Consumer Finance Monitor (Season 5, Episode 1): Cancel Culture in the Consumer Financial Services Industry: A Discussion with Special Guest Todd J. Zywicki, Professor of Law at George Mason University Antonin Scalia Law School

Speakers: Alan Kaplinsky and Todd Zywicki

Alan Kaplinsky:

Welcome to the Consumer Finance Monitor podcast. I'm Alan Kaplinsky, Senior Council at Ballard Spahr. I'm the former chair of our Consumer Financial Services Group at Ballard Spahr. And I'm very pleased that you have downloaded today our weekly podcasts. Our podcasts hopefully as you know, are released every Thursday during the year except during Thanksgiving Week and Christmas Week, we take a couple of weeks off. So we do 50 programs a year.

Alan Kaplinsky:

And we try to invite to our programs experts in important areas in the consumer finance industry. Sometimes they're topics that we have explored often in detail on our companion blog, which also goes under the name of Consumer Finance Monitor. And I would encourage any of our listeners that are interested in our topic today to go on our blog and to do further exploration of the topic.

Alan Kaplinsky:

My guest today, very special guest today is Professor Todd Zywicki. Todd has been a guest on our program before and has talked about a different subject, something that we'll get to toward the end of the show today. But for those of you that aren't familiar with Todd, let me just say a few things. He's the George Mason University Foundation Professor of Law at George Mason University, Antonin Scalia School of Law. That's a real mouthful. And one of my suggestions to you, Todd, is you might consider shortening the name of your law school.

Alan Kaplinsky:

He's also senior fellow of the Cato Institute and former executive director of the GMU Law and Economic Center. In 2020 to 2021, he served as chair of the Consumer Financial Protection Bureau Taskforce on Federal Consumer Financial Law, and that indeed is a topic that we will get to toward the end of our show today.

Alan Kaplinsky:

He was in 2021 inducted into the American College of Consumer of Financial Services Lawyers, he has written extensively more than 130 articles in law reviews. His articles are followed by literally thousands of people. He ranks in like the top 10% of people who are followed in the social science research network. I could spend the whole program talking about the achievements that Todd has achieved, but we wouldn't have time to get to the substance of our program. So Todd, a very warm welcome to you, really pleased to have you back on our show.

Todd Zywicki:

Thanks Alan, and thank you and Ballard Spahr also, not just for inviting me but to podcast and especially Consumer Finance Monitor, which I look at pretty much every day and you guys are the go to place for developments in this area. So thank you guys for the work you do.

Alan Kaplinsky:

Thank you, I'm pleased to hear that of course. We've got an interesting topic to talk about today and it's something that maybe five or six years ago, I never heard of the expression and I'm referring to cancel culture. We're going to talk about cancel culture in the consumer finance industry. But Todd, maybe we shouldn't assume that all our listeners know what cancel culture is in general, apart from banking and consumer finance. So I'm wondering if you could just in a few sentences, describe what that is.

Todd Zywicki:

Sure, Alan. What I mean by cancel culture is something that people have heard in other context, but this may be the first time they've thought about in the financial services context. What I mean by cancel culture is really the idea of private actors, universities, internet providers and increasingly, and I fear more to come of basically refusing to deal with individuals based on their political beliefs more than anything else.

Todd Zywicki:

You could cancel somebody for anything, but what we see now is an emerging trend on the internet obviously of kicking people off for the things they say, of universities canceling speeches by people who are thought to be triggering or have threatening ideas, and that's where the term cancel culture comes from, is really this university context of somebody being invited to speak and then "being canceled", having their speech canceled and an emerging threat here is I think of cancel culture coming to banking.

Todd Zywicki:

And consumer financial services, which is that basically people based on their political beliefs, but it could be anything in else, being denied access to financial services, and I think the threat that that poses to people.

Alan Kaplinsky:

Well, let's turn back the clock a few years to the Obama administration, and they developed something called Operation Choke Point. That became extremely important and I guess you could say a terrible threat to certain types of businesses, gun makers, tobacco manufacturers, pertinent to the consumer finance industry would be payday lenders.

