

RALPH NADER RADIO HOUR EP 254 TRANSCRIPT

Steve Skrovan: Welcome to the Ralph Nader Radio Hour. My name is Steve Skrovan, along with the man of the hour, Ralph Nader. Hello, Ralph.

Ralph Nader: Hello everybody and Happy New Year.

Steve Skrovan: On today's show, we welcome Oscar nominated an Emmy-winning writer, director, Josh Fox. Most of you may be familiar with his documentaries that blew the lid off the wonderful world of fracking, *Gasland Parts One and Two*. He also lectures around the country and has written a book entitled *The Truth Has Changed*. We're going to be talking to him about that as well as all that he has endured going up against the fossil fuel industry. In the second half of the show, we welcome back constitutional scholar and regular guest, Bruce Fein. In the past we've talked to Bruce about war powers, John Bolton, Brett Kavanaugh, the Mueller investigation. Today, he's going to give us his take on the confirmation hearing of Donald Trump's latest nominee for Attorney General, William Barr, and what was asked and what wasn't asked more importantly.

As always in the middle we will head over to the National Press building to check in with our Corporate Crime Reporter Russell Mohkiber. But first, I remember sitting in a theater a few years back, watching a movie about something I was not that familiar with. It was this term called fracking. And I saw a man put a match up to the faucet of his kitchen sink. He turns the handle on the faucet and it explodes into flames. Well, our first guest wrote and directed that film with his own little consumer video camera and he started a fire of his own. Josh Fox is the Oscar-nominated, Emmy-winning writer, director of *Gasland Parts One and Two*. He is internationally recognized as a spokesperson and leader on the issue of fracking and extreme energy development.

In 2017, he was awarded his third Environmental Media Association Award for Best Documentary for his latest film, *How to Let Go of the World and Love Everything (All the Things) Climate Can't Change*. His most recent project and his first book is entitled *The Truth has Changed*, which is also being produced across the country as a theatrical performance piece. Welcome to the Ralph Nader Radio Hour, Josh Fox.

Josh Fox: Okay, terrific. Thanks for having me on.

Ralph Nader: Welcome indeed, Josh. This is one documentary that really had an impact. There are so many great documentaries now. We live in the world of 'Golden Age' of documentaries but most of

them just peter out; they don't really affect what they're documenting and urging for change. But I know for a fact that your documentary, *Gasland*, was very instrumental in helping the citizens in the state of New York persuade Governor Cuomo to prevent fracking in the state of New York compared to the horrific fracking that went on in Pennsylvania where you lived and grew up--fracking that contaminated water exposed people to toxics. And now the small landowners who signed these leases are complaining they're being cheated under their leases in terms of the royalty. So why don't you tell us how you got started in this because it couldn't be more personal.

Josh Fox: Well, *Gasland* began with my family getting an offer to drill and to frack on our land, which was an offer initially worth about 100 thousand dollars--a little bit more. It clearly would have been more than that over time because if they did drill and send us royalties or whatever. But I mean the initial offers in that period of time, in 2008 and 2009—it was like a bonanza. We had 20 acres, not much land, but they're going 3,4,5 thousand dollars an acre and a lot of offers for just initial drilling. Of course, this was not really true in terms of what the oil industry ended up providing to people, because then they would send them fees and then they would send them pipeline reductions and then they would say, the gas isn't worth that much now. So, they would find a way to really chisel everybody's money down. And what the fracking industry does consistently all across the world is take people's land away, toxify it and despoil it, find one way or another to either get them to sign with basically a whole suite of lies about what's going to happen when they do this, or they just go and get the rights behind people's backs by buying mineral rights without landowners knowing it or creating laws where they split the estate where if people hold surface rights, the gas industry can come in, or it's just controlled by government. And this is happening all across the world. The fracking industry represents the largest expansion of fossil fuels on the surface of the planet today. When we talk about needing a Green New Deal, when we talk about needing to transform our energy system away from fossil fuels, what we have to talk about is banning fracking. Those two things go hand in hand. And unfortunately, we saw under the Obama administration and under Hillary Clinton's leadership as Secretary of State, a huge expansion of fracking across America and across the world, being promoted as a better alternative to coal for electricity generation. Of course that was also a lie. Fracking is worse than coal when it comes to climate change because the methane itself leaks into the atmosphere as well as getting CO2 from burning the gas and altogether you have a higher greenhouse gas emissions profile from fracking than even from coal, which is one of our worst fuels that we could possibly develop. So, the whole thing is built on a stack of lies that is promoted by the fossil fuel industry and these are the same guys that have been doing this thing for centuries: Exxon, Mobil, BP, Shell, Chevron--the same suite of super-majors that are the most powerful companies on the face of the planet pushing fracking. So, a lot of people have been fighting back worldwide. I mean the film gave people information. The film, because it was on HBO, because it was sold in 30 countries worldwide, and those flaming faucet clips of people's water being contaminated by the drilling and fracking certainly lit people's imagination and people's understanding and enthusiasm on fire for this. But really, it was citizens' movements--people who bound together in their backyards and in their communities and their towns and their cities and states and countries where we have had enormous progress. We've banned fracking in the state of New York. We have many local and municipal bans throughout the United States. We've banned fracking in the majority of countries in Europe, in France, in Italy, in Germany, in the Netherlands, in Scotland, in Ireland. Most of the continent

of Europe has banned fracking, even Poland. So we have seen a huge amount of progress on this issue based on citizen action and good information.

Ralph Nader: But, just to go back, when fracking man approached your dad, apparently, he lied. He said, we don't use chemicals and of course a million people in Pennsylvania rely on ground water and due to the contamination of groundwater... I mean fracking not only damages up toward the stratosphere, but it damages down. Tell us what kind of chemicals are used and how it affects the water and how permanent it is once they suck up what they're going to suck up from your land and they leave wreckage behind including all kinds of road wreckage of big trucks, noise, pollution, why don't you give us a flavor of that.

