

AMERICAN PREDATORY LENDING AND THE GLOBAL FINANCIAL CRISIS

ORAL HISTORY PROJECT

Interview with

Ken Zimmerman

Bass Connections

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PREFACE

The following Oral History is the result of a recorded interview with Ken Zimmerman conducted by Clare Holtzman on July 21, 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.

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Interviewee: Ken Zimmerman
Interviewer: Clare Holtzman

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Clare Holtzman: I'm Clare Holtzman, 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 Tuesday, July 21st, 2020. I'm conducting an oral history interview with Ken Zimmerman, currently a Distinguished Fellow with the NYU Furman Center who has joined me through Zoom. Thank you for joining me today.

Ken Zimmerman: I'm pleased to be here.

Clare Holtzman: I'd like to start by establishing a bit about your background. I believe that you received your bachelor's degree from Yale University. Is that right?

Ken Zimmerman: It is.

Clare Holtzman: After college, you then completed a J.D. at Harvard Law School, correct?

Ken Zimmerman: Yeah.

Clare Holtzman: In the context of your work life, when and how did you first become involved with residential mortgages?

Ken Zimmerman: So maybe to take a half-step back, I've always focused in my professional interests on the intersection of housing, urban development, and equity issues. I actually grew up in Washington, D.C., and when my folks were purchasing their house, there were still restrictive covenants on it. I'm Jew[ish and] come from a Jewish family. Restrictive covenants prevented both Jews and African Americans from buying the house. A D.C. neighborhood realtor decided to sell the house to my parents, and within a year the neighborhood became racially integrated. So, I grew up in one of the few racially integrated neighborhoods in D.C., but it meant that the intersection of race, place, and class was very apparent to me, even if I would use different language to describe it now than I did back as a young person. And so, when I went to law school, in fact, I also spent a year at MIT (Massachusetts Institute of Technology) in the urban planning school because I was interested in understanding more from a planning perspective and from an urban development perspective on that intersection.

After I left law school, and planning school, [and] after clerking for a federal judge in California, I began my career really focused on looking at how homeless people did or did not access the resources that were available. In fact, to date myself, I started a fellowship that Skadden Arps made available to focus on homeless people in Oakland. And I started four days before the 1989

earthquake hit. I spent my first year suing FEMA (Federal Emergency Management Agency) for discriminating in the context of disaster relief, an issue, unfortunately, I did not solve. I then came back to D.C. and spent six or seven years in the Civil Rights Division of the Justice Department as part of the team focused on fair housing. It was a time in the nineties when—really it was the first time I think that the civil rights community had started to examine in depth, the ways in which the mortgage market that most people thought operated relatively efficiently, had not only a degree of discretion embedded in it, but that discretion was being used in ways that disadvantaged people of color.

The Fed [Federal Reserve] report, the Boston Fed report, came out during this period. That was the first high level sophisticated analysis that said some of the discrepancies between denial rates for African Americans and others could only be explained by race. And I was part of the civil rights division [which] brought [a series of cases] against lending institutions that examined what their practices were, including doing detailed mortgage loan reviews, assessing the way in which they define CRA [Community Reinvestment Act] catchment areas, and [which] ultimately led to a series of consent decrees that in the nineties, actually represented a form of regulation by consent decree. I think [those decrees] had the really beneficial consequence of helping the lending industry itself see that its practices were not only not efficient, but were leaving out a huge number of people that could qualify for mortgages if there were reasonable standards and an appropriately employed form of discretion.

Clare Holtzman: Great. Can you talk a little bit more about that . . . and what legal tools you used?

Ken Zimmerman: Sure. [I]n the Justice Department, like any good litigator who as a hammer, everything does look like a nail . . . In this case, and I think it's one of the real privileges of working for the Civil Rights Division—at least the Civil Rights Division when it believes in civil rights—is that you have remarkable access to any of the institutions that are targets for an investigation. And what that means is, as opposed to actually seeking by necessity attorney's fees or saying that[‘s] what [you] need to do to meet the business model of a private law firm or the like, is that you can really pursue it in depth and over a period of time that many others can't. And in that day and age, this is really before the bank regulatory agencies, the FDIC (Federal Deposit Insurance Corporation), OCC (Office of the Comptroller of the Currency), the Fed, [and] the rest had really started to build up their enforcement capacity or their bank review capacity. [T]he Justice Department, because we were focused on the Fair Housing Act or Equal Credit Opportunity Act said, “this feels like an area [we should examine and address whatever we find].”

