

AMERICAN PREDATORY LENDING AND THE GLOBAL FINANCIAL CRISIS
ORAL HISTORY PROJECT

Interview with
Geoffrey Giles

Bass Connections
Duke University
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PREFACE

The following Oral History is the result of a recorded interview with Geoffrey Giles conducted by Jon Rosen on July 15, 2021. This interview is part of the Bass Connections American Predatory Lending and the Global Financial Crisis Project.

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

Transcriber: Kale Wright
Interviewee: Geoffrey Giles
Interviewer: Jon Rosen

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Jon Rosen: I'm Jon Rosen, a student at Duke Law School and a member of the Bass Connections American Predatory Lending and Global Financial Crisis team. It is Thursday, July 15, 2021. I am speaking with Geoffrey Giles, a partner at Geoffrey Giles and Associates, for an oral history interview. Mr. Giles joins me via zoom. Thank you so much for joining me today.

Geoffrey Giles: Nice to be here.

Jon Rosen: I'd like to start by establishing a little bit about your background. I believe that you received your bachelor's degree from the University of Illinois and then your law degree from Southern Illinois University. Is that right?

Geoffrey Giles: That's correct.

Jon Rosen: Why did you decide to go to law school?

Geoffrey Giles: There were no jobs at the time. I got a master's degree in business and there were still no jobs. So, I decided law school would be good. I liked being on campus. And why grow up when you don't have to? But that was a long time ago.

Jon Rosen: At what point in your legal career, did you become involved with residential mortgages?

Geoffrey Giles: Well, for 25 years I was a bankruptcy lawyer. A lot of what we did was Chapter 13 and some Chapter 11 work to stop foreclosures and to get people back on track. When the law changed in 2005, with BAPCPA [the Bankruptcy Abuse Prevention and Consumer Protection Act], I just said, "to heck with it. I don't want to do bankruptcy anymore." So I went and concentrated strictly on mortgage work for residency, not for businesses. I did a program for NCLC [National Consumer Law Conference] with Max Gardner back in about 2005. He made it real clear that there was a storm coming, because of all the predatory lending in California and that all the mortgages were going to adjust and people were going to have trouble paying them. So I thought, "well, this is something that I can get my hands on and figure out how to help people from losing their homes." In 2009, the state of Nevada instituted a Mediation Program, which a number of states instituted.

While the program is flawed in a number of respects, it does put the brakes on foreclosures [and] gives homeowners a chance to talk to their lenders, which is oftentimes futile. But if they don't do it right, and if the paperwork isn't right, then the foreclosure stops. I've had a number of successes in this respect - stopping foreclosures with the program. I've had some clients that are still not

paying since 2009 and the predators are quite frustrated. We keep making fair offers and they keep saying, "well, we want every nickel. We want our attorney's fees. We want interest or default interest if applicable," a bunch of things like that. So we say, "okay, start over. We'll be there." At this point I've been doing it for about 40 years and I'm really just consulting, not taking new cases. But I've got a bunch of these that I'm winding up. That's another story, but it's quite an interesting one.

Jon Rosen: Can you talk a little bit about that NCLC program in 2005 and what it did?

Geoffrey Giles: Well, it was the annual convention for consumer law (NCLC) and it's two or three days. I forget where that one was, it might've been San Diego or Philly, I don't remember. Max Gardner was a great advocate [and] very famous guy on a panel with me. He was kind of running the thing. We were talking about mortgages, what federal remedies were available for people with defaulted mortgages, and the fact that mortgages were going to go into default because of this dreadful lending process that was going on all over the country. Nevada's predatory lending statute was tossed out years ago because of preemption. Apparently, the Office of the Comptroller of the Currency [OCC], or one of those offices, can put down rules about what you can sue banks and lenders over that just overtakes state law, which was unfortunate but that's always been the way it was. So there was virtually no state remedies prior to the implementation of the Mortgage Mediation Act here.

Jon Rosen: Just to go off of that, can you describe Nevada's foreclosure system before 2009 and what options borrowers had?

Geoffrey Giles: We're a non-judicial foreclosure state. Deed of trust is what it's called. I came out here from Illinois, having studied in a judicial foreclosure state. At my first job, my boss said, "here, figure out this deed of trust and foreclose on it." You could have been speaking French for all it mattered to me. So, I kind of learned right from the get-go because they didn't teach that in Illinois whatsoever. It's just a very hurry up, quick and dirty, way to take a person's home for being in default with a private trustee who cries to sell on the courthouse steps and judges are not involved in it. We do have judicial foreclosures on the books here, but less than 1% are judicially done. Usually they do it that way if there's a problem with the paperwork, something is awry, and they can't do a normal one. I've seen that happen, actually. Hundreds of these mediations. ...

