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Mortgage Crisis Commission: Tragedy or Farce?

Here we go again! A commission. The politician's way of seeming to do something, though really doing nothing, all the while defusing criticism and dispersing risk. *

Three years late and stunted politically at its very inception, this year's version of a Truth and Reconciliation Commission will likely do little to uncover any truths which we don't already know and reconcile nothing that would not have been reconciled in any event without a commission.

Let's take a close look at the new special investigations unit, already being dubbed the Mortgage Crisis Commission.

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Marching Orders

The following 'marching orders' are from President Obama's State of the Union Address 2012, given on January 24, 2012:

"And if you're a mortgage lender or a payday lender or a credit card company, the days of signing people up for products they can't afford with confusing forms and deceptive practices are over."

"And tonight, I am asking my Attorney General to create a special unit of federal prosecutors and leading state attorneys general to expand our investigations into the abusive lending and packaging of risky mortgages that led to the housing crisis. This new unit will hold accountable those who broke the law, speed assistance to homeowners, and help turn the page on an era of recklessness that hurt so many Americans."

The Players

The "special unit" mentioned by the President is an office of [Mortgage Origination and Securitization Abuses](#). Special units don't have Chairpersons, but this one does. So, let's just stick to the word "commission" for the time being. Its chairman is to be [Eric Schneiderman](#), the Attorney General of New York. This investigation unit is to be part of the Financial Fraud Enforcement Task Force.

In addition to Eric Schneiderman, the commission will be co-chaired by Lanny Breuer, Assistant Attorney General at the Criminal Division of the Department of Justice; Robert Khuzami, the SEC's Director of Enforcement; John Walsh, the U. S. Attorney in Colorado; and Tony West, the Assistant Attorney General of the DOJ's Civil Division.

According to the White House, "the goal of this joint investigation will be threefold: to hold accountable any institutions that violated the law; to compensate victims and help provide relief for homeowners struggling from the collapse of the housing market, caused in part by this wrongdoing; and to help us finally turn the page on this destructive period in our nation's history."

Chairman

Eric Schneiderman has been developing a reputation as a fighter against tax cheaters. More to the point, he has been opposing a bank foreclosure deal - which has been strongly backed by the Obama Administration - arguing that the settlement would place a limit on investigating wrongdoing on the part of banks. He has come under intense pressure from the Administration and its functionaries, such as Shawn Donovan of HUD, and many Attorneys General, to support the settlement. In fact, Mr. Schneiderman was kicked off the AGs' negotiating committee. The big stumbling block in the settlement has been that, in exchange for the banks' agreeing to a settlement, the Attorneys General who are participating in the settlement would have to agree to sign broad releases preventing them from bringing further

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litigation relating to improper bank practices. The price tag was \$20 billion.

Interestingly, quite recently there has been news about a potential settlement after all. Under this proposed settlement, banks would agree to follow existing laws against abusive foreclosures and set aside \$25 billion to help homeowners who are underwater on their homes or who were wrongfully foreclosed. We still need to learn the full details regarding the level of legal immunity granted to banks accused of wrongdoing as well as the scope of violations covered by the settlement.

The cynical amongst us might think that AG Schneiderman has held out long enough against mighty Administration pressure and has been offered now some national prominence by being named the Chairman of this commission. After all, Mr. Schneiderman sat near First Lady Michelle Obama at the State of the Union speech and he issued the following statement: "I would like to thank President Obama for his leadership in the creation of a coordinated investigation that marshals state and federal resources to bring justice for the victims of the misconduct that caused the mortgage crisis."

Anyway, assuming AG Schneiderman's sincerity, he's but one vote amongst several. And, as political cover and possibly a political tool, Mr. Schneiderman's position to chair the commission serves to undermine and devalue the strenuous and politically sensitive efforts made heretofore by other AGs to resist the bank settlement - such as the efforts made by the AGs of Delaware and Massachusetts, and certainly the effort made by AG Catherine Cortez Masto of Nevada, one of the hardest hit states in the foreclosure debacle.

