Ralph Nader Radio Hour Episode 98 Transcript

Announcer: From the KPFK Studios in Southern California, it's the Ralph Nader Radio Hour. [Music playing]

Steve Skrovan: Welcome to the Ralph Nader Radio Hour. My name is Steve Skrovan, with the man of the hour, Ralph Nader. Now, David is not with us again today, Ralph. He's on the primary campaign trail. Last week he was in New Hampshire with the Triumph the Insult Comic Dog. And this week he's in Iowa, of all places. When he comes back we're going to have to get a full field report from him. I want you to grill him, is what I'm saying.

Ralph Nader: We'll be ready to grill him.

Steve Skrovan: Well, on today's show we're going to be talking to Washington Post columnist, Kenneth Harney. If you've been having trouble getting a mortgage because of your credit score, you'll not going to want to miss this discussion in the second half of the show. We'll also get our weekly crime report from Russell Mohkiber, the Angela Lansbury of the corporate crime beat. If we have time we'll try to get to some listener questions. But before we do all of that, Ralph talks a lot on this show about the danger to our democracy when there's too much power in too few hands. And one of the ways corporations consolidate power is to get bigger, and bigger, and bigger. We see it with the banks. We see it with airlines. We see it with telecommunications companies. I think the latest in that field is a proposed merger between Charter and Time Warner. Just when you thought the service couldn't get any worse.

And all this brings us to our first guest. Professor Carl T. Bogus is a Professor of Law at Roger Williams University of Law School. He has written extensively about political ideology, torts and products liability -and also gun control and the second amendment. But at the moment he is at work in a long term project challenging the current paradigm in anti-trust law. His first article on that project, "The New Road to Serfdom: The Curse of Bigness and the Failure of Antitrust," has been published by the *University Of Michigan Journal Of Law Reform*. So, welcome to the Ralph Nader Radio Hour, Professor Carl Bogus.

Carl Bogus: Thank you, Steve.

Ralph Nader: Yes, welcome. Indeed, Carl Bogus. I've read your books in the past; and they're right on point and very well documented. And that's why I was taken by your most recent article called "The New Road to Serfdom: The Curse of Bigness and the Failure of Antitrust" in the *University Of Michigan Journal Of Law Reform*. The word "antitrust" has always bothered me, Carl, because it's a word that was well known over a hundred years ago because the big corporations were known as "trusts." But it really isn't that well known today. And I like to use the word "anti-monopolization," or "anti-monopoly," or "anti-bigness." So, that's what we're really going to talk about today. And if any listener thinks this is remote from what they pay every day for goods and services, who they have to succumb to in terms of concentrated power, or limiting their options, or opportunities, not only to go into small business as independent actors but also their role as workers and citizens, and whether they think that bigness affects the political and electoral world as well. So, it's extremely relevant. And let's start with your major point, Carl Bogus. You have five reasons why regulators and courts should be more skeptical of mergers and acquisitions involving very large companies. Can you just list the reasons? And then we'll develop some of them in the ensuing interview.

Carl Bogus: Yes, I believe that first: the nation is better served by having more rather than fewer companies. And there are many reasons for that. And one is that with more companies, citizens have more choices among employers. Second: I believe that mergers and acquisitions suppress research and development. Steve Jobs is famously reported to have said that, "Every merger represents a *failure* of innovation." That rather than having a big company do research and innovation on its own, they simply buy up small companies that are doing it successfully. Third: mergers and acquisitions often do considerable damage to local communities - that is businesses that are important to the social and cultural fabric of an economic fabric of a local community are vacuumed up by some behemoth corporation far away and disappear from that community. Fourth: the economists who attempt to predict if two big firms merge, will they have sufficient market power to demand monopoly prices? Many of their predictions are simply wrong, and as a result retrospective analyses show that most mergers that are approved by the regulators—because the regulators don't think they will lead to increase prices—do in fact lead to increased prices. I should have mentioned that the larger companies get, the greater their political power, the greater their political power the great their ability to get corporate welfare from the government.

Ralph Nader: And your fifth point on workers?

Carl Bogus: The fifth point on workers is that this relates to freedom. That is fewer companies - and they're larger, rather than more companies - that workers have less of a choice among employers and the competition for workers goes down. And this results in a poor environment - economic environment - for citizens seeking to find employment and a reduction in freedom. That is one of the great freedoms we have is if we don't like the employer we work for, we're not serfs. We can quit and go get employment elsewhere. But the fewer other options there are - particularly if you have somebody who knows an industry and is used to working in an industry and there are fewer and fewer firms in the industry - then there are fewer and fewer choices of employment and a diminishment of freedom.

