

AMERICAN PREDATORY LENDING AND THE GLOBAL FINANCIAL CRISIS

ORAL HISTORY PROJECT

Interview with

Prentiss Cox

## PREFACE

The following Oral History is the result of a recorded interview with Prentiss Cox conducted by Andrew O'Shaughnessy on June 1, 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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Andrew O'Shaughnessy : My name is Andrew O'Shaughnessy, a JD candidate at the Duke University School of Law. I am also a research assistant for the Global Financial Markets Center's American Predatory Lending project. It is Monday, June 1st, 2020. I am speaking remotely with Professor Prentiss Cox to conduct an oral history interview. Professor Cox, thank you for joining me today.

Prentiss Cox: Thank you.

Andrew O'Shaughnessy: So, I'd like to start by establishing a little bit about your background. So I understand that you graduated Phi Beta Kappa from Oberlin before heading to the University of Minnesota for your JD. Is Minnesota your home by adoption or birth?

Prentiss Cox: Adoption. I'm actually Southern. I was born in Mississippi... mostly lived in Louisiana where most, almost all, of my family's from and went to high school in Atlanta.

Andrew O'Shaughnessy: So, what brought you to Minnesota?

Prentiss Cox: You know what, I was just a couple years out of college, and I was just looking for a nice place to live. Literally I was on my way to Seattle, and I kinda got waylaid here and decided that I really liked it. It's kind of a story of someone who's 22 or whatever.

Andrew O'Shaughnessy: That's a nice place to live; it's about a good an answer as you could hope for, right? So you went to the AG's office shortly after graduating. So in the context of your work there, when did you first become involved in matters related to residential mortgages?

Prentiss Cox: Related to residential mortgages? Is that what you said?

Andrew O'Shaughnessy: Yep.

Prentiss Cox: The first time I did a couple of small mortgage related matters I moved to the consumer protection division in '95 or '96 from my first four or five years in the AG's office. I worked representing the state financial regulator, and I did a couple of

mortgage related matters representing the state financial regulator. I moved to the consumer protection division in '95 or '96, and the first residential mortgage case I had was First Alliance Mortgage Company, FAMCO, which was a subprime lender. So I had some familiarity with mortgages from representing the state financial regulator.

Andrew O'Shaughnessy: I suppose I got ahead of myself a little bit, but what led you to the AG's office originally?

Prentiss Cox: It's actually what I wanted to do when I went to law school. I went to law school when I was 30, and I'd already lived here for seven years or so. And I was looking around for something, some career where I didn't have to manage scads of people to do interesting work. And so I decided to go to law school. I just interviewed a bunch of people and I said: "Whoa, I think I want to go work at the AG's office. It sounds just about the kind of work I'd be interested in." Can sue bad guys and you don't have to go out and find clients. And it just seemed like a great job and it was, it was a fantastic job. So I actually went to law school with the intention of trying to work at the AG's office.

Andrew O'Shaughnessy: So in '95/'96 when you moved over to the consumer protection side, where did residential mortgages fall in the hierarchy of things that you worried about?

Prentiss Cox: It didn't. I mean when I first went over, we just get cases and we do them and residential mortgages were just one of literally dozens of types of products or services that might be subject to consumer financial protection, consumer protection regulations. I did a big case against the largest boat dealer in the state, auto companies...and it's a variety, a whole variety of different markets and different kinds of things.

Andrew O'Shaughnessy: Well, so how did matters make it to your desk then? What sort of institutions referred them to you? How did they get investigated originally?

Prentiss Cox: Well, I'll tell you how. I mean, in general – I eventually became the manager of the division – but at the time someone else's manager and, we just sort of say, "Well, here's a case who wants it?" And we'd do it. In terms of residential mortgages, how I heard about FAMCO was I became friendly with the guy who ran our phone room, where people call in and complain. Back then it was mostly by phone, and I knew more about mortgages than anybody else there because I had done some work with the state financial regulator. And he came in and told me, I've got this, I've got this case, I've got this complaint. And it was a fax back

in those days. And it was kind of hard to read. He came in and said I've got this case, this complaint, and said that he had been charged 20%.

And I said, "Oh, it's probably just hard to read on the facts. It's probably 2%, you know." I said, "See if you can get them to send in his paperwork so we can look a copy of all his paperwork or somehow get all his paperwork cause there's 20%, we need to look at it." So he came back a few days later and said, "Here it is, it's 20%." And I said, "Geez," and I just took a look at it and I couldn't quite believe that somebody had been charged a 20% origination fee, essentially. And then I noticed it was an exploding ARM [adjustable-rate mortgage]. When I read the papers, I said, "All right, this guy's got a 20% origination fee and it's an exploding ARM. It's gonna go up even if interest rates stayed the same."

So this just doesn't look right. So I had my favorite bulldog investigator, Guilia, who was amazing. I said, "Interview this person, find out what this is about." She did. She came back, she said, "I don't know if it's true, but he told me that he has not got great credit, but not horrible credit." Which turns out to be true for about a quarter of the FAMCO borrowers. I'm like, "This is amazing." So I told our investigator to go down to the courthouse. We were in downtown St. Paul. I said, "Go down to the courthouse, the County building, which is also the courthouse, and just pull a bunch of records from other people who've had loans by this company, FAMCO." And she did that and I said, "Contact them and get their paper." And she did that, and everyone cooperated, and we hadn't had that many FAMCO loans. We were the last state they'd gone into at that point. So we were able to get a chunk of about a dozen loans, and I just looked at them and they were all [this] same exact package. They were all this huge origination fee and an exploding arm, so we just opened an investigation and went from there.

Andrew O'Shaughnessy:

So what was the legal basis for your claims against them once you started. What legal tools were you using?

Prentiss Cox:

Okay. States are authorized to enforce HOEPA [Home Ownership and Equity Protection Act], which is the high cost mortgage lending rule. And some of the later subprime lenders walked up right to the edge of a HOEPA loan and stayed right under. FAMCO was actually quite brazen about just saying, "Yeah, we're HOEPA loans," and they complied. I mean, this is the thing about FAMCO loans. This was the original subprime lender of that era. There had been others, but you know, of this new era, FAMCO was the original one that grew out of Long Beach Mortgage and that kind of thing. The interesting thing about FAMCO was that the paper was pristine. I mean, they were HOEPA loans but there wasn't a HOEPA claim there. I mean, you could have tried to invent one, but the real claim was what we call UDAP, Unfair Deceptive

Acts and Practices, which is the general principles-based consumer protection law. We just treated it as a UDAP case.

Andrew O'Shaughnessy: So did you feel that UDAP provided a sufficient scope for what you wanted from a regulatory perspective?

Prentiss Cox: Yes. I mean, UDAP was often sufficient. There's a reason to have laws like HOEPA apply more generally...for market control and for efficiency of bringing cases because it's much easier to point to deficiencies in a rule based system and say you didn't comply with these rules and you can bring a quick case and get a big result. In the case of HOEPA, it's a great result because you can go back three years and rescind everybody's mortgages, right? That's the most powerful tool out there. But that's not necessarily what you need in an individual case that you're already in. UDAP is often sufficient. It's not the ideal market changing mechanism, but it's often fine for mitigation. And it was fine for this case. We got everything we needed. We just had to put together a big fraud case.

