Future Anarchists of America?

Update I, below. Update II, below. Update III: The denouement of Brian and Ilsa's story can be found here.

True story: A retired couple I know, Brian and Ilsa, own a home in the Southwest. It's a pretty house, right on the manicured golf course of their gated community (they're crazy about golf).

The only problem is, they bought the house near the top of the market in 2005, and now find themselves underwater.

They've never missed a mortgage payment—Brian and Ilsa are the kind upright, not to say uptight 60-ish white semi-upper-middle-class couple who follow every rule, fill out every form, comply with every norm. In short, they are the backbone of America.

Even after the Global Financial Crisis had seriously hurt their retirement nest egg—and therefore their monthly income—and even fully aware that they would probably not live to see their house regain the value it has lost since they bought it, they kept up the mortgage payments. The idea of them strategically defaulting is as absurd as them sprouting wings.

When HAMP—the Home Affordable Modification Program—was unveiled, they applied, because they qualified: Every single one of the conditions applied to them, so there was no question that they would be approved—at least in theory.

Applying for HAMP was quite a struggle: Go here, go there, talk to this person, that person, et cetera, et cetera, et cetera. "It's like they didn't want us to qualify," Ilsa told me, as she recounted their mind-numbing travails.

It was a months-long struggle—but finally, they were approved for HAMP: Their mortgage period was extended, and the interest rate was lowered. Even though their home was still underwater, and even though they still owed the same principal to their bank, Brian and Ilsa were very happy: Their mortgage payments had gone down by 40%. This was equivalent to about 15% of their retirement income. So of course they were happy.

However, three months later, out of the blue, they got a letter from their bank, Wells Fargo: It said that, after further review, Brian and Ilsa had in fact not qualified for HAMP. Therefore, their mortgage would go back to the old rate. Not only that, they now owed the difference for the three months when they had paid the lowered mortgage—and to add insult to injury, they were assessed a "penalty for non-payment".

Brian and Ilsa were furious—a fury which soon turned to dour depression: They tried contacting Wells Fargo, to straighten this out. Of course, they were given the run-around once again.

They kept insisting that they qualified—they qualified! But of course, that didn't help at all—like a football, they were punted around the inner working of the Mortgage Mess, with no answers and no accountability.

Finally, exhausted, Brian and Ilsa sat down, looked at the last letter—which had no signature, and no contact name or number—and wondered what to do.

On television, the news was talking about "robo-signatures" and "foreclosure mills", and rank illegalities—illegalities which it seemed everyone was getting away with. To top it off, foreclosures have been suspended by the largest of the banks for 90 days—which to Brian and Ilsa meant that people who weren't paying their mortgages got to live rent free for another quarter, while they were being squeezed out of a stimulus program that had been designed—tailor made—precisely for them.

Brian and Ilsa are salt-of-the-earth people: They put four kids through college, they always paid their taxes. The last time Brian broke the law was in 1998: An illegal U-turn on a suburban street.

"We've done everything right, we've always paid on time, and this program is supposed to help us," said Brian. "We follow the rules—but people who bought homes they couldn't afford get to squat in those McMansions rent free. It would have been smarter if we'd been crooks."

Now, up to this point, this is just another sob story of the Mortgage Mess—and as sob stories go, up to this point, it's no big deal.

But here's where the story gets ominous—here's where the Jaws soundtrack kicks in:

Brian and Ilsa—the nice upper-middle-class retired couple, who always follow the rules, and never ever break the law—who don't even cheat on their golf scores—even when they're playing alone ("Because if you cheat at golf, you're only cheating yourself")—have decided to give their bank the middle finger.

They have essentially said, Fuckit.

They haven't defaulted—not yet. They're paying the lower mortgage rate. That they're making payments is because of Brian: He is insisting that they pay something—Ilsa is of the opinion that they should forget about paying the mortgage at all.

