AMERICAN PREDATORY LENDING AND THE GLOBAL FINANCIAL CRISIS

ORAL HISTORY PROJECT

Interview with

David McLaughlin

Bass Connections

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PREFACE

The following Oral History is the result of a recorded interview with David McLaughlin conducted by Andrew O'Shaughnessy on July 23, 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: Sherry Zhang	Session: 1
Interviewee: David McLaughlin	Location: By Zoom
Interviewer: Andrew O'Shaughnessy	Date: 7/23/20

Andrew O'Shaughnessy: My name is Andrew O'Shaughnessy. I am a J.D. candidate at the Duke University School of Law. I'm also a research assistant for the Global Financial Market Center's American Predatory Lending Project. It is Thursday, July 23rd, 2020. I am speaking remotely with David McLaughlin to conduct an oral history interview. Mr. McLaughlin, thank you for joining me today.

David McLaughlin: Absolutely.

Andrew O'Shaughnessy: I'd like to start by establishing a little bit about your background…. You got your bachelor's [degree] from Missouri State University and then your J.D. from the University of Missouri. What took you to Georgia?

David McLaughlin: Let's start from the get-go with precision. I technically am a graduate of Southwest Missouri State University, SMSU, which sometime after I graduated, after [some] litigation and debate, Missouri State University was created. But I am a graduate of Southwest Missouri State University. [I] graduated from there in 1988, took a year off [and] worked for a law firm in Springfield, Missouri, where I grew up.

[I] also worked almost full time as an orderly in an operating room at a hospital, trying to decide if I wanted to be a lawyer or go in the medical field. I opted to go to law school. So I started law school in the fall of 1989 at the University of Missouri and spent my time there. After my first year of law school, the absolute last thing I wanted to do was anything related to the law for that summer. So I went back to Tennessee and was a camp director at a camp program that I had been working for since 1982. I think that was my fifth or sixth summer on staff there.

While there that summer of 1990, I met a young woman from Alabama who was five years younger than me. So when I graduated law school in 1992, she still had one year of undergrad left and she knew that she was going to go to divinity school in Atlanta. So instead of moving to Birmingham for a year, I moved to Atlanta where we would then rendezvous. And of course the reality was we ended up having an on again, off again relationship. I was too poor to leave Atlanta after we were completely off. I met my wife shortly thereafter. And so I have now passed more than half my life as a Georgia resident and have been happily married for almost 26 years. So that's how I got to Georgia. [It] was [because of] a girl.

Andrew O'Shaughnessy: …. Why [did] you [choose] law school over med school?

David McLaughlin: [My] dad passed away three years ago, but [my] dad was an OBGYN and there are not too many medical professions that draw a father away from home in the middle of the night and nightly than being an OBGYN. So I had actually seen enough of the profession of being a doctor to know that that was not a route I wanted to go. Of course, there's a billion different professions in the medical profession. And in fact, in hindsight to be candid, had the profession of being a physician's assistant been a mainstream, widely known profession back in the eighties, the chances are [that] I would be in the medical field. But at the time, things that I was looking at included being a perfusionist, being a nurse anesthetist, [or] maybe even [attending] nursing school, but also I always had an inkling of wanting to be a lawyer.

I'd done speech and debate all through high school. I actually went to Vanderbilt my freshman year of college and debated at Vanderbilt. And so I always had that part of me that loved advocacy and oral advocacy. When in college, I was getting my teaching degree…and I worked as an orderly all through college in the operating room. I realized teaching high school students was the last thing on earth that I wanted to do. And so as a senior [I] decided maybe I could go into the medical field in some fashion, but law school also was something that I started thinking about. So I took a year off. I worked as a paralegal in a law firm in Springfield [and] loved it. [I] worked in the evening shift at the hospital and continued to love it, but realized [that] law really was fascinating. And I went to law school wanting to do med[ical] mal[practice] defense work. The medical realm was of such an interest to me. That's what I thought I would come out of law school doing well.

Andrew O'Shaughnessy: … Once… you're in Georgia, how do you get from there to the [Attorney General's] office?

David McLaughlin: I came to work and moved to Georgia…, literally loaded up a U-Haul and rolled into town the day before the bar BARBRI course was to begin. And that was in '92. And it's ironic that we're talking about the predatory lending crisis of 2008 [because] until that recession, the next recession going back in history was in 1992. So the economy was a little slack and the market was pretty tough in 1992. So being a [Missourian] from the

University of Missouri, not having clerked or done anything in Georgia yet, it was difficult to find a job. So after I took the bar exam, I actually waited tables at a now defunct steak chain called Steak and Ale for a year, made a lot of contacts, but also made a contact with the [District Attorney's] office in the Coweta Judicial Circuit, which is actually where I work now.

So exactly twenty-seven years ago in June of 1993, I went to work for the [District Attorney]'s office. And for three and a half years, I was one of five Assistant [District Attorneys] in a five-county circuit. So my first trial, for instance, that actually went to the jury was a murder case. I did armed robberies and child molestation cases. I tried a death penalty case that was the last death penalty case that has been tried in this circuit, which is about twenty-four years ago. So I was there just enjoying life and trying cases right and left. I literally was in trial monthly throughout the circuit. I had a county of my primary responsibility, but when I wasn't in that county drawing up cases or trying cases, I rode the circuit and tried cases in all the other counties. So I had probably more trials in that three and a half years than most people would see in a lifetime.

In fact, probably most prosecutors now would not see that… people just do not try cases like they used to.

But I was in the middle of this death penalty case, and some lawyers from the Attorney General's office happened to be in that courtroom on another matter. [They] saw me arguing some motions and came up to me and said, "We don't like the two applicants that we have for our current opening. And we'd like you to apply." And so I was asked to apply, filled out my application in pen, and within a week had the job at the Attorney General's office. I went to work there on November 1st, 1996. And I remained there until [March] 31st or whatever the last day in March is, [and] worked there until the end of March of 2020. And now I am back in the…circuit where I began twenty-seven years ago.