... The law has been evolving and they've changed it somewhat every legislative session, which they meet every two years. It isn't a continuous legislature. They've been tinkering with it all along. But, in essence, before 2009 you'd get a Notice of Default [NOD] and Election to Sell, which is a document they record in the County Recorder's Office. You get that in certified mail, you have 90 days to take action, cure it, make a deal, whatever is going to happen. Then they have a Notice of Sale, which after 91 days they can file. That tells you there's going to be a sale in three weeks. And then on that day, they go and cry at the

courthouse steps. There's no redemption when it's cried, it's over. There's a way to challenge that the sale is illegal, [but] is nearly impossible.

I've done it a dozen times. And I gave up because, in Nevada, the standard is substantial compliance, instead of strict compliance with foreclosure law, which means any little thing. I've seen judges say, "well, having the wrong name on the NOD is substantial compliance because the guy knew he was in default." I mean, it's nuts but they're the judges. So that's how it was at that point. Then the Mediation Program came into being and you could file within 30 days of getting the NOD. You would send in paperwork to the Supreme Court, something called the FMP [Foreclosure Mediation Program]. And that would start the process. They've tinkered with that process all along since 2009. They changed it very substantially in 2017 or 2018 when they put all these cases in the district court. Instead of going for a review of the mediation, filing the petition for review, you'd actually file your petition for foreclosure mediation in the district court, or it would be an issue.

Then they would make a ruling at the end of the day, which is the way it works now. Otherwise, it's pretty much the same. The problem with this is the law requires the lenders to come with full authority. They send somebody there that has to talk to somebody who can actually make a decision. Then, when you want to do something that's unconventional, they say, "no, guidelines don't allow it." It's usually not anything like the guidelines, servicing guidelines, it's the Pooling and Servicing Agreement [PSA] that forbids what they're doing. But, first they deny that. No matter what the situation is, they say they have full authority. Even if that authority is them saying, "nope, not going to make a deal. We want the money or the house." [That] having of full authority, which I believe is one of the things we argue in district court.

Jon Rosen: To go back to the pre-mediation system, can you just talk about that process of the auction of the courthouse steps and how that would work?

Geoffrey Giles: Well, after the Notice of Sale - three weeks after it's recorded in mail - there's a date and time when it gets sold on the courthouse steps. You go to that to see what's going on. There's usually 50 people there and probably a hundred sales. And the creditor could either try the sale or can postpone it - and they can postpone it three times before they have to start over. That postponement is an oral postponement. There's no letter that goes out. If you want to track this stuff, you have to go down there, make a note of it, whatnot. I've seen multiple occasions where they'd postpone it to one day, but they'd cry it on a different date or they'd say they postponed it and nothing was ever done. You'd show up and then everybody would do other cases. They wouldn't address this case. And then they'd say, "oh, we postponed it." But there was no mention of it. So it's a he said, she said kind of thing. I one time showed up with a videographer and a camera and they said, "no, we're not going to go forward." I said, "this is a public [process]." And he said, "no, we are not going forward. Take the camera away."

They had 50 people around that wanted to bid on other houses and stuff. So I kind of had to take the camera away. But that was how it worked. It essentially works that way today. Although, they can't sell houses. Back in the day, it was kind of Wild West. Now, with all the federal regulations and the state regulations [that] have come in - we've got something called the Homeowner's Bill of Rights that came into being in about 2013 that gave homeowners all kinds of rights to various things - they could make requests for mortgage assistance, they'd have to postpone things while the request was pending, [and there were] different standards for the state and federal RMAs [request for mortgage assistance]. If a person can really afford to reinstate the mortgage after a significant default, pay time and a half-payments, come up with a down payment, you could make a deal.

At first, deals were hard to strike. They just wanted the properties back. From 2009 until maybe 2012, it was just “my way or the highway”. Then they realized they were going to wind up having way too much REO [real estate owned] inventory. So they actually started making fairly good deals because the federal government was bankrolling HAMP [Home Affordable Modification Program] and some other related programs where they would give spiffs¹ to the mortgage services to make deals. You could get reduced interest rates, longer terms, balloons at the end. It really became fairly user-friendly by about 2017-2018, someplace in there. Now they'll make deals in almost every case. I think maybe 10%-20% of the cases it's just too far gone, they don't want to make a deal. When it's easy, they don't need to hire me. When it's a train wreck, that's when I get involved. That's why I've got cases that haven't been able to foreclose for over 10 years. We've got something in the Nevada called the Law of Ancient Mortgages and they're trying to make that stick now. They're trying to wriggle out from under it - just a lot of back and forth. That's the hot topic in foreclosure law today in Nevada.

Jon Rosen: Can you talk a little bit about those mortgage cases that have stuck around and how the law interacts with them?

Geoffrey Giles: When the Foreclosure Mediation Program first came into being, it drew a lot of lawyers into the process. All they wanted to do is find fault with the lenders' documents and the lenders procedures [and] kill the foreclosure, because it usually took them a year to start over again. There was a number of lawyers that never made deals. They just got the foreclosure killed over and over. That happened six or seven times in the course of a decade and it doesn't help the client, ultimately, if they want to keep the house. Of course, one of the alternatives of the mediation is to short a seller, which you don't see much anymore because values are so high. But they would short a seller or take a deed in lieu. Lenders don't like that. They don't believe in lieu of foreclosure because they don't like our junior liens. They can do “walk away for cash” or for keys. A number of non-retention alternatives. But typically, the cases that I

¹ In sales slang, a “spiff” is an immediate bonus or other incentive linked to a sale or other transaction.

would do are where the guy wants to keep his house. He doesn't want to just walk away from it when he's got six kids there, he's got to work, and it's a catastrophe. So that's the kind of cases I started doing.

