AMERICAN PREDATORY LENDING AND THE GLOBAL FINANCIAL CRISIS

ORAL HISTORY PROJECT

Interview with

Al Ripley

Bass Connections

Duke University

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PREFACE

The following Oral History is the result of a recorded interview with Al Ripley conducted by Charlie Zong on March 5, 2020. This interview is part of the Bass Connections American Predatory Lending and the Global Financial Crisis Project.

Readers are asked to bear in mind that they are reading a transcript of spoken word, rather than written prose. The transcript has been reviewed and approved by the interviewee.

Transcriber: Maria Paz Rios
Interviewee: Al Ripley
Interviewer: Charlie Zong

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Charlie Zong: I'm Charlie Zong, an undergraduate student at Duke University and a member of the Bass Connections team, American Predatory Lending and the Global Financial Crisis. It is Thursday, March 5, 2020. I am at Duke University Law School for an oral history interview with Alfred Ripley, who is currently with the Consumer & Housing Project at the North Carolina Justice Center. So Al, thank you for joining me today.

Al Ripley: It's my pleasure. Thanks for having me.

Charlie Zong: So I'd like to start by establishing a few facts about your background and education. You received your bachelor's degree and your Juris Doctor from the University of North Carolina at Chapel Hill. Do you mind telling me what year you received these degrees?

Al Ripley: Oh, you're stretching my memory. 1997 was my law degree and undergrad was 1991.

Charlie Zong: Okay. So you also attended North Carolina State University from which you received your Masters of Education. Do you remember which year that was?

Al Ripley: Yes, I think that was 1994.

Charlie Zong: Okay. So, when in your career did you first become involved with issues regarding residential mortgages?

Al Ripley: I was working in 2001 at Self-Help Credit Union in Durham, North Carolina. And at that time there was a tremendous amount of focus within the organization on problems surrounding predatory mortgage lending and those dealt with a host of issues with wealth stripping, where you would have people repeatedly flipped in loans and each time they were flipped, there were new fees and charges assessed against them, so the equity was drawn out of that property, away from that homeowner, and was basically taking wealth from that homeowner. Around that time, about two years later, the Center for Responsible Lending was created, and I was asked to perform more of a government relations and lobbying role both for Self-Help Credit Union and for the new Center for Responsible Lending [CRL]. And so I learned more about those dynamics with predatory lending during that time.

Charlie Zong: And what kind of jobs did you hold before you became involved with the residential mortgage sector and how, if at all, did these jobs cause you to become aware of residential mortgage issues?

Al Ripley: I was a high school teacher before I went to law school. And so during that time I was teaching students with disabilities in history and civics and was not very focused on the mortgage sector. So, it wasn't really until I started working at Self-Help Credit Union and the Center for Responsible Lending, that's where I really started to get some greater insights into mortgage issues.

Charlie Zong: I'm interested to know more about your responsibilities and just any notable issues or pieces of legislation you were engaging with while with Self-Help and CRL.

Al Ripley: Well, in 1999 and around 2000, what I think is reasonable to characterize as the first anti-predatory mortgage lending law [in the country], or the first really meaningful law, was passed in North Carolina. I believe it was in 1999. And that was a piece of landmark legislation that really established some safeguards to help guard people against predatory mortgage lending practices. And that law has, over the years, had some addendums to it, some improvements, some amendments to make it better. But that was really the first landmark piece of legislation. And at that time, we still saw many examples of aggressive predatory lending across the country that was still draining homeowners of wealth. But at least North Carolina had that law. And I think it helped position the state in such a way that the foreclosure crisis, even though it was still bad in North Carolina, I think it would have been much worse had North Carolina not had that law.

Charlie Zong: And so were there any notable cases of people, or communities, that were particularly suffering before the passage of that law?

Al Ripley: Well, there was certainly a lot of evidence of low-income communities, communities of color being targeted by aggressive predatory lending activity. And so, we would see that not only in North Carolina, but in other areas in the Southeast, particularly in Georgia. We had contacts with entities in Atlanta that were seeing some of these practices as well. So, there were definitely lenders that were targeting what we would consider vulnerable, low-income communities in the Southeast, and we saw significant evidence of that. So much so that we were also involved not only in trying to support the passage of the law in North Carolina, but also to see it in other states and to try to advocate with federal regulators for better regulatory provisions.

