

RALPH NADER RADIO HOUR EP 253 TRANSCRIPT

Steve Skrovan: Welcome to the Ralph Nader Radio Hour, my name is Steve Skrovan along with my co-host David Feldman. Hello David, how are you doing today?

David Feldman: I'm very excited. It takes a simple majority to impeach Donald Trump.

Steve Skrovan: A simple majority of?

David Feldman: Congresspeople.

Steve Skrovan: We'll find that out for sure. We also have the man of the hour, Ralph Nader. Hello Ralph.

Ralph Nader: Hello.

Steve Skrovan: Yes. Say that with more conviction.

David Feldman: I think Ralph gets nervous when he hears me talk.

Steve Skrovan: Yeah, I think so. Let's try that again.

David Feldman: I'm very intimidating.

Steve Skrovan: We also have the man of the hour, Ralph Nader. Hello Ralph.

Ralph Nader: Hello.

Steve Skrovan: I think our show must lead the radio show/podcast league in having constitutional scholars as guests. Bruce Fein has been a regular guest. We've had Corey Brettschneider and Jamie Raskin. I may even be forgetting a couple here or there. Today we're gonna add to that list and bring you constitutional scholar and author, Alan Hirsch. Mr. Hirsch has written a book entitled *Impeaching the President: Past, Present and Future*. The threat of impeachment has been hanging over our current president, pretty much since he took the oath office. In his book, Professor Hirsch lays out a history of impeachment. We've had three of them--Andrew Johnson, Richard Nixon and Bill Clinton. He explores exactly how President Trump may be vulnerable to impeachment. And as always, we will head over to the National Press Building to check in with our Corporate Crime Reporter, Russell Mokhiber. If we have time, we'll try to knock out some listener questions. First, let's find out about impeaching the president. David.

David Feldman: Professor Alan Hirsch is an Instructor in the Humanities, and Chair of Justice and Law Studies Program at Williams College. Professor Hirsch is the author of numerous works, legal scholarship and many books including *For the People: What the Constitution Really Says about Your Rights*. It's co-authored with Akhil Amar. Also, he's written a *Citizen's Guide to Impeachment*, as well as the book we'll be discussing today, *Impeaching the President: Past, Present and Future*. Welcome to the Ralph Nader Radio Hour, Professor Alan Hirsch.

Alan Hirsch: It's well to be with you.

Ralph Nader: Welcome indeed. This is more and more of a complex issue as you get deeper and deeper in your book, *Impeaching the President: Past, Present and Future*, which is why I think you took these case studies--President Andrew Johnson, President Richard Nixon and President Bill Clinton--to try to elaborate the nuances and all the biplay that occurs when the process is initiated. Before we get into what I think most people want to hear about, [which] is the impeachment context of the Donald Trump presidency, just tell us briefly Alan Hirsch, the procedure involved, just how it winds its way.

Alan Hirsch: Okay Ralph, thanks. It starts with the House with Representatives investigating, and then should they so choose impeaching the president, which means it's akin to an accusation. Think of it as an indictment in the criminal justice system. The House says we accuse the president of bribery, treason or other high crimes and misdemeanors. That's what the Constitution sets forth as the standard. And, then if you get the majority in the House, it goes to the Senate for a trial. That's akin to a trial in the criminal justice system, although it's a little different. You have a hundred jurors or judges in the Senate. It's presided over by the chief justice. You need a two-thirds majority in order to remove a president. The only penalties for conviction on impeachment charges are removal from office, and potentially disqualification for future offices. You're not facing jail time or anything like that. There's no reasonable doubt requirement. There's no majority requirement. So, there are these differences from the criminal justice system, but it is a trial.

Ralph Nader: And, after the president leaves office, if he escapes impeachment and conviction, he's still vulnerable to the normal criminal laws arising out of his behavior in office, is that correct?

Alan Hirsch: That's correct. Even if he is removed via the impeachment process, he is liable for criminal charges. But that's after he leaves office.

Ralph Nader: In fact, the Justice Department was gonna pursue criminal action against Richard Nixon arising out of the Watergate cover-up and obstruction of justice before his successor, President Gerald Ford, pardoned him.

Alan Hirsch: And that's why Ford pardoned him.

Ralph Nader: Right, well, I'm trying to make some sort of structural sense so we can have a good conversation because there's so many aspects of this. Let me just tell the listeners a little bit about your Chapter 6. I'm just gonna go through the lessons; you had a bunch of lessons that comes from past episodes of removing the president--attempts, or trying to, or talking about. One, you say impeachment is a last resort and you describe that; Two, you say impeachment requires high crimes and misdemeanors and you try to describe that vague type of phrase, which has been wrestled over by many constitutional law people; third, you say impeachment requires unfitness for office; Four, impeachment requires popular support from the American people and; Five, impeachment and removal must be bipartisan. These are the lessons that you took from history of impeachment. Lesson six is impeachment must pass "the shoe test". In other words, the members who are of the party of the president have to ask themselves, well what if the shoe was on the other foot--a little empathy in other words. They don't just become steadfast partisan opponents of any impeachment process. Lesson seven, impeachment must be for the good of the nation; lesson eight, the tie goes to the president, except when he has forfeited that presumption; lesson nine, if all of the above conditions are met, removal is not only justified, but also mandatory; lesson ten, ditto, the 25th Amendment, which has been debated in the context of the Trump administration. Well, that's quite a series of hurdles. I'm gonna put before you an article by a very respected journalist in last Sunday's New York Times, David Leonhardt. I'm sure you've seen it. He's not an extremist; he's considered pretty prudent. The article is headed, "The People vs. Donald J. Trump: He is demonstrably unfit for office. What are we waiting for?" He had four grounds that he thought were ripe for impeachment by the House and the indictment in effect being sent to the Senate for trial. Number one was Trump has used the presidency for personal enrichment; number two, Trump has violated campaign finance laws; number three, Trump has obstructed justice; number four, Trump has subverted democracy.

