AMERICAN PREDATORY LENDING AND THE GLOBAL FINANCIAL CRISIS

ORAL HISTORY PROJECT

Interview with

Ed Boltz

Bass Connections

Duke University

2021

PREFACE

The following Oral History is the result of a recorded interview with Ed Boltz conducted by Neha Vangipurapu on March 3, 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: Patrick Rochelle
Interviewee: Ed Boltz
Interviewer: Neha Vangipurapu

Session: 1
Location: By Zoom
Date: March 3, 2021

Neha Vangipurapu: I'm Neha Vangipurapu, an undergraduate student from Duke University and a member of the Bass Connections American Predatory Lending and Global Financial Crisis team. It is Wednesday, March 3rd, 2021. I am speaking with Ed Boltz, a partner with the Law Offices of John T. Orcutt for an oral history interview. Mr. Boltz joins me via Zoom. Thank you for joining me today.

Ed Boltz: Thank you. I'm glad to be here.

Neha Vangipurapu: I'd like to start by establishing a bit about your background. So you attended the Washington University in St. Louis, and then later earned your Juris Doctorate from The George Washington University in Washington, DC. What led you to law school?

Ed Boltz: What led me to law school I guess was I find [systems] that you can argue through very interesting. And I wanted to be able to help people. And I found both of those in the law eventually.

Neha Vangipurapu: You joined the law firm Poe, Hoof & Reinhardt after graduating from law school. What kind of cases were you working on there early in your career?

Ed Boltz: ... I self-described, in retrospect, as sort of their garbage pail lawyer because I – it was a medium, small law firm. There were like six or eight other lawyers when they hired me. And I did all of the work that was related to what mostly they did but didn't want to do because it was not as profitable or as engaging. So I was the guy, the new man, low man on the totem pole who got a lot of the stuff that nobody else really wanted to do. ... I was there for about two years, then that's when that job ended and I left.

Neha Vangipurapu: You've been practicing law since 1996. And in the context of your work life, when and how did you first become involved with residential mortgages?

Ed Boltz: So my second job was working for -- was when I went to work for John Orcutt and doing bankruptcy work and consumer bankruptcy work. And the biggest chunk of that is dealing with people's mortgages because here in North Carolina that's one of the prime reasons people file bankruptcy is when they fall behind or are having problems with their mortgages. So that's when I started to get involved, you know, in late '98 through '99 ... [I was] representing people and trying to ... help them keep their homes.

Neha Vangipurapu: So did you notice any rise in residential mortgage cases in bankruptcy cases just in the numbers that you were seeing leading up to the '08 crisis?

Ed Boltz: Probably starting around 2004-05 is when we started to see more and more ... mortgages, not just first mortgages, but that's when we started to see a lot of... second mortgages. ... And then even third and more mortgages. ... I think I had one client who filed a bankruptcy and had five mortgages against their house, which was increasingly silly, right? ... Like what are these lenders doing? They're so far down the road in terms of ever getting paid. But then we also started to see a lot, when people would refinance. So mostly here in North Carolina when you buy your home and get your original mortgage, you do that -- there's a closing with an attorney. But when you refinance those often don't -- usually don't have an attorney involved doing the title work because they assume that since you already own the house, the liens are cleaner and things like that.

And so we started to see a lot more through 2004, 2005, and 2006. People who were refinancing their house, taking cash out to -- for various purposes. But those mortgages were really sloppy. ... It got to the point, particularly -- the worst one always was Countrywide Mortgage, where if we saw it was a Countrywide Mortgage, we would end up doing a title search and more -- very frequently we would find out that the documents weren't recorded correctly. They were in the wrong county. They were just -- they described the wrong house. ... All of the details that are important in title work for a lawyer to be able to say, all right, there's a lien on this house. Mortgage companies were just [overlooking the details] because they were going so quick and they just didn't care.

And [they] were flipping them into the securitization trust and such... it was just a mess. And so we were seeing more and more of those, with people filing bankruptcy, falling behind. .... With the junior mortgages, the second and third mortgages and stuff, we could get rid of those in almost every single bankruptcy case we were filing ... after the housing crash. It was the first mortgages where people had a house that was worth $150,000, but they owed $250,000 for it. That's where we were stymied and not able to really give them all the help that we could, that we wanted to.

Neha Vangipurapu: So were there any residential foreclosure cases in the late 1990s or early 2000 that you worked on before the financial crisis that stand out in your mind?

Ed Boltz: ... One, I was still a baby lawyer, so, you know, I [was] just ... treading water to keep my head up, right? And for the most part, it was – people fell behind on their mortgage ... So we had to catch -- the goal was to catch them up through the bankruptcy case. And back then, there was a very clear presumption among the, particularly among the bankruptcy judges and the -- also the trustees in bankruptcy -- that everything that the mortgage company said was almost certainly a hundred percent true in the early 2000s. ...You could take it to the bank, right? Because they were the bank.

