

## RALPH NADER RADIO HOUR EP 420 TRANSCRIPT

**Tom Morello:** I'm Tom Morello and you're listening to the *Ralph Nader Radio Hour*.

[Music] Stand up, stand up, you've been sitting way too long.

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

**David Feldman:** Hello, Steven.

**Steve Skrovan:** Thank you for the formal — Stephen. I'm “Stephen” now. I'm glad we're at the “Stephen” stage. I just want to remind everybody, David, as I'm sure you're excited about Wednesday, March 30th, next week at 12:30 p.m. Eastern, our guest would be Jessie Singer, author of *There are No Accidents: The Deadly Rise of Injury and Disaster—Who Profits and Who Pays the Price*. And we're going to be doing that as a live Zoom.

**David Feldman:** It's an opportunity for everybody to watch how this show gets made.

**Steve Skrovan:** Yes, which is a fascinating, fascinating process to watch. And you get to see our mugs on the screen, at least mine and David's. So go to [ralphnaderradiohour.com](http://ralphnaderradiohour.com) to sign up and be in our live Zoom audience. And we also have the man of the hour, Ralph Nader. Hello, Ralph.

**Ralph Nader:** Hi, everybody. Yeah, do sign up. Make it a really large audience. Get your friends and neighbors too. Take a peek.

**Steve Skrovan:** Up first, we're going to talk to Professor Theodore Postol who is an expert on nuclear weapon systems and professor emeritus of Science, Technology and National Security Policy at MIT. He has worked for the Congressional Office of Technology Assessment, the Pentagon, Argonne National Laboratory, and he is here today to talk about how nuclear weapons might factor into the current war in Ukraine. And we're going to close out the show with our resident constitutional scholar Bruce Fein to give us his take on the confirmation hearings of Supreme Court nominee Ketanji Brown Jackson.

As always, somewhere in the middle we'll check in with our corporate crime reporter, Russell Mokhiber. But first, nuclear weapons used to be unthinkable, so why are we thinking about them? David?

**David Feldman:** Theodore Postol is a professor emeritus of Science, Technology, and National Security Policy at MIT. Welcome to the *Ralph Nader Radio Hour*, Professor Theodore Postol.

**Theodore Postol:** It's a great pleasure to be here.

**Ralph Nader:** Welcome indeed, Ted. If there's anybody in the world who knows more about intercontinental ballistic missiles, let me just print it for our audience, and I want to quote you.

You say, “The Russian early warning system is nothing like the US early warning system. The US government knows when a ballistic missile has been launched anywhere in the world. The Russians can't do that. They completely rely on ground-based early warning radars against nuclear surprise attack. As a result of this, the Russians are susceptible to thinking they are under attack when they are not. The Russian false alert of 1995 illustrates the serious dangers to the U.S. from this limitation in Russia's early warning systems. The 1995 false alarm happened to take place during a politically calm time between Moscow and Washington. If such a mistake were to happen now, there would be a very serious risk of nuclear war, which would kill billions of people.” Give us your view now of what situation is in the Ukraine-Russian war.

**Theodore Postol:** The situation unfortunately, well, I've been trying to find out as much detail as I can. And of course, there is information but, it's very spotty. But I think right now, nothing is going as most informed experts, including myself, would have expected. For example, I thought, along with many other people who have some knowledge of military operations, that Russia could very quickly take Kyiv. That is, to say, the beginning of the operation, it looked to me like the Russians were planning on quickly penetrating in a blitzkrieg-like way into Ukraine and surrounding Kyiv and then basically taking it. It is very clear that the intelligence, the Russian intelligence, and certainly what I thought was the case at the time, so I admit complete misjudgment, the plans were built on the misconception that the Ukrainians would not fight, and that they could not fight. It turns out that the Ukrainians not only are fighting, but I think that the level of skill and determination that really goes from the foot soldier to the top military command in Ukraine. So I think this is a military that is showing tremendous ingenuity and competence, in addition, of course, to extremely competently using the weapons they have available. And I would have told you even a week ago or a few days ago, that the outcome was probably going to be Russia taking the place, taking the Ukraine. And this was not my hope, but it was what I was guessing. I'm not so sure now. It may be that the Ukrainians can stand off the Russians. They've inflicted tremendous casualties on the Russian force.

**Ralph Nader:** And how is this going to affect Putin's nuclear strategy, if at all?

**Theodore Postol:** Well, I think he's in a corner. And when someone's in a corner, it's a dangerous situation. It's much more dangerous with regard to the possibility of nuclear escalation now than it was a week ago because he may be--this is all speculation but it's not totally uninformed. He may be facing an internal crisis with regard to his own leadership at this point. It's very likely people--we don't know, but I want to underscore we don't know, but it's very likely that people inside the leadership structure are pointing fingers at each other. The army has failed to produce what it claimed it would produce. They obviously thought it was going to be a cakewalk. It's been hardly a cakewalk. It's been a military disaster. And Putin is presumably furious at his underlings, including his own intelligence agencies. The intelligence agencies should have known that the spirit in Ukraine was towards fighting. In other words, they completely misinformed or misjudged the spirit of the Ukrainian people in the military, and now Putin is in a desperate situation, and people are fleeing Russia. I already came in contact with friends who we have already told they can come and stay with us, Russians. And obviously Ukrainians are fleeing for their lives. And the situation is very fluid and very dangerous from the point of view of Putin, who is not inclined to back down, at least, from what we can see now.