Andrew O'Shaughnessy: How long after starting at the Attorney General's office did it take you to first become involved in issues related to residential mortgages?

David McLaughlin: That's a great question. And I was trying to think of the answer to that, and I'm not entirely sure which came first, the chicken or the egg. But you have interviewed Chuck Cross as part of this history and Chuck at the time was the head of enforcement for the State of Washington. Chuck and I got invited to be faculty for the National White Collar Crime Center, which is out of

Morgantown, West Virginia. At that point in time, the training hypothetical [that] we had involved residential mortgage fraud. I want to say that that was probably around the year 2000, maybe 2001.

… I think I was probably involved in residential mortgage fraud then just before [the faculty invitation] happened. …I had been just a County prosecutor and now I'm a white collar crime fraud prosecutor at the Attorney General's Office in the late '90s. By way of chronology, what you have to understand is up until the mid '90s, I would say, there was a genre of crime [that included] credit card fraud, probably a variety of other frauds that are perpetrated against financial institutions, *and* residential mortgage fraud that had existed for as long as there had been residential mortgages. But the fraud, frankly, was the dirty little secret of the industry.

And so you had the regulatory industry that dealt with fraud in those institutions. You had the criminal justice system, of which I was then a part of it by then in the '90s. While we did have a little bit of credit card fraud, we did not have the volumes of it that we would go on to have. Similarly, residential mortgage fraud was a concept not even known generally by law enforcement, let alone state and local prosecutors. And what you had happening in the '90s — and this was unknown to me at the time…was that the volume of fraud that was impacting the lending industry [and] the credit card industry had reached a critical mass, to the point where the absorption of losses by the industry could no longer just be done in the manner and fashion than it had been done for years and years. The problem had gotten just so out of control that lenders were now starting to lose tons and tons of money.

And so what happened in Georgia — I can't speak to what happened specifically in the other states — but what happened in Georgia was [that] the Department of Banking and Finance, which is our regulatory branch in Georgia when it comes to the lending industry, was becoming aware of these massive mortgage fraud cases. We're talking egregious cases. We're talking phantom borrowers; we're talking homes flipped that were worth $200,000 that were being flipped for $600,000. And [the department] recognized we have to bridge the gap between the regulatory industry and the criminal justice system. And so Georgia saw its first residential mortgage fraud case be prosecuted. I prosecuted it as a criminal theft case. The case began in the late '90s — '98 or '99.

We tried [the case] maybe in the year 2000, 2001. The appellate opinion affirming the case I think is a 2002 case. That's case of the *State of Georgia v. Kenneth Bradford and Jo Ellen Bryant*.[1] And it was a case [for which] the Department of Banking and Finance could not get a local prosecutor interested in dealing with it. The Georgia Attorney General's Office is an office of limited criminal jurisdiction. You probably have already discovered [that] throughout the country, [attorney general's] offices have authority in a variety of different and limited criminal areas. Some offices have no criminal authority whatsoever. Generally speaking, the Georgia Attorney General had no authority to do residential mortgage fraud. We did a lot of telemarketing fraud in the mid [to] late '90s in the [Attorney General's] Office.

: Again, we had no authority to do so, but it was such a critical problem and local [district attorneys] were not doing those cases. In Georgia, the governor has authorization to appoint the Attorney General to do criminal prosecutions where there is a tremendous state interest and a tremendous need for the [Attorney General] to be able to engage in these prosecutions. So that's how we did the telemarketing fraud. And that's exactly how we did the residential mortgage fraud. We went to the governor and we said, "Look, there is this horrible problem, and nobody's paying attention to it. Can we have authority to prosecute?" And we were given more or less blanket authority to prosecute residential mortgage fraud.

Now, as a footnote here, what you have to understand is [that] in the late '90s and in the early 2000s, we can talk conceptually about residential mortgage fraud, but there was no crime of residential mortgage fraud. So by comparison, concepts of identity fraud have been around in this country for probably hundreds of years…, in our justice system, notions of stealing people's identity has been around for generations. Yet we didn't have a crime of identity fraud until the mid '90. You had all the related crimes — that's forgeries, bank card fraud — but until we had the crime created of identity fraud, attention was not brought to the concept of how horrible it is for individuals to have their identity stolen. Similarly, residential mortgage fraud didn't exist as a crime. It was a concept. It was a concept that involves crimes of theft, wire fraud, mail fraud, you name it, but the real impact of residential mortgage fraud is on the community. Like the real impact of identity fraud is on an individual, the real impact of residential mortgage fraud is on the communities that end up having all of these homes that

[1] 266 Ga. App. 198 (2004).

have been flipped and, and have been used in fraud that sit vacant and bring down property values. And so at the time, we can talk in hindsight about residential mortgage fraud as a buzz phrase, but it really didn't exist as a criminal prosecutable offense.

And so when we handled the Ken Bradford case and Jo Ellen Bryant case, the tools that we had at our disposal were essentially theft by taking with a theory of deception. In other words, the banks at issue were deceived into believing that the properties were worth a certain amount of money; that the borrowers had the financial pedigree that they were alleged to have had in the loan application; that the bank statements that were used in support of the loan application were not fraudulent. The notion is the lenders would never have lent the money had they known of all of those misstatements and misrepresentations. And that, in most states, is theft by deception. And so we were able to prosecute this case. It was a week-long trial. It started on a Monday, finished at the end of the day on a Friday, [with] hundreds of pages of documents admitted into evidence. The jury didn't get the case until about 3:30 or so on a Friday afternoon. And on a case like this, there's no way in the world [that] a jury is going to be able to convict that quickly or acquit that quickly. And so the judge let them deliberate for about an hour. This case involved… I [want to] say… three separate accounts and two separate lenders.

Now, interestingly, we had a total of seven good property frauds that took place. One of the companies — and I'll say it happily, it's a business that I'm sure doesn't exist anymore — Bank United, out of Texas, was one of the lenders. They refused to cooperate with our prosecution. I think three [of their] properties had been defrauded out of over a million dollars and they refused to cooperate. And I talked with the company president and legal counsel and did the whole “Well, we can domesticate an out-of-state subpoena and we can make you come.” And their position was a very reasonable, rational position in regard to my threats, which is, “Do you really want to have to go to trial on a victim who doesn't want to be there?” And the answer to that is no. We had to carve that out of our case.

