

AMERICAN PREDATORY LENDING AND THE GLOBAL FINANCIAL CRISIS

ORAL HISTORY PROJECT

Interview with

April Charney

Bass Connections

Duke University

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## PREFACE

The following Oral History is the result of a recorded interview with April Charney conducted by Patrick Rochelle on October 5, 2020. This interview is part of the Bass Connections American Predatory Lending and the Global Financial Crisis Project.

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

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Interviewer: Patrick Rochelle    Date: October 5, 2020

Patrick Rochelle: I'm Patrick Rochelle, a Master's of Public Policy student at Duke University Sanford School of Public Policy and a member of the Bass Connections American Predatory Lending and the Global Financial Crisis Team. It's Monday, October 5th, 2020. We're speaking remotely for an oral history interview with April Charney, a former senior staff attorney with Jacksonville Area Legal Aid. Thank you for joining me today, April.

April Charney: Thanks for having me. It's a pleasure.

Patrick Rochelle: Of course. I'd like to start by establishing just a little bit about your background. I believe that you attended Florida International University, and later completed your law degree at the University of Miami. Is that correct?

April Charney: Yes. FIU. At the time I was, it was only the upper two years. I started actually at Miami Dade when it was still a community college. I kind of was ... in a hurry. So I finished law school when I was 22.

Patrick Rochelle: I take it you're originally from Florida.

April Charney: No, I was born in New Jersey, but raised in Miami, pretty much.

Patrick Rochelle: ... I understand, after you graduated from the University of Miami, ... you were in private practice for a number of years. What kind of legal work were you focused on earlier in your career?

April Charney: Well, I was in private practice for a very short time, in between stints with legal aid or legal service programs. It was when I lived in Arkansas. I moved to Arkansas when I met my husband and had my kids. So the first couple of years before I moved back into legal services, I worked privately in a small town called Fayetteville. And I was a general practitioner. You basically do what comes through the door, which was representing people involved in legal problems.

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

April Charney: Well, I have to say I've always leaned toward representing individuals or consumers. And so the first time I became involved with foreclosure defense ... was [between 1991 and 2003 when I was] a lawyer at ... Gulf Coast Legal Services in Sarasota, an office that unfortunately does not exist anymore in bricks and mortar. So there's less representation of poor people around the country. And that was one of the offices that became disrupted and closed as

bricks and mortar. But at the time we did quite an extensive foreclosure defense and eviction defense practice through that office. I managed it for almost 10 years, and that's where I learned about predatory lending and became involved in foreclosure defense. At that time, [around 2003,] it was completely different than it is now. At that time, redlining was at its height. Interest rates were, average, between 10% and 14% on [mortgage] loan papers. So at the get-go, there was a problem [of] what we call today predatory lending. But the term has, or the meaning of the term predatory lending, has shifted over all these many, many years to talk more about lack of disclosures or influencing consumers to take terms that are not conducive to lasting out the length of the loan. So the tide has turned, because now we don't have a significant pool of financially qualified borrowers so that there is really no lending market to be had right now in the residential mortgage industry.

Patrick Rochelle: You were speaking just a moment ago about your time managing the Gulf Coast Legal Services in Sarasota. What sort of clients and consumers were you working with? ... What was your typical case while you were there?

April Charney: Well, the – most of my particular caseload involved eviction and foreclosure defense, so I did public housing ... eviction defense, also private eviction defense, a lot of condition litigation involving private tenants, but also class action work involving the shutdown, for instance, of a citywide mobile home park in Sarasota. All of the residents of that community, which was low, very low income, primarily Hispanic at that time, were being evicted by the city on a five-year eviction notice. So there was a class action that was filed and eventually that eviction notice was withheld – withdrawn. The park did close eventually. Also, as far as foreclosure defense, the primary issues that in Florida at the time involved Mortgage Electronic Registration Systems, or MERS, and also the U.S. government at the time was more involved in filing ... foreclosure actions. And I think over time we have convinced the industry that loss mitigation and forbearance is in everybody's best interest. But when I first began my work in foreclosure defense that was not something that was in the vernacular or that people were used to, or, or willing to engage in.

Patrick Rochelle: ... What struck you about your work in Sarasota? What surprised you about it? What lessons did you learn from that experience that perhaps was, was new to you as a relatively young professional?

