LARRY MCMURTRY: JEFF BEZOS AND THE FUTURE OF BOOKS

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STOP PAYMENT!

A Homeowners' Revolt Against the Banks

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REPORT

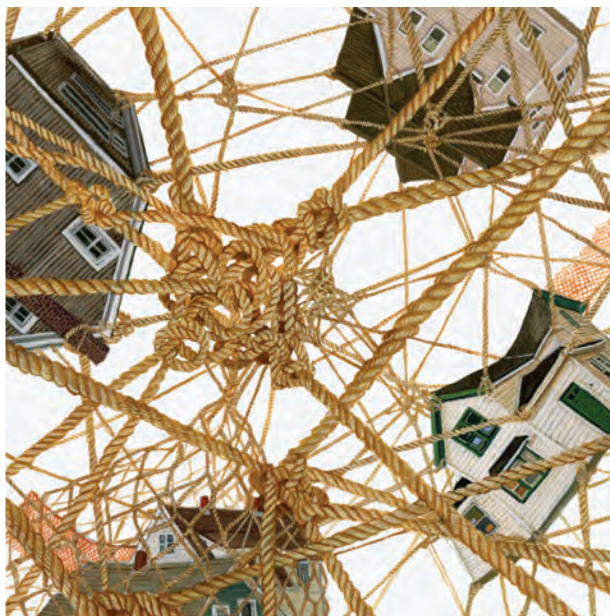
STOP PAYMENT!

A homeowners' revolt against the banks

By Christopher Ketcham

The first slide was cryptic. QUIET TITLE: THE NEW AMERICAN REVOLUTION, it said. The presenter, a former real estate broker named George Mantor, promised the words would make sense by the end of the two-hour workshop. "The revolution takes learning," said Mantor. He was a wiry man in cowboy boots with a sunburned nose and hands that shook, and he described himself as a member of the National Homeowners Cooperative, a group dedicated to fighting foreclosures and shifting the burden of mortgage debt "back upon the shoulders of those who invented it—Wall Street and the greed we all see manifested there."

Mantor advertised the free event, which took place last March at the public library in Ramona, California, as an opportunity for those in attendance to join the NHC and become the "brave pioneers" who would "take on big banks and win." About twenty people, old men and their old wives and a few younger people, had shown up. Many had either lost their homes or were about to be foreclosed upon.



Kept in Place, by Amy Casey. Courtesy the artist and Zg Gallery, Chicago

Mantor's first recommendation, per slide No. 21, was to STOP KIDDING OURSELVES. "We are no longer a nation of laws," he said. "America's greatest asset, its middle class, is being intentionally destroyed. And elections are not the answer. Voting," he said, "is like playing patty-cake with a man holding a machete." Household net worth was down $12.3 trillion since 2007; the country ranked forty-eighth in life expectancy worldwide; one half of all American children were expected to live on food stamps sometime in their lives. Our pensions were upside down and sinking, our 401(k)s were now "201(k)s," our home values could fall 25 percent or more in the coming years.

"Now how is it possible," asked Mantor, "that Wall Street is an island of prosperity in this great sea of poverty? Is this what we want?"

"No," said a voice in the crowd.

"So how the hell did we get here?" asked Mantor, before launching into a breathless history of banking deregulation under Ronald Reagan; how it accelerated in the 1990s under Bill Clinton; how the Gramm–Leach–Bliley Act of 1999 dropped the barriers that barred commercial banks from taking on the risks of investment banks; how the Commodity Futures Modernization Act of 2000 allowed for the proliferation of derivatives markets; how derivatives formed an "avatar economy," a system of illusory value built atop the real

Christopher Ketcham's last article for Harper's Magazine, *"The Albany Handshake," appeared in the May 2010 issue. He is a reporting fellow with the Investigative Fund at The Nation Institute and the recipient of a grant from the Fund for Investigative Journalism.*

economy, in particular the economy of the edifices in wood and brick and stone that people like us bought and sold and called home.

Mantor clicked through the slides faster, telling the now familiar story of the housing boom and bust. Wall Street had packaged our home loans in derivatives known as mortgage-backed securities so that the banks could raise more capital for more loans—to anyone and everyone—to be pooled into more securities to make more profits. The housing machine, of course, collapsed under the weight of its many frauds. The result was a recession, bailouts for the banks, and foreclosures on the homes of the kind of people who had come to listen to Mantor. He said there were 50 million handguns in America. He talked about armed struggle, a rising up. He mentioned that a month earlier there had been a report on Fox News that Al Qaeda planned to target executives of the banks in New York City. "The American middle class," said Mantor, "appears to be getting a new ally."