Jon Rosen: Can you talk about the mortgage and foreclosure issues you were seeing in the mid-2000s, before the foreclosure crisis, and how those issues changed as you were getting closer and closer to 2008-2009?

Geoffrey Giles: Back then, we didn't challenge the way the foreclosure was conducted. We simply assumed that the foreclosure companies were doing it right. We didn't know about Pooling and Servicing Agreements. They'd say, "well, the investor won't do so-and-so." And we'd think, "well, it's a little old lady in Minnesota. This investor wasn't some Wall Street [entity]" There was no reason to scrutinize the paperwork, just put them in [the appropriate bankruptcy] chapter, reinstate it, [make] periodic payments, and restart the things. But that became tougher and tougher to do. The trustee in [Chapter] 13² got really greedy and wanted 10% of all the mortgage payments that the guy was making post-petition. Well, if he is having trouble paying X, he's going to have a lot more trouble paying 110% of X to pay the trustee's fee.

So, Chapter 13 became less and less desirable. Then when BAPCPA came in it became impossible, in my view. Although, a lot of lawyers stayed in the business and did it. Then we started really looking hard at the paperwork, which was frequently wrong. During this crazy lending festival from 2005-2008, they would take out mortgages on the hoods of cars and they wouldn't be notarized or there wouldn't be a trustee - because you have the three-party estimate through your trustees, borrower, or lender trustee. There'd be no trustee put in. There would be all kinds of mistakes with the paperwork. There were statutes for predatory lending, which were ignored, and we started to try and enforce those. Then a federal court in Las Vegas said, "nope. This is all preempted. 549 or 598," or whatever it is - I forget the number. It's just so good.

It took away the arrow in our quiver. One of the things that became apparent after litigating so many of these [is that] whenever it came to the court's attention of a Supreme Court or a federal district court - they would cut back on the rights of the homeowners. They narrowed it down so there was really very little left. We had all kinds of theories to go in and sue over. They would always remove the cases [to] federal court, if they could. You don't win much in federal court and it's annoying. Frankly, I used to go there a lot and now I won't even drive by the building it's so awful. But, that's just me. I mean, they have a right under the Constitution to remove conditions that are there and they'll do it.

Federal district judges don't give much to the homeowner, for whatever reason. I got a theory on that, but it's probably not appropriate to talk about them.

² pre BAPCPA the homeowner could make the post-petition mortgage payments directly as they became due and have the trustee cure the arrears only. After BAPCPA the trustee wanted to make all the payments pre and post-petition making it more expensive for the homeowner.

Anyway, that's all it was. And the mediation program really was the potent thing for homeowners that made a difference and forwarded a lot of model foreclosures. There's just lots and lots of bidders with these foreclosure sales because they're - Wall Street's buying up half the houses in the country. Ask them how many homes that are built every year that get bought by Wall Street. [They're] turning America into rental neighborhoods, which is hard. But, I'm old and not going to have to deal with it. You are.

Jon Rosen: During that time, mid-2000s, ...was there a point, just through your practice, that you realized that Nevada was going to have a major problem with foreclosures?

Geoffrey Giles: Yeah. Nevada was at one point, per capita, at the top of the country. It was always like Nevada, Florida, California, and there was one other state that was way up there. I mean, it's a small state, population-wise, but in terms of percentage of houses in foreclosure I think at one point it approached 10% of all the houses. You see these mortgages and they were just ghastly. They were negative amortization mortgages, pick a payment, let the principal balance build up every month if you want to. That's a train that's going to have to come off the tracks at some point. But, the mediations really slowed that down. And bankruptcy still works. When everything else has failed, I do send people to bankruptcy lawyers, periodically, not very often. But if they really, really, really want to keep their house, I have a get right with Jesus talk with them saying, "look, you can't afford this. It's crazy. You're on social security, near a million dollars in arrears. Come on. I'm a lawyer, not a wizard. What do you expect me to do?" ...

Jon Rosen: As you mentioned, in 2009 the Nevada legislature enacted the Foreclosure Mediation Program. Can you just talk about what the program did?

