

RALPH NADER RADIO HOUR EPISODE 461 TRANSCRIPT

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

David Feldman: Good morning.

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

Ralph Nader: Hello, everybody.

Steve Skrovan: We could do something a little bit different today on the program. No outside guests, all in-house. The subject, though, is corporate personhood. Few people know this topic better than Ralph – the nature of it, the history, and the consequences of treating corporations as legal persons – the consequences for our health, our safety, our prosperity and our democracy. So in today's show, Ralph is going to break it all down for us. This Frankenstein monster we call the "corporation," a Frankenstein that is not only immortal, but with the development of AI (artificial intelligence) is actually evolving.

Along the way, David and I are going to pitch in with their own questions and comments. Then we're going to welcome to the show one of Ralph's associates, Francesco DeSantis. Francesco works for Ralph at the Center for Study of Responsive Law. Those of you who are paid subscribers to the *Ralph Nader Radio Hour* and Substack, that's where your money is going, the Center for Study of Responsive Law. And Francesco is going to give us an update on one of the center's prime projects – urging the government to develop a corporate crime database. We have a street crime database and a terrorist watch list, but corporate crime dwarfs both of those in terms of the financial cost and the violence it wreaks on ordinary citizens – violence, which may not seem obvious at first blush, but is very real, from plane crashes to poisoning water and soil. Francesco and Ralph will report on how the corporate crime database can be a tool to fight back against repeat offenders.

As always, we'll take a break at some point to hear from our corporate crime reporter, Russell Mokhiber. But first, Ralph, let's talk about the nature of the beast here. Tell us about the corporate entity and how that has led to corporate personhood.

Ralph Nader: Yes. We've had a lot of people on our show talking about specific corporate abuses unsafe products, climate violence, tax evasion, political influence that's improper on elected officials and elections, et cetera. But we never really talked much about the nature of the corporation itself. And so I'd like to talk about how did this corporation that is everywhere in our midst – these large corporations strategically plan just about everything in our society and culture in order to maximize sales, profits and bonuses for the top executives. How did all this come about?

Well, it actually started with England and the Hudson Bay Company and other crown corporations in those early centuries after the medieval period finished. And what the British king did was, in fact, charter these giant corporations and they ruled whole areas of Canada. For

example, the Hudson Bay Company would deal with collecting furs and other products and shipping them back to England and around Europe. And then there was one dealing with India and it actually ruled India for a number of generations. Now these were called crown corporations. They weren't exactly totally government. They were very profitable and investors made a lot of money in them. They actually had soldiers. They were able to enforce the laws against the natives – the indigenous people in Canada and the natives in India – and they got into a lot of controversy. Those were the early precursors of what we now call the modern corporation.

And the modern corporations started in its current form in places like Massachusetts with the early textile companies. And they were chartered by a state legislature passing a law that basically says X company has now been chartered to do Y business, like manufacture textiles. It's important for all of us to know that corporations are not created by investors. They are created by state authority. Some are created by federal authority, like Fannie Mae and Freddie Mac.

Steve Skrovan: Why is that important to know, Ralph?

Ralph Nader: It's important because most people think corporations are created by private enterprise. You get people who assemble money and they create a corporation. They create Apple; they create General Motors; they create DuPont; they create Prudential Insurance. No, they don't actually create because these corporations are entities that law professors call legal fictions. They're not humans, obviously, they are just legal fictions, but they are equipped with enormous authority, as we'll see in a few minutes, and we'll discuss the evolution from the early 1800s when the legislature of the Commonwealth of Massachusetts started chartering textile companies.

All the authority of corporations--the board of directors, shareholders--comes in something called a charter that the states around the country give to create corporations. And the big plus that gives the corporations the ability to take risks is that they attract investors with limited liability. So if a corporation does something bad, is sued, has to go into bankruptcy, or is mismanaged it has to go into bankruptcy, the investors only lose the amount of their investments. They don't lose their house; they don't lose their bank account. This kind of limited liability was the yeast that unfurled the future elaborations of corporate power. So let's discuss those elaborations.

In the early 1800s, when the state legislatures chartered these companies, and they weren't just textile companies, the charter restricted what the corporation could produce, like you're going to produce textiles; you are not going to produce hammers or sickles. And they were put on a tight leash; they were chartered for a few years and then they had to be renewed on good behavior, because the early lawmakers in the states were scared of this beast that they were creating. Later on it was called in the 1930s by Justice Louis Brandeis in his Supreme Court case "Frankensteins in our midst."

What he meant by that is that once it's unleashed, it doesn't conform to normal human accountabilities; it doesn't have the level of shame or guilt. It can make a lot of mistakes and hurt a lot of people and still be credible. For example, GM could refuse to recall millions of cars, get caught by the Department of Transportation due to demonstrated deaths and injuries, thus

required to recall the cars. But then it keeps selling cars. Yet nobody thinks of GM as some entity that should phase into oblivion because it created death and injury knowingly by not recalling the cars.