Ralph Nader: Well, some of our listeners, Professor Bogus, may be surprised to learn that the origins of antitrust laws were supported by left/right, that the Sherman Anti-Trust Act in 1890 that passed Congress was sponsored by Republican Senator John Sherman from Ohio and that historically authentic conservatives have supported the breakup of monopolies, cartels on the grounds that it liberates free market competition when the breakup occurs. And unfortunately, the image today is that if you're for a rigorous enforcement of any monopoly laws, you're more likely to be a liberal progressive and not a conservative. But that's completely false. And you go through a lot of history. In your Law Review article, indeed, that's the main substantiation of the points that you make. And you cite Frederick Von Hayek who is the intellectual from the Austrian School of Economics that Speaker Paul Ryan calls his major mentor. And he reflected exactly what you just pointed out. That he thought - he said, "The fewer employers there are, the worse the workers are going to be, the lower they're going to be paid, and the less money there is to stimulate the economy and meet the workers' needs." Sort of sounds like Wal-Mart. But can you elaborate on that, that there is a conservative intellectual tradition here quite in contrary to the Chicago School of Economics that has taken over Anti-Trust thinking in recent decades?

Carl Bogus: I agree with you Ralph. And I think there are actually probably two different conservative traditions here. Both of them are very important. The first one you mentioned is Hayek and the libertarian tradition. And what you've just reflected is that Hayek recognized that we don't look at people simply as consumers. They're not simply shoppers in retail stores buying things. They get the money to buy things from their role as workers. And bigness and consolidation reduce that and reduce freedom in the workforce. And that is a great detriment to citizens. And in fact, in the title I borrowed the name of his favorite book, <u>The Road to Serfdom</u>, calling this <u>The New Road to Serfdom</u>. There's a second conservative tradition. It's a Burkean Tradition. And Burke thought that culture--

Ralph Nader: That's Edmund Burke.

Carl Bogus: Yes

Ralph Nader: The British political philosopher who supported the Colonists in the Revolution after a fashion.

Carl Bogus: Yes. Thanks Ralph. That's right. So, Edmund Burke believed in culture, in fabric of society, that that was very, very important. And these mergers that cause local firms to disappear that get vacuumed up by these giant companies do enormous damage to local communities. So, here is an example: I teach in Rhode Island. And Rhode Island used to have its own banks. And those banks were important to the Rhode Island economy. Those bankers knew businesses in Rhode Island, and the people who ran those businesses, and who could be trusted with loans. But those banks and their executives were also important to the Rhode Island culture. Executives in businesses often serve as trustees or directors of local schools, and charities, and museums, and theaters, and the like. And when they disappeared, the community, it is impoverished. And the Rhode Island banks were eventually all bought out by Boston Banks. The Boston Banks were all bought out—we're talking about the major banks. The large Boston banks were all bought out by national banks. Today, there is not a major independent bank in New England. So, this is just one example, I think, of how communities are diminished by these mergers and acquisitions.

Ralph Nader: What's interesting is the Chicago School of Economics, which reflects the views of Milton Friedman and people at the University of Chicago Law School - it was all very mathematical. And they basically pushed aside the whole rationale of the legislators for the antitrust laws—the Sherman Act of 1890, the Clayton Antitrust Act of 1914 which was supported by Republicans and Democrats, by the way, at that time. They were worried about just the points that you're making in your Law Review article, which you want to view as a primer of explaining Antitrust to people who aren't lawyers. And you do so in very clear language. They're worried about concentrated power, political power, economic power, power to control communities from far away executive suites in New York, in Chicago, power that could decide what was innovative and not innovative. And I've always accused the Chicago School of Economics as being empirically starved because the evidence, Professor Bogus, is overwhelming; that when the steel industry consolidated, they were suppressive of research and development and started losing out to European and Japanese skilled companies. When the other companies were consolidated, they froze the technology and even were prosecuted successfully by the Justice Department for product fixing by agreeing not to innovate pollution control systems as an antitrust violation. In one area after another you see suppression of worker rights; you see suppression of research and development; you see suppression of community self-reliance.

In your article I saw these startling statistics. You said the 500 largest corporations in America control 75% of the economy, of the GDP. And so, as absentee ownership increases and decisions are made about Ithaca, New York, or St. Petersburg, Florida, or Peoria, Illinois from Tokyo, New

York, Shanghai, Berlin - you name it - it's almost impossible for local communities to shape their own future. And something that happens in China collapses communities all over this country because our auto parts industry and other corporations want to export their whole industry to China and hollow out the communities that bread them and supported them and provided them with their profit. So, explain this absence of the Justice Department and the Federal Trade Commission which, I think, they're beginning to come out from under the Chicago School ideology. But it's, sort of, of an ignoring of the reality on the ground for the last 100 years of mergers and acquisitions. And of course as you point it out in a lot of your articles, one of the incentives of mergers and acquisitions is the bigger the company the more the pay of the CEO and the President of the company. So, they have a personal interest in merging and acquiring other companies.

Why is the evidence, which is so overwhelming, then shoved aside? Who's defaulted here? The economists? The law professors? Who surrendered to the Chicago School of Economics, deprived of empirical reality?