Why would they lie? Why would they lie about any of these things? It was over the next decade and through the biggest recession since the Great Depression that finally the trustees and the judges started to -- at first, we would sit there and say, here's a problem. They're like, "Oh, your clients just, they're not [responsible]... the homeowner made the mistakes. And it was their fault." Over that ten-year period and this huge crash is when the bankruptcy system and the court started -- particularly the bankruptcy system I think more than the state courts even -- started to realize, "Oh, wait, the mortgage companies are themselves doing a lot of things wrong, incorrect. They're not doing accounting. They're just churning people and eating up equity with fees and things like that. So that's what sort of the progression we saw over a ten-year stretch from they were honest [and] everybody believed them to be honest to everybody knew that they were troubled at best.

Neha Vangipurapu: Were there any pieces of legislation that you can recall that maybe helped mitigate that in that period...?

Ed Boltz: So the anti-predatory lending [law] did help a fair bit. And that's why I think North Carolina was not hit quite as hard as a lot of other states. ... [T]hroughout the early 2000s, I became involved with the National Association of Consumer Bankruptcy Attorneys. And then I joined the Board of Directors of that. I think in 2006 is when I was elected. But through that, I got to know a lot of people around the country, other bankruptcy attorneys and what they were going through. Other places like California, Arizona, particularly Florida ... their situation was much worse because there [were] no limitations really on what people could borrow using their house as an ATM. ...So that did help. It wasn't a perfect solution because it only had -- federalism limits what a state can do to restrict mortgages under the National Banking Act and all that nonsense.

So really the biggest and the closest we came was ... after 2008, particularly with the election of President Obama, there was a push through Congress on a federal level to allow mortgages to be modified in chapter 13 bankruptcy, which means you could pay over an extended period of time, the value of your house, regardless of what you owed on it. The example I gave before of where you owe $250,000 on $150,000 house. You could do -- it's called cram down. You could cram it down to that value and … basically force the mortgage company ... to take a rewritten mortgage loan. And corporations can do that in chapter 11 in their bankruptcies when they file all the time. But consumers aren't allowed to do that. There was a big push to do that. It passed the House of Representatives with a pretty resounding majority.

But then the Secretary of Treasury, Timothy Geithner said that he didn't think it was really important to do that. And it died in the Senate. It died a very near close death in the Senate because Mr. Geithner wanted to go -- came from Wall Street and he protected Wall Street over Main Street. ... That would have been a huge, [it] would have really mitigated a lot of the -- in 2010, [it] still would have done a lot of good to help people save their home by being able to basically rewrite their mortgages so that they could afford them.

Neha Vangipurapu: So going back a little bit I know you mentioned chapter 13 and chapter 11 bankruptcy cases. But could you briefly describe the difference between a chapter seven and a chapter 13 bankruptcy case?

Ed Boltz: Sure. I'll hit all five of the real bankruptcies that there are. Some of them you don't care about very much. So there's Chapter 9, which is for government entities and municipalities. The most famous one is Detroit, [which] filed a Chapter 9 bankruptcy. Then there's Chapter 12, which is for farmers and family fishermen. ... There are some of those cases, but they're not very common. Chapter 11 is generally for corporate bankruptcies and also for the formerly wealthy. Individuals can file that, but it's much more expensive. So the main two kinds of bankruptcies that people file – regular folks file are Chapter 7 and Chapter 13. What a Chapter 7 does is it gets rid of most all of your debts. ... So it gets rid of your credit cards and medical debt that you might have.

... It gets rid of your personal obligation to pay on a mortgage note. But it doesn't give you a free house, right? If you want to keep your house, you still have to pay for your house. And if you're behind on your house payment, a Chapter 7 doesn't do anything to help you get caught up. You're still behind, and you'll still face foreclosure once the bankruptcy is over and the Chapter 7 bankruptcy lasts only five or six months at the most. It's largely a bureaucratic churning of the wheels until you get done kind of thing. The one thing it doesn't get rid of unfortunately is student loans. But that's a different, that's a different oral history that somebody will do in 10 years about that nightmare.

Chapter 13 on the other hand is a reorganization. So it also gets rid of your credit cards and your medical bills. But it lets you ... propose a plan that can last usually up to five years where you can get caught up on things. If you're behind on your mortgage, you can get caught up on that. ... You can get caught up on a car payment, you can deal with junior mortgages, second mortgages and stuff such like that by the what we call strip off, which means that if there's no equity in your house above what you owe on your first mortgage, you can get rid of the second and third mortgages there. ...[From] like 2006 through 2012, we did a lot of Chapter 13s. It was largely because people would have a junior mortgage that sometimes would be $50,000 [or] $70,000 on their second mortgage that we could get rid of for them. So that would be a huge, huge savings for them and allow them to keep their house. ... It's a much more involved bankruptcy than a Chapter 7 because [it] is a quick in and out and gets rid of some debts, but not -- but if you want to keep your house, you've got to pay for it still, obviously.

Neha Vangipurapu: So were you seeing more Chapter 7s ... before 2006?

Ed Boltz: It depends. ... I think as the housing crisis worked its way through, we started to see -- we actually would start to see more. At first, people were trying harder to save their homes. But as sort of reality crept in on them that there was no way to get – to fix the problem and keep the house. A lot of times they then choose to file a Chapter 7 and just walk away. Especially because when dealing with houses, ... the example I gave before of that person who had ... a house worth a

$150,000, but they owed $250,000 on the first mortgage. From a cold economic point of view, keeping that house makes no sense at all because you're paying for a house that's -- you're paying for a house that's worth $250,000, but you're only living in a house that's a $150,000 house.