But, he told the room, there was another strategy that we could follow: attack the banking industry with the fine print of real estate law. For a bank to foreclose on a homeowner, the law requires the bank to show it owns the loan secured by the mortgage against a house. To do that, the lender needs to produce a chain of title as documentary proof that it has legally acquired the loan. This, said Mantor, is where opportunity beckoned. In the frenzied mortgage markets of the past decade, the chains of titles on the loans of tens of millions of homeowners had been "clouded." If homeowners sued to quiet the title—demanding proof of who really owned their loan—there was a chance they could get their house back. They could even separate their house from the debt against it. The debt then would be unsecured, non-collateralized, and the bank could not take the house even if the homeowners never repaid the money. "And why should we pay it? What are they gonna do?" Mantor struck a defiant pose, his chin out, and rocked for a moment on the heels of his boots. "The fight going forward is about the title," he went on. "We need to do it *together* or it won't work. Pack the courtrooms with quiet-title actions."

When Mantor finished his presentation, a squat man with a white beard and a big belly stood up and introduced himself as Charles J. Koppa, cofounder of the National Homeowners Cooperative and a related group called Protect America's Dream. Like Mantor, Koppa had been a player in the housing game; he had invested in properties, watched them rise in value, and flipped them, and for many years had worked as a real estate broker and loan officer in Ramona. But now, he said, he was organizing a citizens' movement to oppose the banks, and he urged those in attendance to join the NHC and Protect America's Dream. He said he was organizing a series of public events in Ramona called the Mad As Hell Seminars, in order "to create a mad outcry across America, starting right here in Ramona." Then he handed out a flyer that said "Main Street demands to KNOW WHO holds their NOTES on their HOMES. ARE YOU MAD AS HELL?" For a fee, Koppa could lead the revolution.

At the heart of the clouded-title problem is a Virginia-based company, recently much in the national news, called Mortgage Electronic Registration Systems. MERS was created in 1995 as a privately held venture of the major mortgage-finance operators, chief among them the government-sponsored mortgaging entities Fannie Mae and Freddie Mac.* Its stated purpose was to manage a confidential electronic registry for the tracking of the sale of mortgage loans between lenders, which could now place loans under MERS's name to avoid filing the paperwork normally required whenever mortgage assignments changed hands. No longer would the traffickers in mortgages have to document their transactions with county clerks, nor would they have to pay the many and varied courthouse fees for such transactions. Instead, MERS was listed in local recording offices as the "mortgagee of record," the in-name-only owner, a so-called nominee for the lender, so that MERS would effectively "own" the loan where the public record was concerned, while the lenders traded it back and forth.

This centralized database facilitated the buying and selling of mortgage debt at great speed and greatly reduced cost. It was a key innovation in expediting the packaging of mortgage-backed securities. Soon after the registry launched, in 1999, the Wall Street ratings agencies pronounced the system sound. "The legal mechanism set up to put creditors on notice of a mortgage is valid," as was "the ability to foreclose," assured Moody's. That same year, Lehman Brothers issued the first AAA-rated mortgage-backed security built out of MERS mortgages. By the end of 2002, MERS was registering itself as the owner of 21,000 loans every day. Five years later, at the peak of the housing bubble, MERS registered some two thirds of all home loans in the United States. Without the efficiencies of MERS there probably would never have been a mortgage-finance bubble.

After the housing market collapsed, however, MERS found itself under attack in courts across the country. MERS had singlehandedly unraveled centuries of precedent in property titling and mortgage recordation, and judges in state appellate and federal bankruptcy courts in more than a dozen jurisdictions—the primary venues where real estate cases are decided—determined that the company did not have the right to foreclose on the mortgages it held.

In 2009, Kansas became one of the first states to have its supreme court rule against MERS. In *Landmark National Bank v. Boyd A. Kesler,* the court concluded that MERS failed to follow Kansas statute: the company had not publicly recorded the chain of title with the relevant registers of deeds in counties across the state. A mortgage contract, the justices wrote, consists of two documents: the deed of trust, which secures the house as collateral on a loan, and the promissory note, which

* *Fannie Mae, the Federal National Mortgage Association, and Freddie Mac, the Federal Home Loan Mortgage Corporation, contributed half of the funds to create MERS, and representatives from both entities served on MERS's steering committee. Other major shareholders include Bank of America, Chase Home Mortgage, CitiMortgage, the Mortgage Bankers Association, and the American Land Title Association.*

indebts the borrower to the lender. The two documents were sometimes literally inseparable: under the rules of the paper recording system at county courthouses, they were tied together with a ribbon or seal to be undone only once the note had been paid off. "In the event that a mortgage loan somehow separates interests of the note and the deed of trust, with the deed of trust lying with some independent entity," said the Kansas court, "the mortgage may become unenforceable."

MERS purported to be the independent entity holding the deed of trust. The note of indebtedness, however, was sold within the MERS system, or "assigned" among various lenders. This was in keeping with MERS's policy: it was not a bank, made no loans, had no money to lend, and did not collect loan payments. It had no interest in the loan, only in the deed of trust. The company—along with the lenders that had used it to assign ownership of notes—had thus entered into a vexing legal bind. "There is no evidence of record that establishes that MERS either held the promissory note or was given the authority [to] assign the note," the Kansas court found, quoting a decision from a district court in California. Not only did MERS fail to legally assign the notes, the company presented "no evidence as to who owns the note."