Charlie Zong: What were the names of the organizations you worked with in Atlanta?

Al Ripley: That I don't remember. I was not the point person for those. I just know the organization was working with those organizations and with those people. But I was not the point person. We had other point people that were engaged in the advocacy efforts out of state. I was strictly in [the] Durham area. And please understand, I'm sort of talking about that time period around 2001 to 2003, 2004.

Charlie Zong: So how would you characterize the key changes in the mortgage market in North Carolina leading up to 2008?

Al Ripley: Well, I eventually left the Center for Responsible Lending and went to work for the North Carolina Justice Center, where I work now. And in that capacity, we had a lot of very close relationships with what we call legal service providers in North Carolina. So these are a variety of nonprofit organizations that represent primarily low-income communities. And we started to see loan products and complaints of lending practices that we had never seen before. So, for example, we would have clients coming to us for assistance because they were in danger of foreclosure and we would look at the loan package that they had, and it would be an adjustable rate mortgage, or ARM, which people in the industry commonly refer to, that had a two-year adjustable period and then a 28-year additional payoff period. So we would refer to that as a 2/28 ARM.

We would also see what we called 3/27 ARMs, which were a 3-year fixed period, then an adjustment, and then another 27-year period. And again, an adjustable rate mortgage. And the way those loans were designed is they had what we called a teaser rate at the beginning, which was a very, relatively, low initial mortgage rate. And then after that two-year period, in the case of a 2/28 or three-year period, in the case of a 3/27, the loan would adjust to a rate plus LIBOR [The London Inter-bank Offered Rate]. And so basically you might start at six, but then it was LIBOR plus six or LIBOR plus nine. And so, we ended up with people literally going from a 6% interest rate straight to an 18% or 19% interest rate. And of course, that meant that the monthly payment they were required to make to sustain the loan jumped dramatically. And it was really horrifying to see homeowners in those circumstances who clearly did not understand the types of lending transactions they were engaging in. They didn't understand how the documents worked, they didn't understand how the loans worked, and they were losing their homes because of it. And so we started to see more and more cases of that.

Charlie Zong: And when you say LIBOR, you're talking about the London Inter-Bank Offered Rate?

Al Ripley: Yes. It's basically a benchmark that could be used as a benchmark for increasing that rate above a certain amount.

Charlie Zong: Okay. And so could you explain who you perceived around this time in the early 2000s to be the key people or organizations in the discussion about the state and federal regulations for the mortgage industry?

Al Ripley: At that time, we were literally in a process, I would describe it as a puzzle – trying to piece the puzzle together, because initially, it didn't really make sense. Why would a lender make a loan to someone that was clearly not sustainable? Because you could look at the financial characteristics of that borrower and you could easily recognize that, yes, they might be able to afford those payments in the first two or first three years in the case of a 3/27. But after that, there was

no way they were reasonably going to be able to afford the loan and they would have to either refinance the loan or be foreclosed on, which was happening in increasing numbers. And it was only later that we started to recognize many of the dynamics. So, for example, you had in some instances, mortgage brokers who were involved in this process that were engaged in activity that – for example, allowing people to apply for no doc loans where they didn't have to document any income.

And we had instances of brokers falsifying information in loan applications, unbeknownst to the borrower, or asking people to sign blank documents that the broker would fill in later. What the borrowers did not realize is that because of the yield spread premium structures of those loans, the brokers were actually getting paid more to put borrowers [into riskier loans] who actually qualified for more traditional products, safer products. And instead, they were incentivized to put borrowers into 3/27s and 2/28s. And they would get paid more for doing that, and the greater the initial interest rate was, the more the broker would get compensated.