So we went to trial on three properties in which we had straw buyers whose backgrounds had been entirely made up. Bank statements, fictionalized income, fictionalized appraisals, overinflated. All of the classic mortgage fraud that you would use, and a classic simultaneous flip where the middleman went into a room and bought the property for $195,000 and turned around and sold it for $300,000 or $400,000. So three properties…it was two separate banks, both who came and gave testimony. A good, tight little case, but still, it's mortgage fraud. It's conceptually difficult. I had to put on the jury something I would normally never do. I had to put a journalist on the jury just because of how the peremptory strikes [during jury selection] broke down. And so he's the guy during the trial taking copious notes throughout the trial.

Now, this journalist was the food critic of the Atlanta Journal-Constitution. So not necessarily a political pundit, but nonetheless he's a journalist. So I told you, we wrapped it up on a Friday. The jury was out about an hour. The judge brought them back in to basically say, "I'm going to send you home and we'll come back Monday and let you resume deliberations." And the jury said, "You know what, judge, if you'll give us about five more minutes, I think we're close". And that's kind of "OJ [Simpson]" bad [on] a case like this…but they went back out, fifteen minutes later, came out [and] convicted the defendants on all counts. [The] judge sentenced Ken Bradford to twelve years in prison and Jo Ellen Bryant to ten years in prison.

I had tried a lot of cases up until that point in the DA's office, and when a trial wraps up and the jury's excused, there's still some things that have to happen there in the courtroom. So it may be fifteen, twenty, thirty minutes before the lawyers get to leave. So here we are on a Friday evening, and the jury has been excused and we probably were in the courtroom half an hour and we left and I've got to tell you, most of the jurors had stayed [and] wait[ed] to talk to me and to thank me for the case and what we've done, because they got it. They understood that when this was all said and done, this wasn't just that some banks lost money. This was that homes in their communities were being used to perpetrate fraud and that this is the kind of fraud that really impacts everybody.

That just blew me away because I had never had an entire jury or nearly an entire jury stay behind to thank me and to talk with me about the case. And that case… *State of Georgia v. Ken Bradford*, you can go and find it on Lexis and you can read all about it. It was affirmed on appeal in some great, great case law and great analysis of the facts. But the fact remained: we still didn't have a residential mortgage fraud law. And now we had everybody's attention. So suddenly, the Department of Banking and Finance was sending us cases and we were starting to get into the business of prosecuting residential mortgage fraud. And because I had done one trial, suddenly I'm now the expert. That was also about the time that I got hooked up with the National

White Collar Crime Center. Chuck and I started traveling the country teaching for the National White Collar Crime Center. But we also started doing, in Georgia, more and more cases.

And I'll never forget — Thurbert Baker was the Attorney General at the time. I worked for four separate Attorneys General when I was at the [Attorney General]'s Office over my 23 years…, Mike Bowers, I worked for for six months. And then he ran for governor. Mike Bowers is the Bowers of the infamous Bowers V Hardwick United States, Supreme court case involving oral sodomy, which was eventually reversed years later. So I worked for Mike and then Thurbert got appointed. Thurbert would be my longest Attorney General. Thubert was there for thirteen and a half years. And Thurbert called me down one day to his office. And he said, "David, we need to be able to prosecute mortgage fraud, without having to go to the governor every time a case comes up. So I need you to write us a law that would give us authority to prosecute mortgage fraud."

Well, here's the problem, it's real difficult to write a law to give yourself authority to prosecute a crime that doesn't exist as a crime. I went back and I said, "Thurbert, if we're going to do this, we need to have a crime. And here's the problem: nowhere in the United States, is there the crime of residential mortgage fraud, no state has it. And the federal government doesn't have it." And Thurbert said, "Go write a statute." And so, with the help of Chuck [Cross] and with my knowledge of the criminal justice system, I sat over a period of days and drafted out what would ultimately become the nation's first residential mortgage fraud law passed in 2005 by the [Georgia] General Assembly.[2] And it then went on to be the model [for other states].

Now, Andrew, I've not been in the mortgage fraud game for a while, so I don't know how many States now have residential mortgage fraud statutes. Many, many do, and many, many [of them] used our statute as the model. The crime of residential mortgage fraud is actually very simplistically worded. And that is: If you make a misstatement, misrepresentation or omission in the mortgage lending process, then you're guilty of the crime of residential mortgage fraud. The beautiful thing about that statute and about the approach is it takes the focus away from lenders being victims. Now, the industry embraced this, obviously, because the industry was a primary beneficiary of such a statute. It took the focus away from a lender having to lose money and put the focus on the process itself.

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[2] See O.C.G.A. § 16-8-100, et seq.

So if you were a borrower creating fraudulent information on the loan application, you're guilty of residential mortgage fraud, whether you are successful or not. If you're a mortgage broker, if you're a closing attorney, if you're an appraiser and you're engaged in making misstatements, misrepresentations or omissions, you're guilty of residential mortgage fraud. You don't have to have the loss in order for that to be a crime. I have worked on a lot of legislation over the years and I've always said about the legislative process: If you have designed what looks like a Porsche, a nice Porsche with all of the trimmings and all the fixings, and you send it through the legislative process, often what comes out the other end is a Twinkie. That's how bad the legislative process can be. And I went for the brass ring on the statute. You will hear me refer to, in a minute, the "perfect storm" which led to the predatory lending crisis.... [B]ut we had a perfect storm of *goodness*, in that there was nobody during the 2005 session — and you've got to remember this predates the crisis. And you got to understand — I'm going to digress.