Similar cases were brought before courts in Idaho, Massachusetts, Missouri, Nevada, New York, Oregon, Utah, and other states. "It appears that every MERS mortgage," a New York State Supreme Court judge recently told me, "is defective, a piece of crap." The language in the judgments against MERS became increasingly denunciatory. MERS's arguments for standing in foreclosure were described as "absurd," forcing courts to move through "a syntactical fog into an impassable swamp."

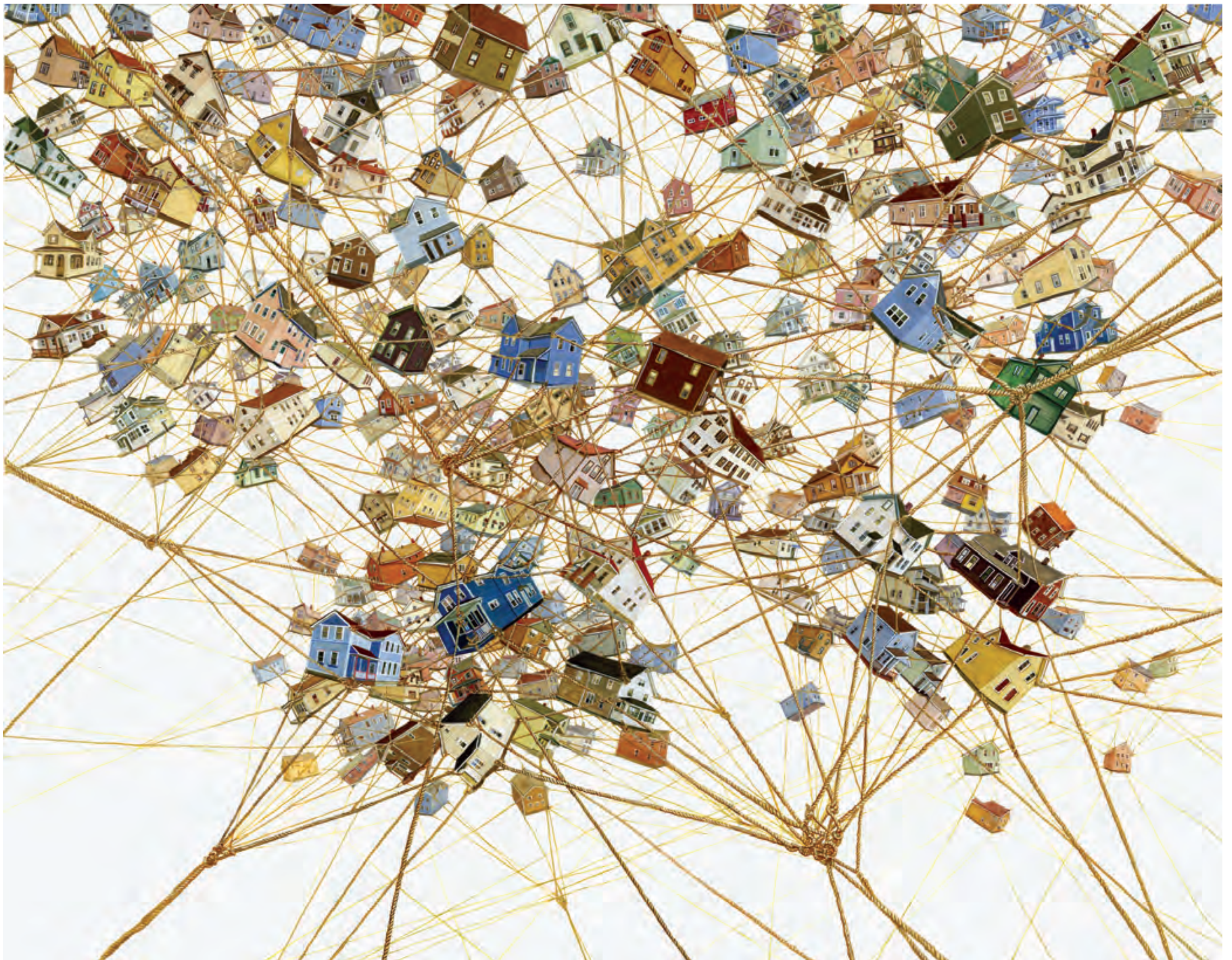
"What's happened," said Christopher Peterson, a law professor at the University of Utah who has written extensively about MERS, "is that, almost overnight, we've switched from democracy in real-property recording to oligarchy in real-property recording." The county clerks who established the ownership of land, who oversaw and kept the records, were democratically elected stewards of those records, said Peterson. Now a corporation headquartered outside Washington, D.C., oversaw the records. "There was no court case behind this, no statute from Congress or the state legislatures," Peterson told me. "It was accomplished in a private corporate decision. The banks just did it." Peterson said it was "not a coincidence" that more Americans than at any time since the Great Depression were being forced out of their homes just as records of home ownership and mortgages were transferred wholesale to a privatized database.