So more and more people would eventually -- [people] started to realize why don't I just walk away from this? I'll let this house go and buy another house. ... To generalize people of color were much less likely to walk away from their houses in large part because ... there's a fear that this is the house that I have. And if I don't keep this house, I'll never get another bite at the American dream kind of thing. ... Middle-class folks, particularly white middle-class folks, are more likely to say, "You know what. I'll let this house go. In another two or three years, I'll buy another house."

Truthfully, that was most often accurate. Especially as the housing crisis started to work its way through. So I would see a lot of people who would be struggling to save these houses and the reason for that, the other reason for that is that there's what I call emotional equity in homes. The house is worth $150,000 cash. But this is where, particularly when this was your mother's home ... where you grew up and where your kids have lived their whole lives. ... You got to keep that house, so they'll stay in their high school so that they don't hate you for the rest of your life for making them move [their] senior year and things like that. ... What we would [also see] a lot of times is people struggling to save a house that made no financial sense, but it made complete emotional sense. And that was part of the problem we'd have to deal with.

Neha Vangipurapu: So how did you decide to take on certain cases with your law firm? And was there like a specific legal strategy that you used in fighting these abusive mortgage lending cases?

Ed Boltz: ... In terms of dealing with a mortgage ... if we could hope to put somebody into a feasible Chapter 13 plan that they might be able to perform under, that was the first cut. Always the hardest thing is the person who lost a job, has no income at all, but is struggling to save their house. There's very little I can do for that person with a bankruptcy in the first place, because ... there's not a long-term solution there. One of the things we always, I always tell people is bankruptcy doesn't fix poverty. It fixes debt. So somebody who has no income or is just poor, I can't -- it's harder to help that person. And putting them in a Chapter 13 bankruptcy and having them struggle makes very little sense if there's no hope that it's going to succeed at all.

But on top of that, ... in terms of looking at cases, we'd be looking at: Alright, is there something we can do to make this work? ... One of the things that was really surprisingly common was – so here in Durham, where I live and you're somewhere down the street from me probably in Durham also. But there are people who have a Durham mailing address, but their house is in Orange County. And there's people who have a Chapel Hill mailing address, but their house is in Durham County or even Chatham County sometimes. There's a corner down there in the South, Southwest. And a lot of times we see mortgage companies where they just filed the documents in the wrong county because they're like, "Oh, if it's Durham, it's Durham." And those cases, we'd be more willing to do more litigation on because the upside of success is that they might not have a mortgage against their house.

And so then we're able to force a modification of that case. And that's -- what we would then also see and have a lot of litigation on … is after the bankruptcy case was over because the way – a Chapter 13 works is during that three to five-year period of time that you're in the bankruptcy, you're making a monthly payment to the trustee that includes your ongoing mortgage payment and the amount necessary to get caught up on your mortgage. And we started to see this through 2007-08 because [of] the sloppiness of the mortgage companies, people would finish their bankruptcies. And six months later, they'd call me up saying, "Ocwen [Loan Servicing] says I'm $7,000 behind on my mortgage. I haven't missed a payment since I was done." And we'd end up in a lot of litigation over that because the mortgage companies would have all of these secret and hidden charges that would be lurking for people.

So that they'd get done. It always seemed it would be six months because it was as if they had a rule, people will forget their lawyers after six months, and then we can start to get them. ...We started to see a lot of litigation around that, and that's why and we weren't alone. This was a nationwide problem that people were seeing this. And that's why around 2010 and 2011, the National Bankruptcy Rules Committee, which sets the rules that go along with the bankruptcy laws, started coming out with rules making the mortgage companies disclose these fees that they might assert. And at the end of a bankruptcy case, agree or disagree that as of March 3rd, this person is current on their mortgage. And if they disagreed, then they'd have to say that then while there was still a court who could decide what was true or not. And so that was a change that came out of the housing crash through the bankruptcy system so that we are able to know these problems before they get there and fix them one way or another. So that's another kind of litigation we started to see, and then this has helped us. The law, the rules have changed so that we're better able to help folks that way.

Neha Vangipurapu: So moving forward in your career a bit, how did you become involved with the National Association of Consumer Bankruptcy Attorneys?

Ed Boltz: So I went to my first conference for NACBA … less than a year after I was hired. So in the spring of '99. I think it was in San Francisco. And I've been to everyone except for, I didn't go in 2020 because we had to cancel it because of intervening events. But that's the smallest of tragedies from COVID I think. And so I started going to this. My now partner, but then boss, John Orcutt was -- had been going to NACBA conferences for three or four years before that. And it is a great place. That's how I got to know people like Max Gardner because even though we're in the same state, he's out in Shelby in the mountains and particularly back then when the internet was nothing like it is now, email. People didn't, you didn't get out beyond your little area very far.