Andrew O'Shaughnessy: So when and how exactly did you reach a settlement with FAMCO?

Prentiss Cox: Well, first you have to investigate it. So we had all these people and we got all their paper. People were amazingly cooperative. And so we interviewed them all. And after, as we interviewed...as Guilia would interview them... I did a couple interviews, but she did most of them. As she would interview them, I would start piecing together the story between the interviews and the paper and I would ask her to ask different or more questions. And so what we did was we essentially reverse engineered how FAMCO was selling these loans. So we would listen to everybody's stories and then we would sort of realize what their sales process was. And early on in FAMCO you saw it was a very clear process.

Everybody was saying the same things. They were telling you different things because they're people, and they tell different stories based on the same rough experiences. But then if you start doing lots of interviews and looking at the paper, you saw that there was a very consistent process here. They would bring them in, they would tell them they had terrible credit. So the situation was similar. Everybody had been reached out to; nobody found them. They found everybody. This is a characteristic of subprime lending of that era. Then they would tell them they had terrible credit. Whether they did or not, they'd just pick out one blemish in their credit and say it was terrible. Many people did have terrible credit, but as I said, a quarter of these borrowers were A paper. Then they would convince them that FAMCO was their only hope

to get a mortgage loan and they would go through this two -hour presentation called “The Monster.”

So we were able to figure out pretty much what they were telling everybody and why it was deceptive, and we put the case together. And then as we were putting this case together and we were getting closer to filing, the original FAMCO loan officer, their first loan officer in Minnesota, it had only been less than a year, came into our office and had a crisis of conscience. And I found out he worked in auto F&I [finance and insurance], which is the back end of the auto deal where they give you the loan and the add-on of all the products they can. It's notorious. I've done a case in that area, a couple. It's notorious for consumer protection violations, this auto F&I area. And this former auto F&I guy comes in with a crisis of conscience. And immediately, after interviewing him, I walked down the hall and said, “I just had an auto F&I guy come in and lay out the whole scheme for me.” And I said, “When an auto F&I guy comes in with a crisis of conscience, you know you've got a fantastic consumer fraud case.”

So that's how we built the case. And then after we filed, I found out about someone who was actually tape recorded. Renee Gunderson had tape recorded her conversations with them, which is permissible in Minnesota. We are a one-party consent state. So we had that, you know, the guy, the salesman, the loan officer was really helpful. We pretty much reverse engineered it and figured it out. And I remember he was very impressed. He's like, “How do you know all this?” Later I'd tell him, “You know, well, we've talked to a dozen people and we just put the notes together and sequenced it all.” Which is why you want former employees whenever you do a fraud case, they're just so useful. They tell you exactly how and why it all works.

And he was able to tell us about how they recruited. It actually wasn't a coincidence he was there. They recruited Auto F&I people...very telling. They took them to Orange County, and they trained them for a month on this giant sales tactic called “The Monster.” It was a script, and not only did they tell them how to talk to people, but they went through every possible question and they have the same, uniform answers. It a sales factory basically. So he was able to give us the script and lay out the whole thing. So that confirmed in a lot more detail what we had. And we had an incredible affidavit from him explaining why this was deceiving people.

Andrew O'Shaughnessy:

So at that point, with the affidavit and the interviews and the workup of the sales process that you had from those two, was that sufficient to reach a settlement? How did the claims get resolved exactly?

Prentiss Cox: So we sued them. They hired a local counsel. I became friends with their Senior Legal counsel. They had an attack dog, junior partner, litigator, and we started in on getting a temporary injunction. It wasn't everything we wanted. We didn't have a great judge, but we got something in a temporary injunction. And then as we were attempting to settle the case, we were able to just essentially settle the case for a cash payment to everybody. Because they had come in relatively recently, we were able to actually get them out within a year. There was only like 60 or 70 loans and we got them out within a year. They came in as an initial, just one-person office. We had them shut down in Minnesota within a year.

And then we were able to get a local bank. Their mortgage unit made an offer to try to refi [refinance] everybody and they were able to get a refi with almost every one of these people, particularly all the A paper, but even some of the sub, near-prime, and that kind of thing. They were able to get refis, give refis to a lot of these people. So it was really an effective settlement because we acted quickly enough to really shut them down quickly.

Andrew O'Shaughnessy: So throughout this whole process, did it seem like FAMCO was a sui generis bad actor or were you starting to see other cases or institutions cropping up?

Prentiss Cox: Well, I'd like to say I started to see other cases or institutions, but to me it was just that, at that point, it was just a consumer protection case.

I went on and did other consumer protection cases. I went back to my telephone case or whatever I was dealing with, so the first case, it just was an interesting case. I would say what I got out of it was a relationship with two people...three...one of whom left the consumer protection world. But two, I would stay with all the way through the time I left the AG's office in 2005, seven years later. Two people, Tom James in Illinois, and Chuck Cross...at the time at the Washington Department of Financial Institutions, DFI, the state financial regulator. And Chuck and Tom and I, plus Pam Kogut in Massachusetts, the four of us were looking at FAMCO and were talking to each other and were like, "Whoa, this is really bad." So we began the process of sort of putting together a bigger group of people to look at this. At the time it just looked like it was on one case.

Andrew O'Shaughnessy: So what was the next mortgage-related matter?

Prentiss Cox: Household.



Andrew O'Shaughnessy: Was that the same sort of process in that it began with complaints? Or was there another jurisdiction that put you on the set?

Prentiss Cox: Every case was a little different about how it gets started. From my perspective, I came in a little late to Household. Our financial regulator had started working on that case where I used to be their attorney. They came to me, the financial regulator, and said, "You should get involved with this area. We need some help." My boss at the time was about to run for governor and there were politics around my ability to help. They formed a multi-state group, and this is where there was really the first large multi-state. We settled with FAMCO and then it went on to be featured in the New York Times in 2020 as the first great subprime mortgage problem of that era, which it was.

And it imploded in the weight of these investigations. Tom James, who I just mentioned in Illinois... you gotta talk to Tom. He went through the large bankruptcy process with FAMCO and in the process brought in more states, sort of developed a multi-state. So there was this multi-state and Household, and then those people, Tom and Chuck, started calling and saying, "You guys have to get on Household. We want you on this investigation." I'm like, "My hands are tied." Eventually I got the green light to get involved. And so I got involved with Household, partly based on my relationships with Tom and Chuck and their bosses. I then moved into the leadership group, but Household was different from my perspective. FAMCO I put together a consumer protection case from scratch, essentially.

I had shared my complaint with Tom and Chuck, and they loved it and were able to get a lot out of that for their own complaints. And then I got in Household. I already had these relationships with them. And so I kind of quickly moved into the leadership of the AmeriQuest case, but that was always a multi-state case. And now New York was involved, the New York AG's office at the time under Eliot Spitzer, a guy named Mark Schneider, as well as the New York DFI [Department of Financial Institutions]. So they called their banking department. So this was mostly AGs, but there were a few state banking regulators involved, including New York and Minnesota and Washington. I assume you've talked to Chuck Cross. If you haven't, you have to talk to Chuck Cross. He used to be at the Washington DFI and he's at the Conference of State Bank Supervisors.