I first met Charles J. Koppa and the other leaders of the National Homeowners Cooperative at the invitation of Vermont Trotter, a former logging contractor from Coeur d'Alene, Idaho. Trotter's home was being foreclosed on, and he had started a popular blog about MERS. On the blog, he referred to himself as "V."—V for vengeance, V for victory, Trotter wasn't sure what V stood for (aside from his first name)—and the guys behind the NHC had contacted him to ask whether V. could be the spokesman of the movement. "V. is us," they told him. A few days before the NHC workshop, Trotter and I met at the San Diego airport before driving to Koppa's house in Ramona, about an hour north. He was trim and tanned and dressed like a ski bum—he'd been out skiing that week—and seemed untroubled by his situation: fifty-three years old, with a nine-year-old daughter to support, no job, his savings running out, and the bank trying to take his house.

After he read about MERS's legal problems in early 2010, Trotter looked for MERS on his mortgage papers and found it: as nominee for Bank of New York Mellon. He called up the bank and told them to "go to hell." He was in default already—the logging business had collapsed with the end of the real estate frenzy. In November 2010, refusing to budge from his home, he filed suit against Bank of New York Mellon, demanding that the bank prove ownership of his loan and citing what he called the "MERS curse" as his defense. He lost in the lower courts, and appealed. When I met him in March, the Idaho Supreme Court had set a hearing date for the fall. Trotter was unable to afford a lawyer, so he was going to argue the case himself. He had studied the case law, and believed he knew enough about MERS and the mortgage-contract statutes in Idaho to sway the judges.

As we drove toward Ramona, Trotter told me that the "true horror" of MERS was what it could do to homeowners who were current on their mortgage payments—the "good" homeowners who still had a job and who weren't facing foreclosure. If there was no legal record of which bank owned their debt, and the MERS-mortgaged homeowner nonetheless had been making payments, then who exactly was the homeowner paying? The checks, clearly, were going out each month, cashed by a bank that claimed to own the note. But without the legal record to certify the ownership of the note, it followed that the bank could not legally issue the homeowner a clear title to the home. In effect, a homeowner with MERS on his mortgage could spend thirty years paying a lender that wasn't the owner of the note. After those thirty years, said Trotter, when the note was paid off, the homeowner would come to an awful discovery: without a clear title issued to stipulate that the home had no claim of debt against it, the homeowner could assert ownership of exactly nothing. "Because you'd always be looking over your shoulder," said Trotter. "Some other lender could come and say, 'No, *we* owned that note. You paid the wrong guy.' " When this realization came to him, Trotter was alone in front of his computer—the house was dark; his daughter was asleep—but he said he nearly screamed. "With MERS," he said, "nobody owns anything. You're only paying rent."

As a logging contractor, Trotter had spent a lot of time in title rooms at county courthouses. His work there was a matter of due diligence: he needed proof, for his own indemnity, that the owner of the land he was being asked to log was in fact the real owner and could claim the right



to cut timber there. The title searches involved paging through documents that sometimes went back to the 1880s, when the original land grantor was the U.S. government.

You couldn't sell real estate without a clear title, explained Trotter. Title-insurance companies will not insure the sale of a house when the title's status is unclear, and without title insurance, there can be no home sales. "It means that the mainstay of our economy, real estate, is no longer viable." He pointed out the window at the houses in the San Diego hills and spoke about the Peruvian economist Hernando de Soto. "De Soto says that free enterprise fails in third-world countries because they have no reliable real-property recording system. No one knows who owns what. What do the Israelis do when they take over parts of Palestine? They destroy property records. And the bureaucrats can tell you, 'I'm sorry, sir, but there's no record of that.'"

When Trotter and I arrived at Koppa's house, it was a warm spring afternoon, and Koppa was on his porch with a beer, yelling into the phone. "By God, I'm going to hang up this phone, as I have done before," he shouted into the receiver, "because this is unfair and this is America and in America you have to document what you do." Koppa had once owned eleven investment homes in San Diego County, three of which—at a loss of what he said was more than a million dollars—were foreclosed on by lenders using MERS. A couple in Ramona had hired him to fight a foreclosure brought by SunTrust Bank, which had apparently lost their note in the MERS system. The couple, Larry and Karen Graham, had paid a lawyer $2,500 to take on SunTrust, but the lawyer, they said, had "done absolutely nothing" to help. The Grahams then called Koppa, though he had no law license and could not represent them in court. His only power was to pester SunTrust, and to conduct what he called a "title audit" to find any breaks in the chain of title.

Koppa hung up, having gotten nothing he wanted from SunTrust, and turned to me, waving a digital recorder: "The sixteenth hour of tape with these people. They're going to jail. Fraud and lies, fraud and lies." Trotter and Koppa, meeting for the first time in person, talked awhile. Then we all sat on the porch, joined by a tall, grim, white-haired man

Interdependence, by Amy Casey. Courtesy the artist and Zg Gallery, Chicago

named Steve Campbell, who had been in the mortgage business for thirty-three years—for Citibank, Wells Fargo, and Norwest—and had once owned a house in Las Vegas but lost it in a MERS foreclosure. Koppa and Campbell had met at a foreclosure-defense seminar in Phoenix, in the winter of 2010, and they had talked about "taking on MERS." Koppa had an idea for a homeowners' cooperative, "like the cooperatives of the Great Depression, when people will reach out to a neighbor when they no longer trust the government, the businessmen, the bankers."