And so, what we would do is, when there [were] really preliminary suggestions of disparities, most of it came about because of an analysis of HMDA (Home Mortgage Disclosures Act) data. I think it was really clear [that] HMDA data by itself does not prove discrimination in any way, shape, or form, but it can be an

indicator of something that seems askew. And so, what we would do is we would identify certain loans, undertake sort of a preliminary assessment of whether it felt like it was worthy to do a full-scale investigation. Some of that might be reaching out to community groups, some of it might be assessing publicly available information, some of it might be reaching out to the lending institution and asking for its explanation of that data, and then depending upon that, then open up an investigation. It was very clear an investigation was not the same as an indictment, was not the same as formally authorized litigation, but frequently it meant getting full access to its lending files, being able to do the regression analysis that took into account every variable that ultimately should be taken into account. It meant going much deeper into communities and understanding what the bank's practices had been. And similarly, really doing a 360 [degree] assessment of exactly what was going on.

You know, the first major case that was brought—I wasn't involved—but was in Decatur, in Atlanta. And, it was very clear cut that there had been historic practices that had precluded bank activity in predominantly minority areas. It was reinforced by wildly disparate lending patterns. And ultimately, a consent decree was reached in which the bank, if I recall correctly, admitted that there were problematic racial practices. As we went on, what emerged increasingly is a realization of how diverse lending institutions operated. So, a case I brought, was against Blackpipe State Bank near the Pine Ridge Indian Reservation. And so, they had had a policy of refusing to make secured loans on the Indian reservation. We undertook a yearlong investigation to understand if that was a legitimate business justification and concluded that, while there were some reasons why a bank might want to take into account pricing or other mechanisms, the difficulties, the absolute bar to making secured loans on Indian reservations was not justified. So [I] brought it, sued, settled it.¹ And, it became a starting point . . . for the bank regulatory agencies to use . . . in terms of guidance, in terms of standards, in terms of amendment, in terms of how their ECOA (Equal Credit Opportunity Act) and CRA examinations were undertaken in ways that responded to, I think, much of what had been found.

Clare Holtzman: Can you talk about what HMDA data is for clarification and ECOA and CRA?

Ken Zimmerman: Sure. In 1977, — . . . less than a decade after the Fair Housing Act had been passed and less than five years after the Equal Credit Opportunity Act had been passed—[Congress enacted the CRA in] recognition that simply having legal standards that barred discrimination, in lending and other forms of housing related activity [was insufficient. The civil right statutes were] all really important, all well and good -- but for most members of the public, and especially for anybody who wanted to seriously investigate it and didn't have the ability that the Justice Department did to get lending institutions to provide information, it was really important to have some publicly available information,

¹ The Associated Press, "2 Banks Settle U.S. Charges of Racial Bias," *The New York Times*, January 22, 1994, <https://www.nytimes.com/1994/01/22/business/2-banks-settle-us-charges-of-racial-bias.html> (accessed Sept. 13, 2020).

not simply to weed out discrimination, but to understand when there might be practices that didn't rise to the level of discrimination, but had the consequence of limiting access to capital for minority communities. And so, the Home Mortgage Disclosure Act was passed that said every lending institution, not every, most lending institutions that fit within certain criteria had to keep track of what happened with every loan they accepted, every loan they denied, including the racial characteristics of those who had applied. And so, it meant for the first time there was a publicly available data set that one could use to track whether there were racial disparities in acceptance or rejections. As I said earlier, I think it's important to recognize just because there are racial disparities doesn't necessarily mean there's discrimination, but it means there's a justification for asking more questions to try to understand what gave rise to those disparities.

Clare Holtzman: And can you talk a little bit about ECOA?