Josh Fox: Absolutely. Every possible human and ecological system is damaged by the process of fracking. They'll come in, they'll rip out whatever it is, five acres of land, they'll install fracking well pads and they drill down almost a mile or two miles and they'll inject down through that drill pipe high-pressured water and chemicals, huge amounts of water--two to nine million gallons of water per well, and then that water is infused at different stages of the process with hundreds of toxic chemicals. We know of about 900 different toxic chemicals that they put into the ground. These are carcinogens, these are neurotoxins, these are endocrine disruptors; they're petroleum distillates, they're corrosion inhibitors, there's all sorts of things. And a lot of these chemicals are proprietary. So, Halliburton or Chevron or Shell, they're not required to tell you what's in these chemicals although we know they're incredibly harmful to human life and incredibly long lasting. Most of these chemicals do not biodegrade. They stay in the ground and what happens of course is they leak out the sides of the gas wells. As the cement casing breaks down you get chemical infusion into the water table. You're drilling through the water table when you do that; you have methane migration that comes up around the sides of the well and you have methane and benzene and other BTEX chemicals [benzene, toluene, ethylbenzene, xylene] and toxic chemicals going into that water table. So, when you're using a private water well, as a million people in Pennsylvania do and over a million people in Michigan do and people all over this country do, you're gonna get those chemicals inside your groundwater and you cannot clean groundwater. Surface water is very hard to clean, but groundwater--that's almost impossible because you're talking about chemicals stuck to the dirt particles that filter through the water. So, it's a permanent state of destruction of that landscape, as well you have volatile organic compounds, which are wafting off of the surface of those wells. They'll boil off the water once they get to the surface and they literally separate out the benzene, the toluene, the xylene on the site. So those chemicals waft into suburban neighborhoods. I'm talking about fracking that's happening in cities; fracking is happening next to schools; fracking is happening next to places where people live all over this country--in Colorado, in Texas, in California and Pennsylvania.

Ralph Nader: How deep do they drill?

Josh Fox: Well, it depends. If the shale formation or whatever their target formation is 2 thousand feet down and they'll drill 2 thousand feet; if it's a mile down, they'll drill a mile.

Ralph Nader: I heard that the reason why they couldn't do fracking decades ago is they didn't have the sophisticated technology and a lot of this technology was a result of government research and development. Is that true?

Josh Fox: Well, fracking--there's different kinds of ways to look at this--but the modern fracking that we're talking about right now was really pioneered at Halliburton and a company called Schlumberger and yes, a lot of research and we know Dick Cheney, the vice president during the Bush administration was the CEO of Halliburton just before Bush came to power. And one of the main things that happened was they got exempted from the Safe Drinking Water Act. Yes, there was an enormous upswing in technology--the pressure and the amount of chemicals and the amount of water going down those wells escalated astronomically. It rivals the cluster bomb under the ground. It's like a mini earthquake. One of the real things that happened was during 2005, the Bush-Cheney administration and the Congress exempted fracking specifically from the Safe Drinking Water Act; the Safe Drinking Water Act being the law that says, if you're injecting chemicals into the ground, you need to report those chemicals to the EPA and there's a chain of liability. Once they were exempt, there is no liability, nobody knows what chemicals they're putting at what place so they have no legal liability for them. When a landowner comes in and says, you poison my water. And they say, oh, no we didn't, we didn't use those chemicals at that location. That means they get off, got free. So that was one of the major things that happened in Washington to make fracking explode all across this country.

Ralph Nader: Well, talk about state/federal regulation and whether there've been any civil litigation that succeeded--tort law litigation.

Josh Fox: There's a lot of fracking cases, in fact *Gasland* Part Two focuses on three major cases; in three major states--in Texas, in Pennsylvania and in Wyoming. Those cases were based on science that was performed by the EPA. It's very difficult for citizens themselves to conduct this kind of science. It's extraordinarily costly to prove what chemicals are used. To test for all these chemicals, you have to figure out where they migrated from; you have to test for 800 or 900 chemicals. These are the kinds of things that citizens can't do out of their own pocket unless they're extremely wealthy. So EPA or the government institution has to come in and say, this is America, you can't inject these toxic chemicals into our backyard. We're going to find out what you're doing.

However, as you can find out in *Gasland* Part Two, the most toxic injection that the gas industry does is injection of high-pressure money into Washington, DC. And we see in 2012, when Barack Obama gives his State of the Union Address, where he touts natural gas industry talking points that in fact, they were about to shut down all of the investigations that EPA had to protect citizens in the United States. And if you watch *Gasland* Two, it is incredibly angering. When you see these investigations prove that the

fracking industry has contaminated groundwater and then all of a sudden, the Obama administration completely backs off of that. They suspend their conclusions; they fire the people involved. Lisa Jackson at EPA resigned and all the people who are doing good work on fracking within the government, which the movement had persuaded people to do this, right? Obviously, the movement asked EPA to do this kind of study. All of that good work folded up and thrown away and fracking goes back on the march.

Ralph Nader: Isn't it amazing; we're talking with Josh Fox, who is the author the new book, a book like you've never read in terms of the way it's organized by the way. **The Truth Has Changed**, and "the rules have changed", you say "the water has changed, the climate has changed, the truth has changed, we must change." And this is really a legislative crime of the first proportions. Imagine a sane Congress exempting one of the most toxic matrices of drilling in the world from the Safe Drinking Water [Act], designed to prevent death injury and disease among the people? And then Obama taking after Bush, lifting any kind of regulatory pressure and disclosure. Are the states starting to pass some of the stronger regulations? I hear something is going on in Colorado here on fracking.

