President Nixon resigned. But leading up to the events and the conclusions, three articles of impeachment in the House of Representatives, we all were able to see John Ehrlichman, H.R. Haldeman, John Mitchell, and John Dean. We could see the witnesses. We had a sense of the real live people, their credibility and how [it] impacted the American people. We can't have this trial by video, by Zoom, by just a written record. We need live witnesses in order to fully engage the American people and to underscore its importance. So, the first thing that needs to happen is the Senate has to conclude that although the constitutional text is not clear on this point, that Chief Justice John Roberts should preside.

It's the gravity of the situation. What's at stake is someone who has sought to tear the Constitution asunder. And if he's not convicted and prevented from running for office again, which is one of the punishments that comes from conviction for impeachment, the country, in my judgement, has not got a whole lot of staying power to remain a democratic, free country.

Ralph Nader: When you say the Constitution is not clear on the point because the trial comes after Trump has left office, it's very clear that if the president is in office, the Chief of Justice—

Bruce Fein: That is correct. Because the Chief Justice of course did preside at Trump's first impeachment trial. Now some have raised this issue [of] well can you have an impeachment trial after someone is no longer in office? That was settled in 1876, when the [US] Secretary of War Henry Belknap resigned, even before he was impeached. He was accused of bribery. The House impeached him after the resignation. [It] went to the Senate for trial. He argued there wasn't any jurisdiction and the Senate rejected that argument. 37 to 29. There are these two reasons why there needs to be a trial even after someone has left office. One is to set a precedent that is a warning to future occupants of [the] office that this kind of behavior will result in your removal. And second is to disqualify somebody from running for office again because they're a clear and present danger to our constitutional dispensation.

Ralph Nader: Now, do you think that they should subpoena Trump to testify and would that boomerang on the Democrats?

Bruce Fein: Well, I think, you know, the issue, an issue that remains open here, it seems to me, is, you know, criminal intent by Mr. Trump. Was he inciting violence? Was he inciting the insurrection, the seditious conspiracy, the destruction of property, that actually resulted, unfortunately, in the deaths of individuals in the Capitol? the Capitol police and others who were participants in that whole affray? And intent is an element of incitement. And so clearly you want to have a Mr. Trump there to give him an opportunity to explain. What did you mean when you said, "We have to fight them there." No, this is going to be a theft of the election. [Mike] Pence has the authority to not count the votes if he doesn't want to and said concurrently with his personal attorney saying we need "trial by combat." Well, what did you mean when you said those words? And especially...

Ralph Nader: That was Rudy Giuliani...

Bruce Fein: Rudy Giuliani.

Ralph Nader: ...on the [National] Mall.

Bruce Fein: On the Mall, at the same time, yes, the same crowd. I call them, you know, a fevered mob. And also confronted with the fact that we now have almost a half a dozen or more participants in this storming who have said, "Oh yeah, of course I did interpret the language. It was a direct order to storm the Capitol, to use violence to prevent the counting of the votes." And some of them have actually called Mr. Trump to pardon them. Now, obviously, he didn't do that, but that is the strength of their conviction that they were following the President's orders. And how does he explain that?

Ralph Nader: Now, let's elaborate this enforcement process. You don't have to prove criminal intent to be convicted on impeachment in the US Senate, but Trump is exposing himself to normal criminal prosecution for what he did as any citizen would be. He doesn't have any immunity for that. Indicate how mild the impeachment process is given the enormity of what he did. And can he still be prosecuted, or is that the end of it if he is convicted, removed from office and stripped of his right to run for public office?

Bruce Fein: Well, first of all, it's surely true that impeachment is not a criminal proceeding. It's a civil proceeding. And that's why, you know, you don't have to prove guilt beyond a reasonable doubt. That's not the standard. And you don't have the same rights to cross examination. And the privilege against self-incrimination doesn't exist in a civil case. And that's what impeachment is. They clearly, after he's impeached and disqualified from running, because the maximum Trump can get now his disqualification from running for office, federal office again. After that, the Constitution is very explicit. He can be exposed to criminal prosecution where the standards of proof are much more exacting. But if you look at the article that was voted by the House, it does cite insurrection and incitement. And therefore under their own words, they have to at least have some evidence of criminal intent or some kind of proof of intent even if it wouldn't satisfy a guilty verdict in a criminal prosecution because of the different procedures. They don't have to find it met that threshold of incitement, but a lesser threshold would still justify removal from office. That's why I think they have to get a sense of Mr. Trump being subpoenaed. And then it denies the argument that, well, this was a witch hunt. He didn't get a chance to defend himself. Well, he did. He had a chance to explain himself completely with his own lawyers there and respond to the fact that those who were in the crowd said, "Of course I was following orders." And [to] respond to the discrepancy, staggering discrepancy from the words "we gotta fight, we gotta fight". You know, "weakness is never acceptable; losing is never acceptable" with the words that came forth, you know, a day or two later, where in a scripted message, he said, "Well, you're not really a Trumpist if you're for violence; you're not a Trump person, if you don't respect the law enforcement" [which had] a wholly, wholly different tone. Whether it was sincere or not, it was not what he said on January 6th. And you could ask, well, you knew then what words were needed if you wanted to try to quell rather than foment a rebellion and you didn't use them. We know you didn't use them because a look at your script of January 6th with what came a day or two later and the difference is staggering.