Ken Zimmerman: Equal Credit Opportunity Act, as I mentioned, I think was enacted in 1974, you and others can correct the dates on all of this, but largely made illegal discrimination in the provision of credit. And, it was broader, it was all credit, so it wasn't just mortgage credit, but it applied to mortgage credit. The Fair Housing Act was [for] the first time, starting to be deployed to mortgage credit as well. ECOA overlapped significantly, there were some somewhat minor differences between the two, but collectively they provided a very strong legal basis to pursue claims of discrimination in the provision of mortgage credit.

Clare Holtzman: And were there any parts of the country where discriminatory lending was particularly problematic or pronounced?

Ken Zimmerman: The way I would answer it is, it was just a time of reckoning in which the mortgage industry, which had started with explicitly racially conscious provisions, from the thirties and forties when the Home Ownership Loan Corporation, or the early days of the FHA [Federal Housing Administration] with redlining in the right, . . . when the 30 year mortgage was first created, it was at the same time in which racial terms were incorporated into its origin. So, I mean, it's not surprising, nor is it sort of an explicit indictment of the mortgage industry any more than any other sector of the American economy, that racially problematic practices were just part and parcel of it. And so, the way I look at it in the seventies, eighties, and by the time I became involved in the nineties, you were dealing with an industry which had never started to take seriously the racial impact of historic practices.

And so, while there was some overt, insidious discrimination, meaning that there were racially motivated people who were trying to avoid lending in areas because of biases or false beliefs about the credit worthiness of people of color, I think what was more widespread were just a set of practices that had been historically adopted that had that same consequence, and that frankly, from my perspective, the lending industry had never examined closely, and because they were not, they were viewed as short-hands for credit worthiness, and yet

weren't. I mean, the front end to back end ratios that were sort of short-hands for what determined credit worthiness were so crude, that it meant many people of color that might use other forms of assets to provide a basis for their credit worthiness were excluded. [A]nd that was as a result of a failure to re-examine the linkage between the standards that were being used and who was unnecessarily excluded.

Clare Holtzman: [W]hat made you jump from the DOJ to the U.S. Department of Housing and Urban Development?

Ken Zimmerman: So after the six or seven years I was there—and I was very happily there—but as I said, litigation was the tool that we had at our disposal, and actually the Blackpipe State Bank Case that I mentioned influenced this, that it became clear to me that to make a change at the level that I thought was needed, litigation was a very valuable tool, but it was too crude to be able to make the kind of adjustments that were needed, in part because many of the problematic practices weren't necessarily in violation of civil rights laws, but they were still ones that needed to be corrected. And so for me personally, I decided I wanted to move into a policy position, and I was fortunate enough to get a job as a Deputy Assistant Secretary at HUD (Department of Housing and Urban Development), which had regulatory and investigatory authority as well, but just as importantly, the Federal Housing Administration fell under HUD's ambit, the federal oversight agency, the FFEIC (Federal Financial Institutions Examination Council) fell under, HUD had influence over that. And so, for me, it was an opportunity to look from the inside in the non-litigation role, to understand, and hopefully contribute to, the kind of policy shifts that might remedy some of the things that I thought and experienced as being problematic.

Clare Holtzman: So, while at HUD what kind[s] of enforcement actions were you taking?

Ken Zimmerman: Ah, you want to know what I did, not only why I went there. So, Andrew Cuomo was Secretary at the time, and it's a while ago now, 20 years, which is somewhat frightening, and so my memory of that portion of my career is probably a bit more hazy than others, but there were a series of things. [O]ne of the things we did is open an investigation into Freddie and Fannie, the two GSEs [Government Sponsored Entities], and they are just huge behemoths, and at that point in time were just so well resourced and politically invulnerable that it was a testament to Andrew Cuomo that he was willing to open an inquiry into them. They lawyered up in a way that made it very difficult to gain traction. But we were fielding complaints from fair housing groups about many of the lending institutions and had the ability to investigate.