And so it's there that I met people like Max Gardner. Billy Brewer, who proceeded me as President of NACBA, is in Raleigh and is another one of the most fantastic bankruptcy attorneys. ... So that's how I got involved that way by going to the conferences. And then I started going to the Capitol Hill days that we'd have every year where we'd go up to DC to lobby against the bankruptcy law. First, it was to lobby against the bankruptcy law changes that finally went into effect in 2005. It took about eight years. So I started going in 2000, 2001. So four or five years of that. And then I got elected to the board because I was encouraged by folks. "Hey, you've been doing a lot. You should join. You should run for election." So I was fortunate and won.

Neha Vangipurapu: So in the years leading up to the crisis, what legislative proposals and policies was NACBA focused on advocating for based on some of the challenges that consumers were facing?

Ed Boltz: ... The main one was through a defeat in the Senate, was the ... Judicial Mortgage Modification bill. And I don't remember the bill numbers for that, obviously because it was a decade ago. But it would have allowed ... Chapter 13 to change the terms of the mortgage. To write down the principal, to re-amortize it, do things like that, so that you could get an affordable mortgage.... At the same time, we were also trying to work for administrative law changes through the Obama administration because … two thirds of all mortgages are Fannie and Freddie or VA [Veterans Affairs],... The government stands behind them one way or another. And so it can dictate and we were trying to get ... Mel Watt, who was the head of the FHFA [Federal Housing Finance Agency] after he'd been [in] Congress … to get them to take more helpful approaches. Once that died ... and instead we got like the HAMP [Home Affordable Modification] program, those modification programs, which were not great. But especially at the beginning, they specifically said, "Oh, but if you're in bankruptcy, you can't participate in these HAMP programs, which ... we started screaming about that right away because it made zero sense at all. So the person who is the most in need and has the most debt problems, you're just excluding because why? ... And their answer at that point was, "Well, because bankruptcy makes it more complicated." And we're like, then deal [with it]. You've got judges for this very reason. Deal with it.

... Once the Treasury Department did change that rule to allow people who were in Chapter 13 to get loan mods [modifications], that's when we started pushing to get loan modification programs ... throughout the country. ... In all three districts here in North Carolina, it took a while because what we found with the HAMP program was I think, and you probably – I'm sure you've heard this a thousand times – is it was a nightmare. ... People trying to navigate it on their own could get nowhere, but it was also not set up for me as their attorney to get anywhere any better for them because I would call into the same telephone tree that they did. There was no way to -- so that's one of the things that eventually bankruptcy courts starting around 2012, and then they adopted it here in North Carolina in 2018 finally is when they adopted [it]. It is a mortgage modification program so there was some court supervision. ... We can't force people to do anything, but we can force them to be transparent. And that's been a pretty big help. It could be bigger, but it's [a] pretty big help.

Neha Vangipurapu: So I'm thinking of the 2005 Bankruptcy Reform Act. And I'm wondering what was your and what was NACBA's position on this law?

Ed Boltz: Yeah. So we pretty much fought it as hard as we could because it was -- I don't think anybody even minced words that it was an anti-consumer bill. It was meant to make bankruptcy harder. It was meant to make it harder for people to file Chapter 7 and more expensive for people to file Chapter 13 by adding just a lot of burdens and hoops to jump through. So that first, I think was first introduced in Congress in 1998. And it managed to not be passed through a series of tragedies and miracles. ... It was going to be voted on September 12th before the planes hit the towers. And so obviously Congress ... moved on for a little while from 2001. There was once a big snow storm in D.C. that shutdown the entire city for a week.

And so the bill got pushed ... Hillary Clinton convinced Bill Clinton to veto it one time after talking to Elizabeth Warren before they became unfriends and then became friends again. And it finally passed in 2005 and became effective in October ... in 2005. And so that really -- at first, the concern was that that was really going to clamp down and eliminate bankruptcy completely. I think one of the things that everybody involved in NACBA was proudest of is that we as consumer attorneys worked very hard to teach each other and dissect this law and find ways to make it still work for people. And in many cases, the intended result was the opposite came out. So in some ways, consumers benefited from that law by accident because the truth is, it was really -- and this was surprising, but ... it wasn't terribly surprising because then Senator Biden was one of the managers of the bill because even though he was a Democrat, he was from -- he was the Senator from Delaware, which at the time was a home of a lot of credit card companies.

And it's still the center for corporate bankruptcies. And so he was very, he took a somewhat dim view of consumers filing bankruptcies, and that came out through the ... 2020 election. It was an issue. ... Elizabeth Warren kept raising that as one of the things against him. So that's what we worked against. ... It was one of the worst written pieces of legislation ever. And I'm not saying that as to the goal of it because there were worse things that we've done in this country than that. ... But it was just sloppily written. Like there are sections that have triple negatives. That you have to sit there and diagram out to figure out what does, what might this piece of legislation mean?

... They'd come up with a new term in statutory interpretation called hanging paragraphs because normally, I don't know how often you look at statutes, but normally ... section 1325, "A," Roman numeral one. This would just have sections of the law that had no number attached to it at all. So we would have to call it the hanging paragraph of section 1325 because – and it was just an example of how poorly it was written, which worked to the consumer's favor because we were able to poke holes in those sorts of things in a lot of ways. So in some ways people came out okay from ... the law because they paid some creditors less. Car creditors got paid more. Mortgage companies, it was a wash for, for the most part. They were about the same as they were before.