Alan Kaplinsky:

I recall getting calls, we do and did work for payday lenders at that time and got several calls from clients who were about to lose their life source. That is they were going to lose lending relationships, even checking relationships with their principal banks. And it was because of something pernicious going on in the government. Hopeful you can tell us a little bit more about what was this operation Choke Point all about.

Todd Zywicki:

Sure, and that is the catalyst for the modern threat, but I think it could probably go back even a little bit further, which is the entanglement of government with banking in general, but especially in the United States, goes a long way back and it's taken various forms. For example, there's a reason why banking and housing traditionally have been covered by the same committees in Congress, which is the use of financial services to promote political goals such as housing and the like, goes way back.

Todd Zywicki:

The ability of the government to get their tentacles into the consumer finance industry I think accelerated during the financial crisis, which was... there was this kind of deal with the devil in some sense when-

Alan Kaplinsky:

You're referring to '08/'09?

Todd Zywicki:

'08/'09, that's right. There was this deal with the devil, when we dumped all this taxpayer money into these banks, basically they got in bed in an even bigger way than they had in the past with the regulators. And so we started to see this early on, for example during the Obama administration when they targeted Ally Financial as the first auto finance company, they went after when they were trying to crack down on what they perceived as discriminatory lending in the auto by auto dealers.

Todd Zywicki:

And if you recall at the time, basically they chose Ally because the government still held a very big stake in Ally and Ally was trying to get permission to become a bank holding company and they needed a CFPB's permission to do it. And so then what we saw on top of that then was that you're referring to, Alan, which is Operation Choke Point. And the name of it points out exactly what the concern here is, which is the government named it Operation Choke Point because they said they were going to choke off the air that these industries needed to breathe.

Todd Zywicki:

Without bank accounts for example, you can't run a payday lending operation because you need to be able to take consumers' checks and cash them when the due date comes. And so what they did through Operation Choke Point using very opaque and really shadowy means of using supervision, of using raised eyebrow regulation, is it's sometimes referred to, to tell banks that there are certain industries that are legal industries but which present a "reputation risk" from dealing with them.

Todd Zywicki:

And you named some of them, Firearms, but payday lenders being the big one. And so as you mentioned, basically what happened was through this process of supervisors and backroom pressure, getting banks to choke off the financial services to these companies which then what soon became apparent was once one bank took away your bank account because you had a reputation risk, it was very, very difficult to get a bank account somewhere else.

Todd Zywicki:

And that's one of the problem with this industry, is banking is such a heavily regulated industry and it's regulated in this very non-transparent a way that everybody in the industry is familiar with, that there's great barriers to entry in order to be able to get a new banking charter and the like that it can be a death now. If one bank won't provide financial services to you, that really does choke off the air that you need to breathe.

Todd Zywicki:

And during the Obama administration, what we saw was this force in the government but I think what we're starting to see now is private pressure and private decisions by banks prompted, but also independent of the government.

Alan Kaplinsky:

Let's get back to Operation Choke Point for a minute. I take it, it was pressure being applied by the federal credential banking agencies, the FDIC, the federal reserve, the Comptroller, and it was not based on any law, that is any statute, any regulation or anything in writing. No written guidance at least that were aware of at least anything that was published externally. I don't know if there were things internal within each agency.

Alan Kaplinsky:

I'm wondering if you know, how did this phenomenon happen? Do you think Obama was actually involved that he summoned all the heads of the banking agencies together and said, let's do the following?

Todd Zywicki:

I still think that the whole story is yet to be told, Alan, which is it took years of litigation and for your requests to even figure out what was going on. It was one of these, and it came out in some of the litigation that the payday lenders have brought, and so much of it was done in rooms with no written record, it's not quite clear where it came from. The germ of the idea was not crazy. The core idea that the DOJ had in mind was, something that's been accepted for some time, which is if there really are industries that are facilitating illegal or fraudulent behavior, then it might make sense to look at the financing behind it.

Todd Zywicki:

For example, that's why we have anti-money laundering laws, is to shut off access. But that germ of trying to use the financial system to go after truly illegal and threatening behavior is a lot different from simply shutting down entire legal industries, simply because regulators subjectively don't like them.