Alan Hirsch: Okay, so the last two, let's take those first, obstruction of justice in subverting democracy. There, I would only say we need to be patient. We need to wait to see what Mr. Mueller has to say about those issues. That's close to the heart of what he's investigating and if those charges are true--if there was collusion between his campaign and a foreign adversary, to help him win the election; if he obstructed justice into the inquiry about those alleged facts, undoubtedly, those would be grounds for impeachment. So, I don't disagree with Leonhardt, except that I'd say, he's a little too impatient. We have to wait and see those charges substantiated. Now, number one, the personal enrichment and there I don't agree. Ralph, you and I had this discussion, I think before Trump even became president and I'm second to none in admiration for your decades of work requiring and insisting on more transparency in government. I think you're right, and he's right, to take seriously the Emoluments Clauses. The problem there is there is so little--virtually no litigation--as to exactly what is meant by emolument. Therefore it seems to me Trump is entitled to a ruling by a court. It's true that he should have divested his business interests. It's true that there are all kinds of possible conflicts of interest raised by those business interests. But, until a court rules that he has to take action, that he is in violation of the Emoluments Clauses, it seems to me, he shouldn't be impeached for something about which there is so little precedent.

Ralph Nader: There are cases in the courts, right, one of them lead by Professor Larry Tribe of Harvard law school.

Alan Hirsch: That's right, there are cases pending. So, we'll have to see what happens. Now when it comes to the campaign finances violation, I'm in agreement, with the major caveat that again, we still need to know more. But the payments to Stormy Daniels and Karen McDougal, which Trump's lawyer Michael Cohen has already plead guilty to and been sentenced for, certainly seem to me to potentially constitute an impeachable offense--especially if Trump deliberately concealed them in violation of campaign finance laws. The federal prosecutors in New York concluded that Cohen's involvement in those payments were criminal and were directed by the president. Now, I think there's a bit of a misnomer and we shouldn't contribute to it by calling them campaign finance violations. That makes them sound technical. Trump himself has already pointed out that these violations happen all the time; they usually result in a fine. But that's for minor and inadvertent infractions. What we might have here is more like election fraud. If someone deliberately violates the law to get himself elected, that's serious. In fact, that's exactly the sort of thing, it seems to me, that warrants removal from office. And the only reason I hesitate about all this is because the facts haven't been developed. Trump is certainly entitled to defend himself--to say what he knew about the payments, why they were made and so forth. But it seems to me if he was deliberately circumventing laws designed to promote transparency, precisely to help himself get elected by keeping the American people in the dark, that's definitely impeachable.

Ralph Nader: Okay. And, Trump has subverted democracy.

Alan Hirsch: Well there again, that's a little bit of a vague charge. We need the bill of indictment as it were. We need to know exactly how he subverted democracy. Is it by colluding with Russia? Is it by some other means? Subversion of democracy is ...

Ralph Nader: What Leonhardt included was, not just the insults--the press is the enemy of the people. He said, "Individually, his sins may not seem to deserve removal from office." I'm quoting him. "Collectively though, they exact, a terrible toll on American society. They cause people to lose their faith on which a democracy depends--faith in elections, in the justice system, in the basic notion of truth. No other president since Nixon has engaged in behavior remotely like Trump's. To accept it without sanction is ultimately to endorse it. Unpleasant though it is to remove a president, the costs and the risks of a continued Trump presidency are worse."

Alan Hirsch: So here, forgive me, but I'm going to agree and disagree. Starting with the disagreement, a president should not be impeached simply because the country or Congress thinks he's doing a poor job. He needs to have committed a high crime or misdemeanor, or bribery, or treason. That mostly refers to a specific and serious abuse of his power. We don't have a parliamentary system where you can call for vote of "no confidence" any time. That's my disagreement. If Leonhardt is suggesting that there's just this big sense in which the administration is corrupt through and through, I won't disagree with him. But I'd say that's not good enough to impeach a president. You need to be specific. On the other hand, there may be gray areas where it is appropriate for Congress to look at the entire tenor of an administration--where we just don't know if he's committed a serious enough offense, or if it's proven with sufficient specificity. But nevertheless, we think we might have to get rid of him. There's a valuable quote from the Nixon impeachment saga, which is in the book. It's when one congressman talks about as an analogy, going into a grocery store and looking for some ripe tomatoes, but they're all bruised and yucky. You move over to the fruit section and you find the apples are yucky, too. At a certain point, you conclude that this is a rotten store. That congressman had come to feel that way about the Nixon administration. It was rotten through and through, entirely corrupt. Now, as you know my book is not a polemic against Trump. I caution against the use of impeachment. But if members of Congress believe that impeachment or conviction is a close call, then it seems to me appropriate to consider a range of action. Leonhardt named some. You can add the Muslim travel ban, certainly the attacks on freedom of the press. At that point, you might conclude that this administration has forfeited the presumption against impeachment.

Ralph Nader: Well he did add, you know, he filled it out. He said, he has called for Comey, Hillary Clinton and other political opponents to be jailed. He has rejected the factual findings from the CIA, the Congressional Budget Office, research scientists and others. He has told bald lies about election fraud; what he's trying to say is the whole is greater than its parts.

Alan Hirsch: Yeah, I'm sympathetic with that reasoning, but I think you want to hang it all on some specific impeachable offense. Then if you, as I said, if there is a gray area, then it seems to me as a scale tipper, you can consider all those things.

