AMERICAN PREDATORY LENDING AND THE GLOBAL FINANCIAL CRISIS

ORAL HISTORY PROJECT

Interview with

Stephen Dane

Bass Connections

Duke University

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PREFACE

The following Oral History is the result of a recorded interview with Stephen Dane conducted by Ryder Buttry on November 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: Sarah Walker
Interviewee: Stephen Dane
Interviewer: Ryder Buttry

Session: 1
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Ryder Buttry: I'm Ryder Buttry. I'm a Master of Public Policy candidate at the Duke University Sanford School of Public Policy and a member of the Bass Connections American Predatory Lending and Global Financial Crisis team. I have another one of our team members who's shadowing the interview today, so I'll let her introduce herself as well.

Shreya Joshi: I'm Shreya Joshi, an undergraduate student at Duke University, and I'm also a member of the Bass Connections team on American Predatory Lending and the Global Financial Crisis, and I'll be observing today's interview.

Ryder Buttry: It is Monday, November 15, 2021. I am speaking with Steve Dane, owner of Dane Law LLC, who has joined us via Zoom for an oral history interview. Thank you so much for joining us today.

Steve Dane: Sure. Thanks for talking to me. I'm glad to be here.

Ryder Buttry: I would like to start by just establishing a bit about your background. I believe that you grew up in Toledo, Ohio and then went on to the University of Notre Dame for your Bachelor of Science in Mathematics. Is that correct?

Steve Dane: Yes.

Ryder Buttry: And after college, you then completed your law degree at the University of Toledo. Correct?

Steve Dane: That's right. Came back home to go to law school.

Ryder Buttry: Can you take us through the trajectory that led you from law school graduation to establishing yourself as a litigator at Cooper & Walinski?

Steve Dane: It wasn't a direct path to civil rights litigation, which is what I do now. But after graduation from law school, I clerked for a federal judge on the U.S. Court of Appeals for the Sixth Circuit. From there, I looked around a number of different geographic places to start my law career. The firm that I had worked for as a student in Toledo—the firm eventually became known as Cooper & Walinski—gave me a very good offer to entice me to come back home to Toledo. My wife and I both had family in Toledo. We both grew up there—we both grew up a couple of blocks from each other actually. My siblings and her siblings all lived in the area, and we decided that Toledo is where we wanted to live and stay.

So, I took the offer from Cooper & Walinski and started a law practice there. At the time, I didn't know I was going to be a litigator. I certainly didn't know I was going to head into the civil rights field. But they had a training program that

required new young lawyers like me to try a little bit of everything. So, I had to do wills. I had to form corporations. I had to do estate planning. I had to do real estate closings. Just a wide variety of different things. But it was the courtroom work—the litigation—that really excited me, and I had a talent for [it]. So, after a couple of years, I decided I was just going to do litigation full-time, and that's what I've done for forty years.

Ryder Buttry: What was the nature of your litigation work at Cooper & Walinski?

Steve Dane: I covered a wide variety of subjects. It could be product liability. It could be contract disputes. It could be a lot of insurance coverage litigation between big corporations and big insurance companies. [I covered] employment discrimination cases, employment breach of contract cases—a wide variety of different stuff. The fair housing work, which is what I eventually made a career out of, just sort of came along out of the blue and serendipitously.

Ryder Buttry: In the context of your work life, when did you first become involved with residential mortgages?

Steve Dane: From a litigation civil rights standpoint, about in the mid-1980s. By the mid-1980s, I had been doing a lot of work for the Toledo Fair Housing Center, and it was observing questionable behavior in mortgage markets, including some unwillingness by local lenders to provide loans in sufficient amounts in Black neighborhoods or racially mixed neighborhoods. They asked me to take a look at the problem and the facts to see what was going on. At that point, I had to learn about the mortgage lending industry and how it was operating and how it worked and what appraisals were and what appraisal philosophy was and what underwriters did and what underwriting involved. And back then there was no automated anything. Everything was done manually by an individual. But you know, I learned it. And that led to quite a few different lawsuits against mortgage lenders for discrimination of all sorts and all kinds.