So as the 1800s unfolded, and you had more and more corporations chartered, the state legislatures became overburdened. So they delegated the chartering function to state corporation commissions that were agencies in the executive branch of the state governments. Removing state charters from the glare of publicity that ordinarily would cover an open state legislative action to charter X company or Y company was the first step. Once the corporate lawyers got the chartering in the state commissions, they then went to work on further refinements of corporate power and lack of accountability. One of them was to start shopping around to find the states that wanted revenues from chartering corporations. And they found the state of New Jersey.

The state of New Jersey began giving easy charters, called permissive charters, where they give a lot of power to the board of directors and the executives over their own shareholders as the shareholders became not anymore just founders, a few of them, but they became scattered. People could buy shares in a corporation from a long distance, and they became more numerous, so they had to be controlled. And New Jersey provided a lowest common denominator and started making a lot of money. But then Delaware looked at New Jersey and said, hey--this is in the late 1800s-- we can outdo New Jersey. We can make it even easier to charter in Delaware and make a lot of money.

One time, about 25% of the state revenues in Delaware came from these franchise fees. And what happened was that all the big companies that were already chartered in places, like Ohio, New York and New Jersey, began moving to Delaware. So GM was chartered in Delaware; Citibank became chartered in Delaware. Of course, DuPont was chartered in Delaware. Hundreds of companies began flocking to Delaware because the bosses and the board of directors could do more and more whatever they wanted. They didn't have to worry about enforcing strict fiduciary duties to their shareholders, not to mention workers, their community and what are now called other stakeholders. They also could be secret. Delaware corporation law then was quite protective of corporate secrecy. And secrecy feeds the imbalance of corporate power with the rest of the population.

Now the corporate lawyers weren't satisfied with limited liability for their shareholders. They then went to work, starting in the early 1900s, for something called limited liability for the corporation itself. And the first big one was workers' compensation. There was a real benefit to enacting workers' compensation laws so that workers didn't have to prove negligence. They would get some form of compensation for their injuries or other afflictions. But the tradeoff with corporations was that you couldn't sue in tort law. So the corporations got away with not having to face trials by jury and open court; they just have to face a state workers' compensation commission that would have hearings and workers would plead their case for so much per month for their disability and the corporate lawyers would often oppose it. And then they would come to a decision. It was called, somewhat critically, by trial lawyers as a meat chart-- so much for an arm, so much for a leg in compensation.

And increasingly, the corporations began to dominate the worker compensation commission and preventing worker compensation laws from reflecting higher costs for medical and other reimbursable results of factory or foundry or mine or other workplace injuries and afflictions. It

was a very incomplete and dissatisfying system for which the corporations got comparative immunity from tort lawsuits, the corporation now, itself, as it starts toward limited liability. And then it was off to the races. In the 1900s, 20th century, more and more corporations would get through legislatures all kinds of immunities. One of the worst one was the Price-Anderson Act, which gave nuclear power plants very limited liability. There was an Atomic Energy Commission report in the 1950s that said a Class 9 nuclear power meltdown could contaminate radioactively "an area the size of Pennsylvania."

Well, obviously the insurance companies freaked out and they said we're not insuring these nuclear power plants. Are you kidding? And so except for very minor insurance, the insurance is now being paid by the taxpayer. Price-Anderson Act was upheld nine to nothing, unanimous. That's an example of limited liability of the corporation owning the nuclear power plant.

But let's step back to another switcheroo. Until the 1880s, corporations were not considered persons. Now our Constitution does not mention the word corporation or company once. All it talks about are persons. So these smart corporate lawyers again said, "Aha! In order to get the rights under the Constitution that human beings have, that citizens have, we have to make corporations into persons." Well, how do you make corporations, which is a legal fiction into persons? Most people think of persons as human beings. In fact, Daniel Webster in the famous Dartmouth College case orated about corporations not having the soul, not having the being.

So in about 1887, there was a Supreme Court case dealing with attacks on railroads. And without going into too much detail, the scribe for the Supreme Court – they used to have a scribe – was a former railroad lawyer. And so he did something very, very bad. The court did not decide directly that the railroad was a person. It decided for the railroad, but it didn't say it was a person. But in the summary of the case – the scribes would summarize the case, they're called head notes – he put in that the court decided that corporations are persons under the 14th Amendment. In other words, they get equal protection of the law. What that means is that you cannot subordinate corporations to the rights of real human beings. You cannot have unequal protection of the law subordinating corporations for taxation, for preventing them from lobbying, preventing them from giving money to campaigns--all the things that they do now to exert their power. That can't be done because they have equal rights under the Constitution.