April Charney: How systemic the problems were and the issues were. And that's basically what took me to Jacksonville Legal Aid, at the time, was to help shore up that legal aid program's ability to defend the homeowners in Jacksonville from foreclosure. The issues are still to this day systemic and nationwide and, and really at the time involving England and other countries, it was a global issue. I think now our issues are more of a nationwide, or a local as opposed to a global foreclosure problem.

Patrick Rochelle: ... What was your role at Jacksonville Area Legal Aid, and what – you alluded to this earlier, but what brought you there?

- April Charney: Well, I was very lucky to meet a lady named Lynn Drysdale and we basically grew up together and in the law together. So, we worked together to start the Consumer Law Work Group for Florida Legal Services back in the nineties. And then we worked together all through that time until Jacksonville Legal Aid decided to add to Lynn's department, which was consumer law, to focus on foreclosure defense. And I applied for the position and was very grateful that she and Michael Figgins were willing to have me on board. And my goal was to stop foreclosures of the homeowners. I mean, we had a huge foreclosure problem in the state in that area and nationwide at the time. We do again now, but we're just not seeing it yet.
- Patrick Rochelle: ... You mentioned that you and Lynn Drysdale had started a working group in the 1990s. I wasn't aware of that. Could you describe that a little bit? What was the impetus for starting that working group?
- April Charney: Sure. We as lawyers, legal aid lawyers, legal service lawyers around the state and the country decided that it was in our interest and our clients' interest if we network together. And this was before, shall I say, the days of email and Zoom. And our goal was to meet quarterly, to talk about our cases, to update on the legal issues and case law that was around us to, at that time work on substantive consumer law issues, in front of the Florida and national legislature, and also to coordinate with other lawyers around the country doing similar work. So Florida Legal Services was the umbrella organization, and we worked – I through Gulf Coast Legal Services and Lynn at the time through Jacksonville Legal Aid – and there were many others – worked to develop a consumer law group. There were other law groups, family law, other[s] et cetera. We were the Consumer Law Task Force.
- Patrick Rochelle: Is it still around today? Do you all still take part in the working group or is it—?
- April Charney: Oh yeah. Well, I'm no longer with Legal Aid directly, although I work, do work for them. So they do have a housing law work group that is, in the days of pandemic, probably not meeting anymore personally, but I know they meet online as a work group and to do trainings and to develop materials and work together on their cases. I know that for a fact, because my daughter is a lawyer with Disability Rights Florida, and she's on that work group with Jeff Hearne and others who are still leading the charge.
- Patrick Rochelle: So I want to ... turn back to your work at Jacksonville Area Legal Aid. While you were there, how would you – actually, even before you were there – how would you characterize the key changes in the Florida mortgage market between the early to mid-nineties until, up until the financial crisis in 2008, roughly? What sort of changes occurred there during that time period?
- April Charney: Well, I don't know that we had a lending market. I moved to Jacksonville, started my work there in 2004, and it was a foreclosure market. It was not a lending market. And so our world was filled with foreclosures. At one time, I think I probably had 130 open foreclosure files. But like I said, because the

issues we learned through working on the cases were systemic in nature, a lot of the affirmative defenses and affirmative counterclaims that we would pursue on behalf of the homeowners were used in, on a case-by-case basis to stop the foreclosures. We also worked to develop other programs. We established a judicial or circuit-wide foreclosure mediation programs that were mandatory for residential foreclosures, but because a lot of the problems were systemic and beyond the reach of one-on-one mediation with the homeowner, there was not much opportunity to resolve problems.

So, I'll give you one example and these problems exist to this day and have not changed and have only gotten worse, shall I say. So when a homeowner goes into default, every mortgage contract, which is identical, if you've read one, you've pretty much read them all, unless they're [USDA, VA, FHA -insured], says that when the homeowner goes into default, the lender can purchase property insurance or hazard insurance, because usually homeowners escrow the cost of insurance through their monthly mortgage payment. So they pay principal interest taxes and insurance pro rata, and it's called escrow for taxes and insurance. But when you stop making your regular mortgage payment, ... the lender, has no legal obligation to keep your insurance policy in force or in effect, because you've defaulted. So often what happens is that insurance policy, which is a market-rate insurance policy, is allowed to lapse, and ... the lender through the servicer as they're called, shall I say, the collecting agent, force-places property insurance, which is allowed through the mortgage contract. The mortgage contract also says that the lender doesn't have to give you the same quality or quantity of property insurance.