When I was in law school, I got the lowest grade in my real estate finance class. I did very poor[ly] in debtors and creditors. I did very poor[ly] in tax... Since the day I've been married, my wife has managed our books and our checkbook and our finances, and I get my allowance each month. And that's what I buy my books and I eat my lunches on. I am not a [Certified Public Accountant]... I am not a mental giant or genius when it comes to probably anything in this world. I'm a prosecutor — I'm a good prosecutor, but I'm a prosecutor. I've got an average academic background. And I recognized in the early 2000s, long before we passed our legislation and long before the collapse of 2008, that this was a problem in which the only outcome was going to be a collapse.

Now...Chuck's an outdoor guy and I'm an outdoor guy. So Chuck and I, we would go teach for the National White Collar Crime Center. And we'd always pick places like Helena, Montana, or Boise, Idaho, and we teach for a week and we'd go fly fishing for a week, and do photography and do hiking. And, besides talking about women, we would talk a lot about work. Chuck and I used to talk about the predatory lending that went on that fed the criminal market, if you will. Chuck was more global regulatory thinking. So he thought more in terms of how the secondary market buys up these loans, bundles them and sells them in mortgage-backed securities. And he was able to educate me in that realm. I was able to educate Chuck in the criminal justice realm and explain to him how the criminal mind works, and how as long as you had lenders that were willing to make what you may have heard people refer to you by now as “liar loans,” the criminal industry was only going to grow and grow and grow. And we would talk about this confluence of events…. And Chuck used to talk a lot about the myth of home ownership, and if you don't have Chuck's paper that he wrote about our hike in Idaho, where we climb Ruffneck Peak, and he educated me about, the myth of ownership, you need to find that article, it's a good article….

Because one of the things that we were talking about in the early 2000s was [that] not everybody in this country really needs to own a home. Yet, particularly in the ‘90s, there were so many incentives and it became so easy to borrow. You started putting people into homes that had no business being in homes. And as a result, the mortgage fraudsters were able to start preying on people and put them in these homes that were essentially flipped properties. And so you had this confluence of an unlimited number of people willing to borrow money in horrifically unfavorable terms, and often were involved in crime. You had lenders who were willing to just throw this money at people. And then you had an investment industry that was willing to buy these as mortgage-backed securities. And so we would talk about this confluence, this perfect storm.

I can tell you that both Chuck and I have PowerPoint presentations dating back to the early 2000s, demonstrating why these events coming together were fueling the epidemic that was going on in the realm of mortgage fraud. Now, none of us said “the entire world economy is going to collapse because of this,” but simple me [who got a] low grade in real estate finance and debtors and creditors rights recognized that “this is not going to work just in the long term.” Just flipping a home over and over and over again, driving the price up from $150,000, ultimately up to a million dollars, that's not going to work in the long run; it's going to collapse. But this stuff was going on. And we were talking about this stuff and we were teaching about this stuff. So by the time we get to 2005, nobody in the Georgia General Assembly [and] nobody in the industry was going to speak out about our bill.

So I put in our bill, for instance, venue provisions. Because I think, “Okay, I'm trying to imagine a prosecutor. And I know that in a metro Atlanta area on any given property transaction, you might have the closing in one County, the property in another County, the money deposited in another County.” And so I thought, “Well, rather than having to prosecute a given fraudster in a dozen different [counties], if we said venue can be wherever the property is located, wherever the closing takes place, wherever any money changes hands, wherever any act in furtherance of the [transaction]—" there are there five separate places in the mortgage fraud statute where venue can be. I don't think there's any other statute in Georgia that has such a broad venue provision unchanged during the legislative process. I even had a provision in there — it's still there — that was what I viewed as sort of this catch-all provision. And it basically says: Any document filed with the official registrar of deeds (or whomever in any County is the official recorder of instruments) that contains a misstatement, misrepresentation or omission is a violation of the residential mortgage fraud law. [This provision was] just designed to capture all of those fraudulent quitclaim deeds and all these different [fraudulent] documents that we see. It was left in there. I thought "There's no way that stays in there. That's going to be x'ed out." The statute as I wrote it pretty much is the statute as passed and the statute as it [currently] exists. It got signed into law in May of 2005. And I'm proud, I'm very proud. It became that which States started adopting in large form as their own [residential mortgage fraud statutes].

Andrew O'Shaugnessy: The mortgage fraud law goes in a Porsche and it comes out of Porsche in 2005. I think you mentioned that your first [mortgage fraud] case you tried, on the early side of 2000. So there's a bunch of time in there before you solve this conceptual problem and had it [listed as a specific crime]. Did you try a bunch of mortgage fraud cases in the interim? Did your legal strategies evolve or change?

David McLaughlin: The thing you got to understand about any criminal cases [is that] only one out of every hundred, one hundred fifty cases on a docket is ever going to go to trial. So I think we were lucky right in the beginning of getting the trial. Everybody else after that pled guilty. We did do another trial in DeKalb County a few years later, but [in] every other [mortgage fraud] case we had, the people pleaded guilty. And no, we didn't have a period of time where we stopped doing investigations and stopped doing prosecutions for want of statute. Once we did the Ken Bradford case, there was about a decade of my life…where my primary focus was on residential mortgage. And once we got good at it, and the floodgates started coming out.

So now it's ironic that Countrywide, for instance, would go on to be one of the more notorious predatory lenders and was probably instrumental in the worldwide collapse, ultimately. [But] on an enforcement level, on a[n] "I can pick up the phone and call a guy" [level], Countrywide — there was a period of time [when] they were one of our best sources of cases.

Because all of these lenders, if they hadn't gone under, started to get real sensitive to the fact that these fraudsters were taking advantage of them. And so the lenders got real good at picking up red flags. My closing attorneys got real good at picking up red flags. Some brokers did, but more often than not, the brokers were in on it. So we didn't get many cases from brokers, but I got phone calls almost daily, certainly weekly, from closing attorneys and lenders, where they just started seeing red flags and inconsistencies. And we were everywhere. We were infiltrating closings. We had undercover officers go into closings. We had them posing as buyers. We had them posing as borrowers. We had closing attorneys that were — frankly, that industry is probably a pretty dry industry. If that's all you're doing. So we had closing attorneys that wanted to know if they could get a gun and a badge and everything. So we were busting closings. We were doing flip cases where we'd have a closing in one room, we would walk into another room [where] we would do the back end closing, and then our agent would stand up and say, "Everybody's under arrest."