And in subsequent decisions, they added more and more court cases, giving these corporations this and right that was equal to a human being such as free speech rights, rights against unauthorized search and seizure under the 4th Amendment. In fact, right now, I think there's only one right that corporations do not have that individuals have under our Constitution. And that's the right to plead against having to testify and incriminate themselves. People can take the 5th, as vernacular puts it, if they're subpoenaed in court, for example, and they're asked questions. They can say I refuse to answer on the grounds of my right not to incriminate myself. Or they say I plead the 5th amendment.

Well, as far as I know, corporations can't do that. They can't plead that. That's about the only thing left. A lot of the civil rights laws that were designed for minorities--and then of course, they were expanded to all human beings--were acquired by the corporations. They ripped off the civil rights laws, the civil liberties laws, and under the notorious Citizens United case about 13 years ago in the Supreme Court in a split decision, corporations, which were once forbidden (as corporations, not corporate executives, as corporations) from writing checks opposing or

supporting candidates for elective office. Now, as long as they don't coordinate with the candidate's campaign, they can contribute a billion dollars to independently support a campaign or a party or whatever. So the lid is off.

Steve Skrovan: Ralph, let me interrupt for a second. Just to summarize for our listeners, what you've just told us is that now with the exception of the 5th Amendment, corporations are protected by all the other amendments that were designed to protect people in the Constitution. Am I hearing that correct?

Ralph Nader: That's correct. They can have a trial by jury, 7th Amendment, for example. They can be protected under the 4th Amendment. For example, when the EPA wanted to take planes over a chemical company in Michigan in order to try to detect emissions, the company got a lawyer and said, "You can't do that. You don't have a warrant. We're protected against search and seizure." See, that's how far it goes.

So the question becomes even more intriguing. Suppose corporations start using robots, as they are now, and the robots are full of artificial intelligence, and basically they start engaging in autonomous activity--they start developing sales plans, advertising campaigns, testing pharmaceuticals, and contracting with the Pentagon to engage in armed force overseas. The question is, does the robot with artificial intelligence have equal protection under the law? Does the robot owned by a big corporation, which may be chartered in the Bahamas or in the Isle of Man in the Irish Sea between Great Britain and Ireland for even more permissive purposes and tax avoidance? So that has not yet been adjudicated. What if the robot develops patent applications for our gene sequences? What if the robot becomes a subsidiary corporation of a giant corporation? They can create all kinds of subsidiaries. In fact, the subsidiary issue is part of the corporate power system. Corporations have done things around the world through subsidiaries. And when the prosecutors catch up with the subsidiaries, they want to go to the parent company. And the parent company says, no, we don't have any responsibility here. Focus on that subsidiary in Indonesia that was engaged, say, in bribing was an actual case. So we've got a situation here where this monster is evolving, obviously in all kinds of ways--using nanotechnology, genetic technology, or biotechnology, artificial intelligence--without any legal or ethical frameworks so there's no regulation of any of these industries to speak of, and they're off to the races. If we see what they're doing, it's only because investigative reporters dig in once in a while, or you have a very rare congressional or state legislative hearing.

Now here's where we're at: the next stage of corporate limited liability. First, they limit the liability of the shareholders. Now they've limited more and more the liability of the corporate entity itself. The next step is to limit the liability of the bosses, the executives. And in the Boeing 737 MAX case, you can see the degree that these corporate lawyers have gone to develop webs of protection shielding them. A lot of times what they'll do to the prosecutors is say, "Look, we're protecting our CEOs; we're protecting our presidents of the company. You want to go after us, you can fine the company and not fine our clients, and not prosecute criminally our clients." This is all in closed door settlement negotiations with the Justice Department, or with the state attorney general, say, the opiate manufacturers. Now, the opiate manufacturers and promoters had a lineage that went directly to the pharmacist, to the doctors, to the underground dispensation of these opiates and over a million deaths so far. The litigation by state attorneys general, for example, against the opiate manufacturers, OxyContin, for example, is about over. And the

pharmacies like Walgreen's have just settled in a way it amounts to tens of billions of dollars. And the tradeoff was... have you heard of any of these executives being prosecuted, convicted and sent to jail? No. The tradeoff is let the corporation pay and immunize, i.e., limit the liability of the real people who are getting real big bucks at the top of the corporation. And so what does the corporation do with the fines? Well, here again, the corporation has become a brilliant transfer mechanism.