Todd Zywicki:

And one of the illustrative comments that came out and some of the foyer requests was somebody from the FDIC I believe it was, said, "Well, make sure every time you talk about Operation Choke Point, you mention online pornography so that we can wrap everybody else, including payday lenders, everybody else in this unsavory and distasteful appearance of being like online pornography," which clearly illustrates that what they were doing here had no legal basis, it was really just their subjective-

Alan Kaplinsky:

Well, it's interesting. I'm wondering how you react to what I'm about to tell you. Many years ago, myself and other lawyers at my firm were heavily involved in structuring relationships between non-bank payday lenders and banks, both national banks and state chartered FDIC insured banks. Sometimes we represented the bank, sometimes we represented the non-bank payday lender.

Alan Kaplinsky:

And those relationships were terminated very abruptly, first by the then comptroller of the currency, and I'm drawing a blank on his name right now. Used to be a lawyer at Arnold & Porter, a very, very senior banking lawyer who became comptroller. He and I think Julie Williams, who was the then chief council, decided this was not a good idea, these joint ventures or relationships, they were questionable legality. And he ordered all those relationships to be severed completely.

Alan Kaplinsky:

And then the FDIC followed suit a little bit later than that. And I'm wondering if that is the genesis of the dislike of the payday lending industry that it began really well over a decade ago, and that this was just another iteration of the dislike that the agencies had going back. What do you think of that?

Todd Zywicki:

I think that's probably part of it, Alan. One of the problems you have in this area is you get this strange alliance of the regulators who don't like this, the activists who don't like this, and the big banks in all banks that don't like this, because payday loans for example are a big competitor to overdraft protection fees for example. And so you always see the banks right there standing arm to arm with the regulators who don't like it and the activists who don't like it. And so I think this assault on payday loans goes back a long way. We saw it during the CFPB early years, we're going to probably see it again under the CFPB.

Todd Zywicki:

But in this case, an Operation Choke Point, and I think what we're starting to see now is it's much broader, it goes just beyond payday loans. Operation Choke Point as we talked about covered a lot of politically disfavored industries like firearms dealers and that sort of thing. One thing that's notable is that there are a lot of other industries of course, in this country are very controversial. It wouldn't be hard to talk about the abortion industry for example, planned parenthood or certain activities of environment groups, or protest groups. A lot of groups that are very controversial which somehow avoided the stigma of reputation risk.

Todd Zywicki:

And I think partly what's going on here is, and I remember I testified on Operation Choke Point once in Congress, Alan, and a Congressman from California raised this concern. What happens if a Republican comes in? Maybe they'll turn this against abortion groups or environmental groups, and I think what the activist community understands and what the financial, the big banks in particular understand is this isn't reciprocal. The cancellation only goes one way, this power, the government's only going to be used in one way.

Todd Zywicki:

And what I think we saw that I think was on net probably salutary was at the end of the Trump administration, Brian Brooks issued this new rule called the fair access to financial services law that was designed to try to take these politics out of banking. And we could talk about that a little bit more but I think that it was a preemptive strike to try to prevent these subjective political ideological targeting of certain groups and individuals for debanking, is the term is arisen now.

Alan Kaplinsky:

To get back to the payday for a minute, there was at the time when all this was going on, there was a lot of what I would say was unlawful payday blending that was going on around the country, and I'm not referring by the time that Operation Choke Point became prevalent to my knowledge. There really weren't any remaining joint ventures between banks and payday lenders. It was maybe the beginning of other kinds of online lending where there were partnerships developing between certain kinds of banks and online installment lenders, but not payday lenders because payday lending really over the legitimate payday lenders, they through a variety of reasons, some of it may very well be an outgrowth of cancel culture, payday lending, legitimate payday lending is not much of an industry anymore.

Alan Kaplinsky:

Most of those companies that did legitimate payday lending have gotten into installment lending at APRs that are well below what were being charged in the payday industry. So you had still a lot of payday lending going on, but it was being done initially by offshore companies that were ignoring U.S. law, then tribal payday lending developed, where payday lenders were partnering with basically tribal entities, either the tribes themselves or agents of the tribe or members of the tribe.

Alan Kaplinsky:

And so that was very questionable, at least it's my belief. And in fact, in our firm, we made a decision at the time not to represent anybody in helping them create a tribal lending structure because we thought it was really of questionable validity. And of course, the U.S. government DOJ totally general, they went after tribal lending in several situations and put some people in jail that were engaged in that.