**Ralph Nader:** So how would use of his tactical weapons be an advantage to him at all? Short-range tactical nuclear weapons.

**Theodore Postol:** In reality they're not. But the perception, if he perceives that they are, anything is possible. Nobody rational, nobody rational is ever going to use nuclear weapons. The problem is miscalculation, misperception, accidents, but we're in a situation now where a misperception or a misjudgment seems more likely. And if he were totally rational, he would say no, I'm not getting close to this. It's like the argument for low-yield nuclear weapons is like an argument that I'm in a room filled with gasoline vapor. And instead of lighting a match, I'm just going to make a little spark, and maybe I'll keep the whole place from going up. And it's really, conceptually, it really is that meaningless difference because the Russian doctrine, in part built by Putin, in fact, has focused on the potential use for nuclear weapons to stave off a disaster that would lead to the loss of Russia as a nation, the non-survival of Russia as a nation. And so they have this doctrine, which incidentally was brought about with deep consultation with Putin himself. The concept, it's crazy. Let me just tell you what I think of it before I describe it to you so there's no misunderstanding here. The concept is to — they call it “escalate to de-escalate.” The idea is simple but wrong. The idea is that you use a low-yield nuclear weapon, a tactical nuclear weapon. This tactical nuclear weapon, incidentally, is maybe half or a third the yield of the weapon that destroyed Hiroshima, which means it would destroy a very large area not quite equal to Hiroshima, but 50 or 60 percent of the area that was destroyed in Hiroshima, so that's hardly nothing. And the idea is that you use this weapon as a vehicle for showing how desperate you are and you cause everybody to just stop.

Now, I don't know how you use it in this situation because you are not under attack. You are not trying to stop an advance into your country, you are the one in control of the forces in Ukraine; you can stop the forces in Ukraine. So what are you going to use this nuclear weapon for? The Ukrainians are not going to surrender, I don't think, if you use a single nuclear weapon. They're going to just hold their positions, I think. And then the question will be, what do all the other nuclear powers, and what does the United States do, or NATO? And what will happen, absolutely because it's a military response, is NATO will put all of its nuclear weapons on alert in preparation for a counter strike. It doesn't mean they will counter strike, but then the Russians will be having to prepare for the possibility of a counter strike from NATO and the United States. No one will have any idea what's happening. Think of the 911 situation where the World Trade Centers were attacked; none of our communication systems were corrupted; basically, everything in the United States was functioning, but we had no idea what was going on. We were so worried that there were more planes coming, that we grounded every airplane in the country. The problem with using even a single nuclear weapon is even though you can write out on paper what kinds of vast, capable communication systems we have, and sensors all over the world and in space, even though you have all those things, the reality is you really don't know what's happening. There's too much

**Ralph Nader:** Well, let me interject, Ted, when Russia and NATO, meaning the U.S., escalates into a higher level of readiness, you're saying that that increases the risk of accidental releases.

**Theodore Postol:** Absolutely.

**Ralph Nader:** Explain that to our audience.

**Theodore Postol:** Well, just for a second, let me ask the audience to imagine you are a high level military officer in either Russian or American military forces, and you are a perfectly

rational, capable person. You may not be a person whose views you agree with, but sensible professional, and your job is to provide for military capability if it is needed. You're not looking for trouble, but you are in the command of your leadership. So your job is to be prepared militarily for anything that can happen. So what happens is you see the adversary doing something that looks like it could be a prelude to a significant escalation. What do you do? You immediately take action to protect your forces. You disperse your forces; you prepare them to fight if they need be, or to move quickly, but what does the adversary see? The adversary sees you dispersing your forces and preparing them to fight. Well, that means that that's a possibility. It doesn't mean it's going to happen, so you start dispersing your forces and preparing to fight. And of course, the forces are like, imagine you're playing a chess game where you can't see the chess board, right? You can only see one piece at a time; the rest of the board is completely opaque to you, and the pieces on both sides are moving without you directing them to move. So you got this situation where all kinds of actions are being taken by lower level commanding officers who are just simply trying to be prudent and protect their forces, and be prepared to fight. And they're taking actions and they run into somebody, and you have a fire fight. Or there's a submarine operating too near, one of the others' warships, and they get detected, and they try to drive them to the surface so they attack them. There are all kinds of possibilities--aircraft encountering each other

**Ralph Nader:** On that basis, there still is very close communication potential between Putin and Biden. They have the so-called red phone and they've upgraded it. Is that something to reassure people?