Josh Fox: Well, the citizens have had to really make this their obsession, a life's work. When we banned fracking in the state of New York, it was because of hundreds of thousands of New Yorkers who dedicated their time day in and day out, week after week; this should not be how this works. I mean the government should basically--yes, you're right, it's a crime. The Obama administration boasted that they drilled more than the Bush administration. We have had very few champions within government who really deeply understood this issue. Bernie Sanders, I was, full disclosure, a surrogate for the campaign and helped advise that campaign. When he came out to ban fracking, this was a ray of sunshine like we've never seen in that movement. I mean most politicians will say, oh, well we should regulate the process. Well, I know from a decade of studying this, that regulating the process doesn't do anything and it means nothing. You ban it or you don't ban it. Once the frackers get in, they treat this entire regulatory system as if it were parking tickets. And they often don't even have to pay the parking tickets. So, if they get in, if they start drilling, you will be contaminated. That's what will happen. It doesn't...I've not seen a regulatory regime, a suite of laws that allowed the drillers to go forward that actually protected the people. I haven't seen that, because it's impossible. The process is inherently contaminating.

Ralph Nader: What is this hypnosis, this grabbed even so-called liberal politicians? Governor Jerry Brown favored fracking. He's talking all over the western world about climate disruption, which I like his call rather than climate change--climate violence, climate crisis. He goes to Europe and exposes the Trump regime on this and withdrawing from the Paris Accords, then he, in California, he defends and promoted this fracking. We don't even need the fossil fuels from fracking; we waste more in a year--in terms of our own energy lack of conservation--than fracking is going to give us. So, what is this hypnosis over liberals as well? I mean is Nancy Pelosi going to do anything? Are the progressives in the House of Representatives going to start the ball rolling to repeal the exemption from the Safe Drinking Water Act?

Josh Fox: Well, Ralph Nader, I completely agree with you. It's extraordinarily disappointing and disheartening to see the Democrats become the party of fracking. And I think one of the major disputes in the 2016 election that you're going to see play itself back out right now in 2020, is that fracking issue. Democrats who support a Green New Deal are not going to be people who support fracking. Democrats who are serious about climate change action need to say that we have to ban fracking. But what's happened here is that entrenched interests of the oil and gas industry for hundreds of years. Okay, right? For over a hundred years they've had an entrenched interest, a very powerful interest in Washington and the state governments as well as local government. And I think at the same time you also have an acceleration of pressure from money in the system that has turned that entrenched interest into a sort of turbocharge. But I don't understand how a governor like Jerry Brown who's on his way out, and there's a huge campaign called Brown's Last Chance—"please Jerry Brown ban new fossil fuel production in the state of California"--how he can claim to be an environmental and climate leader without listening to that movement that was on the ground, that was so ferocious and beautiful and commonsense. I do not understand that. See, I think some of this has to do with the fact that these people have relationships for years and years and years. I know a person like Alexandra Ocasio-Cortez does not have a 10-year relationship with an oil and gas lobbyist who has given her money for her campaign...

Ralph Nader: That's for sure.

Josh Fox: ...that has a chitchat relationship that they go to dinner at the same country clubs. That is not happening with this new generation of people in Congress. However, I'm sure Nancy Pelosi, Jerry Brown, Hillary Clinton, not to mention the Republicans, who are way worse on this issue.

Ralph Nader: Marinated in oil.

Josh Fox: I mean these are long-term relationships and unfortunately, we have to break that cycle. That's very difficult to do. But I think, look, I saw Abdul El-Sayed's tweet this morning 81% of people in America support a Green New Deal; over 50% of Americans favor a ban on fracking; 75% of Democrats favor a ban on fracking. Now let's get to my book for a second; *The Truth Has Changed* is about these very sophisticated new forms of propaganda that we are seeing on social media, that are smear and misinformation. That is old news. Smear and misinformation has been used by the oil industry, the fossil fuel industry for decades. But what we see with the rise of Steve Bannon and Cambridge Analytica and Donald Trump, are very sophisticated psychological techniques, we call psycho-graphics that are aimed specifically at voters to turn their most deeply felt convictions against them in ways that they can divide and conquer an electorate. And I know a lot about this because I was the target of a smear campaign from the oil and gas industry going ten years now almost. When I put out *Gasland*, they put out huge amounts of information trying to challenge the science of that film--say that it was a fake, say that these things were not due to fracking, called me a "liar." Basically, everything that I had to say they were going to some way say was false. Of course, now ten years later, the science on fracking has been born out.

Everything in that film has shown itself to be true. But the smear and misinformation techniques that can happen when you have a population that's completely obsessed with social media and we have eroded our basic standards of how we process truth in our society, in our media and also in our daily lives; I sometimes get fooled. I don't know sometimes, when I look at something out of the internet--I'm like, "Is this true or not and how do I find out?" So, we've lost a lot of that and ***The Truth Has Changed*** has to do with how the oil industry does that, not only to citizens but also in government.

Ralph Nader: Josh, in the remaining three minutes that we have, I want to promote your book but just answer this question--if people around the country want to show ***Gasland*** at community meetings, how do they get it?

Josh Fox: Oh, ***Gasland*** is very easy to find. ***Gasland*** is on YouTube, basically. I mean, ***Gasland*** is everywhere.

Ralph Nader: Okay.

Josh Fox: You can watch a bootleg version or you can go on Amazon or whatever it is--buy it for \$2; rent it for \$2. We have had a very vigorous community screenings program of ***Gasland*** and ***Gasland 2--of How To Let Go Of The World***, which is my film about climate change. ***Awake: A Dream from Standing Rock***, which is the film that I made with indigenous filmmakers out at Standing Rock. All of those films you can get online, and we love it when people show them at the community level. That's what we want. We've done thousands upon thousands of screenings of all those films that exist to be an education tool, that exist to try to help communities to stave off the fossil fuel industry. So, all of those films--***Awake, a Dream from Standing Rock*** is on Netflix; ***How to Let Go of the World***--type that in--just put in my name and you'll see there on Google, or whatever it is that you're using, my whole list of films and I think all those movies will be helpful to people and also entertaining. They're really good if I do say so myself.