So for instance, I'm dealing with a property right now that went through a tornado. And because the borrower was in default at the time of the tornado, the lender is saying that the property insurance that that lender force-placed only covers the lender's interest in the property and doesn't pay for the tornado damage because to fix it exceeds the value that the lender places on that property. So the poor homeowner in a poor state now has no ability to remove their blue tarp or fix their home. Although their debt is increasing monthly by that, the premium for that force-placed insurance, that only covers the interest of the lender and not the interest of the borrower. So says the lender. And this is – so the debt increases monthly, the borrower is in default, and that problem, that debt increase, eventually exceeds whatever equity cushion or interest the homeowner has in the property. So the opportunities for workout with an ever-expanding and increasing debt with a value on the property to the homeowner that is reducing equal amounts to the increase in debt, leaves little room for loss mitigation, or working out a debt situation.

Right now, in the course of the COVID or CARES Act forbearances that we have going on right now, the problem is at the end of the forbearance, which only pays principal and interest, and nobody is talking yet about these force-placed insurance issues or the excessive cost of the insurance, is added to the back end of the debt. That's the only relief available right now under the CARES Act. So the debt, as I said, is ever-expanding. The only thing that servicers right now are

willing to do is expand the term of the loan so that a 30-year debt now will become a 40 year debt, and you can pass it on to your children.

So we're not out of the woods. None of these problems have gone away. That is one systemic problem, and it repeats across the field. So for instance, I see many cases where there's a homeowner who's in default, and the lender says, well, okay, we consider that we're at risk for our security, our collateral. So we're going to send someone [to] drive by your house monthly and charge you \$15 to \$35 for the privilege and add that to your monthly debt, as long as you're in default, even if you're in a forbearance, because you're still in default, if you're in a forbearance. That's another systemic problem with the drive-by inspections.

Patrick Rochelle: ... You mentioned earlier that it was challenging often to mediate some of these cases. How would you describe your legal strategy in the years leading up to the financial crisis? When you're actually in the courtroom with your clients, what sort of, what was your – what was your strategy, and how effective do you think it was?

April Charney: Well, the strategy is still the same. First, you look at who's doing the suing. So, [does] the entity that's suing have the right to possess the note and to sue on that note and to enforce the mortgage. If that entity, no matter if it's a bank or the U.S. government or whoever, has the right, then you proceed to stage two and determine based on the facts, whether that entity did the right things in order to be able to have a foreclosure. So there's a lot of notice issues and timing issues. If the loan is secured by the government, a VA [Veteran's Administration], FHA [Federal Housing Administration], USDA [United States Department of Agriculture]-insured loan, or guaranteed loan, there are many federal regulations that provide administrative loss mitigation processes that have to take place, are called conditions precedent to the right to accelerate a debt or to file a foreclosure. So those are all good opportunities. Some are legitimate dismissal defenses, as they're called, some are affirmative defenses, meaning that until you do A, B, and C, you don't have the right to accelerate a debt or to file a foreclosure.

Oftentimes there are statute of limitation defenses, timing of between when the acceleration occurred and when the foreclosure is actually filed. But it's very complicated because often times acceleration doesn't occur until a foreclosure is actually filed. And I must digress for a minute because although I'm familiar with non-judicial foreclosure, it's not my main bailiwick. So I speak in the world of judicial foreclosure. The differences really are that – for instance, I'll give you one for instance. With the notice that you have to give to a homeowner saying you've got so many days, usually 30 or 35 days to correct your – you're in default, and you have to pay up within 30 or 35 days, or we're going to accelerate this debt and file a foreclosure. In judicial foreclosure states right now, the law has only progressed to say that a homeowner has a right to have a substantially compliant notice, as opposed to a strictly compliant notice. So if I only get 29 days, the judge may say that that is a sufficient notice unless I can

show as the homeowner some prejudice that resulted as not getting all of my notice rights. In a non-judicial foreclosure state, for instance, Maine, the condition precedent, that same paragraph of a notice, is a strict construction. It has to be strictly followed or there's no right to get access to the statute that gives you the right to a non-judicial foreclosure. I'm starting to feel like I used to feel when I used to teach lawyers how to defend foreclosures, back in the day.... It's been about two or three years since I've trained a whole room full of lawyers. So at one time, Lynn and I, and others, were probably every week going somewhere around Florida or around the country, training other lawyers, how to stop foreclosures in their locations.