Alan Kaplinsky:

And so I'm wondering, how much of this Operation Choke Point do you think was really just an outgrowth? I'm trying to give the government a little bit of the benefit doubt, and maybe I shouldn't be, but they paint with a broad brush and there was a lot of stuff going on that was of doubtful legality. And I'm wondering if things morphed together, that is unfortunately the legitimate payday lenders, those that were operating under a license, whether they just got swept in with all the illegitimate payday lenders.

Todd Zywicki:

Yeah, I think that's a cogent observation, Alan, and the question I ask is, to what extent was the confusion or the sweeping together intentional, or to what extent was it accidental? Which is to say, as I acknowledged a minute ago, I think one can make a reasonable argument that the DOJ or the government might have some legitimate role in policing financial services used to facilitate fraud in the like, including as you know, potentially online fraud.

Todd Zywicki:

And that's a lot of what's been going on. Well, I wouldn't say that's been what's going on, but obviously the partnerships with the banks and the Indian tribes is they're really driven by the desire to do online lending and get preemptive effect over use of ceilings and that thing. And you can argue about the legalities of that, but that's what's driving a lot of this.

Todd Zywicki:

So on one hand, you do have a legitimate government purpose in preventing fraud in the like, but what seems to have happened with payday lending and Operation Choke Point was more than that. And it seems to me, it was an intentional blurring of the boundary, which is they didn't say that company A is engaging in fraud. What they said is, this entire industry presents a reputation risk to the bank. They didn't say that they were actually doing anything wrong, they said it's a reputation risk and it'll sell your reputation if you provide financial services to these industries, which is intentionally painting with a broad brush and intentionally I think being designed to destroy the industry.

Alan Kaplinsky:

Let's get into what Brian Brooks did now, this fair access to banking regulation. I know when he proposed it, I don't think it never got finalized. It was toward the end of his tenure. I viewed, I knew there would be an outcry, I'm not at all surprised. And most of the complaints I got were from banking clients who were offended that the government was requiring them to deal with certain industries that they find objectionable.

Alan Kaplinsky:

So maybe industries that sully the environment, fossil fuels, things that they just didn't want to deal with and that they hadn't dealt with and they didn't want to be forced by the government to do something. So tell us exactly what proposed reg Brian issued at that time, and I'd like to get your feelings about it.

Todd Zywicki:

Alan, this is one I've really struggled with. As you know, I am second to none in being a believer in free enterprise system and of private businesses. And what Brian did is the first of glance, sends a little bit of a chill at my spine. As you said, I think it was Brian's last day on the job, is controller like January 18th or something like that, then like you said, it never went into effect. But what the regulation says and what he was particularly concerned about, examples you're giving of fossil fuels and presumably these other industries, is that using basically political litmus test to determine whether somebody gets financial services or not. And we saw this in the recent OCC nominee, Professor...

Alan Kaplinsky:

Omarosa.

Todd Zywicki:

Omarosa, right, who says that our goal would be to bankrupt the fossil fuels industry. It's in the same vein. And what they realize is the leverage point as Operation Choke Point was APLI name is choking off access to financial services, can choke off an entire industry. So my predisposition towards these things is to say, look, private businesses can deal with whoever they want to.

Todd Zywicki:

Now, here's where I start to think that Brian may have a very good point and why I think that it's more complicated than that traditional way of thinking about it, which is to say that is it really accurate to consider banking to be a purely private industry now? We know in many countries, banks are essentially public utilities and as part of public utility regulation, you basically have to give a bank account to anybody who qualifies. In other countries, I don't want to go as far saying you have to give a bank account to everybody even if they can't pay for it, but other countries, there's effectively a guaranteed right to financial services.

Todd Zywicki:

And in this country, we continue to treat it as banks as our private companies but it's not clear to me that it's accurate anymore to really think of them as purely private companies. What we know about the financial services industry is it's very heavily regulated in a non-transparent way as we said, there are very high barriers to entry. If you want to start a new bank, you've basically got to meet all the same requirements, including this vague sense of reputation risk.

