



REUTERS/MIKE SEGAR

**DOCUMENTS IN DOUBT:** Consumer bankruptcy lawyer Linda Tirelli holds foreclosure files with documents she alleges in court were falsified by banks.

# The watchdogs that didn't bark

THE U.S. HAS PURSUED NO CRIMINAL CASES OVER FORECLOSURE PRACTICES - BUT POTENTIAL LEADS ABOUND.

BY SCOT J. PALTROW  
NEW YORK, DEC 22

**F**OUR YEARS after the banking system nearly collapsed from reckless mortgage lending, federal prosecutors have stayed on the sidelines, even as judges around the country are pointing fingers at possible wrongdoing.

The federal government, as has been widely noted, has pressed few criminal cases against major lenders or senior executives for the events that led to the meltdown of 2007. Finding hard evidence has proved difficult, the Justice Department has said.

The government also hasn't brought any prosecutions for dubious foreclosure practices deployed since 2007 by big banks and other mortgage-servicing companies.

But this part of the financial system, a Reuters examination shows, is filled with potential leads:

Foreclosure-related case files in just one New York federal bankruptcy court, for example, hold at least a dozen mortgage documents known as promissory notes bearing evidence of recently forged signatures and illegal alterations, according to a judge's rulings and records reviewed by Reuters. Similarly altered notes have appeared in courts around the country.

Banks in the past two years have foreclosed on the houses of thousands of active-duty U.S. soldiers who are legally eligible to have foreclosures halted. Refusing to grant foreclosure stays is a misdemeanor under federal law.

The U.S. Treasury confirmed in November that it is conducting a civil investigation

of 4,500 such foreclosures. Attorneys representing service members estimate banks have foreclosed on up to 30,000 military personnel in potential violation of the law.

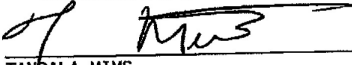
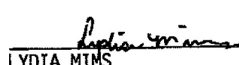
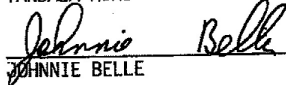

In Alabama, a federal bankruptcy judge ruled last month that Wells Fargo & Co. had filed at least 630 sworn affidavits containing false "facts," including claims that homeowners were in arrears for amounts not yet due.

Wells Fargo "took the law into its own hands" and disregarded laws banning perjury, Judge Margaret A. Mahoney declared.

And in thousands of cases, documents required to transfer ownership of mortgages have been falsified. Lacking originals needed to foreclose, mortgage servicers drew up new ones, falsely signed by their own staff as

# Mysterious alteration

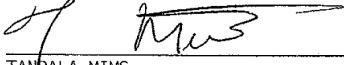
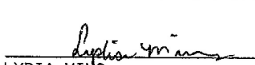
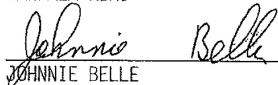
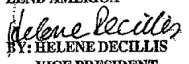

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.

 TANDALA MIMS	(Seal) -Borrower	 LYDIA MIMS	(Seal) -Borrower
 JOHNNIE BELLE	(Seal) -Borrower		(Seal) -Borrower
	(Seal) -Borrower		(Seal) -Borrower
PAID TO THE ORDER OF WASHINGTON MUTUAL BANK, FA WITHOUT RECOURSE LEND AMERICA			(Seal) -Borrower
 BY: HELENE DECILLIS VICE PRESIDENT			

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Two versions of a promissory note filed by Wells Fargo & Co. in a foreclosure action in a New York federal bankruptcy court. The one filed first, above, **doesn't show that Wells Fargo owns the mortgage loan**, and therefore lacks the right to foreclose." The version below, filed later, **bears an additional stamp that appears to give the bank ownership**. But federal bankruptcy judge Martin Glenn dismissed Wells Fargo's foreclosure attempt, questioning the validity of these and other documents. Wells Fargo currently is trying again to foreclose.

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 TANDALA MIMS	(Seal) -Borrower	 LYDIA MIMS	(Seal) -Borrower
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	(Seal) -Borrower		(Seal) -Borrower
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 BY: HELENE DECILLIS VICE PRESIDENT		 BRENDA F. BRENDLE FIRST VICE PRESIDENT	(Seal) -Borrower

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employees of the original lenders – many of which no longer exist.

But the mortgage-foreclosure mess has yet to yield any federal prosecution against the big banks that are the major servicers of home loans.

REUTERS HAS identified one pending federal criminal investigation into suspected improper foreclosure procedures. That inquiry has been under way since 2009.