Carl Bogus: Well, I think a lot of good meaning people got seduced by the siren song of supposed objectivity. What the Chicago School said was, "Listen, the antitrust laws have been interpreted as being about all of these important values - social values and political values -and that's very messy. You get a case that comes along, and once you start to worry about how this merger is going to affect the political and social life of the country and of communities, you get people who disagree. It's very subjective. It's very difficult. And, so, well, forget all of those things - those values - because we can't calibrate them. We can't measure them. But the economists tell us that what they can do is they can do this economic modeling. If two companies want to merge, well, those two companies have sufficient market power to reduce production and raise prices. And that's objective. It does not lead to judges or regulators imposing their own views about values on the country." That's very seductive. Let's be objective. Let's be scientific. But the problem with that view - and one of the parents of the Chicago School thinking here, Robert Bork even said this - the problem with that view is if you only value what you can measure, you are frequently not paying any attention to the most important values that you have. And if there is any most fundamental value about the United States of America, it is we have always believed that there should not be too much consolidated power. And our founders created this elaborate and wonderful system of separation of powers and state versus federal government, so that too much power would not flow into one set of hands in the government.

Ralph Nader: I've got to tell you a story, Professor Bogus. It illustrates this point. Bernard Rappaport was the liberal CEO of an insurance company, American Income Life Insurance Company in Waco, Texas. He told me a story that about 30 years ago he met the heads of the Bank of America, the giant Bank of America which was then restricted to California. And he said to them, "What's going to happen if you guys get in trouble? If you broke yourselves up into six banks and one of the banks got in trouble, there are still five other banks that can take up the risk. But if you get in trouble, you're too big to fail." That's how far ahead Bernard Rappaport was of this time. It's one of the consequences of bigness. It was called years ago "the curse of bigness." One of the consequences is that they're too big to fail. Which means they are too big to fail so the taxpayer bails them out. As in the Wall Street collapse in 2008 with Bank of America, AIG Insurance Company, Citi Group, Merrill Lynch, and others collapse the whole US economy, unemployed 8 million workers, shredded pensions and mutual funds, and ended up being bailed out with trillions of dollars of guarantees in taxpayer funds.

So, there's an example of what you're pointing out right there. They were too big to fail. And as George Will, the conservative columnist, pointed out recently, any corporation too big to fail is too big to exist. And that, of course, comes right back to antitrust enforcement. And you make the point that early in the 20th century, antitrust was discussed by presidential candidates. It was discussed by Howard Taft, Ted Roosevelt, Robert La Follett. It was discussed by Woodrow Wilson. And now it's almost never discussed. Bigness is never discussed because both major Republican and Democrat parties are dialing for the same big money from big corporate executives and their super packs. How would you recommend making bigness over small business, over communities, over workers, over consumers? Bigness has brought us these notorious concentrated power trade agreements, NAFTA, The World Trade Organization, now the one coming in from the Pacific Rim, which I think is going to be defeated in Congress, because of the grassroots' opposition to it in the coming months. How would you recommend that people make this a big issue by connecting it to their daily lives, so it isn't so theoretical?

Carl Bogus: Yeah. Well, I think they can start with where they work and to what extent the industry in which they work has been consolidated. They can also think about themselves also as consumers. So, they go into the supermarket. I know that the giant supermarket where I live, in DC, has a whole aisle of beer. I don't know how many choices of beer is there; maybe 80 different brands. And all of them in that giant - all of those 80 different brands - are produced by just two companies. And those two companies, which by the way neither one of which is today an American company - by the way, InBev, Anheuser-Busch and SAB, one is a Belgian company and one is a South African company. Those two companies themselves want to merge. But the idea that you have all of this choice is an illusion that is being set up behind the curtain by these giant, giant companies. So, whether it is as a consumer, or I think equally or even more important as a worker, or as a citizen, because certainly we understand as citizens that the larger these companies are the more political power they have. And that goes with the fact that not only both their size gives them power, and the fact that there are fewer of them in industries gives them power. And they use that power to obtain all manner of favors and subsidies from government. “Corporate welfare,” a term I think, Ralph, you coined: a favorite liberal term; “crony capitalism,” the same thing – term - favored by Conservatives; “rent-seeking,” affirmed, favored by economists—it all refers to the same thing.

We know, Ralph, that there are structural problems in America today that - when I was a boy it was accepted that my generation would do better than my parents, and my parents had done better than their parents and so forth. The great anger in the electorate today comes from the recognition that that’s no longer the case; that we now fear and believe that our children will do worse than we do. And there may be quite a number of reasons for it. But one of them—and one that has been overlooked—is this growing tendency in our country - and indeed now the world - the consolidation of these giant firms, to these behemoths getting bigger and bigger; fewer and fewer companies, more and more giant companies.

