

## RALPH NADER RADIO HOUR EPISODE 467 TRANSCRIPT

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

**David Feldman:** Anti-trusty co-host. Hello, Steve.

**Steve Skrovan:** That's another show we'll do later. And we also have the man of the hour, Ralph Nader. Hello, Ralph.

**Ralph Nader:** Hello. We've got a principled conservative ready to speak out.

**Steve Skrovan:** True enough, Ralph. After the tragedy on 9/11, America had a choice. We could have investigated the crimes, identified the perpetrators, and set about to apprehend them in a police action. Instead, George W. Bush expressed that he wanted to "kick some ass," which led to a military invasion of Afghanistan where Osama bin Laden was based. In the process, we rounded up hundreds of supposed terrorists and sent them to the Gitmo military prison at Guantanamo Bay, Cuba. We declared these people enemy combatants and denied them the legal recourse and due process one would expect from civilian justice. So that decision to carry out a military action instead of a police action has served only to undermine the moral authority of the United States to claim that it follows the rule of law.

And while Osama bin Laden appeared to be the financier of the operation, the U.S. government later decided that the true mastermind of 9/11 was Khalid Sheikh Mohammed. Mohammed and four of his associates have been detained and tortured at Gitmo since 2006. And after 15 years of legal limbo, last year, the U.S. government initiated a plea deal negotiation with the detainees. And last week, that plea agreement landed on President Biden's desk.

Our guest, Judge Andrew Napolitano, asked, "Why would the government agree to such a plea for the persons it claims are the monsters who murdered three thousand Americans on 9/11? What does the government fear?" Well, that's the question that Judge Napolitano will offer, and we look forward to hearing about all of that. In the second part of the show, we're going to have sort of a free-form conversation. We're going to talk about the train derailment in East Palestine, Ohio, and we're also going to talk Super Bowl.

Somewhere in between we'll check in with our corporate crime reporter Russell Mokhiber. But first, it only took us a month after 9/11 to invade Afghanistan. Why had the alleged masterminds been sitting in Gitmo for 16 years without a trial? David.

**David Feldman:** Judge Andrew Napolitano is a former Superior Court Judge and a syndicated columnist. Judge Napolitano has taught constitutional law and jurisprudence at Delaware Law School and Seton Hall Law School, and he was Fox News' Senior Judicial Analyst from 1997 to 2021. He is the author of several books on the U.S. Constitution, the most recent entitled

*Freedom's Anchor: An Introduction to Natural Law Jurisprudence in American Constitutional History.*

Welcome back to the *Ralph Nader Radio Hour*, Judge Andrew Napolitano.

**Judge Andrew Napolitano:** It's a pleasure to be with you guys and always a pleasure to work with one of my heroes, the great Ralph Nader.

**Ralph Nader:** Well, thank you very much, Andrew. Listeners should know that a few years ago Andrew came down to Washington. I interviewed him for C-SPAN on one of his books on the Constitutional rule of law, and I asked him about the war criminals George W. Bush and Dick Cheney figuring I'd get a Fox response. And what he said I'll never forget. He said, "What are you waiting for, Attorney General Holder? You should be prosecuting Bush and Cheney." And I understand when he went back to Fox headquarters, they didn't greet you with the bouquet of roses. But that's what you stand for, constitutional observance and the rule of law. Now you've just written a column – one of your many columns – called *the Legacy of George W. Bush and His Torturers*. So, you're not letting go (of that idea) - properly. It seems that past presidents are indeed above the law, and we'll see about Trump in the present.

But you talk about Guantanamo, off of an edge of Cuba, and how this monster, costing over half a billion dollars, which was seized by the U.S., Guantanamo, has turned into a grotesque version of the rule of law. And you might want to expand on that. Go ahead.

**Judge Andrew Napolitano:** Well, Ralph, it's always a pleasure to be with you. I remember that C-SPAN conversation very well. And of course I remember the consequences. The consequences were a phone call from George H.W. Bush to his former campaign manager, Roger Ailes, who was then my boss, basically saying, "We love the judge, but he wants my boy," referring to the president, "my boy to be executed." Roger called me and said, "Did you call for the president's execution!?" No, I didn't. I don't believe in the death penalty. "What!? You've been working here for 20 years, you're my chief legal guy, and now I find out you don't believe in the death penalty!?"

Anyway, it's now humorous. At the time I thought I was going to get fired. George W. Bush, is arguably the worst president in the post-World War II era for bringing us into two totally useless and very costly wars – Afghanistan and Iraq – which cost us in excess of two trillion dollars. Over 850 thousand people were killed – five thousand were Americans, and it destroyed the moral order in that part of the world for a full generation. It also instituted a regime of torture. I believe, Ralph, as do many of us who follow this, though we haven't seen it in writing, that Bush somehow pardoned or granted immunity to the torturers, because the torture was so vast and so extensive, and no one has been prosecuted for it. Obama and Holder who said loudly that they were against torture had every opportunity to do it. And they knew the names of the torturers, but it just didn't happen.

The torture occurred all around the world at so-called black sites. These are basically foreign prisons that were taken over by the CIA. In some cases, the CIA actually administered the torture like to Khalid Sheikh Mohammed. In other cases, they witnessed it as foreign intelligence agents administered it pursuant to their request and their explicit instructions. The torturers were under

the guidance of two American civilian psychologists who were lauded by my former colleagues at Fox News; many, many times they were almost lionized for the torture that they perpetrated.