Ryder Buttry: How would you characterize the key changes … in the Ohio mortgage market between the mid-1980s and 2008? You can also speak to the national market, if you would like as well.

Steve Dane: Yeah, I can speak to the national market as well. Well, the first major change that occurred was the movement from individual loan processing and lenders keeping loans that they originated in their portfolio to the securitization of mortgages and the creation of a secondary mortgage market. That happened in the mid to late 1980s. At that point, the whole entire process for underwriting mortgages and the motivations and the financial incentives, I would say, probably changed significantly. Part and parcel with that, the mortgage securitization process was not regulated—hardly at all. And as the market moved to that dynamic in the 1980s and into the 1990s, no one was watching the store. The regulators were not closely monitoring the securitization of mortgages. And so, there was a lot of abuse in the industry that led to, I think, the first Savings & Loan crisis back in the late 1980s and early 1990s.

There were some attempted fixes made on that, but it really didn't lead to any more general oversight of the mortgage lending industry. I remember writing an article in 1993 about the structure and regulation of the residential mortgage lending market. I made a proposal on how to simplify it to make sure that at least mortgage lending discrimination laws were more easily applied and could be regulated and monitored both by the government and by private parties. But that was not taken seriously so far as I know. And then—you asked me all the way up until 2008. The crisis of the early 2000s was actually foreseen by my clients—they're housing advocates. The leadership at the National Fair Housing Alliance in the late 1990s and early 2000s started to see a significant amount of predatory mortgage lending behavior in predominantly Black neighborhoods and racially mixed neighborhoods.

They brought these observations to the attention of the federal regulators, anyway, and they were largely ignored. People said, "You're wrong. The mortgage markets are fine. Homeownership among Black homes and Black families is up. People are getting loans. And so, you don't have to worry about it." And the National Fair Housing Alliance and other fair housing groups, civil rights groups like my clients on the ground were saying, "No, the mortgages that are being given into these neighborhoods—in our clients' racially mixed neighborhoods—are abusive. They're predatory, and they're taking advantage of people's limited financial circumstances. They're giving them loans that they can't afford to pay back. And they are, in some cases, stripping them of the wealth and the equity that they already have in their homes." But they were ignored as well. Then fast forward to 2005 and 2006 when the crisis started brewing, and in fact, they were deemed correct.

Ryder Buttry: You mentioned that the National Fair Housing Alliance brought these issues to the federal regulators. Did community organizations and consumer-related NGOs respond in any other ways to the changes in the mortgage market during the 1990s and 2000s?

Steve Dane: I don't know the answer to that question Ryder. My work, my knowledge, my skill set is with civil rights groups specifically and fair housing organizations in particular. There's a whole other community of consumer advocates that I'm not really tapped into and other nonprofit organizations that deal with their own limited—I shouldn't say limited—but specific subject matter issues that I don't know what they were doing. I would not have been involved in that.

Ryder Buttry: I was also going to ask about your relationship with the National Fair Housing Alliance. I read you did a testimony on their behalf to the House Committee on Banking, Finance and Affairs in 1989 about some mortgage lending discrimination. How did you get involved with the National Fair Housing Alliance?

Steve Dane: Well, its first executive director Shanna Smith is from Toledo, and she was the executive director of the Toledo Fair Housing Center when I started doing work for her and the fair housing community generally. The first members of the

board of directors of the National Fair Housing Alliance when it was formed in 1989 were also clients of mine. They were from around the country—fair housing organizations in Virginia, Wisconsin, Southern Ohio, and elsewhere. So, everyone had worked with me before. They were very comfortable with me and my advice and my skill sets. And when the National Fair Housing Alliance started really ramping up—it was formed in 1989—they called on me to help them out and get them going. It's been a great relationship ever since.

Ryder Buttry: What kind of stakeholders do they represent?

Steve Dane: The National Fair Housing Alliance is a consortium of primarily private nonprofit fair housing advocacy groups throughout the entire country. I don't know how many groups are part of the alliance now—somewhere between ninety and a hundred probably. It would probably say on their website.