Ralph Nader: This leaves us with a lot of questions. Let me start with the Founding Fathers. How routine or how exceptional did they see the use of the impeachment clause in the Constitution? As we all know, they were very, very weary of presidential power. They did not want another King George to launch us unilaterally into wars without the exclusive authority of Congress to declare war being obeyed. I mean the Federalist Papers are full of the fear of executive power. They developed the separation of powers in three branches as one consequence of their concern. But since impeachment applies, not just to the president and the vice president, any high official of the executive branch--secretaries of state, secretary of defense, secretary of interior, heads of regulatory agencies--did they think it should be more routine than perhaps the tenor of your book, Alan Hirsch. Because let's add one more point, basically what impeachment is, it says, Congress is so disgusted with this high official, they want to fire that person. That's what it really amounts to it. It isn't a criminal conviction. Nobody goes to jail who has been impeached. That may occur later. What do you think? What was their view? Was it to be exceptionally used?

Alan Hirsch: I think so. I think the most specific evidence is when George Mason, a delegate to the constitutional convention from Virginia, proposed that the president could be impeached from maladministration. And they rejected that specifically on the grounds that that's too broad. You're absolutely right that impeachment is a crucial tool; they were afraid of a king by another name. But it is a tool. We have another tool for getting rid of presidents who are not doing their job. That's called election. The whole idea of a representative democracy is that the people choose their leaders. They invest much more commitment and passion to electing the president than any other office and for obvious reasons; it's the most powerful person in the land. Removing a popularly elected president through congressional action is potentially a slap in the face of millions of Americans.

Ralph Nader: On the election point, the argument is there's not enough time to wait for an election. This is an emergency; he's unfit for office, the allegation is.

Alan Hirsch: Okay, but you said the right words there, "emergency," "unfit." This is not just a case of boy oh boy, this president is lousy, even if he gets us into war, he destroys the economy, that is what we have elections for. The Constitution is pretty clear on this Ralph; you can only impeach a president for treason, bribery and other high crimes and misdemeanors. Now I understand the latter phrase is a bit opaque, but they explicitly rejected the idea that it was a maladministration, basically, the president doing a bad job. Now you're pushing me into this corner of being so anti- impeachment. I want to emphasize, I am. But part of the reason is I think you get someone like Trump, who we may have to impeach and remove, and we don't want to dilute the standards so it seems like it's just a political act and the next president, the other party does the same thing. It really should be reserved for the

president and Trump may very well be the poster child for impeachment. But it should be reserved for the president who violates the Constitution. You're right, it doesn't have to be that they violate the criminal code. They don't have to specifically commit a criminal offense. But they have to commit a constitutional offense and if we start declaring that high crimes or misdemeanor means any dumb speech the president gives, and I agree Trump has done a dozen things that turn our heads, that make us sick, but it takes more.

Ralph Nader: Okay. What I'm asking about is the cumulative effect. Let's talk about, all presidents lie; all politicians lie. But there is a difference in degree. What happens when a president lies as a matter of practice, every day, every day, and creates false descriptions of conditions around the country--false descriptions of what causes what around the country, in the world. He creates a fantasy, which is replicated through his massive tweet followers and Fox News. The question I'm asking you, Alan Hirsch, is where does impeachment initiative come down on the critical mass being breached?

Alan Hirsch: Let me throw this back at you. Bill Clinton had a problem with the truth. Can we agree on that?

Ralph Nader: Yes.

Alan Hirsch: Would we have wanted him impeached over it?

Ralph Nader: This is where the critical mass comes in. For example, let me give you an extreme case: let's say we have a president and every day he gets up there and a hundred times, on a microphone, beamed to the American people, he lies on all kinds of things, dealing with serious matters. He lies on what he isn't doing oversees, is doing oversees that's violating the Constitution and international treaties. He lies about what number of people are receiving health care and being denied health care. Let's say he just does that day after day. Are we left with the 25th Amendment?

Alan Hirsch: Well, you just read my mind. I was going to say it sounds to me like you're describing someone with a pathological disease. That is the appropriate path to take then, is the 25th Amendment.

Ralph Nader: Explain that to our listeners.

Alan Hirsch: The 25th Amendment is a means--the other means for removing an unfit president it's not requiring a specific criminal act. It rather requires that he be unfit. Specifically, it requires the vice president, which is why it is improbable that it will be utilized--the vice president and a majority of the cabinet have to transmit to the Senate and the House, the written declaration that the president is unable to discharge the powers and duties of his office. Now that's vague. That doesn't require a crime. That requires just the inability to discharge the duties--typically presumed that it's because of a physical disability, but it doesn't have to be. The president gets to contest it. We don't want to get in the weeds here, but the Congress would then get to rule. I take your point that the president may be cumulatively a nightmare. And I would say, again that the rotten store metaphor is where that comes into play; that it can be taken into account in the context of the allegation of some specific wrongdoing. I think to say chronic dishonesty is an impeachable offense, is maybe a little bit broad, and almost a guarantee that every president is going to have people calling for impeachment on that basis.

Ralph Nader: Sure, that doesn't relate to whether the president should be impeached. I mean, people are going to ask for impeachment on the first day the president takes office.

Alan Hirsch: But we don't want those calls to be taken seriously, do we?

Ralph Nader: No. I mean, I'm always talking about this critical mass. At what point is the line crossed? Like with his dishonesty; at what point is the line crossed with his bigotry. And implementing his bigotry with actual executive actions.

Alan Hirsch: We both know Ralph that law is not a science. But I get nervous if I hear something like bigotry as a basis for impeachment. I would say the Muslim travel ban that was struck down by the courts, but a specific act of bigotry, that might be impeachable. The general idea that we think this president is a racist or something like that, you know, not good enough. You need the specifics to prevent impeachment from being abused routinely as a political football. You need what Alexander Hamilton called injuries done immediately to the society itself.

Ralph Nader: Which is why I connected the bigotry statements with actions that he pursues.