The article that I wrote centers on the unexpected legal consequences of the torture. George Bush, listening to Alberto Gonzales, then attorney general and Senator Lindsey Graham, his go-to guy on the floor of the Senate, was of the view that military men on military jurors would not wince at torture and would not hesitate to impose the death penalty. Well, they were wrong.

And every time there was a trial at Guantanamo Bay, ask me how many trials there have been at Guantanamo Bay for 9/11, which is the stated purpose for this Devil's Island, it's an easy number to remember, it's zero. But there have been many trials at Guantanamo Bay for other alleged acts of terror behavior. When Federal military judges, following the federal rules of criminal procedure, permitted defendants and defense counsel to say to the juries what was done to them by the government, military jurors were repulsed by this and on numerous occasions asked the presiding judge to impose clemency notwithstanding whatever was proven in the courtroom because they were so repulsed by the torture.

I have not been a fan of the FBI at all. But when the FBI arrived at Gitmo, around 2006, and they saw the torture that the American military was visiting upon prisoners, they stopped it immediately. They said either it stops or we leave because we could be prosecuted if we don't stop it, we would have to arrest you. And if you use force to prevent us from arresting you, we're out of here. Anyway, they stopped the torture. But the torture and the reaction of jurors to it has caused the government of the United States of America to have second thoughts about prosecuting the person it claims was the mastermind of 9/11. I say it claims because first, the government claimed the mastermind was Osama bin Laden. And after he was murdered in his home, they changed their minds and said no, it wasn't Osama bin Laden. It was Khalid Sheikh Mohammed who we have at Guantanamo Bay.

By the way, when I said on air at Fox that Osama bin Laden was murdered, they said take a vacation for a week, Judge, which I did. I mean, obviously if they tell you to stay off of here, you don't have much of a choice. And it was an act of murder. He should have been captured and should have been tried and the evidence against them should have been presented to a federal jury in lower Manhattan. There was no military involvement on his part, and there shouldn't have been any military involvement in our part. But instead they assassinated him. Fox hired as a contributor a guy who put five bullets into Osama bin Laden's belly and it turns out he put the bullets in his belly after he was dead. But he did it so that he could tell the world that he put bullets in Osama bin Laden's belly.

Anyway, we're back in Gitmo. They changed their minds. The mastermind is Khalid Sheikh Mohammed. Now they've decided they can't try him. They can't try him because under the federal rules of criminal procedure, he and his lawyers can present to the jury, not only the torture that was visited upon him, but all the misguided horrors of American foreign policy in the Middle East going back to the toppling of the popularly elected prime minister of Iran under the Eisenhower years. And the lawyers for the DOJ and the DOD basically went to Attorney General Merrick Garland and said, "We'll try this case and we might get a conviction. But we can't try it without the jury hearing and the public knowing the who, what, when, where, how of torture and the who, what, when, where, how of every military excess the United States has engaged in the Middle East for the past 50 years. What do you want us to do? Settle the case.

So the lawyers for the justice department approached the lawyers for Khalid Sheikh Mohammed and said we have to have settlement negotiations. And they agreed on the framework of a settlement, which of course does not include the death penalty. Joe Biden has said I'm not going to call this one. Lloyd Austin can call it or Merrick Garland can call it, and that's pretty much where it sits now.

**Ralph Nader:** Andrew, let's back up a bit and lay the legal framework here. Tell us where torture is illegal domestically, internationally. Give the framework there.

**Judge Andrew Napolitano:** It is illegal everywhere the American government goes. It is illegal under federal law, period. So if an American torturer is torturing someone in Pakistan, that American has committed a felony no matter what the laws of Pakistan may be. That is absolutely clear. What is also clear, sadly, is that the DOJ doesn't prosecute people for this, again, either because they got some sort of a deal from George W. that was never made public, or he issued pardons that were never made public, or because everybody who runs the DOJ, whether it's in a Democratic administration or a Republican administration, is of the same mindset, namely, if the government does it, it's not illegal. That, of course, is reprehensible, contrary to American law, antithetical to the Constitution, violative of express clauses in the Constitution.

I once had a debate with Mike Chertoff, a longtime friend of mine. We started out in the legal community of Newark, New Jersey at the same time. Mike became a federal judge and then he was the first secretary of Homeland Security when Bush concocted that totalitarian department of government. And Mike said, "Well, this is not a violation of the cruel and unusual punishment clause because it's not punishment. Punishment is only that which follows conviction." Well, this is absurd hair splitting. Cruel and unusual punishment is whatever unlawful pain the government visits on someone before, during, or after their trial.

**Ralph Nader:** It's also contrary to the army manual at that level of specificity. People must be astonished listening to this because, I didn't know about secret pardons by George W. Bush. I thought all presidential pardons had to be made public and, if not, are subject to the Freedom of Information requests. What do you say about that?

**Judge Andrew Napolitano:** What I'm saying is what I have already said. I haven't seen it. It's a suspicion because of the cavalier attitude that some of the torturers have had. I mean, these two torturers were all over Fox News. Now they are outside contractors. The head of torture for the CIA was Gina Haspel. Torture is videotaped. Repulsive as it is, it's videotaped. Haspel famously burnt the tapes and boasted about it. So I'm concluding... How could you boast about committing a felony? How could you boast about destroying evidence of the felony unless you knew you were not going to be prosecuted for this? And the only way you could know it is if you have some piece of paper signed by whoever – the attorney general, the president – saying you're not going to be prosecuted. So this is my supposition and my rationale, Ralph. I have not seen and do not know personally of any secret pardons.