The two men combined forces. Self-trained in website design, Campbell built a site that they called the National Homeowners Cooperative/Protect America's Dream. They read George Mantor's column in *National Real Estate Investor* and got him to join. Then Trotter signed up. They reached out to lawyers, realtors, journalists, anyone who would listen. They envisioned hundreds of thousands—and eventually tens of millions—of MERS homeowners banding together to mount lawsuits against the banks. They talked about "saving the country one real estate parcel at a time."

They would provide a service to each of those homeowners, but they wouldn't do it for free. They were broke. "An army travels on its stomach. You got to feed the people in the movement," Trotter told me. "You got to eat if you want to destroy the banks." To monetize the NHC the group offered, at a cost of $1,139, a "primary title analysis" that they claimed members of the cooperative could use in court to pursue foreclosure defense, or, as Trotter hoped, to pursue a case of quiet title whether they were being foreclosed on or not.

Koppa would be the lead investigator in the title audits, and he would train other investigators. The NHC would feed homeowners, title analysis in hand, to lawyers, and the lawyers would be thankful for the clients. The organization would have state directors, and each state director would have subdirectors looking for homeowners in distress, and when they brought in people who purchased the title analysis, the money would be spread among all parties who had had a hand in drawing new "clients" into the movement. It was to be a proper, vertically integrated enterprise.

Later that evening, after Koppa and Trotter went to sleep, Campbell and I sat down to look at the websites he had spent a year building. First, though, he wanted me to see the house in Las Vegas he had once owned. He clicked through photographs. The place had nine rooms, three fireplaces, granite countertops, refinished oak cabinets, a massage chair and a treadmill and king-size sleigh beds and big TVs and an air-hockey table. "I did the lighting," he said, "and the electrical, the concrete work, the landscaping, brand-new French doors, a tiled courtyard, dug the holes in the yard, planted the trees, laid out sixteen tons of gravel, wheelbarrowed it all in myself, put in $12,000 custom-made awnings and Sunburst blinds, an outdoor firepit so you could sit out in the wintertime, redid the hot tub. Invested over $150,000. I put labor into that house. You've never owned a home"—I told him I rented in New York City—"so you can't understand how personal this all has been."

When the housing market crashed, Campbell lost his job, and then, in September 2010, the house. His wife divorced him, and he ended up living with Koppa and his wife at their house in Ramona. He lingered a moment over the photos, then clicked over to the websites. The National Homeowners Cooperative was the initial portal, and here people could find out—"with no charge," he said—whether they had MERS on their loans. "Almost every homeowner is attracted, because they're gonna be curious: Do I have MERS?" MERS homeowners could find other MERS homeowners and form "neighborhood alliances." Then the user was prompted to Protect America's Dream and thence to a site, also run by Koppa and Campbell, called HERSID, which stands for Homeowner Examinations of Recordations, Securitizations and Intermediary Documentations. The homeowner, in order to proceed, was then asked for money.

I asked Campbell if he didn't see a problem in taking cash from homeowners who were already financially distressed. He spun around to face me. "Do you blame us for wanting to make a product and charge a little something from the homeowner and maybe even help them? We have to survive! And maybe we can do it without hurting anyone." By this point he was yelling so loudly I was worried he would wake the others. After a pause, he continued in a quieter voice. "Because capitalism, you know, is about hurting people," he said. "It wasn't capitalism that built this country, it was entrepreneurialism—you made a product and people needed it and it helped them, it made their lives better. The true definition of capitalism is those who seek success by the demise of others. True capitalism is the destruction of your competitor. We're entrepreneurs."

He clicked on a link on the NHC website that led to a clip from his favorite film, *Network*. "You know *Network*? Prophetic." On the screen was the figure of the crazed evangelizing newscaster Howard Beale, in his famous freak-out scene—Beale in a soaking-wet raincoat over his pajamas. "We'll start the Mad As Hell Seminars with this," said Campbell.

"I want you to get mad," said Beale on the screen. "I'm a human being, goddammit! My life has value! So, I want you to get up now"—Campbell nodded his head, and his leg began to tremble—"I want all of you to get up out of your chairs. I want you to get up right now and go to the window, open it, and stick your head out and yell—"

Campbell paused the video: "This is what I'll do to my audiences. We'll have Mad As Hell meet-ups. And on the website we'll have Mad As Hell calendars." There were plans for Mad As Hell T-shirts and Mad As Hell buttons and Mad As Hell baseball caps—an entire Mad As Hell storefront—along with Mad As Hell Tuesdays on the website, when V. would

post a new piece of writing and the pages would turn red from 6:00 A.M. until midnight.