Ralph Nader: And also, you see, they’re losing any sense of patriotism. These companies were born in the USA, chartered in the USA. They made profit on the backs of American workers. They went to Washington to be bailed up by taxpayers when they were in trouble. Now they’re quitting the country in terms of their legal fiction; that is their moving to Luxemburg, or to Ireland, called “inversions,” in order to avoid Federal taxes. But they still stay here selling their products, receiving all the public benefits, the research and development budgets for the National Institute of Health, the Pentagon, NASA, getting all the public works and infrastructure, all the court facilities they have. But they don’t want to pay their fair share. So, they’ve lost any sense of patriotism, any sense of bonding with the communities in our country. Other than to tell them “no thanks,” we’re shoving our industries off to China or to Cork, Ireland.

Can you imagine a small business in Rhode Island saying to the US government “If you don’t get rid of our Federal income tax we’re going to move to Cork, Ireland”? It would be unheard of. That’s another consequence. That’s another consequence of what our forebears in the early 20th century called “the curse of bigness.” And this whole idea that you have to be big in order to compete with other big giants around the world is nothing more than a rationalization of subordinating the spirit of free and competitive enterprise in this country. That's how radical these giant corporations are. But we tried to get the Federal Trade Commission - successfully actually - years ago to put up a primer for the citizenry, "here is what antitrust law is all about" in clear language, "how it affects you as a consumer, how it affects you as a worker." And I think the Federal Trade Commission still has it. If you go to FTC.gov or whatever website they now have, ask them if they have the primer on antitrust for citizens. This is very important to have an educational process outside of law schools so people understand that there are laws on the books that need to be much stronger, that should protect them.

Now, what do you think of current antitrust law enforcement by the Justice Department and the Federal Trade Commission? And what would you recommend precisely in terms of beefing up these laws and the budgets for enforcement?

Carl Bogus: Well, before we get to that I want to underline the point you just made, because I think it's the most important point of all. So, Clemenceau famously said, "War is too important to be left to the generals." And one of the problems with antitrust is it has become a hyper tactical and specialized field. And most citizens don't know what the word means, "antitrust," but certainly think that it's too dry and technical a subject for them to worry about. And yet - as you pointed out earlier - there were times, for example the presidential election of 1912, when antitrust was one of the biggest topics in the debate among presidential candidates.

Ralph Nader: As to who is going to be the stronger enforcer.

Carl Bogus: As to who is going to be the stronger enforcer and exactly how it should be done.

Ralph Nader: Yeah.

Carl Bogus: So, the ultimate cure here is to take antitrust away from being the exclusive possession of these antitrust specialists and make it a topic of public debate again. And it is only when the public is energized and says "This is an important topic about American values, about controlling consolidated power—in this case consolidated commercial power which is just as dangerous as consolidated governmental power." Only when the citizens see that and see that this is not a technical subject, this is a political subject - in the best sense of that word - that is something about values that deeply affect the Republic and how we all live here, only then will the regulators and the courts become more sensitive to this and stop looking at everything as in simply materialistic terms. What-- [crosstalk] Sorry.

Ralph Nader: You reminded me. I helped start the American History of Antitrust over 20 years ago with Bert Foer who's a former lawyer with the Federal Trade Commission. And a few years ago he developed a beautiful video. I mean he really worked on it. I think it was about 10, 15 minutes explaining antitrust to the average citizen. And so, go to American Institute of Antitrust. Go to their website, listeners, and see how you can download this video. Because he really wanted it widely distributed, so people could watch it at town meetings that the children could learn about it in high school, college. He really wants to hear from you. His name is Bert Foer.

So, back to the last point - as our time begins to run out - how would you strengthen some legislative action, bring up to date the antitrust laws? And how would you strengthen the antitrust laws?

Carl Bogus: Well, I think the laws are adequate. It's the interpretation of the laws that are a problem. And I think we need a debate about what the laws were intended to do, that they were intended to do more, then ensure that there is not a reduction in production and not an increase in prices. These laws were designed to control consolidated power in the commercial realm and all of the evils that flow from that. And that's where we really need to begin. We really need to begin with making this a topic of public discussion and discussion by the presidential candidates. I'd like to see this discussed by Clinton and Sanders and O'Malley on the Democratic side. And I'd like Republicans - some Republicans - to recognize as you pointed out earlier that whether you are a Libertarian or a Burkean traditional conservative, the control of consolidated power in the commercial realm should be a great concern to you.

Ralph Nader: Well, you are an expert in telling us what the history and purpose of the Antitrust Laws are in your new groundbreaking - a lot of your articles - <u>The New Road to Serfdom: The Curse of Bigness and The Failure of Antitrust</u>. We've been talking with Professor Carl Bogus, who teaches law at Roger Williams University School of Law in Bristol, Rhode Island. Can you give our listeners your contact information, if they want to communicate with you further?

Carl Bogus: Yeah. So, I think it's pretty easy. Just Google me, "Carl T. Bogus," and I have a website, and you can contact me through that website, or you can send me an email. And my email address is CBOGUS@RWU.EDU. And Ralph - if I may - I just like to add one last thing. Your listeners who are not lawyers and not economists are just the people I wrote this article for. They should not be put off by the fact it is in a Law Review. I wrote it so it would be informative and accessible to serious readers who are not lawyers, not economists. It will tell them everything they need to know about the history and policy of antitrust. They will find it completely accessible.

