AMERICAN PREDATORY LENDING AND THE GLOBAL FINANCIAL CRISIS

ORAL HISTORY PROJECT

Interview with

Roy Cooper

Bass Connections

Duke University

2022

PREFACE

The following Oral History is the result of a recorded interview with Roy Cooper conducted by Edward Balleisen on March 9, 2022. 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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Session: 1
Location: By Zoom
Date: March 9, 2022

Edward Balleisen: I'm Edward Balleisen, Professor of History and Public Policy at Duke University and a co-leader of the Bass Connections, American Predatory Lending and the Global Financial Crisis team. It's March 9th, 2022. And I'm joined via Zoom by Governor Roy Cooper for an oral history interview, today, as well as Duke Law student Sam Wolter and Duke Public Policy Master's student Ryder Buttry, who are part of the APL team. Governor, thanks so much for joining us today.

Roy Cooper: Glad to, Ed, look forward to the discussion.

Edward Balleisen: We'll be focusing today on your engagement with the problem of predatory lending in the North Carolina residential mortgage market --both during the 1990s, when you were a state legislator and eventually Senate Majority Leader, and then in the 2000s, when you served as Attorney General. But I'd like to begin with a few details about your early life. Where did you grow up, and then go to college and law school?

Roy Cooper: So, I grew up in Nash County in Eastern North Carolina, a little town called Nashville. After going to [University of North Carolina at] Chapel Hill for undergrad and law school, I decided to come back home and opened a law practice in Rocky Mount, which is about 10 miles east of Nashville, still in Nash County. Raised my family there, practiced law for 18 years. And part of that time, spent a little time in the state legislature, as well. As a true citizen legislator, I had a full-time law practice, but was able to, being about 55 minutes away, I could get home most every night and still do both jobs. Probably the busiest I've ever been in my life, but great place to grow up, and amazing people in the Rocky Mount area.

Edward Balleisen: In that early phase of your career, did you engage much with residential mortgage lending?

Roy Cooper: So, I had pretty much a general law practice. So very early in my career, I started practicing law about 1982, I did some real property transactions and home loan closings, mostly in the 80s. My practice evolved over the years, and I was doing mostly civil litigation by the 90s, but I certainly was very familiar with residential home loans, very familiar with people coming in and often buying their first home, the realization of the American dream. And, it's one of the reasons why I got so involved in this issue, is talking with a number of lawyers who did residential real estate work and were beginning to see the abuses that we later addressed in the General Assembly. You got to know that home ownership has been one of the things that people aspire to, and it's where they invest most of their resources. And for most families, it's the biggest purchase they've ever made or ever will make. So, it was so important that we work to try to get this right.

Edward Balleisen: You mentioned abuses that you started hearing about from your peers. I take it that was maybe in, around the early-1990s or mid-1990s. What kinds of things were you seeing in the market?

Roy Cooper: I would say, one thing we began to see a rise of mortgage brokers, and these were people who would go in and talk to people who owned homes or who wanted to own a home and would say that they could get them the best deal, that they could shop for them, and do all of the work for them and get them a home loan. And what people began to realize later on, and we had legislation to address this, but these mortgage brokers, although they purported to represent the interest of the homeowner, actually would get paid more for giving them a bad deal. And we saw that begin to happen time after time. Some lawyers would tell me that a mortgage broker at a loan closing would tell the homeowners, we couldn't get you to that 5.5 percent loan. We had to get the 5.75 percent loan. And what we didn't know is that, that broker was being compensated more.