On May 12 of last year, Sheila Bair, the head of the Federal Deposit Insurance Corporation, testified in a prepared statement before the Senate banking committee about "promoting the stability of our financial system." One of the "systemic risks" to stability that Bair singled out was the problem of clouded title, though she didn't identify it as such. She spoke of "flawed mortgage-banking processes" that had "potentially infected millions of foreclosures," of "a historic breakdown in U.S. mortgage markets," and she noted that "we do not yet really know the full extent of the problem."

The extent of the problem is, however, increasingly clear. April Charney, a foreclosure-defense attorney in Florida who is an expert on MERS, wrote me recently to warn that the mortgage market was now suffering from "an incurable case of economic HIV." The clouded-title infection, she said, "is not limited to mortgages where MERS is nominee for the originating lender." Whereas MERS had created breaks in the chains of title for tens of millions of loans, she said, the same breaks were increasingly evident for any mortgage that was securitized—which represents the great majority of home loans in the United States today.

One example is the case of Antonio Ibanez. In 2007, Ibanez defaulted on the mortgage for his Springfield, Massachusetts, home and was foreclosed on by U.S. Bank. The bank then applied before the Massachusetts Land Court for a "quiet title" action to show that the bank alone owned the property. The Land Court declined to quiet the title. Ibanez's promissory note was not assigned through the MERS system, nor was MERS named as mortgagee of record; yet the deed and the note for his mortgage nonetheless had been separated before his note was assigned to a securitized trust. A lender called Rose Mortgage had originated the loan, then sold it to Option One Bank, which sold it to Lehman Brothers, which sold it to Lehman's fully owned subsidiary Structured Asset Securities Corporation, which pooled the loan into Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2006-Z, whose investors were now alleged to be the owner of Ibanez's note. U.S. Bank was appointed trustee of the securitized trust, to enforce the payment of the notes, and, if necessary, to foreclose on defaulting homeowners such as Antonio Ibanez.

The deed had been legally transferred once, while the note had been moved multiple times, without legal assignment under Massachusetts statute, from bank to bank and then to the Lehman trust. As a consequence, U.S. Bank, acting as an agent of the investors in the Lehman trust, did not have the right to foreclose on Ibanez. The Land Court returned ownership of the house to Ibanez, and in January 2011 the Massachusetts Supreme Judicial Court upheld the decision. Bank stocks plummeted on news of the high court's ruling. Reuters called it a "housing-market catastrophe risk" and reported that the case had unleashed a "bank-eating cancer." It was unclear whether Ibanez still owed money to any lender, as the factual "beneficiary" of his note could not be determined. He had, in effect, gotten a house for free. The Ibanez decision was retroactive, and it could be applied to most of the securitized loans in Massachusetts.

Charney has closely examined the decision in Antonio Ibanez's case. As the case progressed through the Massachusetts courts, the banks had three years to produce the note showing ownership of the loan, but they were not able to do so. Charney has defended hundreds of foreclosure cases in Florida state courts but said she has yet to see one securitized mortgage in which the loan documents were legally transferred to the trust. She said the evidence also points to investment banks having pledged loans into multiple trusts in order to double-sell the loans to investors—which, if true, would constitute securities fraud. She suggested that investors in mortgage-backed securities had bought "nothing-backed securities," "empty-sack trusts," tranches of ethereality, worthless in the real world.

The consequences of all this could be cataclysmic. Pension funds, mutual funds, sovereign-wealth funds, insurance companies, municipalities and state governments, along with government-sponsored entities such as Fannie and Freddie, purchased an estimated $7 trillion worth of mortgage-backed securities during the past decade. If they in fact bought empty sacks, their likely recourse would be to sue the banks that sold them the fraudulent securities, a process that has already begun. In April 2011, the Federal Home Loan Bank of Boston filed a securities-fraud suit against Bank of America, CitiGroup, Goldman Sachs, J.P. Morgan, Capital One, Barclays Capital, Credit Suisse, Deutsche Bank, and numerous other lenders and servicers involved in the $5.8-billion MBS pool in which it had invested. The bank wanted its money back, and charged, among dozens of counts of fraud, that "mortgage loans were not validly assigned, and papers necessary to ensure enforceability of the mortgage were never transferred to the trustee," and that, as a result, what it had purchased in the trust was "worthless." Five other Federal Home Loan branches have filed similar suits. Last June, Eric Schneiderman, the attorney general of New York State, opened a probe into fraudulent home-loan securitization practices at Bank of America, Deutsche Bank, and Bank of New York Mellon, and in October Beau Biden, the attorney general of Delaware, announced a suit against MERS for "a range of deceptive trade practices that sow confusion among consumers, investors, and other stakeholders in the mortgage finance system, damage the integrity of Delaware's land records, and lead to unlawful foreclosure practices." Adam Levitin, a professor of law at Georgetown University, told me that if the lawsuits are successful, the banks will be on the hook "for hundreds of billions of dollars" and will likely go bankrupt.