Andrew O'Shaughnessy: Okay. We've started with North Carolina and we are only just branching into other jurisdictions. That's extremely helpful.

Prentiss Cox:

You got to talk to Tom James. He's still at the Illinois AG's office. I just talked to him a couple of weeks ago. You gotta talk to Chuck Cross, who's now a high official at the Conference of State Bank Supervisors in Washington DC. Chuck and Tom just went from one end to the other of this thing. It was the three of us doing these cases, from FAMCO all the way through the collapse. I left a little early to go to the University. So background track. Household had a different rhythm. Each of these have their own rhythm, right. So in Household, it mostly was a multi-state case.

So we litigated as this giant group. There'd be 25 attorneys on our side, and they had their own litigating team. And it was always negotiated as a multi-state case.

New York had done a lot of the footwork on it. New York was a big leader in this case.

Andrew O'Shaughnessy:

So what were some of the different dynamics in play given that it was a multi-state case?

Prentiss Cox:

Well, it's less about litigating the case, as it was with FAMCO. We were in court and then mediating and doing discovery. I mean, it was a typical litigation. We had a sense of what the problems were with Household, but I don't think there had been the deep discovery or think through of the theory of the case and the underlying discovery to sort of be ready to litigate.

And so with Household, it was mostly about the power of having a large group of states interested in filing a lawsuit and the leverage that gave you in negotiating the settlement. And we would go to Chicago, we had these periodic meetings in Chicago where we would meet with a whole room of state folks and try to develop positions and go back and forth. And, and when we did the... so that was a settlement through a multi-state process... and when we did the settlement there, we came to a number. And at each stage of these three cases, three main cases we're going to talk about, I was learning. So for FAMCO, it is just a consumer fraud case. To me, it was a really interesting, really bad consumer fraud case and complex, but it was just a consumer fraud case, like boats or cars or advertisements for something, phone service, whatever. Just like any other consumer fraud case.

Now at the time I got to Household, when we were negotiating with them, we did a little digging and read their SEC filings. So by the time we got to Household, what I learned was, "Oh, this is all funded by Wall Street," which I knew by the way was funding FAMCO. I'd read their SEC

filings just to find out about this company. And I remember going down the hall talking to my favorite colleague...Tom Purcell, who was a deputy, but he's really just a good person to talk to about a more interesting or complex case. Cause he had been doing this for decades and was really sharp and he was one of the key leaders to create the tobacco cases of that era of the mid-nineties. He was the staff AG person who was the most involved in creating that case. Minnesota created... the first case or one of the first two. There were really two models. Minnesota, Mississippi. He was the Deputy Attorney General who was involved in that. So I went and talked to Tom about FAMCO and he said, "Well, who funds them?" I said, "Well, I read their SEC filings. I think it's Lehman Brothers or some other Wall Street people. He's like, "Well, go upstream." And I'm like, "Oh, I got a huge caseload. I'm not going to turn this into being about Lehman brothers." "I got a great case against FAMCO I can go after them. I don't need to go upstream," which was really stupid of me and brilliant of him. It's what I should've done. I should've gone upstream, right? I should have been. And then later when Sheila Canavan and Tom James did that, they uncovered this memo about having to check your morals at the door in order to work with FAMCO from some Lehman person who was doing due diligence. But even then, we didn't go after Wall Street hard. No, I didn't do it at all. So when we got to Household now, I was finally beginning to understand the business model. When we got to Household, I was beginning to understand the business model a little bit more so that when we were negotiating, I think I was the person that kind of put this together more than most.

I was like, we're not really negotiating in the way you normally would in a consumer fraud case. It's like that the cost of really remediating this case is beyond their capacity to pay probably... depending on how we look at it... so we can either sue them and put them out of business, probably, if we succeed. That will be our success... would be to put them out of business and try to follow them in bankruptcy and get whatever money we can. That's one option. If we're settling, then I think the settlement value, and I've kind of figured this out, which I still think is right. I think the settlement value in terms of money, there are two things, money and an injunction. You want to change their tactic, their sales going forward with an injunction.

You can't keep doing this, and you want to get money for the people who've been harmed. I said, "The pot of money is going to be dependent on how Wall Street perceives them." They will not, unless we're going to proceed, pursue them into litigation with the likely outcome of, if we win, putting them out of business. If we don't do that, we are out of the mortgage business for sure. Then they can settle based upon their relationship with Wall Street because Wall Street's

watching our case, right? And because Wall Street's watching our case, their funding model was dependent upon the spread between whatever Wall Street would give them and what they could lend it out at. And if Wall Street cut them off or started raising the rates too much, it would change their business model to be one that is not viable.

So basically they could settle for whatever they could pay us, that wouldn't scare Wall Street into believing that they no longer had a viable business. So we made the deal somewhat consciously, very consciously on my part, someone on the group's part, that it was better to get a really good injunction and stop this business practice in this area...constrain the business practice in this area and get as much money as we could. And so we did that. On the money side, we were originally in the two to three hundred range and I was the hawk along with Tom James. I was like, "We can do better than this." They have to settle with us, they have to, and so the only question is how much can they settle for without spooking Wall Street that they're out of business.

So it's not really about the merits of the case per se at that point. It's about how you know, how much you can get in money. And so I was just saying we're not going to settle for that. We can get more and more and more. So I kept pushing. The AGs were like, "This is the biggest consumer protection settlement ever by States." I'm like, "Yes, it is." It's two or 300 million or whatever, but we're dealing with a massive amount of money here. This should be a multibillion-dollar case if we wanted to litigate it. We'll never actually see that money. So it makes sense to settle and get the injunction, which it might not have, but in retrospect, we can get more. They have to settle with us. We've got an incredible leverage.

So I just kept pushing higher and higher. Eventually we got \$525 million. Awesome. Which was by far the largest settlement in history at that point other than tobacco. Then, more importantly for our perspective, Kathleen Keest at the Iowa Attorney General's office – this is where you want to talk to Tom Miller, of course, the Iowa Attorney General, he was involved in this as a leader and his staff person, Kathleen Keest, later, who came from the National Consumer Law Center and then went to the Center for Responsible Lending and then finished her career at the FDIC. She's now retired in Des Moines. Kathleen Keest led the group brilliantly, led the group to do like a 30-page injunction where we basically said, "Here's how you have to operate if you're a subprime mortgage company."

And that's what we saw as the value of the case to kind of create this sort of requirement that hopefully the industry would adopt plus to get a shockingly large number for the time and place. The reflection here on

Household is, if we had used FAMCO to go after Lehman Brothers, could we have scared Wall Street? And I've always wondered that. I think in retrospect I didn't.... it took me three cases to develop the big picture by the end of AmeriQuest. And I really mean AmeriQuest this time. But at the end of the third case, AmeriQuest, I had a framework and I understood what the industry was about and why it was a problem and why it might lead to an economic collapse. I kind of got all that, but it took like seven years, six years really to develop through three cases to understand that at the bigger industry-wide, mortgage level industry level, why that was the case.