Neha Vangipurapu: So I know you mentioned that in some ways this was a positive [change] for your clients. But were there any -- what were the ways that it impacted your clients negatively? Did it make it any more difficult for you to advocate on their behalf in bankruptcy or [raise] abuse in mortgage lending cases?

Ed Boltz: Yeah. The way it was successful in making bankruptcy harder was particularly just a lot of procedural and structural hurdles. Just the amount of documentation that people have to present that ... nobody wants to see from every single debtor four years of their tax returns, because what does it matter what their income was in 2016? Well, it was based on this lie that people were intentionally depressing their income for four years in order to be able to file bankruptcy and escape their bills. Which makes no sense, like who would do that? Who would avoid paying their bills, earning less money for four years so that they could stop later paying their bills? That seems like a lot of suffering and work intentionally to not pay.

... And that just raised the cost and the burdens of filing the bankruptcy. So you just, people now have to go through a credit counseling course, which is an hour long internet session where you have to stay awake so that you can type a code word in the middle so that they know you're still there kind of thing. ... What are you going to learn about financial literacy in one hour while – nothing, is what study after study has shown. So that's sort of where we've [ended up]. It's things like that that have made it more difficult, more burdensome. We have ... a bunch of really onerous extras that really don't benefit anyone, doesn't deter anyone in the long run if they want to push through, but … they end up paying me more money because I have to do more work for them for the same result, which [frustrates] some people.

Neha Vangipurapu: ... How effective were voluntary modifications in preventing bankruptcy cases?

Ed Boltz: Not, not terribly [effective] because ... this is a bit of selection bias, obviously, because I would only see the people who didn't get loan modifications. But I saw a ton of people who didn't get loan modifications, and their story was always the same. Over and over again that they produced -- they'd call up Bank of America and they'd be told to provide these documents and they [would] provide those documents. But then the person who they were working with quit because they couldn't take it any longer, taking people's houses away. And the new person would start up, but it'd take them three weeks to get around. And they'd say, "Oh, your tax returns are no good. Your pay stubs are no good anymore. We need newer pay stubs." And you get the new pay stubs. And they say, "Oh, we didn't get those."

And I'm not saying it wasn't a large portion of the time my client's fault too that they didn't understand what they were supposed to provide because they were asked, they were being asked to basically justify rewriting a complicated financial instrument. But it was also the mortgage companies [who] ... put very few resources into their loan modification teams because there was nobody requiring them to until really, until it started to work its way out. And the CFPB [Consumer Financial Protection Bureau] started to put greater oversight on them particularly once Dodd-Frank passed and Rich Cordray got in there.

Neha Vangipurapu: So what were some of the hurdles that you found that your clients were facing in receiving these modifications? And were there any like strategies that you found lenders using to kind of get out of providing these modifications for the borrowers?

Ed Boltz: Yeah ... one of the biggest hurdles was, like I said, was just the producing [of] documents over [and] getting them to the right person on the right day and the right timeframe required a lot of getting it together yourself. But then they'd also -- a lot of times it was, you need to hit the right sweet spot in terms of, alright, your income is high enough to justify that you can show that you'll be able to afford this modification once we give it to you, but not so high that they could say, "Oh, you don't need the modification." ... And also that the modification would be big enough to justify doing the work because why lower somebody's mortgage payment by $15 a month?

That's not going to help them. But not so big that the mortgage company feels like they're losing their shirt. So it was all of these sort of trying to thread the needle that was really difficult for a lot of people. And then sometimes it would just be absurdities because the Treasury Department under HAMP would, among other things, they would require the debtors to submit a hardship letter to say what their hardship was. And so, this was, this is a completely subjective thing, and it was totally insane and random what they would agree to. Because sometimes people would just be like, "I was out of work sick for two weeks." Good enough. But then I had another client who they said that their 19-year old son was killed in a car accident and that set them back and the mortgage company is like, "Well, but you weren't depending on your son for income, so how did that really harm you when he died?”

... I couldn't believe the inhumanity of that. ... Especially like just the cost of burying their son is something. I was like, "How about let's go with that?" And they're like, "No, we just don't see that he was an income producing member of the household. So his death isn't really relevant." And nobody was forcing them to say that. So it was things like that that were often the worst. And really part of what was terrible about the loan modification process also is maybe a little counterintuitive, but the mortgage companies often did not give very clear reasons for saying no. And they would give very, very cloudy reasons, which would leave my clients with this idea of, "Well, maybe if I just do, tweak this a little bit, I'll be able to get a mortgage modification and save my home." And really the servicer was saying, "No way, never going to happen, give up." But they wouldn't say that out loud. And so, once we started to have the programs where I could be involved and we could have, if we needed to have a conference where they have a representative and I'm there, and they could say, "This is never going to happen." Sometimes killing off hope was what my clients needed so that they could move on. Because they'd sit there and they'd be like, "Oh, well maybe if I get – my boss says, I'm probably going to get a dollar an hour raise in June. So maybe then I'll be able to get the loan mod when I'm making $40 more a week." Nope. That's not [right], but they have hope and hope can be, you know, it's a false hope.