Ralph Nader: By the way, listeners should know that Josh has hit the big-time media in the past few years. I mean, he's been on Jon Stewart, NPR's Morning Edition--huge audience. He's been on Chris Hayes and MSNBC, Bill Maher, CBS World News Tonight. You've reached tens of millions of people. I mean you've really had an impact. In fact you're the only journalist ever arrested in Congress for doing journalism. So, I want to talk about your road show here and this little book, 130 pages, listeners, Seven Stories Press. He's got the scenes in the book and just listen, these are all scenes; they're not just chapters: "American Owned and Operated", "Church of Pompei", "It's a Damn Shame", "How Do Things Change", "Poisoning The Well", "What Else Can They Cover Up", "Algorithm of Ocean Waves", "Venus Used to Have an Ocean", "DemocratLand", "No More Hot Dogs", "All Those Truths Inalienable", "The Earth is Flat", "Normal Life", "The Ocean Inside You", "Glaciers", "Standing Rock", "Sweat Lodge Earth".

That's what this book is so, what is your road show, what is in theater that you are performing all over the city? Briefly.

Josh Fox: Sure. Well, *The Truth Has Changed* came about as a one-man show; I originally come from the theater. My documentaries are very theatrical. I narrate them. I'm often in them. And Sheila Nevins over at HBO who is a great titan of progressive movies said, "We need to get you doing your show on tape and make that into a film". And I said, "All right, great". So, I went and created over a year and a half, a one-man performance that basically takes people through my front-line reporter's history from 9/11 to Standing Rock to the BP oil spill to the fracking wars, to all the ways in which the oil and gas industry attacked me over the years, and created an incredible, very, very difficult emotional situation to go through--how tough that was to deal with. And how those very same people who did that now run the world--Steve Bannon, Andrew Breitbart, Fox News. I was the beta test for a lot of their techniques. And so, then taking a look at my personal experiences and saying, well, this is what happened in the 2016 election. This is how the oil and gas industry deviously misinformed people. This is how they spread lies about Hillary Clinton, about Bernie Sanders, about some of the most important principles that we have in America today, and giving people a sense of how now the truth is what we really need to move us forward as always. And that is happening among people at the community level, but I mean the story is kind of a roller coaster ride through that. And it takes me all the way back to my grandfather--my two grandfathers--one who was a Holocaust survivor, who arrived in this country in the 50s after fleeing the Nazis as a Jew in Europe during World War II, and to my other grandfather who was an Italian tailor in New York who committed suicide when my mother was just five years old. So, as we are in humanity right now, one of the most, greatest surviving species on the planet, and also the most deeply suicidal species on the planet, putting us in that human condition at the same time as witnessing the incredible onslaught of lies of smear and misinformation.

Ralph Nader: You're going from one city to another and performing?

Josh Fox: Yes. I've been touring all across the nation as I have with all my films. But I've been doing it live. I did it in service of the midterm elections. We went to about 25 different states and I have set up those performances with activist organizations and communities and theaters all across the nation. And we taped it to become a film. So, *The Truth Has Changed*, is a film now. We are in the final stages of editing that and we expect it to come out in the spring. But the book happened because Dan Simon, the great editor at Seven Stories came to one of my performances and he said, "This would be a terrific book". And we started working on it and it is! I really am so proud of the way that it turned out. It reads beautifully; it looks beautiful. I think it really encapsulates not only the performance but a whole series of observations and stories and thought, and really, I think it's really worth it.

Ralph Nader: I would agree; it has an approving long foreword by Bill McKibben and you couldn't get a better imprimatur for your book, *The Truth Has Changed*. I've been trying to get Bill McKibben to stop using the phrase climate change, which is too benign for catastrophe on the horizon and all over the

world in terms of climate disruption, climate devastation--man-made. So I hope you'll pick it up and replace that benign word climate change with something like climate disruption or climate devastation or climate catastrophe. Thank you very, very much Josh.

Josh Fox: Thank you so much and it's a pleasure to be here.

Ralph Nader: And just keep it up; don't get discouraged.

Josh Fox: Will do.

Steve Skrovan: We've been speaking with author and documentarian Josh Fox, author of *The Truth Has Changed*. We will link to his extensive body of work at ralphnaderradiohour.com. But when we come back, we're going to talk to one of our most frequent guests, Constitutional scholar, Bruce Fein. He's going to give us his take on the William Barr Attorney General confirmation hearing. But before we do that, we're going to find out what's happening in the world of corporate crime with Russell Mohkiber. You are listening to the Ralph Nader Radio Hour, back after this.

Russell Mohkiber: From the National Press Building in Washington, DC, this is your Corporate Crime Reporter, "Morning Minute" for Friday, January 18, 2019. I'm Russell Mohkiber. UBS will pay 68 million dollars to settle allegations of fraudulent conduct involving the manipulation of LIBOR, a benchmark interest rate that affects financial instruments worth trillions of dollars and has a far-reaching impact on global markets and consumers. The states allege UBS misrepresented the integrity of the LIBOR benchmark by concealing, misrepresenting and failing to disclose that UBS at times made LIBOR submissions to avoid negative publicity, protect the reputation of the bank and benefit its derivative trading positions. The alleged conduct led to UBS making millions and unjust gains when government entities and not-for-profit organizations entered into swaps and other financial instruments with UBS without knowing that UBS and other LIBOR setting banks were manipulating their LIBOR submissions. For the Corporate Crime Reporter, I'm Russell Mohkiber.