David McLaughlin: We did a case involving a guy named Daniel DelPiano. And they were going to flip Ron Gant. Now, Ron Gant was a famous Atlanta Braves baseball player, and they were going to buy and flip Ron Gant's home. Now, Ron Gant didn't come to the closing; we had an undercover person come on behalf of the Gants to sign the pleadings. But we dealt extensively with Ron and his wife, in the "sale" of the property (I say sale of the property in quotes). And then we busted the buyers of the flip, the Fagliers. Duke Faglier was a jazz musician. And at one point in time he was one of Elvis Presley's bodyguards. I would actually go on to kind of become friends with Duke and his wife. But they were dupes; they were being used to buy a property that they believed to be an investment property. … Daniel DelPiano ended up going to prison for that case.

We worked a case down in Henry County with a broker who drove a cherry red Porsche. And this is before Facebook and Twitter, but there was still the communication network where the fraudsters all knew [that] we were busting closings. Fraudsters would come and case out the joint [and if] they'd see a law enforcement vehicle, they'd be no shows at closing. So we had to get to the closing earlier and earlier. And we busted this a case down in Henry County. Can't remember the guy's name, he drove this cherry red Porsche. He came and our officers were already there looking out the window. And he arrived an hour and a half before closing and drove around the building and then left. And then about an hour later, [he] came back and drove around the building and then ultimately came into the closing. We did the deal, [then the] closing attorney stepped out. Our officers were in the closing, one posing as an intern or a paralegal for the lawyer, another posing as a representative of the seller. And that guy fought. This guy was about six foot two, six foot three. And ended up getting his nose busted on the conference room table and bled all over the closing attorney's couch. We felt really bad about it, but that's the kind of stuff we were doing.

And we started doing that [in] 2002, 2003 [and] did it all through the passing of our law. And frankly, were making cases well up until the time that the industry collapsed. Now, when the industry collapsed, it just kind of shut everything down. It became all but impossible for the fraudsters to do what they want to do. Now, it created a new market and it created, frankly, for illegitimate fraudster[s], people that have been doing the wrong thing — it actually created an opportunity for them to start doing the right thing…. We had a subdivision in Athens…Georgia where homes that were worth $150,000 were being flipped for $300,000 and $400,000. And when the economy collapsed and everything went into foreclosure and everything fell apart, those homes went for $20,000 and $30,000. I mean, pennies on the dollar. And so you had a lot of people get into the rental industry that way. But the other thing that you had happen was a lot of fraudsters were able to pick up those houses and continue to flip in the old way, but in ways that weren't as noticeable, because it really did take about five years for the housing industry to correct itself on pricing. A lot of people thought it would take ten years [but] it happened in about five. And fraud is not like it used to be, but it's still out there. The concepts are still out there.

David McLaughlin: Jumping back in the chronology a little bit, we talk about the liar loans. We talk about the secondary, uh,

Andrew O'Shaughnessy: Could you define a "liar loan?"

David McLaughlin: Yeah, absolutely. So part of this confluence that we have is a notion of the secondary market purchase of these mortgages. I'll give you an example of a company that doesn't exist anymore called Fremont. Fremont was one of the big subprime lenders. You've probably been told all about the subprime industry…but there was an entire subprime lending industry that was created of *barely* brick and mortar. I mean, if they were a brick and mortar, they might be a storefront or a desk in some other building. Because what you had is the ability to lend money on a morning and have a buyer for that note that afternoon. So companies like Fremont and Allied and some of the others would lend money hand over fist, and it would be off their books by the end of the day. And so the knowledge that you could do a loan to somebody that was a[n] eighteen percent interest loan and have a mortgage-backed security buy that up and bundle it meant that you had a lot of people getting into the industry that had no business being there.

And what we refer to as the liar loan is the notion that in the old days, you had to be real careful about creating a web of fake W2's, fake bank statements, and employer, so that if they check your reference they would be able to verify "yes, they're an employee making a quarter of a million dollars a year." You had to get pretty sophisticated in the documentation that supported your loan application. [In contrast, for] liar loans, also known as stated income loans, all the lenders were looking at was, "Have you represented that you've got an income that fits into the formula of us being able to extend this loan to you? [If y]ou do, we don't give a shit – sorry – whether you're going to be able to make this loan payment or not, because we're going to have sold it by this afternoon." This is where you have the collision of mortgage fraud and what we'll call "non-fraud borrowers." Now, I'm sorry, [but] if you work at Hardee's and you make $18,000 a year, I don't care what any broker tells you — you can't afford a $600,000 home. Yet those loans were being extended to people who just believed that "If I can get a $600,000 house, I'll figure out a way to make it work later." So it was that environment that the fraudsters were able to just pounce on because these subprime lenders were literally throwing money at people. So when we talk about liar loans, that that's what we're talking about.

Andrew O'Shaughnessy: Were liar loans part of the maturation of the market over this period? How did you see products evolve? Were those available in the early 2000s?

David McLaughlin: You say, "maturation of the industry"; I would say "the immaturing of the industry." I think it was [that] you had to be in the game. And that's why big bedrock lenders also got into the subprime industry. Sometimes they do it with subsidiaries, but there was so much money being made that if you weren't in the game, you weren't making money. And the notion of a bad loan has been around for a long time. A notion of a risky loan has been around for a [long] time. A lender or a broker looks at you, they know that "You might not be the best candidate for this loan, but we're going to take a chance on you." And they know that that loan, when bundled with a bunch of others, is not going to be crippling to either an institution or a mortgage-backed security down the line. And the notion with risky loans was [that] you didn't have that many risky loans, and when bundled up with good loans, if one goes bad, yeah, you're not going to hurt the overall product. But the problem was, we just were flushed with risky loans. *Everything* was a risky loan. And because the interest rates were so high on these things, everybody saw that there was such fast and easy money to be made.