"We follow the rules, and look where that's gotten us?" she says, furious and depressed. "Nowhere. They run us around, like lab rats in a cage. This HAMP business was supposed to help us. I bet the bank went along with the program for three months, so that they could tell the government that they had complied—and when the government got off their backs, they turned around and raised the mortgage back up again!"

"And charged us a penalty," Brian chimes in. The non-payment penalty was only $84—but it might as well been $84 million, for all the outrage they feel. "A penalty for non-payment!"

Nevertheless, Brian is insisting that they continue paying the mortgage—albeit the lower monthly payment—because he's still under the atavistic sway of his law-abiding-ness.

But Ilsa is quietly, constantly insisting that they stop paying the mortgage altogether: "Everybody else is doing it—so why shouldn't we?"

A terrible sentence, when a law-abiding citizen speaks it: Everybody else is doing it—so why don't we?

I'm like Wayne Gretsky: I don't concern myself with where the puck has been—I look for where the puck is going to be.

Right now, people are having a little hissy-fit over the robo-signing scandal, and the double-booking scandal (where the same mortgage was signed over to two different bonds), and the little fights between junior tranches and senior tranches and the servicer, in the MBS mess.

But none of that shit is important.

What's really important is Brian and Ilsa: What's really important is that law-abiding middle-class citizens are deciding that playing by the rules is nothing but a sucker's game.

Just like the poker player who's been fleeced by all the other players, and gets one mean attitude once he finally wakes up to the con? I'm betting that more and more of the solid American middle-class will begin saying what Brian and Ilsa said: Fuckit.

Fuck the rules. Fuck playing the game the banksters want you to play. Fuck being the good citizen. Fuck filling out every form, fuck paying every tax. Fuck the government, fuck the banks who own them. Fuck the free-loaders, living rent-free while we pay. Fuck the legal process, a game which only works if you've got the money to pay for the parasite lawyers. Fuck being a chump. Fuck being a stooge. Fuck trying to do the right thing—what good does that get you? What good is coming your way?

Fuckit.

When the backbone of a country starts thinking that laws and rules are not worth following, it's just a hop, skip and a jump to anarchy.

TV has given us the illusion that anarchy is people rioting in the streets, smashing car windows and looting every store in sight. But there's also the polite, quiet, far deadlier anarchy of the core citizenry—the upright citizenry—throwing in the towel and deciding it's just not worth it anymore.

If a big enough proportion of the populace—not even a majority, just a largish chunk—decides that it's just not worth following the rules anymore, then that society's days are numbered: Not even a police-state with an armed Marine at every corner with Shoot-to-Kill orders can stop such middle-class anarchy.

Brian and Ilsa are such anarchists—grey-haired, well-dressed, golf-loving, well-to-do, exceedingly polite anarchists: But anarchists nevertheless. They are not important, or powerful, or influential: They are average—that's why they're so deadly: Their numbers are millions. And they are slowly, painfully coming to the conclusion that it's just not worth it anymore.

Once enough of these J. Crew Anarchists decide they no longer give a fuck, it's over for America—because they are America.

If you are interested in this subject, be sure to check out The Strategic Planning Group, where I discuss black swan events and other interesting possible scenarios. Here is the Preview Page, if you are interested. Enjoy!

Update I:

The Center for Public Integrity has a story, written by Michael Hudson this past August 6, that shines a light on the issue of perverse incentives of the HAMP program. These perverse incentives came to light because of a whistleblower, a former employee of Fannie Mae, filing a lawsuit. Fannie Mae was so keen on being perceived as a money-maker, after the Federal government bailout, that the aid programs passed by the Congress and signed by the President were turned into profit centers.

The former executive, Caroline Herron, recounts:

"It appeared that Fannie Mae officers were focused on maximizing incentive payments available to Fannie Mae under various federal programs – even if this meant wasting taxpayer money and delaying the implementation of high-priority Treasury programs," she claims in the lawsuit. Herron alleges that Fannie Mae officials terminated her $200-an-hour consulting work in January because she raised questions about how it was administering the federal government's push to help homeowners avoid foreclosure, known as the Home Affordable Modification Program, or HAMP.