We were much less well-resourced, and frankly had much less capacity than the Department of Justice did to do the kind of full-scale investigations, the staff wasn't as extensive, and the lenders weren't as inclined to be cooperative . . . And, I learned a ton, but it ended up being sort of less the in-depth analysis and more, very important work understanding of [how] the messaging, the bully pulpit, the raising of questions in the public square, could add to influence that

was significant. So, I think it was at that time, Bill Apgar, who was . . . an Assistant Secretary launched a large-scale national conversation. I hope you're talking to Bill in the course of all of this, and you know, many of the large-scale issues we surfaced were going to be resolved, or not, in Congress, and were beyond the scope of what we were going to be able to do.

Clare Holtzman: Can you talk about what kinds of issues at Fannie and Freddie you were investigating?

Ken Zimmerman: Well, it was the big level question of whether or not their standards were excluding people of color— especially because the Fannie and Freddie authorizations set up standards that were supposed to benefit underrepresented groups—whether what they were doing was sufficient, and whether in fact the mortgage practices they had were reaffirming racially disparate consequences or not. And so, I don't think the investigation got as far as anybody would have hoped, but it was the opening in the subsequent conversations with Fannie and Freddie that took place.

Clare Holtzman: And can you explain the powers that the Fair Housing Act gave HUD and talk a little bit more about how you used them?

Ken Zimmerman: Sure. So, the Fair Housing Act was enacted in 1968, originally, in the immediate aftermath of Dr. King's assassination. And I think it's a telling point that the Fair Housing Act was actually the last of the major civil rights statutes enacted. [I]t's always astonishing to me, the Title II of the Civil Rights Act of 1964 dealt with public accommodations in other forms. The Voting Rights Act of 1965 [enacted three years before the Fair Housing Act], some would think, should be the most politically ambitious, and yet even with those passages they couldn't pass the Fair Housing Act. The idea of promoting racial integration was sufficiently explosive that Southern senators continued to oppose it despite the fact that the Voting Rights Act and other civil rights statutes had been passed. And it was only King's assassination [and] the issuance of the Kerner Commission Report several months earlier, that allowed the Fair Housing Act to actually be enacted. It was enacted—and this is the case with almost all of the original, or that generation of civil rights statutes—with strengths and weaknesses. It was really important because it made many things illegal, but it didn't do many of the things that were necessary, including provide for robust damages in the event of discrimination and the like.

And so, in 1988, Congress went back—and frankly it was during the end of the Reagan administration—to pass what ultimately became known as the Fair Housing Amendments Act. And that changed the enforcement regime in a couple of significant ways. Most significantly, the Justice Department had always had so-called pattern or practice authority, which meant that if there were multiple incidents where there was a policy at issue, the Justice Department could sue. In 1988, with the passage of the Fair Housing Amendments act, [the Justice Department] was also now for the first time able to get damages, civil penalties, and the like. Perhaps more significantly, while

there [had] always been an administrative complaint process that would allow individuals who thought they might've been discriminated against to report that to HUD, it was really toothless.

And so in 1988, [Congress] did something that is still pretty exceptional, is that it allowed individuals to file a complaint with HUD, HUD could investigate it, and if HUD found probable cause, it allowed HUD to actually bring the complaint to an administrative law judge and get money damages for the individual who had complained. In other words, they didn't need an attorney. It was a mechanism established where, if either the plaintiff, either the complainant or the respondent, didn't want a HUD ALJ (administrative law judge) to resolve it, they could choose to go to federal court, in which case the Justice Department would bring the case effectively on behalf of the individual. I mean, it's a remarkable statute that effectively provided a free lawyer for any complainant who filed a complaint, where after a preliminary investigation HUD found probable cause. There were other changes made: it actually expanded the mortgage discrimination provisions in important ways, it added sex or gender, and disability, and families with children to the protected class categories. And otherwise, in a variety of other ways, strengthened the tools available to the federal government to address housing discrimination.

Clare Holtzman: And so, your time at the DOJ and HUD spanned most of the 1990s, how did the mortgage market change during that time?