Patrick Rochelle: ... Why did you start doing that? What was the impetus for it?

April Charney: Well, the impetus was that I stood up in the courtroom – it was me and many others, not just me – and realized that there weren't any lawyers, or very few lawyers, behind me to help. And they weren't there, not because they didn't want to be there, but because they didn't know how to defend foreclosures. It's not something that you go to law school to learn, or you pick out as an opportunity for making your way in the world, as a way to make money and to make a career .... So, we decided that we needed to be able to train lawyers how to defend foreclosures, and as legal aid and legal service lawyers, we were able to commit private attorneys to be trained in exchange for taking a pro bono foreclosure defense. So for eight hours of training, they agreed to provide 20 hours of legal services to a qualified homeowner in foreclosure. And we were at the ready to mentor and assist them, provide forms, update them with case law.

In fact, we formed many foreclosure and ... bankruptcy-related listservs that go on to this day that we participated in as lawyers on a daily basis and provide those same things. One thing I would mention is that [when I was with] Jacksonville Legal Aid, I went to lobby actually, on behalf of the National Association of Consumer Advocates and Jacksonville Legal Aid, we went to U.S. Congress to advocate and ... we were able to obtain an earmark for training lawyers to defend foreclosures. And we used that money to go around the state of Florida to train lawyers. And we did that for many years.

Patrick Rochelle: How much was the earmark for?

April Charney: \$250,000. I think that was in 2006? Many, many years ago.

Patrick Rochelle: I want to go back one step. I think you had mentioned earlier that you – there was a foreclosure mediation program that you had, that you all had started as part of... ?

April Charney: Right. The circuit, the circuit judge, the administrative judge, it – and it wasn't just in Duval [County]. It was, it was, we made it around the state and eventually other, other local – nationwide, these programs became nationwide. But it was an administrative order from our chief circuit judge in Duval at the time.

Patrick Rochelle: What did those sort of – what did those programs sort of look like in practice?

April Charney: You had to commit to show up with a representative, if you were the lender, to negotiate in good faith, to try to resolve the differences to avoid the foreclosure prior to obtaining a hearing before the court.

Patrick Rochelle: ...You mentioned your stint in lobbying a little bit, and as part of the National Association of Consumer Advocates. I suspect you have other stories about, about that time in that. What was that lobbying like? What was it like engaging with a member of the Senate on an actual earmark? Can you just tell us a little bit more about that process or what you can remember?

April Charney: Well, interesting. The first most interesting lobbying story I have was when Marco Rubio was representing the used car dealers in Florida, and I was lobbying on behalf of the Florida Consumer Work Group ... [We wrote a] used car disclosure bill ... that [said that the dealer] couldn't make a disclosure about a condition of a used motor vehicle without putting it in writing. And that was one of my first – it did not come to be – but that was one of my first lobbying efforts.

Initially, when we lobbied Congress on behalf of homeowners in foreclosure, it was a worthwhile effort, but the process became very political and financial, so that financial and political interests overwhelmed any ability of Congress to fix the problem. So for instance, if you come to court and you tell me that you're the holder of a note, and you're not, and you're a bank, I think that the OCC [Office of the Comptroller of the Currency] and FDIC [Federal Deposit Insurance Corporation] and other regulators should come in and do something about the fraud on the court. And we really saw that turn pivot to requiring another entity, which we call a servicer, that isn't a bank, that isn't regulated by the OCC or the FDIC, having to perform all sorts of consent orders and conciliations, having nothing to do with the underlying fraud on the court that was committed by the bank.

Now, these banks also, they normally come into the foreclosure world as the trustee of a trust, a securitized trust, what we call a REMIC [Real Estate Mortgage Investment Conduit] trust. And these aren't bad things. These are financial tools or investment vehicles that we all use to shelter income. And these are nothing more than bundled residential or commercial mortgage loans. We securitize anything that we can put a value to, including the right to pay for education or re-insurance – anything that you can put a financial value to, you can securitize. Car loans are often securitized, also. Car dealers who have floor plans, their floor plans for all the vehicles on their, at the dealership are in a securitization. And then there's reinsurance to insure the investors' interests in the securitizations. And we as pensioners, people, individuals, we are all invested in REMIC securities.