A few weeks after the NHC workshop, Vermont Trotter emailed me a twenty-three-page file of court documents relating to a case brought by a Utah man named Scott Harvey. In 2010 Harvey had filed a quiet-title action against the

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—*The Globe and Mail* (Toronto), June, 1994

In *New York Revisited,* New York City is a living, breathing character —the streets and skylines are rendered in gorgeous, lyrical detail, and the tenements and skyscrapers crackle with energy. Acclaimed writer Henry James was born in New York, but as a young man he left the United States to live abroad. On his return visit to New York he wrote *New York Revisited*, which was published in *Harper's Monthly Magazine* in 1906. This concise book remains today as rich and beautiful a description of New York as it was then, elucidating both the changes time has wrought and the myriad ways the City remains a constant. This volume is enhanced with period illustrations and photographs and features an introduction by Lewis H. Lapham, national correspondent of *Harper's*. Handsomely bound with a spectacular illustration of the Flatiron building on the cover, it is a literary treasure.

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alleged owners of his loan, and he had apparently gotten the debt against his house canceled. Harvey was not facing foreclosure, had never missed a payment on his loan, and was never at risk of losing his house. He had done what Vermont Trotter counseled all Americans to do. "Read the case," said Trotter. "It's simple, it's beautiful, it works."

Harvey had hired a Salt Lake City attorney named Walter Keane, a Chicago transplant who runs a one-man office, to argue his case. In his brief, Keane borrowed language from Kansas's *Landmark* decision: it states that MERS had effected "a split of the note and deed of trust," making "the latter [a] nullity," and that therefore the debt should be "stricken from the chain of title." Keane also cited a statement by the Salt Lake County recorder of deeds, who said that MERS was potentially "the scam from hell." MERS never responded. Nor did the alleged lender. Nor did the trustee for the lender. The judge, finding no disputed facts, handed Harvey the house. The owner of the debt, the true beneficiary, was unknown, and whether Harvey would have to pay back the loan was not for the court to decide.

When I met Harvey and Keane at a seafood restaurant in Salt Lake City, they were having drinks with another Salt Lake City homeowner, Mike Waters, who was fighting foreclosure by Bank of America. Waters, a real estate investor with five children, said Bank of America had offered him a loan modification after he lost his job in early 2010, then canceled the contract because the bank admitted it didn't own the loan and had no right to negotiate the modification. Eighteen months later, in March 2011, after Waters filed a lawsuit alleging breach of contract, the bank suddenly reversed itself and claimed that it did in fact own the loan. Waters had closed hundreds of real estate deals but had never experienced anything like this. Then he read about MERS, which was listed on his deed of trust, and made it the focus of his ongoing lawsuit. Bank of America offered him a cash settlement to drop the suit and sign a nondisclosure agreement, but Waters refused.

Scott Harvey had also been in real estate for many years. When he discovered that his loan had been sold by the originating lender, Garbett Mortgage, to another bank—and when no record of this transfer could be found in the Salt Lake County Recorder's office—he had an "epiphany" not unlike Vermont Trotter's. "I asked myself, 'Who owns the note? Am I just paying rent?'" Like Waters, he found MERS named on his deed of trust, and thereafter, like Waters, and like Trotter, he learned all he could about MERS. With the help of Keane, Harvey had escaped a $130,000 debt, had resold his house for $155,000—the court had given him clear title to do so—and walked away. He bought another house, where, in October of 2010, he moved with his wife and daughter. "People, you know, are looking at me like I'm gaming the system," Harvey said. "Like I got away with something. But the system is what's gaming us."

Keane was in a celebratory mood. He ordered lobster-stuffed shrimp and a filet mignon and more wine. "We are gaming the system as much as the motherfucking banks are," he said, and laughed so explosively that the diners at the next table turned to stare. When he first arrived in Salt Lake City six years earlier, he had struggled to survive in his practice. "Then I read the *Landmark* case. And I said, 'Fuck, I can do this.' I'm making four times the amount I made in my best year. I fuck the banks! I love it! I've got roughly, what, twenty to thirty new clients a month seeking quiet-title actions naming MERS." In the previous ninety days, he had grossed more than $150,000. "I only take MERS cases. I don't think there's a basis in law for me to go after the banks if it's not a MERS mortgage."

Keane raised a glass of red wine. "So thank you, motherfucking banks. You now have Walt Keane as a crotch-cricket on your ballsack, and I have sunk my fangs. I am the Darwinistic response. The banks have scattered all these corpses across the land—real estate properties where chain of title is broken, where there's no fucking record—and natural selection has selected Walter the fucking lunatic to clean them up and adapt to this new environment."

"That's right," said Harvey, whose voice was an order of magnitude quieter than Keane's. "It's time to adapt. What we're doing, what Walt is doing, is only forcing the banks to obey the law. Why should they be able to disregard centuries of land-titling statutes? Awareness is the first step of adaptation. How is this country going to evolve if people don't even know what's going on?"