And that goes back to that perfect storm that Chuck and I talked about in Idaho. That was the summer of 2001. That was the year that Chuck could beat me to the top of the mountains. I would go on to become a runner that next year and lost about 60 pounds. And when we did Montana in 2002, I would beat Chuck to the top of the mountains, But we talked about all of this stuff and you know, Chuck — this is his world. This is his industry. I was a simple prosecutor. And we talked about these problems, just two guys on a mountain in 2001 and 2002. And then when 2008 came, I'll never forget. Chuck and I would have these phone calls where he'd just say, "Dude, we were right about this years and years ago." And that's what makes what happened just so mind-numbingly absurd. Not just in the hindsight, but in the [fact that] this was allowed to have happened. Now I don't have the insight. And I'm trying to think of the movie at the moment. You'll tell me the movie because you've seen it. What was the movie that was made about this? Brad Pitt was in it.

Andrew O'Shaughnessy: *The Big Short*?

David McLaughlin: *The Big Short*. That [movie] seeks to answer a lot of this, but that movie doesn't answer necessarily how this was allowed to happen. And I don't know that anybody ever really got the answer to that. Because one thing people started talking about in the mid-2000s when the industry collapsed was all of the people that are going to go to prison over this. That never happened. That just never happened.

Andrew O'Shaughnessy: The thing I'm curious about is the degree of attention that mortgage fraud was getting. So we're talking about a fairly broad stretch of time, really right in the middle of which you're getting this residential mortgage fraud act passed. But in 2000 versus 2005 versus 2010 where was mortgage fraud in the hierarchy of civil crimes that the [Attorney General]'s office was concerned about?

David McLaughlin: I will tell you that [at] the [Attorney General]'s office, it was an absolute priority in the state of Georgia. It was probably in the neighborhood of a hundred or more speaking engagements that

I did throughout the United States. So you got to a point, frankly, where — this will be my narcissistic moment for just a second — if I was going to be flown out to San Diego to speak on a panel where I would end up getting five minutes of talking time, that that was not worth my while. The demand was so great that I had to start really picking and choosing where I would go and who I would teach for. Selfishly, I felt like I had something to share and say, yeah, I would happily go to downtown Atlanta and be on a panel and at least get some good food, even if I didn't end up talking much. But I would fly all over the United States. And I would talk to regulatory groups; I would talk to the closing industry; I would talk to the appraisal industry, the broker industry, and law enforcement. And I taught prosecutors and law enforcement all around the United States. I put together training programs here in Georgia. We would put on day-long, two-day-long, and week-long training programs for law enforcement.

… The thing that you have to remember about particularly the way residential mortgage fraud worked in the late nineties and the early 2000s [is that] part and parcel of a residential mortgage fraud crime was that the property at issue, more often than not, would either be a vacant property, or it would be occupied by criminals. People engaged in mortgage fraud that would buy and flip property would put drug dealers or prostitution rings in these properties. So you have to realize that while probably the regulatory side of the equation focused on what was happening with the industry (the borrowers, the lenders, the secondary market, the mortgage-backed securities)… law enforcement didn't give a shit about lenders. In fact, we would hear that over and over again: "The lenders knew better." But the people that were really being hurt by residential mortgage fraud were the communities. And we would see certain subdivisions that were targeted by fraudsters where the crime rates just escalated; identity fraud rates escalated; shootings and drug dealing escalated. And so law enforcement, beginning around 2001 or 2002 well up into the economic crisis, made this a high priority. I can tell you that firsthand, based on the numbers of law enforcement officers that we would train, both in Georgia and throughout the United States.

Now, the other dynamic that you've got to understand is for the most part, at the local level, law enforcement officers are not interested in financial cases. If it is a financial case they're interested in, you get in and you get out, and [they're] not interested in doing something that's going to take weeks or months of your time. So as a practical matter, it was very, very difficult to make a dent in residential mortgage fraud from a law enforcement standpoint. I can tell you that at the Attorney General's office, I probably opened two hundred or more criminal investigations involving residential mortgage fraud.

Fortunately, [the Department of Housing and Urban Development] became very interested in undertaking some of those as investigations. And they took a lot of those cases. Now, I don't know that they ever became prosecutions, but they did take a lot of those cases. But the problem was we [were] bottled-necked with an inability to adequately investigate. So while law enforcement did make it a priority, there was only so much that we could do. And I like to believe that the best impact that we had in putting a dent in residential mortgage fraud was the impact that we had on the industry itself. So for instance, one element of Georgia's residential mortgage fraud law is: If you receive money in the mortgage lending process where you knew that there was a violation — that there had been a misstatement misrepresented or misrepresentation or omission made — then you're guilty of residential mortgage fraud. Because what would happen in a lot of these cases, these closing attorneys would know, “Yeah, this buyer in front of me does not make a quarter million dollars a year.” They would know this, but they would still engage in the transaction. And once we made it clear that everybody was going to be responsible, it did change the way the appraisal industry worked. It changed the way closing attorneys handled the brokerage industry; [they] started getting very, very serious about it. So I think we made a dent in the problem before the collapse. But truthfully, it wasn't because we were out there arresting people, just because of the limited resources that were available for investigating. And then once the industry collapse happened, to be honest, I think law enforcement was kind of over it. Because we were out there preaching it, anybody, and everybody that would listen was kind of over it. I think they thought, “Okay, the problem's now gone away.” And so local and state law enforcement presence in the realm of residence mortgage fraud just plummeted.

Andrew O’Shaughnessy: I am curious about these two ends of the spectrum from local to more regional. On the local side… you mentioned before that the whole reason you needed the special authorization from the governor was because they were not enthusiastic about bringing these investigations in the first place. Was that because of just resources or were there other elements as well?

David McLaughlin: I think it's both. I can tell you now, having spent 23 years doing nothing but complicated white collar crime, I'm back now in a

[District Attorney]'s office where I am still encountering some of these cases that I would have been able to have spent weeks or months on when I was at the Attorney General's office that — I can't do that anymore. I'll pull up for you in real time here… my open caseload right now is in the neighborhood of… two hundred thirty-nine cases that are open right now. I cannot spend the time that it takes to adequately do what I will call the "Full Monty" on a case like I could at the [Attorney General]'s office.