Steve Skrovan: Thank you, Russell. Now this week, the Senate held a hearing on Donald Trump's pick for the fired Jeff Sessions as Attorney General, William Barr. Mr. Barr served as Attorney General in the first Bush administration in the early '90s and here to give us his take on that nomination is our next guest. Bruce Fein is a Constitutional scholar who was Associate Deputy Attorney General under Ronald Reagan. Mr. Fein has been a Visiting Fellow for Constitutional Studies at the Heritage Foundation and an adjunct scholar at American Enterprise Institute. He has advised numerous countries on constitutional reform including South Africa, Hungary and Russia. He is author of *Constitutional Peril: The Life and Death Struggle of Our Constitution and Democracy and American Empire, Before the Fall*. Welcome back to the Ralph Nader Radio Hour, Bruce Fein.

Bruce Fein: Thank you.

Ralph Nader: Welcome back, Bruce. This is going to be a high-powered interview because it's an interview directed at something right in the news. The Senate Judiciary Committee has been holding hearings, not very thorough and not a wide array of witnesses, under the aegis of Chairman Lindsey Graham, the new chairman of the Senate Judiciary Committee, on the nomination of William Barr to become Attorney General. And as far as our listeners are concerned, they've heard this before, but I urge them if they ever confront a legislator or a member of the executive branch at the federal and state levels, they should always ask two questions--what is your evidence and what is your legal authority for what you are now pressing forward or proposing? And that's what I'd like to see, Bruce, guide the questions. You sent Eight Questions Senators Must Ask William Barr On Executive Power. And I assume you sent them to the members of the Senate Judiciary Committee?

Bruce Fein: Yes. The committee staff, yes; addressed to the committee, yes.

Ralph Nader: Right. You're very concerned about the war powers of a power concentrating presidency under both parties over the last few decades. And you made this statement based on the statements of William Barr both in his official capacity in the Justice Department earlier years as well as a corporate lawyer more recently. You said, "Indeed, Barr would crown the president with more unchecked authority than King George III had during his tyranny over American colonists, which provoked the American Revolution. He should not be confirmed by the Senate unless he recants his extra-constitutional opinions." Why don't you explain that.

Bruce Fein: Yes. Under Mr. Barr's statements, and again these are things that he's made either as a Justice Department official, he gave an extensive interview with the Miller Center in 2001, recounting his ideas--things maybe that weren't recorded on paper about virtually limitless executive power. He stated with regard to war, that the president can initiate war on his own even if Congress votes specifically legislation against it. Now this turns the Declare War Clause of the Constitution on its head, which entrusts exclusively to Congress, the authority to initiate war. The president could respond unilaterally only in self-defense when we had in fact been attacked or were imminently in danger of attack.

Ralph Nader: And how does he justify this? The president can initiate war even if Congress votes against it.

Bruce Fein: Yeah. Well, he just makes it up out of thin air. There is no intellectually respectable argument for it except that presidents have done it and gotten away with it because of a craven

Congress. It's a little bit like Bernie Madoff saying, well after I've stolen the first billion, I kind of get grandfathered in; can steal another billion. The fact is, Ralph, that there was not a single voice during the Constitutional Convention, the ratification debates, the yearly Congresses who dissented from the understanding that only Congress could take the nation from a state of peace to a state of war. And that included Alexander Hamilton, who was the most vocal proponent of a muscular president. Even he said, the plain--not ambiguous--the plain meaning of the Declare War Clause is up to Congress to decide exclusively whether circumstances justified going from a state of peace to war. And that really was the understanding and in practice for 150 years. The first big break came in Korea where Harry Truman didn't have any authority from Congress. He simply said I'll call the Korean War a "police action". He even threatened to use nuclear weapons in the Korean War. Three million Chinese soldiers entered. We had five to six million who were involved, tens of thousands of Americans died, millions of casualties on the Chinese and Korean side, and he said, "It's not a war." Congress, unfortunately was craven and refused to hold Mr. Truman accountable. Even the Supreme Court really understood the president was overstepping his bounds. You may recall, Ralph, in our Harvard Law School days, we read about *Youngstown Sheet and Tube v. Sawyer* in which the Supreme Court rapped the knuckles of President Truman for seizing steel mills, during a potential strike purportedly under emergency powers, if you will, during the Korean War. And the Supreme Court said, "No that's a power only Congress has." Indeed, the only mention of anything like emergency powers in the Constitution is in Article 1, Section 9 where the power to suspend habeas corpus is entrusted not to the president, but to Congress, in times of invasion or rebellion. So, when you ask well, Mr. Barr, where is the authority? And I worked in legal counsel myself for several years.

Ralph Nader: White House Office of Legal Counsel.

Bruce Fein: Well, no. In this Justice Department's office where Mr. Barr was. I also worked in the Office of Legal Counsel then, I mean, not with Mr. Barr, but earlier. And I can tell you they're... all of the justifications for the war powers of Congress is made up solely, solely of just what presidents have gotten away with. They don't cite anything in the text of the Constitution.

Ralph Nader: Well listen, some of our listeners are probably asking now, what about the War Powers Act? How did Congress fuff their exclusive authority under the Constitution to declare war with the War Powers Act?

Bruce Fein: Well, remember just the background there, you remember Lyndon Johnson, based upon lies about a so-called second non-existent torpedo attack of North Vietnamese boats against American ships, he got the Gulf of Tonkin Resolution. It says, it really is an illegal delegation to the president to war however you want to war. And Lyndon Johnson of course lied in this campaign against Goldwater suggesting he was the peace candidate as he was planning at the same time Rolling Thunder, where it would result in our bombing Vietnam with greater munitions than in all of World War II. And putting

that aside, then Congress actually repealed the Gulf of Tonkin Resolution and President Nixon said, "Well so what, I'm going to continue the war anyway".

So, in part of the discrediting of Nixon, when he was weakened, Congress did pass the War Powers Resolution of '73. But it really, it's almost intellectually incoherent. On the one hand, Ralph, it says, nothing in the law is supposed to change the Constitutional equilibrium of power over war between Congress and the president. Well, if we're not trying to change anything, why pass it?