We saw a significant increase in upfront fees, completely unnecessary insurance. You also could just look at a loan and think they're never going to pay this back. This is not going to work. And I would look at some of the HUD [U.S. Department of Housing and Urban Development] forms, of course, the summary of the expenses that these lawyers would give to me. And, you would say, this is just not going to work. This is not the kind of loan that you are used to seeing in North Carolina with a regular bank and an origination fee and a reasonable interest rate. And you buy your home and the bank wanted to make sure that the person could pay the loan back because they were going to continue servicing the loan. Everything began to change when [firms] bought and sold loans, had mortgage brokers, saw these outrageous fees. And then I, and I think you've talked to Martin and others, I was approached by Martin Eakes, as a legislator, who brought in some of the same things that I was seeing. But we began to recognize that it was very widespread, and that it was happening, that it was multiplying, and that we needed to do something about it. And therefore we started the process of trying to get the legislation.

Edward Balleisen: As majority leader in the Senate, you had a key role in shepherding the passage of the 1999 Predatory Lending Law, the eventual legislation that you're referring to, which recast state regulation of the mortgage market. What do you recall about the enactment of that legislation? How it became a priority, not just for yourself, but broadly across the legislature; the debate among key stakeholders; and the process of forging, what became a remarkably bipartisan consensus around the eventual bill?

Roy Cooper: I think we have to step back and look at the landscape a moment. Banks were of critical importance in North Carolina. We had been smart enough in the 90s to provide legislation that would encourage national banks to locate in North Carolina. I remember former [Virginia] Governor Terry McAuliffe saying to me, you stole all our banks. North Carolina had become the second largest banking state in the country, second only to New York. So people knew all of the jobs that were created by our banking industry. So we had that backdrop here and a lot of these banks were not engaged in this kind of activity, but it was beginning to happen. I had conversations with then Attorney General, and subsequently Governor, Mike Easley, ..., Alan Hirsch was working with him over there, Phil Lehman, who ended up working with me when I became Attorney General. They, along with Martin, brought information to me that, we have got to stop these abuses.

Well, the General Assembly on this kind of very complex legislation wanted parties to go over and work it out. And I certainly encouraged them to do so, but I said, we need to do something about this. I think we had what we thought was an agreement. I put in the legislation, I think some other Senators put in some of the same legislation, but apparently the people that were negotiating on behalf of the banks, it really had not gotten to the higher levels. So when it became time to introduce the legislation, there was great demand to pull back on it, that they had not been informed. And we needed to go back to the drawing board. I got a lot of phone calls from friends and people in the banking industry telling me to hold back. What I knew is that this was going to be a very difficult issue, and that if we didn't have something pushing it forward, then it wasn't going to happen, because of the inertia of the legislature. Something not happening is much more likely. It's much easier to stop legislation than it is to get it through. So, I went ahead and introduced it anyway. Many of the banks were very disappointed that I had, but I thought it was important.

And that process was one we had to sort of start back from the beginning, mostly to acclimate people and to make them understand what the problem was. And most people who would look at these loans would say that isn't right, but the debate was about the cure. How do you do it? And a lot of the banks, who didn't believe they were doing anything wrong and mostly weren't, were concerned about the overregulation, the cost, you know, am I putting myself at risk? So we had to go through all of that. It took look a long time, starts, and stops. I played mediator, arbitrator, quarterback, hammer, whatever I needed to do to continue to move it forward. And I want to thank all of the passionate advocates. I talked to Martin Eakes the most, and Martin somedays would come stomping in my office and he would be red faced and very passionate and frustrated. And that kind of passion was really important in moving this forward. And at the end of the day, we were able to get, I think it was the first, anti-predatory lending legislation in the country. Trying to quantify the problem and not only cure the problems that you had seen, but try to prevent the problems that you could anticipate, was difficult.

And I thought the legislation we came up with was brilliant. Putting it into a high cost of loan category, where there would be lots of problems, and if you stayed below all of that, you didn't really have to worry about it. And it was just something that we had to do, because when you think of single premium credit insurance, that somebody doesn't need, that there's a big upfront cost, and you're going to put that into the loan, and charge a high interest rate, and somebody could pay on a loan for 15 years and never even get to the principal of what they had borrowed? So wrong on so many levels. So, we got the legislation done, and it was toward the end of my legislative career when we got this done. And I became Attorney General and how great it was to get to enforce the law that we had worked so hard to get passed. And a lot of people deserve credit for it, from the Attorney General and their office to the consumer advocates. It was so much work. And I give credit to the people who were representing the banks as well. This was new territory. This is something that, you know, we all agreed was wrong, but we had to figure out how to get there. And we did at the end of the day.