In AmeriQuest, maybe what we should have done is sue them and put them out of business and send a warning sign to Wall Street at every point, go after subprime mortgages, but we weren't there yet. I wasn't there yet after Household and nobody else definitely was there yet. We were just treating it as another consumer protection case. And a lot of these people hadn't really been on FAMCO other than me and Tom and Chuck. So we weren't going to, and it wasn't going to happen there. In retrospect, if we had gone in knowing what we knew seven years later, we should have been going after Wall Street the whole time, which is what Tom Purcell told me when I went to his office, and I didn't want to hear it. So by then we were basically going after Household knowing that we were going after their relationship with the Wall Street funders. At least I did. And I think a couple others got that.

Andrew O'Shaughnessy:

So two related questions. The first being, it seems like when you're in a multistate settlement situation and you have not done discovery yet, it seems like there's a certain fundamental information asymmetry between the States who haven't done discovery on the one side and the business. Do you think that constrains the ability of the public to size the settlement amount, or did you think that the financial filings you had access to were sufficient to do that?

Prentiss Cox:

There was some discovery, voluntary discovery and whatever one state gets they share. So it wasn't a matter of differences between the states. We certainly didn't have all the information we would have had had we sent out civil investigative demands aggressively and built the kind of case that I built against FAMCO. But we hadn't done that, and we knew that. And when I went into Household, I'm like, "Oh, we haven't done as much work as we should probably do to do this settlement." The truth is I don't think it would have mattered in that case because we got as much money as we were going to get out of Household without collapsing their market. So as it turned out, it kind of didn't matter. We also knew because Kathleen's brilliant, we knew what we needed to do to try to constrain the industry at the time. So, and she had a lot of

experience just in mortgage, consumer protection regulation, and mortgages. I think it didn't hurt us in that case.

Now that is often the case. Your question is correct. It is often the case that multistates go off and negotiate and there's dynamics within multistates. For instance, there are some states who are never going to sue and so they want to just push the settlement down and down and down cause it's either nothing for them or whatever they get out of this. And there's some bad multistate dynamics. I don't think that's what happened in Household. I think in Household it was just the elected officials were willing to settle much more quickly than some of the line staff like me who were more hawkish because we had different incentives.

We had different incentives, but we were all on the same page ultimately. And having the elected officials there was huge. Roy Cooper in North Carolina and Tom Miller in Iowa. It was huge to have them lead these investigations.... lead the negotiations and provide that clout. Tom particularly took a lot of leadership there. Roy Cooper, both, they took a lot of leadership to, to make that settlement happen.

Andrew O'Shaughnessy:

So turning to AmeriQuest now, what was that story and at what point did you reach what you described as "your end state consciousness of the dynamics?" Was it from the beginning or during the process?

Prentiss Cox:

Well, by Household I began to understand the importance of Wall Street to this industry, right? And that was the turning point I'll say. I also began to think of it as a whole industry and I remember at the end of the Household settlement, there was a small negotiating group. I think five of us, Tom Miller, Roy Cooper, uh, the New York banking supervisor and me and Tom, there may have been one other person.

We were the executive committee basically. And I was sitting next to Tom and we were across from the Household officials and attorneys. And at one point they said something, and it was like, okay, we're going to settle, they're going to agree to \$545 million. They're going to agree. It became obvious after just that one moment, it became obvious, we were going to get a settlement. Tom and I looked at each other and smiled and I wrote him a note that said, "Who's next?" which is about understanding that now I was beginning to see this. And Tom probably had gotten there before me. I was beginning to see this as an industry-wide problem. We weren't going after individual companies. We were trying to constrain an industry out of control. And when we thought we'd done that with Household... we kind of did with Household... at the

time we sued FAMCO they were the largest lender and we put them out of business.

At the time we sued Household, they were the largest subprime lender and they plummeted. They had to comply with the injunction and their mortgage originations fell drastically because they were no longer engaging in these deceptive tactics. So it kind of worked at the level of the tools we were used to using, et cetera, at work. So I wrote a note to Tom after they said that and said, "Who's next?" And he wrote back, "AmeriQuest." And I had three or four names in my head, one of which was AmeriQuest. And so I smiled and so we went on and then AmeriQuest started. So I went back and started looking at AmeriQuest. Frankly, I went back and took care of a bunch of other work that had been stacking up.

And then a few months later, I'm like, "Send me all your AmeriQuest...whenever you get an AmeriQuest complaint, send it over." So I started collecting AmeriQuest complaints, and two or three other subprime mortgage lenders. But Tom, I trusted his judgment. He said "AmeriQuest," then I kind of gave them high priority. I'm sure Chuck Cross, by the way, was on the Household executive committee as well. You gotta talk to Chuck. He was a bulldog...so persistent as well as incredibly knowledgeable and brought the financial regulator and the detailed knowledge of that to the table that we were less capable on. So I started looking at AmeriQuest and then that developed as a more traditional case. We were about to send a civil investigative demand when... remember that guy who brought me the complaint at FAMCO?

The guy...head of the phone room. He had now left the office. We had a volatile Attorney General. Everybody was leaving. He had now left the office and was a consultant. And he called me up and asked if I wanted to meet with the General Counsel of AmeriQuest. I'm like, hmm, I wonder if they found out we're about to send a CID. I said, "Sure, I'll meet with anybody." So, Curtis Lowe is his name. And Curt Lowe had a meeting with Tom Noto, who was the General Counsel of AmeriQuest who came in. And I liked Tom immediately. I liked Tom from one end of this to the other. He was pretty straight forward. And so he came in and gave me their best practices spiel, which is almost meaningless to me. I don't care what their best practices there are, I care what their actual practices are.

So I basically listened to him politely and said, "That's all fine. Let's put that aside and talk about what's really happening." What you've got-- When I started looking at AmeriQuest, it was a different case. I mean, it was evolving. So FAMCO they were charging 20%, and the fees had gone down by the time you got to Household. They were charging right

at the HOEPA limit of 8% plus, again, the adjustable ARMs... the exploding ARMs... but with AmeriQuest it was shifting again. So it was all subprime mortgages. It was all a lot of deception, a lot of unfair practices. But then what they were, was shifting over time. So when we got to AmeriQuest, the prices, the fees, had continued to drop. You still saw the adjustable ARMs, but now you began to see other products, like 80/20 products.

Andrew O'Shaughnessy: I'm sorry, could you define the 80/20 product?

Prentiss Cox: It's where they essentially give you two loans. The first mortgage for 80% and the second mortgage for 20%.

Now, FAMCO loans were really well underwritten. They were subprime loans, but they were concerned about the collateral. Their loan to value ratios were really low. They would only give you like a hundred-thousand-dollar mortgage on a \$200,000 house often. You could tell they were underwritten loans. They wanted them to perform. They were just incredibly abusive because they were so high cost. Compared to the risk that was being with it. Even with Household, they took you to the limit. People didn't understand what they were paying.

