

## PREPARED TRANSCRIPT OF REMARKS

5TH USCA 14-51224 David McCrae v. PHH Mortgage Company, et al.

**TEXAS STOP LITTLE HOUSE ON THE PRAIRIE STOP CARPETBAGGERS  
STOP I'M YOUR HUCKLEBERRY END**

**OUR SITUATION - APPELLANT BRIEF FILED 021215.  
APPELLEE BRIEFS FILED. ONE APPELLEE STANDS MUTE.  
REPLY FILED 041815.  
ORAL ARGUMENT REQUESTED TBA - 15 MINUTES**

Summertime in New Orleans, and the Livin' is Easy.  
5USCA / 600 South Maestri Place 70130

[INVOCATION]

From David McCrae, slave of Christ Jesus and Natural Citizen of the United States, and resident of Texas, with all of the rights and privileges attendant thereto, to all these three Judges of The Fifth District Court of Appeals of the United States of America who are here assembled in New Orleans, Louisiana, with their clerks and attendants, Grace and Peace to you, from God Our Father and the Lord Jesus Christ!

Having been set upon and grievously wronged by thieves, the appellees here named, said actions having been endorsed by lower District Court judges herein named, and such decisions having no merit or basis in fact, and having been wrongfully and ill considered, I pray your attention, consideration, and remand to Federal District Court for proper trial before jury of previously disclosed and well known facts and issues.



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[WHOAMI?]

I'm Dave McCrae. I'm your APPELLANT today. I've brought a couple of my minions here today, they're just observers. They'll keep out of the way. I'll keep my prepared verbal remarks to fifteen minutes, but if you have a question anywhere along the way, just chime in. We've got the time. If I have to send my minions out for lunch...no problem! That's what they live for. I own a little patch of land over in Texas, about five acres we split off Clyde's ranch in 2001, put in our own water and electric, and took up residence. I moved to Texas in 2001 after my employer in Illinois at the time curled up and went bankrupt. I heard about it on the radio one Friday afternoon, and spent the weekend making sure everything was turned off and nothing would explode. I was invited to hang around and see how things worked out, and give our security people some comfort about where all the light switches were, and maybe get paid. It was much different work than I'm used to, and pretty much meaningless. I decided I was disinclined, and decided to move to Texas and do whatever people do down there to make a living.

We sold our house in Indiana and bought the Texas place. I burned the Indiana furniture, and bought new in Texas. It was cheaper. Indiana was the second house we bought after we moved from Cleveland, our first home, and where all our kids were born. So we were relatively comfortable taking a mortgage for our third house. We'd already bought and sold two. In 2001 I was 51 years old, so I took out the mortgage for fifteen years. Most people retire about 66, and I'm like most people. We borrowed \$72,500 on property valued at \$100,000. Life was simple back then, and we paid 6-1/4% interest - 180 payments, no PMI, no balloons. We later found that PHH had held the mortgage (actually the IRLC) for eight days, and securitized it over to a CDO for FNMA. That's another story, for another day. You've heard that one too. We hardly have time today to talk about collateralized debt obligations. But I'll be showing the movie Inside Job, out on Lafayette Square in the public park, for anyone interested. And I believe we have some extra DVD's to give out, free for the asking. They're very educational.

I've made my living building steel mills, power plants, foundries, refineries, stadiums, churches, and even running undersea robots hooking up oil wells down in the bottom of the ocean. Actually, that was more fun than work, and I got to go on Megastructures for my 15 minutes of fame. I continued doing that work after we relocated our residence. I did more traveling to and from client locations. I continued to work until I was 62, when I decided to finish one client project (a little Russian steel mill) in Mississippi and retire completely, in July 2012. I was healthy, all the kids were grown, and I decided to work on improving my golf game a little more aggressively. Pretty soon I reckon I'll get a round tuit.

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I had known this was going to come to pass at some point. I had made quite a bundle of prepayments on my mortgage as circumstances permitted, in varying amounts and on irregular occasions, and by 2012 I had employed this investment strategy to my advantage and reduced my principal from ~\$23,000+ to about \$7,558, or about 2 years eight months advanced by GAAP. These facts have never been challenged. We had about eleven payments to go. My computer does Excel, and amortization schedules are not that complex. I was sure I was in pretty close agreement with PHH on principal. I called them up in New Jersey on their hot line to get a payoff statement. I'm blacklisted on their website, mortgagequestions.com.

Basically, there are millions of people like me in Texas. There are millions of stories like mine. My story to this point is unremarkable. But we're certainly complex by now.

[WHY ARE WE HERE?]

That brings us to our business here today. We are here to resolve an unusual situation, of some social timeliness, and offering some unique legal issue. I'm from Main Street. My counterparties live over on Wall.