Now, the whole point in us making the residential mortgage fraud statute so simple was to make it easier to prosecute what I will call the "quick in and out case." A loan application with fraud in it? Boom, there's your crime, that's all you need. You don't have to do the dozens and dozens of properties. You don't have to do the case very complicatedly. So we gave local prosecutors a tool that allowed them to fairly simplistically be able to prosecute mortgage fraud. And that had an impact in that we started seeing local prosecutors do mortgage fraud cases where they had never done them before. Now, the other dynamic, though, is the public pressure that came from everybody starting to talk about residential mortgage fraud. …Because we did all kinds of public service and training.

In fact, if you go on YouTube and search my name, you'll see a professionally produced training video that was done for the industry where I'm a talking head in front of a desk talking about mortgage fraud, and then professional actors act out little vignettes. Go find it if it's not part of your project yet, it should be. I didn't know it was on YouTube until someone saw it and we did that 10, 15 years ago.[3] So suddenly a homeowner who's in a subdivision that realizes that, that house that just sold across the street for half a million dollars and no one ever moved into it, that house is a mortgage fraud. And so we started seeing community pressure put on [district attorneys] and local investigators to start doing something about it. So there were a handful of [district attorney]'s offices in Georgia that actually really got into prosecuting. Macon, Georgia, the prosecutor down there really got into prosecuting mortgage fraud. Cobb County. Fulton County, ironically the principal county that Atlanta is in, wouldn't touch mortgage fraud. Today, I don't think they've prosecuted a residential mortgage fraud case. So a lot of it is just: what are you willing to commit your time and effort and energy to?

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[3] Ga. Ass'n of REALTORS®, *Closing the Door on Mortgage Fraud*, YOUTUBE (Dec. 30, 2015), https://www.youtube.com/watch?v=JZKvuNtUC60

Andrew O'Shaughnessy: In terms of the ecosystem of other actors that were active in this space, what was your assessment of the state financial regulator during this time?

David McLaughlin: I have to give all the props to the state regulator in so far as they were the ones that brought us into the fold. And so I've got to give props to them for being aggressive and realizing that there is a gap that needs to be bridged. In the early days when I was speaking primarily to regulators, the American Association of Residential Mortgage Regulators, AARMR, was an organization that Chuck Cross was very involved in. And so some of my earliest speaking engagements were to the regulators and I would, and it'd be a room full of three hundred to four hundred people. And I would have them all raise their hand and say, "repeat after me" – the mantra I would have them say… is essentially that sometimes there are some people that just need to go to prison. And what Georgia's regulators realized was [that the] people that we've been dealing with from a regulatory standpoint are just flat out criminals. And so I credit Georgia['s] Department of Banking and Finance for bridging the gap between that regulatory world and the criminal justice world.

Now, I think that nationwide, there probably was a problem and a burden or a hurdle, if you will, that state regulators had in trying to reform a broken industry. And let's face it, the industry was broken. I would go, and I would speak to some of these components of the industry, whether it's the appraisal industry or the brokerage part of the industry. And they would often be a little indignant about how they weren't the problem, [that] it was some other aspect of the industry that's the problem. The reality is [that] everybody was at fault. Everybody was asleep at the wheel. Everybody was complicit, however you want to word it. You cannot point to any one component of the industry. And I don't think it's entirely fair to blame the regulatory industry for missing the boat or being complicit or being asleep at the wheel. I think it was one of these things where it was what it was.

And that's why I talk towards the beginning of the chronology of [how] in the '90s, the criminal component of the industry was small enough that it was absorbed by the solid part of the industry. The notion of being able to write off, for instance, if you're credit card company, be able to write off a bad transaction. Everybody was able to do that. Everybody was able to overlook, I believe, the few bad actors that were out there, but at some point in time — I think I used the phrase "critical mass" – [that] developed where the problem was just too big. It just exploded. And I credit the state regulators for being some of the first to recognize that.

Andrew O'Shaughnessy: …[W]e have some questions that we normally try and conclude with.

David McLaughlin: I do have a case that was on my list of cases I wanted to tell you about.

Andrew O'Shaughnessy: Please do. One of my questions is: is there anything else I should have asked you about?

David McLaughlin: I got to tell you about, uh, Ajesh Shretta. A-J-E-S-H Ajesh, Shretta, S-H-R-E-T-T-A. He went by A.J. We got wind from Countrywide that there was a guy in Georgia named Naim Sayed that looked to be the buyer on a couple of pending mortgages. And they had drawn a connection to this guy named A.J., and they had done some data mining, and they had that A.J. had been behind the purchase of a variety of condos and properties in the metro Atlanta area, some of which had been in the name of Naim Sayed. And so they wanted to know what interest I would have because they had a couple of pending transactions. And so I was like, "I'm absolutely all in. You let you let me know what you need me to do." And there was a property that was to be closed on in north Atlanta. And we had staked out the closing and the closing attorney was there and we had A.J. on the phone and he was supposed to be coming. And he was always ten minutes away. And "now I'm fifteen minutes away." And ultimately we pulled the plug on the close and he just wasn't going to show up.

And so we kept waiting and then another property came into play, a very rural property up in north Georgia. [As for] the owner's name, I'll keep his name to myself. [He was] just a good Southern Georgia rednecky kind of guy going through a divorce. And they were needing to sell this property in a hurry, but it just didn't smell right. So we had him in the fold with us as well. And his property was pending closing and Naim Sayed was going to be the buyer on this property. We had another property in which A.J. was involved – and I can't remember who the buyer on that property was going to be – and they were going to close simultaneously. It was the property [that] we had to pull the plug on at the closing the night before. We had to stake out two closings, one up in north Georgia. I believe we were up in Rome, up in north Georgia, the other one in metro Atlanta.