There were all kinds of problems with the Household loans, the way they used ancillary products like packing on mortgage insurance and this is what... I kind of don't want to go into all of this. It's a form of packing. Like what they do with the auto webinar guys we mentioned before, so Household was different. They were just charging you lots and lots of money that you didn't know you were paying until you got to the table and – even then – you didn't know because of the way they've packed it into the monthly payment. So that was, again, a high cost lending. When you got to AmeriQuest, what became clear to me right away was the costs were still high, but they were way down compared to FAMCO particularly, but also Household.

But what you saw in AmeriQuest was deteriorating underwriting. And that became apparent when I first started looking at them. I remember we had eight complaints from people who were complaining about excessive appraisals of their houses. Why would someone write into the Attorney General's office that their house had appraised for more than it was worth? I mean, what a bizarre complaint, right? So I had to ask myself, why are people writing in to say that their appraisal was too high? That's just weird. Not just one, but eight, right? And so then you had to ask, well, something different is going on here. So then we began to dig into AmeriQuest, and we got a ton of data from them. So it wasn't the problem you mentioned before. We were able to get a voluntary



production of data, again, Tom [Noto] was very forthcoming from one end to the other.

So we got downloads of data about their loan files. We got randomly selected loan files and date periods we picked. And the big states are being active at the time. At the time, Minnesota...not anymore. It's Minnesota, Illinois, New York, Washington... Dave Huey and Washington at this point. Someone you want to talk to... he's retired now. I think he's back in the Twin Cities where he's from. But we had this bizarre presentation of a consumer protection case. And so then we looked at the files and it was really apparent; you didn't need to be a genius. You just had to know what mortgage files look like. And if you read through the mortgage files, you just saw bizarre stuff.

I remember there was one home that was in an inner ring suburb that the comparable appraisal was like 10 miles away in a wealthier suburb. But this is a metropolitan area. You don't go 10 miles away to find a comparable property, right? So you began to see screwing around with the appraisals of property, screwing around with the property value. Then when you looked at the files more closely, what jumped out at you was all the stated income files. People who weren't proving that they had income to pay back the loan, but rather were just stating that this is what their annual income was. And that was really problematic. And you also began to see these three year, 3/27 loans, which meant that the interest rate was fixed for three years and adjustable for thereafter on the loan.

So when you put the whole thing together, there were all these layers. When you put it together, they were selling the fixed rate for three years to people who had lots of other debts. Wrap all your debts into this, we'll lower your overall monthly debt payment, which was probably true, but what they weren't saying and what people probably didn't get, was that you were transferring credit card or medical dischargeable debts in bankruptcy for debt secured by your home and then they would just constantly flip you. So you began to see the same people getting flipped to the loans; they were churning the loans. So it became a different case. It wasn't just about the high charges. Here we were dealing with subprime borrowers and the high charges were not excessive to what it was, what was happening was that they were originating loans and churning loans, wrapping dischargeable debt into mortgage debt and convincing people to take these loans that they would never be able to pay back.

You were setting up a mortgage crisis and at that point that's where Wall Street was loving this because Wall Street was seeing these 3/27 loans and they had this huge appetite for churning these in. Now I

began to really research Wall Street a little more and began to understand mortgage backed securities and Wall Street. Well, why would Wall Street take all this crap? I still didn't get it at that point. And then when you're doing AmeriQuest, I'm like, oh, again, a reason....It's like, they're turning these into securitized instruments and they're selling them to other people. That's why they would do it. And they make their money on the fees of the securitization process. So I began, all of a sudden, I began to put together the whole thing. It's like, oh, that's what's happening now.

And it was an evolution. FAMCO to AmeriQuest. We had a very different loan model by the time we got to AmeriQuest. And this was 2003 when I first started looking at AmeriQuest. And mostly through 2004, we investigated them and began negotiating with them. And then it was in that period where I began to put together what became the subprime mortgage crisis. And AmeriQuest was the biggest. So every time we went after the largest of the subprime lenders. But at that point you begin to see this proliferation of other subprime lenders, and I was watching the regulatory system and you began to see the OCC was letting their banks move into this and was not taking aggressive steps. And reading mortgage news, you could see the volume exploding every quarter in subprime mortgages, where they have become 20% of the overall lending and on up to 40%, if you included all mortgages.

So all of a sudden in the process of doing AmeriQuest, it's like, this thing is out of control. Whereas in Household we could treat it as a case. It wasn't. It was still only a tiny percentage. When we did Household, it was only a tiny percentage of the mortgage market. By the time we were in 2004, early 2005, you began to see that the market was out of control. It wasn't just AmeriQuest. And I began to understand that. And so when we began to negotiate with AmeriQuest, I was a super hawk and I was like, we just need to sue them. I mean, I'm willing to engage in this multistate as we continue to investigate and figure this out, figure out the right thing to do. But I don't want another Household settlement. I don't care if we sue them and people don't get a dime.

Our number one job now is to put them out of business and send a signal to the whole industry that we're going after them. We're the only cops on the beat. The FTC wouldn't join us. I was leading AmeriQuest. I was the lead counsel on the AmeriQuest investigation. Tom Miller and I. Tom Miller was negotiating with the company lead, and I was lead investigator putting a case together. By that point I had really gotten it. It took six years, but got there eventually. I began to understand the industry and how it worked and why this was just the biggest, but it was just one company and a bigger industry that was out of control. And our

primary job – I understood this by early 2005. It took me 2004 to figure all this out.

By early 2005, I figured out that we needed to just put them out of business, and I gave a little speech. I'm sure Tom and Chuck – Tom Miller and Tom James and Chuck – probably remember it, where when I went to the university, the case was still going on and I had drafted a complaint and I'm like, "Let's just all sue them. Let's just all file these complaints. Horns blaring because this whole thing's going to implode." Yeah, and I understood it at that point, and I gave a little rousing, "Let's stop negotiating. Let's just sue them because what we need to do is tell everybody that we're going to sue every subprime mortgage lender." The FTC wouldn't join. I was imploring them. It's just a UDAP case. Come on in. Join us. You have the authority. They're not a bank, they're a non-bank.

I began to understand the non-bank/bank distinction, although at that point the banks were chasing the non-bank lending model... the subprime model. I was trying to convince people that our task at that point was simply to try to bring down the industry. In fact, when we were negotiating with AmeriQuest, it was funny cause we would fly out to Irvine and later to Chicago and we would sit on opposite sides of the table and they would have like eight or 10 former Attorney Generals on there, plus their Morrison Forrester lawyers plus Tom and then some of their senior officials. And we would have our large group on the other side. And I was doing battle with their chief outside counsel. And then after one of these sessions, we were all sort of leaving, we all got up, we were at the back end of the hall on the way out. And one of the senior, former AGs said, "Prentiss, I think on a bad day you would say the whole subprime mortgage industry is a fraud." And I looked at him and I said, "That is not true. I would say that on a good day." And everyone laughed. But it's exactly how I felt at that point. We were negotiating, but I was mostly trying to just convince everyone that we needed to sue and not worry about the money or the injunction. We were past that. The industry had exploded to the point where we just needed to bring it down. And the bank regulators were our enemies, not our friends. The FTC was sitting on the sideline. We were it. We shouldn't have been it, but we were pretty much it. The federal government was absent or hostile, one or the other.