The other critical factor is that those loans were being sold into the secondary market, which meant that not only the initial lending entity nor the broker had a long-term stake in that loan, they were just selling it to someone else. So, they had no interest in ensuring that the loan was actually sustainable over the long-term, because by the time the borrower went into default on the loan, someone else would own it. And so it's that type of structure where you've got a lender and a broker, or financial institution — and I don't want to put all of this on the brokers because there were also plenty of financial institutions and traditional banks that were engaging in similar conduct. But it was that kind of a structure where you were then selling that asset into a securitized secondary market.

And there was another failure of the system, if you will, at that stage. Because you also had rating agencies that were supposed to rate the type of investment vehicles. And there's ample evidence that many of those rating agencies knew that these financial institutions were making loans to people that truly could not afford them over the long-term, that those loans were not sustainable. And yet they rated those investment vehicles with a very high rating. They didn't do their job either, and were complicit in what was going on.

And it was necessary to have all of those chain of dynamics to create the dynamics that led to the foreclosure crisis and the financial crisis. Because without any one of those pieces, you wouldn't have seen the type of awful lending activity that we saw. And of course, ultimately those loans were held by retirement vehicles, by investors who did not know that in fact, those mortgages were in such terrible shape that they were. And that's really that sort of a dynamic that led to the crisis that we ultimately saw.

Charlie Zong: And when you're describing the evolution of this overall dynamic in the market, would you say that this was accelerating after the predatory lending law was passed?

Al Ripley: Absolutely. I mean, the predatory lending law that was passed was really [not] designed to deal with dynamics that had not been seen in the marketplace yet with the 3/27s and the 2/28s. And so, this is a constant dynamic that we see even to today. We will see practices in the marketplace that are harmful to consumers, and we will convince regulators and legislators and other decision makers to pass laws or to have regulatory actions to try to control that harmful behavior. We'll get those laws passed, and then various industries will come up with what we consider to be new and creative and innovative ways to get around those rules and then create a new set of products that then have to be dealt with and have regulation put into effect. And so, it's somewhat of a cycle. So, you know, you still see those sorts of dynamics in different types of lending products, particularly in small consumer lending products, not necessarily mortgage products today.

Charlie Zong: So as organizations like the [NC] Justice Center are trying to keep up with these new ways of originating mortgages, did you have particular legislators or other organizations that you had relationships or significant interactions with?

Al Ripley: Absolutely. There were definitely legislators that were able to see the current financial dynamics and the danger of those dynamics and wanted to take reasonable action to help prevent further harm and further crises. And then there were also particular entities that were not necessarily legislators, but were other stakeholders that also saw those dynamics and wanted to try to help promote good and sensible legislation and also good and sensible regulation.

Charlie Zong: I think with regard to the state agencies that were regulating the mortgage industry, did you work in particular with any one of them? For example, the Commissioner of Banks, or other groups?

Al Ripley: At different times we certainly did. And we saw, what also became a component of these problems was what we termed at the time “predatory mortgage servicing.” So not only did we see abuses in the underwriting and the making of these loans, but we would also see what we considered predatory practices in the mortgage servicing of these loans. And that was in part because of the way that mortgage servicers were incentivized to do their work. In our experience, we saw many examples where servicing entities actually were paid more money to take a home through the foreclosure process than they were to simply maintain the regular payments on a mortgage. And so, there was a perverse incentive to actually have more homes go into foreclosure because the servicers of those loans would make more money.

So when we started seeing that activity occurring – and we saw more and more of that around 2005, 2006, 2007, 2008 – we then worked on legislation in North Carolina to help stop what we saw as abusive mortgage servicing practices. And North Carolina actually passed what was then one of the best laws to curb those types of activities. And that was done with the support and the help of the Commissioner of Banks's office because the Commissioner was uniquely positioned to see these types of dynamics and to be able to help. Now, it's

important to note, of course, the Commissioner of Banks's office is not a legislative body, but the legislature and particularly the bill sponsors that we had running those pieces of legislation talked to each other and thought carefully about the laws that they were enacting. So we were fortunate to have that type of dynamic at that time.

Charlie Zong: When you mention the piece of legislation that was passed to try to reign in the mortgage servicers, are you talking about the North Carolina SAFE Act?