And we were on the phone with agents all evening. And sure enough, the buyer did not show up at the closing we had tried a week or two before, that buyer never showed up, but we caught a live one, if you will, at the closing up in Rome. What happened was A.J. was supposed to be the buyer, but it got substituted by Country[wide]. It got substituted [in] about an hour before closing. And of course, we're on the phone with Countrywide and we tell them, “Just go for it, whatever they are proposing, roll with [it].” The substituted buyer was the guy named Imran Siddiqui. And Imran shows up at the closing up in North Georgia and we do the whole closing, and then we arrest him. And of course, he's blown away because he truly is a buyer who thought he was buying an investment property, [a] very decent fellow worked at a cellular telephone company. And we ended up dropping the charges on him. But we bust him. [At this point] we still don't have A.J.

So I'm still in contact with my redneck buddy. And he's still in contact with A.J. and they they're going to have a meeting and I keep telling them, “Record the phone calls if you can. But see if you can meet up with him to get the document signed.” And they ended up meeting at some park up in a north Georgia rural county, where I call up, I get through to a sheriff's department deputy and I have to very quickly say, “Look, here's the deal. My name is David McLaughlin. I'm with the Attorney General's Office. At such and such park, there's getting ready to be a rendezvous. And we've got arrest warrants for this guy named Ajesh Shretta. And we need your help.” And they got me a narcotics agent in no time, and they staked out the park. And sure enough, my seller was there and a taxi cab from metro Atlanta shows up, and it's this guy named Ajesh Shretta. And we bust him. He had credit cards and driver's licenses and other people's names. We ended up putting seven or eight separate properties that he had purchased through fraud or had arranged to be flipped through fraud. And A.J. was also — I think he had a green card. [That] was how he was here in the United States. So I put him in prison. I think it was a fifteen year prison sentence. And we notified [Immigration and Customs Enforcement] that when he's done, he's probably likely to be a deportation candidate.

Well, A.J. would go on to escape from prison about two or three years later. He would get caught, he would get prosecuted for the escape. And do you know that even having escaped from prison and being given an additional prison sentence, he got out of prison on millions of dollars of mortgage fraud I think within about six years. [Immigration and Customs Enforcement] never put a hold on him. He ended up in Ohio. And the only reason I know that is because he got arrested for shoplifting in Ohio and an [Assistant United States Attorney] who, I kid you not, his name is Thorin Oakenshield from the Hobbit… Thorin Oakenshield was an Assistant United States Attorney assigned this case. And so I had to dig out my whole file and get him all armed with the ability to try to deport this guy. And the judge ended up not deporting him.

I tell you that story, because it's a great story, it's a fun story. But I think it's also maybe typical of how, in some respects, a lot of these people that engage in mortgage fraud were just not treated by the system as regular criminals and [that] may very well be one of the reasons why, not withstanding a world economic collapse that happened on everybody's watch, thousands of people didn't go to prison. And now, looking at a caseload of two hundred thirty-nine cases where I'm prosecuting shoplifters and drug cases, to see that the realm of fraud that took place and the scope of it [is staggering]. And I'm not so naive as to say residential mortgage fraud caused the world economic collapse, but it was a part of it. And the predatory lending aspect of it was necessary to the fraud being able to take place. And it was the predatory lending that caused the worldwide economic collapse. Plus that's just a fun story.

…I've stayed in touch with Naim Sayed over the years…. He had so many properties bought in his name. He was saddled with this burden, probably for the rest of his life. Any time he tries to borrow or do anything, he pops up on a list, which is just really sad.

Andrew O'Shaughnessy: Just in these last few minutes, what do you think that, state-level policymakers should learn from the mortgage crisis and its consequences?

David McLaughlin: Well, you're too young to know who Gordon Gecko is or was, but in the '80s, there's a movie that came out called *Wall Street*, which you need to go watch if you've not already watched it. Michael Douglas was, uh, was Gordon Gecko. There's an infamous line where he's talking to a bunch of big boardroom [people] and just preaching that greed is good. And here's the thing, I can't say greed is good or not. I can't speak to why our economy succeeds and doesn't succeed. If greed is a part of that, then fine. But the reality is, I do not care what the industry is, I do not care how white-collar or blue-collar the profession is, I do not care how sophisticated you may think certain people are, [but] thieves are everywhere…

Sometime in the '70s, some egghead came up with the "fraud triangle." The fraud triangle is "opportunity, need, and rationalization." That people who engage in fraud have a need for the money. They've got an opportunity to steal the money and they rationalize their conduct on, "well, it's just a little bit" or "I'm not paid enough" or whatever it may be. And when I teach groups and I'll talk briefly about the fraud triangle, and then I'll make a loud raspberry noise and stick my tongue out, which you couldn't preserve in a transcript so I'm not going to do it for you here. Here's the thing having dealt with criminals for 27 years, people are going to steal and they're going to cheat and they're everywhere. And they don't have to rationalize it and they don't have a need for it, and they will make the opportunity to do it.

And so what the entire regulatory industry, what the policymakers of the world have got to realize is that whatever systems are put in place, there are people that are going to try to exploit those systems to their own personal benefit. They may not think of themselves as thieves, but they are. And they could be — and I'm not saying the President of United States is a thief — but they could be at the highest levels of state government or the street level people. You've got to understand that there are just people in this world that steal. They lie, cheat, and steal, that's what they do. And any time that you're developing policies or procedures or — and the digital world creates an entire new open front for fraud — you've got to remember that there are people who are going to try to exploit that, they're going to try to steal.

I actually have a character flaw – several, one's procrastination. But one is, I really do trust and put a lot of trust in people. And I think a lot of people, maybe a majority of people, operate on a trust basis. And so it's real hard if you're a naturally trusting person to think that the way you need to approach policymaking, law creation, [and] systems creation is with a pessimistic ,"If I do this, somebody is going to try to exploit it." But unfortunately, you've got to think that way. It's not all rainbows and unicorns. You've got to think in terms of "What am I doing? How can that be exploited and how can I figure out a way not to have let happen?"

[END OF SESSION]