**Ralph Nader:** Well, some discerning listeners are going to ask the following questions – why weren't these accused people, post 9/11, tried in U.S. courts since one of them already was, the so-called 20th hijacker? Why weren't they tried? And second, what role does the president have

in the separation of powers? Is it because it's under the Military Code of Uniform Justice that he can say yes or no to the settlement that you just described with the accused in Guantanamo Bay?

**Judge Andrew Napolitano:** Those are excellent questions. Again, I argued, as did you at the time right after 9/11 as did many Progressives and many Libertarians, that Gitmo was a Devil's Island, that the military had no jurisdiction over this, and that the Constitution requires that crimes committed by foreigners in the United States shall be tried in the place where the crime occurred. So those who destroyed the World Trade Center towers and caused the 3,000 deaths there should have been tried in lower Manhattan. And those who attacked the Pentagon should have been tried in Alexandria, Virginia, and the same thing with Shanksville, Pennsylvania. But George W. Bush was of the view, as absurd as it sounds, that even though 9/11 was not perpetrated by the military, it was military-like and military in magnitude – in reality, there was nothing military about it – and therefore, military should try these people. And by the way, they are too dangerous to bring into an American courtroom. But we bring mobsters and the heads of drug cartels into American courtrooms. But we couldn't bring these people into American courtrooms. So George W. Bush bullied the DOD, the DOJ and the Congress into establishing this Devil's Island. The Supreme Court heard six cases on Gitmo and the procedures there. The government lost five. The one that the government did not lose was because of a technical issue about where the appeal was filed. And the defendant filed his appeal in South Carolina instead of in Illinois, the place of his original arrest. By the time it got to the Supreme Court, the court kicked it out and said to refile the appeal. But the other five, the Bush Administration lost because the essence of Bush's argument was, "Guantanamo Bay, it's Cuba. It's not the United States. The Constitution doesn't apply. And best of all, those pesky federal judges won't be able to interfere with what we're doing. We can torture, we can have quick trials, and we can have summary executions." Sandra Day O'Connor saw right through that and said, yes, it's not the United States but the U.S. is permanently there. Even if not permanently there – and I think the U.S.'s presence is theft of real estate, another story for another time, Ralph – even if not permanently there, they are there doing what they do. And when the government goes anywhere to do its job – we're not talking about traveling, we're talking about setting up stakes – wherever the government goes to set up stakes, the Constitution goes with it. Therefore, Mr. President, you have to have a trial with a neutral judge and a neutral jury and you've got to follow the federal rules of criminal procedure. If you want to have a military trial, we can't stop you. If you want to have a civilian trial, we can't stop you. We're telling you right now, it's got to be a fair trial with the full panoply of protections that the Bill of Rights offers. That's the answer.

**Ralph Nader:** Well, George W. Bush knew what was going on. There were, at the peak, about 300 prisoners called detainees at Guantanamo Bay, and the vast majority were picked up in Pakistan and that area after 9/11 for bounties. The people who seized these innocent people were getting bounties by the U.S. military in order to make George W. Bush look good. Hey, look at all we captured. And that's why they're losing the cases, because under the rules of procedure there's a system called due process. And the vast majority of these people, I've been told by the military lawyers themselves, were innocent from the get-go.

**Judge Andrew Napolitano:** Correct, correct. The general, who was the chief prosecutor, General Mark Martens, became a friend of mine. Turned out that some on his staff were former law students of mine when I taught at Seton Hall Law School in Newark, New Jersey, and they invited me down to meet the general and I spent a lot of time with him. Brilliant gifted guy who

was first in his class at West Point, first in his class at Harvard Law School, first in his class at Oxford University, PhD in political philosophy. He turned down the second star; only a one star can be a prosecutor. If you take the second star on your shoulder you got to leave. He kept turning it down, turning it down, turning it down. He finally got so disgusted with the system, after telling me he'd never do this, he retired without ever having tried a case after devoting 20 years of his life to these prosecutions. So there is no person on the prosecution staff in Gitmo now who was there all the way through, and they're on their fourth judge. The only continuity is the defendants and defense counsel. Remember, at one point, a rogue FBI agent, on his own, answered an ad in a legal publication in Washington, D.C. for a job as an intern. And the intern was for the defense team at Gitmo. Of course he got the job. He didn't tell them what his real job was, and he would go home at night and tell the prosecutors everything that he had learned from defense counsel. When the defense counsel eventually found out about this, General Martins fired the whole prosecution team, attempted to invalidate the portions of the prosecution that had been captured by the FBI guy, and they had to go back to square one and start all over. He's still in the FBI. You would think, at least he would have been fired, and at most he would have been prosecuted.

**Ralph Nader:** Well, you called George W. Bush torturer in chief. If you were attorney general, how would you proceed against the luxuriously placed George W. Bush and Dick Cheney right now?

**Judge Andrew Napolitano:** I would try them for war crimes, which is what you and I talked about in that C-SPAN interview, Ralph, for which there is no statute of limitations. When you said to me, what are the war crimes? The war crimes are well-known – leading us into war under false pretenses; intentionally targeting civilians in the Middle East; authorizing torture and purporting to protect it against state law, if done in the U.S., and international law – these are all well-known war crimes for which the penalty is life in prison. It can also be execution.