Geoffrey Giles: There's really been two programs in Nevada. The first one was the Foreclosure Mediation Program, which was an adjunct to the Nevada Supreme Court. They were always complaining about separation of powers and that it should be in the hands of an administrative agency. The court ducked that constitutional question many, many times. Then when they had a chance to rewrite the law in 2017, they made it actually run by an administrative agency and started the FMP, Foreclosure Mediation Program, which became Home Means Nevada - which [is] the outfit that oversees it. There's a portal to upload documents. The banks want all the documents in the world from the people. They have to provide certain documents to us. Then we go through that with a fine-tooth comb to see if there's mistakes and reasons that they can't go forward. We've got some fairly interesting doctrines in Nevada. When a Note and Deed of Trust, which are two parts of the mortgage, are separated and MERS [Mortgage Electronic Registration System] owns one, and hasn't assigned it, and U.S Bank owns the other, they can't foreclose under those circumstances. Supreme Courts made that clear. We always try and attack the transfers and the assignments and whatnot. They're wrong because back in 2008-2009 they were

so sloppy. You've heard of robo-signing. The robo-signing was epidemic. There were people who were signing a thousand of these a day and it was a Wild West. We stopped a lot of foreclosures for some of that stuff.

Jon Rosen: In 2009, when the bill was passed, did you have any involvement with the bill as it was being passed? And what was your view of the interests that were considered in the bill?

Geoffrey Giles: I don't know. I don't go down to the legislature ever. That's a different world. I tried once. It was ridiculous. They just do what they're going to do, you know? I don't want to ever be called a lobbyist. I don't know whose interests - I'm sure it was all kinds of lobbyists down there saying, "do this, don't do that."

Jon Rosen: You mentioned that the system was adjunct to the Nevada Supreme Court. Can you just talk about the role this Supreme Court played in devising the mediation system? ...

Geoffrey Giles: They were really the ones that sponsored it, because the crisis was causing havoc with Nevada homeowners. There were just so many foreclosures. They realized something to be done. We had a very active Chief Justice at the time who sort of shepherded everything through. He appointed the people to the FMP. He, behind the scenes, set it all up. I wasn't privy to any of that. I wasn't involved with the FMP. They trained mediators and told them what to do and how to do it. That's a whole other story, but I can go into if you want to. Right now, the mediators I don't think are being trained at all by Home Means Nevada. I don't know. I've tried to find that out. It's a much smaller, much more opaque organization because there's been so few foreclosures since COVID. With the CDCs [Centers for Disease Control and Prevention] rules and the governors' injunctions saying, "no foreclosures, no evictions," it hasn't really done much. But I think probably come 1st of August, it's going to pick up because I guess the CDC order expires July 31st. And the Nevada state one is gone, that's expired a couple months ago.

But the oversight is, by the court now, the Home Means Nevada is pretty non-existent, as far as I know. I just don't interact much with them because you give them notification that you filed a petition and then they wait for the court order, whether or not to issue a certificate. So, if they issue a certificate, then the foreclosure can go forward. If they don't issue a certificate, then they've got to start over. That's usually the fight in the mediation with the mediator. Then with the district court, if the mediator doesn't do it right. Of course, whether he does it right or not, is a matter of perspective. The creditors want him to issue a certificate in every case and we don't. So that's where the battle lines are drawn. But I can't tell you any more about what the court has to do with it than that. The initial program sunsetted in 2017 and this was enacted to replace it, which it did. This one does not have a sunset, it's a permanent program. Because of that - the issue of modifying contracts and Article 1 Section 10 of the Constitution is that the law matched from the U.S. Supreme Court is a little bit

problematic, because when these are temporary measures, they're willing to take more leniency with modifying, changing contractual relations than if they're permanent. None of that's worked its way up through the courts yet, but I know it will.

Jon Rosen: In the original program, who were the mediators and how were they trained?

Geoffrey Giles: They were picked. Letters went out to all the lawyers saying, "we need mediators for this program because there were so many foreclosures." They didn't require any direct training to start, but then they had programs for them and they'd bring them up to speed. Eventually they said, "well, you have to have so many hours of mediation training. It wasn't good enough just to be a lawyer." There were qualifications they had to [obtain]. I had colleagues of mine that were mediators and they represented homeowners and that wasn't very well accepted. Those guys were all gotten rid of at some point. There's kind of a conflict of interest built into that situation. If we played it exactly according to the bill, it wouldn't be. But now I don't know what level of training they have. And there's a lot of non-lawyer mediators.

When you start talking about substantial compliance versus strict compliance, what a Notice has to contain, and all that, their eyes kind of glaze over. They say, "well, that's for the district court." But the way the system is, it's not just pure mediation, it's mediation with a kick. The mediator has to make certain findings that the paperwork is correct, that they've come in good faith [and] that they had authority with the people that were there, the people on the phones. All those things have to be found by the mediator in order for the certificate to issue. If any of those were missing, then the foreclosure had to start over. And that usually meant ... they would take a year to start over. Now, with all the zombie mortgages that are being foreclosed on, they get on it right away.

These zombie seconds that are more than 10 years old - which I've been fighting those for a while - they don't get a certificate and they're back at it within a month, because there were default debt buyers that have bought this defaulted paper for next to nothing. It's really shocking what they get away with. We caught one debt buyer trying to enforce a second mortgage, and he'd paid less than 1 cent on the dollar for it. And he wanted full value off of it, which is just appalling. But, that's how it is - these Zombie seconds. The banks have gotten rid of them years ago. Then they've been bought by billion-dollar hedge funds. So, it's just one in every penny, plus interest, plus attorney's fees. They're kind of ruthless.