Andrew O'Shaughnessy:

What were the public prosecutors and the state regulator side of the table? What were the dynamics like there? So you were the most aggressive? What did the rest of the coalition look like?

Prentiss Cox:

Well, I think most people just saw it as another chance to get a settlement, which is what happened after I left. I left in July of '05. And

they settled I think in November or December of '05... with AmeriQuest. And they did a settlement, like the one with Household. And I think most of the group was moving that way. But because I had started this investigation and was lead counsel, I think that we were still talking about it at that point. And I mean, you know, it's not unreasonable for AGs to treat it as a typical consumer...another one. But as a consumer fraud case, get the best settlement you can, get as much money back to people. That's a reasonable position. It's just at that point, I had done enough work on understanding the whole industry that I just thought we had a different animal in front of us and that our job was to be what the politicians or the elected officials in Congress and the OCC [Office of the Comptroller of the Currency] and the FTC and the other federal entities that were either AWOL or hostile should have been doing, which was seeing an industry out of control and figuring out how to contain it.

Andrew O'Shaughnessy: So how many of these states were involved in FAMCO? So for you, you're learning progressively between these cases. It sounds like for some jurisdictions they still have at least a case or two less experience than you do in Minnesota.

Prentiss Cox: You have to break it into the States that are willing to go after these big cases and those that aren't. But the states that hung in there from the beginning were Washington, both their AG and their DFI, including under their later Republican AG, who was great. The Washington AG and DFI, the Illinois AG, and then later and continuing on the New York AG and off and on the DFI in New York, and Minnesota until I left... and Iowa. I'm sorry, and Iowa. So you had those sort of lead states and then you had a few other states that were pursuing these cases and were actively engaged in them. But then with most multistates, a lot of people are just hanging on... Arizona was big on Household. There were some states that would drop in and out. Those were the states that sort of were there soup to nuts. The ones I mentioned and the other states weren't going to file big lawsuits against major companies and go after Wall Street and that kind of thing wasn't going to happen. So that's just how multistates work. If I've forgotten anybody listening or watching this, my apologies.

Andrew O'Shaughnessy: So another thing I'm curious about is do you think that other than the people at those offices, do you think that there was some other perhaps cultural common denominator behind the states that are willing to be more aggressive?

Prentiss Cox: A little bit. If you look at a paper I wrote with two other people, Amy Widman and Mark Totten, we looked at every UDAP case done by state Attorney Generals, the FTC, or by that point, the CFPB in 2014 and we

analyzed them. You'll find that it sort of breaks down like you think, but not exactly. It's not exactly what you think. California brought two UDAP cases, one for a couple thousand dollars in 2014. So here's the largest state in America, the leading progressive state in America that should have massive resources, total citizen buy-in to do aggressive consumer fraud work against major companies, and they're just doing no work. They're just not bringing cases. On the other hand, you've got Vermont, a tiny state, but one who's politically aligned to do this work, bringing really good work and being leaders in multistate cases.

You've got Iowa, which is not exactly a bastion of political progressivism during that time or now, and not a big state, but they're being involved in all these subprime mortgage cases. They're doing all kinds of good work and a whole bunch of areas in that. That's Tom Miller. So a lot of it is people, a lot of it is cultural institutions.

New York is a great office built up by Eliot Spitzer, who was an incredible Attorney General. He was hard to work with. I remember there was one little multistate where I did all the work... literally everything... and then offered other people to join in a multistate. We had a settlement. We were going to announce it on like, say a Thursday. On Wednesday afternoon, Elliot Spitzer issued a press release saying "New York sues X." I was like, "What's up?" They're like, "Oh, what can I tell you? It's our boss." That's who Elliot Spitzer was, but he was also an unbelievable Attorney General who built up what is, I think the premier Attorney General office in America still. Before that, New York was a terrible office in terms of doing consumer protection work. So I think a lot of it is just great public officials who take over an office who have a vision to create it. Now it's more likely to happen among larger states and states that are more politically progressive. Although in terms of just day to day consumer work, I think you'll find in our study, it's called "Strategies of Public UDAP Enforcement," Harvard Journal of Legislation. Florida and Texas still have AGs offices that have carried over.

They do a lot of good work. They're big states, they're Republican States, but they do a lot of good consumer protection work. The actual leaders though, Illinois, New York, Lisa Madigan... incredible. Just took a good office because they have people like Tom James and turned it into a great office... like New York, a premier office in the country. I think you just get people like that who do amazing work, who are amazing leaders who make it happen. And it's more likely to happen in certain places, but it has to do with who the leaders are.

Andrew O'Shaughnessy:

So I think another, the last case I wanted to be sure to ask you about, was *State v. Fleet Mortgage Corp.*

Prentiss Cox: That wasn't a mortgage case, but go ahead. It's sort of.

Andrew O'Shaughnessy: Well the reason I wanted to ask you about it was because it embraced the issue of non-banking subsidiaries of national banks. Can you talk through that a little bit?

Prentiss Cox: Yeah. So that goes back to I believe 2000, 2001. So we had done FAMCO and we were in the process of negotiating Household I believe. And this was an entirely different problem. I came to call it preacquired account marketing. Basically where a bank or financial institution, but it can be of any account holder, sells the right to charge your account, to tell them at the time, telemarketers, direct marketers, direct mail, later internet, sells the right to charge your account on a special basis where the third party marketers are selling junk membership clubs and junk insurance policies....doesn't need to get your account number to charge your account cause they have a contract with the financial institution that if they say you consented, then you consented. Needless to say, that led through this layering of deceptive tactics to absolute out of control fraud.

I went after US Bank or our office did... they became sort of the poster child for sharing financial information. But the message that got out in the public from that is, "They're sharing our financial information." It wasn't about this preacquired account marketing. So then we sued the third-party seller, one of them who was involved with US Bank and every other major national bank. We sued them for this. But what I was doing with *Fleet* was a very conscious attempt to do two things. One is sue the bank for the conduct, not for the sharing of the financial information, which is what we did with US Bank Corp. We sued them for the underlying conduct of the marketing company because they were aiding and abetting the marketing company.

So we were doing what I didn't do in the subprime space, which is try to go up to the party who can really shut off the spicket, in this case financial institutions, and try to make them responsible for the conduct of the people they were in bed with. It was a conscious attempt to do that. It was also an attempt to show that it was beyond checking accounts and credit cards... that it was any form of financial account and they were putting it on mortgages. They were letting people add these junk products onto your mortgage and it would show up as a little thing called fraud on your bill at the bottom. But for people who had automatic debit, they didn't even get the statements that said that. So, they just assume their escrow account changed by \$9 a month or whatever.