Edward Balleisen: The law, as you noted, had a couple of different features to it. On one hand, it prohibited certain kinds of practices. And then on the other hand, with respect to some kinds of loans at a high enough interest rate threshold, there were additional requirements for those types of loans. Could you speak a little bit about those details? And then I'd like to turn our attention to the enforcement question while you were attorney general.

Roy Cooper: Well, I know that the details of it, very complex, and I was very immersed in it at the time, was fascinated, and became, I don't know, maybe could have opened up a practice in it at the time, but there are a lot of issues that we were trying to cure. And what you wanted to do is to stay out of that [high cost] category when you made a loan. One of the issues that we saw mortgage brokers do is they would go in and convince people that they could get them a little bit lower interest rate and what we call flip the loan, which would lower their monthly payment a little bit, but which would significantly increase their debt because of all of the upfront fees, again, that they were charging. And one of the real debates that we had in the General Assembly was, how is that bad? When is that bad? How do we stop it when it's bad? Those are some of the things that we looked at. We also saw these mortgage brokers who would encourage people to take out second mortgages. Sometimes, they would encourage them to take their unsecured debt and turn it into secured debt on their home, which we know the atrocity that that can be. And so what we did with the complex nature of the legislation is try to anticipate all of those things that were bad.

The single premium credit insurance industry lobbied so hard, and they tried so hard to explain how this was beneficial to a consumer. And I dared them to tell me, give me one instance, how this could be beneficial to a consumer when they can pay insurance like most people do every month. Not only are you going to make them pay it up front, but you're going to make them finance it and charge them a high interest rate. Those are the kinds of things that we would run into through this entire process, this, but at the end, we were able to get something that I thought, was not perfect, but certainly model legislation. In the meantime, other states wanted to get in on it. And some of them did, but then there was rising opposition across the country to this. And so North Carolina got in at the right time to protect our people, but the opposition to it, I guess that we can talk about it in a minute, made that more difficult for people in other states.

Edward Balleisen: You became Attorney General as you noted after the election in 2000, and then were charged with enforcing this new law. What kind of strategy did you develop for approaching that challenge? How did you think about the relative importance of monitoring market behavior, engaging in public education, and also bringing administrative or other legal enforcement actions in order to realize the promise of the law?

Roy Cooper: So, we had a tool that could help us stop a lot of the predatory practices that were occurring in the home mortgage market. And particularly, when we saw more and more finance companies getting into this business versus the hometown community bank, these finance companies were taking advantage of people right and left. They were national in scope. So one of the strategies that we thought was important was to pull attorneys general together. We'd seen it work with tobacco. And I think that the second big thing that attorneys general did after tobacco was the fight against predatory lending and bad loans and the eventual mortgage foreclosure crisis and everything that occurred during that decade or so. So we would band with other attorneys general. We all would take the consumer complaints that we would get in our office. We were working with advocates on the ground to warn people about these kinds of loans and really everything is in the legal documentation. You know, you close a loan, it’s a stack of papers that high, and it says, this is single premium credit insurance, and you don't have to buy it, and blah-blah-blah-blah-blah. But you know, people don't read all of those disclosures. So getting the word out on the ground that you really need to be with somebody that you trust. We eventually passed legislation that regulated mortgage brokers and then required them to have a fiduciary duty to the homeowner. Things that you think would be really simple, but they were hard to get, but they happened. I think the multi-state strategy was a good one. We had, trying to think of the loans, the cases that we had. We had the Associates, I think was the first one, Household Finance was one, AmeriQuest was one, Countrywide was one. We saw all of these abuses and we were able to get hundreds of millions of dollars back for consumers, but we were also able to send a strong message throughout the industry. And I think that was positive.