Herron further alleged that "trial mods" were implemented regardless of eligibility of applicants, so that Fannie Mae would be eligible for Federal government bonuses.

Ms. Herron's testimony in fact proves Ilsa's suspicion that there was a scam at bottom. As Mr. Hudson writes, "Herron charges that Fannie Mae continued in headlong pursuit of 'trial mods' even though it knew that many had little chance of becoming permanent. [. . .] Fannie preferred doing trials, Herron alleges, because it was eligible to receive incentive payments from the Treasury Department."

So in the pursuit of these perverse incentives, people who did not qualify for HAMP were enrolled in the program. And when their "trial mods" were up after 90 days, they would be notified that they didn't qualify—regardless of whether they in fact did qualify, as in the case of Brian and Ilsa.

All so as to be perceived as a profitable operation, worth having been bailed out. All so as to be perceived as "returning America's money".

As of February, 2010, of the over one million homeowners' mortgages under HAMP auspices, 83% were "trial mods". One would assume that those 850,000 homeowners would also be assessed an $84 penalty for non-payment.

$84 times over 850,000? You do the math.

Update II:

This post seems to have struck a nerve—by the number of hits it's gotten, it's number 2 on my list of most viewed posts, with a bullet. By the number of comments it's generated, it's the undisputed number one.

But a lot of the comments seem very negative towards Brian and Ilsa personally, which I've found surprising. A lot of the comments seem to say, basically, "They had it coming, for buying at the top of the market." Or else, they seem to say, "They deserve it, trying to take advantage of the system."

First of all—as I thought I made clear early in the piece—HAMP would not change the principal of Brian and Ilsa's mortgage: It would only extend their payment period, and refinance the loan with the now-lower interest rate, so as to lower their monthly payments. Brian and Ilsa would still owe more money than their house was worth, but at least they'd be paying less money per month.

Second—and an issue I debated quite a bit before publishing the post—I didn't highlight the fact that, in order to qualify for HAMP, one of the conditions was that one of the homeowners had to have a medical event which had required large out-of-pocket expenses.

In the case of Brian and Ilsa, both of them had had such medical expenses: Ilsa for breast cancer, which has since gone into remission, Brian for cardio-vascular problems, which have also been cured, though at great cost.

I didn't highlight these medical issues because I wasn't trying to write a sob story—I was trying to write a piece describing a middle-class couple who are throwing in the towel.

I thought I had made it clear that Brian and Ilsa were not trying to have someone else pay for their misfortunes—they would still own an underwater house. But they would simply be paying for it over a longer period of time, with a slightly lowered mortgage interest rate, and therefore having to pay less out of their monthly income.

The vitriol of some of the comments, however, was surprising in its need to find blame with Brian and Ilsa.

There were elements of class envy, certainly, but I think for the most part, there was a kind of projection-and-denial going on: If salt-of-the-earth, always-follow-the-rules people are getting screwed with, then maybe the screwing that I've been getting as of late isn't normal either—and maybe I should be fighting back, instead of accepting my lot.

By claiming that Brian and Ilsa "had it coming, and should accept their fate", maybe those commentators are trying to explain away—to themselves most of all—why they have been screwed with, yet are doing nothing about it.

Just a thought.

This Is What Brian and Ilsa Said To Their Bank: “Show Me The Note, Motherfucker!”

Note to new readers and kind fans: My outrage at the Mortgage Mess made me swear quite a bit in my last post about this issue—a lot of people thought it detracted from my arguments. Therefore, like a junkie easing off the horse, I’m going to set goals for myself: Not more than half a dozen swear words in this post—deal? The one in the title counts as the first. GL
So the week before last, I wrote about Brian and Ilsa, a retired couple in their mid-to-late sixties, living in a house in the Southwest that had—unremarkably—gone underwater.