Ryder Buttry: I know we've talked about how the National Fair Housing Alliance was responding to these changes. How, if at all, were litigators responding to the changes in the mortgage market during the '90s and 2000s?

Steve Dane: Well, I believe there were a number of consumer protection attorneys working in the field, and I'm sure there were class actions. I was involved in one class action on the consumer side in the mortgage lending arena. I worked with Gary Klein on one of those cases and had a few others in Ohio. But my involvement was primarily on the racial discrimination aspect of it. There were very few of us representing Black neighborhoods, interracial neighborhoods, [and] mortgage applicants of color in the litigation process. Fair housing attorneys are few and far between, unfortunately, and back in the '80s and '90s when I was most active in the field, there were very few of us. We did what we could with what we had.

Ryder Buttry: Did your legal strategy change at that point. If so, how?

Steve Dane: I would say only in this respect: in the early days of litigating mortgage lending discrimination cases, much of the behavior that we observed was intentional. And the mortgage loan originators and the lenders who were responsible for the behavior that we were challenging, for the most part, pretty much acknowledged that they were treating Black neighborhoods differently, but they claimed that that was necessary because the financial or economic considerations required it. And that turned out not to be true. In a few instances, we did identify a policy or practice that the bank had implemented that was having a disparate impact even though the bank may not have realized that. And we did challenge a few of those at the beginning, but disparate impact was not the primary legal basis for the claims in the early days. That has changed recently. Now a lot of lenders have improved their systems. They've improved their underwriting. They're much more conscious of making sure that the people and their staff do not treat neighborhoods differently because of racial composition, but there probably are still some racially, facially neutral

criteria that are causing disparate impacts. That's where the focus of some of the more recent litigation in this area has been.

Ryder Buttry: Could you explain what that term "disparate impact" means? [Did] you encounter those kinds of impacts in the Ohio mortgage market between the mid-1980s, when you first got involved with residential mortgages, and 2008, when the crisis hit?

Steve Dane: Disparate impact is a legal term in the civil rights field which means that a policy or practice of a business is—even though neutrally applied, evenly applied across all racial segments of the population (white, Black, Hispanic, or white neighborhoods and Black neighborhoods)—in other words, the policy itself is equally applied everywhere—it nevertheless is having a statistically significant adverse impact on communities of color. Even if that was not its intent, that can be illegal if it has that impact unless it can be shown that the policy or practice at issue is the only way to achieve a legitimate and necessary business purpose. If there are other less discriminatory alternatives available, then the policy or practice itself that has a disparate impact is illegal, and, frankly, must be eliminated, and the less discriminatory alternative must be adopted. That's the legalese for it. What was the other part of your question—some examples?

Ryder Buttry: Yes. If you encountered these in the Ohio mortgage market between the mid-1980s, when you first got involved, and 2008.

Steve Dane: Well, yeah. One of the policies that we had that we challenged involved a bank policy where the bank established a rule that it would not lend more money in a neighborhood than the predominant value of all the properties in the neighborhood. When applied across white and Black neighborhoods, of course, the predominant value of houses in Black neighborhoods is lower than the predominant value of properties in white neighborhoods because of longstanding and historical discrimination in mortgage lending markets and appraisals and so forth. But once you establish that facially neutral policy, that will necessarily depress the ability to sell properties at a higher value in Black neighborhoods. So, if the predominant value of the housing stock in a Black neighborhood is $100,000 and the predominant value in a white neighborhood is $150,000, by applying that policy, the bank was basically saying they're not going to loan money to anyone buying a house for more than $100,000 in the Black neighborhoods, but they would provide a mortgage for someone in a white neighborhood for the same amount of money. That was a policy or practice that was ill-advised.