And so sometimes, that was one of the worst things that we'd see is people just would have this dream that they'd be able to hold [onto their house]. They were too desperate. And a lot of times what we'd see through a bankruptcy ... would be a controlled crash, where they'd start out trying to save the home. And then we'd try to get a loan, and they couldn't afford that. And then we'd try to get a loan mod and they wouldn't be able to get that. And maybe after a year or three of further struggle, they'd say, "Alright ... could I just walk away from my house and start over?" And we'd say, "Yeah, great. That's probably the right choice." And over and over, those clients would say, "You know, I probably should have done this two years ago." And I said, "Oh yeah, you remember I told you to just file a Chapter 7 and walk away." And they're like, "Yeah, you did. But I wasn't ready to hear that." So that's part of what ... People want to go down after giving it their best fight too.

Neha Vangipurapu: So in your experience, did a greater proportion of these sorts of loan modification cases not ... [was] there a greater proportion that wasn't granted a loan modification than was [granted a loan modification]?

Ed Boltz: Yeah. More people would not get them. It was a pretty low ... because if they were in a bankruptcy and trying to get a loan modification, even before there was a program where I could engage, because like I said, without some sort of program, I was really no better than [my client at getting a loan modification], even with my fancy law degrees and everything. And there was nothing more I could do for them. Like I would call the same 800 number and sit on hold the same hour and a half to get through to the same disinterested bored mortgage servicer clerk who didn't care [as much] as they did. So I -- there was no real way for me to [help]. That was not a cost effective way for me to help them.

But even then, even once they would get a loan mod, they would say, "Oh, I'm trying to get a loan mod, Mr. Boltz. I'm trying to get a loan mod." And maybe one in four would actually be able to get a loan modification in those cases. And we would see those because we would then be able to go to the bankruptcy court and say, "Alright. We don't have to pay this arrearage any longer. We can fix their plan and get approval for this by the bankruptcy court. ... And that was also very important for a lot of the clients to have that sort of backstop because a lot of times the loan mod's they'd be offered would be terrible. They'd be even worse than what they were getting out of the Chapter 13 already, or they wouldn't understand them because a very common way to do a loan mod.

And this isn't necessarily bad. It's just, you need to know it. [It] is that, "Alright, you're $25,000 behind on your house. We're going to take that and put it at the end of your mortgage. And there's going to be interest on it. And in another 22 years, when your mortgage comes due, you're going to have a balloon payment probably of about $50,000. And that might be fine because hopefully you have plenty of equity in your house and you can refinance and be okay. But you need to know that ahead of time. And the mortgage servicers were not always interested in explaining these solutions because their goal was -- they didn't care about the homeowner, their goal was to get it off their desk. And move on … - because they have 10,000 more to deal with behind it. So I think back when we were seeing this, particularly in '10, '11, '12, '13, it was probably maybe one in four people would get a loan mod.

And I had no way of guessing who those would be always because it seemed almost random who would get them both because of their -- some people would suddenly get all their ducks in a row and get all their documents in no problem. And other people who I thought were professionals themselves one way or another, just couldn't get that done. But it was also, you could never tell whether – who was it? There was Ocwen ... the mortgage servicers back then sucked. They'd give people some and say -- it was very arbitrary, which was part of what was frustrating to everybody involved [because] you couldn't predict.

Neha Vangipurapu: So in your experience, did you see that there was any impact on, of loan modification programs on the number of Chapter 13 bankruptcy cases you were seeing...?

Ed Boltz: Well, I think some of the things did help a lot, and they also helped in the states. So for example, after there was a National Mortgage Settlement where all the servicers had to pay money in. And I think the head of -- Joe Smith was the North Carolina monitor of that at the time. That was, those were very helpful, especially because that was another example of that program at first said, "Oh, if you're in bankruptcy, we won't help you." And we said, "Well, why won't you help these [people]?" They had to stop their foreclosure so that they could keep their house before, to buy the time to talk to you to get all [this straightened out]. And so we were fortunately able to get them to -- there's ... always a prejudice. "Oh, you must be a bad person if you file bankruptcy. So, we don't want to help you." ... And that was until, when did that program run out? Sometime around 2017 or '18 I think is when the money finally ran out on that. That was a tremendous help for a lot of our clients, particularly lower income folks because they could get what? Up to a year worth of their mortgage payments caught up through that forgivable silent second mortgage. So that was a very helpful program for a lot of people. The other ones were often as frustrating as they were helpful because, like I said, some people would get them and other people wouldn't. And then they ... they'd say, "Well, why didn't I, why couldn't I get a loan mod?"

I wouldn't have an answer for them back then. I think that's where we are now, that we have these programs and particularly where we are after 2020 with COVID…. I was just reading something from the CFPB [Consumer Financial Protection Bureau] about how there's 300,000 people who are more than 90 days delinquent on their homes. More -- 300,000 more than there was a year ago, which was already pretty high. They're just sort of hiding behind the foreclosure moratoriums that are in place right now. I think having these programs are going to help a lot, and that's what I've heard from my colleagues and friends who represent mortgage companies is that they also know that there's a bunch of people who are just behind and sort of everybody's sticking their head in the sand about what to do about them like an ostrich right now.