Ralph Nader: Can they get it online?

Carl Bogus: Yeah. They can get it online. Just go to the University of Michigan Journal of Law Reform website. The University of Michigan Journal of Law Reform website, and it is in Volume 49. The title of the article is The New Road to Serfdom: The Curse of Bigness and the Failure of Antitrust. And it is available there. As I say it's completely accessible. The only downside is that it's 120 pages, and as someone remarked to me, "the curse of bigness indeed."

Ralph Nader: Well, thank you very much for your research, clarity of your writing, Professor Carl Bogus.

Carl Bogus: Thanks for having me, Ralph.

Ralph Nader: You're welcome.

Steve Skrovan: We've been speaking with Carl T. Bogus, Professor of Law at Roger Williams University of Law School. He can be reached at CBOGUS@RWU.EDU. And we'll post a link to the article on the Ralph Nader Radio website. So, now we're going to take exactly one minute to check in with our corporate crime reporter, Russell Mohkiber. You're listening to the Ralph Nader Radio Hour. Back after this:

Russell Mokhiber: From the National Press Building in Washington, DC. This is your Corporate Crime Reporter Morning Minute for Friday, January 29th, 2016. I'm Russell Mokhiber. During the last five years probably 82% of individuals referred for criminal prosecution in the Federal system were actually prosecuted. But during the same five years, only 12 percent of corporations referred for criminal prosecution were actually prosecuted. That's the conclusion of a report released by the Transactional Records Access Clearinghouse or TRAC of Syracuse University. During the last five years, federal investigative agencies made 10,670 corporate criminal referrals to U.S. Attorneys throughout the country. The number of referrals that went on to be prosecuted, however, was much smaller — 1,309 cases or, on average, only 262 a year. This means that for corporate referrals, only a small proportion, 12, of the matters recommended by the agencies resulted in the filing of criminal charges in court. For the Corporate Crime Reporter, I'm Russell Mokhiber.

Steve Skrovan: Thank you, Russell. Welcome back to the Ralph Nader Radio Hour. My name is Steve Skrovan. And I don't know about you out there, but I see a lot of commercials on TV and even on my phone about how important it is to find out your credit score. It's a big concern for a lot of people. But it's like your weight. You're not sure you're going to like what you see when you step on that scale, especially after the holidays. And our next guest tells us "If you've been frustrated that the credit scoring system has prevented you from getting a home mortgage, 2016 could be a watershed year. Important changes are in the works." And those are the words of Washington Post Real Estate columnist, Kenneth R. Harney, who is going to tell us exactly what is in the works. Welcome to the Ralph Nader Radio Hour, Kenneth Harney.

Kenneth Harney: Glad to be with you.

Ralph Nader: Thank you for coming on, Ken. Kenneth Harney knows an enormous amount about real estate. He has a syndicated column around the country on real estate. I've always been trying to get him to write a book. He could write six books in one year. He knows so much. So, this interview is going to be interesting not just to people who are dealing with home mortgages, because when you're dealing with a credit score, you're dealing with anybody who has credit and who has a credit card. So, let's start right from the beginning. Ken, what is a credit score made up of right now before the changes that are being proposed that we'll talk about?

Kenneth Harney: Here's what I can say, Ralph. People should know that there are a lot more than one score out there. There are many scores. Even the most popular score in the mortgage field is the FICO score and there are 50 or 60 versions of that. So, it's an inherently confusing subject for most people once they begin to delve into it, because not only you have the FICO score, but you have each of the credit bureaus have their own in-house scores. And so, there are really dozens of scores out there. And when you see people online offering free scores you can be certain that it's not a FICO score, which is the one that is used in the majority of credit decisions for the mortgage field anyway. But what's in it? It's what you would imagine: a banker, a lender, somebody with the money, who you're asking to lend you some, would be interested in knowing. That is: have you paid your bills in the past? And so, many of your bills in the past, many of your credit transactions in the past get reported to the three main credit bureaus. And that's Equifax, Experian and TransUnion. The scores also look at the type of credit that you've got in the past. They'd like to see a mix of credit. So, it's credit cards and mortgages.

Interestingly, if you've got most of your credit from say a rental-type place or certain types of stores that deal with people with bad credit, that gets reflected on your score. That's built into these models. The scores also look at your utilization of credit. It's a key thing that a lot of people either don't know about or forget about. So, if you have a credit card and you have a $15,000 or $20,000 line on that credit card, you don't want to be using a lot of that credit. You would think maybe bankers want you to use a lot of the credit, but in terms of the scoring models which intend to rank order you - in terms of your likely risk to the lender - they're interested in how much are you utilizing and do you have a lot of credits?