Todd Zywicki:

And so, in the same debate we're having over the internet and internet providers, which is if there are legal barriers to entries as we see in financial services or potentially de facto barriers to entries, we see with Twitter, it's argued and things like that, does that start to change the balance? Or as I think of it in the world of the second best. In the world of the first best, we could conjure up imaginary perfect markets with perfect entry where anybody who was disfavored could get a bank account. But in the world of the second best where the government is so intertwined and the leverage points are so clear, what do you do?

Todd Zywicki:

And this is an emerging threat right now, what I would say, is what we saw for example is after the tragedy of January 6th last year, on January 7th, Donald Trump's bank canceled his personal bank account. Donald Trump who had millions of dollars in his personal checking account lost his bank account. Now obviously he'd have no trouble getting that, but what if you're just some Schmo, some Joe Blow?

Todd Zywicki:

What we've heard for example are stories where people claim that they've had their bank account canceled because they were identified as somebody who was say a white supremacist for example, a thing we never heard of. We know that people who sell things that are offensive have lost the ability to process payments on their accounts.

Todd Zywicki:

You may have seen just last month, there was a nonprofit organization in Missouri that was going to host a speech by Donald Trump Jr, and the payment processor believe it was JPMorgan Chase. All of a sudden, said, "We're not going to process payments for this group anymore, including this event with Donald Trump Jr. because our policies are, we don't process payments for groups we consider to be engaged in hate speech," and they had to cancel the event.

Todd Zywicki:

And so what I think we're starting to see is this constellation of activism, these very vocal activist groups with government sitting in the background and the emerging woke corporate culture, which really only tilts in one direction.

Todd Zywicki:

And opening up here potentially, I think the same sorts of dangers that we've seen on university campuses, that we've seen with respect to employment law, that we've seen with respect to the internet, which is using the financial system as a leverage point to try to control political speech by private individuals and holding them at threat that unless they tow the line, the line of local corporate culture and activism in the incumbent government preferences, that you basically essentially lose your ability to exist as a human being if you can't get access to bank accounts and credit cards in the light, and I think it's not imaginary.

Todd Zywicki:

We've seen other areas now where this cancel culture is taken over and people have lost access to very important things. And I think financial services is an obvious leverage point for this to trickle into next.

Alan Kaplinsky:

I guess bottom line, Todd, do you think that Brian's fair access to banking proposed reg? Do you think that's the right way to correct this problem or is there a better solution?

Todd Zywicki:

That's a question, Alan, and that's one of the things I'm wrestling with, which is number one, I know what the better solution is. The better solution would be as we talked about extensively in our CFPB Taskforce report, the real way to solve this is more competition, more entry by more competitors, which is to say as we stress in our Taskforce report, we need more access to more banks, credit unions should be able to compete more, we need industrial loan companies, we need more fintech, we need more innovation, we need more access to the payment system by non-bank providers and all of these things where we just have more competition and more choice.

Todd Zywicki:

That's the best solution in my view, which would be to have essentially outlaws be able to find somebody to provide services.

Alan Kaplinsky:

But are you... Let me if I can, push back on it a little, because are you saying that these new competitors who you would like to see be able to compete directly with banks? I assume that they're going to be regulated by the same federal prudential agencies, FDIC, FED, Comptroller as the banks are. Does that really get to the heart of the problem? Aren't those same regulators, if they get it in their court that there's a certain industry they don't like and they want to wipe out, why would they stop pressuring the banks? Why wouldn't they pressure these new non-bank competitors?

Todd Zywicki:

That's exactly right, Alan. And so may be that even that is insufficient, I think that reduces the risk. I think that's the way forward and to amplify your point, which I think is a very important point, I'm not being in any way Pollyannish about this because the regulators want to regulate. They want to get at these things and what we've seen is little things like the rule of law and traditional regulatory authority aren't going to stand in their way.

Todd Zywicki:

We saw this, for example, the unilateral effort by the administration to extend the OCC housing mortgage moratorium. And so you're right, that's not a solution itself. And a good example is what a lot of people have pointed to is cryptocurrency and fintech as a solution to this, but what do we see? What we see are the progressives on the hill and the regulators are basically saying, well, we've got to sweep all that into the banking system so that we have visibility over it, precisely because people want to take that and get rid of it.

