

MEMORANDUM FOR THE RECORD ("MFR")

Event: Interview with Chris Swecker on mortgage fraud

Type of Event: Interview

Date of Event: March 8, 2010, 3:00-5:00 p.m.

Team Leader: Chris Seefer

Location: FCIC, large conference room

Participants - Non-Commission: Chris Swecker former FBI Assistant Director and Bank of America Chief Security Officer

Participants - Commission: Chris Seefer; George Wahl; Sarah Knaus

Date of MFR: March 19, 2010

Summary of the Interview or Submission:

This is a paraphrasing of the interview dialogue and not a transcript and should not be quoted except where clearly indicated as such.

Opening Remarks

Chris Seefer opened the meeting by summarizing the mandate of the Financial Crisis Inquiry Commission. He explained that the Commission is interested in understanding where to find data detailing mortgage fraud. Mr. Swecker made clear that he is bound by a signed severance agreement with his former employer, Bank of America, and could not discuss any proprietary information regarding the company. He is also prevented from saying anything negative about Bank of America.

Mr. Swecker's Professional Background

In response to a line of questioning by Chris Seefer, Mr. Swecker provided the following information about his background:

- He graduated from Appalachian State University in 1978 and Wake Forest University School of Law in 1981.
- Following law school, Mr. Swecker became an Assistant District Attorney for Eastern North Carolina.
- He joined the FBI in 1982 where he worked on Organized Crime in Charlotte, NC and Oklahoma. From 1984-1987, Mr. Swecker served in the FBI's General Counsel's Office.

- Mr. Swecker completed an eight-year stint at the FBI office in Miami from 1987-1995, working on cases involving Columbian and Jamaican drug traffic and money laundering.
- He was promoted to Assistant Special Agent in Charge, and transferred to the Houston FBI office, where he served from 1995-1999. During this time, Mr. Swecker was in charge of all criminal investigations geographically located between Houston and twenty miles past the US-Mexican border. He also acted as the Inspector of the Houston office, which Mr. Swecker defined as a “glorified auditor.”
- From 1999-2004, Mr. Swecker was located in North Carolina, with a stint in Iraq as an on-scene Commander for a few months.
- Mr. Swecker was promoted to Acting Assistant Director of the Criminal Division at the FBI Headquarters in April 2004. In July 2004, he was named Assistant Director.
- In this role, he covered all initiatives minus terrorism and counter-intelligence.
- From January-July 2006, Mr. Swecker served as the Acting Executive Assistant Director of the FBI, overseeing all divisions with the exception of terrorism and counter-intelligence teams.
- He joined Bank of America in July 2006, where he worked on anti-laundering, executive protection, and other tasks. He was let go when Bank of America bought Merrill Lynch, which resulted in the firing of six executive officers.
- Mr. Swecker currently serves on the Board of Directors for Allied Barton and consults and practices law in a private practice.

Pre-2004 Testimony

While serving in the Charlotte, North Carolina office from 1999-2004, Mr. Swecker promoted white-collar crimes, including mortgage fraud, to the office’s top priority. At this time, mortgage fraud was a newer type of crime with an increasing caseload. In either 2002 or 2003, Mr. Swecker worked on a case involving Fannie Mae and McLean First Beneficial, which resulted in a \$24 million forfeiture by Fannie for packaging loans the company knew were bad. Fannie knew these loans were bad because a case agent informed them they were fraudulent, but Fannie still sold them. There was a civil case, and the FBI wanted a US Attorney to indict Fannie as a corporation, but this case was deemed to not have enough evidence. Mr. Swecker worked with the HUD Inspector General Ken Donohue on this case. After the fact, Fannie forced banks to buy back their faulty loans.

Funding for Mortgage Fraud

To understand the FBI’s focus on mortgage fraud, Mr. Swecker recommended that the FCIC look at the Time Utilization Recordkeeping (TURK) cards, which break down which types of cases an agent works on by day and burn rates for agents working on mortgage fraud. He also recommended searching the FBI budget to breakdown how much money was allocated specifically for mortgage fraud. Although the Congressional budget may not have this specific information, the requests from each department may.

Prior to 2001, Mr. Swecker said there were around 2200 agents working on white-collar crimes. Five hundred of these agents were transferred to terrorism-related divisions in the time period immediately following 9/11 under the assumption that they would be returned once the situation calmed down. Mr. Swecker guessed that there are 1500 agents working on white-collar crimes today. When he served as Assistant Director, there were between 125-500 agents working on mortgage fraud cases. Mr. Swecker recommended looking at Inspector General Glenn Fine's reports on how agents and funds were diverted post-9/11.

Chris Seefer asked Mr. Swecker what mortgage fraud resources the FBI asked for during his tenure as Assistant Director and for any accessible documentation of these requests. According to Mr. Swecker, the budget request and final FBI budget would demonstrate a lower level of funding for the white-collar crimes division. He explained that the budget process was a six-month back-and-forth process with first the Justice Department, then the Congressional Budget Office, and finally Congress. There should be work papers and folders from the FBI and the Congressional Budget Office detailing the process. Within the FBI, John Coliano would have emails about the request. Mr. Swecker noted that much of the individualized funding for his division came from individual meetings with members of Congress, who would earmark allocations in legislation.