Ken Zimmerman: I mean, there were two things. [T]he national economy was booming in the nineties until the bubble busted in 2000, with some immediate consequences. You were also seeing the first wave of lending bubbles a little bit earlier, with the S&L Crisis (Savings and Loans Crisis) and similar things. But what was starting to emerge in the nineties was the emergence of what subsequently became known as predatory lending practices. And in part, in some of the writing and reports I subsequently wrote when I moved to New Jersey, is that there were several simultaneous dynamics that were taking place. For the first time, Wall Street recognized that the equity that people had in their home was an asset. Up until that time—home ownership has always been one of the more significant wealth building measures for most American families—but up until then, while people took out home equity loans, people hadn't been incentivized to view their house as a commodity.

And what started to happen, is that Wall Street ended up investing in many financial institutions that were not formal banking institutions, and those financial institutions were concentrating particularly in communities of color. But for people who might be interested in taking out home equity loans and other forms of getting access to the equity that they had built up, frequently they involved very predatory terms, there were things like single premium financial insurance and other things that were really just practices of getting people to pay money to refinance a home, or undertake a home equity loan that were not justified in any way, shape, or form. But it outpaced the regulatory framework. So, one thing was that Wall Street was starting to pump

huge amounts of capital in. And there were data tools that were for the first time becoming available so that these types of lending institutions or brokers were also incentivized to do it, to tell who had equity in their home, particularly elderly people who might not be as sophisticated. You could actually identify all of that. And there was a new range of products that were starting to be developed. So, while historically the 30 year mortgage had always been the standard, and there was some adaptation you were starting to see not only home equity loans, but adjustable rate mortgages and a whole range of other things that sometimes had value, but if in the hands of somebody incentivized to do predatory practices, were really dangerous. And over the course of the late nineties into the 2000s, there was just an explosion of those kinds of practices that really led up to the financial crisis that emerged out of the housing sector in 2007 and '08.

Clare Holtzman: And then what made you go to work for the New Jersey Institute for Social Justice?

Ken Zimmerman: So, I was at HUD and quite pleased, my stepfather was always fond of saying that if you ever worked for the government and you got a flag in your office and a TV you had it made. And I remarkably had both of those things. At the same time, I had three young kids at the moment and a national job, and as my wife pointed out, if I wanted to get to know my kids, this was going to be problematic. And so, a headhunter found me and recruited me to become the first executive director of an organization called the New Jersey Institute for Social Justice. It was focused on addressing the structural barriers that prevented Newark, and other urban areas in New Jersey, from reaching their full potential. And it just seemed like a remarkable opportunity take the lessons I had learned in the federal government, [and] go back to community level work; combine policy, project, and advocacy. And I concluded with my wife that it made sense to take the plunge. So, that's what led me there.

Clare Holtzman: And can you talk a little bit more about what the organization did?

Ken Zimmerman: Sure. So, I mean, it was a very special opportunity, in that a wealthy philanthropist—who had been born and raised in Newark, [was] deeply committed to the city, [and] founded the state's largest law firm—put together just a stellar board, all focused on addressing how to combat the structural barriers that prevented the city from reaching its full potential. The board was actually headed by Nick Katzenbach, former U.S. Attorney General, had a federal judge, a number of luminaries, and very importantly, including people with long experience in Newark, from Newark, and so it was just well situated to have credibility in a variety of audiences. You know, as a white Jewish lawyer coming to Newark offering to help, that was something that was not going to be well received unless I had introductions, which the board was able to provide.

And over the course of the next six or seven years, while I was there, we ended up building an organization that I was very proud of—it still exists, just celebrated its 20th anniversary—and ended up focusing really in three different

areas. One was on workforce, including how to help Black and Brown people take advantage of opportunities that were emerging. There was an eight and a half billion-dollar school construction program, and we developed a pipeline with the building construction trades to get Black and Brown young people union cards, so they could have access to opportunity. [We] focused an enormous amount [on] criminal justice reform, convened a set of stakeholders and developed a plan that actually helped New Jersey become the state with the greatest reduction in mass incarceration per capita of any state in the country. And then, we engaged in a variety of what we called metropolitan equity issues, which were looking at housing, transportation, and related work that were about some of those structural challenges. And it was really in that guise that I continued my work on housing with the Mount Laurel case, and mortgages with state legislation, and the national efforts to combat predatory lending.