Alan Hirsch: Okay, but if you get the actions, you may have the impeachable offense. Then as I said, I agree with you that the cumulative effect--what I call the rotten store--if you can look around and say, wow, this administration just, discards our constitutional norms on a routine basis. That will definitely be relevant if we're in a gray area, based on a credible allegation of a specific impeachable offense.

Ralph Nader: Let's draw a comparison here--do you think that Nixon performed impeachable acts that warranted the movement by a bipartisan force in the House of Representatives to move to the floor and impeach him.

Alan Hirsch: I do, I think that Nixon being forced to resign under threat of imminent impeachment is a Constitutional success story.

Ralph Nader: All right, now, does it follow that you do not think as of now, from what we know about all the far flung behaviors and actions of Donald Trump, that the House of Representatives has enough to warrant a proper constitutional impeachment action.

Alan Hirsch: I would say that's probably the case, although I think that the election fraud with respect to deliberate circumvention of campaign finance laws is very possibly impeachable. They need to be a little bit of investigation first. Based on what we know, I think there is a very, very good chance that that would result in impeachment. I think then of course everything that Special Counsel Mueller is looking into is quite likely to produce impeachable offenses. I just don't want to jump the gun on it.

Ralph Nader: Now on the Mueller inquiry, how does that proceed? Because he could try to subpoena Trump; do you think that's authorized?

Alan Hirsch: Yeah, I do. I think Trump may claim executive privilege and refuse to comply with such a subpoena. In which case I think he would end up before the courts, which probably would rule that he's not immune from subpoena.

Ralph Nader: Do you think that there's any exaggerated use of the pardon power that could be an impeachable offense? That he could pardon his family, pardon himself.

Alan Hirsch: Right. Let's be clear that I think the impeachments to date, such as Joe Arpaio and Scooter Libby, they may have been unseemly, especially Arpaio, which almost seems like a reward for political loyalty. But I don't think they're impeachable. However, I would not say that the misuse of the pardon power can never be a basis for impeachment. I think the examples you gave, if you were to pardon members of your family, yourself, all members of your political party; there are any number of possible abuses of the pardon power, just like any other articles where power can be abused.

Ralph Nader: Do you think that a sitting president can be indicted?

Alan Hirsch: That's a great question, Ralph. You know the current Justice Department guidelines say that he cannot be. I believe a sitting president cannot be prosecuted. That would interfere with his performing the duties of the job. I am not so sure that he can't be indicted. It seems to me that's a different story. And analysts have been a little too glib in moving from the one to the other.

Ralph Nader: Do you think that the House of Representatives can do something short of an impeachment resolution, such as a reprimand? So, it doesn't shake the constitutional foundations, but it evinces a position by the House of Representatives.

Alan Hirsch: I do, I remember when there was talk of censoring Clinton and people said, no, there's no constitutional authority for Congress to do that. I said, sure there is, the 1st Amendment. Congress is allowed to say what it wants. They pass resolutions all the time, which amount to nothing more than declarations of their beliefs or intent. So, I think you can reprimand the president. I don't think it would be particularly meaningful. And don't get the idea that I don't think this president can or should be impeached. I think it's premature. But I think it is very possible if we're having this conversation again in two, or four, or six months. I'll be right there with you and calling for his impeachment.

Ralph Nader: One of your lessons was, impeachment had to be supported by the American people. Could you spell that out? How would that be demonstrated?

Alan Hirsch: The usual way is public opinion polls. I'm not suggesting this as an absolute requirement. What I am suggesting is, this was one of the lessons from the Clinton impeachment. There was no chance that he was ever going to be convicted. What I argue in the book is impeachment shouldn't be symbolic--a way of making points or scoring political points. It should only be undertaken if there's a legitimate chance of success. Realistically, there's not a realistic chance except if the people, broadly speaking, support impeachment. But having said that, I don't think you need to poll the Senate or poll the American people and get a certain result before you proceed. That's too static a way of thinking about it. Things change when you pursue proper action. Nixon, when the impeachment process started, there were very few Republicans who were going along with it. But by the time all the information had been unearthed relevant his wrong-doing, it had bipartisan support. I would say, here's my way of looking at it, and again, this is art more than science; you don't need the votes to start the impeachment process. That would be Alice in Wonderland. Verdict first, trial later. What you do need is a realistic chance of success.

Ralph Nader: Then let's put another hypothetical. Unaffiliated with the official duties of a president, the president is sued for sexual assault under the tort law in the civil action by a woman. The case goes

against the president. He loses. In the process, the judge determines that he has committed perjury. Can that be used as an impeachable offense before the House Representatives?

Alan Hirsch: It sounds like there's a particular case you have in mind. But let me broaden the discussion, as a general proposition, we're not looking for private actions. Again, what Hamilton said, "an injury to the society itself". There must be exceptions to that. If the president commits murder, if the president commits armed robbery, they've just abused the public trust. We can't view them as our commander in chief. But by and large, private misconduct is not the sort of thing we're looking for. Now in the case of Clinton, you did have perjury. So, the Republicans had a kind of airtight case to be made. The leader of the executive branch is violating an oath to tell the truth and that's pretty serious business. I think under most circumstances that would be true. But I don't think you can ignore the context, which is the lies Clinton told were in the context of, not only a civil suit, but a civil suit that was eventually dismissed as lacking merit and the lies he told were that of a collateral matter later deemed irrelevant by the judge in case and clearly told to preserve his marriage. I don't know. I take the view, and the American people took the same view, that this is not what impeachment was about--telling lies about who you had an affair with in the context of a politically motivated lawsuit. But I'm not going to rule out the idea that private conduct can disqualify a president from office. Again, a president who commits murder clearly cannot continue to serve.