George W. Bush has never visited Europe since he left office. I don't know that he has the intellectual curiosity to do so. There is still an E.U.-wide arrest warrant live out there issued by Spanish authorities for the arrest of George W. Bush because of the war crimes that I have just summarized. I don't know that it would be enforced but it could be enforced anywhere on European soil or anywhere on the soil of a country that's a member of the EU, which is nearly all of them.

**Ralph Nader:** Well, they enforced it against the former dictator of Chile, didn't they?

**Judge Andrew Napolitano:** Yes, they did. I don't think he was ever prosecuted but he was confined.

**Ralph Nader:** And as you stated previously, these are undeclared wars. They're clear violations of the U.S. Constitution, which gives the exclusive authority to declare war to the Congress. And the Congress never declared war against Iraq over a million casualties, fatal, and the sociocide of that country and all the devastation in Afghanistan and the spillover in Libya, Hillary's war, and so on. Well, you've just written another column, *War and Indifference*. Spell out your thesis.

**Judge Andrew Napolitano:** Well, in my view, Joe Biden was on the faculty as an adjunct. I know and like him. When I taught at Delaware Law School, Joe was an adjunct faculty there. He had me call him Joe until he became president. I haven't spoken to him since he became

president. I would sit next to him on the Acela, the high-speed train from New York to D.C. I was getting on in New York going to D.C. to do my work at Fox. A couple times a month they sent me to D.C. And Joe was getting on in Wilmington to go and do his work, and we would sit with each other. He was a different Joe then. But the present Joe, in my opinion, has utterly wasted 50 billion American dollars by supporting the Ukrainians in the war that they're destined to lose against the Russians. I'm not talking about justice here; I'm talking about military reality. But one of the worst things he did, exposed by your friend and mine, and I say that with seriousness, Sy Hersh, was the destruction of the Nord Stream pipeline, which is an attack on an ally, Germany, and an attack on a putative, but not real enemy, Russia. This was revealed when America was looking upward trying to find a balloon. Gee, what a coincidence. This was revealed on the same day that the government is trying to scare the daylights out of everybody about a balloon floating from Alaska to South Carolina. None of the mainstream media picked it up; you didn't hear a peep out of German government nor a peep out of German industry.

They did 10 billion dollars' worth of damage to say nothing about the ecological damage to the Baltic Sea and you don't hear anything about it because of the indifference of the American media to this kind of subterfuge by the government. I think Sy Hersh humiliated the American media by being a one-man investigative team who scooped them on this story.

**Ralph Nader:** He certainly humiliated the Congress. We're going to have Sy Hersh on in a soon program on his story.

**Judge Andrew Napolitano:** Please tell him I love him. Like you, Ralph, he's an American hero.

**Ralph Nader:** Well, listen, Andrew, let's talk about the inkblot called Congress which has surrendered decade after decade more and more powers to the executive branch about which you've written a book and about which we put out reports. The United States has never been more militarily dominant in the world. The jingoism, the militarism, giving tens of billions of dollars more to the military budget year after year than the generals asked for and that Biden asked for. Give me your characterization of Congress. Because the reason why Guantanamo is open, which Barack Obama wanted closed, is because of the Republican party in Congress. Give me your take on all this.

**Judge Andrew Napolitano:** Well, I have two takes on it. One is the intelligence community, which captures every keystroke – I'm holding up my iPhone – captures every keystroke on every mobile device and every desktop in the United States, obviously illegally and unconstitutionally, has enough dirt on enough members of Congress to assure that budgets are always increased. The military industrial banking media – President Eisenhower in heaven forgive me, I'm adding two words to military industrial complex – so enriches itself and employs so many people in so many different congressional districts that the Defense Department is guaranteed the sinecure of more and more money all the time.

The American defense budget is greater than the defense budget of the next 12 countries in the world combined, which of course includes Russia and China. The American military owns and operates 903 foreign military installations. There is not a human being on the planet that can explain, justify, or even name all 903 of these. So it's totally out of control no matter who the president is, no matter what the president's attitude is, the Congress is terrified of the intelligence community and of the military industrial banking media complex, which runs this country.

**Ralph Nader:** Let's go back to Eisenhower's first draft. He actually had military congressional industrial complex. His advisors said, Mr. President, you should drop the Congress because you have to deal with them. And he did, but he originally had the military congressional industrial complex. And that's the way we should refer to it, you can add banking and the media.

This is super Sparta on steroids – the aggressiveness, the lack of diplomacy, the lack of waging peace by the U.S. government – it's like they've mothballed the charter of the State Department, which was diplomacy. They've turned it into a bellicose agency, sometimes much worse than the spokespeople for the Defense Department, which should be called the offense department. What do you think the American people have got to do here? How do you turn it around?

**Judge Andrew Napolitano:** I don't know how you turn it around. It's so embedded in our system. Thomas Jefferson said the Constitution should expire once in every generation and we should have to re-ratify it. He also intimated, didn't say precisely, that should federal laws expire, we should have to re-enact those as well. But, Ralph, you and I are of the view and I think many of your listeners will agree, we don't have two parties in this country. We have one party. They both love war, they both love welfare – one prefers individual welfare, the other prefers corporate welfare. They both love spending more money than they collect. Collectively they've spent 31 and a half trillion dollars more than they've received in the past hundred years,. The mindset is nearly identical.