They had tried to refinance their home mortgage, under the auspices of the HAMP, the Home Affordable Modification Program. HAMP was part of the Financial Stability Act of 2009—the famed “Stimulus Package”.

Under this program, the principal of Brian and Ilsa’s mortgage loan would remain the same—they would not be getting a free ride. (Some readers mistakenly thought that they would. See note at bottom.)

But though the principal of their mortgage loan would remain the same, the period of their mortgage would be extended—and the loan itself would be refinanced with a lowered mortgage rate of 2.75%, from the 6.25% of the original mortgage.

Therefore, their monthly payments would go down roughly 40%—a significant amount for them, especially after their retirement savings had taken a big hit following the Global Financial Crisis.

What had been dreadful about Brian and Ilsa’s case was that, though they qualified for HAMP—and indeed, HAMP had contacted them, at least initially—they were given the bureaucratic runaround for several months, before they were finally allowed into the program.

And then, three months after their mortgage had been lowered, with no warning, they were told that they in fact did not qualify—even though the program fit them like a glove.

Indeed, the program had been tailored for people exactly like them: Retirees, who had suffered unforseen medical expenses on top of having their house go underwater. People who weren’t looking for a handout, but just to refinance so as to take advantage of the now-lower interest rates, and thereby lower their monthly payments.

But now, the bank was saying that they didn’t qualify. Out of the blue, no explanation, no appeal, nothing: They simply no longer qualified. To add insult to injury, they were also told that not only did they owe the difference in mortgage payments—they also now owed a penalty fee, for “incomplete payment”.

Brian and Ilsa tried complaining about the unfairness of the situation, but once again, they were given the runaround.

Then, they and I both discovered that a lot of the people who were initially said to qualify for HAMP in fact did not qualify—they were added to the program so that banks and servicers could collect Federal government bonuses, then bumped off the program once their three-month "trial mod" was over.

It didn't matter if they qualified or not—it was all just some sort of sick game with these people, done so that they could get some of that Federal government bonus money. The proof of this was the undisputed testimony of a whistleblower—whose testimony was of course ignored by the mainstream media.

After all this heartbreak and frustration—and fear—Brian and Ilsa had reached the end of their tether: Ilsa had said, essentially, Fuckit, and was urging her husband Brian for them to strategically default. Brian was wavering, though he was as equally outraged as his wife.

The point of my piece was, If and when solid upstanding middle-class people such as Brian and Ilsa ever do throw in the towel and let out a collective Fuckit, then it's curtains for the American Republic: You cannot have a viable society where the backbone of the country thinks that following the rules and the law is for suckers and chumps.

With the facts of their story in hand, I went off and wrote up my piece, posted it—and watched as it garnered 50,000 hits in a matter of days—over 70,000 hits as of today, eleven days later—and it's still going strong.

I'm a pretty good writer—but I'm not that good of a writer: Clearly, my piece touched a nerve. Touched a nerve? More like gouged it out, put electrodes to it, then went all Abu Ghraib on it—that's how vehement some of the reactions to my piece were.

Life goes on. Between when I last spoke to Brian and Ilsa, and when the reactions to my post started rolling in, Brian and Ilsa's story continued, of course—

—and it took quite the amazing turn over the last couple of weeks.

"And we have you to thank," Ilsa told me.

"Oh?" I said.

"Yes indeed," said Brian—and then he explained:

While interviewing them, I had also been working on my "The Second Leg Down of America's Death Spiral" post—the one where I swore up a storm.

In that piece, I discussed the mechanics of the Mortgage Mess, and how a seemingly trivial issue—chain-of-title—could well clog up the system and bring a collapse in the mortgage market.

I had explained how the banks, in their urge to securitize, had been sloppy with the mortgage notes. I explained how, potentially, this could mean that homeowners with mortgages might well be able to get out of their debt, since no one could now show who legally owned the note. Not just people in foreclosures—everyone with a mortgage that had been improperly handled.