Neha Vangipurapu: So the 2009 Helping Families Save Their Homes Act. Did you notice that there were any impacts from that on bankruptcy cases specifically? I know that it extended eligibility for a Chapter 13 bankruptcy. So did you see any positive impacts [from] that legislation?

Ed Boltz: So those helped a little bit, but less so here in North Carolina. The main thing is that that helps with debt -- in Chapter 13, you have to be an individual and you have to have less than a certain amount of debt. And particularly in places with very high housing costs like California, Boston, New York. Places like that. A $350,000 house here in North Carolina is a very nice house. A $350,000 house in San Francisco or San Jose doesn't exist I think. I don't think it exists. I think even a one bedroom. Like every once in a while you see like the articles about comparing houses between – a one bedroom cinderblock house in San Jose is like a $650,000 [house]. It's insane. So I think that had less impact here in North Carolina, but I think that did help, but they nibbled around the edges. Those were small changes to the bankruptcy code, not anything hugely substantive.

Neha Vangipurapu: So going back to your law practice. Your practice is based out of Durham, North Carolina in the middle district. Do you know if there were any neighborhoods or areas of the Research Triangle that were most impacted by the mortgage crisis in the mid-2000s?

Ed Boltz: Yeah, my firm is in both the middle -- we have offices in Raleigh, Durham. I don't -- during the housing crisis towards the end is when we opened a Greensboro office. So we weren't very much out that direction. We have offices down in Fayetteville and out in Rocky Mount-Wilson area, [we] have an office there too. ... I think the thing that was fairly unique about the housing crisis is that ... it was everywhere. So it penetrates. Where most of the time recessions hit the hardest at people on the bottom of the economic ladder. This one hit – made its way fairly far up that. So people in middle-class suburban areas whether South Durham, Cary, the more bedroom communities. Even in Chapel Hill. [People] were facing these problems with being underwater on mortgages, being delinquent when they – and a lot of times, in truth, a lot of times, those were much more difficult clients to help with because a lot of times people who have been economically marginalized, they're more resilient in that regard because they're used to being beaten up by banks and mistreated and things like that. When privilege is taken away, people whine a whole lot more.

Those were often very difficult clients to deal with who were formerly very comfortable and upper-middle-class, and now they're struggling because they went from ... two incomes in the household to one, or somebody lost their job and had to downsize in terms of their job, but they're still trying to maintain the same lifestyle that they had. So we saw that ... through 2012, '13. It was pretty well spread throughout our area. We would see people of all economic levels, all races and colors and things like that. So that was, it was somewhat different than a lot of times you see.

Neha Vangipurapu: And before the crisis, were you dealing with mostly people from economically marginalized communities?

Ed Boltz: ... The standard line, which is accurate is that the three main causes of bankruptcy are: job loss, sickness -- medical illness, and divorce. And so that's what we would see most mostly. And again when middle-class folks get sick, they might, they can last longer than people who are working minimum wage jobs, obviously, because their savings are going to be better. The more generational wealth you have to call on, when you can borrow from your mom or dad or grandparents to make it through a rough patch, [it] is easier. So that's one of the reasons why I think -- but prior to the economic crisis, and then since then, since 2013 or so until [recently] where 2020 is even more so in that because the virus is no respecter of anything.

... Your race is irrelevant. ... Your wealth is irrelevant, you might get [it]. None of those matter. We're like now in sort of a super version of that. And people who, a year ago, everything was wonderful. Like everything was ticking. The economy was great, their job. There's people now who've lost their businesses because they had to shut down for six months. And there was no way, there was no way to prepare for that. So I think we're now seeing something like, sort of like the housing crash and that crisis on steroids a little bit because it's everywhere ... Until now that crash was unique in that every -- more people got hit farther up on the economic ladder. This time it's everybody's been hit, I think, unless you're Jeff Bezos or something like that. You're fine. Amazon has done well.

Neha Vangipurapu: So did it surprise you when you started to see more cases of middle-class suburban people being impacted by bankruptcy and mortgage lending cases? Did it maybe point you into thinking something about a mortgage crisis coming up?

Ed Boltz: Yeah. And I've joked a long time. Like if I would have, if I would have been smarter, I could've sold short on Countrywide because I knew in 2004 that this company cannot last because of the loans they're making. And I would not, I would not be sitting here with you right now. I'd be on my own beach. And I'd, with my man servant bringing me a mai tai or something like that because I think that was something fairly common in the bankruptcy world. We saw that these mortgages were just getting out of hand. Like there was no basis in reality, ... all of the Ninja [No Income No Job No Asset] loans. The no income, no asset, no justification. ... No one could understand how a 68-year old person on $1,500 of social security just bought a half a million dollar house. Like who justifies that?

I think it was things like that that we sort of started to see coming. And then a lot of the things,... like all of the things with robo-signing. ... played out first ... first in the bankruptcy courts because there's so much more documentation that gets filed on these sorts of things. And we started to see that there was no way, they were just making up numbers on a lot of ... the mortgages and just hoping, throwing darts at a wall to pick.