Jon Rosen: Can you just talk about what it was like to represent a borrower in the mediation system, in the early years of the program? And what [did] it take to get a successful outcome?

Geoffrey Giles:

In the first couple of years, nobody really knew what was going on. It was so new. You go in with a borrower and say, "well, look, 7.5% ARM [adjustable-rate mortgage] is not fair. Let's rewrite this for current rates, which were 3%-5%, or something." [And they'd say,] "no, no, no, we can't make any changes. You have to have agree to catch up on your arrears." It was just kind of a head banging contest for a couple of years. The homeowners were scared. They didn't want to lose their houses. They pretty much trusted the lawyers to represent them. A lot of people did this *pro se* and that was allowed. The mediators should have told these people, "well, look, paperwork wasn't right. You should take this to district court and get the thing shut down." But, the mediators were reluctant to do that.

So, if you went in without a lawyer, you oftentimes got screwed. Then they'd come after the foreclosure sale [when] there's been a third-party purchaser wanting help. At that point there's not much help you can do. We're lawyers, not wizards. We looked at it to see if there was a mistake in the foreclosure and 99 times out of 100, there wasn't. It was done. There's no right of redemption under non-judicial foreclosures in Nevada. They're just out. It was a question of getting cash for keys and hoping they can get some relocation money. But the homeowners were always, in my experience, pretty compliant and pretty glad to have your attention and to have a lawyer representing them.

Although there really were two kinds of homeowners in this situation. There were the ones that knew they were hopeless [and] that they couldn't redeem their house. They were just trying to buy time, free rental, a freebie. And there were those who genuinely wanted to keep their houses. You can't go into these as a lawyer saying, "oh, my client's a flake. He just was trying to buy time." You don't approach it from that standpoint. Everyone in the program knew there was basically two types of homeowners. And there was a significant number of them that were just playing for time - some of them would go from lawyer to lawyer to lawyer. That was a sort of gamesmanship. Now, most everybody that I talk to, that I meet with, they want to keep their houses and some of the times it's practical or they're working and they can make some sort of a reasonable arrangement. Sometimes it's just atrocious. There's nothing that can be done for them. Another thing you can do is block the foreclosure.

In some cases, they've lost all the original documents. So [that's] tough, [but] you can't proceed. We have rules for a reason. Whenever that happens, we try and exploit it, but that doesn't happen very often. They usually can come up with the documents. The Nevada Supreme Court recently ruled the terms of the mortgage, the Deed of Trust part of the mortgage, they don't have to have the original. The certified copies are good enough. [That's] another one of the arrows and the quiver that has been taken away. In a way, I'm really glad to be retiring because it's getting harder and harder to do this.

I think there's probably going to be a jump in foreclosures come next month. And I know there's been a jump in the zombie mortgage foreclosure because

every week I download all the foreclosures in this county, Washoe County, to see what's going on. I would guess maybe a third of them are these second mortgages that have been abandoned. The people think, "oh, that's been gone. That's long gone. I haven't heard from them in five years. What are they doing? They're gone." And they're not, they're just sitting in the weeds. Cause back 10 years ago, there was no equity. They're not going to foreclose on the property when the first has got more depth than the value of the property, but now with property values so insane - in Nevada, they're getting \$500 a square foot for residential housing in some places. They'll take anything.

Jon Rosen: During those years of the mediation program, during the foreclosure crisis, did you find that there was a difference in outcome between the two different types of homeowners and what it would take to get a successful outcome for those types of people?

Geoffrey Giles: It depends on what a successful outcome is. For the guys that are jerks, you're just trying to prolong the inevitable [and] a successful outcome is shutting down the mediation, shutting down the foreclosure and making them start over, which usually bought you a year. There were lawyers, that's all they did. They advertised that they could do that. I think that was kind of stupid. But, the outcome you want, aside from the walkaway outcomes, is for the lender to rewrite the mortgage on terms you can afford. And they only started doing that five to six years after the crisis started, when HAMP became a big deal. Even though HAMP is gone now they're still doing it. I see that all the time. I'm not sure exactly why that is. I can't get straight answers out of anybody on this subject. So, you have to make educated guesses as to what's going on.

Jon Rosen: In the mediation program, were there lawyers that represented the lenders and what was kind of your view of them?

Geoffrey Giles: Oh, they were just incredible. The nice thing about it was the lenders were cheap and didn't pay them much. They'd come to mediations not prepared enough, at least initially. Now they're getting a little bit more sophisticated and they know what they're doing. But initially they would show up [and] they'd gotten the file that morning by email, tell them we got full authority, not knowing what that is. Of course, all authorities are requisite to fair mediation. They were sort of easy to beat. That was a nice part of it. But the clients were interacting [and] wouldn't make deals. It was a lot of head banging and a lot of people [were] wanting to file Chapter 13, because the mediation would go forward and the foreclosure would go forward. After the mediation is unsuccessful and they get a green light to foreclose, you're a month away from losing the house.