Ralph Nader: Why did they enact it?

Bruce Fein: Yeah. So you don't really know. And then you have its purposes that are defined as the president can use the military offensively in response when there's a declaration of war that is equivalent or there's an actual attack. But then there's other provisions that talk about the president doesn't need to withdraw troops for 60 days once he puts them in an eminent danger. It's just an intellectual mess. And the fact is every president since its passage, and it passed over Nixon's veto, had said "it's unconstitutional, I'm not going to obey it". Congress has done nothing. So, presidents just thumb their nose and now we're here at 40 some years and Congress just left it. It's just a decoration out there. So, the War Powers Resolution as it is, is zero.

Ralph Nader: Let me interject here for our listeners. The practical effect of a war mongering Attorney General, Bill Barr is very eminent. He will be the triumvirate with John Bolton, Trump's National Security Adviser who has never seen a war he didn't like. And Mike Pompeo, the Secretary of State who acts like he's Secretary of Defense and has urged all kinds of unilateral US government attacks from Asia to the Middle East. And now you're going to have an Attorney General who thinks that the president is king; in effect, he can do no wrong. He can do whatever he wants in military and foreign policy without any restraint from Congress or the courts under basic presidential mad man who in order to distract attention from the pending Mueller report and if that nails him, can start a war. And he's got this triumvirate of Bolton, Barr and Pompeo raring to go. Isn't that the danger?

Bruce Fein: Well, it's more than that even. You described him as a king. He's more than king. And remember, King George III did not, unlike Barr's view of the president and presidents accepting this view, play a judge, prosecutor, jury and executioner to kill anybody on the planet, citizen or not, based upon secret unsubstantiated evidence. That is with the war power now as conceived and practiced, and not just conceived; practiced means the president can choose anybody he believes, based upon evidence we never get to see, is a danger and vaporize them and that's the end of it. One person who suffered that fate was a citizen, who was a teenage son of Anwar Al-Awlaki--never been accused of anything. He's now disappeared from the history books, wiped out by a predator drone under President Obama. He never explained ever how he selected the teenage son of Mr. Al-Awlaki; he didn't have to explain what standards he used.

Ralph Nader: Who was having lunch with two friends...

Bruce Fein: Yes, friends. I think it was dinner, but it's the same idea, absolutely. And we don't know how many others [there] are, because presidents now claim under the war power, they can keep everything secret they want. Congress doesn't have to know. We got special forces in 172 countries, probably more. Nope, we can't learn about it because (undiscernible word) claim he has state secrets. Just think about this and this is what really is stunning to me and should be any lawyer--to entrust with one individual the authority to play prosecutor, judge, jury and executioner to kill anybody based on whatever evidence he says is sufficient to show an eminent danger. It's truly shocking. It's like going from the heliocentric to the geocentric theory of the universe in the law. We're back to the Spanish Inquisition. Now it's true we have some political restraints. So, this unbelievably tyrannical power has not been exercised at a level--it's not a genocidal level. But it's as Justice Jackson warned, "The principle lies around like a loaded gun." It could turn up and the president could massacre everybody. Well, I decided I decree you're an eminent danger. We shouldn't wait until all of the ammunition has been used to kill us all before we respond. And that's where we are now with an Attorney General--

Ralph Nader: And where are the courts here?

Bruce Fein: Yeah. The courts have just been abysmal. They have accepted, when there have been challenges to these or what I call assassination; they just accept it; state secrets; sorry dismissed; not going to look at it; war powers issues; political question; there's no standing--they don't want to decide any of these questions. So, we basically are now reduced to without a check on the executive branch that's imposed by those entrusted with the law like the attorney general. We have as lawless an architecture as in China or Russia; we have a political architecture that restrains it more, but as a matter of principle, yeah, president can do whatever Putin wants to do or President Xi in China, just a matter of what he's getting away with.

Ralph Nader: Well, it is true. It is true that from the Supreme Court on down to the district courts, they've just abdicated their role. So, when the citizen challenges a lawless military act or lawlessness by the presidency, they say, well, you citizen you and 300 million others don't have legal standing to sue because you don't have a stake that is going to make you sustain the suit. That's a medieval doctrine from the Ancient England for heaven's sake. The other argument they make, which you alluded to is, it's a political question, the judges don't deal with political questions. Yeah. Tell me about it. And it has to be resolved between Congress and the president. And so, let's go to Congress. I don't know if you read this wonderful article by a Democratic Congressman from New Jersey in the Washington Post on January 11th. His name is Bill Pascrell, listeners, P-A-S-C-R-E-L-L and the title of the article is Why is Congress So Dumb and the subtitle is We Dumped Our Own In-House Experts, And So Now We Are Allowing Lobbyists To Do Our Thinking For Us. And I'm sure you read that and that illustrates the point you've been making again and again in articles and testimonies you've testified. By the way, listeners, Bruce Fein has testified about 200 times before the committees in Congress. And that's one reason they've

stripped their staff; they've cut out sections of the Government Accountability Office, which is the watchdog; they've eliminated the Office of Technology Assessment; they've cut into the Congressional Research Service budget. So, you have people like Rand Paul, Senator Rand Paul, he's supposed to be a major opponent of concentrated power in the executive branch. And there are other libertarian, so-called Senators. Where are they?

Bruce Fein: Well, they're part of the problem too. It's like a self-lobotomy really. I mean Senator Paul, and some of the things I really applaud, but he doesn't even have his full staff there. This is overseeing a \$4.3 trillion enterprise. And you're exactly right. I've been here like you have, Ralph, 40/50 years. And the staff salaries have gone down, not up. The level of accomplishment of staff is plunged. They only can..

Ralph Nader: Committee chairs?

Bruce Fein: Yeah. Do they pay them \$30,000, \$40,000, \$50,000 here in Washington? The expensive city, they're 25-year-olds; they're chief of staff; they know nothing. They don't even know about Vietnam War.