He also recommended examining the final FBI budget submission for FY 2002, which should demonstrate lower levels of funding for white-collar crimes. The requested budget, when compared to the Funded Staffing Levels (FSL) from the Department of Justice, would show how many agents worked in specific fields. Finally, burn levels would demonstrate the number of agents transferred or "burned" to counterterrorism from white-collar crimes.

In 2006, after the WMD and 9/11 Commissions reports were completed, the FBI instituted new protocols forbidding agents to work on both criminal and terrorism cases at the same time and established separate career paths.

Mr. Swecker noted that there is a difference between addressing the problem and actually impacting change. During the S&L and Enron crises, the FBI created large task forces that quickly responded to the situations. The response to the current mortgage fraud crisis, according to Mr. Swecker, has been more of a "slow burn".

2004 Testimony

As lending rates dropped to 5% from 2002-2004, Mr. Swecker observed the increase in "fly-by-night" mortgage brokers, crooked appraisers and attorneys, a high level of house flipping and other fraud. During this period, Fannie Mae and Freddie Mac purchased loans that were financed for empty lots. According to Mr. Swecker, Bank of America realized the increasing levels of fraud, while others slipped into bad loans.

In 2004, the FBI issued a Significant Activity Report to raise the profile of mortgage fraud. Mr. Swecker led Operation Clean Deed from 2004-2005, in an attempt to publicize the white-collar crimes epidemic. The FBI held a major press conference in 2004, and gave testimony on the rise of Suspicious Activity Reports (SARs), the various types of cases, the decreasing underwriting standards and the threat of systemic fraud.

When questioned about data demonstrating the level of mortgage fraud, Mr. Swecker recommended looking at SAR referrals, undercover investigations, and referrals to law enforcement downstream from the banks. In Mr. Swecker's opinion, bank data is not highly accurate, because mortgage fraud would often fall into the credit-loss pile and not be reported separately. Today, banks do not devote much to mortgage fraud detection because by 120 days the loans are usually sold. However, some of the banks "ate their own cooking" with off-loan income.

2005 Strategic Plan

Mr. Swecker next discussed the FBI's Strategic Plan released in 2005. Working with Bearing Point, the FBI analyzed the next 5-10 years of issues facing the FBI. The plan studied the unit level of threats, made recommendations for changes, and included counter threats. Included within the plan was a warning that in the near future mortgage fraud levels would increase. Director Mueller initiated this plan out of his own volition. It was the first time the FBI used outside consultants of any kind.

Additional Resources

Chris Seefer asked Mr. Swecker to suggest any additional resources for the investigation into mortgage fraud. From 2003-2008, Mr. Swecker's major mortgage fraud initiatives would include press availabilities and conferences. He prepared Briefing Materials for the Attorney General, the Director of the FBI and Congress, as well as pre-testimony materials that were made available to Congressional committees. Mr. Swecker's team released a Financial Fraud Memo annually. He also recommended looking at the indictments, arrests, restitutions, fines and forfeitures that were associated with FBI mortgage fraud cases. In case reports, there would also be a Potential Loss Prevented/Avoided (PELPs) listing.

In one case, Mr. Swecker's team set up a mortgage brokerage company, which operated as a business, closing dummy loans. Through this, the team caught a number of players red-handed.

As the Assistant Director, Mr. Swecker asked for additional mortgage fraud agents. This request would have gotten to the Executive Assistant Director, but Mr. Swecker was unsure who was responsible for cutting this request.

Mr. Swecker spoke to the Mortgage Asset Research Institute (MARI), the Mortgage Bankers Association, and the Mortgage Brokers Association. He remembered meeting with MARI and

the Mortgage Brokers Association in 2004, and giving a “come to Jesus speech”. The organizations resisted increased regulation, insisting that they would police themselves better. However, they supported an increase in FBI agents focusing on white-collar crimes. Mr. Swecker has not seen any evidence that they have changed. Last year one of the organizations had an RFP for fraud analytics, but withdrew it before completion.

Although Mr. Swecker is under a strict agreement with Bank of America, he said in a hypothetical that a bank he knew closely did not carry fraud loss product until 2007. They did not track fraud, which was typical of banking when the markets were sound.

Responding to a question about the response to broader corporate-level fraud, Mr. Swecker answered that packagers and sellers of fraudulent loans do not meet the underwriting standards. He observed that middle-level people issued warnings to their superiors but received pushback on the issue. Corporate-level fraud is seen around complex fraud schemes involving accounting and other big items. Mr. Swecker directed the FCIC to the civil fraud case against Angelo Mozilo.

The biggest problem will be the poor underwriting standards.

Potential People of Interest to the Commission:

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