Al Ripley: I'm not. This was a different piece of legislation and I don't remember the exact bill number. But basically what it was designed to do was make certain that when a homeowner made a mortgage payment, that the payment was actually credited to their account in a timely manner and credited properly. What we saw happening was many mortgage servicing entities were taking a payment and putting it into what they called a suspense account. And rather than applying it to the homeowner's mortgage payment, they would hold the account in suspense and then they would send the homeowner a foreclosure notice.

And sometimes they would also have things that, for example, what we called at the time "forced-place insurance" where because those monies were put into a suspense account and not put into the escrow account of the homeowner, the entity, the mortgage servicer, would then say, "Well your escrow account is short and your escrow account is how we pay for your insurance on the property, and since there's no insurance in place on the property, we're going to force place the insurance policy." So, it was really a scheme by which these mortgage servicing entities were able to increase their fee revenue and they would get additional payments for force-placing insurance. All the while, we had homeowners that were making timely payments on their loans.

And the imbalance of the position of the mortgage servicers against homeowners who were relatively low income and did not always have access to legal services is tremendous. It's a tremendous imbalance. And so, we were able to take very compelling examples of these abuses to legislators in the General Assembly, but also responsible actors in the financial marketplace. And the bill we passed was passed overwhelmingly in the Senate and the House in North Carolina, but it also passed with the support of the major financial institutions in North Carolina as well.

And that to me is an example of responsible financial entities that recognize the difference between good and abusive practices and want to see a good and safe marketplace, not only for the benefit of homeowners, but also for the benefit of their own institutions. It's important to remember that when we have these financial crises, the people that suffer the most of course are the homeowners, that get hurt the most. But there are also reputable financial institutions that play by the rules that also get hurt because it's their assets that are also being damaged as well.

Charlie Zong: As you're working with organizations and trying to bring these cases to show people what's going on, did the Justice Center have to change its staffing or have to evolve to respond to the accelerating rate of the industry changing?

Al Ripley: We had to be far more engaged on the dynamics around the underwriting of loans, the transfer of loans from one entity to another, learning more about the legal status of holder status, and the importance of what's known in the industry as the allonge. It's basically a document that's attached to the security instrument and as it is passed from party to party, there are different elements that have to be followed so that the holder in due course is actually the owner of the note and so forth. We had to learn and do a lot of research in that way. We had to study the way that mortgages were recorded and transferred in what was known then as the MERS [Mortgage Electronic Registration System] system.

And so it was a very technical aspect of the work, and it did require us to step up our game and to learn more about the details and nuances of these industries, whereas in the past we had been principally focused on helping to defend a homeowner against a given foreclosure action. We really had to learn a lot more about the way the market was working to be able to understand and to better represent the homeowners that we had in our office.

Charlie Zong: So in 2009 and 2010, you published some articles with the North Carolina Justice Center that argued for the adoption of policies such as imposing restrictions on debt buyers and foreclosure rescue scams, and limiting deficiency judgements, and also notification laws for homeowners associations. So these all sound like policies that could prevent unnecessary foreclosures. But in your view, what were the significant reasons why these policies were not implemented before 2008?

Al Ripley: Some of it was just in part the nature of the marketplace. So, for example, the foreclosure rescue scam. And I'll just take a moment to explain how that works. So you might be in a situation where a foreclosure has been filed against you and someone is going down to the courthouse and literally looking to see who those foreclosures are filed against. And so you get a phone call from someone who makes a representation that they're going to help you save your home from foreclosure. "But here's what I want you to do. I want you to not talk to your mortgage servicing entity at all. Make sure that you send any correspondence to me and I'll handle that communication. Make sure you don't talk to them. And then any payments that you intend to make, make sure you send them to me and I'll send them to the mortgage servicer. And by the way, you have to pay me several thousand dollars before I'm going to do any of this work for you."

So in your mind, you think you're getting help. And so you send not only a payment for the service, but then your other payments that you were hoping to make to the mortgage servicer. And I'll give you an example from a real case. The rescue scammer was located in Las Vegas, Nevada. We had a homeowner sending the money that they had, and they didn't have enough money, to

Nevada, and they never heard from the person again. So that's sort of a classic foreclosure rescue scam. Well, you wouldn't have made necessarily a lot of money doing that back in 2003 because the raw number of foreclosures wasn't nearly as high as it was in 2008 or 2009, so we saw, really, a dramatic increase in foreclosure rescue scams during the height of the foreclosure crisis. And thus, that's why that type of legislation was needed then.