While interviewing Brian and Ilsa, I had talked about these issues to them, at some length. Whenever they needed to take a break from telling me their own story—which as you can imagine got them wound up to high heaven with frustration and worry—I would stop and tell them about the Mortgage Mess, and what I was finding out about it: The crooked law firms manufacturing documents, the shyster banks who owned—outright—Congress. The whole sordid mess.

Also, talking to Brian and Ilsa about the ins and outs of the Mortgage Mess was my way of wrapping my head around the complicated issues at hand, and making sense of it before I wrote about it.

I thought that Brian and Ilsa were only half-listening to me, out of politeness, whenever I rambled on about MBS's and chain-of-title and MERS and all the rest of it—but they paid me a lot more attention than I realized, at the time.

(Note to self—consider adding another aphorism: Always assume people are listening to you more closely than you realize, even if they seem to be distracted.)

Underwater Homeowners
A desperate person with a little bit of knowledge can be a dangerous thing—as Wells Fargo, Brian and Ilsa's bank, soon found out.

Last Monday, October 4, after I had finished interviewing them and was busy writing my original post on the pair, Brian mulled over what I had told him about chain-of-title and the Mortgage Mess—I can just see him, head lowered, looking up: The epitome of the Kubrick Stare.

Brian dashed off an e-mail to his bank that night—a quick post, where he explicitly said, "I want to see the loan note where it says I owe you money, or else I'm contacting my lawyer and halting payment on my mortgage."

The very next day, someone from Wells Fargo called them.

Not a machine, not a customer service rep in India—an actual, honest-to-God, alive-and-kicking bank executive.

She apologized profusely about the HAMP screw up—said that Brian and Ilsa qualified, they qualified, they qualified!, and that she would be the one to "straighten out their situation".

Brian and Ilsa couldn't talk that Tuesday, when the bank executive called. And for various reasons, they couldn't talk Wednesday either—they finally talked to the bank executive on Thursday . . .

. . . and during those three days, it was the executive who chased them: Two e-mails to their AOL account, two phone calls on their answering machine.

On Thursday, when they spoke, the bank executive was sweetness and light—she told them that Ilsa and Brian qualified for HAMP, that they would get refinanced, that they would not have to pay the difference in mortgage of the last three months—"Your lower mortgage rate is locked in!"

And as to the $84 penalty fee, which had driven Brian in particular up the wall: It was waived.

Ilsa told me, "It was the nicest conversation we've ever had with a bank executive."

The executive promised to have the papers drawn up, ready to be signed before November 1.

That's right: November first. After dicking them around for months on end, Wells Fargo all of a sudden went from turtle-speed to light-speed—to warp-speed—boom!—just like that. They didn't even engage thrusters, Captain—it was warp drive the instant Brian e-mailed that threat.

Threat?, you say. What threat was that?

The threat Brian laid down, in the e-mail he sent Monday night:

Show me the note, motherfucker!

That threat.

As I discussed in some detail in my "Second Leg Down" piece, the process of creating Mortgage Backed Securities inherently created ambiguity as to the note holder. This ambiguity in and of itself was not the problem—the problem was, along the way, the chain of title of the note was broken in a lot of mortgages. Thousands of them—maybe even millions.

At the same time, there was massive fraud by so-called "foreclosure mills"—bottom-feeding law firms hired by the banks to carry out the judicial process necessary for foreclosure and eviction. According to credible reporting (as I have mentioned, Yves Smith at naked capitalism has been all over this), the foreclosure mills were not only falsifying signatures, but they were outright fabricating documents—in short, committing massive perjury.

So between these two issues—broken chain-of-title, and systematic document forgery by the foreclosure mills—all of a sudden, the banks have a massive problem on their hands: Legally, their ownership of the note can be challenged—and if the blatant illegalities of the foreclosure mills touched the particular note, then its foreclosure could be in question.

All of a sudden, massive numbers of foreclosures and mortgages could be called into question.