But the problem that happens is that at least during the time of these securitizations ... the loan documents were not transferred according to the securitization agreements. And so the banks as trustees would come into court and say, "We hold these notes," and did not have the documentation or

paperwork to back it up. So that was a big problem. And it's okay if you come to court and say, well, I made a mistake, but this was systemic fraud. And that's what we as lawyers began to start to deal with. And that transcends the issue of a borrower's failure to pay because you can't have a gambling debt, shall we say, and enforce that in a court. You can't come in and say, you have a marriage license, and you're entitled to some remedy as a result of that license when you don't have one. It's a similar kind of thing, coming into court and saying, "I'm a holder of a note," it gives you certain rights. And you're not a holder of a note. We see that still every day.

Unfortunately, what began to happen, and a lot of the consent orders show this, there was a lot of falsification and fabrication of documentation to convince the courts or enhance proof of standing of the right to come in and foreclose. And that goes on to this day. There's no remedy for that problem that, unfortunately, the foreclosure industry has come up with because it's very hard to foreclose if you don't just have paperwork. You have to have witnesses and testimony, and that takes time and a lot more money. And the other problem that became apparent over the years is that the [right to collect on or service] these loans was sold over and over and over again. So there was a failure of paper at the beginning. There was also a loss of paper and understanding of the accounting over time.

So there's no continuity, shall we say, in loan accounting, and because we're, as a matter of the subject that we're talking about, we're talking about homeowners in default or allegedly in default, so there's going to be all of these force-placed insurance, drive-by inspection, late fee, other related kinds of cost issues that are, nobody is accountable for. There's no responsibility to the borrower. And the problem at the level with the judiciary is there's a lot of exhaustion, if you will, to deal with these issues, particularly when judges have the same mortgages that the people who come in front of them have, and they're paying their mortgage. And there's a lot of frustration and anger, if you will, toward these kind of cases in court.

Patrick Rochelle: As a lawyer trying to defend one of your clients, if you pointed out to a lender or a servicer that they didn't have the proper paper, how would they respond?

April Charney: ...You're dealing with lawyers on the other side, you're not dealing with lenders or even servicers. You're dealing with [industry] lawyers. These are lawyers that do nothing but foreclosure prosecution. So there's a long and storied history about some of the Florida lawyers who've gotten into trouble with that kind of problem. So the first problem is there's already an added debt collection cost involved and, with the [cost of the industry] lawyer layer added onto the foreclosure debt. The other problem is that oftentimes the lawyers are aware or should be aware of what is going on in the paperwork and their cases.

For instance, if there is a previous foreclosure that's been filed where the note is not endorsed, and now they're filing a foreclosure two years later that has an endorsement in a case that involves a REMIC trust that closed five years ago to

the accumulation of new assets, I think that lawyer knew or should have known that that endorsement was fabricated to convince the judge that their client had standing to foreclose, and the [lawyer] should not file that foreclosure. So there's a question of whether that lawyer now has independent liability, not only as a lawyer, but as a debt collector because they're engaging in efforts to collect a consumer debt as a debt collector....

So it becomes very, very complicated, and it takes many, many years. Oftentimes you go up and down on appeal to more than one court. And if you are able to settle, you settle with a way for your client to maintain their housing and their shelter because as these are legal aid and legal service cases, there's not money at the end of that case for even the legal aid program, many, many times to be able to recoup their losses or investment in defending that case.

So the outcome is going to be to maintain homeownership. And there's also another component, which is to make sure that it's not reported as income to the borrower, to the homeowner, because then there's a tax liability. So if I'm in a position, like I just, we settled the case with, the client kept their home and got money. I have to now deal with the money issue with the IRS because as a result of having to, it's not like my client got hit by a car and has physical injuries, which are deductible as an income deduction. The money that my client got for suffering through nine years of fighting a foreclosure is considered income to my client that is taxed.

Patrick Rochelle: You mentioned earlier that part of these cases is that there's no continuity in the loan accounting ... – a lender or servicer might not have the proper paperwork to indicate they have ownership over a trust or a note. ... How is that allowable? ... How is that legal?