PHH and I had our differences and we were obviously never able to work them out satisfactorily. They tried to steal my house; I opted for a strategic bankruptcy. I still live in the house. I own it. I'm not bankrupt any more. You've read through our court records from Western Texas District and Western Texas Bankruptcy Courts to this point, and our briefs, and I'm sure your mind is spinning with facts and issues. We've been at loggerheads since 2012. This is 2015. It's a ball of confusion. I'm not going to reread everything out loud. I will take questions, and answer what I can.

I'm embarrassed for all of us. We've done a terrible job in managing our own communication, and an even worse job in the lower courts sorting things out. Right now, today, since I walked in, I've spent more time in the same room with my counterparties discussing this issue than we've spent together in the past three years. BTW, there's something wrong with that, all by itself. There ought to be a law. Maybe something like 2015 RESPA-TILA. That one's about 1888 pages of law, 59 pages of amendments, 49 pages of interpretations, and 430 pages of public comments. It's posted on my site for your convenience. I've read it. Maybe more people ought to read it.



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[RUBIKS CUBE EXERCISE, Facts and Issues, interactive with panel, as in Appellant Briefing Book. Solve three modified cubes. Some color stickers removed. Three minutes intermission.]

Simply put, we need a jury. Somehow we skipped over that in Texas. Now we're here in New Orleans. We have a dispute that exceeds twenty dollars. Rule 38 says we need a jury, to resolve the facts and issues. This is a complex case. We asked for a jury. We NEED a JURY!

[WHY DO WE FIGHT?]

I've come here today as a US Citizen, representing our current Attorney General, currently Loretta Lynch, under the qui tam system. The confused facts and issues in my case are only too representative of the current economic quagmire affecting every property owner in the United States. I would hazard a guess that half of the civil dockets in the US Courts deal with property disputes such as ours today. Subtract drugs, soon 80%. In 1989 they put Charlie Keating in jail; the legislature, Republicans and Democrats, reviewed existing law and passed a Financial Institution Regulation Reform and Enforcement Act to regulate, reform, enforce and eliminate just such future problems. Our central bankers in Chicago wrote scholarly papers on the wonders of self regulation, and proselytized our self correcting economic system to the world. Following that system, in twenty years, the world was on the brink of economic collapse, where we are today. We set up a Financial Crisis Inquiry Commission forthwith, and they printed a Blue Ribbon Report in 2008. It was scary, even more scary than Iran. We printed more money to fix it. And more money. And more money. There was wailing and gnashing of teeth. There were sound bytes. We got a Brand New President. Some Congresspeople even lost their jobs and were replaced. Bernie Madoff had to go to jail, and they never found the money. I think Charlie had passed by then. Ken Lay was in jail; he was one of the smartest guys in the room. In 2012, the legislature, Republicans and Democrats, passed the Warren Dodd Financial Regulation and Reform Act to regulate and reform this whole industry. It comprised a little less self-regulation, and a little more enforcement. The enforcement hasn't happened yet. We bailed out all the banks and made them whole, whoever was left. In 2006 no banks failed in America. Since then we've closed up [523]. If you want to have a BAD DAY, just go ahead and clean out your locker from your bankrupt closed-up steel mill and go down to the bank to get a few hundred dollars out of your account to go look for a job...and see the FDIC chains strung across the bank door! Still, people who lived in the houses owned by these closed up banks were just foam on the runway. We set up a Consumer Financial Protection Bureau, starting in 2014. BTW, anyone here today from that group? [LOOK AROUND] No? That's why I'm here. I'm here today representing enforcement. I have standing in this matter. Loretta is indisposed today. We have a Mortgage Fraud Task Force Working Group set up, and they're tremendously busy. BTW, anyone here today from that group? [LOOK AROUND] No? That's why I'm here. I have the time and the inclination.

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Why are my counterparties here today? [LOOK AROUND] Yes, of course they're here. They're the APPELLEES. Out in public today, under the bright lights. They don't want to be here. They like being self regulated. They want to stay that way. I think they have another important motion for dismissal coming up, as soon as I shut up.

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Has anyone here got a speeding ticket in the last four years? You don't have to answer that. My last ticket I got about 2006, when I was still working offshore. I was doing 58 in a 45, about a mile from my house coming up CR 330. They radared me. I told the police person she caught me fair and square, I was momentarily distracted and was going home to pack up for another 4-6 weeks offshore starting next day. She said I could just waive the court appearance and mail in the money. I sent in \$145 electronically next week when I was out on the rig. It was convenient for everybody, and I try not to speed any more. \$145 is still kind of discouraging. Actually the deer are more hazardous on CR 330 than the cops; we only have two (cops), and they live within a stone's throw over from me at the top of the hill. The courts in America probably processed about 100,000 speeding tickets yesterday, some right, some wrong. There's not too many people driving around at 180MPH through the school zone so they can get to work quicker. The system is ugly, but it works. The streets are mostly safe to drive on.