Clare Holtzman: And so, can you talk a little bit more about the specific issues that you were following?

Ken Zimmerman: About those or about specifically the mortgage related ones?

Clare Holtzman: The mortgage related ones.

Ken Zimmerman: Yeah, so, I mean, in 2000 or 1999, right after I left HUD, I had experience at HUD and DOJ around fair housing and mortgage efforts, but Wade Henderson, the leader of the Leadership Conference on Civil and Human Rights, had undertaken an effort that was really designed to see if it was possible to bring advocates and the lending industry together, in a quiet effort that could lay out a framework that both sides would agree to, that could form the basis of congressional actions before the election in November, 2000. And because I had just left the federal government, he asked me to be one of the people representing the advocates that could work closely with him. Martin Eakes—who I know you know and is well known in North Carolina circles—was among the others that he asked. There [were] probably 20 of us evenly divided between advocates and lenders, it involved principals from Bank of America, Countrywide, [and] a number of others.

And so, I spent a year probably in these quiet meetings to see what we could negotiate. It actually pushed me deeper into that world. Martin [Eakes], who's somebody I respect enormously, educated me greatly about the array of issues that were going on. And ultimately the lending industry pulled out of the negotiations, I think taking a bet that the November election would be more favorable to them than whatever deal we could reach. In New Jersey, as I was making the rounds, the problems with predatory lending were ravaging communities in Newark, and so with that it led me in the context of the Newark organization to say this was an issue we should take up. And with, really the strong support of the Center for Responsible Lending, [including] Debbie Goldstein, who I think is involved with your project, [we did so.] I coauthored [a study] with a couple of others about what was going on in New Jersey, but

done very consciously in conjunction with some of the leading advocacy groups, the AARP (American Association of Retired Persons), Citizen Action, NAACP (National Association for the Advancement of Colored People), and Latino Action Council.

And it became the policy explanation for why we were seeking legislation. And over the course of the early 2000s, we used that report and the advocacy influence of those organizations and others to get engaged in a very hard fought effort, that ultimately responded in the passage of legislation to curb the levels of predatory mortgage activity that we were seeing. It was something that required everything from negotiating with the credit rating agencies, who were absolutely abhorrent—and deserve a special place in the Pantheon of [bad] actors who don't get sufficient attention or critique for their role in many bad things, in my view—to working through with the New Jersey Mortgage Bankers Association, that we started off on the opposite side of, but ended up with a piece of legislation that at the end of the day, I'm not sure happily, but they recognized it was going to be better than what the alternatives were and therefore endorsed. And got it through both houses of the legislat[ure], and, with Governor McGreevey having been elected, that he ultimately signed.

Clare Holtzman: Can you go back and talk a little bit about the report, and what . . . kinds of data you were trying to collect?

Ken Zimmerman: Sure. ... [I]t was a report that took the HMDA data that was available, and with others who were more statistically [pro]ficient than I, laid it out, but combined it, really on some level relying on the same approach I had taken while at DOJ to combine both individual stories, analysis of lending patterns, expert insights, and HMDA data to explain, in what I think proved to be relatively readily accessible terms, why this was a set of practices that required state legislative activity, and did so very closely with CRL [Center for Responsible Lending] and other national advocates who were adopting a strategy of saying this was a practice that needed to be addressed. It was . . . during the Republican federal administration that didn't seem interested in doing so. And so, if we could pass enough state legislation, we could force the conversation at the federal level to be more robust than it was otherwise going to be.