**Theodore Postol:** That should help as long as they're talking. But it doesn't necessarily mean Putin knows what's happening, or Biden, because all they know is the information they get from the field. And, a plane is all of a sudden down and there are other planes in the area. You can't even tell when there's air combat, which of the planes are yours and which are not. It's very hard to do. You have these elaborate systems called IFF systems, but they don't always work. And then once these planes get into a situation where they're close together, even the air defense systems can't tell who is who, so in military operations, you typically have what are called air defense zones. In other words, you don't fly, even if you're an American and you have Patriot units below you, you don't fly into that air defense zone because you will be shot at. They don't know who you are. So there's just a lot of unknowns in a military confrontation that have to be managed. And by and large, the militaries are pretty sophisticated at doing this. So I'm not suggesting that they're incompetent. They're actually amazingly competent at these things.

**Ralph Nader:** We don't hear on the mass media the kind of things that you're saying. You're not getting on the national TV or radio or into the newspapers, but if the public isn't informed about this, they can be induced to become very aggressive. Biden's language, I think, seems to be overly aggressive, unnecessarily aggressive to Russia, because you don't want to humiliate a dictator who is losing a war against Ukraine and has no back door, no escape hatch. He can go berserk

**Theodore Postol:** He needs to be given a way out. And I don't see any evidence for that at this time. I have thought that Biden has been handling the situation reasonably well by making it clear that he, Biden understands, there are red lines that the West cannot cross, and transmitting that clearly and unambiguously to Putin. My concern is that the belligerence in tone and language is raising the ante in a way that is not constructive.

**Ralph Nader:** By red line, you're saying they have to reassure Russia and Putin they're not going to attack Russia or invade Russia. Is that what you mean by red line?

**Theodore Postol:** Yeah, but for example, Biden has made it clear that he's not sending American or allowing NATO troops to go into Ukraine to help. That's very important. He has made it clear that he is not going to respond to Zelenskyy's pleas for help setting up a no-fly zone over Ukraine. He is not going to do that because that would be a step too far. So where it's really tricky is resupplying Ukraine with more weapons because, at some point, what could happen, I hope it doesn't, but what could happen is this resupply chain that's bringing anti-aircraft weapons and anti-tank weapons into Ukraine could start being attacked by the Russians. Once they're in Ukraine, they're a valid target with military supplies.

One of the things you always try to get attacked or destroyed, if you can, are the military logistics of your adversary. Without strong logistics, modern armies cannot function. We've seen that on the Russian side. They miscalculated their logistics needs initially, and now their logistics is even worse because the Ukrainians have very skillfully been attacking their logistics. You don't want to be driving a truck that looks like it's carrying fuel in Ukraine because it's much easier to destroy than a tank, and it's a very high priority target because tanks don't operate, and armored vehicles don't operate unless they have fuel.

**Ralph Nader:** We're talking with Professor Theodore Postol. What more materials can they read that you've written over the years? You've written in the *New York Times*; you've testified before Congress. How can people read more about what you're saying?

**Theodore Postol:** Well, I think the danger right now in my view, the greatest danger, is the possibility of nuclear use leading to uncontrolled escalation. The other things going on are terrible. I don't want anyone to misunderstand. The loss of life is terrible. But if this thing gets... if an accidental use or a misunderstanding occurs, in some way or another, that leads to the use of nuclear weapons, it will, with very high probability, escalate out of control in a very short time. It's possible it will be constrained, but it's very unlikely. And so what we all should be worried about is keeping a lid on things.

**Ralph Nader:** Now when you say short time, you're talking hours.

**Theodore Postol:** Could be hours, could be hours, could be hours. It could be a day or two leading to something that escalates in hours. There's just so many — there's an infinite number of scenarios you could invent, all of which are plausible. An infinite number of plausible possibilities. That's what makes it so frightening.

**Ralph Nader:** Steve?

**Steve Skrovan:** Yes, Professor Postol, if one of these tactical nuclear weapons would really be used, what are the long-term radiation effects in the area that it's used?

**Theodore Postol:** Well, let me just step back. The problem is not simply the immediate terrifying and terrible affects. The problem is the escalation that it would certainly bring about. But since you're asking, I don't want to sound like a lunatic here but I'll say it. The consequences would be very severe but only relatively local. And when I say only relatively local, I think the important thing to keep in mind is that it's the first step in something vast that would be