Ralph Nader: Back to official duties, when do you cross the line into impeachable territory? All presidents fail to faithfully execute all the laws. It could be an impossibility. Sometimes it's negligent; sometimes it's too burdensome; sometimes the laws are too arbitrary. Let's give him that leeway. What happens when a President Trump comes in and he puts in people like Scott Pruitt at EPA and Mulvaney at the Consumer Financial Protection Bureau and Zinke at Department of Interior, where they blatantly, especially the first two, are shutting down the enforcement of the agency. They are blocking civil servants; they're pushing scientists out; they're pulling back on courtroom cases that are actually in court. They're pushing to repeal regulations and they're blatantly saying, we're not enforcing these laws. Now at what point does the president who appoints these people, praises them in the public realm, and certainly it shows that they're doing his bidding--at what point does that grievously violate the obligation to faithfully execute the laws of the land?

Alan Hirsch: So, from one lawyer to another, in your skilful presentation of the case against him, you said they blatantly say they are not enforcing the law. I don't think they're that stupid to blatantly say it. I think they interpret the law differently from (the way) you do, in a way that I agree, contradicts the spirit of the laws and so forth. But all of that Ralph, it seems to me is what we have elections for. You have just written what should be the speech coming out of the next 4 to 5 democratic nominees for president, who are about to declare in the next few months. That's what they should be talking about and they should be getting the American people to go along. But having a cabinet official or several who are knuckleheads, violate the spirit of good government, who disagree with you and me on everything from A-Z and even engage in some shady practices--that's not impeachable.

Ralph Nader: See, it's much worse than what you're saying. They basically are blatant. You can take Scott Pruitt; you can take Mulvaney; they basically are shutting down the agencies. They're saying, we're not gonna enforce these regulations; we're gonna repeal them. Mulvaney said, the Consumer Financial Protection Bureau should be to protect Wall Street. I mean in a hundred ways, they basically are shutting down the agencies, shutting down the civil service, scuttling budgets, rearranging the priorities into becoming captured regulatory agencies.

Alan Hirsch: And, what do you think Congress can do about that?

Ralph Nader: Well, obviously, we're expecting hearings from the House of Representatives.

Alan Hirsch: And that's my point. This is part of, I hate to use this word in connection with the Trump cabinet, but this is part of the normal political process. Impeachment is when you have something abnormal.

Ralph Nader: Let me push you a little bit on this. When is a president not faithfully executing the laws to a degree that it's impeachable, under our Constitution?

Alan Hirsch: I suppose I could fall back on the "We know it when we see it." We know that when Richard Nixon is using the IRS to harass political opponents, and is having the CIA obstruct an FBI investigation, then we know you've crossed the line. That's a blatant misuse of, a complete abuse of his Article 2 Powers. When you have cabinet officials who simply do a terrible, terrible job that seems contrary to the spirit of the mission of their department, that still feels to me like it's in the realm of "normal politics." That's where Congress--that's what you have the political battle; that's what you have elections for.

Ralph Nader: That's all true. But in the meantime, people are getting sick, dying; they're losing their homes; they're losing their savings. It's always the time factor. The point I want to make with you is that I don't think they faithfully execute the laws, has any boundaries, if the only time you want to make it into impeachable offense is going after an affirmative president action like Nixon and the IRS; instead of simply doing nothing, shutting down the operation.

Alan Hirsch: Yeah, so Ralph, again, I think you might have to put a little more trust in Congress, in the courts. There are vehicles for resisting all of the abuses you're talking about. And, the only question, which is separating us, is when does the extreme remedy of impeachment come into play? If I can't

convince you of the constitutional matter, I would try convince you as a tactical matter. Can you imagine right now, if Congress, without waiting for the Mueller report, they listen to Ralph Nader and they said, my God this president has to go; there's too much suffering in the meantime. And they set in motion impeachment proceedings. What would happen? Trump would be acquitted in the Senate, because the case would not have been made, because the American people aren't ready for it. The Democrats would take a bath next election, and Trump would be rewarded for it.

Ralph Nader: Okay, you're pointing to the likelihood of conviction. Okay, let me, in the remaining time, Alan Hirsch, the author of the brand-new book, *Impeaching the President: Past, Present and Future*, produced by City Lights. It's in San Francisco, extremely readable and shall we say, approaching a level of becoming a duty of citizenship to read this book, given the daily headlines. Here's my last topic I'd like to discuss with you. If 5,000 people were peacefully assembling in a ballpark, protesting some public issue, and the president slaughtered them. He had no legal basis for it; they presented absolutely no threat to him, but he slaughtered them after a preliminary campaign of saying, they are gonna attack the White House and the ballpark is in Atlanta, Georgia. Would that be an impeachable offense?

Alan Hirsch: Yes.

Ralph Nader: Okay. Why isn't the slaughter of the Iraqis under an unconstitutional war? It was never declared; it violated the UN charter, which is a treaty--as well as Geneva Treaties; it violated a number of federal statutes and Bush and Cheney lied about the reasons they were going to war against Iraq in months before the invasion in March 2003. Why isn't that an impeachable offense? And do you give a pass for terrible acts abroad by a president that are illegal and unconstitutional and brutal, compared to similar behavior domestically? Does the impeachment clause stop at the border?

Alan Hirsch: No. The last question is the easy one in your hypothetical. You can of course be impeached for foreign policy actions.

Ralph Nader: What would they be?

Alan Hirsch: What's a little tricky, in the case of the Iraq War, is you're right that there was no formal declaration of war, but there pretty clearly was a congressional acquiescence. Now if you were to say that that was won by lies about the presence of weapons of mass destruction, I think the problem is the empirical one of proving that. Because the Bush administration and their supporters would scream till the chickens come home that every intelligence agency believed they had the weapons; every foreign government believed they had the weapons. And, I don't want to get into the weeds on that, because frankly that is outside my area of expertise, and I think that's where you'd run in to some trouble. But I certainly endorse your proposition that an illegal war could be the basis for an impeachable offense.