Ralph Nader: And the committee chairs have been stripped of their power, which is now in the hands of four--two in the House, the two leaders of the two parties and two in the Senate. And so, we used to get legislation through Senator Warren Magnuson, Chairman of the Senate Commerce Committee. He had much greater power than his successors today. So, they've concentrated power from the 535 members of Congress in the hands of four leaders--two in the House, two in the Senate.

Bruce Fein: That's right. You don't even hardly remember the chairman. I mean, you remember John Dingle and he would threaten people and get action. The Chairman used to be well-known, Wilbur Mills of Ways and Means Committee, Samuel Ervin on the Watergate Committee. Now they're just nonentities. The only people they even know about as leadership either is Nancy Pelosi or Boehner or Ryan or something; nobody else even makes a cameo appearance on the scene. And the members don't even stay around. Typical week in the House is Tuesday through Thursday. They could come in Monday and leave Thursday evening or back home Friday. They hardly are even in town so they don't do any work; they don't have a staff that really knows anything and they hand all the power over to the executive branch, have a few hearings and go away. And it is ridiculous because they have plenary power, if they wanted to, to hire the best consultants, to have lawyers who were really good and paid them something, they could have House and Senate counsel who actually new constitutional law, but they don't do it.

Ralph Nader: You've described the questioning at the Senate Judiciary hearing of Mr. Barr. It was pretty inadequate.

Bruce Fein: Yeah. Anemic, absolutely. Well, think of this, despite all the major legal issues concerning war powers and people are worried about Trump initiating nuclear war on his own, there wasn't a single question, not one from either a Democrat or Republican about war powers which is stunning. It's the most important power that the president claims and not even ask a single question? It shows that they're unified in trying to run away from their constitutional responsibilities, which is quite deplorable, but this is just a total failure of oversight and rigor of virtually of every single member. Well, I mean we wouldn't be alarmed if you're a member of Congress where the nominee has said even if you vote against the war, the president can go to war anyway? And you don't even have the curiosity to say, well, where do you get that in the Constitution?

Ralph Nader: Listeners who want to get a copy of the Eight Questions Senators Must Ask William Barr On Executive Power and the memorandum that he sent with Louis Fischer on January 11th, to the Senate Judiciary Committee members can get it by going where, Bruce Fein?

Bruce Fein: Well, if you go to the American Conservative website, they will have--you just put in Bruce Fein, the American Conservative. It'll come up electronically, they'll get the full document.

Ralph Nader: You know, William Barr, the nominee for Attorney General. has written in the past that there's almost no way you can charge a president with obstruction of justice.

Bruce Fein: It's clear, he wasn't involved in the Nixon Impeachment. I don't know whether you saw it, Ralph, or the listeners that Elizabeth Holtzman who was there on the Nixon Impeachment. She was one of the members of the House Judiciary Committee and I know Liz Holtzman; I know you do as well. She'd written something in response to Barr's statement saying, no, as a member of the Judiciary Committee, they did charge President Nixon with obstruction and even dangling the pardon power out there to tamper with witness testimony.

Ralph Nader: What's Barr's theory here?

Bruce Fein: Well, his theory is that, because he's the president and enforces the law, he can do whatever he wants. He said he can start or stop any investigation for any reason, which is just silly. If he started the investigation because he got bribed, that clearly would be illegal or stopped one because he got bribed, or started investigation because the target was a Jew or a Christian or a Hindu or a Protestant, based upon religion, that clearly would be improper, or to stop one based upon religion or

race or whatever. So, it's just a total blanket kind of endorsement of presidential supremacy president uber alles there with no restraints or rule of law.

Ralph Nader: This kind of concentration of power, Bruce Fein, in the White House and unlimited war-making power from the White House, it seems it should attract both liberal and conservative groups opposing the nomination of William Barr. And I don't see it happening. I see criticisms, but I don't see the conclusion from the criticisms either from the right or from the left citizen groups and other groups, the American Bar Association. Where are the lawyers? What's going on here in terms of left-right opposition that isn't materializing? It's as if they're giving up.

Bruce Fein: Well, I don't know. It could become even worse than giving up. I think that country basically is unified behind limitless power of presidents to go to war, whether it's Obama or Trump or Bush or Clinton or anything else. Remember Clinton, he asked for a declaration of war in Serbia and Congress didn't vote it and he said, "Okay, I'll just go in and bomb the heck out of Serbia or Belgrade and you could not call it a war." What happened? Nothing. People just yawned. What really is quite alarming is that this is the one place where there is unity. Yeah, presidents should go to war whenever they want. That's why there are no questions out of Democrats or Republicans of Barr with regards to his war power views. They don't care, which is frightening for an empire. That's why we're not a republic anymore, Ralph.

Ralph Nader: And I guess the prevailing view is we're the most powerful country in the world militarily and we're invulnerable. We can go after everybody and we're not going to get counter-attacked. And you know, lawlessness, as you've written, is contagious. If the U.S. is lawless, other countries say well, the US bombs, they go past international boundaries, national boundaries, drones, special forces. Let me ask you a few quick international law questions. What's left of international law? Is the Saudi bombing of Yemen again and again, especially of civilian targets, legal under international law?

Bruce Fein: No. These are war crimes, without a doubt they're war crimes, and we're complicit in them, because we're supplying the Saudis knowingly with the bombs and the refueling capabilities and otherwise to commit them.

Ralph Nader: They can't claim self-defense?

Bruce Fein: They're not being, Saudi Arabia is not being...they're the ones who initiated the conflict. If Saudi Arabia is, you know, they don't own Yemen. Whatever else the Houthis are the enemy, they're at least Yemenis. They're occupying their own country.

Ralph Nader: No, but there's a civil war and they're intervening.