Yeah, there are individuals – Rand Paul, Thomas Massie and on the other side, Alexandria Ocasio-Cortez (AOC) and Jamie Raskin. There are people who are personally courageous and intellectually understanding, but the vast majority of both parties are of the same mindset – government has to regulate more, government has to grow, government has to give more money to defense, American empire has to grow. American empire searching the world for monsters to destroy, there will be no end to our search.

**Ralph Nader:** At the expense of desperate needs and infrastructure. Look at the disinvestment in our railroad infrastructure and that disastrous derailment of 50 cars with lethal chemicals in Ohio that's still spreading in the atmosphere. One last point of optimism here, there is one section of our due process of law that has held here and it's quite fascinating. It's the Federal Rule of Civil Procedure and due process.

**Judge Andrew Napolitano:** Yes, that opinion was by Justice O'Connor, which told the DOD and the DOJ they had to follow the Constitution, meaning follow due process. Trials have to be fair. The full panoply of constitutional and statutory protections all have to be followed. And this has basically worked. What has not worked is the wrong people are in the defendants' chairs. The torturers and the murderers in the government should be in the defendants' chairs.

**Ralph Nader:** Now, you're viewed as a Republican, a former Fox commentator, a conservative. How are your friends in those sectors of political opinion and advocacy reacting to you?

**Judge Andrew Napolitano:** I think they know that I'm a Libertarian, a belief in the sovereignty and primacy of the individual, a belief that our rights come from our humanity and not from the government. Candidly, I had more of a negative reaction from my friends over my criticisms of Donald Trump's presidency and his obstruction efforts to impede the Mueller investigation than I

did over the type of comments we're talking about now. But my views in my books are well known. My Views are consistent. And like you, if lumps come, phew. When you say this stuff, you take the lumps, you pick yourself up, you brush yourself off, you smile and you go right back at it. That's what a guy named Ralph Nader taught me back when I was an undergraduate at Princeton. He was taking on that poorly disguised CIA agent, William F. Buckley, Jr.

**Ralph Nader:** I know our listeners would like you, before you go, to give an encapsulated view of the situation at Fox News. Are they turning around on Trump? Are they becoming hardline? What do you see?

**Judge Andrew Napolitano:** I'll never say a bad word about Fox. I spent 24 years there – happiest years of my life. They put me in front of a camera. You ready for this number? 14,500 times, that's a record of sorts. But I do believe that Rupert Murdoch called up Donald Trump and said to him, to Murdoch's credit – to his face, although it was on the phone – 'you are just not institutionally, constitutionally, temperamentally, or intellectually qualified to be the president of the United States and we will not support you.' And that attitude of course filtered down through Mr. Murdoch's various media entities – The *Wall Street Journal*, the *New York Post*, all of the Fox apparatus as well as his journals in his newspapers in London and in Australia. I commend him for that. I wish he had done it while I was still there. I might still be there, but I commend him for it.

**Ralph Nader:** In conclusion, what book would you like our listeners to read and how do they get to read your weekly columns?

**Judge Andrew Napolitano:** Well, my weekly columns are everywhere. They're on [judgenap.com](http://judgenap.com). My podcast, which draws about a million and a half views a week, is *Judging Freedom*. You go to *Judging Freedom* on YouTube. And my newest book is called *Freedom's Anchor: An Introduction to Natural Law Jurisprudence in American Constitutional History*. We reviewed every Supreme Court opinion that expressly accepts or expressly rejects the concept that our rights come from our humanity and synthesize it in a 500-page. Ralph, hold on to your chair, 2000 footnote legal treatise, which is the universe of everything ever written on the concept of natural law in English, and some in Spanish, on natural law and natural rights. That'll be published in about two weeks.

**Ralph Nader:** We have been speaking with former Judge Andrew Napolitano, longtime commentator for Fox, now writes his own weekly column, has his own podcast. And thank you very much, Andrew.

**Judge Andrew Napolitano:** Thank you.

**Steve Skrovan:** We have been speaking with Judge Andrew Napolitano. We will link to his work at [ralphnaderradiohour.com](http://ralphnaderradiohour.com). Let's take a quick break to check in with our corporate crime reporter, Russell Mokhiber.

**Russell Mokhiber:** From the National Press Building in Washington, D.C., this is your *Corporate Crime Reporter* "Morning Minute" for Friday, February 17, 2023. I'm Russell Mokhiber.

On February 3, a Norfolk Southern freight train derailed in the village of East Palestine, Ohio, a town of 4700 residents near the Ohio-Pennsylvania border. The train was composed of 141 cars and was carrying hazardous chemicals. The derailment caused a fire which lasted for days. The railroad workers' union last week condemned what it called the dangerous and historically unsafe practices by rail carriers that resulted in this catastrophe that will impact the community of East Palestine, Ohio for many years if not forever.

The root causes of this wreck are some of the same ones that have been singled out repeatedly associated with the hedge fund initiated operating model known as Precision scheduled railroading or PSR.

For the *Corporate Crime Reporter*, I'm Russell Mokhiber.

**Steve Skrovan:** Thank you, Russell. Welcome back to *Ralph Nader Radio Hour*. I'm Steve Skrovan, along with David Feldman and Ralph and Ralph's associate, Francesco DeSantis, who's going to clue us into a news item that everybody's heard about and we're going to get Ralph's comments. Francesco?