So when Brian e-mailed and asked about the note of his mortgage loan? That was like a cattle prod to the crotch—that woke up Wells Fargo.

There was a reason the bank executive called them back the very next day, and warp-speeded their HAMP refinance: Brian and Ilsa's note is probably either lost, or it's been irretrievably besmirched by the broken chain-of-title mess, or the foreclosure mills mess, or perhaps both.

By refinancing, a new note is generated on Brian and Ilsa's mortgage loan: Pristine and copacetic. They have to sign this new note in order to get the refinance. It doesn't matter how the loan is refinanced—under HAMP auspices, or by any other means—once the homeowners sign on the line which is dotted, all of Wells Fargo's troubles with that particular loan vanish—

—but they have to get people like Brian and Ilsa to sign: No tickee, no laundry.

I explained this issue to Brian and Ilsa, and furthermore told them that, insofar as their relationship with the bank is concerned, they're in the driver's seat:

If they wanted to? They could insist on seeing the note, hire lawyers, and take this to court—where Wells Fargo would lose.

The bank would lose because, once Well Fargo fails to produce their note, or the note's chain-of-title is shown to be irremediably broken, the judge would be left with no choice but to declare that Wells Fargo has no standing to foreclose and evict Brian and Ilsa from their home. If Wells Fargo can't produce a valid note, who are they to claim Brian and Ilsa owe them money?

This is how Brian and Ilsa—and the millions of other homeowners with mortgages, not just people being foreclosed upon—could wind up with their house scot-free, while the banks—and the Mortgage Backed Security holders—would be left eating the losses.
(Very important note: In my previous post, I skipped these specific legal steps, concerning how exactly homeowners could potentially wind up walking away from their mortgage loans, yet keeping their houses. Most important of all, I failed to explain how a broken chain-of-title nullifies a bank's standing in court to bring about foreclosure and eviction proceedings. This failure of mine happened because I was so into the material that I didn't realize that ordinary readers might not see or know the specific steps that would lead to a homeowner giving the shaft to their bank. I hope I have clarified the issue with the above explanation. Please accept my apology, and excuse my mistake.)
"If you play your cards right," I told Brian and Ilsa over the phone, "you could get your house for free."

Like I said in my first post about them: Brian and Ilsa are salt-of-the-earth people.

“But we took out a mortgage—we owe that money,” said Brian. Ilsa said, “All we want is what we were offered: A lower monthly mortgage payment.” Then Brian added, “We don’t want to take advantage of anybody—that would be wrong.”

Wells Fargo is lucky—how many other people are going to act as decently as Brian and Ilsa?

Actually, that’s the wrong question: Which of the banks, or the bank executives, deserve to be treated so decently?

I can’t think of a one.

Note on comments:

In the discussion section of my first post on Brian and Ilsa’s situation, there were a disproportionate number of anonymous comments trashing the couple I described, calling them, in effect, dead-beats and free-loaders.

I’ve come to suspect that many of these anonymous comments trashing Brian and Ilsa were written by trolls working for public relations firms and other shills of the banks. This has been happening on a lot of other blogs that have been discussing (and inevitably criticizing) the banks for their behavior.

An old girlfriend who works in public relations has told me that it’s an open secret in the business that a couple of the big PR firms in fact have in-house task forces doing internet and blogosphere damage control for the banks—and getting huge retainers for their troubles. But she had no proof, so this is basically hearsay—albeit informed hearsay.

Because they are essentially on the Federal government dole, the Too Big To Fail banks ought to be subject to scrutiny and oversight, as regards any attempt to manipulate public perception by way of public relations firms.

I would call for the TBTF banks to be audited, to see that they are in fact not spending public monies in order to manipulate public perception—but really, at this stage, what’s the point?

Note on swearing:

See? Only four swear words in the whole post! A new record! As to my use of the word “hell”, that’s not a swear word—that’s where we’re all going, if this Mortgage Mess isn’t straightened out.