We challenged it; they got rid of it…I can tell you a policy that we challenged in the insurance context that had to do with the age of the dwelling. That would be a clear example of a disparate impact policy and how it was fixed. Not exactly mortgage lending, but similar because it has to do with housing stock. In a couple of our insurance cases, we ran into a policy the insurance company had established where the insurer would not sell the better insurance policies, called replacement cost policies, if a house was older than thirty years old. Housing

stock in Black neighborhoods is typically older than housing stock, generally speaking, in white neighborhoods, because the newer constructed housing in suburbs and in the outer rings of cities oftentimes is five, ten, twenty years old. It's newer than the inner cities, which have a lot of older housing stock.

So, on a percentage basis, the homes in the white neighborhoods were newer than the homes in the Black neighborhoods. So, the application of this thirty-year policy was having a disparate impact on Black neighborhoods being able to get the decent and better replacement cost insurance. We could show that statistically. So, the insurance companies said, "Oh, well, we have to have a thirty-year rule because older houses are at higher risk of an insurance loss, and the claims that we get overall are higher than the newer homes." And that sounded legitimate when we were told that on its face. But then we looked at the data, and guess what we found? We found out that the insurance risks and the costs were lower on houses that were over thirty years old than they were on the houses that were twenty years old.

How could that be? Well, what happens is, it's like a bell curve. The age of the dwelling and the condition of the dwelling is like a bell curve. Between zero and ten or fifteen years, there are few losses that are covered by insurance, so the total insurance costs are low. Once you get between fifteen and twenty-five years, that's when things start to go bad. The roof gets old; it gets leaky. Things start to fall apart. The plumbing starts to leak, and the systems in the house that can cause damage and loss all fall apart. So, the insurance costs go higher. After thirty-years old, most of those systems have been replaced, and they're like new again. You've got a new roof. You've replaced the furnace, the plumbing system. The old lead pipes have been replaced with plastic pipes. And so, the insurance costs go down.

So, what we found out was that this rule which was having a disparate impact in the Black neighborhoods to a greater extent than in white neighborhoods was, in fact, not justified by the data. And we were able to convince the insurance companies—virtually every single one in the industry—to change the rules to a less discriminatory outcome or a policy that I'm not sure has any discriminatory impact. And that is that the decision should not be based upon the age of the dwelling itself but rather on the condition of the dwelling. And now it is standard industry practice when issuing insurance policies. Yes, you can get a replacement cost policy in a Black neighborhood so long as the condition of the property is satisfactory—it's safe and warrants the issuance of insurance—rather than just simply looking at the age. Sorry that a long-winded answer to a question, but I think it clearly indicates why disparate impact analysis in the mortgage context and housing context can have some value.

Ryder Buttry: As these changes were happening in the mortgage market during the 1990s and 2000s, what problems, if any, did you and your colleagues in the civil rights arena—whether that's your legal colleagues or the advocates you were working with at the National Fair Housing Alliance—especially worry about?

Steve Dane: Well, in my work, what we were worried about was that the communities of color were suffering the greatest harm and hardship by virtue of these changes in the mortgage market. I noted previously the fact that predatory and abusive loans were being targeted in communities of color and in Black loan applicants. They were the ones that were going into default, which was, of course, causing harm to their credit and causing them to lose their homes. Our focus was on the racial aspects of the mortgage market behavior more so than simply the consumer aspects and the consumer protection aspects, which were of a concern to others like consumer regulatory agencies and so forth…The biggest global harm [we saw] to communities of color caused by the abusive practices in the mortgage lending industry in the early 2000s was that Black communities were stripped of the wealth that had been accumulating in homeownership. In this country, the predominant method of building wealth in the family is through the appreciation in value of real estate and specifically in homes.

So, because the mortgage crisis of the early 2000s impacted Black neighborhoods so much more so than white neighborhoods, the communities of color were losing the wealth that was starting to be developed by the fact that they were getting more mortgages and being able to build up some equity in their homes. And that is a great loss.

Ryder Buttry: Could you elaborate a bit on what made the nature of these loans predatory?