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

Ken Zimmerman: I mean, I think at its heart, it started very much from the largely racially influenced history of mortgage practices. Which meant that there was a level of opening for unscrupulous lenders and brokers, but very much capitalized by Wall Street, which saw profit opportunities in taking equity in people's homes and monetizing it. That practice, and then increasingly as the recognition of the bubble— or wasn't a bubble —recognition of the ascension of housing prices, meant some people were incentivized, and chose to engage in, poor practices of continually refinancing or engaging in speculative transactions with their homes. [This] led collectively to the ingredients whereby there was just an enormous

amount of unjustifiable lending activity. That was coupled then with the development on Wall Street of the kind of interconnected new financing models in the acronym soup, such that there was heavy capitalization on Wall Street of the purchase and securitization, which is how the capitalization of these practices took place of really bad mortgages. And failure, in part, because of the credit rating agencies and others to accurately risk them. And so, with all of that, as the house of cards got ever higher, once there was a moment of reckoning as it came tumbling down, it led directly to Lehmann Brothers and the other financial institutions having huge exposure they didn't realize, and as a result, took down with them the economy broadly. So it was deeply driven by the inappropriate mortgage activity that took place, the failure of regulators to acknowledge it and take appropriate steps; and by Wall Street's inappropriate sophistication that outstripped, actually, not just regulators, but even Wall Street itself truly understanding how leveraged they were and how unprepared for the reckoning that ultimately ensued.

Clare Holtzman: And so, to what extent do you seek your personal experience as adding something important to our understanding of what happened in the run up to 2007 and '08?

Ken Zimmerman: In terms of my own personal experience, I mean there are others as well, starting with Martin Eakes, and Debbie [Goldstein], and others who have deep insights. So, I'll say without knowing how much this makes me special in any way, but the several high-level takeaways that I would observe, I hope are useful. I mean, the first is that the ongoing consequences of race on any one of a number of institutions and ways in which our market is set up, not only has impact for people of color, but actually exposes vulnerabilities that, as the 2008 recession showed, have consequences for everybody. And this represents that in an incredibly distilled and concentrated form. The second, is that as one thinks about how to address that, it's really important to realize how the incentives in the private sector left to their own devices are going to lead to practices that increase our overall vulnerability to the kind of crisis that then emerged.

And so, even though I was a happy litigator when I was, there's an array of regulatory tools that need to be deployed that I think are reflected in the history that I've described. One of them is actually having strong enforcement tools. There's simply a need for that, and that is something that is appropriate and needs to be updated. But it's insufficient, it's too crude to be able to take on some of the more nuanced pieces. And there you need folks who are engaged in regulatory agencies, issuing guidance, regulations, a form of examination that can really stay attuned to what's happening and be able to follow up. It's not sufficient to only have that, anybody who says that regulatory agencies can be captured, in this case they frequently were. But that is just part and parcel. It means though that they are part of the picture that is needed. I think similarly though, the availability of publicly available forms of transparency and accountability, HMDA is a leading example. But as we're moving into a mortgage market where there's far less in person loan applications, we need to update it.

The central proposition that publicly available data is essential remains intact. And just as much that there needs to be the investment in those groups who were looking at it from a consumer, from a racial justice, from a public good perspective, to be able to take that data and use it. So, those are all elements that at least as I look back on the lead-up and development of the crisis come away as lessons. And I think they're applicable not just in the mortgage realm, but more broadly in a social policy and regulatory reform realm as one looks at this.

Clare Holtzman: Is there anything you think I should have asked or that you would like to add?

Ken Zimmerman: This is a really important conversation, I'm eager to see how you all pull it together and what emerges from it. I mean, I guess the only piece that I would add, and maybe for the sake of posterity it's worth noting, is that these kinds of discussions of policy reform, and system incentives, and the like are appropriate because that's part of the way of understanding it, but it leaves out the role and significance of individuals, and recognizing that whatever one does in terms of legislation or policy, it's impossible to prevent those types of practices from occurring, without question. And ultimately what much of the effort to try and combat it, and frankly, much of the effort that led to it involve people. I mean, there are real heroes in terms of those who stood up and tried to combat it, led by Martin [Eakes] and the other folks at CRL. And it's really important to single out their leadership in the face of huge challenges that existed. I think it's equally important to remember that the head of lending institutions should have responsibility, moral responsibility, if not legal responsibility for taking on practices that they were sophisticated enough to know where they were likely to lead. And somehow in the course of these conversations, for all of the sophistication of the policy discussion, we need to find a way and make sure that we hold onto the human element of what it is that any of these types of practices and policy trajectories involve.

[END OF SESSION]