Ralph Nader: In your book you mention the illegal bombing of Cambodia by Nixon. What troubles me a bit is the way the courts abandon their duty by just saying it's a political question. You can slaughter people; take it up with Congress.

Alan Hirsch: And Congress has abandoned its duty. You and I are totally in agreement that when it comes to the war-making power, it should be a three-branch operation, and it's become a one-branch operation and there's a long period of complicity in that.

Ralph Nader: This is very disturbing to people in the world from Cambodia to Iraq. Let's take the Cambodia one. That was clearly Kissinger/Nixon--clearly illegal. It led to the horrible regime that arose and slaughtered over a million and a half Cambodians--the Pol Pot regime. Would that be an impeachable offense?

Alan Hirsch: I think under the right circumstances it could be. I think there are two reasons why Congress was right to reject that article of impeachment in the case of Nixon. One is there was congressional acquiescence. Two, you may take issue with this, but there were better reasons to impeach him. And we didn't want an impeachment process and trial, had it come to that, to turn on this foreign policy issues that were debatable when you had clear abuse of domestic powers.

Ralph Nader: Yes, on the Iraq thing, obviously it was determined soon after there were no weapons of mass destruction and the emissary of Bush came back and said, "Boss, I'm sorry we couldn't find anything." But the whole foreign policy, military policy is out of control. I mean, more than a few Constitutional observers have pointed out that the abdication of Congresses Constitutional authority to the presidency is totally out of control. You can topple the regime in Libya using a black budget appropriation in the Pentagon--no authorization, no appropriation, no declaration of war--and get away with it.

Alan Hirsch: No, but in terms of impeachment, I think you'd agree your argument proves too much, which is if we're writing on a blank slate, we might try to prevent all of that. But you've just made the last ten presidents all impeachable.

Ralph Nader: Well, this is the crisis of our democracy, Alan. I really do...

Alan Hirsch: No, but I think the way to address that crisis is not going to be through the impeachment clause.

Ralph Nader: Well, we're running out of time Alan Hirsch, author of the great book, *Impeaching the President: Past, Present and Future*, a very educational book for all seasons and all citizens. If you were able to amend the Constitution, would you?

Alan Hirsch: In the context of the impeachment clause?

Ralph Nader: Yeah, would you improve it, weaken it, make it more specific, what would you do?

Alan Hirsch: Looking to my next book, I think I'd get rid of the Electoral College first. But I'm filibustering while I think about what I would do with impeachment. No, to be honest Ralph, I think the impeachment clause has worked well, in so far as it was used to drive Richard Nixon from office, which was the proper outcome. It did not drive Bill Clinton and Andrew Johnson from office and I believe that was the right outcome. We'll have this conversation again maybe in six months, a year or two, and we'll see how things play out with the current president. But I think it's worked pretty well. I understand you have an impatience, and want to hold presidents to a high legal standard, as do I. But you might be more willing to use impeachment for that purpose. I think that would be too destabilizing. So, I think it was established as a crucial weapon expected to be used rarely. I don't know that we need to change the language. Maybe we could get a committee together to spell out high crimes and misdemeanors a little bit.

Ralph Nader: Well on that note, thank you very much Alan Hirsch, Yale Law School, author of several books, one of them, which we sponsored. *Talking Heads on Television*, which is very prescient today. We're really out of time Alan. Maybe Steve and David are thirsting to ask you one more question.

Steve Skrovan: So, let me see if I understand this correctly professor, so far what you think the smoking gun for an impeachment of Donald Trump would be is election fraud, which would be coming out of the Mueller investigation?

Alan Hirsch: No, it's what we already have with the payments to Stormy Daniels and Karen McDougal, which is pursued by the Southern District [Court] of New York and probably not by Mueller.

Steve Skrovan: That's right because Bruce Fein was telling us, and correct me if I'm wrong, Ralph, that the Mueller investigation really has nothing to do with impeachment. It has to be/it has to come out of the House Judiciary Committee, in their own investigation, right?

Ralph Nader: Yeah, I was gonna ask you that, Alan, is he gonna be just left with, given who is attorney general and president, is he gonna be just left with a report to Congress?

Alan Hirsch: Probably, yeah. I mean the alternative is he could indict Trump and most likely it will be determined by the courts that he can't, even though I think there's a case to be made that he can. But I think what we're most likely going to get out of him is a report, which the attorney general will probably try to keep a secret, but the House will subpoena. Then they can certainly initiate impeachment proceedings based on his report. They don't have to pretend it doesn't exist, and then start from scratch with an independent inquiry.

Ralph Nader: On the other hand, they could ask him to testify the contents of his report.

Alan Hirsch: Absolutely. Even if they can't get their hands on it, there's no way they can stop him from talking to them. As for the specific charges, it's looking more today, than it did twenty-four hours ago like collusion is on the table. You saw this stuff with Manafort?

Steve Skrovan: Yes. So, you think that would be the smoking gun that would get the Senate Republicans that you need to turn the corner?

Alan Hirsch: I don't know about that. I mean, it's gonna take a lot to get them. Yeah, it might be that. It might be actual collusion is what it would take to get them. I think there's a very, very strong likelihood that Mueller will make a compelling case for obstruction. I think we already have--we need a little more fact finding--but a pretty good case for election fraud. Then yeah, it might be the only thing that actually turns the Republicans in the Senate, is collusion. But even that is looking more likely.

Ralph Nader: From the layman's point of view, this is the most overwhelming case day by day for obstruction of justice in American history.

Alan Hirsch: For sure. Then we still have to come up against the fact that the voters--don't we want them to get a crack at him--to have the Congress...?