So, it’s factors like these that go into scores. A problem I’ve always had with scoring and with the system as a whole—and Ralph, I don’t know, whether you agree with me on this—but the system seems to be set up to forget about people who don’t, for one reason or another, use credit a lot. They don’t like or don’t want credit cards.

Millennials, noteworthy in the day, are not making a lot of use of credit cards. Perhaps you just are a person who don’t feel you want to get into credit situations, and so you don’t take out loans from people. But you do pay your rent. You do pay your phone bills. You do pay your various other bills that are really credit when you scan them, tear them down and look at what’s going on here. A rent is just like a mortgage payment, and yet your rent, generally speaking, does not get reported to the three major credit bureaus. And if information does not get reported to those big credit bureaus—it doesn’t sit in their files, nobody knows about it—and these credit scoring models they have in house from either the FICO model or another model of Vantage Score, it can’t pick it up. It can’t use it in its computations.

Ralph Nader: And even if you pay your utilities on time, if you pay your cellphone payments on time, not just your rent - well, you call them non-banking forms of credit - it doesn’t go into your FICO number. By the way, the FICO model number takes you from 300, which is terrible credit, to 850 maximum number, which is outstanding credit and low risk of default. Let’s break this down a little bit, Ken. Number one: what happens to people who have lower credit scores for non-rational reasons? I’ve heard report say, “If you complain a lot to an insurance company or to a car dealer, that can lower your credit score.” Is that kind of information getting into the database of the FICO Company?

Kenneth Harney: I’ve never heard that, Ralph, certainly not complains. It’s all about paying bills. And, so, if you’re just a pain in the neck for them I don’t think that gets reported.

Ralph Nader: Okay. So, that’s often used as a put off by an auto dealer, who wants to shut up a complainer. But let’s get back to what is being proposed, because the credit score is very important in terms of what kind of credit you get, what kind of interest payment you pay, what kind of terms. So, it’s a very realistic impact on people’s lives. Now, there is a proposal to increase the kind of credit behavior—like paying rent, paying utilities, paying other non-banking forms of credit—to put that into the FICO or other credit score models. And there’s a bill in Congress supported by both Republicans and Democrats that you report on called the Credit Score Competition Act, “which is designed to expand access to mortgage money for large numbers of credit worthy applicants, especially first time buyers and minorities”—I’m reading from your column—“who are currently shut out in consideration by the two companies' credit scoring practices." You were referring to Fannie Mae and Freddie Mac. Can you explain the likelihood of that happening, so that people get a fairer evaluation of their credit worthiness?

Kenneth Harney: Well, let me just back up and say something about the Fannie and Freddie situation. I mean, these are crucial to the mortgage market. We can debate all the things about them whether they're too strict on credit or not. But in any event, they are the gatekeepers to mortgage credit for a lot of people. And each of them has, since the mid 90's, used credit scores to sort of automate, help automate their underwriting system so they can determine whether this is a good loan or not, before buying it and securitizing it. And so, each of them - from I guess 1995, 1996, right about there - has been using the FICO model exclusively. Now, that model does not incorporate, or the model they have installed does not look at any of these other types of credit like payments many of us make. And so it's not the latest model that FICO has even come out with, but they have exclusive reliance on FICO. And since FICO came out there had been some competitors, one main one, interestingly created by the joint venture created by the three big credit bureaus because they got tired of everything being dominated by FICO. So their model - it's Vantage Score 3.0 - is pretty much what's the issue here, they claim - the Vantage Score claim- that because they do pick rent, they do pick up utilities and other of the transactions to the extent that they do get reported to the bureaus that they are able to score 30 to 35 million more consumers than FICO does. FICO disputes that, but the point is that the GSEs, the Fannie and Freddie are not using even FICO's most modern version of its model and, therefore, harming people who are credit worthy, but they just don't have the types of credit that lean to the outdated FICO model being used at Fannie and Freddie.

Ralph Nader: Why are they so sluggish? Why is Fannie and Freddie so sluggish?

Kenneth Harney: Yeah. It's a good question. I ask that question about two years ago and was told, "Hey, Ken, this is so expensive to change." The official - and I think they probably believe it, but it's not an adequate answer - is that we think the model we have or the models we're using - even though they're based on really old data that goes into the 90's credit behavior - has changed since then. We've had recessions. We've had housing boom and bust. They've got some really old data in their model. But they say that it's adequate, that it serves them well, and to change it would not only cause a lot for them but also require--

Ralph Nader: Apart from Congress putting pressure on them with this Credit Score Competition Act Bill that's been introduced, how tough is Mel Watt - who is the Federal regulator to some extent, Freddie and Fannie - on this issue.

Kenneth Harney: I think he has to understand that there's a problem here, because for the past two years he has brought up the subject in his annual directive setting goals for the Fannie and Freddie for the coming year. Mel, who heads the Federal Housing Finance Agency which oversees Fannie and Freddie conservatorship, has told them to get moving in fact for 2016, to finish their studies, which they've been doing for the past two years on how to and whether they should switch to additional models and allow lenders who are sending them loans to use other scoring models like Vantage Score. And of course, if that door opens - the Vantage Score - then you'll have potentially even better scores being developed by others who currently are discouraged by the monopolies.