I asked Harvey how much he'd paid Keane in attorney's fees to get his house free and clear. "Thirteen thousand dollars," Keane answered for him. "I wrapped that cash around my cock and danced around the room. It was the easiest fucking money I've ever made. I got into this MERS game because I'm a capitalist and I wanted to make money. There's nothing altruistic here." When he finished his steak, though, he did pay for everyone's dinner.

At the end of September, I went to see Vermont Trotter argue his case before the Idaho Supreme Court. The hearing was held in an empty auditorium at the University of Idaho, in the city of Moscow, and Trotter, who hadn't slept the night before, sat alone in an ill-fitting suit at a table that held a pitcher of water and a glass that he didn't touch. Three lawyers, representing MERS and Bank of New York Mellon, sat on the opposite side of the room, talking breezily. Over the previous weeks, MERS had been faring unexpectedly well in the courts. On August 31, the U.S. District Court for the Northern District of Georgia had dismissed a class-action lawsuit against MERS. On September 7, the U.S. Court of Appeals had tossed out a class-action suit brought against the company by Arizona homeowners. Two days later, the Alabama Supreme Court affirmed that MERS could foreclose on homeowners in that state. And by September 13, two California appellate courts had upheld the legality of MERS foreclosures. Trotter had read about all these decisions, and tried to ignore them.

The judges filed in, and Trotter stood. The matter, he said, came down to sloppy recordkeeping. "The most glaring deficiency in this entire action," he said, was that MERS had not executed an assignment of the deed of trust. "Where is that document? It's not part of the record before this court. The County Recorder of Deeds couldn't find it either. I asked! … It must be in a secret drawer. Doesn't that defeat the purpose of publicly recording documents?

"Does it matter," he went on, "whether documents filed in the public record have any authenticity? Or is an impressive but defective scorecard of cases from all over the United States, is that enough to deprive Idaho homeowners of their property and of their rights?"

Trotter sat down, and Bob Pratte, the attorney for MERS, rose and stated that Trotter had "fundamentally misapprehended" Idaho mortgage and contract law. But the heart of his argument was simpler: "The consequences of finding that MERS cannot be a beneficiary would be hugely problematic," he said. "It is important to understand that if MERS can't be a beneficiary under a deed of trust, it doesn't just affect the five or ten percent of the population that doesn't pay their loans, it affects every transaction. It affects everything they"—MERS—"have done. If they can't be beneficiary for one purpose, they can't be a beneficiary for any purpose." Trotter's challenge to MERS, said Pratte, would "upset" the "fundamental integrity of negotiable instruments and security instruments" in Idaho, and, if that challenge were upheld, "there would be broad consequences." Pratte was appealing, in the end, to the power of the status quo, and the fearsomeness of the abyss beyond it.

In 1942 the economist Joseph Schumpeter, in his book *Capitalism, Socialism, and Democracy*, asked, "Can capitalism survive?" Schumpeter thought the prospects weren't good, in part because corporate capitalism had resulted in a diminished sense of real-property ownership. The "capitalist process," wrote Schumpeter, substitutes "a mere parcel of shares for the walls of and the machines in a factory." It thus produces an "evaporation of what we may term the material substance of property—its visible and touchable reality.… Dematerialized, defunctionalized and absentee ownership does not impress and call forth moral allegiance as the vital form of property did." Real property could be seen, held, cared for, protected, preserved; real property gave to the holder of the title his "will to fight, economically, physically, politically."

After Trotter's trial, I drove eighty miles north to Coeur d'Alene, where he lives near the lake around which the town is built. I wanted to meet him at his house, but he said we should meet at my hotel instead. We drove around. "I really want to see your house," I said.

"I'm thinking about it," he said.

Finally, after much persuading, we pulled up in front of a split-level cedar-sided home, about 1,800 square feet, that had a basketball hoop and a white garage and a bedroom over the garage and big trees towering over a field of tall grass that abutted the driveway. I thought we'd go inside, and reached for my door handle, but Trotter said, "Don't get out. There are things in there sacred to me, things I cannot show you."

I asked him about the trees. "Oh, let's see, that's a forty-year-old ponderosa there, maybe sixty-five feet, and those there are red fir—big-ass trees, serious money, one hundred foot easy—and those there are maples, and I got some locusts. It's the land. Where you awaken to the land is where you belong. It talks to me. I've got a flock of thirty wild turkey that come wandering through, and one night, a cold night, I saw three deer, three buck, outside my bathroom window. I could see their racks. They'll bed down right in that field. And the birds, the birds, the birds—the crows, the blue herons, seagulls, eagles—and the black squirrels, acrobatic like nobody's business: *wheeee!* from tree to tree. And in the spring, the flowers bursting with color." He paused a moment, looked out the window at his house. "The land, they stole the land."

Trotter's case is still pending. He might get lucky, like homeowners in Massachusetts and Kansas, and get his home back, or it might be seized like so many others and moved from one side of a bank's spreadsheet to another. The question before the Idaho court, and everywhere else, is when is the possibility of a cataclysm not a threat to be feared, but an opportunity to be embraced. ■