Edward Balleisen: In 2004, as you I'm sure, well remember, the Office of the Comptroller of the Currency [OCC] issued rules to preempt state banking regulations for reaching the activities of nationally chartered banks. How at all did your enforcement and litigation effort shift after the issuance of the OCC's preemption rules?

Roy Cooper: Ah. Chairman Hawke. I took a visit to [OCC] Chairman [John] Hawke. I got several of my fellow attorneys general to write letters to him. He had the strong belief that that this was his only choice, that federal preemption of the state anti-predatory lending laws was the only thing that he could do. Now it's interesting that the Federal Trade Commission took the exact opposite position, but the OCC was extraordinarily rigid about it. And it was frustrating. You sort of think about the classic study of federalism when you think about this. It's good to have a strong Federal Government when there's discrimination and peoples' State laws are being written to discriminate against people and to take away people's constitutional rights. That's important.

But in an area like consumer protection, States are, I know it's trite, but States are the laboratories of democracy. They can find and focus on problems much more quickly than the Federal Government. We know how slowly the Federal Government moves when there is a problem. And when it comes to consumer protection, the Federal Government should be a floor, not a ceiling. And the OCC was trying to preempt all of our laws. I mean, we challenged it. We continued our cases. I think it [preemption] did slow down the state actions that were occurring. I think Georgia passed a law modeled after ours. And it's funny how eventually the Federal Government, a decade later, passed laws that looked like ours, but it was frustrating when you know you had to fight the people who were doing wrong to consumers, in addition to the Federal Government. That was a very frustrating time for us, but we were still able to be successful in a number of our cases. We did get the message out that we were going to talk about you, if you were engaging in this kind of activity.

And it also led us to deal with other issues like payday lending. We had some of the same problems with payday lending.... We had a good usury law in North Carolina, and we said, no, your payday loans should have to comply with our usury laws. And you can't charge 400 percent interest to people on these short-term loans. We eventually drove them out, but it was like playing whack-a-mole, and they continued to use federal law and national bank charters and rent-a-charter, even, Native American tribes, they would try all kinds of ways to avoid our state laws. But at the end of the day, I think we were able to push them out for the most part and raise the level of awareness, which I think was good. And I think North Carolina came out of all of this better than a number of states because we were able to get in on the ground floor.

Edward Balleisen: I'd like to invite you to take a really macro view now, with respect to that process that culminated in the 2008 crisis. Over the last decade, we've seen a number of different narratives emerge to explain the financial crisis, to account for it, to provide a story that situates the crisis, gives some explanatory force to how we ended up with it. How do you understand what caused that global financial crisis?

Roy Cooper: Reckless greed. I think when these loans became less personalized, and there was a responsibility of the bank to service the loan, a responsibility of the homeowner to pay the loan, and that continued to work. That was a process that I think, for the most part, protected consumers. We always want to try to find ways to increase homeownership. And that's a sort of a different story, because you got into situations later on. There were a lot of things that were happening. People who really should not have been buying homes and did not have the credit, they were getting into the market. I think the credit rating agencies beared some responsibility for that. And we started taking action against them. But these loans became a commodity, and they bundled them up, and they sold them, and then repackaged them, and sold them again, and the credit ratings were still A and A+.

And anybody that knew anything about these individual loans would know that maybe the person didn't have good enough credit and probably wasn't going to pay it. Or the loan was predatory and was just dripping with fees that they [borrowers] could never afford to pay. And nobody's taking responsibility for all this. The piper has to be paid at the end of the day. And I think that's what happened. I think all of those things contributed. I'm no expert in this but seeing these loans and seeing the people that it affected, it also led to the foreclosure crisis because these mortgage servicers, the loans were passed from servicer to servicer to servicer, and they were completely irresponsible in how they moved to foreclose. So families were getting hurt on the front end and the back end. And it was great to be Attorney General at that time because we knew we could do something about it.