The investigation focuses on a defunct subsidiary of Jacksonville, Florida-based Lender Processing Services, the nation's largest subcontractor of mortgage servicing duties for banks.

People close to the investigation said

indictments may come as early as the end of this month. Nationwide press reports had showed photos of what appeared to be obviously forged signatures on foreclosure affidavits.

The Justice Department doesn't disclose pending investigations, making it impossible to say if other criminal inquiries are underway. Officials in state attorneys' general offices and lawyers in foreclosure cases say they have seen no signs of any other federal criminal investigation.

"I think it's difficult to find a fraud of this size on the U.S. court system in U.S. history," said Raymond Brescia, a visiting professor at Yale Law School who has written articles analyzing the role of courts in the financial

crisis. "I can't think of one where you have literally tens of thousands of fraudulent documents filed in tens of thousands of cases."

Spokesmen for the five largest servicers - Bank of America Corp., Wells Fargo & Co., JP Morgan Chase & Co, Citigroup Inc., and Ally Financial Group - declined to comment about the possibility of widespread fraud for this article.

Paul Leonard, spokesman for the Housing Policy Council, whose membership includes those banks, said any faults in foreclosure cases are being addressed under a civil settlement earlier this year with federal regulators.

JUSTICE DEPARTMENT and Federal Bureau of Investigation officials say they have brought mortgage-fraud criminal cases through their "Operation Stolen Dreams." None, however, were against big banks. All targeted small-scale operators who allegedly defrauded banks with forged mortgage applications or took advantage of homeowners by falsely promising arrangements to get them out of default and then pocketing their money.

Justice Department spokeswoman Adora Andy declined to comment on the absence of prosecutions for foreclosure practices by big banks. She said in a statement: "The Department of Justice has been and will continue to aggressively investigate financial fraud wherever it occurs, including at all levels of the mortgage industry and, when we find evidence of a crime, we will not hesitate to pursue it."

Some judges have accused banks of falsely stating in court that they are working on loan modifications for homeowners in default.

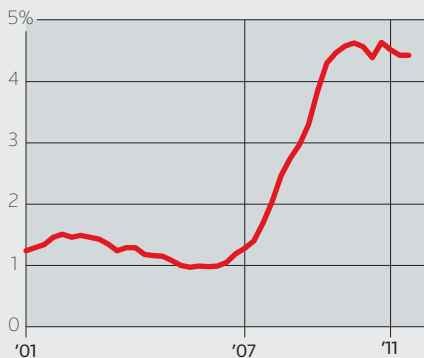
In a Nov. 30 court hearing, not previously reported, a federal bankruptcy judge in New York accused Bank of America of falsely telling courts and the public that it was working to renegotiate loans.

"Bank of America issues constant press releases about how it is responsive to their borrowers on these issues. They are not, period," said Judge Robert Drain, in a case involving homeowner Richard Tomasulo, a pharmacist from Crompond, New York. Drain said Bank of America had been telling the court since January that it was working to modify Tomasulo's mortgage, but hadn't done so.

"Whoever is in charge of this program and their supervisor, who should be following it, should be fired" because "they are frankly incompetent."

Bank of America spokeswoman Jumana Bauwens said the bank has completed "nearly one million" modifications since

## PERCENTAGE OF HOME LOANS IN FORECLOSURE



Source: Mortgage Bankers Association via Thomson Reuters Datastream

2008. The U.S. Treasury this year suspended loan modification incentive payments to the bank because it was “seriously deficient” in responding to requests for modifications.

FORECLOSURE FRAUD came to light in September 2010, with evidence that employees of Ally Financial Corp. had committed “robo-signing,” in which low-level workers signed and swore to the facts in thousands of affidavits they hadn’t read or checked.

The affidavits were notarized outside the signers’ presence, in apparent violation of state and federal criminal laws.

Since then, mounting evidence of possible foreclosure fraud has convinced judges and state regulators that servicers have harmed homeowners and the investors who bought mortgage-backed securities.

A unit of the Justice Department that oversees bankruptcy court cases, the U.S. Trustees Program, said in its 2010 annual report that there were “pervasive and longstanding problems regarding mortgage loan servicing,” which “are not merely ‘technical’ but cause real harm to homeowners in bankruptcy.”

Banks, the Trustees Program says, have falsified affidavits by claiming homeowners owe fees for services never rendered and by overstating how much owners are behind on payments.