**Francesco DeSantis:** In East Palestine, Ohio, a town of 5,000 not far from Pittsburgh, a train derailment and subsequent explosion are causing toxic chemicals to spew into the air unchecked. These chemicals reportedly include polyvinyl, which when burned can become phosgene, which was used as a chemical weapon during World War I. Some have compared the disaster to Chernobyl or Three Mile Island. HAZMAT specialist Sil Caggiano has said, "We basically nuked the town with chemicals so we could get a railroad open."

While authorities have cleared the way for residents to return home, local reports are ominous – fish dead in the stream, chickens dead in their coops. Many have pinned the blame on President Biden for rejecting the striking rail workers' demands for time off late last year. Some have also allotted blame to Secretary of Transportation Pete Buttigieg who, in light of this tragedy, has opted not to reinstate the Obama-era brake rule and is in fact planning to further deregulate freight rail. He also waited 10 days to even make a statement.

Norfolk Southern Railway, which holds nearly 40 billion dollars in assets, donated \$25,000 or \$5 per person to the town. They're now offering \$1,000 "convenience checks."

**Ralph Nader:** This is an example of the backwater tragedies involving railroad derailments. And they occur with some frequency around the country because the railroads are reporting huge profits. We're talking about the freight railroads, not Amtrak, and the government has been disinvesting so it can blow up more places around the world with huge military budgets. They've been disinvesting in upgrading both the safety standards and the railroad beds itself. The freight trains are getting heavier, they're moving faster, but they are on an inadequate railroad bed, and that predisposes these trains to a risk of derailment. And so now the spotlight will be on the Federal Railroad Administration under Pete Buttigieg, which is a patsy regulatory agency. It's completely controlled by the railroad industry. I've written about this from time to time in the past, they put their own people in charge, and when they say they meet all safety regulations, well, sometimes they don't. But the safety regulations are written essentially by railroad lawyers. So we have the following serious problems of these freight railroads which are traveling as we

speak all over the country and they go through areas of cities populated by the poorest people of the cities not surprisingly. The chemicals are deadly, as Francisco pointed out; the mayors are never told about what's coming through their towns. Chlorine gas tanks came through Washington next to Capitol Hill right after 9/11. If chlorine gas happened to have been hit by those hijacked planes, it would have destroyed a huge number of people in Washington, D.C. That's how lackadaisical the whole process is. So the chemicals, number one, need much more regulation and disclosure to the municipalities. The brakes operate on air brakes, which were developed in 1868. And although Obama wanted to upgrade it, the lobbyists worked Congress and the federal Railroad Administration to delay and the new kinds of brakes are still not installed. And we have understaffing. The railroad unions really have a point here. They're understaffing both operating the railroads but also in maintenance. And so we have a double jeopardy here. The government disinvesting and not regulating, and the corporations making huge profits by strip mining their safeguards around the country. So Pete Buttigieg, who spends a lot of his time ribbon cutting on his aspirational trail to the presidency, better get to Ohio and take command of the situation and bring along the head of the Federal Railroad Administration, Amit Bose, and also bring along the CEO of Norfolk Southern Railroad which, unlike its name, is really a tremendously large railroad company, and his name is Alan Shaw. We've got to personalize the people who are in charge, failed their obligations and have to be held accountable. Congress has got to have highly publicized hearings and they haven't shown any indication that they're going to do that.

**Steve Skrovan:** Ralph, Francesco referenced the Obama-era brake rule. What is a brake rule?

**Ralph Nader:** Yeah, it was a proposal to upgrade the technology of freight train brakes. Right now the technology has the brakes stopping one car at a time when they have a new electronic systems that can stop the entire sequence of railroad cars, and that has not been enforced.

**Steve Skrovan:** So it seems very similar to your experience in the auto industry where there are safety fixes that exist. The technology is there but they're arguing it costs too much, is that the reason?

**Ralph Nader:** They're arguing that it's not necessary. They haven't killed hundreds of thousands of people. But what we have to point out are these gases, these chemicals are silent form of violence. Unless you're really close, they don't produce dead bodies. They just produce cancer, respiratory ailments, long-term disabilities as are now feared by the people in that part of Ohio. And the fumes have spread to Pennsylvania and the West Virginia Panhandle because the railroads and the authorities decided on a controlled burn in order to prevent an explosion and of course it backfired, because when they did the controlled burn, it was during a time when the winds were at a peak of 45 miles per hour. Can you imagine a blunder like that? So we need congressional, Senate and House. Listeners, do the same thing. Tell your senators and representatives to get going here.

[Music]

**Ralph Nader:** Did you all watch the Super Bowl?

**Steve Skrovan:** I did, yes. I did watch the Super Bowl.

**Ralph Nader:** How about you, David?

**David Feldman:** No, I did not. I don't believe in football. I think the whole display is grotesque.

**Ralph Nader:** All right, but there's an interesting part of that game. Just before the end of the first half, the star quarterback, Patrick Mahomes, for Kansas City, was tackled. And he limped off the field with huge pain. It was a high ankle re-injury of something that he had to suffer from a couple or three weeks earlier. And so the announcer said it's a horrible thing to see the quarterback limp off that way. And then there was a 30-minute halftime of entertainment, etc. And Patrick Mahomes came back like Superman. No limp like Superman, completed 13 out of 14 passes and barely won the game, but he won the Super Bowl. The Press never asked the question, what was he given during halftime that transformed him into a Superman with no limp whatsoever? You played varsity football for Yale, Steve, what's the explanation?