Steve Skrovan: Yeah. That would probably be the answer to his very strong base of supporters that if you do it through impeachment, then oh, it's the Deep State; it's the elites who have taken this guy they

don't like out, because they're not able to get enough money, or, like Mitt Romney, he just doesn't have the right style; he loves all the policies, but he's not saying it in the right way.

Ralph Nader: That's why it has to be an overwhelming case. Did we do the obstruction of justice in Leonhardt? Did you go through that Alan?

Alan Hirsch: No. All I said is we need the Mueller report. I think it's going to be a powerful case for obstruction. Starting with the firing Comey, but it's going to be A to Z. It's probably gonna be witness tampering, God knows what else.

Ralph Nader: Oh yeah, pounding on Sessions--I mean, think what he did out of sight, yeah.

Alan Hirsch: Absolutely, the perfect storm for impeachment is Nixon, because it's after he won an election, but did it through dishonest means in part and where everything we learned about him was after the election. So, things are a little trickier here, where a lot of what we know, we could just say let's let the voters decide. And then, if God forbid, they re-elect him, it becomes really tough to impeach him.

Ralph Nader: The thing is if he resigns, it gets so hot, he resigns, he appoints Pence; Pence pardons him. What happens?

Alan Hirsch: Probably Pence learns the lessons of history and doesn't pardon him, because that cost Ford the presidency, probably.

Ralph Nader: But would he get away with it?

Alan Hirsch: Yeah, I mean the real question is, what if Pence takes the office on the condition that he pardon Trump, which some think is what happened with Ford. I don't know, I don't even want to start thinking about President Pence. I just don't want to get nauseous right now.

Ralph Nader: That's why I asked you that last question, in terms of clarifying--constitutionally clarifying in a few paragraphs.

Alan Hirsch: But isn't that sobering? As excited as you could get about getting rid of Trump, it leaves us with someone who is awful, and probably more effective.

Ralph Nader: But you know, that's the main danger among the Republicans in Congress. The main danger to Trump is Pence. They love him.

Alan Hirsch: Yeah, that's true. On the other hand, don't you think the party suffers politically a great deal that Trump's base, which is uniquely bonded with him, gets very upset if he's driven out; they don't just rally behind Pence.

Ralph Nader: Either way they lose.

Alan Hirsch: I think so, yeah.

David Feldman: Can I ask a quick question that I think about often? What if Trump does get re-elected--we don't impeach him; the Democrats have the House, maybe the Senate, and we spend the next six years grinding down the power of the executive branch and we see the ascendancy of the legislative branch. Couldn't that be a good thing, where we completely strip the president of his powers--not Trump, but the office; wouldn't that be a good thing?

Alan Hirsch: I don't know, but I think six more years of Trump would have more unintended negative consequences that we could begin to perceive.

Ralph Nader: I agree with that.

David Feldman: Okay. I don't mean to belabor the point, but that's how I sleep at night, thinking maybe we'll come out of this where the executive branch has been put in its place.

Alan Hirsch: Yeah, and I'm just gonna say, I've been able to sleep nights the last years, thinking that this would energize the citizenry. And I think to some extent that's happened, but your hypothetical in which he gets re-elected just throws that out the window.

Steve Skrovan: And there was a little bit of that after Nixon, in Watergate with hearings and where the Congress said, oh, we better maybe assert ourselves a little bit more here.

David Feldman: Yeah, the myth, like the War Powers Act, that there's a threat and only the president can act quickly. That's been shown to be fallacious, that you can take time before we go to war--the ticking clock fallacy. Maybe, I don't know, I sleep at night thinking Trump might be a gift.

Alan Hirsch: That discredits presidential power basically.

David Feldman: Yeah, but we don't really need that strong a president; there aren't these pressing issues. Everything can be resolved democratically without the president acting unilaterally.

Ralph Nader: You're talking about rebalancing between the branches.

David Feldman: Yeah.

Alan Hirsch: Isn't it just as likely that he will further tilt it because he will respect no restraints, and the Congress continues to acquiesce?

Ralph Nader: Yes, wag the dog. He could start a war.

Alan Hirsch: Wag the dog--we're just about to get possibly national emergency declared so we can build a wall.

Ralph Nader: Yeah. Someone said, if he declares a national emergency—a Republican said this the other day on NPR--that would be an impeachable offense. Listen, thanks very much Alan.

Alan Hirsch: Totally my pleasure. Anytime.

Ralph Nader: Okay, let's stay in touch. If I get you some more interviews on this book, are you okay with that?

Alan Hirsch: Yeah, absolutely.

Ralph Nader: Okay good. I take it you haven't been on NPR and PBS on this?

Alan Hirsch: I have not. Done a bunch of radio shows, but not the big ones so if you want to make some rain, by all means.

Ralph Nader: Yeah, okay. That's good.

Alan Hirsch: Thanks again, bye gentlemen.

Ralph Nader: Thank you, yup, buh bye.

Steve Skrovan: We have been speaking with constitutional scholar Alan Hirsch, author of *Impeaching the President*. We will link to that at ralphnaderradiohour.com. Now let's find out what news is breaking in the corporate crime world with Russell Mokhiber.

Russell Mokhiber: From the National Press Building in Washington DC, this is your Corporate Crime Reporter "Morning Minute" for Friday, January 11, 2019. I'm Russell Mokhiber. In a major victory for anti-pipeline activists, the Maryland Board of Public Works voted last week three to nothing to deny TransCanada an easement to put its fracked gas pipeline under the Potomac River, just west of Hancock, Maryland. The decision deals a major blow, not just to TransCanada, but to the Mountaineer Gas Pipeline that it will connect to in West Virginia. "I was thrilled to be there today with around forty other citizens of West Virginia, Maryland, and Virginia to see the [Maryland] Board of Public Works vote against the Columbia gas TransCanada portion of the Eastern Panhandle expansion project," said Tracy Cannon of the Eastern Panhandle Protectors, and one of the lead organizers against the pipeline. "It's also a great day for all of those living in the path of the pipeline. If the Maryland part of the pipeline is never built, then there will never be gas to supply the West Virginia part of the pipeline." For the Corporate Crime Reporter, I'm Russell Mokhiber.