Bruce Fein: Yeah. Exactly, it's a civil war. Yeah. You don't get to intervene and we're like, well, China fought the civil war between Mao and Chang Kai-Shek. Should we have invaded? No. That's not authorized under international law and it is certainly not in self-defense. The Saudi Arabians are part of this; they're so in-expert, they bombed from altitudes that caused there to be very great inaccuracies. But we may well be complicit in it. Now, why aren't they hauled before the International Criminal Court because I do think they could be prosecuted for war crimes, because they got a lot of oil and they buy other people off, is what it is. The majority of their soldiers and Saudi soldiers, they're recruited from Sudan and from Egypt. They just pay them a lot of money. They didn't even use Saudi Arabians, who don't know how to fight.

Ralph Nader: All right. Let's talk about Israel, which refuses to be a member of the International Criminal Court and just recently Prime Minister Netanyahu declared openly that the Israeli Military has bombed targets in neighboring Syria hundreds of times. Those are his views, hundreds of times in the last couple years. Is that legal under international law?

Bruce Fein: No. It's not even close. The basic theory is that, if Iran, through Hezbollah, gets into a certain proximate territorial relationship of Israel, then they can preemptively try to destroy them before there's actually been any attack. I mean under that theory, you could preemptively go into any country in the world and start dropping bombs alleging that it's imminent that the Iraq was about to be released. And it's truly is stunning that now Israel has become so brazen. Before they at least tried to be sotto voce about the bombing of Syria which is in saying Syrian territory is free-fire-zone if we think there are any Iranian influences there. Now it's open and notorious and they praise and bemedal people for attacking Iranian presence in Syria.

Ralph Nader: Do you think that the Israeli colonies in the West Bank, which are considered a violation of international law, do you think that Israel's constant incursions in the West Bank adhere to international law and what's your international law view of the colonies?

Bruce Fein: Well, it's a very messy situation, because the West Bank, even before the '67 War, was ambiguous as to who actually controlled it. It was under, at one time was King Abdullah of Jordan, the territorial, historically we know to what nation did it belong. And remember, Jordan has kind of renounced that they don't want any control over the West Bank. But I think one issue that you've raised here, in international laws, it's very clouded. There are strong arguments on both sides with who has true sovereignty there. There's still a principle of international law irrespective of that question that requires only reasonable proportionality with regard to the use of force and treatment of civilians whether it's occupied territory or whether you're legitimately trying to exercise war powers before there's a conclusion of peace. And there the level the lethality of the Israeli war machine seems clearly

disproportionate. You can make an inference, I think, Ralph, just from indicating the numbers on each side; you know, for every 500 Palestinian who died there may be 10 Israelis or something like that.

Ralph Nader: So, it's at least 400 to one especially involving Gaza as well. Unfortunately, we're out of time, Bruce, and just in conclusion how can people get this memo that you sent to the Senate Judiciary Committee and the Eight Questions that William Barr should be asked?

Bruce Fein: Yes. You go to the American Conservative website and if you just put in Bruce Fein, if you went to Google, put in Bruce Fein, the American conservative will jump right up.

Ralph Nader: Okay. And what's your prediction about William Barr's nomination?

Bruce Fein: Well, right now I think he'll overwhelmingly be confirmed, unfortunately and what's even more regrettable than the confirmations, Ralph, we never would have even addressed--the war powers issue is not even on the table. And one of the things that we neglected and just historically we know that Nixon, when he was under impeachment fire, we know that he created you know defcon 3, put us on nuclear alert over the Yom Kippur War in 1973. We know when Clinton was under impeachment fire, we ended up with the rockets into Afghanistan and Sudan. And Trump is more erratic than Clinton or Nixon. And so, the likelihood of some kind of foreign adventurism, if impeachment starts to loom, is very very high and moreover as you point out he's got Bolton around him, which wasn't true--Clinton and Nixon didn't have a Bolton there to try to encourage them on.

Ralph Nader: To show you how bad it is, Trump's gotten rid of his generals, McMaster as his National Security Adviser, former general, retired and General Mattis, Department of Defense and those were considered the restrainers. Now we have civilians, some of them draft avoiders like John Bolton and they're the war mongers. So, citizen alert out there, you better focus on your two Senators and Representative; let them know you got a pulse otherwise [we] may be in a big war with Iran and that's not Iraq. That would be a real conflagration that will bounce back into this country. The stock markets will collapse; all kinds of things will be shoved aside in terms of the necessities of the American people. Let them hear from you--two Senators/Representative. Thank you.

Bruce Fein: Thanks, Ralph.

Steve Skrovan: We've been speaking with Constitutional scholar, Bruce Fein. We will link to his work at ralphnaderradiohour.com. That's our show. I want to thank our guests again today, Josh Fox, Director of *Gasland* and Author of *The Truth Has Changed*, and also Constitutional scholar, Bruce Fein. Those of you listening on the radio, that's our show; for you podcast listeners, stay tuned for some bonus

material we call the Wrap-Up. A transcript of this show will appear on the Ralph Nader Radio Hour website soon after the episode is posted. For Ralph's weekly column, it's free, go to nader.org; for more from Russell Mohkiber, go to corporatecrimereporter.com.

And Ralph has got two new books out, the fable, *How the Rats Re-Formed the Congress*, to acquire a copy of that, go to ratsreformedcongress.org and *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. The producers of the Ralph Nader Radio Hour are Jimmy Lee Wirt and Matthew Marran, our Executive Producer is Alan Minsky, our theme music, "Stand Up, Rise Up" was written and performed by Kemp Harris, our proofreader is Elisabeth Solomon. Join us next week on the Ralph Nader Radio Hour, when we speak to Shoshana Zuboff, Author of *The Age of Surveillance Capitalism*. Talk to you then, Ralph.

Ralph Nader: Thanks, Steve and notice the subjects we discussed today, listeners and the critical role of Congress so go and empower yourself by accessing ratsreformedcongress.org.