These people repossessed 21,456 houses in 4Q 2014. They repossessed 24,892 houses in 4Q 2013, about 238-277 houses per day. We're a non-judicial state in Texas, so it takes an average of 23 days to repo a house and sell it. PHH currently spends \$50M per business quarter for their consiglierii to keep these matters swept under the rug, sub rosa. They manage \$1,227.3B in property, and keep about 282 basis points on the spread. Everything is securitized. Actually, they make more money on fees than they do on MSR's. They never make mistakes. I'm the first one they made. They've never paid a \$145 ticket. The system is ugly, and it doesn't work. Some people term this the vampire squid system. Some people love it, because money continually rolls in. It's like opening up your bag of bread, and finding it all pre-sliced. VunderBahr!

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### [DEMONSTRATION OF DISCOMBOBULATED REGULATOR]

I've brought in another gizmo today, this little discombobulated regulator. I think most everybody has one of these, which I took off my barbecue grill, where we usually sit around in Texas out on the deck, barbecuing small animals. Out of this regulator, I've



removed the little spring inside, so it really doesn't regulate anything anymore. It looks like a regulator from the outside, you can turn the handle, but if you plugged it in and lit up your barbecue...your head might explode! That's why I've also put this 'DANGEROUS' tag on it, to remind me not to use it, until I put the spring back inside. What I'm trying to say is this: you can make all the laws you want, to fix whatever problem you want to fix...but if you're not going to enforce the laws you make, your effort is just wasted. Without the little spring inside, this regulator is just...DANGEROUS. And that is just why we are gathered here today.

### [WHO WILL WIN?]

I'm an optimist, only due to personal preference. I expect the United States people will win this case. I think we can improve the business environment, especially in the mortgage servicing business. We'll need your help.

Send this case back to Texas. Order a US Attorney to get involved. He's already on the payroll. Order a judge to convene a jury. Let us prepare and present this case to a jury. The cost and time is insignificant. It's already allocated. I have the time and the inclination. I'll join in.

I have one house. I've paid for it. I've fought for it. My opponents manage a portfolio of \$1,227.3 Billion and own 2.9% of the houses in America. They foreclose ~22,000 houses every 90 days, about 250/day, including weekends. They regulate themselves. The enforcers are having a meeting today, working out a strategy.

We're having a meeting too. We have a rare opportunity to make a difference. Let's do it. Let's do it yesterday. I'm like Rosa Parks. I'm sitting down. I paid my nickel. Laissez bon temps roulez!

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### [YOUR MISSION, SHOULD YOU DECIDE TO ACCEPT IT]

1. Remand this case to Texas, or other suitable venue in the United States, like Southern District New York, to whom I've already reported the criminal aspects of this case. Bring out Judge Jed Rakoff. Preet Bharara could be a Special Prosecutor, apparently he's not going to be USAG.
2. Assign competent prosecution to this case and turn these defendants upside down to get every piece of loose electronically stored information shook out of their pockets.
3. Stay all foreclosures in process against class members #2 through #21,457 who currently occupy their homestead, under PHH oversight, until this case is adjudicated. I have a feeling a lot of these class members are already disclosed, and are subjects of a consent judgment already being finalized by PHH and the CFPB, or the MMC, or the DOJ, or whoever else. We are here today. I'm a judicial activist. You are the judiciary.
4. Censure and replace these young legal eaglets of the defendants with competent and qualified counsel willing to defend these facts and issues, without delay.
5. Stay all PHH Accelerated Share Repurchase Programs or other share based compensation to preserve company assets until satisfactory resolution of this enforcement action.
6. Convene a jury of 12 righteous men or women to try this case.



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[GUEST INTRO]

Is there any other business before the court today?

US SENATORS, OR MINIONS? You're Invited! Bring your friends!

STATE ATTORNEY GENERALS, OR MINIONS? You're Invited! Bring your friends!

MULTISTATE MORTGAGE COMMITTEE MINIONS? You're Invited! Bring your friends!

SEALED COMPLAINTS\* FROM OTHER STATES? You're solicited! Bring your files!

\*NOTE- We will not be able to unseal complaints at this meeting. One, I'm not an attorney. I represent only myself, Pro Hac Vice. I represent USAG, qui tam. I can't represent other Class members. Nevertheless, one of the issues on appeal here is the possible existence of a Class of Others Like Myself, and their future Charter. I feel strongly that we will discover such a Class after remand to District and assignment of counsel. At that time, our US Attorney will ask for complaints again, we'll unseal the boxes and get to work.

OK, let's go deliberate!

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