Steve Skrovan: Hey, let's knock out some listener questions here. David do the honors.

David Feldman: Steve Donovan writes, Ralph, how can I get an autographed copy of *How the Rats Re-Formed the Congress*?

Ralph Nader: That's an easy one Steve, just go to ratsreformcongress.org--you get an autographed copy and you can also buy five autographed copies at a discount.

Steve Skrovan: All right, thank you for that question Steve. Our next question comes from Bradley S. Chasse, I believe. He wants to know who is in Maine. He said, in the recent January 5th Episode of the Radio Hour, you spoke of a friend in Maine who asked LeBron James about respecting the workers of his clothing brand. He says, "Well I'm in Maine. I'm curious who this was. I'd like to network with local activists and this may be someone who does good in Maine."

Ralph Nader: Indeed. His name is Lance Tapley. He's fairly well known in media circles in Maine as a citizen activist, and as a good investigative reporter. Lance Tapley.

Steve Skrovan: All right, very good. Thank you for that question Bradley.

David Feldman: This next question comes from Jon Robert Ralston. He writes, "Dear Ralph, with regards to your observation and criticism of the term climate change not being emphatic enough to accurately capture the urgency of the situation, I wonder why advocates who are active on the issue don't just go to the logical extension of climate change and talk about it in terms of extinction. Is extinction too alarming and therefore counterproductive? I'd like your thoughts." He adds, "Thank you and keep up the great work."

Ralph Nader: Certainly, climate disruption can produce extinction of certain subhuman species. But it hasn't yet been predicted to extinguish the human species. So, I would support using words like climate disruption, climate devastation, climate catastrophe, or climate crisis.

Steve Skrovan: Very good, our next question comes from David P. He says he's been an admirer of yours Ralph since the 60's. He owned a Corvair, but he read Unsafe at Any Speed and last week he was watching a show, which I've actually watched, it's called Adam Ruins Everything. It's hosted by Adam Conover who is a comedian. It's a show about debunking a lot of popular myths. He says, "There was a show where they did about airline travel." He's quoting here, he says, "In the late 1970's, liberal consumer advocates believed that without regulation, there would be more airline competition and thus even lower prices so they launched a campaign against the Civil Aeronautics Board without Ralph Nader." And "flying is too expensive; all Americans should be able to afford airplane tickets. I can see that working for sure." He's quoting you in the show. Conover then goes on to say, "Unfortunately, Ralph Nader was wrong. According to report by a former FAA official, while ticket prices did temporarily

drop, prices are now in fact higher than they would have been if regulation had continued.” And he’s saying, “Well, what’s that all about?”

Ralph Nader: Well first of all when I testified before Congress, I had two conditions for deregulation. One is strong enforcement of the anti-trust laws to prevent mergers. And the other is strong enforcement and safety laws to protect passengers. The listener didn’t have a complete description of my conditions. Second of all, without deregulation, you wouldn’t have had Southwest Airlines, which ushered in opportunities for tens of millions of people who couldn’t afford to fly. And while the fares are tightening now, and they’re going up because the mergers were not stopped and we’re back with fewer larger airlines controlling the market than before deregulation, there was a whole period of years when there were all kinds of cheaper fares. Regional People Express, for example, would go from New York to Buffalo, for just a few dollars. And so, it did work. But like anything else, we have to stay vigilant and try to break up any kind of monopolistic practices by the airlines, but I was very cautious about deregulation without anti-merger and safety enforcement being part of the deal.

David Feldman: People Express was what I flew during most of my college touring as a stand-up comedian in the early 80’s. It was like refugee airlines.

Ralph Nader: But it’s cheaper than buses.

David Feldman: Yeah, it was like a bus with wings, essentially, yeah.

Steve Skrovan: It depends on which party and which president is deregulating and they call something deregulation, but sometimes it’s just an opportunity to share the loot with your cronies.

Ralph Nader: Yeah, it has a force of its own now that transcends presidents. I mean they’re down to 4 major carriers for heaven’s sake.

Steve Skrovan: Yeah. Well that’s our show. I want to thank our guest again today Alan Hirsch, author of *Impeaching the President*. For those of you listening on the radio we’re gonna check out right now and a transcript of this show will appear on the Ralph Nader Radio Hour website soon after the episode is posted.

David Feldman: For Ralph Nader’s weekly column--it’s free--go to nader.org. For more from Russell Mokhiber, go to corporatecrimereporter.com.

Steve Skrovan: Ralph has got two new books out, the fable, How the Rats Re-Formed the Congress. To acquire a copy of that, go to retreformcongress.org. To the Ramparts: How Bush and Obama Paved the Way for the Trump Presidency and Why It Isn't Too Late to Reverse Course. We will link to that also.

David Feldman: The producers of Ralph Nader Radio Hour are Jimmy Lee Wirt and Matthew Maran. Our executive producer is Alan Minsky.

Steve Skrovan: Our theme music "Stand Up, Rise Up" was written and performed by Kemp Harris and our proof reader is Elisabeth Solomon.

David Feldman: Join us next week for another edition of the Ralph Nader Radio Hour. Thank you Ralph.

Ralph Nader: Thank you everybody. Happy New Year. A just New Year we hope; productive New Year for all. If you like this program, spread the word. Get some more radio stations to take it on.