Ralph Nader: When he saw, watching it on television in the White House, unfold, he didn't make any effort to call back his supporters.

Bruce Fein: Yeah. Kevin McCarthy his Minority Leader in the House and Kevin McCarthy, Lindsey Graham, were trying to get through to him, [with]. "Hey, call off your people; we need help; send in the armed forces." He was riveted according to the records, the reports that we have in *The [Washington] Post* and *The New York Times*. He was riveted, just watching, and he was calling them patriots. He was watching the fevered mob. Even afterwards, he has not stood up even after this happened and said, we need to prosecute all those people. He has not. Well, what was your intent then? If they commit crimes and you are indifferent to them, of course you didn't care whether they went up there. So whether it was intent or reckless disregard, he knew he was throwing a match on kindling, ready to have it light.

Ralph Nader: Well, to convict him requires two-thirds of the US Senate. And that means there needs to be at least 17 Republican senators voting to convict him. Do you think that will happen?

Bruce Fein: I think if I was betting right now, I think there's 50-50. Obviously, some of it depends upon how effective the House is in presenting its case. Because in addition to the issue of the insurrection and the seditious conspiracy on January 6th, we have the few days earlier, when clearly, Mr. Trump was calling the Georgia Secretary of State, and a few days earlier and another electoral official, you know, asking them to falsify the Georgia election returns [and] find additional votes. [and saying] “Well, you know, you could be criminally prosecuted if you don't throw out those election returns.” So they obviously need to call the Secretary of State and the other officials, to say, well, and they recorded the conversations because they knew that they could expect the worst from Mr. Trump.

Ralph Nader: It was Trump who accused his Secretary of State of being vulnerable to criminal prosecution when **he** was behaving in a way that clearly violated the Georgia criminal code against the—

Bruce Fein: And the federal criminal code too. It's in [U.S. Code] Title 52, which makes it illegal to try to falsify or interfere with the rights of the state to elect presidential electors in a fair and free fashion. So he violated both federal and state law at the same time as he was accusing, threatening, or maybe the veiled threat, or maybe wasn't so veiled, threat to prosecute Mr. [Brad] Raffensperger or the Secretary of State unless he manipulated the votes, so that Mr. Trump won. And he makes these crazy statements about the voting machines being rigged so that they would count Biden votes three times and not Trump votes and things like that. Rudy Giuliani went down there and manipulated a video that he alleged showed that there were votes that were miscast or miscounted when in fact it had been clipped and it was shown to be a fraudulent representation of what in fact was occurring. All those things that Trump knew about, and he was obviously concealing them or wasn't disturbed at all by them. We also know just as we go back, and this is permitted in trials, when someone has passed similar acts [and] has developed a longstanding reputation and habit of acting with a certain state of mind, it can be introduced as evidence that that state of mind also was present in a current event. And we now have John Bolton saying, “No, obstruction of justice was a way of life at the White House.” All the instances where Trump was trying to obstruct the [Robert] Mueller investigation; his whole life is nothing but obstruction. He was obstructing justice in issuing pardons to his friends and dangling pardons to hope that they would not incriminate him. And obviously, you know, is punishing anyone who would actually try to tell the truth. So you put all that evidence together and I think his state of mind is obvious.” You know, Mr. Trump had no interest, he does have no interest in having a free and fair count. He only was calling because he wanted the election results changed. And why is he just choosing to approach the states where he lost? He doesn't suggest that he's going to ask any other states to do recounts or rejigger the votes where he won. So we know that he had a corrupt state of mind, but it's important that the House present the case solidly with evidence. There's no need to rush it really fast to accommodate Mr. Biden's program. If it takes a little bit longer, it does. Because this impeachment trial is for the ages. It's for a precedent that hopes to prevent a reoccurrence for a 100, 200 years for posterity. And we can't compromise their liberty because Mr. Biden wants to get a few weeks advanced running start on his domestic program.