Ralph Nader: We've been talking with Ken Harney, a syndicated columnist on real estate whose column appears in the Washington Post and a lot of other newspapers. Tell our listeners what they can do under consumer protection laws to get their own credit histories and to see whether there's false information in their files by these giant credit bureaus, three of whom dominate the industry—Equifax, Experian and TransUnion. What does the average person have as a right to get this information? And is it free?

Kenneth Harney: Well, first of all, they can go - and I recommend to everyone to at least once in a year - go to AnnualCreditReport.com. And you can get - just once a year, but you can spread it out over the year - you can get your current credit report from each of the three named bureaus. Plus, federal law, Fair Credit Reporting Act guarantees us all the right to dispute and get corrected information that is inaccurate in our credit reports and therefore maybe having a negative impact on our ability to get credit. That's what the law says. There has been, and not the best performance by the credit bureaus and by the creditors—the lenders, the banks—who report to them in clearing up a lot of people's erroneous information. And that's a huge problem.

Ralph Nader: But they can correct false information, the average consumer. Can they?

Kenneth Harney: Yeah, you can. But sometimes it takes longer than it should. Sometimes you don't get satisfaction.

Ralph Nader: There are tens of millions of unbanked consumers in this country, and that's why their proposals to set up a Postal Savings Bank, restoring what existed up to 1968 in our post offices and other proposals to make it easier for people to engage without excessive fees in banking transactions. Now, what do you do for the tens of millions of people who are so poor that they're not part of the credit economy as you eluded to? Under the present situation, what would their credit score be? Or would it be just no credit score? They wouldn't give them a number; they'll just say no credit score. Is that correct?

Kenneth Harney: If you don't have credit, if you're not using the credit system that the banks want you to be using - which is them and credit cards and all that conventional type of credit - but you're only paying rent and various other things that don't show up - you may will not have anything in the files at any of the bureaus. And if there's nothing in your files or if there's very little on your files, then no model can score you. So, I think what's needed is a reform of the system to broaden the number and types of people who are reporting to the bureaus. Currently maybe 10,000 rental organizations are now reporting rents to the bureaus. And so that's a step in the right direction. There is some reporting of utilities data and some I understand of telecommunications data. But it leaves those people who are unbanked - who by the way are not going to be getting a score anyway or showing up in these files until they seek credit as opposed to just banking. So, it's a real problem for maybe 50 million people who just don't show up. And with some of the new scores, in fact, FICO itself has come up with a score that is more inclusive and was able to score more people. Vantage Score, as I say, claims to be able to score 30 to 35 million more people who are currently, you know, they just don't show up. And if they do have a score, if there's just a little bit of information in a credit bureau file they may end up with a very, very low score which is worse than having perhaps no score.

Ralph Nader: Well, I've always been worried about the credit economy trap because the moment you get into that—credit card, debit card—the vendors find more and more ways to encase you in their tentacles. And, of course, the Internet and Facebook and Google databases and so on are just an overall part. A lot of things you can't buy anymore if you don't have a credit card. I mean, try renting a car, for example, without a credit card.

Kenneth Harney: I would want to do that.

Ralph Nader: Yeah. Fed Express doesn't take cash. So, years ago Consumer's Union promoted a movement - which didn't succeed - which was to try to convince Main Street merchants to give cash discounts, discounts on cash purchases. Because as everybody knows, the credit card companies take a certain percentage from the retail customer, from the retail vendor and that's how they make their profit. And it never got anywhere.

Kenneth Harney: And they raised prices for everybody.

Ralph Nader: Yeah. They raised prices. I once wrote a column, Ken, "Five Reasons Why I Don't Have a Credit Card." And that was before debit cards, and one of them was just your point: you're contributing to the increase in prices. You contribute to impulse buying. You allow an invasion of privacy. They now know so much more about you than sometimes you know about yourself with the big data on more than just people's horizons. But we do need a broader discussion of this. But I find your weekly columns are really pretty fascinating. Why don't you tell our listeners as we conclude, Ken Harney, how they can reach your weekly column if it doesn't have to be in our local newspaper?

Kenneth Harney: Well, you just go to the Washington Post. There's WashingtonPost.com. And it should be there. You may have to search around a little bit, because it does run in the Real Estate Section. In some papers, like the Chicago Tribune, I'm writing on business and it runs at different parts of the week. I mean, I can be located online and at the weekly column.

Ralph Nader: How can they reach you online?

Kenneth Harney: The best way will be just to go to the Washington Post site, WashingtonPost.com.

Ralph Nader: To what extend did you get material for your column other than your initiated research from consumer complaints?