following. But on a local level, you would destroy an area, maybe six or seven-tenths of a mile in radius, so that's not trivial, that's a few square miles of the area if it's a city. There would be intense fires in these areas because the explosion of the nuclear weapon, people focus on the blast from the nuclear weapon. But really the way to think of a nuclear weapon is someone has been able to stick their metaphorical hand into the center of the sun, and bring the center of the sun down to the earth, and let it release its energy until it dissipates. And so the initial temperature in the nuclear weapon can be tens of millions of degrees Kelvin or higher. And this rapidly cools producing a fireball. But the fireball cools to a temperature of maybe 2,000 degrees hotter than the equivalent area of the sun. And that radiates an enormous amount of light and heat on the terrain below, and ignites all kinds of things. So what you do is you get a very large area fire, and it's an area fire, it's important to understand. It's not like when you read histories of London burning down or San Francisco, there's a line of fire that burns through the city. In this case, everything is on fire simultaneously. And the result is, you get a mass fire of enormous intensity. And on the ground where that mass fire is burning, it generates buoyantly rising air over areas of many square miles. And that buoyantly rising air causes afterwinds behind it, like you see when a fireplace is burning. And inside the fire zone, the wind speeds can easily be of hurricane force, and the temperature of the air can easily be above the boiling point of water. So, nobody survives that, nobody. And then of course you have a radioactive plume, which may or may not occur, depending on whether the weapon was exploded close to the ground or not. If it's exploded close to the ground, you can have a radioactive plume, small particles of material that have radioactive material attached to them that could spread lethal radiation downwind. So it's a very narrow plume, but you don't know where it's going, of course, if /when this kind of thing occurs. And it's a narrow plume, but it could spread for many miles downwind, and people in its path will receive lethal doses of radiation; it depends of course on the weather. If the nuclear weapon is detonated in somewhat higher altitude where it doesn't generate all these ground particles, the fire creates tiny particles of ash and uncombusted material. That material rises buoyantly from the fire zone and it's laden with water vapor, water vapor into cooler air, and it'll start raining out downwind, and it will also be highly radioactive. This was known as the black rain in Hiroshima. This was rain that was just black and was just generated from ash from the burning fires and dense water vapor cloud that was condensing and raining onto the area below. So although this is a small nuclear weapon, so it's almost a trivial significance relative to what else will follow, it's not insignificant. And people will not know exactly what happened. All they will know is that there was this big cloud on the horizon; people inside it will be dead or dying, and that there is radiation. And what happened with Chernobyl? There was a world panic over it because people didn't know what was happening; people have a great fear of radioactivity, which I find understandable, and that's just this one consequence.

**Ralph Nader:** David?

**David Feldman:** Yes, are we still operating under mutual assured destruction? It seems to me that most Americans believe that it's mutual assured destruction and that's why nobody's going to press the button. Have we pulled out of ABM [Anti-Ballistic Missile] treaties? Have we modified a ABM treaties?

**Theodore Postol:** The way I would describe mutual assured destruction is that it's an existential condition, not so much a policy. So for example, if you know that if I attack you the result will be both of us dying, then you know that I will be deterred if I'm reasonable and logical from

attacking you; if I'm not suicidal. And the same could be true of you. So that's an existential condition. We both restrain ourselves, even though we might hate each other, or see each other as a terrible threat, from attacking the other because we know that both of us will die. So it's an existential conditions.

Now, when you build these missile defenses, you implicitly are suggesting that you think you can escape some aspect of this existential condition. It's not so much a change in policy as it is an indication that you don't necessarily fully accept that this existential condition cannot be dealt with. And that's one of the reasons why these missile defenses, in the case of nuclear weaponry, is a very dangerous thing to do. Because it looks like you think you can escape the consequences, and this makes a potential adversary nervous. Because I think it's very clear, if we look very carefully, and I have done this, so I'm talking now from having studied this. If we look very carefully over the last few years about what Putin has done and what he has said about nuclear weapons, it is very clear that he is concerned that western leadership might incorrectly believe that they can depend on missile defenses at some future time. He is very clear that he doesn't think his missile defenses will work. But he's also been very clear that he is preparing for the possibility that if anyone tries to use them, he will assure them under any condition you can imagine, that they will suffer the existential consequences of using nuclear weapons. It's very clear that he's afraid of what we think we understand, what leaders think we understand. Now, I think it's extremely important that we understand that this man, Putin, is extremely intelligent and he is a deep thinker about these strategic issues. He has made a terrible mistake; he is a terrible person; the man has none of the moral constraints that an ethical person at any level would have, but it's a big mistake to assume that he's stupid. I think that's the problem here; you don't want to do that. And he's afraid of what the Americans might do. It's not a good situation.

**David Feldman:** Air defense, Anti-Ballistic Missiles, ABM's, Iron Dome, the Patriot missile--there seems to be this idea that America can shoot incoming missiles out of the sky with our Patriot missiles. Poland has our Patriot missiles. They're moving them around Europe, supposedly to protect Europe from incoming Russian missiles. Do these things work?

**Theodore Postol:** I would say these systems do a very good first approximation [but] have no capability. None. There is a small chance, extremely small chance, which we have not yet seen, that one of these Patriot missiles could run into the front end of an incoming missile. That's the only chance that they have of actually destroying that missile. And that is near zero chance because the probability of such an encounter is very low, and incidentally, the missiles that the Patriots would be trying to intercept are of long enough range that they will be coming in fast enough, that the Patriot interceptors will not even acquire, they'll not even see the incoming missile before it passes by. So it's like trying to use a baseball bat to hit the hypersonic baseball that has been launched from somewhere where you don't know it's coming from. You wouldn't even know where it...

**Ralph Nader:** This is astounding because the official of White House-Pentagon line since Reagan started the Star Wars program, was that they're getting more and more accurate and they're shooting down some of these missiles at experimental sites in Alaska and elsewhere, and it's already cost hundreds of billions of dollars. And what you're saying is it's a fraud.