Todd Zywicki:

That may not be enough. So, that leaves us contemplating things like the Brooks' fair access to find a financial services rule, which is a very blunt instrument, no doubt. And the potential unintended consequences are quite clear of such a blunt instrument. But I do think that it's time to think about whether that is the least bad way of getting at this question, that despite the unintended consequences, is the threat sufficiently grave, is it a sufficiently administrable standard?

Todd Zywicki:

And one thing I'll say to your point, Alan, I've heard the same thing from the bank saying, we don't want to deal with these unsavory characters. Well, from their perspective, if they have a choice, then they're going to be forced by activists and increasingly, their own employees to go after companies based on purely ideological criteria.

Todd Zywicki:

As we said, they're not debanking abortion clinics in the like, it is clearly a one way ratchet, but I would suggest that the banks that maybe they don't want to be in that position where they're constantly being forced to take political stands on things that they would rather not. And one of the virtues I would suggest of the Brooks' rule is that it relieves banks of having to do that.

Todd Zywicki:

You have to carry a payment processor for Donald Trump Jr., then it's not up to you anymore. And if you're an internet company that has to provide access regardless of ideological content, then it's not up to you anymore. Then it's not your deal anymore, and I would say banks might consider whether or not over the long run, they might be better off out of not being constantly subject to this cycle of cancel culture in universities I think like Chicago, for example, that have said, "We're not canceling people," or my own law school that says, "We're not canceling people."

Todd Zywicki:

The problem abates when basically, people know you can't be canceled, then you just live with it. And I suggest that might be the best way forward here. Brooks' rule focuses on objective financial risk and says you can't take into account these other criteria, and that may be the least bad way of dealing with this in a world of cancel culture.

Alan Kaplinsky:

Remind me, Todd, what happened with Brian's proposed reg? Did the new acting controller withdraw it? Or where is it or is it still out there?

Todd Zywicki:

I think they withdrew it. He issued it on his last day and I think it was just never published in the federal register maybe, and so it never became final. It was announced as a final rule but I think it was held in advance and then they said they would withdraw it.

Alan Kaplinsky:

Right, okay. We're getting toward the end of our show today, and before we run out time, I want to as I promised at the beginning of the show, we would have a short discussion of this taskforce on federal consumer financial law that the CFPB organized under Kathy Kraninger when she was director of the bureau during the Trump administration. You were appointed to share that at that taskforce and over the course of a year, produced a voluminous report that was absolutely incredible both in terms of scope, issues that you covered and how well I thought you dealt with these issues.

Alan Kaplinsky:

And I thought really an even handed fair way of dealing with the issues. We had you on an earlier podcast show shortly after the report came out, where we got into the report in a lot more detail. And then I also had as a guest, Ira Rheingold, who heads the National Association of Consumer Advocates, I think it's called NACA. They, along with other groups had brought a lawsuit against the CFPB, claiming that the taskforce was illegally constituted by the CFPB and the report should be ignored, it should be expunged, reminded me of unfortunately is probably a crude comparison, but Nazi Germany, where they burned books that they didn't like, that looked like they wanted all your handy work to absolutely disappear as if it never happened.

Alan Kaplinsky:

Very recently, the new CFPB headed by Rohit Chopra entered into a settlement with all these consumer advocacy groups. And maybe if you could, briefly describe what they did and more importantly, what your reaction is to what they did. And is this also an example of cancel culture?

Todd Zywicki:

I had thought about that but I guess you're right. And I want to say first, thank you for your kind words on what we produced in the report and it's even handedness. This was really a thrill for me and I as always, appreciate Director Kraninger putting her trust in me on behalf of the entire taskforce and the opportunity to work with her and all the bureau staff and the incredibly accomplished group of fellow members of the taskforce between the five of us. I think it was estimated over 150 years of experience working in this area in all kind of different ways and different backgrounds.

Todd Zywicki:

And as you said, there was a lawsuit that was filed. We started this in January of 2020 and our task was to bring back the report within a year. And one of the challenges of course, was the pandemic hit within a month or so after we started the taskforce. And meanwhile along the way, there was this lawsuit filed claiming that we were subject to the Federal Advisory Committee Act, and the settlement was entered into November 29th, is the date I have, that requires not that the report be depublished or banned, but two things.