First, there are exceptions here in terms of criminal fines. The money that they pay out is covered by some insurance. So the insurance premium is deductible under the federal tax code. If that's not enough, they use depreciation regulations so they depreciate certain assets. This is all very, very complex. And if that's not enough, they'll find other ways to shift the cost away from the corporation as much as possible. Maybe they'll increase prices because they have a quasi-monopoly position for their product in the marketplace. The other thing that they do in addition to being insurable is it's deductible. Some of these payments are seen as ordinary necessary deductible expenses under the Internal Revenue Code. So that's another way, you see, of limiting the liability so that it doesn't pinch, it doesn't deter, it doesn't stop future practices because so much of it was, just as people say, the cost of doing business. But once again, Louis Brandeis back in the 30s, imagine what he would think today, that's what he meant by a Frankenstein rising in our midst, a creature that we create as a society, and it begins to create itself and develop hundreds of subsidiaries.

I was down in the Cayman Islands once on a *Nation* cruise tour, when *Nation* magazine was using it as a fundraiser. But I wanted to go down because I wanted to see this big gray office building. So I went to this big gray office building and I walked in and I saw the receptionist. He was taking calls. People were walking in and out. That office building held the charters for thousands of corporate subsidiaries of banks like Citibank, Bank of America, chemical companies, drug companies, you name it. They were parking in one of the most permissive jurisdictions on the planet, the Cayman Islands, where you can do just about anything if you're a chartered corporation and pay no taxes. They're parking it in this gray office building. So that's an extent of how this Frankenstein can continue to abstract itself, continue to make it remote from the public spotlight, from any kind of governmental regulatory accountability.

Now we can go back to all the abuses that we've discussed in our programs so we can see that the system of giant corporations, and I'm not talking about small business; there is a difference in kind. The ma and pa grocery store, the local stores are different corporations. I mean, they have nowhere near the power, nowhere near the reach, nowhere near the ability to transfer costs. They have to meet their customers and be more accountable for them day after day in person. So we're not talking about small business here. We're talking about these giant multinational corporations with headquarters in New York, Chicago, London, Paris, Berlin, Tokyo, Shanghai, et cetera. And it doesn't matter what culture they come from. The corporate culture transcends culture.

In fact, when the native tribes in Alaska were given sure title to their native lands, the culprits in the mineral industry, that had their eye on all these lands, persuaded Congress to create these native corporations. So instead of tribes and tribal councils, they supplanted them with native corporations owning these huge tracts of land. And guess what? More and more, these tribal leaders began behaving like corporate executives. And this gets to one of the real problems here that goes back over 2000 years. Whenever a society allows commercial values to reign supreme over human rights values, over civic values, tolerance, decentralization of power, et cetera, it

degrades the quality of life to no end. And that's why every major religion, as I've pointed out in past programs, has warned its adherents not to give too much power to the merchant class. It started with the money lenders over 2000 years ago in the Middle East. Now why did they do that? Because they saw that once people are in to making money, profits, they get greedy. They don't have limits. They make a bunch of money and then they want to make another bunch of money. They want to be like Tim Cook of Apple who, now with a rubber stamp board of directors, is making \$833 a minute on a 40-hour a week yardstick, not to mention benefits. You can imagine the benefits. And by the way, he is in the top 20, but he's not in the top five. There are other CEOs in the country that are making even more.

So the early moralists, the early adherents of these religious scriptures knew that they had to put some controls. They were called usury laws, for example, to limit the amount of interest the money lenders could lend. And the corporations got rid of our state usury laws with one or two exceptions in the 1970s. That's why they can charge payday loan rackets and roll them over again and again because the poor worker can't pay the balance and they can run up interest rates of 400%. Imagine. 500%. There's no limit, no usury laws. They got rid of them by lobbying state legislatures in the 1970s. So what the early religious moralists knew was that there was no self-limiting principle to material avarice or greed, which is why in ancient China, the merchant was socially at the lowest rung of social recognition. To be a merchant in Mandarin China was to be viewed as unsavory, to be viewed as unworthy in terms of any Confucian principles and other non-mercantile, noncommercial norms and mores.

So what's happened in our country is that, except for a few periods like the progressive period around the turn of the century in 1888 to 1912 and a period in the '30s under the New Deal because of the Depression, Franklin Delano Roosevelt, and a period in the '60s and early '70s when the consumer protection, environmental protection, and worker safety laws were enacted, it's been all bets off. The commercial values began devouring the civic spheres. There were no more commercial free zones in our country. For example, gambling used to be restricted, then it opened up in Las Vegas, then it was Atlantic City. Now it's everywhere. Casinos now are a form of economic development in depressed areas. As former Senator Lowell Weicker once said in opposition to gambling in Connecticut, "We don't want to be a society that bets on the future. We want to be a society that builds the future."