Neha Vangipurapu: ... Do you see any long-term impacts of the financial crisis on North Carolina? And in the city of Durham in particular ... how has the North Carolina mortgage market changed since the financial crisis?

Ed Boltz: Well, I think banks got much, much more restrictive on lending. And then there was also a lot of consolidation, like we saw with ... or their own bankruptcies too. ... Bank of America, I think it was Bank of America was basically twisted -- had its arm twisted into buying Countrywide. All of the consolidations that led to Wells Fargo between it and -- was it Wachovia? I think that they merged with Wells Fargo and Bank of America gobbling up NationsBank ... And now BB&T and SunTrust. So we've seen a real consolidation and also much tighter, much more, for a while tighter lending standards. So it was harder for people to buy houses, which isn't necessarily a bad thing.

If there's other housing alternatives that are, that are reasonable, because you don't necessarily need to buy a house your first job straight out of college because you don't ...want to buy a house if you're not going to live there for at least five years, probably 10 years is reasonable. But we used to see people just buying houses willy nilly. So I think that's not necessarily bad, but it's been harder. And it's also, you know, in hotter housing markets, like Durham has definitely been for the last until again -- but even now it's still a pretty hot housing market because everybody's realizing they can move to, they can live in the Research Triangle much cheaper than they can in San Jose or San Francisco, and they can telecommute.

And they can be at work early because if they go to work at nine o'clock here, it's still six o'clock in California. So they're the hardest working person at their business now. ... I think that is in a way driven a lot of the rental and eviction problems that we're seeing more and more in the Triangle. [The problem] is that it's been harder to buy houses and your protections, if you own a house, your protections for keeping that house are greater than if you're renting it. Whether it's through loan modifications or foreclosure mitigations or bankruptcy, or any of those things, homeowners -- let alone taxes. You get so much better treatment by, in your taxes if you own a house than if you rent a house. So, but I think that tightening has really been a small, a facet of where we are with a lot of people having problems with rent right now.

Neha Vangipurapu: So just two quick concluding questions that we ask. The first one is: 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?

Ed Boltz: ... He didn't say it in regard to this, but I think it was the irrational exuberance. It was -- Alan Greenspan said that in the '90s about the stock market, but I think it's what really there was, is that going up ... People, everyone, whether it was homeowners or lenders or the federal government all believed that housing prices can only go up and that they'll just go up and up and up and up and up. And so if I take out a loan that's unreasonable today, well, in a year or two, it will be okay because now I'll have the equity to justify this. And my income is just going to go up and up and up. And so people borrowed to buy houses or against their houses in ways that were irrational and lenders were more than happy to do that.

And that led to a lot of irresponsible choices on all sides, including the federal government in making it easier and easier to guarantee loans without any safeguards or protections or making sure that they were good or what to do with those built into the mortgages ahead of time when they went bad. And then when they did, it sort of was a cascade. Once housing prices started to fall, they were falling for everyone. And that was sort of the flaw, and ... the worst thing that came out of the whole housing crisis was the Tea Party. Because when ... Timothy Geithner's goal of helping Wall Street but not Main Street, became apparent to everyone, that's when a lot of people realized that government isn't going to help me.

So I don't want them to help anybody. And the problem that causes that -- just like I want my neighbor's house, if it catches on fire, I want the fire department to put it out even if they were irresponsible and smoking in bed because if their house burns down, it might catch my house on fire, but it's at least going to be a smoking ruin next to mine and ruin my property values. People didn't realize that same thing was true with mortgage foreclosures, that you want your neighbor to keep their house because it helps you keep your house. And so,...even the responsible people were irresponsible in their unkindness that way. So I think we saw a lot, a fairly universal level of irresponsibility across the country. [That's my] explanation.

Neha Vangipurapu: So looking back on the crisis over a decade later, what do you see as its most important lesson for a state level policy maker?

Ed Boltz: Well, I think that for the state it's that they need to, they need to do more and really to build into the foreclosure process more protections and off-ramps, ways to prevent that foreclosure. Because North Carolina has a pretty restrictive foreclosure system here in that when the mortgage company files a foreclosure action, it's not before a judge and there's only a handful of things that they have to prove and ... they don't have to really, they have to say that they discussed loss mitigation, but they don't have to have offered anything. And what I've even heard from a lot of my friends who represent the mortgage companies, because especially in the bankruptcy world here in North Carolina, there's not that many of us who [are] on either side.

So we know each other. And if we're not friendly, it's hard to keep working. But they even have said that ... most of the mortgage companies have come to the realization that they don't want to be in the home ownership business. And so they would prefer to offer a loss mitigation, but the state needs to force that on them because even if they, even if that's what they want, they can't justify it themselves. So I think that's one of the lessons that I wish the state learned more is that the foreclosure system we have here in North Carolina tilts too strong in favor of just saying, "Oh, you missed some payments. You lose your home." Because that's about what they have to prove. “And we're not going to do any, we're not going to do anything to help you save your home.” And so that's really a glaring failure on the part of North Carolina that they could correct. They could insist upon loss mitigation programs. The problem is who pays for that obviously? [That] is the problem with everything in government.

[END OF SESSION]