# OVERSIGHT AND INVESTIGATION: "WHY SHOULD THEY TAKE YOU SERIOUSLY?"

Yves Smith has a post laying out one of the most troublesome aspects of the response to the revelation of foreclosure fraud. As she explains, to conduct an "independent review" of its PR-servicing "review" of its own servicing practices, GMAC picked the lawfirm that has been in charge of its national counsel on servicing issues.

> A Birmingham, Alabama law firm, Bradley Arant Boult Cummings, has been GMAC's national counsel on real estate servicing matters for some time (see here for examples of some of the matters it has handled).
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> Curiously, Bradley Arant is one of the firms that GMAC engaged to conduct an "independent review" after its use of robo signing became public:
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>> GMAC Mortgage is initiating an independent review of foreclosures in all 50 states and examining foreclosure sales nationwide to ensure procedures and documentation are accurate….
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>> The firms hired to conduct the review are Sullivan & Cromwell LLP, Bradley Arant Boult Cummings LLP, Morrison & Foerster LLP and PricewaterhouseCoopers LLP, said a person familiar with the matter.
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> Given Bradley Arant's long-standing and extensive involvement in GMAC's mortgage

> business, how can it legitimately be part of the team conducting the review? It's incentives will be to minimize any problems, for a host of reasons, the most important being so as not to ruffle a big meal ticket and to avoid the exposure of any issues that might create liability for the firm.
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> [snip]
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> Bradley Arant is certain to frame its examination as narrowly as possible and not consider potentially troublesome but germane questions such as who at the contracting organizations (LPS, Fannie, other servicers) might also be culpable.A broader look is key to understand who really bears responsibility. Foreclosures of securitized loans increasingly look to be what Bill Black would call a criminogenic environment, in which the major perps are deeply entwined and work together. And if caught, it is clearly in their best interest to cut loose the weakest, most dispensable actor in their tidy group, the foreclosure mill.
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> So in many ways, the selection of Bradley Arant makes perfect sense. It is familiar with the terrain, so it will be able to issue a plausible-sounding report. It is also so deeply part of this questionable backwater that it is highly unlikely to make a bottoms up investigation and potentially rock the boat.

Couple the prospect of law firms involved in the fraud conducting "independent" investigations of their own fraud with this exchange from Thursday's House Financial Services hearing on robo-signing. Maxine Waters asks the Acting Comptroller of the Currency, John Walsh, whether or not OCC (which regulates the big banks) has imposed any penalties on the servicers for their fraud.

> Waters: I asked earlier about whether or not fines had been levied from the Treasury Department [see that exchange here]. Let me turn to the OCC. Since we started experiencing the fallout from the subprime boom, has OCC taken any enforcement actions against servicers?
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> [long pause]
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> Walsh: We have certainly issued supervisory requirements on them, matters requiring attention and other things to remedy—
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> Waters: Have you levied any fines?
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> Walsh: I do not believe that we have.
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> Waters: Have you issued any cease and desist orders?
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> Walsh: I don't believe that there have been any public actions against them.
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> Waters: Have you threatened to revoke any charters?
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> Walsh: No.
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> Waters: Do you think that the servicers really believe that you mean business if they don't have to fear any consequences?
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> Walsh: Well, I think the consequences are quite clear and present to them. I mean that we can compel action and the threat of more serious penalties—
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> Waters: But you haven't done that. You haven't done any of that! Why should they take you seriously?
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> Walsh: **The supervisory process is one that happens—does not mainly happen in the public spotlight**. It happens in the dealings directly with the institution through the process of examination,

> matters requiring attention, and other things. Only when a particular problem is identified that rises to the appropriate level do we get into the area—
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> Waters: Let's talk about examiners. If you have examiners onsite, can you explain how you don't know about all the problems that have recently come to light? What do the examiners do?
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> Walsh: There's, as I mentioned, our attention was focused on the modification process, it would be quite unusual for us to be in the room or present at the point where an affidavit is being signed or a notarization is taking place. **We do rely on the systems and controls of the financial institution, its own internal audit, or any flags that raise the issue, like our complaint function. And unfortunately those did not raise an alarm about this process**. [my emphasis]

The supervision of the TBTF banks, the head of the OCC tells us, happens primarily in back rooms, and in spite of the examiners on OCC's staff, relies on the internal controls of a bunch of financial institutions that already proved their internal controls either don't or are designed not to function.

Walsh's claim that OCC got no alarm about this process is an out and out lie, of course. When JP Morgan Chase and Wells Fargo refused to cooperate with the investigations of a bunch of state regulators, those regulators told OCC that some homeowners might be losing their homes improperly and asked for help. But instead of taking that as a red flag and conducting an independent review, they again relied on the banks' own internal reviews.

> When two banks — J.P. Morgan Chase and Wells Fargo — declined to cooperate, the

> state officials asked the banks' federal regulator for help, according to a letter they sent. But the Office of the Comptroller of the Currency, which oversees national banks, denied the states' request, saying the firms should answer only to inquiries from federal officials. In a response to state officials, John Dugan, comptroller at the time, wrote that his agency was already planning to collect foreclosure information and that any additional monitoring risked "confusing matters."
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> But even as it closed the door on state oversight, the OCC chose itself not to scrutinize the foreclosure operations of the largest national banks, forgoing any examination of their procedures and paperwork. Instead, the agency relied on the banks' in-house assessments. These provided no hint of the problems to come until they had tripped the nation's housing market, agency officials later acknowledged.
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> [snip]
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> Even when the mortgage industry itself identified possible flaws in foreclosure paperwork, the agency was slow to act. In September, Ally Financial suspended foreclosures after discovering problems with tens of thousands of cases. But even then, the OCC did not begin to examine the operations of other major banks. Instead, the agency asked them to undertake internal reviews and told them it would conduct its own examination later, an OCC official said.

That GMAC "independent investigation" Yves focused on? That's the one that OCC thought sufficient when Ally Financial admitted its own problems.

So it works like this: The regulators allow the banks to self-report on their own processes. When the banks identify what are pretty apparently significant instances of fraud, the federal regulator still allows them to investigate themselves, in GMAC's case, having the law firm that conducted much of the fraud in the first place act as an "independent" investigator of processes the law firm itself provided. And then, even in the face of that obvious fraud, the regulator refuses to impose any penalties–or even, to conduct any oversight outside of a back room–claiming all the time that the threat of penalties the banks know OCC won't impose are enough to gain compliance.

As DDay reported on Friday, here's what Professor Adam Levitin had to say about such a scheme:

When the regulation and investigation all comes down to the banks and their corrupt law firms investigating themselves, you can be pretty sure the system is designed to not find the obvious fraud everyone is talking about.