Chairmen

Maybe Mr. Schneiderman has taken the Chairman's position for all the best consumer financial protection reasons, yet his appointment has perhaps given cover to certain other co-chairs who will be serving on this commission.

A brief note on just two of them should suffice:

- **Lanny Breuer**, Assistant Attorney General at the Criminal Division of the Department of Justice worked for Covington & Burling the law firm that has been prominently defending MERS. This is also U. S. Attorney General Eric Holder's former law firm. Anyone who has spent time in DC with the lobbyists there (such as myself) know that Covington & Burling has many long term ties to the financial services industry, regulators, and congress.
- **Robert Khuzami**, the SEC's Director of Enforcement, has distinguished himself for never seeing a no-fault settlement that he didn't like. This is the same person who was General Counsel to the fixed income department at Deutsche Bank - that would be the same Deutsche Bank which included the Greg Lippmann trading operation that traded in toxic mortgage assets, a key player in extending the subprime bubble.

Predators and Prey

I think I've seen this **five step gambit** before.

Step One: Ignore

The Administration ignores the needs of the foreclosed-upon and demonizes the mortgage originators, but lets the banks have their bailouts.

Step Two: Public Relations

Popular sentiment arises with its inevitable push-back and forces the Administration to seem to be doing something.

Step Three: Do Something, Anything

Dodd-Frank gets traction and the CFPB is founded.

Step Four: Prey

Elizabeth Warren "stand ups" up the CFPB, but is nudged out of the way.

Step Five: Neutralize

Now that something appears to be getting done, and the populace seems to be placated, continue doing whatever caused the uproar in the first place, with slight alterations around the edges for effect.

In each step above, platitudes abound and posturing follows as surely as the night follows the day.

Gambit

So let's apply the **five step gambit** to this commission:

1. **Ignore**: three years very little or nothing satisfactorily done to really resolve the plight of borrowers, but plenty of blame for mortgage originators.
2. **Public Relations**: despairing and forlorn, the popular protest is too loud and nasty to avoid, so it is time to do something.
3. **Do Something, Anything**: create a Mortgage Crisis Commission - in an election year! - to supposedly fix the problem.
4. **Prey**: appoint Eric Schneiderman to chair the commission, but surround him with the proclivities of the aforementioned co-chairs.
5. **Neutralize**: appearance takes the place of real action, since there is no independent investigator, no budget, no staffing, but the public occasionally will learn

about "prosecutions" and "investigations" and the good works of the commission.

Quis custodiet ipsos custodes?

Who will watch over the watchmen themselves?

The above Latin interrogative is attributed to the Roman poet Juvenal, who penned these words in his Satires (Satire VI, Lines 347-8, my translation).

Remember early in 2011, when the Foreclosure Task Force looked at 2800 loan files - and at only one hundred foreclosures! - that produced findings using internal reports, with virtually no external validation?

So it is early 2012, and we are presented with the game plan called the Mortgage Crisis Commission or Unit of the Department of Justice or Special Investigations Unit or Office of Mortgage Origination and Securitization Abuses of the Financial Fraud Enforcement Task Force of the Department of Justice.

By my reckoning, this puts us at Step Three (Do Something, Anything) transitioning to Step Four (Prey).

Step Five (Neutralize) will come soon enough. Appearance counts. It is an election year.

But if the Administration were really devoted to rectifying the issues that caused the problems confronting borrowers, it would be urging the postponement of the bank settlement until such time as the AG negotiating committee has completed its investigation, and an adequate monetary settlement is forged, one that denies too much legal immunity to banks accused of wrongdoing, and also includes a list of violations that the banks must resolve.

Is the Mortgage Crisis Commission an admission that the purported investigations by the Department of Justice for the last three years have failed to produce any credible results?

Whatever the results, many in the public now know this Administration's strategies and political gambits only too well.

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