That's how it was. [But] the lawyers got better. It's still done by these law firms that contract out. I don't know what their pricing was like. I tried to find out over the years. The better ones charged by the hour, but a lot of these outfits that are foreclosure mills will charge a flat fee, which they won't talk about.

Then when they get in over their head and they realize they're liable to lose the case, all of a sudden, some big 50-man law firm shows up. That spells trouble. I've seen that happen in half a dozen cases in the last couple of years.

Jon Rosen: You mentioned the district court, in relation to this mediation program, can you just talk about what role the court system had in relation to the mediation program?

Geoffrey Giles: On the first part of the mediation program, when it was the FMP, the district court would only get involved when somebody filed a petition for review. It was an informal process and it would only go to the district court if the mortgage was green-lighted, the foreclosure was green-lighted, and the homeowner wanted to challenge that. And then you'd file a petition for review. I doubt more than 20% of the time did that happen. Then they restructured the whole program in 2017. Now, everything's in district court. A district court has to rule on every case, which is nice. But the trouble is one of the things I've heard over the years is, will the mediators have training? As a district judge, they're not trained in this. Why shouldn't they just accept the recommendation of the mediators? You hear that time and time again. When the mediators would say, "go ahead and foreclose," despite the fact the paperwork wasn't right, the judges would say, "well, how are we to get involved in this? The mediators have the expertise." And then when a mediator would say, "oh, they've been acting in bad faith on a modified mortgage," the judge would say, "oh, well, we can't modify mortgages. We have the contracts clause. It was constitutional."

There was always a bias toward the lender and against the homeowner because judges and people like that pay their mortgages. They don't like to see people sitting in their houses for years and years without doing so. Forget the fact that Bank of America owed \$2 billion to the government back in 2011 and forget the fact that Citibank got \$1.5 billion and all that, all those - I forgot what they're called anymore. They're sort of not relevant these days. But we got copies of all that paperwork and tried to show the courts that, this isn't just a scofflaw Court more than once without getting any traction. So, it's always been a bias against the defaulting homeowners, although we've got some new judges on the bench now with this new program. We'll see, I don't know. I'm only doing a few more of these cases. Unless it's something really interesting, I'm taking a pass on it. I mean, 40 years is enough, right?

Jon Rosen: Part of the mediation program was a case management system. How did you feel about how the program managed cases?

Geoffrey Giles: I'm not sure what you mean by case management system.

Jon Rosen: The mediation program system for making sure that that cases moved along.

Geoffrey Giles: They move along on their own because there were rules [and] deadlines. After you file - I'll talk about what the deal is now, because it did change. Right now,

after you file your petition, which must be done within 30 days of the start of the foreclosure, they've got to have mediation within 135 days. Mediator has to make a decision in 10 [days]. Then, you get to comment on it. The judge has to rule. Nothing really falls off the rails unless everybody agrees to postpone things. I was in one of those last week where we got really close and we all agreed to postpone it a month and hope it doesn't come off the rails and get lost. But that does happen. It can happen.

Jon Rosen: In 2011, the Nevada legislature required that lender sign an affidavit verifying that they had the full 30 days to foreclose on a home. Can you just talk about that and what you made of that effort?

Geoffrey Giles: I think that was in 2013 with the HBOR, the Homeowners Bill of Rights, where you had to file an affidavit of authority. That was something that they filed in every case. Then you'd pick it apart. I was successful on picking a few of them apart because when you look at the Pooling and Servicing Agreement - which the last one I got I think is right here. Actually, it's sitting here. Look at the thickness of that. It's double sided. It's 300 and some pages. In there, most Pooling and Servicing Agreements say, "the servicer cannot modify the loan so as to jeopardize the value of investor's portfolio." Meaning you can't lower the interest rate, you can't extend the term, you can't do X, Y, and Z. That's in there. If the servicer disobeys that - that's the contract between the servicer, the investor, and there's actually one more party that gets complicated.

If they break that, then the servicer has to eat the loss. So, they will do anything not to eat the loss. You wouldn't believe the hoops they'll jump over, the things they'll do to avoid that. When we go in and say, "what? They didn't have authority, because their hands were tied by the PSA". [They'd say,] "oh, that's not true. That's the authority that they've got. You can't require them to change the contract." Just on and on and on. We argued the same things time and time again on these cases. That did change though. They started making deals. I got to say, I'm not sure why it changed, maybe the investors and the servicers got together and said, "look, we're going to file, what are these PSA's? We're going to have more REO [Real Estate Owned] than we can stamp." Of course, nowadays, in the last couple of years, REO was great. They loved to have it. But that wasn't the case 5 to 7 years ago. That's when they started making deals...

Jon Rosen: Do you have any experience during the foreclosure crisis with strategic defaults and [if so, what was] your experience with those?