**Theodore Postol:** It is a fraud. "Fraud" is a kind word, but it's a fraud. And I have been very concerned about the ethical dimensions of this. I've repeatedly said that this is unethical to tell people that these systems will protect them. It's like knowing that a bridge is going to fall down

if you use it, and telling people to go ahead and use it. Or maybe another analogy is like you sent, or if you want to put in a more military context, you have rifles that you know will jam and not work, and you send your people into combat with them. This is the ultimately immoral thing to do. And we've been doing it now for decades. I've been trying... I don't know how many times I have caught these guys making a lie where I've been on the front page of the *New York Times* several times with having exposed frauds. The *Times* no longer talks to me because I'm no longer politically correct. But I was on the front page of the *New York Times* published many op-eds in the *New York Times* over time, and they were right. No one has shown that the stuff I've done is wrong. In fact, as people delved into it further, they found out that what I was saying was absolutely correct.

**Ralph Nader:** And to be clear, you were talking about intercontinental ballistic missiles. You are not talking about these primitive garage built rockets that Iron Dome is supposedly shooting down at a high percentage of effectiveness. It's just totally incomparable, correct?

**Theodore Postol:** They're totally incompatible, but I have to say, sorry to say this, but Iron Dome is also not working, and I've been looking at that. It's a much easier target, in some ways, an artillery rocket, but it's still too hard to target, and Iron Dome has not been very successful.

**David Feldman:** Can a jet fighter shoot a missile out of the sky?

**Theodore Postol:** You see, there's a process that has to go on to shoot down a missile. Let me-- it's not complex. But you first have to see the missile coming. Now remember that the missile can be traveling very fast, in fact, it will be. So seeing it is not so easy. Imagine looking up in the sky for an object falling; you would see maybe blue sky or clouds. And the object has a very small cross section. Think of a missile coming at you may have a diameter of one or two feet. And so you're going to be blinded by the light, with just the blue sky alone. And it's like trying to see a small bird flying at very high altitude; you just can't see it. And it's a small bird that's travelling at hypersonic speed at you. So you first have to acquire it. And then you have to decide where you can hope to intercept it because you have an interceptor that is generally traveling quite a lot slower than the incoming missile. So you're going to have to get ahead of it somewhere, and then try to get ahead of it and run into it. And your interceptor may not have nearly the speed to get to an intercept point even if you know it's coming in. Now an airplane does not have the kind of radar and infrared systems that would allow it to detect an incoming, missile like the Iskander, this missile that the Russians are now using extensively in Ukraine. You wouldn't see it. You couldn't see it with the systems on the plane. So if you did see it, you don't have an interceptor on the plane that's fast enough to get to an intercept point, and on top of that, the interceptor does not have a detection range against the object that is long enough range that it can see it early enough to make the final maneuvers to hit it. So it's basically not possible given current systems.

**Ralph Nader:** By the way, listeners who think that Professor Theodore Postol is the lone voice here, years ago, the American Physical Society, which is made up of establishment physicists, some of them consultants to the Pentagon, put out a report, if I recall, saying that Star Wars was unworkable. It required levels of complexity to the software that were impossible to attain. Well, we're out of time. We've been talking with Professor Ted Postol, emeritus of MIT, an expert on the technology of nuclear warfare among other things, and the public citizen speaking out against it. Is there anything else you want to say to our audience, Ted, before we conclude?



**Theodore Postol:** Well, I guess all I'd like to say is that the world is in grave danger. And we all need to hope and do what we can to influence our political decision makers to make wise decisions so that we don't get some kind of accident, or series of accidents, that rapidly escalate into nuclear weapons use, because it will kill us all. I believe that Biden does understand that. He has shown a good deal of common sense on this. I have to say, Jens Stoltenberg, this NATO Secretary General, should just be quiet. They should just tell him to be quiet. I don't know who he is anyway. He's not an elected official. He represents a bunch of countries, and he's just dangerous. We have a man who has made a terrible, probably irrecoverable mistake, Vladimir Putin. He is going to be desperate, and we've got to try to find a way to help him back out of this corner without using nuclear weapons, and this is the task for our leadership in combination with others.

**Ralph Nader:** On that sober note, thank you very much, Ted.

**Theodore Postol:** Thank you.

**Steve Skrovan:** We have been speaking with Professor Theodore Postol. We will link to his work at [ralphnaderradiohour.com](http://ralphnaderradiohour.com). Up next we're going to talk to our resident constitutional scholar Bruce Fein about the hearings for Supreme Court nominee Ketanji Brown Jackson. But first, let's check on 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, March 25, 2022; I'm Russell Mokhiber.

Scott Charmoli's patients' teeth were just fine, but fine wasn't making him enough money. Federal prosecutors alleged that the dentist in Jackson, Wisconsin drilled into and broke his patients' teeth in order to charge them for fixing the damage he'd caused. By so doing, the dentist went from pulling in US\$1.4 million and affixing 434 crowns in 2014 to raking in US\$2.5 million and performing more than 1,000 crown procedures a year later. That's according to a report in the *Washington Post*.

Following a four-day trial, Charmoli, 61, was convicted of five counts of healthcare fraud and two counts of making false statements about his patients' treatment.