Ralph Nader: Well, they can split the day, work a full week for change, [and] work on weekends. They can split the day for part of it for the impeachment trial and part of it for Mr. Biden or the congressional agenda on policies. Let's go to the power of the executive branch. You've just written a report, which we've released on constitutional restoration, which could be

called restoration of congressional authority, vis-à-vis the presidency and the executive branch. Do you think that Joe Biden is going to stretch executive power as far as Donald Trump? He's going to revoke a lot of Trump's illegal executive orders. What's your view so far? What are the early signs?

Bruce Fein: Well, the early signs are not promising. The earliest sign perhaps was the testimony of his [US] Secretary of State nominee, Tony [Anthony] Blinken, when he said he wouldn't necessarily submit treaties for ratification. He could say that in some cases, he'll just do them as executive agreements, which are just agreements between the president and foreign powers, because diplomacy might suggest that's a good idea. Well, the Constitution says nothing about executive agreements. A treaty is defined as a sovereign contract between sovereign nations. And he was speaking in the context of any kind of nuclear deal that may be concluded with Iran. Go back to the 1922 [Washington] Naval Conference that set limits on building naval ships between big powers. That was a treaty. All these arms control agreements have been treaties. The SALT treaties [Strategic Arms Limitation Treaty], the Open Skies Treaty ~~ies~~; [we] even ~~will~~ have migratory bird treaties, and then suddenly, well, we can't get treaties anymore. And this wasn't just the first time. You remember when NATO [North Atlantic Treaty Organization] was first ratified as a treaty, it excluded Spain that was then run by Francisco Franco, because of the dislike of his fascism, if you will, and the Spanish Civil War. And the result was that when [Dwight D.] Eisenhower came in, he just basically de facto, made Spain part of NATO through executive agreements. That's where we had air bases at Rota. Remember we had even nuclear bombs that were dropped inadvertently in Spain during their period where the so-called outside of NATO but inside through executive agreements. And so this is just another example. Well, wait a minute. You know, I'm not saying that a treaty with Iran is not a good idea. I'm all in favor of it, but it's still a treaty. Process is important. You just can't conclude it on your own.

Ralph Nader: Let's give us some other examples. Biden spent a lot of years in the Senate. He knows what congressional authority is and should be. So let me ask you a couple of very short questions. Do you think Biden would spend money like Trump did for the Wall [Street] that was distinctly opposed and not authorized by the Congress?

Bruce Fein: Well, I would sure hope not, but you know, I can't be conclusive simply because... you remember there were a couple of cases where Obama spent money that he wasn't supposed to spend. Especially remember the deal down in Guantanamo [Bay detention center] where he didn't give proper notice to Congress when he was swapping Guantanamo detainees for [Bowe] Bergdahl. And I just don't know [with] the pressures in the White House, people act differently. And Obama was a senator too, and he didn't pay any attention to any Senate prerogatives whatsoever.

Ralph Nader: Do you think that Biden would violate and defy congressional subpoenas the way Trump has done over a hundred times and gotten away with it?

Bruce Fein: Well, I would hope not, but, Ralph, the disconcerting thing is Mr. Biden was Vice President under Obama for eight years, right? He's got some independence because he was actually separately elected, and Obama flouted subpoenas regularly, not as flagrantly as Trump. And Eric Holder wasn't going to release information relating to the operation that we're overlooking some gun violations, gun running down there in Mexico. And they asserted in these privileges, remember Obama wouldn't permit the release of the Senate torture program. He

wouldn't permit the release of the 28 pages on Saudi complicity and in 9/11. And Biden was in the administration. Now, of course he doesn't have the final decision, but you have a way to leak out stuff if you don't like it, you know. And it's just a different deal. He's certainly not Trump. I certainly agree with that. I mean, I have no doubt that he would never for a moment try to suggest that, you know, that an election after it had been fully exhausted and the results had been declared by the states, you know, he would never do anything like Trump tried to do to question the legitimacy of any successor.

Ralph Nader: Let's see if he's going to do what Obama and George Bush did in terms of use of armed force overseas.

Bruce Fein: Yeah, that's a very, very good question. And because, again, I don't want to extrapolate too much, but Antony Blinken, when he had about an eight-hour hearing in [US] Senate Foreign Relations Committee in all these issues, and Rand Paul had raised these issues [i.e.,] the president just, you know, uses military force on his own, and how does the AUMF [Authorization for Use of Military Force] relating to Afghanistan justify forces in Libya and Syria and Somalia. And now the force, that we fight Somalia now with troops in Kenya. And there wasn't any suggestion [that] we really got to come back to Congress and get authority again. And this is just an historical fact, Ralph. No president ever, including Jimmy Carter, surrendered executive power voluntarily back to the Congress. No matter whether they had "Napoleonic" personality or self-effacing personality; just the dynamic of the office, we didn't want to cling to power.