Former federal prosecutor Daniel Richman, a professor of criminal law at Columbia University Law School, says a central question is who prosecutors would target in criminal investigations. Richman said it would be easy but not worthwhile to charge large numbers of rank-and-file workers who, directed by supervisors, falsely churned out affidavits.

He said criminal investigations would be warranted, but harder to bring, “if there are particular individuals who lie at the heart of this conduct in a very significant way.”

In October 2010, members of Congress pressed the Justice Department to investigate. Attorney General Eric Holder said investigations were best left to the states, with help from the Justice Department.

The Office of the Comptroller of the Currency, the top bank regulator, quickly negotiated settlements with the 14 largest servicers, requiring changes in practices and “remediation” for harmed homeowners. That settlement allows the banks to choose their own contractors to determine who was harmed and by how much.

Lawmakers and homeowner advocates have criticized the arrangement, contending that it will let the banks avoid making all

**“We were concerned and then shocked at the sheer number of fraudulent documents we were finding that had been filed...”**

wronged homeowners whole, because the contractors are paid by and answer to the banks.

Since then, the department’s civil division has worked with a shaky coalition of all 50 states, which have been seeking a civil settlement with five banks that are the largest loan servicers. The negotiations center on requiring them to pay \$20 billion or more in penalties, only some of which would go to compensate wronged homeowners.

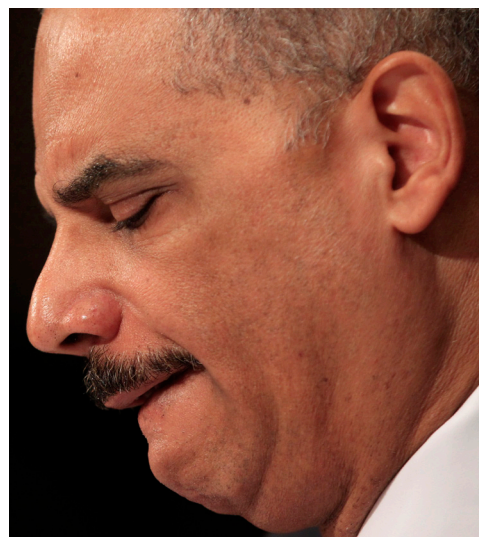
FEDERAL LAW enforcement has been noticeably absent, even in areas hardest hit by the crisis, such as Las Vegas.

In 2010 the FBI’s Las Vegas office shut down its mortgage fraud task force, which had focused on small-scale swindlers.

Tim Gallagher, chief of the FBI’s financial crimes section, said that the Las Vegas office had asked to transfer agents to other duties.

Impatient with the lack of federal prosecution, states including New York, Massachusetts, Delaware and California have launched their own investigations of the banks.

In November, it became the first state to file criminal charges. The state attorney general obtained a 606-count indictment against two California-based executives of Lender Processing Services.



REUTERS/KEVIN LAMARQUE

**HOLDS BACK:** U.S. Attorney General Eric Holder publicly so far has resisted calls by lawmakers for a criminal investigation, instead emphasizing Justice Department cooperation with states to reach a civil settlement with banks for foreclosure misdeeds.



REUTERS/U.S. BANKRUPTCY COURT, SOUTHERN DISTRICT OF NEW YORK

**STRICT JUDGE:** Robert Drain, a U.S. bankruptcy judge in New York, has faulted and ruled against banks in foreclosures, citing questionable documents and misrepresentations in court.

It accuses the executives of paying Nevada notaries to forge the pair’s signatures and falsely notarize them on notices of default, documents Nevada requires in foreclosure actions. State officials said more indictments are expected.

In an interview, John Kelleher, Nevada’s chief deputy attorney general, said the investigation began in response to citizen complaints.

“We were concerned and then shocked at the sheer number of fraudulent documents we were finding that had been filed with the county recorder,” Kelleher said.

Investigators found “tens of thousands” of false records filed on behalf of big mortgage servicers, he said.

The two executives have pleaded not guilty. In a press release, the company said: “LPS acknowledges the signing procedures on some of these documents were flawed; however, the company also believes these

documents were properly authorized and their recording did not result in a wrongful foreclosure.”

THE U.S. ATTORNEY’S Office in Manhattan is the federal prosecutors’ office that traditionally has filed the most cases against top banks and financiers. But it hasn’t brought any foreclosure-related criminal cases involving Wall Street’s biggest financial houses or the law firms that represent them.

To date the only step it has taken publicly was an October 2011 civil settlement with New York State’s largest foreclosure law firm.