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. I'm with David Feldman and Ralph. And I want to welcome back friend of the show and resident constitutional scholar, Bruce Fein. He's going to give us his take on the hearings for Supreme Court nominee, Ketanji Brown Jackson. Welcome back, Bruce.

**Bruce Fein:** Thank you for inviting me.

**Ralph Nader:** Hey, Bruce, a couple quick and simple questions before you go in to what has not been asked and discussed in these hearings. First of all, why the marathon, 13 hours grueling pace, for a Congress that only works three days a week when it's in session? What's the purpose of this marathon that is really not good for public view. Who is going to stick with 13 hours in one day? What's the purpose of this kind of grueling schedule instead of spreading it out? Why

don't they have six-hour sessions instead of 13-hour sessions? What are they trying to do, beat down the stamina of the nominee? Or they want to get out by Friday so they can have their weekend?

**Bruce Fein:** Well, it's a combination of that. We know that the hours are calculated to enable them to get back to fundraise. They want to have time, as well, to get free advertising in their question and answer period, and so they are orchestrated to raise the political issues that are useful for their constituents. But you're right that there isn't any need to have a 13-hour marathon sessions, but they only work three days a week anymore, and fundraising is more important to them than hearings.

**Ralph Nader:** Well, the other point you made and I made, is there's no longer any public input by citizen witnesses. I testified with Dr. Sidney Wolfe on the Steve Breyer nomination; you've testified twice on two nominations for the Supreme Court before the Senate Judiciary Committee, and now it's not possible. The Judiciary Committee is closing out the American people. They just have the witness, they have the statements by the senators; then they have two sessions choreographed, one by the Republican and one by the Democrat, and then it's over. What do you say about this lack of public input and why is it bad?

**Bruce Fein:** Well, the reason why it's bad is because, there's not enough known about how the Supreme Court operates anyway. It doesn't permit cameras in the courtroom. Now, at least you can go on your internet and listen to the audio tapes on some of the oral arguments, but it's very important for the public to have a maximum understanding of how court proceedings occur, and the demeanor of the justices, and what issues are relevant. Not only to give confidence in the system, but how they should consider their votes when candidates run for office based upon what kind of individuals they propose to appoint to the United States Supreme Court.

But the other reason why it's so dysfunctional not to have public testimony is that the members themselves typically focus on issues that are of narrow, parochial concern to their particular political constituency that is irrelevant to the larger issues that are far more important to everyone. And that's exemplified by the questioning that we've witnessed so far. These major areas of congressional abdication, state secrets, wars without any congressional input, infinite delegations and presidential actions that are the equivalent of legislation, executive agreements as treaties, they go totally, totally unexamined in the hearings. You need public witnesses that have a broader perspective to bring these issues to the fore and make it a far more educational process than what it is now; it's simply campaign opportunities for Republicans and Democrats.

**Ralph Nader:** Well, this cloistered strategy now by both parties; they've done it for both the Democrat and Republican nominees to the Supreme Court, is very troubling because you asked to testify formally on the Judge Jackson nomination; you wanted to make a couple important points about separation of powers and about what happens to the Supreme Court when it has nobody from legislative experience, most of them are corporate lawyers, and you were turned down. So you were invited to submit testimony for the record, which you did, but why do you think that there isn't anybody on that large Judiciary Committee who will raise issues of corporate personhood, corporate crime, the violations that corporate hegemony inflicts on this country, not to mention the abdication of constitutional authority by the Congress itself. It doesn't declare war anymore. It lets the presidents decide when and where to use the armed force and to make wars around the world. What do you think should be done about this?

**Bruce Fein:** Well, first, the cause before you get to that remedy; I think the causes are largely twofold. Number one, with a Supreme Court's decision in *Citizens United*. It magnified the importance of money in politics. And what we have is on both sides, huge amounts of money flowing into the campaign coffers. I think if you took Mitch McConnell's slush fund and Nancy Pelosi's combined is like \$800 million. And so they are marching to the tune of corporate interests. And unfortunately, it's on both sides, and that's why you find, despite the fact that I think public funding is adequate for presidential campaigns, that the nominees of both parties say this is stupid. We're not going to accept public money and forego our private treasure chest, which is double or triple what the public money would yield.

But the second element, Ralph, is that there is this ethos in Congress that escapes from accountability and simply wants to act as a talking shop and shout their campaign slogans and then hand it off to the executive to make all the decisions, so they can't be primary. They don't decide anything, and if things go bad, they just blame it on the executive. And that's an unfortunate circumstance that is just progressively gotten worse over the years, and now both parties are eager to just give away the whole house to the executive.

Recently, there was a big article in the *Washington Post* about many members on more the liberal side/progressive side, telling Biden, "Hey, don't come to us with legislation. Just rule by executive order." And wait a minute, you have to sit down and make sure you have a majority; you have to compromise. The legislative process can be difficult. But that's how the Constitution says, we ought to enact policy. And unfortunately, not only is it wrongheaded constitutionally, you come in with an executive order and the next president comes in and undoes what was done before. You have this kind of accordion-like approach to what the law is. And we've seen that in what happened between Trump and Obama, and now from Trump to Biden, and we have regulations that are there for one day and then they're gone the next. That's not the kind of law that we want to have. It should be far more stable and it has to be debated in the public forum, which is Congress; the executive branch largely operates in secrecy.