Well, that's all gone now. Organized religion, which used to be a barrier against the spread of gambling, has dropped its opposition. And of course there were always those illegal gambling numbers rackets in the back of cigar stores on Main Street, USA. But now it's hugely greater. It's now available to teenagers, tweens. They get a hold of their family's credit card if they don't have a credit card themselves. They know how to use the computer and they can dial right from their home and bet on all kinds of things. So there are very few commercial-free zones. It used to be taboo for corporations to direct market to kids. When I was growing up, they might direct market bubble gum. They never dared circumvent and undermine parental authority. That would offend all political backgrounds of families, conservatives, liberals, getting their parents to lose control over their own kids. Well now, it's a half trillion dollar industry. Direct marketing every minute of the day to kids--junk food, drinks, bad medicines, cosmetics for little girls, terribly violent toys, violent programming where they elicit participation electronically by the children and just there's no end to it.

On the internet gulag there are tens of thousands of apps for children where, unbeknownst to them, they are providing information that is immediately sent to advertisers and others who can do whatever they want with it. And so what's the future hold? The future is extremely dangerous. You have autonomous weapons being developed by the Pentagon under contract with these corporations. These corporations are privy now to all kinds of military secrets. I've had military experts tell me they can't tell the difference anymore between the Pentagon and the contractor. They just shuttle back and forth in terms of managerial positions and contracts. The acquisition experts in the Pentagon really don't know what's going on once they let the contract out. We're moving into the mercenaries now over in Africa and elsewhere. More and more of battlefield, if there is a battlefield against the weak opponents in these countries, who don't have an army, and navy, and air force; they're just engaged in guerrilla-type warfare.

But maintenance of fighter planes is through corporate contractors; feeding the soldiers--corporate contractors; clinics--corporate contractors. And so the whole government increasingly is just contracting out governmental functions, which means more secrecy, more hidden profits, black budgets (covert appropriations), and a deterioration of what's left of our democracy. So what is the future when this artificial entity controls our genes? What is the future when they can put a tiny little gadget on our windowsill and listen to everything we say and whisper day and night and we can't even see it it's so small. And then it's automatically transmitted into databases that can be used for whatever. What happens when these corporations start selling drones the way they're selling guns these days? And all these drones in all kinds of sizes--tiny, mid-size, and motorcycle size start floating over people's homes, not just eavesdropping; they can be used for armed attacks on residences, businesses in rural, urban, and suburban areas. How are they going to be controlled?

So the people who have thought about corporate power in terms of their charter and personhood have recommended that we need a constitutional amendment that basically recognizes corporations as artificial entities and not as persons, and strictly subordinates them under the Constitution so they do not have equal rights with human beings. Now the people in these companies have equal rights to do what other people outside the companies have--free speech, protected from illegal search and seizure, and to lobby and testify. And to give campaign contributions, unless we get a public campaign contribution system installed, which is the preferred way instead of selling or renting our electoral candidates. So what the constitutional amendment would do, very briefly, is simply say corporations have to be our servants, not our masters. The only way that can happen is to strictly regulate them and subordinate them to the Constitution so that legislation passed to regulate them cannot be challenged before the Supreme Court by these corporate lawyers saying that it violates the Constitution.

And the second approach is very community oriented. More and more, we should have local economies. There are already hundreds of billions of dollars. But more and more we should have our own credit unions, our own community clinics, our own renewable energy, our own public transit on and on. And the more we have these local economies, small business if you will, cooperatives if you will, mutual institutions if you will, the less sales these giant companies will be able to extract from us and the smaller and weaker they will become. For example, if we were totally self-sufficient in terms of energy, as increasingly communities are beginning to see possible, ExxonMobil is not going to be able to sell much through their gas stations. We'll have solar energy, renewable energy, hydrogen energy, geothermal energy, you name it; they're all

coming and they're leading the way; solar energy now is beating fossil fuels in terms of new energy systems all over the world based on price alone.

So my last point is this. If all this is so important to the livelihoods and the lives and the future of people everywhere, this issue of corporate power and expansion of corporate immunity and corporate control, why aren't people making politicians talk about it? Why isn't the media, like public radio and PBS, at least letting people exchange views about it or engage in reports about it? It's not that it doesn't touch people every day. Every day people are wrongfully injured. Every day they confront the closure of our courts and the weakening of the tort laws by the insurance companies and what I call the tortfeasors' lobby--the wrongdoers' lobby, the big chemical, drug, auto, trucking and other corporations that don't want to be held responsible for their negligence that leads to injuries and illnesses. Every day, every hour people are signing on the dotted line and clicking on their computers and giving up their contractual rights to these fine-print, one-sided contract peonage (convict labor leased to contractors) or contract servitude, every day. It's not like they're not feeling it.

Every day insurance companies are denying benefits for people who are ill and can't pay the medical bills. Every day they're going in to financial institutions and getting ripped off with extremely low interest rates, fostered by the Federal Reserve, which has recently having to raise interest rates in their alleged effort to combat inflation. But imagine trillions of dollars for over 15 years--savings, mutual fund, pension funds, bank savings--were getting virtually nothing for their investments. You think the banks, when they reinvest that money, were not getting interest rates and making bundles of money?