Some of the dynamics around, for example, homeowners associations and foreclosures triggered by homeowners associations, those are still problems today and the dynamics are different. They don't involve lending activity. They involve the enforcement of different fees or standards within the association and whether or not the people that run the association are doing their job properly and those sorts of dynamics. So that's still a problem that needs to be addressed.

The debt buyer issues are ones where North Carolina, in our opinion, still has the strongest anti-debt buyer protections in the country. And we're very pleased that those are still in effect, but yet, the debt buyers are continuously trying to attack those regulations and multiple times have made attempts to hire lobbyists and undo those protections in the legislature, which fortunately, we continue to stop. But it's just evidence of how pernicious various entities can be in the financial market sector in going after low-income consumers and we still need aggressive, strong regulation and laws.

Charlie Zong: So right before 2008, do you feel like, in that lead up, was there any particular behavior in the industry that you felt like should have been stopped by regulation but was not?

Al Ripley: Absolutely. I think that the financial crisis is perhaps the greatest failure of, particularly federal regulators, that I have ever seen in my career and arguably ever in the history of the United States, to do their jobs. And the fact that we had lending activity that was known to those regulators and was continued to go forward without anyone really stepping in to stop that is, you know, a real travesty of what those regulators were supposed to be doing. And then on the backend of the crisis, the fact that very few, if any, individuals that were responsible for this financial crisis and who engaged in activity that was not only immoral but was illegal, and yet have not been punished, is also I think a terrible failure of our financial regulatory system.

The reference I made earlier to instruments, investment instruments, which were not graded properly, and that activity was knowingly engaged in, you know, that's just an example. The broker activity, many of the financial institutions that were encouraging employees to engage in activity that was improper. And regulators at the time knew that was happening. They failed to act appropriately. And after the crisis there was also a failure to act appropriately.

Charlie Zong: There's a particular dynamic in the lead up to the 2008 Financial Crisis, which has to do with federal preemption, and I am curious to know if the Justice Center was engaging with, for example, the possibility of the North Carolina Predatory Lending Law being preempted, and what was your involvement in this issue?

Al Ripley: That is something that was very important then and is still important now and is something that we worry a great deal about. Because a state like North Carolina has some of the best anti-predatory lending laws, not only on the mortgage sector, but also on the small dollar sector. For example, involving payday loans and other types of small dollar lending activity. Federal preemption is always a great danger to those laws. And so we've been very active over the years with regulators back in 2005, but also with the new CFPB, for example, the new Consumer Financial Protection Bureau, in making sure, or doing the best that we can, to try to ensure that any new federal laws and regulations do not preempt state law. It's our preference that those new laws and regulations set a floor, if you will. But a new and strong standard is great as long as it doesn't stop a state from making laws even stronger than that. And we firmly believe that that's an important dynamic. But it's always under threat, and the National Banking Act and the way that those various laws interact with each other always threatened the ability of states to stop improper conduct.

Charlie Zong: So in the lead up to the 2008 Financial Crisis, would you say that preemption was or was not a big issue in North Carolina?

Al Ripley: It was certainly a big issue. It was something that we were worried about. And it was something that was always of a concern because you did have national banks engaging in activities that were very worrying. And I think that in hindsight people who sincerely would want to have laws in place to ensure that we don't have another crisis like this ever again, would want to have a system that's designed to enable states to have stronger standards than federal laws. But also, it is very important that the very base – the floor – of those lending standards, be very strong and robust. And that's why any time you read about attempts to weaken federal lending standards, that's a very real concern as well.

Charlie Zong: …Over the last decade, we've seen a number of different narratives emerge to explain the financial crisis. How do you understand what caused the Crisis?

Al Ripley: I think that the Crisis was caused by financial institutions, brokers, rating agencies all engaging in activities and practices that overvalued mortgages being made, that, in a predatory way, lured homeowners into getting into those mortgages, selling those mortgages into the secondary market, and then creating the type of housing bubble and the financial crisis that we ultimately saw.