So in the process of doing that, we went after Fleet Mortgage Company. Fleet Mortgage Company was a non-bank operating subsidiary of a bank. And going after Fleet, the outside counsel at Fleet brought in the OCC. Fleet said because we sued under a federal law called the Telemarketing Sales Rule, that state Attorney Generals weren't allowed to enforce. If this is getting too in the weeds, let me know. We were suing under the Telemarketing Sales Rule. And the Telemarketing Sales Rule was an FTC invented creature and it's limited to the powers of the FTC and the FTC can't go after banks. So the Telemarketing Sales Rule doesn't directly apply to banks. Fleet Mortgage, represented by Skadden Arps, they told me right away, "You don't have any authority here under anything because even if you're suing under your state UDAP law, you have no authority to go after us because we're a bank."

I said, "Well, I looked it up. You're not a bank... if you are a bank, I wouldn't have sued you under the TSR. I would have sued you under UDAP, but I wouldn't have sued you under the TSR. You're a non-bank." He said, "But we're an operating subsidiary of a bank." And so we had a skirmish in the federal lawsuit. They filed a motion to dismiss on our UDAP claims on our Telemarketing Sales Rule claims on substantive basis. They lost all of those, but they also have this claim that as a national bank, no one could sue them except the OCC. And at the time the OCC was super aggressive about trying to stand between banks and Attorneys General. I remember with subprime, I said, we're out there doing this work. This is why it's so important to have state Attorneys General and to have 50 of them, so you can't buy them all off.

There's always going to be somebody who's willing to do the big case out in the state somewhere. Federal government, you can shut down. And the fact that they got away with this for all these years with this preacquired account stuff, and the fact that subprime mortgages were never contained by the federal government are Exhibits B and A respectively in that process. So you got to have state enforcement because if you don't, states are much more nimble, much more willing to go, we could do things, you know, I could go from looking up stuff and saying, "Oh, that's a problem. Let's send out a civil investigative demand." You know, the FTC or the federal government, even the CFPB, at it's best, is a much more cumbersome process. That's assuming they want it to act like the CFPB did under Rich Cordray.

So states are much more nimble and there's so many of them that they serve as an overflow valve for taking care of these problems. The Fleet Mortgage case, then, the judge just rejected all their arguments for their motion to dismiss, except for the OCC one. She said, "Come back and re-brief that. I need more information." So we re-briefed it and the OCC filed an Amicus and showed up at the argument sitting next to the

bank, and I remember saying, “Does this tell you anything? That the bank is telling us that the OCC is coming into the case on their behalf? OCC wouldn't talk to us, but they would talk to the bank. It's like, does that tell you anything about the problems we've got in our federal banking regulatory system? That the OCC considers the bank their ally and not a state consumer protection regulator?”

They see them as the enemy who needs to be shut down, and fortunately the judge looked at it and in that particular case determined that because of a provision in the Gramm-Leach-Bliley Act that had been written in by an FTC attorney in 1999, we were able to go after a non-bank operating subsidiary of a bank. And I think it was one of the only cases that anybody ever won going after the OCC during that period. And so it was useful. It showed that there was some limit on the OCC. Now later, we had the OCC overreach passing a regulation saying expressly that states can't enforce their own laws against national banks, which is just unbelievable when you think about it. That was overturned five to four<sup>1</sup> by the Supreme Court on *Cuomo v Clearinghouse*, Scalia joining the majority to overturn the regulation I'll add. It's always funny how these things break. So that was the importance of that case. And later that case was used to try to get the OCC to stop stepping between states attempting to regulate subprime mortgages. But the OCC was very determined to fight as hard as possible to shut down the states from doing anything to regulate banks and the subprime space or anything else.

Andrew O'Shaughnessy: So we haven't even gotten to your time at the University of Minnesota.

Prentiss Cox: That's less important.

Andrew O'Shaughnessy: Well, feel free to disabuse me of this impression, but it seems like you've done a substantial amount of work advocating for legislative changes on the strength of your experience, which I think speaks to gaps in the law and opportunities to tighten it up. So I think that would be an important part of the conversation to get to. But I don't know what your availability is in terms of time.

Prentiss Cox: No, I have time. Great. I think it's important because it's important to do this kind of work and I'm really glad you're doing it and I really hope you'll talk to Tom James and Chuck Cross and Kathleen Keest and that you get to preserve this. Because it is a fascinating study. And I remember Tom James and I one time when I was in for a meeting, I don't know what it was, after I was at the university for years after the financial crisis, probably about '09 '10, you know, when the crisis had

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<sup>1</sup> The case was decided 5-3



already roiled through and everybody knew what a subprime mortgage was. I remember I just called Tom when I was there for some meeting involving my university job and I just said, "Let's go have lunch." We got sandwiches, went down by the Chicago river and ate them.

And we were just laughing about how a bunch of state AGs pursued all these cases against all these subprime mortgage companies. Who knew that when we went after FAMCO in 1998 that we were going after the first volley in what would become a global financial crisis?

When I went to the university, I did work on things. I worked a little bit with the CFPB on an advisory panel. I never had a key role in that. I worked on some state legislation. Probably the most important was in 2007 before the crisis hit but when everyone began to really understand what was happening with mortgages, the foreclosure crisis had already begun to hit at the very beginning. The foreclosure crisis had begun to hit, but it hadn't turned into a financial crisis, which is, by the way, an important point I always try to make.

If it had just been a mortgage foreclosure crisis, everyone would go, "Oh, too bad for all those people" and no one would remember it. Or it would have been just some blip. It's only when it turned into a financial crisis that everyone began to say, "Oh, we really have to do something about all this, you know, consumer fraud out there" and form the Consumer Financial Protection Bureau. If it had just been a mortgage crisis, I highly doubt we would have been able to form the Consumer Financial Protection Bureau. People have to see the connection between the consumer fraud and the broader economy, which you saw in spades with that. So in 2007, I worked with the Minnesota people at the Minnesota Legislature to advocate in the community here in Minnesota. Ron Elwood and Amber Brennan, and others...getting the anti-predatory lending law passed, which I think became a model for that kind of work. When I was at the AG's office, I worked on a foreclosure equity stripping. That became a state model that was passed in I think over 35 states or something, then became part of an FTC regulation. After the crisis, I testified on that at Congress. And so, yeah, I worked on some of these legislative solutions.

Andrew O'Shaughnessy: Is that what led you to move into academia or was there something else you wanted to accomplish with that?

Prentiss Cox: If you're the kind of person that looks at this, if anybody goes, ah, that, that's the kind of job I want, well then do it. Because working as a state AG and consumer protection is just a totally blessed and privileged thing to do. The world is your oyster. You can go after things...there's way too much work to do. So you get to help shape the agenda with the kind of

cases that you should be looking at and you should be going after. It's really a great world, but you know, I was working for somebody who....a lot of the best people in the office had left. I stayed a lot longer than many others. I just needed to move on. So it was the point in my life where it was then or never, and I have another blessed position working at the university law school. Just incredible.

You can say what you want. Academic freedom is so important. It's the kind of thing that is not yet under serious attack, but if this Trump Administration keeps going on, I have no doubt that they're going to make a concerted effort as they have in other countries that are attempting to transition from real democracy to closer to an autocratic model. They eventually go after academic freedom. The ability to do this work and say what you think and have a voice for that particular purpose is very important to have in our society. So I feel very blessed to be at the university now.