Ralph Nader: But do you think he will follow the Obama doctrine of prosecutor, judge, jury, and executioner overseas on his own say-so?

Bruce Fein: Yes, I certainly do. Because the way in which he can stop it is simply to make an announcement, issue in executive order [that] I'm not going to do this anymore. That's the authority that he has right now. And he was there for the eight years in the Obama Administration. We don't have any evidence that he ever spoke up against it. Indeed, I think one of the things that he kind of praised and winked and praised, I think, was sitting there and watching the president play judge, jury, prosecutor, executioner to kill Osama Bin Laden. And, you know, there wasn't any efforts to try to capture him. And so that I don't think he's going to renounce that. If you say it's really—

Ralph Nader: Even American citizens overseas?

Bruce Fein: Well, he didn't say anything when Mr. [Anwar] al-Awlaki and his teenage son were vaporized and they were American citizens. So I don't know whether he would draw that distinction; I don't know.

Ralph Nader: Well, do you think that the drone warfare will continue regardless of international law? Do you think that the troops will be expanded in Afghanistan and Iraq and Somalia?

Bruce Fein: I think I don't know how much the expansion will be. I don't think they're coming home. There's no testimony of any of his national security team who've ever voiced any sense that, hey, we got to stop these endless wars. And it's not because we're calloused. You got to know what you don't know. And, you know, we're not going to turn Afghans into Canadians.

That's not going to happen. We're sending our own troops over there to risk their lives and their limbs. And we have to have a foundation for thinking that we're there legitimately. The fact is under an international law and the United Nations, which that's almost our brainchild says, no, you cannot use force in a foreign country, except in self-defense, which means only if you're the subject of actual or imminent attack on your boundaries. We do that to other countries, you know, every day without blinking an eye. And that's not to say that we can't give support by example, you know, that we encourage that peace move forward. But unless Congress is going to declare a war and we've been attacked, we have to accept the fact that, you know, other people and countries can go their own separate ways, if they're not attacking us.

Ralph Nader: Steve and David, any input here?

Steve Skrovan: What fascinated me most, Bruce, was your contrasting during possible impeachment trial how to use Trump's words against him. Because, you know, my first impulse as a non-lawyer would be to say, "Well, if you let him explain himself, then he's going to be able to put the finest face on it, and tell you that that's not what I really meant." But your saying contrasting his statements and the timing of them, that was a really fascinating technique of being able to get the truth out.

Bruce Fein: That's right. And remember also, we're dealing with somebody who his own lawyer, John Dowd, said, "We're never ever going to put him under oath because he's an incorrigible liar. [laughter] His own lawyer says that! So the idea that he's really fast on his feet, and will know how to wiggle out of this, I think, is totally wrongheaded understanding of Mr. Trump's fixation on falsehood after falsehood. He can't even make up good lies.

Steve Skrovan: And I think your characterization of the word "incorrigible" was generous. I don't think that it was even the word he said. I think the word he said began with an F.

Bruce Fein: [laughter] Listen, I know the airwaves and seven dirty words you're not supposed to do.

Steve Skrovan: Thank you very much.

Ralph Nader: Okay. I guess we're out of time. We've been speaking with Bruce Fein, who is a constitutional law expert, actually served in the Reagan Justice Department years ago and is the author of a new report on restoring our Constitution. This is a very practical policy-oriented report on how we can get Congress to reassert its own authority that it has in the Constitution, vis-à-vis the executive branch, and hold situations like empire and other forays and violations of the law and Constitution by the presidency accountable, or at least to restrain it. So good to have you on the show, Bruce. As usual, keep up the good work.

Bruce Fein: Yeah, I always remember the price of liberty is eternal vigilance and that's what our duties are as citizens.

Ralph Nader: Well said.

Steve Skrovan: We've been speaking with Bruce Fein. We will link to his work at ralphnaderradiohour.com. That's our show. I want to thank our guests again, Professor Adolph

Reed and Bruce Fein. For those of you listening on the radio, we're going to cut out here, but for you, podcasts listeners, stay tuned for some bonus material we call "The Wrap Up". A transcript of this show will appear on the *Ralph Nader Rader Hour* website soon after the episode is posted.

David Feldman: For more of Russell Mokhiber, go to corporatecrimereporter.com.

Steve Skrovan: And check out *Wrecking America: How Trump's Lawbreaking and Lies Betray All* written with Mark Green and *The Ralph Nader and Family Cookbook: Classic Recipes from Lebanon and Beyond*. We will link to both of those.

David Feldman: Join us next week on the *Ralph Nader Rader Hour*. Thank you, Ralph.

Ralph Nader: Thank you, everybody.

[57:54]

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