The narrative that I think is an incredibly false and disingenuous narrative is the one that suggests that the Crisis was caused because of federal home loan programs designed to help low-income homeowners gain home ownership, or

low-income borrowers gain home ownership. The reason I think that narrative is a false one is many people that I spoke to back in 2005 and 2006 from low-income communities, and especially communities of color, their experience of this whole crisis was one in which for decades they had tried to buy a home and wanted to buy a home and had always been told that they were not credit worthy, that they would not pay the loan back, that they were not a good candidate for a home loan.

And so when we had people aggressively going in on behalf of predatory lenders into low-income neighborhoods and telling people "Oh, I can get you into a house of your own, and the payment is affordable, here's what it will be." And you only told people about what the principal and interest would be as part of the payment, but you would exclude the taxes and insurance. So basically you are misrepresenting the cost of the loan. To those people, it was completely illogical that anyone would make a loan to me that I couldn't afford to pay back. Why on earth would you ever do that? Because that's the sensible thing and that's what I would think at the same time back then.

What was unknown to them and unknown to us was the reason they'll make you a loan is because they're not going to keep that loan. They're going to sell that loan to someone else. They're going to sell all that risk to someone else, and you were basically being used. "We're going to make you the loan, we're going to take a yield spread premium. We're going to make a nice lot of money, and then we're going to sell it to a teacher retirement fund. And they have no idea what they're buying." And so, there were a lot of victims in this process: homeowners, investors. But to suggest that it was because of federal programs to help low-income communities or communities of color achieve home ownership and that's the culprit, I think is completely disingenuous and a false narrative.

Charlie Zong: So to what extent do you see your personal experience as adding something important to the understanding of what happened leading up to 2008?

Al Ripley: I to this day am in conversations with both people that work in this field but also with people on the street or family members that do not work in the mortgage lending industry, who still have the impression that the Crisis was caused because of reckless lending to low-income people because of federal programs. That narrative is still out there, and so part of what I try to do is when I'm in those conversations, is talk about the things that you and I have talked about in the last hour, and explain how those structures with those reckless financial institutions and mortgage brokers in yield spread premiums and the whole chain of dynamics that allowed those loans to be made was the real culprit.

And that good lending, good, responsible lending, is still a way to help people escape poverty, to help lift people up. But it's got to exist in a marketplace that is reasonably regulated and designed to allow people to gain home ownership and maintain home ownership. And anytime we read about attempts to deregulate or to preempt state laws that create those safe marketplaces, that's

a real danger. And it's a real danger, not only to the homeowners that are trying to get those loans and achieve home ownership, but it's a danger to all of us. The financial crisis was an incredibly costly event, not just to the people that it victimized, but to everyone. And so if we're going to protect not only the economy and the homeowner, but our country, we've got to have really good and thoughtful regulatory mechanisms in place.

Charlie Zong: And just drawing upon your experience at the [NC] Justice Center, and now that we're looking back on the Crisis over a decade later, what do you see as its most important lessons for the mortgage industry and for state level policymakers?

Al Ripley: I think one tremendous lesson is that you cannot trust the market to regulate the market. We've got to have very strong regulatory bodies that create dynamics that stop financial institutions from acting in ways that create tremendous risk to everyone else in the marketplace. And you still see attempts to do that. Attempts by large financial institutions to reduce regulation. You see attempts to water down what's known as the Volcker rule, which is a very important rule to limit the ability of financial institutions that have federally insured funds to basically engage in risky financial activity with those funds.

And the dynamics of “too big to fail” are still very real. You know, if we have large financial institutions that can take great financial risk, and when those risks go bad, then the general public has to step in to bail those institutions out. That is still a very threatening and dangerous dynamic and it is not lost on me the irony of what is happening in the stock market today as you and I speak, and the fact that there are now many financial institutions that are overleveraged, and we will know in the coming months whether we have a robust enough regulatory system to endure some of the crises that we may see on March 5th, 2020, and coming in the next several months and years.

[END OF SESSION]