Geoffrey Giles: Yeah, the people that are strategic defaulters are the people that just want a free - they had a terrible home, they were upside down, real estate wasn't moving, and they owed \$100,000 more than the house was worth. They were strategic defaulters. They would try and really play the system, not pay, and live there for free. That did work. I wouldn't turn away a good paying client just because he wanted a freebie. If you forced the lenders to follow the letter of the law - I think that's what an advocate's job is. Zealous representation is in the

bounds of the law. If that happens to be for a strategic defaulter, well, so be it. But most of the people that we represented were homeowners that were really wanting to keep their houses and were in default because they didn't have jobs, or whatever - a lot of things there.

But strategic defaulters, they've always been around and probably still are. Like I said, right now, the only cases I get involved in have some novel part of them, like the 10-year rule. If the thing is gone more than 10 years it's something I like to look at - or judicial foreclosures, because we can always file counter claims in judicial foreclosures and ask for the sun, moon, and the stars. Sometimes you come close to getting it. A couple of years ago, we had a situation where they did a judicial foreclosure, because they couldn't do a non-judicial one. Their paperwork wasn't right. I got the district court to agree with me. [We] said, "no, you can't foreclose on this." [They said, "well, you can't ever sell the house then." I said, "fine. She'll live there the rest of her life. The heirs can deal with it in 20 years." They took up on appeal and we settled, but that does happen on occasion. That's the exception to the rule.

Jon Rosen: As we've talked about, Nevada has a non-judicial foreclosure process. There were other states that required judicial foreclosure. I was just curious to get your thoughts on the judicial foreclosure system and what the advantages and disadvantages are of those.

Geoffrey Giles: We do have judicial foreclosure statute here. It's used very infrequently. I don't know about how it works in other states. I don't practice beyond Washoe County, where Reno is, but there's plenty of business here. I don't want to have to go to Las Vegas for cases. Good Lord. But judicial foreclosures are about the one-year right of redemption. If they have to do a judicial foreclosure, that gives the debtor a whole lot more leverage because once they get a Sheriff's Deed, they don't evict the person for a year because they know they can go into Chapter [13], undo all that, and rewind it. That's about all I can tell you. Foreclosure between Nevada and California is vastly different and a lot of lawyers in Nevada look to California law for a lot of issues - and that's a non-judicial foreclosure state. What it's like back east, I have no clue at this point. I just don't keep up with that. I think there's 21 states that are non-judicial foreclosure states, the last time I looked.

Jon Rosen: Can you talk about the *Leyva and Pasillas* cases in 2011 and their effect on the mediation program?

Geoffrey Giles: Interestingly enough, I've got a mediation with Pasillas next week. He has still prevailed and knives will be sharpened. It's going to be very hotly contested mediation. But, Pasillas was actually litigated by Terry Thomas, who's a friend of mine. He's passed away now. Even though it was a landmark case, it didn't get them any relief. They went back and they went back and they started the foreclosures over. Now, we're beyond the 10 years. So, I'm going to be arguing that issue because I know we're going to go to the district court on it. And Leyva

was a very interesting case. I'm not sure it was correctly decided. There the court held that a person not in privity with the lender could mediate. So, if Smith bought the house and then sold on a contract of sale to Jones, Jones had no connection with the lender. And if the lender foreclosed, Jones could mediate and have all the rights of Smith, which I'm not sure that's a good idea. But that's what they did as one of the first cases. And Pasillas made it clear that if the paperwork is not in order, they don't get to foreclose. So, the mediator has to recommend a red light that is not getting a certificate, not being allowed to go forward with the foreclosure.

The mediators, unfortunately a lot of them, they say, "well, I'm not the district judge. I can't make decisions like that." They think it really is pure mediation, like a divorce case or a PI [personal injury] case, but foreclosure mediation is not. There are findings that have to be made by the mediators. I was in a mediation two days ago where he didn't know that. ...

Jon Rosen: Can you talk about the Holt case in 2011 and how that affected the program?

Geoffrey Giles: Well, Holt - a friend of mine, Rod Carucci, litigated that one. He tried to establish that a failed mediation where the mediator found bad faith and told the lender not to go forward was somehow *res judicata* and that lender could never go forward again. Well, that'd be a great rule for homeowners, but lenders do have rights and that would be kind of a silly thing for that to happen. [But] that's the issue he was pushing. Holt said that it's absolutely the case that you don't get a certificate if you don't bring the right stuff with you. The issue of whether or not it's constitutional to modify a home mortgage has not been ruled on by the Nevada Supreme Court. I've brought it to their attention more than once. The one case where the district court - and I only know of the one case from the district court - did modify a Wells Fargo mortgage went up on appeal. Then the Nevada Supreme Court dodged the issue by saying, "well, you've got the servicer as a defendant. You don't have the investor." Well, the servicer has got all the rights of the investor. The servicer can do everything that the investor can do. But they just didn't want to decide the case, which was very annoying. But, that's why they get the big bucks.

Jon Rosen: Nevada had some of the highest levels of foreclosure in the nation during the crisis. Why do you think the foreclosure crisis was so pronounced in Nevada?