April Charney: The way that issue is raised in court is an exception to the hearsay rule. So business records that are made in the normal course of a business are allowed into evidence, even though they're hearsay, they're not being offered into evidence by the witness who made the record. And the law has expanded, or I should say, like, like a bad waistline, to allow lenders to come into court through servicers and that servicer then will be able to introduce business records or accountings from a servicer that was three times removed or prior to that servicer. And the only limitation at this point that the case law is requiring is that the current servicer that's testifying have been trained in how that servicer three times removed made those business records. In other words, they don't have to say that they're accurate, just that they know that they made them, and this is how they made them.

And the law presumes that the records are accurate because the current servicer is relying on them, on those records. And unfortunately there's, because of all, like, the insurance and the late fees and the property inspection issues, that's really a misnomer. It's a fantasy to say that those accountings are accurate. The other problem is that much of the accounting is software driven. So it is software that is only owned by a particular servicer, and it's not shared

with other servicers. And unless that servicer, the next servicer is willing to pay to access the software, they're not going to be able to do anything other than scan and upload the records from the prior servicer.

Patrick Rochelle: ... Could you provide an example of an instance where you felt your arguments on behalf of a client really resonated with a judge in the courtroom, and that ultimately led to a positive outcome for your client? Do you have an example of something like that?

April Charney: Well, I have to say, most of my victories are settlements, as most lawyers should be able to tell you. Early on, we had some significant victories involving Mortgage Electronic Registration Systems to cause MERS to stop suing as the plaintiff in foreclosure in the state of Florida. And that was a coordinated effort that I participated in as a staff attorney with Jacksonville Legal Aid. We cooperated with lawyers around the state and around the country who were defending MERS-filed foreclosures. And, in fact, at one point there was a class action that was filed involving, that we filed with other private Florida lawyers involving MERS, but MERS, of its own, during the course of that litigation strategy, left the state of Florida, as far as a litigating plaintiff. Because MERS was coming into court saying they were the holder of a note that they were not connected to in any reality.

Patrick Rochelle: What year did that take place?

April Charney: That was 2000 and — that was the early years. '06, '07. Oh, like that. '08.

Patrick Rochelle: And you mentioned that you also brought a class action lawsuit against MERS. Was that, was that separate?

April Charney: It was challenging their debt collection activities. And we lost on the standing issue, as I recall, that was many years ago. But it was part of an overall litigation strategy of trying to ferret out who the lender was, so that we could actually work settlements to avoid foreclosure and to avoid having to file a bankruptcy to stop a foreclosure. But we learned many lessons, including the limitations of opportunity to settle. For example, going back to the REMIC securitizations in the trust agreements, they're called pooling and servicing agreements. They're on file with the SEC, but there's serious limitations on loan modifications because these are tax shelters. And if you give loan modifications, it's hard to value a tax shelter at the closing of the shelter. So when the trust is full of its bundle of loans, it's given a value. And if then you reduce that value through loan modifications, at some point, the trust, it loses its tax shelter. So there's significant limitations on loan modifications in those securitization agreements.

And that's why we didn't get very far with mediation because of those serious limitations. Also, when you separate the lender from the debt collector, the debt collector is interested in earning income. A loan that is performing – a servicer will get like 30 basis points per loan. Now it may be give or take in dollars to service a loan over the course of the year. A loan that's in default, the servicing, the value or the money that the servicer makes on servicing a loan in

default is doubled or tripled. So the servicer now is disincentivized from keeping or getting that loan into a performing status and has no interest in the underlying collateral, only in the servicing fees that they make every month.

Patrick Rochelle: You talked a little bit about MERS earlier and how they are no longer in Florida. Could you just tell us a little bit more about what sort of organization that was. And ... why it was new in the market. What was new about it as far as residential mortgages go?