**Ralph Nader:** Well, my reaction to the hearings on Judge Jackson is first, massive hypocrisy by people like Ted Cruz and Marsha Blackburn, trying to pin a soft on crime label on Judge Jackson by which they mean street crime. And these are the senators among others who are taking money to be soft on corporate crime. They have defunded the corporate crime police in the federal government. There are not enough federal cops going after the corporate crime wave and nabbing the corporate criminals. That is just the type of hypocrisy that a senator like Senator Blumenthal or Senator Whitehouse should have pointed out to the American people.

The second aspect of it is someone would think that the major problem of the country today is child pornography, not corporate pornography, violent programs inflicted on young people, interactive mayhem so they can participate in the slaughter, the kind of violence of junk food that leads to obesity and all the diseases that come from seducing these young people by corporate advertising, the corporate pesticides and contaminants in the environment that afflict children even more than adults, lead in drinking water, a successor of the lead rampage years ago before environmental groups banned it. This is something that has got to be challenged and I don't see anything in the commentary by NPR, PBS, or the *New York Times*. They're skimming over this whole thing. What do you recommend for the next round here? Let's say it's going to be another

Supreme Court nominee, and there's plenty of time to lay the civic groundwork, what would you do?

**Bruce Fein:** Well, the first thing to do is insist that there are public witnesses who are not orchestrated to raise the issues that we know that the members themselves are not going to raise either because they're compromised by their political campaign donations or that they just don't do the homework necessary in order to understand how vast this wasteland is when it comes to corporate power and their escape from criminal accountability. You remember the famous or infamous statement made by former Attorney General Eric Holder. Well, some banks are too big to fail and to prosecute. There are too many ramifications. This is a Democrat attorney general, and the Republican side is similar, and that has to be overcome by opening up the universe of people who are able to use the platform to educate the American people to the whole canvas rather than just a narrow one.

I don't know how you change the members themselves. Campaign finance reform is problematic because of Supreme Court decisions, and the kind of people who run for office, but certainly a demand that they have more public witnesses, who are not confined in what they can raise as an important issue to be addressed is critical here. One of the other elements, Ralph, that was hypocritical that adds to what you're saying is that the Congress enacts the laws that provide for sentences. And Congress created the [US] Sentencing Commission. And the sentences that were being used to assail Judge Jackson were sentences that were recommended by a sentencing commission that had Trump judges on it and were created by consensus. And indeed you had even Trump judges saying no, that she wasn't out of bounds. We all agreed on these issues. Judge Pryor was one who fell into that category. And so if they are actually fair minded, they would have to say well, we have our own judges that we eagerly confirmed on the Republican side who joined you in recommending these as sentences. But you don't get any kind of fair-minded exposure of all the dimensions of a question, and so it ends up being quite distorted.

**Ralph Nader:** Well, it's dictatorial, that's what it is. It's dictatorial. Basically, two parties on the Judiciary Committee that don't challenge each other and rebut each other; they don't allow citizen witnesses to sit in the chair and rebut the kind of stuff that's coming from the senators. And so basically, you have an enclosure system where the Congress is a very profitable corporate funded cocoon. And it's getting worse and worse, listeners, there used to be a time when Supreme Court nominees were challenged by all kinds leading citizen groups like the Judge Bork confirmation, but now it's all closed down. And I think that some listeners may be upset enough to ask their senators what gives here. We want an explanation and the next Supreme Court nominee should be in a proceeding open to citizen input.

**Bruce Fein:** To underscore the importance of what you've remarked on, Ralph, is that because we're dealing in some sense of a specialized area--certainly law, constitutional law--it is the outside experts who need to come in and point out the deficiencies of the members in their questioning and saying we need to ask, well what about X, Y, Z? You can't expect a lay person to understand what's being neglected. They don't see the whole canvas as a trained lawyer would, like you or me. And that's what makes it so regrettable that you're denying the audience a full spectrum of information that would enable them to see the deficiencies and call in, or write in, or email, text message their member and say what's going on here? Your own questioning was very narrow and why did you neglect to look at X, Y, Z? Education, education, education. It is so

critical here. And you're right, Congress is just throwing spanners in the works that occlude the education rather than open it up.

**Ralph Nader:** By the way, here's the inside scoop. When I talked to the chief of staff and I said, look, Bruce Fein wants to testify. He's testified twice. I'd like to testify, but I'm not putting myself on the table for that. Why aren't you allowing any citizen testimony? He says, "Well, to tell you the truth, the margin of error is so thin on this nomination that the rule is do no harm, which means everything has to be predictable, limited and controlled. Do no harm." If there's a one slip up you could lose the nomination. That is the attitude up there by the Democrats. Thank you very much, Bruce Fein. Thank you for coming on again, and I hope that your remarks have helped stimulate a little feedback. It will be good just to get someone like Senator Blumenthal or Senator Whitehouse to respond and we could read that response, if people back in Connecticut and Rhode Island make the effort to ask why our citizen leaders or citizen scholars, who are independently minded, are not allowed to testify at confirmation hearings on the nomination of Supreme Court justice who are given a lifetime sinecure. Thank you very much, Bruce.