And we banded together during the foreclosure crisis to demand satisfaction for these consumers. Some of them were put out of their home unjustifiably and certainly not given enough notice to deal with it. But I do think reckless greed was at the heart of it. And you know, in the securitization markets, there may be some warning signs ahead. You've still got other kinds of loans out there, with car title loans and others that could potentially cause problems. But it was good, too, to be Attorney General coming out of the foreclosure crisis, because I got to take part in the formation of the Consumer Financial Protection Bureau. So on a federal level, now we have an entity that is charged with overseeing [consumer credit markets], and my friend, Rich Cordray of Ohio, who was the Attorney General, became the head of that.

Roy Cooper: And I worked closely with Elizabeth Warren who was working with President Obama. She knew she couldn't be [head of CFPB] it because she was too much of a lightning rod, but she worked closely with all of us. And I became President of the National Association of Attorneys General in 2010, 2011. And I had a conference. I'll send you the flyer for the conference. But we had everybody from Elizabeth Warren, Brian Moynihan, the CEO of Bank of America with people who had written books about the crisis to Federal Reserve Board members. It was a great conference. I think we entitled it “Emerging from the Financial Crisis and Protecting Consumers While We're Doing It” and trying to take the lessons that we learned from the beginning of predatory loans and all of the bad loans and the foreclosure crisis and the securitization and all of those things.

It led to things like Dodd-Frank and others I think, that were positive for our country, but it was quite an experience being a part of all of that. And I was very honored and humbled to work with tremendous public servants. We would sit hours and hours at a time with a number of us attorneys general on one side and the bankers and the finance company attorneys on the other. I would have Phil Lehman right behind me passing me notes. We would negotiate back and forth. We would meet in places like Chicago, central location.

It was an experience. And I the whole time I knew who I was fighting for. I knew that yeah, they [financial firms] created jobs and it's good, but they could look out for themselves. These consumers, these homeowners, who wanted a part of the American Dream, didn't have anybody who could help them really, except for us and the law. And we were able to write laws, put them in place, and use those laws to help protect them. And I think North Carolinians avoided some of the crisis that people in other states felt, because we had had the foresight to put these laws into place.

Edward Balleisen: You've just touched on this theme, but I wonder if we conclude by asking you, with an additional decade's worth of hindsight, what you see as the most important lessons from that crisis period for state level policy makers?

Roy Cooper: Don't be afraid to do what's right, to change the law, to protect consumers. You hear a lot from businesses across the country and most businesses, not only are they national, they're international, and still, you hear the complaint of how are we going to deal with the patchwork of 50 State laws? How do we do that? Well, you know how to do that. You know how to deal with a patchwork of laws all over the globe. I mean, you've got people who will handle that for you. Don't be afraid to, if you see a problem, step out and try to solve it, make sure you bring people to the table that have an interest in this. Because the collaborative process to lawmaking is critical, because nobody understands everything. And if you're an advocate for one position or the other, you're trying to push it one way or the other, but you need people coming together in a collaborative process to step out there and change the law in order to protect everyday people.

There's so many people living on the margins. The issue of affordable housing now is critical. And home ownership is just out of reach for some people. So, I think we have to look beyond home ownership to make sure that we can provide affordable housing to everyday people, even people in the middle class who live in some areas where the prospect of owning a home is something that isn't going to happen just because of the prices. So, I think not being afraid to change the law, even if your state is different from the others, because you can be an example, you can be a leader, like we were in predatory lending, and that we've got to continue to do things to help people who are living on the margins to make sure that they have affordable housing, healthcare, and a quality education.

Edward Balleisen: Governor, thank you so much.

Roy Cooper: I appreciate it, guys. I hope that helped. I'll be interested to see what you put out.

[END OF SESSION]