The Steven J. Baum P.C. law firm, based near Buffalo, New York, in recent years filed approximately 40 per cent of all foreclosures in New York State, on behalf of banks and other mortgage servicers. Court records show that the firm angered state court judges for alleged false statements and filing suspect documents.

Arthur Schack, a state court judge in Brooklyn, in a 2010 ruling said that pleadings by the Baum firm on behalf of HSBC Bank, a unit of London-based HSBC Holdings, in a foreclosure case were “so incredible, outrageous, ludicrous and disingenuous that they should have been authorized by the late Rod Serling, creator of the famous science-fiction television series, *The Twilight Zone*.”

Another state judge that year imposed \$5,000 in sanctions and ordered the firm to pay \$14,500 in attorneys’ fees, ruling that “misrepresentation of the material statements here was outrageous.”

But the U.S. Attorney’s office in Manhattan filed no criminal charges against the Baum firm. Instead, it signed a settlement with Baum ending an inquiry “relating to foreclosure practices.” The agreement made no allegations of wrongdoing, but required the firm to improve its foreclosure practices.

Baum agreed to pay a \$2 million civil penalty, but didn’t admit wrongdoing.

The law firm said it would shut down after New York Times columnist Joe Nocera in November published photographs of a 2010 Baum firm Halloween party in which employees dressed up as homeless people. Another showed part of Baum’s office decorated to look like a row of foreclosed houses.

“The settlement between the Manhattan

U.S. Attorney’s Office and the Steven J. Baum Law Firm resulted in immediate and comprehensive reforms of the firm’s business practices,” said Ellen Davis, spokeswoman for the Manhattan U.S. Attorney’s office.

Earl Wells III, a spokesman for Baum, said the lawyer wouldn’t comment because “he’s laying low right now.”

An HSBC spokesman said: “We are working closely with the regulators to address any matters raised regarding” the bank’s foreclosure practices.

THE MOST SERIOUS potential foreclosure violations involve falsified mortgage promissory notes, the documents homeowners sign vowing to repay mortgage loans. Courts uniformly have ruled that unless a creditor legally owns the promissory note, it has no legal right to foreclose. For each mortgage there is only one promissory note.

Bankruptcy court records reviewed by Reuters show that at least a dozen radically different documents purporting to be the authentic promissory note have turned up in foreclosure cases involving six different properties in the federal bankruptcy court for the Southern District of New York.

In one, Wells Fargo is battling to foreclose on the Bronx home of Tindala Mims, a single mother who works as an ambulance driver. In September 2010, Wells Fargo filed a promissory note bearing a signed stamp showing that the note belonged to defunct Washington Mutual Bank, not Wells Fargo. The judge threw out the case.

In a second attempt, the court was given a different version of the note. But inspection showed physical alterations. A variety of marks on the original were missing or seemed obviously altered on the second. And the second version had a stamped endorsement, missing on the first, that appeared to give Wells Fargo the right to foreclose.

The judge threw out the second attempt too. Wells Fargo is trying a third time. It declined to comment on the case.

Linda Tirelli, Mims’ lawyer, in October sued Wells Fargo, alleging “fabrication of documents.”

“It seems to me that Washington is deathly afraid of the banking industry,” Tirelli said. “If you’re talking about filing false documents



**WALL STREET PROSECUTOR:** U.S. Attorney Preet Bharara in Manhattan heads the office that files the most cases against financiers and investment firms. So far, the only action it has taken involving top mortgage servicers was an October civil settlement with a law firm that filed foreclosures cases for them.

and filing false notarizations, do you really think that the U.S. Attorney would find it too difficult to prosecute?”

The office of U.S. Attorney Preet Bharara in Manhattan has routinely brought charges involving forgery and filing false documents against smaller targets.

In April, the FBI arrested seven employees of the USA Beauty School in Manhattan. Bharara’s office alleged that the seven suspects had forged documents such as high school diplomas, attendance records and applications for financial aid for students taking cosmetology classes.

In August, Bharara’s office filed felony charges against a sports-memorabilia company’s CEO, accusing him of auctioning jerseys falsely advertised as “game used” by Major League Baseball players.

In a press conference, a U.S. Postal Inspection Service official said prosecution was important because “victims felt that they had a piece of history only to be defrauded and left with a feeling of heartbreak.”

Given the record of Bharara’s office, and those of his fellow U.S. Attorneys around the country, to aggressively pursue violations both big and small, the absence of cases involving the foreclosure fiasco seems to stand out.

“Why there hasn’t been more robust prosecution is a mystery,” said Brescia, the visiting professor at Yale.

(Editing by Michael Williams and Chris Kaufman)

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