**Bruce Fein:** Thank you.

**Steve Skrovan:** Lets fit in a listener question here, David?

**David Feldman:** This comes to us from Daria Leverne, and the subject is the Chinese Boeing 737-800 crash. She writes "I'm seeing reports that this plane is not the same as the 737 MAX. Would you please post something about this to help us understand if there is any difference at all? I've heard reports that it is the same exact plane, but I've not seen anything to refute that."

**Ralph Nader:** The crash in China was a NG 737 Boeing plane. It was not the 737 MAX. The NG is being flown all over the world. It's the workhorse; there are many thousands of these planes flying. The 737 MAX replaced the NG because Boeing wanted larger engines to compete with Airbus and that led to the aerodynamic problem, which led to the software miscue, which led to the two crashes in Indonesia and Ethiopia with 346 people dying. The characteristic of the dive pattern of the plane is puzzling people because usually a plane at 30,000 feet does not go down vertically, unless there is a stabilizer breakdown or something akin to a suicide dive. So the investigation will be not only of interest to the Chinese aviation authorities, but it will be of great interest to the FAA and Boeing.

**Steve Skrovan:** Thanks for that question. So it is not the MAX.

**Ralph Nader:** No, it's not the MAX.

**Steve Skrovan:** Right. This next question comes to us from a regular listener and frequent commenter, Don Harris. He says "You've had many guests to advocate for a constitutional amendment to overturn Citizens United. One problem with the amendment that you have not addressed is they say that money is not free speech. Purpose is there seems to be that the Citizens United ruling was based on the concept of money in the form of political contributions being free speech. By making political contributions no longer free speech, then Congress could pass legislation to limit big money contributions, as political contributions would no longer be a constitutional right. That means that I also no longer have the right to make political contributions. The Ralph Nader that I know would not be advocating for taking away my constitutional right. Please explain this paradox."

**Ralph Nader:** Relax, Don, you still have a constitutional right to speak out independently against candidates, or for candidates, or put an ad in a newspaper for and against as long as you don't collaborate with the existing political campaign and candidacies that you are either supporting or otherwise opposing. What Citizens United did was it liberated the long-term federal statutory prohibition on corporations and unions making contributions to political campaigns, and lifted all ceilings on how much companies like Apple and Boeing and Pfizer can spend. So it doesn't restrict your constitutional right independently to make your views known on a political candidate, and to pay for that as long as you're not connecting your views with the candidacy. That's under a sublime regime called public financing of campaigns. So if there's ever full public financing of campaigns, that does not restrict your freedom of speech to independently make your views known and pay to disseminate those views.

**Steve Skrovan:** All right, thanks for that question, Don. I want to thank our guests again, Professor Theodore Postol and Bruce Fein. For those of you listening on the radio, that's our show. For you podcast listeners, stay tuned for some bonus material we call "The Wrap Up". A transcript of 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 Mokhiber, go to [corporatecrimereporter.com](http://corporatecrimereporter.com).

**Steve Skrovan:** The American Museum of Tort Law has gone virtual. Go to [tortmuseum.org](http://tortmuseum.org) to explore the exhibits, take a virtual tour and learn about iconic tort cases from history. And be sure to check out their latest program on how litigation on brain trauma is changing the future of football. All that and more at [tortmuseum.org](http://tortmuseum.org).

**David Feldman:** Ralph wants you to join the Congress Club. To get more information, go to the *Ralph Nader Radio Hour* website and in the top right margin, click on the button labeled "Congress Club". We've also added a button right below that with specific instructions about what to include in your letters to Congress. The producers of the *Ralph Nader Radio Hour* are Jimmy Lee Wirt and Matthew Marran. Our executive producer is Alan Minsky.

**Steve Skrovan:** Our theme music, "Stand Up, Rise Up", was written and performed by Kemp Harris. Our proofreader is Elisabeth Solomon. Our associate producer is Hannah Feldman. Our social media manager is Steven Wendt.

**David Feldman:** Join us next week on the *Ralph Nader Radio Hour* when our guest will be journalist Jessie Singer to discuss her new book, *There are No Accidents: The Deadly Rise of Injury and Disaster—Who Profits and Who Pays the Price*. And we'll be taping that episode live on Zoom and you can join us this Wednesday, March 30th, at 12:30 p.m. Eastern. Come, watch us tape this episode. All you need is Zoom. Go to [ralphnaderradiohour.com](http://ralphnaderradiohour.com) to sign up to be in our live Zoom audience. We look forward to meeting you. Thank you, Ralph.

**Ralph Nader:** Thank you, everybody. Remember, you can take in effect a one hour course in Tort Law, the law of wrongful injuries designed to protect you and make you safer, by just going to [tortmuseum.org](http://tortmuseum.org) with the family and take a tour of this only Tort Museum in the world. All

kinds of exhibits--tobacco, asbestos, GM, Corvair, Ford Pinto, malpractice, and all kinds of stories throughout history that can give you something that will be personally important.

[Music]