Geoffrey Giles: It was mainly Las Vegas, [or] Clark County, where most of the foreclosures were. Almost anything goes down there. There were situations where - there was one where a woman was prosecuted for applying for and getting like 50 home mortgages and she made \$12 an hour. They're not supposed to give people mortgages like that. It was just rampant. If you had a pulse, you'd get a mortgage. I had a kid here in town who bought two houses, neither one of which he could afford, both of which were in foreclosure. This was back when the home equity wasn't there to support the mortgage. They'd write these outrageous mortgages that are illegal today [and] they may be even criminal, I

don't know - negative amortization, pick-a-payment mortgages. They're still doing 3% down mortgages, which is a recipe for disaster, but they've done nothing to put band-aids on the problem in the last fifteen years. They haven't really addressed the issue.

Wall Street replaced the savings and loan industry. Worst thing ever happened to America. But they get the big bucks and make the big bucks. They get to sit and talk to the President and the Senators and guys like us, we don't get to do that. Homeowners are always asking me, "why is the law on their side?" I said, "when's the last time you sat down with Harry Reid and gave him a \$1,000 campaign contribution and told him what you thought about mortgage law." [And they go,] "what are you talking about?" It's kind of hard to get through. Some people actually believe the government is on their side, but it's not and hasn't been. But that's just me.

Jon Rosen: Related to that, looking back on the crisis a decade later, what do you see as the most important lessons for policy makers?

Geoffrey Giles: They should have banned securitization of mortgages. It's an excellent way to raise money when times are good and everything is going up. It's like inflation. What is the term? Rising tide lifts all boats or something? I don't know exactly what that is. But when times are good, securitization works. When times are bad, everybody out of the water. It becomes a mess quickly. The crisis is greatly exacerbated because the way securitization works. They've done some excellent articles on this. NCLC has done a lot of really good work on this. It's been so long, I've forgotten who the person was there that did it, the lady lawyer that I knew really well back 20 years ago. But I don't think I can remember her name now. But she's written articles on it. I've got a database and stuff like that.

Geoffrey Giles: ... Diane Thompson. She did some great work on that sort of thing back in the day. I've got about 15 large articles here on foreclosure and whatnot. There was one that came out a couple of years ago about why giving homeowners free houses isn't so bad because of all the wicked things the banks have done. Elizabeth Renuart was good too. She actually quoted me in that article. These are some of the people at NCLC who did very good work over the years.

They kind of showed why securitization is a mess. Have you ever come across Tom Domonoske? He used to be very active with NCLC and securitization. It just made him crazy. It was always fun to watch the guy. I think he's a big-time class action lawyer and makes a lot of money on that. We've done class actions against some of these players, probably shouldn't name names, but one of them was just so bad. They had to disclose in their 10Ks (SEC filed annual report) all the lawsuits that they had against them. One year, half the money went out the door settling lawsuits. They got to under a dollar a share, and somehow they turned it around. Now they're back at \$20 a share and they're still doing their stuff. Still cheating the homeowners at every turn. See, the banks were driven out of the business back [then].

It became the mouse houses that took over the mortgage servicing. Wells Fargo services, a few, these days and Bank of America's got some legacy loans they service. But they got out of that business [and] turned it over to Mr. Cooper or whatever the hell that thing used to be - and PPH [Partnership for Permanent Housing], Bayview, SOS [Society of Support], and all these little mouse houses that are just unbelievable. There's one in Chicago, I can't remember their name. It's a company that does nothing but defaulted debt buyer mortgage servicing. And they're just liars. They're just unbelievable. You get them on the phone on occasion and I'm just like, "you're a liar, I'm not going to talk to you. Put it in writing if you want me to look at it." That's just me. After 40 years of doing this, I'm getting a little jaded.

Jon Rosen: We're nearing the end of the interview. Is there anything that I didn't ask about that you'd like to talk about?

Geoffrey Giles: About the crisis? It hasn't been fixed. The underlying problems that caused the mess are still there. There's too much money in securitization, too much money in the hedge funds, and the credit reporting - not credit reporting agencies, the guys like Moody's,... [t]hey're still slicing and dicing and trying to put lipstick on pig. And it'll happen again. I think we're probably close to a tipping point. Although, with all the paper money that's been printed in the last couple of years with COVID, it might never happen. But we thought we were the top of the rollercoaster ride and we were never heading down. But there's just so much money out there chasing housing, I get a call a week. People want to buy my house. They're saying, "I have \$2 million." Well, yeah, that's not a realistic question, do you see it on the market? Do you see a for sale sign on my house? That's just the way it is though. Every week you get calls for stuff like that. No, I'd rather burn the house down than sell it to you, right?

Geoffrey Giles: I think that's the main mess and it hadn't been fixed. The CFPB [Consumer Financial Protection Bureau] was created.... Doesn't answer their mail. The stuff they put out is hard to understand. Even with the weak way they do business, they're still getting clobbered and sued and the banks don't like them. The banks want to do what they want to do and given the way that they pay the big guys for campaign contributions, they get the ear of lawmakers, it's not going to change.

Jon Rosen: Thank you so much for taking the time, Mr. Giles, to speak with us. It was really great to talk to you.

[END OF SESSION]