Steve Skrovan: Okay, and with that question, which I think we know the answer to, we're going to take a one minute break. When we come back, David and I have some questions of our own. Then we're going to welcome Francesco DeSantis from the Center for Study of Responsive Law. But first, let's check in with our corporate crime reporter, Russell Mokhiber.

Russell Mokhiber: From the National Press Building in Washington, D.C., this is your *Corporate Crime Reporter* "Morning Minute" for Friday, January 6, 2023. I'm Russell Mokhiber.

A ground crew worker has died after being "ingested into the engine" of an aircraft while working a shift at an airport in Montgomery, Alabama.

The National Transportation Safety Board said the death occurred when a ground support personnel was ingested into the engine while an American Airlines Embraer 170 was parked at the gate with its parking brakes set. The so far unnamed worker was employed by Piedmont Airlines, a subsidiary of American Airlines Group. Last month, the Occupational Safety and Health Administration announced that fatal work injuries in 2022 were up 9% from the previous year to 5,190 fatal work injuries or one worker death every 101 minutes.

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

Steve Skrovan: Thank you, Russell. Welcome back to the *Ralph Nader Radio Hour*. The topic is corporate personhood. And Ralph, you have a question for us.

Ralph Nader: Why is it, Steve and David, that we can't move to the level of subordinating corporations to the supremacy of human beings and subordinating commercialism to civic values?

Steve Skrovan: That's a good question that I'm not sure David and I are equipped to answer, but I just want to reiterate something for our audience that you made a couple of points about. Because people who argue in favor of the corporate personhood would say, corporations are made up of people. But if I'm understanding you correctly, you're saying that yes, they're made up of people, but those people--those CEOs and management teams--are shielded now from any criminal and civil penalties. The civil penalties are paid by the legal fiction of the corporation, and so that's not a backstop against the better behavior. Am I summarizing that in an effective way?

Ralph Nader: Yes. Basically, here's the metaphor. John Doe is a 26-year old ambulance driver who is heroic having rescued people from fires and from heart attacks and gotten them to hospitals and clinics to save their lives. He then ends up in the army and he's trained to drive tanks. And the military industrial complex and the White House decide they're going to engage in an unconstitutional war in Iraq because Bush and Cheney wanted to blow apart Iraq and Saddam Hussein without Congress declaring war. And so he ends up driving a tank in Iraq, killing people, and he's part of a criminal war of aggression. So you say, gee, he was such a nice guy. But people who work in corporations behave in ways they would never behave in their family or in their neighborhood. Because the mission of the corporation, which is to subordinate obstacles to maximizing profits to run over civic and humane values, entangles them and puts them in a situation of follow orders or you're fired. Follow orders or you don't get promoted.

So the corporate system has a very strong tendency to bring the worst out of people to make them, in effect, operate against their own basic moral principles that they would never pursue in their neighborhood or community outside the company. People should know that one of the immunities of corporations is you don't have any free speech inside a company. The 1st Amendment only applies to arbitrary restrictions by government, state action. Like they can't say to you, you are not going to publish this book; you are not going to print this newspaper; you are not going to speak on a soapbox in Central Park in New York orating about some injustice. They cannot stop you from doing that. There are a few exceptions in terms of talking riotous talk, et cetera.

But once you work for Exxon Mobil or Pfizer or Citigroup, you lose your free speech rights. They can tell you to shut up and do not talk, otherwise they can fire you. So that's another example where they not only are not accountable to the outside world, they have excluded the Constitution from their sprawling corporate premises. And that's why a lot of Silicon Valley workers are chafing because they try to exercise their free speech and they get warned that this could be a condition for dismissal.

Steve Skrovan: Well, that's a great segue into my next question which involves free speech because Supreme Court Justice Antonin Scalia in particular, and those who argue for it for Citizens United, say you can't separate speech from the thing that facilitates it, meaning money. So what would your answer to that be?