Andrew O'Shaughnessy: Great. Well, there are a couple of questions we use just to conclude. So one is, we've seen a ton of narratives emerge over the past decade about the origins of the financial crisis. So we'd like to ask everyone we speak to about, what theirs is?

Prentiss Cox: What I think the origins of the financial crisis were?

Andrew O'Shaughnessy: Yup.

Prentiss Cox: Yeah, I mean the stuff we worked on. Like I said, I think I kind of got that around 2005 that this was coming because of the size of the mortgage market and the opacity of the securitized instruments. What I think is more interesting about that question, if I could take it.... So, obviously I think it was subprime mortgages sold in an opaque way into the markets. The markets didn't know how to deal with them, so they froze up and then you go from there. And it's this relationship... people think about it as just a Wall Street thing, but it was a relationship between Wall Street and these very retail telemarketing, soliciting, going out and selling people on lowering your overall debt by transferring, without saying, transferring it into non-dischargeable debt that'll cost you your home.

I mean, there was this relationship between Wall Street and these retail sellers and that's what it was. The fact that the regulators for different entities weren't seeing the whole picture. Only the state AGs really, the few of us, only that handful of state AGs really went after this in a systematic way and we didn't do it well enough. I mean, we didn't

succeed, I guess. We should have gone after Wall Street as part of this early on, to try to provide them disincentives. Now the other way I'll answer that question, I think that is more interesting, is what happened after the crisis. And what happened after the crisis was-- sometimes I can be remarkably naive. I thought, wow, you know, I was right. I've been telling you there's going to be this huge economic consequence.

I didn't have any clue it was going to be as big as it was, but see now we got to pass this law in '07, the predatory lending law, the mortgage crisis, foreclosure crisis, and then financial crisis. People will see it now and they'll see it for what it is. And what's fascinating is how effective the business community and the right wing was in changing the narrative. It didn't matter to them that obviously deregulation is what caused this problem. The answer is always government caused the problem. You don't even need to ask what the question is. The answer is the problem is caused by government regulation. And the Koch brothers have funded George Mason University to provide them that answer to every question they ask.

Which really what was telling after the crisis... was how there was so little reflection. Alan Greenspan was somewhat reflective. What's his name? The Seventh Circuit judge in Chicago, the law and economics guy. I'm getting old. I know of him quite well.

Andrew O'Shaughnessy: Posner?

Prentiss Cox: Yeah, Posner or Richard Posner was reflective. It was like "Oh, this doesn't make sense in the worldview that I have put forward all these years. I need to rethink this." You would think that pretty much everyone would go, well, obviously this deregulation mindset wasn't great, has its limits or whatever, however they want to process it. But no, I was going to forums in '09 when everything was raw and fresh and the industry was there pushing the exact same lines they were using in '04, '05, '06.

These were innovative products. And the problem was the government. And I'm like, okay, there's no point in having this debate because whatever the facts are, whatever happens, you've already got your answer. It was really quite shocking to me. I remember at one point I said, "You should be walking around here with buttons" – and it was from the business, the financial roundtable – "I think you should be walking around with buttons saying, "I'm ashamed."" You know, "I'm Sorry," Something. You know what I mean? You were clearly wrong. Everything you said was wrong. You caused this massive financial dislocation and harm and people are losing their homes, and you don't

move. And then the right-wing institutes – I remember I debated this guy at the law school.... I think he's now high up in the Treasury or something, but he was at the Cato Institute and he was giving the same line.

This is like, '10, '11, 2010, 2011 maybe in there, maybe later even. And he was when the Cato Institute first came in and the right wing first came out at the crisis, they started blaming the Community Reinvestment Act, which is just truly bizarre. That was so bizarre that the American Bankers Association had to come out and say that it wasn't the Community Reinvestment Act that caused this. I mean, the guy at the OCC just recently rewrote all the CRA rules to make it less effective. But so they've always been after the CRA, but even the Bankers Association came out to say, "Stop this thing about the CRA. That's not what caused the crisis." But here we were at this forum a few years later, this guy from the Cato Institute, and he was like, "Oh, we would never have said the Community Reinvestment Act." "That was way down the list. You know, that was 20th or something like that." And I'm like, "Really? And I just said, "Google this guy's name, CATO, and the Community Reinvestment Act." And you will find in like November of 2008 at the very beginning of the crash, they had a big thing. The Community Reinvestment Act caused the crisis. I mean it was bizarre and he was just lying about it as if, "Oh, we never thought that." I mean they just would come up with anything. So what I think you learned from that, is a long-winded way of saying, what I think I learned from that is that in a hyper-politicized environment, that I think, I would hope, the left would be better. I don't know. But I would assume it would be about taking in facts and information, admitting error, that kind of thing.

But certainly there was very, very little of that from right-wing intellectuals and academics and particularly the business community and their trade groups. Just, the narrative never changes. So whatever you think the cause of the crash was, I don't think they're credible people to talk to. It's very hard for me to get up the energy to talk to people who do that now because we're not really having a debate about what's really true. I mean, I'll change my position if I think I'm wrong or evolve it or figure out what the right thing is. But when you're so committed to a set of priors that it's always "Government regulation is bad," always "The market will solve the problem." You can't really have an argument. You just have to win. You just have to gain political power and win.

There's no point in having that argument with people....who that's their solution to every problem.

Andrew O'Shaughnessy: What do you think state policy makers can learn from that? If anything, other than what you just said, which is: you have to win.

Prentiss Cox: Yeah. I mean it would become much more. It's about political power and it's about winning and then finding the few people who you can engage with that always listen. But basically you just have to get political power and win. And I think the Trump Administration era now triples that. It's just about winning. Because you can engage with people who want to engage on what the right thing to do is. You can find good-hearted, open-minded people and have that engagement. But the general political discourse with these trade groups and that kind of thing... it's not worth the time.

I think the other lesson from the crisis here... if you want to get big picture...is states, which I mentioned before a little bit. States are important. You have to have an overflow regulator. The federal government can be shut down. The federal government can be co-opted. The industry can capture the regulators and usually does. You need elected officials at the state level, independently elected officials, which is what most, almost all state AGs are. Not all. You need them at the state level as a counterbalance. It's such a critical role, particularly right now. And during the early two thousands with the subprime mortgages, it's just a critical role in our political system.

Andrew O'Shaughnessy: So Professor Cox, one last thing...you may not have an answer to this... we may have exhausted it, but is there anything else that I didn't ask about that you think is relevant that you'd like to record on the subject for posterity?

Prentiss Cox: You're a good interviewer, Andrew. That's always the last question you should ask in an interview. No. I've gone on at quite some length. I appreciate that you're doing this. I think it's a great thing to preserve. It's a good history to preserve and do talk to my friends Tom James and Chuck Cross and Kathleen Keest, Dave Huey, because they can give you a different perspective and they're all brilliant.

Andrew O'Shaughnessy: Thank you, Professor Cox. I really appreciate the generosity you've displayed with your time.

Prentiss Cox: Thank you.

[END OF SESSION]