April Charney: Well, MERS still exists, and – but they no longer are the plaintiff, is my understanding, anywhere in the country. MERS was sued. I want to point you to the court clerk in Multnomah County, in Oregon and Oswego County. I believe both sued MERS, made significant money. There were also many, many other attorneys general and clerk-related actions involving MERS. But bottom line, what happened in Florida was MERS was coming in as the umbrella plaintiff and kind of these other characters were hiding behind MERS when MERS was the plaintiff suing to foreclose. And the problem was, as I said, in Florida, in a judicial foreclosure state, you can't come into court and say you hold a note when you don't. You can't come into court and say I'm married when you're not. It's a lie. And so we got courts to understand that and to not just say, well, it was a mistake because it was systemic. Every foreclosure was filed by MERS at the time. So that was a big change. When MERS stopped filing foreclosures was when we uncovered the securitized trust because the next plaintiff in line was the bank as trustee for a numbered trust. And then we learned that the trustee, the bank, actually had no connection to the loan other than as a bookkeeper or a holder of the records. The servicer, who is buried beneath the bank as trustee, was the one who was debt collecting and managing the account. So that was the world that we discovered.

But the problem also was that the loans were not transferred into these trusts. And almost 90% of the market went into these securitized trusts. So, it was systemic lying to the court or fabricating of documents to show that the bank was the holder. I often wondered why the banks chose that route, as opposed to just getting the necessary witnesses and spending the money to show that, well, we may not hold this note, but we have the right to enforce it.

Patrick Rochelle: As a lawyer, what did it ultimately take to convince the court that MERS was not the true holder on the note and that it was actually the bank? What sort of legal hurdles on your end did it take, or a strategy on your and your colleagues' end, to make that argument?

April Charney: It was similar to the training of the lawyers around the state. And in fact, early on the state college of judges asked me to come and train them also. So I went to the state college for [judges] in Florida, and trained all of the judges on – what's a holder, where do you look on the note to see if the note's been endorsed improperly? And just some basic things to uncover whether a party has standing to foreclose. ...We also did a lot of training through the JAG Corps at the time because a lot of our military was also impacted by foreclosures and

still are. Some of the highest foreclosure rates in the country are around military bases still to this day.

Patrick Rochelle: ... [H]ow has the Florida mortgage market changed since the financial crisis in the last, really over the last decade in your opinion? Or has it changed?

April Charney: Well, lending, lending restrictions, underwriting, has tightened way, way up again, so that you really have to qualify for your loan now. And that really is the way it always should be because there's no point in putting a homeowner or a family into a loan, into a home that they can't afford. Unfortunately, the market was abused and manipulated as were homeowners and borrowers. And so we, to this day, we have yet to come up with a financial tool that we can adapt to giving the people who live in our country access to affordable, stable, long-term, shelter. And until we deal with that problem, there really is not a mortgage market worthy of having because it only belongs to the folks who are rich.

Patrick Rochelle: You mentioned underwriting since the financial crisis has gotten stricter. Is that – was that due to some legislation or other policymaking that made it more strict? Or what sort of led to it becoming stricter?

April Charney: Well, with the crash of the mortgage market came Dodd Frank and a host of other legislation, came the CFPB [Consumer Financial Protection Bureau] and other regulatory bodies that were looking at what was happening with the industry and how it was performing. But the underlying systemic problems of a population with limited income and insufficient resources to afford housing was a very unstable, and almost a debilitating way of financing housing in this country. And it remains that way. I think we still, we have really not learned any lessons from what happened. Except maybe we learned to spot fraud earlier. Crime. In the mortgage market industry. Maybe we have, we've learned not to just do it on a conveyor belt system anymore.

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

April Charney: I've always said the same thing. It's the AIG syndrome: arrogance, ignorance and greed. And you put those three things, it's always been that, that's really what it is. A lack of understanding that as a society, as a nation, we only get stronger with homeowners who have secure, long-term, stable, housing. Just like with healthcare. We only get stronger as a nation with families who can afford long-term health care, and it's the least costly method of being a thriving society. And we are still learning these lessons.

Patrick Rochelle: And looking back over a decade later, what do you see as its most important lessons for mortgage originators, state and federal policy makers, and legal professionals like yourself?

April Charney: When you see a fraud, call it out. Call it out fast, call it out quick and teach everybody about it. It's a lesson we should learn every day right now.

Patrick Rochelle: ... Are there any things you'd like to bring up at this point or anything we didn't cover that you think is important to highlight whether about your story or the general story in Florida?

April Charney: Just that we need to learn lessons as a society to keep everybody in shelter, keep everybody healthy. Especially in the course of this pandemic that lesson is brought home to me every day. And that no matter what you do in this life, just remember those things, you're important in your life if you're keeping everybody around you healthy and safe.

[END OF SESSION]