**Steve Skrovan:** Well, I don't know. It's quite possible they shot him up with some cortisone or something, which would have eased the pain in the short term. My experience, and I did sprain ankles playing football, is that when the injury first happens, it's called hot. It's a hot injury. You can actually play on it for a little while, which I did at the time that I sprained my ankles because the swelling has not occurred and it hasn't locked up on you. I would assume after the initial sharp pain of it, as long as he kept moving, he felt he could play on it. Now, I don't know, but it's quite possible they re-taped it and taped them tighter, which reduced the swelling, which gave him mobility, or they gave him some sort of painkiller in the short term that allowed him to continue. And whether that is going to cause longer-term damage, I doubt because he's too much of an investment for them to cause further damage by putting him out there, if it was just going to mask pain and cause further damage, so I don't know. I'm just talking off the top of my head here.

**Ralph Nader:** Yeah, well, we're going to have Ken Reed on the show. He has just come out with a book; he's head of our League of Fans policy. And he made a good point in an article that they were charging minimum ticket prices, \$38 hundred minimum. Other ticket prices at the Super Bowl in Arizona were in the thousands and thousands of dollars. And yet they had turf that was so inadequate that the players were tripping, their cleats were catching on the turf, there could have been serious damage. These NFL bosses are so starry-eyed with the billions that they're bringing in that they can't even provide their expensive players with safe turf. Did you notice that? What's your view, Steve?

**Steve Skrovan:** Yeah, I think that's a huge thing, especially with the domed stadiums, whether it's artificial turf or some sort of grass turf that is not forgiving where they're basically playing on concrete, is a huge deal. Joints come under so much more pressure on those turfs. And let's face it, football players, except for certain ones like Patrick Mahomes quarterbacks and certain other skilled-position players, are pretty disposable. The average NFL career is about four years, so you're absolutely right. Their investment in being able to have a dome stadium or a turf stadium

that requires less day-to-day maintenance overrides the fact that it's hurting people because football players, even more than in most other sports, are really kind of disposable.

**Ralph Nader:** Well, artificial turf ended the career of one of the greatest running backs in NFL history, Gail Sayers, who once scored five touchdowns in one game. He so damaged himself on the artificial turf that he had to retire early. This was actually real grass in Arizona. And in the Super Bowl, they have a system where they can pull it out and work it outside the stadium and then shove it back and it was coming apart. One of the football players said it's the worst turf he's ever played on in his entire life. And yet there's very little commentary by the stooge sports media, which is always covering up for these NFL and NBA and MLB bosses in football, basketball and baseball. So we're going to have Ken Reed on to look at the dark side of professional sports, which will even interest David Feldman.

**Steve Skrovan:** [Laughter]. Wow. If we can just interest David Feldman in something, that would be--

**David Feldman:** No, it's not that I don't find it interesting, I just don't approve of it.

**Ralph Nader:** It's just brutal. It's brutal.

**Steve Skrovan:** It is brutal. It's brutal. I have very mixed feelings about it because football was very, very good to me and I wouldn't be where I am today; I wouldn't even probably have met my wife if I hadn't been recruited for football in college. And I was very lucky to have escaped any kind of major injury or long lasting injury, but no question about it, it's a brutal sport.

**David Feldman:** And they haven't solved chronic traumatic encephalopathy(CTE), the legacy of concussions, which causes brutal brain damage. Didn't they do autopsies, Ralph, on football players?

**Ralph Nader:** Oh, yes, yeah, that's all very well documented. Many of the players lost their mental faculties at age 45, 50, 55. Their families were terrified at the prospects and the lawyers filed class action against the National Football League and the football league settled for a sum far less than the players deserved. And some of the players cut out and refused the settlement of the class action. And now CTE is being discovered in high school football players and it isn't just a big hit that creates the concussion, although it does. It's the constant repetitive lower-level forceful hits. And so, at least a quarter of all high school football players have had concussions that are going to have some consequences later in their life. And there is now a viewpoint that you can hear from Ken Reed about what should be done with high school football.

**David Feldman:** But football is like mixed martial arts, UFC. It should not be celebrated. It's a policy failure. Football and UFC are examples of how we failed our children in this country.

**Ralph Nader:** Well, now the *New York Times* features boxing matches between women. What do you think of that, David?

**David Feldman:** As a comedy writer, I'll keep my mouth shut and say I think it's an example of how we have failed as a culture, the celebration of violence and not something to celebrate.

**Steve Skrovan:** Hannah, weigh in here.

**Hannah Feldman:** Yes, I'm going to withhold my opinions about mixed martial arts and first I'm going to plug the American Museum of Tort Law's panel on head injuries and the future of high school football, which they held last year that had some really interesting discussions about litigation around head injuries and football and what that might mean for the future of the sport. There were some really interesting perspectives in that panel. And ESPN reported just last week about a lawsuit from 10 retired NFL players who are suing the league over denial of disability benefits. And they might bump it up to a class action lawsuit that they were left with these injuries and they were mistreated by league doctors and that their claims were unjustly denied and they violated federal law. So aside from the head injury issue, these retired workers are taking their former employers to court over mishandling their disability claims.

**Ralph Nader:** Not to mention their retirement benefits, which have never been upgraded to reflect the enormous surge in the past two decades in NFL profits. So these retired players now maybe 55/60/65, who built the league and were given poultry retirement budgets at the time, have been asking for an upgrade and the NFL has been very resistant. By the way, listeners, you can look at those events that Hannah pointed out by going to the website of the Tort Museum, [tortmuseum.org](http://tortmuseum.org). And in the process, after you look at the events, you can take a free tour of the Tort Museum and come away with more than a small amount of knowledge about the historic law of wrongful injury and what the remedies are against the perpetrators.