Kenneth Harney: Oh, I get consumer complaints all the time, and they often form the basis of our columns, like this credit thing. I mean, I hear from people all the time about credit scores, because they just can't figure out the system. And I find even well educated - particularly younger folks and certainly working folks - have real trouble understanding not only what the system is like but also what to do once you're in it. And so some people really—maybe there's a need for a book out there. But it's got to be in plain language and aimed at the folks who really need it. It's just the way these credit models are set up and the system is set up. Things that you think make sense like "let's pay off this credit card," right, I mean, do you think that that might raise your score? Actually probably it's going lower it. And so, it's often contrary to what people think would be the--

Ralph Nader: It's an enormous system of control, their way behind people's ability to shape in any public policy manner. But listeners should know detailed consumer complaints are really extremely important. They are important to Ken Harney's column. They're important to our work. They're important to the Federal Trade Commission, to other consumer protection agencies around the country. So, don't hesitate in sending your personal experiences. And the more detailed and factual those letters are, the more likely they're going to have an effect. Just before we close, Ken Harney, does the Federal Trade Commission offer any good, simple consumer information relating to what we've been talking about?

Kenneth Harney: Really the place to look is the Consumer Financial Protection Bureau--

Ralph Nader: Okay.

Kenneth Harney: --which is the best new thing on the scene. They are very concerned. They've already done one study on the whole credit system - very critical of the major players - on the very subject we're talking about: that people don't understand the system, particularly focusing on the complaints that you brought up. I mean, people can go to the CFPB, ConsumerFinance.gov, and file their complaints about credit bureaus. They can put in a narrative. I have found in, as I have referred people to the CFPB - and again that's ConsumerFinance.gov, not CFPB - but you file your complaints, and there are real people who look at these complaints and who get involved. I had one situation where a woman was a 93-year-old widow in Arizona, who was being unfairly foreclosed upon. And through the intervention of the lenders involved, we got those resolved. But Fannie Mae was involved. And I just got an email from her family yesterday. She's now going to be 95 and is very happy she didn't get foreclosed upon. But she filed a complaint. Her son filed a complaint with the CFPB and it got the attention of CPFB. They pulled together the lenders who were involved and got that situation resolved.

Ralph Nader: You're quite right. Our experience with the Consumer Financial Regulatory Bureau is that they eagerly solicit complaints. And they're getting thousands of complaints. And that's the raw material for their consumer protection action. Yeah, I think you're exactly right on that. So, take advantage of it.

Kenneth Harney: And also get your annual credit report. That's www.annualcreditreport.com.

Ralph Nader: Yeah.

Kenneth Harney: Yeah. It's free. And you spot the errors and it gives you a nice profile on what lenders see when they pull down your credit report which often comes with the score.

Ralph Nader: What Ken Harney is really saying is you can be your own personal watchdog on these credit bureaus by going to get this free service on your behalf. Now, thank you very much, Ken. It's a pleasure talking.

Kenneth Harney: My pleasure, Ralph.

Ralph Nader: And I hope we can continue reflecting some of your future columns on matters that really affect people everywhere in this credit economy.

Kenneth Harney: I'd love to. And thanks for the invitation.

Ralph Nader: Yeah. You're welcome. Bye now.

Kenneth Harney: Bye.

Steve Skrovan: We've been speaking with real estate columnist, Kenneth R. Harney, of the Washington Post. We'll post a link to his article on the Ralph Nader

Radio Hour website. Ralph, I just wanted to ask you a question. Not being in the credit system yourself, how do you get a credit score?

Ralph Nader: I don't have a credit score, according to Ken Harney, because I don't have a credit card or a debit card. I never have. I pay by check or by cash.

Steve Skrovan: So, if you want to buy a house or an apartment, how is that done?

Ralph Nader: Well, that's an interesting question, because I've never wanted to buy a house. And I've never had to rent a car, because I had my travel bureau who would rent the car for us. But you point to an important vacuum. If you're not part of the credit economy, you're increasingly frozen out of certain purchases that you have to make. So, unless you get a third party, like a travel bureau to do it for you, you're going to be forced into the credit economy with a credit card.

Steve Skrovan: Very interesting. Well, that's our show. Once again thanks to our guest today, Professor Carl T. Bogus who spoke to us about antitrust laws, and Kenneth Harney who told us all about credit scores. A transcript of this episode will be posted on RalphNaderRadioHour.com. For Ralph's weekly blog go to Nader.org. For more from Russell Mohkiber go to CorporateCrimeReporter.com. Remember to visit the country's only law museum, the American Museum of Tort Law in Winsted, Connecticut. Go to TortMuseum.org. The producers of the Ralph Nader Radio Hour: 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. Join us next week and talk to you then, Ralph.

Ralph Nader: Thank you very much, Steve. We'll be looking forward to David next week fresh from the primary's battle grounds of New Hampshire and Iowa.

Steve Skrovan: Yes. I hope he makes it back in one piece. Bye bye everybody. [Music playing]