Todd Zywicki:

One is to move, just relocate it on the website to the advisory committee portion of the website. And second, to put a disclaimer on the report that says, following an internal review, the bureaus conclude the taskforce was subject to a non-operating compliance with the Federal Advisory Committee Act and basically says that it's not a FACA report. But that the report still is available and that would have to be put on the cover of the report. I haven't checked to see if that's been done already.

Todd Zywicki:

They also note that if three people were to FOIA the document, the original report without the disclaimer on it would be posted on the website as well, which I think is ironic. So basically, all it says is that the bureau has said that it's decided there should have been subject to FACA, it wasn't subject to FACA. So what is my response to that? Well, first, we never said we were FACA committee, as far as I know-

Alan Kaplinsky:

Is that ever an issue up, Todd, at the time? Or do you recall any discussions about, should this be a FACA committee?

Todd Zywicki:

No, and that's what's ironic about this, Alan, which is, this really says nothing at all about the taskforce, which is to say the taskforce ourselves, we had no role in setting up the structure of the committee and how we would be employed essentially, that was the CFPB. We had no role in choosing the members of the taskforce, that was done by the CFPB. We had no role in defending the lawsuit or dealing with the lawsuit, that was all dealt with by the general counsel's office and we would get occasional updates, but they never consulted with us on strategy or anything like that.

Todd Zywicki:

All of the things that are related to this or decisions made by the CFPB without our input or anything like that. We just did our jobs. Now, we would've done it however it was structured. Now, what I can say is I think most of the concerns they've expressed are imaginary in the sense of substantive of concerns, which is I think the report speaks for itself and gratified by what you've said and I think a lot of other people have said, including people who are expecting something very different from us, have remarked on the quality and even handedness of it.

Todd Zywicki:

And I would say the second thing is, we ourselves tried to do everything we could in our power to reach out to as many different voices, get as much input as we could. We created a request for information and comments, we did hearings, we did meetings, we did a public hearing with academics, including Nobel Laureate, Vernon Smith, but also Mehrsa Baradaran, on the other hand, and Marcus Cole and others.

Todd Zywicki:

So we wanted to get input from as many groups as possible. I think our report reflects the fact that we took everybody's thoughts into consideration. I think a lot of the proposals we came up with surprised people, and a lot of those came from the comments and things that we got from Professor Baradaran and others.

Todd Zywicki:

So in my view, this is Washington wrangling. In my view, I think all the view, the taskforce, it's always been our view that the report stands or falls on its merits and its own two feet, whether the CFPB general counsel's office did all the correct procedural structure to this in terms of it being FACA or not FACA or that sort of thing. I don't think that in any way impacted our work on the taskforce or the final product. I think it speaks for itself and I hope that that's how people will review it. If it's a bad report, people should ignore it regardless of whether it was a fact or report or not. If they think it's a good report or parts of it are good, I hope people will take it in that spirit.

Alan Kaplinsky:

Well, Todd, we have come to the end of our show today, and I want to thank you for taking the time to be our guest on the program and to enlighten myself and to more importantly, enlighten all of our listeners about cancel culture in the consumer finance industry and the threat that that poses. And I think you did a really good job explaining how this pernicious idea of cancel culture has made its way over a period of years into the banking industry. And also, talking to us about the taskforce report that you produced along with other members of your taskforce for the CFPB.

Alan Kaplinsky:

As I said, lots of interesting ideas in that report. And while it's not a so-called FACA report, it still exists, it's still on the website and wouldn't be surprised over a period of time, some of the ideas in that report, probably not all of them but some of them will be taken up either by Congress or by the CFPB perhaps under new leadership sometime in the future. So once again, Todd, thanks very much for being our guest and I'm sure it won't be the last time. Don't be a stranger.

Todd Zywicki:

Well, thank you, Alan and I hope some day, we look back on this broadcast and everybody says Professor Zywicki was unduly alarmist about cancel culture. Look, it turned out it wasn't a problem, and this would be one of those times in life where I really hope I turn out to be wrong.

Alan Kaplinsky:

Right, I hope so too. And I also want to thank all of our listeners today who took the time to download our program and invite you all our listeners to join us every week throughout 2022. And I guess the final thing I'm going to say is, a happy and healthy new year to everybody.