Steve Dane: I would not consider myself so much of an expert, but there were some features of them that I am familiar with. One is the overlooking of the applicant's ability to pay back on the mortgage. It is a legitimate factor to consider one's income and whether one has enough income to pay the mortgage back, and a lot of loans were being provided to individuals that didn't have sufficient income to pay it back. So, providing loans without sufficient assurance that the borrower had the ability to pay is one abusive practice that we ran into. Another abusive practice was front-loading a significant amount of fees and costs upfront that got either paid by the borrower out of their own assets—much of the time, this was all their assets because they didn't have much—or wrapping it into the overall size of the mortgage loan to the point where even if [the loan] was legitimately based on ability to pay or the value of the property, by the time you added on all of these front-end costs and fees, which could be 8 %, 9 %, 10 % of the entire loan amount, the mortgage became so high that there was an inability to pay.

…There may have been some appraisal fraud going on. In other words, intentionally inflating the value of the property being mortgaged just to close a loan because mortgage loan originators get paid once the loan is originated and is provided. They have no risk. They get paid then, and they don't care if a loan goes into default or not. They don't care if the borrower is creditworthy [or] not creditworthy, [whether they] can pay the loan back [or] doesn't pay the loan back. That is a risk to be assumed later by the holder of the mortgage. Once they get their origination fees and payment out of the loan closing, they're gone, and they don't really care. So that leads to an incentive to just close loans

regardless of whether the loan is safe or not and then walk away with your fee and never see it again. So, I think part of that process led to a lot of over-appraisal of properties that were not supportable by the market. Then, once the market tanked and the mortgage loans went into foreclosure and the banks re-assumed ownership of the mortgage and foreclosed on the loan, they found out that because it was happening more predominantly in communities of color that the value of the properties in these communities just plummeted. And so, even if you didn't default on your mortgage and your own home, or you own your own home outright in a particular neighborhood, you now find out that all of the properties around you that have foreclosed are foreclosing at values [that are] $30,000, $40,000, $50,000 less then they were sold for. Now the value of your property in the neighborhood has decreased as well. So, there's another negative impact, even on those remaining in the neighborhood who did not get a predatory loan. And now we're dealing with REO [real estate owned] properties that are not maintained by the banks, and I'm still in litigation. What is it, 2021, today? And the crisis that started in 2007, 2008—we're still feeling the effects of it today.

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

Steve Dane: Well, from my perspective, from where I've worked for the last forty years, it is another consequence of the country's longstanding history of discrimination by financial mortgage markets of communities of color. It started in the ‘30s, proceeded all the way through the ‘40s, ‘50s, ‘60s, ‘70s, ‘80s, ‘90s, and the 2000s. Certainly, there are other factors that may have contributed to it. But if we did not have racial discrimination in housing markets in this country, I think the crisis would not have happened or would not have been as severe. Or if it had happened and had been as severe, it would have been equally felt among white and Black neighborhoods and consumers and not just so heavily on communities of color.

Ryder Buttry: To what extent do you see your personal experience as adding something important to our understanding of what happened in the run-up to ‘07 and ‘08?

Steve Dane: Well, my role in this whole field is to enforce the law—the fair housing and civil rights law—by private parties, by victims of the discrimination in the court system. I'm not a consumer lawyer. I'm not a policy wonk. I don't talk to legislators or regulators on how they should do their jobs. But my job as a private litigator is to sue the bad guys. And that's the contribution I've made over the years—is to be able to sue the bad guys [and] make sure that they clean up their act. Obviously, I can't sue on behalf of every victim that comes along, but my clients typically will not only want to get a remedy for the victims but also to stop the policies or practices that are leading to it. And we've been pretty successful in it.

Ryder Buttry: Looking back on the crisis over a decade later, what do you see as its most important lessons for mortgage originators and state level policy makers?

Steve Dane: They all need to look themselves in the mirror, and they need to learn their history. They need to make sure that whatever business practices and policies they are implementing from the lowest level to the highest level have a level of analysis and sophistication to know whether, in fact, what they're doing is economically justified and not just based upon anecdotal information. And it's got to be analyzed that it is not going to have any racially or ethically discriminatory impacts or effects, [that] it is not based upon assumptions that are primarily applicable to white America and not to everyone.

[END OF SESSION]