Ralph Nader: Simply legislation or constitutional amendment that says you're wrong, Justice Scalia. The Constitution or the legislation says that money is corruptive. We have to have limits on it, we have to have disclosure, and we have to have prohibition. Prohibition meaning public funding of public campaigns. And if that's challenged constitutionally, then we're going to have to have a constitutional amendment. Public Citizen is proposing certain constitutional amendments in that regard now. So that's the answer. It's important to address something implied in your remarks. A lot of times when we interview authors and I asked them about corporate law firms being villains they say, "Oh, no, everything they do is legal." Yeah, but they've created their own legal framework with their lobbying Congress and state legislatures. So, for example, corporations producing cars can willfully and knowingly sell you a defective car resulting in a terrible casualty and they can't be prosecuted. And the lawyers can say to the public, well, they did everything lawfully. They can't be prosecuted because there's no criminal penalty in the auto safety law. Well, why isn't there a criminal penalty? Because Lloyd Cutler of the firm Wilmer, Cutler & Pickering representing the automobile manufacturers of America got it excised on the floor debate in the Senate and the House in 1966. And so they eliminated the criminal penalty for willful and knowing practices by auto companies that result in loss of life and limb. So that's what we have to always consider when the corporate lawyers say, oh, my clients have followed legal practices; they did everything legally. Yeah, but who created the legal framework that permitted what law professors call criminogenic activity to be immune from criminal prosecution?

Criminogenic activity comes from the common law of crimes. Statutory crimes didn't exist over 200 years ago. It was called common law criminality, which meant that if you behaved, or if a company, behaved in a way that was reckless, knowing and willfully produced property damage, or damaged life and limb, it could be prosecuted under the common law, just like the common law evolved for the law of torts. That's why it's important to understand this word criminogenic when these corporations say, oh, we've done nothing wrong,. They settle with the Federal Trade Commission or the Securities Exchange Commission for some measly fine, and they admit no wrongdoing. We didn't do anything wrong. Yeah, because you made sure that the Federal Criminal Code is obsolete, antiquated and toothless.

David Feldman: Ralph, you're talking about legal remedies and what the Supreme Court decides. But there are things Joe Biden could do right now through executive orders that would be challenged in the courts. But what could Joe Biden do through executive order right now that would make the workplace more democratic?

Ralph Nader: Well, if you listen to Bruce Fein, David, no executive order can go beyond existing statutory authority coming from Congress. But both parties have had presidents who use executive orders and executive decrees wildly. For example, the Iran Nuclear Accord, which is a treaty in every possible way, never went to the Senate because they knew they couldn't get the 2/3 vote for the treaty. They issued it out of the White House as an executive decree. So if you want to strictly obey the law, Joe Biden couldn't do very much that isn't authorized by existing statutes. Now, some statutes do give discretionary authority to presidents, too much. For example, they allow a president without any standards or criteria to declare a national emergency. Once a president declares a national emergency, he can do what your question relates to. He can issue an executive order to do this and that, and Congress let's that happen. They've very rarely said to a president that is an unlawful national emergency; you're just faking

a national emergency. For example, let's say Joe Biden declared a national emergency for student loan forgiveness. Well, is that really a national emergency in the sense of what Congress took those words to mean? Usually it's an imminent threat to national security or a terrible national disaster that's laid waste areas of regions in our country. So it's all very discretionary. The answer to your question is Biden can do pretty much whatever he wants by executive order. And until it's overturned years later through the appeals process to the Supreme Court, he'll be long gone and there'll be another president who can revoke the executive order, as Trump revoked many of Obama's executive orders in the first few days of his selected presidency--selected by the Electoral College.

The power of corporations is so extensive that they've prevented Congress and the Justice Department from even collecting data about corporate crime. The Justice Department has a street crime database that's very extensive, but they don't have a corporate crime database. And without a corporate crime database, you don't get the kind of reporting you would get on corporate crime, you don't get the kind of studies you would get, the kind of reports you would get, the kind of agendas that you would get in elections. But we are now involved in a coalition that Francesco DeSantis is going to talk about to get a corporate crime database established in the Justice Department on orders from Congress.

Steve Skrovan: That's right. So we're going to bring Francesco into the conversation here. Francesco, he's a public interest advocate and outreach coordinator at the Center for Study of Responsive Law, which is your organization, Ralph. And he has coordinated with the offices of Representative Scanlon and Senator Durbin to get the corporate crime database issue back on the agenda. And he's advocated for it among members of Congress and consumer, labor and environmental groups. Welcome to the *Ralph Nader Radio Hour*, Francesco DeSantis.

Francesco DeSantis: Thank you very much. Great to be here.

Steve Skrovan: So, Francesco, tell us what exactly you've been doing to get this corporate crime database back on the agenda.

Francesco DeSantis: Yeah. So I've been working with Rick Claypool from Public Citizen and the offices you just mentioned of Rep. Mary Gay Scanlon from Pennsylvania and Senator Durbin of Illinois who chairs the Judiciary Committee in the Senate, as well as being the number three Democrat in the Senate, the whip. And basically we have been working with their office for the past year or so to craft a bill that will not only revive the corporate crime database attempt that we've been trying to get established for decades going back to the '80s. And it's really such a common sense, basic baseline question. As Ralph said, we have not only a comprehensive FBI maintained database of street crime where they input data from the local level, the state level, the federal level, but each individual person under the law has a rap sheet. If you break the law it goes on your permanent record, so to speak. Corporations have no such thing, which is absurd. Corporations demand to be treated like people and yet if you talk about any kind of accountability, the equivalent for an individual person, they, just won't stand for it.