**David Feldman:** May I ask a question about football because I've just never enjoyed it. Is part of the celebration the knowledge that these men are being hurt? When you watch it, do you go, oh, that hurts, I'm glad that's not me.

**Ralph Nader:** Well, is a psychologist among us? How about you, Steve, you're the one who knows the most about it. Do you think the Yalies in the stands were cheering for reasons David pointed out?

**Steve Skrovan:** No. I mean, football itself, I've always argued, is a fairly easy sport to master. It's a large ball; you catch it and run with it. You run into people unlike basketball where shooting a jump shot is very difficult. And the most difficult thing, hitting a baseball, doesn't require that kind of skill level. What you do need to get used to is the violence of it, is the contact. And it is a contact sport, I don't think people get off on; they'll ooh and aah a big hit, but I don't think it's anybody wants to see anybody get hurt.

I think the Damar Hamlin situation that occurred, the young man who collapsed on the field after what seemed to be a routine hit, caused him to have a heart attack, which is a very rare thing and could happen actually in any sport really. The reaction to that was very reminiscent to me of post-traumatic stress disorder (PTSD) for soldiers, because all these players were talking about how it affected them emotionally just watching that. And it affected the crowd too. I think it's like all fun and games until something like that happens, but I don't think people get off on the pain. I think there's a certain excitement to physical contact, but I don't think it's that sadistic.

**Ralph Nader:** David, just to show you how violent the game is, after the game the players are sore like you can't believe. The next day, the following day, even if they haven't been injured, they're really sore. An NFL football game is 60 minutes. How many minutes you think there is of actual play, David?

**David Feldman:** I don't know.

**Ralph Nader:** Thirteen.

**David Feldman:** Wow.

**Steve Skrovan:** Yeah.

**Ralph Nader:** Thirteen minutes causes that kind of ache and pain and tension and sometimes injury. The rest of the time they're coming back, setting up. Thirteen minutes.

**David Feldman:** I was very sheltered, I wasn't even allowed to be on the debate team in high school.

**Steve Skrovan:** [Laughter].

**David Feldman:** He can injure his foot from sticking it in his mouth so often.

**Ralph Nader:** Hannah, you were saying something?

**Hannah Feldman:** Yes, I was. To David's question, I'm a lifelong soccer fan. And it's also a contact sport and there is something really impressive about two people who have achieved this peak physical fitness doing something really well, challenging each other, and avoiding getting hurt. I think psychologically there's a thrill to avoiding getting hurt and you watch them and go wow, I can't imagine I could ever do that. And someone actually getting injured is quite devastating. At the European championships a couple years ago there was a Danish soccer player who suffered cardiac arrest. And he was revived but it was a horribly traumatic experience for his teammates and the fans and the other players and the officials and they still talk about it a couple years on. And he's returned to full fitness after having an internal defibrillator installed. And the conversation about that experience circles back to reminding us that the sport isn't the most important thing in the world. So I think it's less about some sort of brutal excitement about gladiators hurting each other and more about watching skilled people avoid injury in a spectacular way that we can only dream of.

**Ralph Nader:** David, look at the difference. Soccer is 90 minutes without a break.

**Hannah Feldman:** There's one break.

**Ralph Nader:** One break? Where?

**Hannah Feldman:** There's halftime. It's 45 minutes and there actually was, at the World Cup, a lot of controversy because they added on extra time. There are natural breaks in the gameplay but anyway, that's neither here nor there. But there's a halftime break but it's only 15 minutes.

**David Feldman:** Ralph, when you sit and watch the football game, I guess you multitask, right? You're not going to waste...you don't just stare at the screen

**Ralph Nader:** No, I don't watch anything. I just hear it on the radio and I can turn it on and off with a flick of a finger. Do you know what attracts me? What attracts me is the stamina. The stamina drive and never give up, which is what we like to see in the Citizen movement. And I'm always in awe at the stamina drive and never give up. I know they get paid well and all, but the never give up at the last minute... imagine some players going to a coach and saying in basketball, we're behind 82 to 58 and they're just five minutes left, why don't we just forget about it? It's unheard of. But people quit all the time in the Citizen movement.

**Steve Skrovan:** Right. I want to thank our guests again, Judge Andrew Napolitano and Francesco DeSantis for stopping by. 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." You'll hear more from Francesco there. A transcript of this program will appear on the *Ralph Nader Radio Hour* Substack site soon after the episode is posted.

**David Feldman:** For more from Russell Mokhiber, go to [corporatecrimereporter.com](http://corporatecrimereporter.com). We have a new issue of the *Capitol Hill Citizen*. It's out now. To order your copy of the *Capitol Hill Citizen*, "Democracy Dies in Broad Daylight," go to [capitolhillcitizen.com](http://capitolhillcitizen.com).

**Steve Skrovan:** And remember to continue the conversation after each show, go to the comments section at [ralphnaderradiohour.com](http://ralphnaderradiohour.com) and post a comment or question on this week's episode. We'll pick some standout comments, so be sure to tune in next week. You may hear Ralph's response.

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

**Ralph Nader:** Thank you, everybody. Remember *Capitol Hill Citizen*. You can't be an advocate on Congress without this newspaper. You'll see why when you obtain it at [capitolcitizen.com](http://capitolcitizen.com).final