So we're trying to establish an equivalent rap sheet for corporations, so to speak, and we have some great support on this, like I said, Rep Scanlon and Senator Durbin. In addition, Representative Jamie Raskin, and Rashida Tlaib have signed on to the House version that's HR9362 in the House. And in the senate, Senator Blumenthal also signed on to Durbin's Bill,

which is the exact same bill just in the Senate. And we are continuing to have conversations with other members of the House and Senate to try to get them to cosponsor it. Obviously, it's unlikely that this will pass in the current session, which will be over in about a week. But we fully intend to reintroduce it in the next session.

And further, the Justice Department has every statutory authority to do this on their own. It completely, 100% falls within their purview to monitor crime, to attempt to arrest crime, to prevent recidivism--multiple offenders committing the same or different crimes over and over again; corporations are serial recidivists. So, we are very hopeful that the Justice Department will see the light on this issue. And frankly, they can do it themselves, but as long as we need to, we'll keep fighting for it in Congress. Moreover, it seems as though the Justice Department is starting to take corporate crime more seriously than they have in the past, specifically with Deputy Attorney General Lisa Monaco, who has made many pronouncements over the past year or so concerning strengthening the department's approach to corporate crime. And as Senator Durbin said when he introduced the bill, it would go a long way towards strengthening the American people's view that the Justice Department and criminal justice system is not completely stacked against the little guy and in favor of the giant corporations.

Steve Skrovan: But this seems very appropriate and logical because psychological studies have been done about corporate persons and it always comes down the same way. They're psychopaths. It would stand to reason that you might want to find out who the psychopaths among you are.

Francesco DeSantis: Absolutely. If you think about the kind of crimes that corporations engage in, they would be completely beyond the pale for any individual--poisoning the water of an entire town or multiple towns, the opioid crisis, drug dealing on an international scale decimating communities all over the country. These kinds of crimes sometimes go unpunished; sometimes they result in a slap on the wrist and non-prosecution agreement, deferred prosecution agreement and so on. But largely, generally speaking, there is no record, no comprehensive centralized database for these types of crimes and what the resolution of those is, which would go a long way, I think, towards strengthening responses to corporate crime as well.

If the American people--journalists and academics, prosecutors, and so on--were able to see that not only the "X Corporation" committed a crime, committed it again, committed it a third time, and each time got basically no serious penalty, I think that that would go a long way towards the political movement to demand more from the corporate criminal enforcement division of the Department of Justice and corporate crime and punishment more generally.

Ralph Nader: I think, Francesco, you may get some traction in the Senate next year with the new session because Senator Durbin has quite a bit of seniority and he's the chairman of the Senate Judiciary Committee. But you're going to have a lot of trouble in the House under Speaker Kevin McCarthy because the Republicans are not known to want to have any kind of corporate crime database. Do you have any Republican support at all in the House?

Francesco DeSantis: Thank you, Ralph. I appreciate that comment. And I completely agree that we're looking at more difficult conditions upon which to reintroduce in the next session in the House. We do see this as completely common sense legislation and lots of reasons why Republicans should support it. For one, it is a government transparency initiative. Another point

is that it would be a key resource for prosecutors and law enforcement. And more generally speaking, it really isn't adding any new spending to the budget, which is what conservatives have supposedly been objecting to for the last several decades. But no, the mismatch between what the new kind of class of Republicans, so-called post-MAGA populists, say about the Republican Party becoming the party for the working class, about standing up to “rogue corporations”, all of this has completely evaporated when it comes to actually supporting even the most basic measure of corporate accountability.

Ralph Nader: It seems the first order of business next year is to have highly publicized hearings in the Senate Judiciary Committee to alert the American people about the necessity and get their dander up as to why this wasn't done decades ago. It's so common sense, as you put it. So we'll start with the hearings with the Senate Judiciary Committee with the leaders being Senator Durbin, the chairman, Senator Richard Blumenthal from Connecticut, and Senator Sheldon Whitehouse from Rhode Island all of whom have spoken out about corporate crime. So they should be the leaders and establish a firm base in the Senate. Thank you very much, Francesco.

Francesco DeSantis: Thank you, Ralph.

Steve Skrovan: And thank you, Ralph. That's our show. For you podcast listeners, we have a few extras in the wrap up and you're going to want to download the transcript of this program at ralphnaderradiohour.com. We'll post that later in the week, so lookout for that. And you can receive the *Ralph Nader Radio Hour* in your inbox every week by subscribing on our Substack page. It's free. Just go to ralphnaderradiohour.com.

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

Ralph Nader: Thank you, everybody.