Lessons Learned Oral History Project Interview

Interviewee Name and Crisis Position	Gary Cohen[1] General Counsel, Financial Crisis Inquiry Commission
Interviewer Name	Sandra Ward (Contractor) Yale Program on Financial Stability
Date of Interview	December 12, 2019
Lessons Learned No.	2019-33

Introduction:

The Yale Program on Financial Stability (YPFS) contacted Gary Cohen by email to request an interview regarding Cohen's time as General Counsel for the Financial Crisis Inquiry Commission established in the aftermath of the financial crisis of 2007-09[2].

The 10-member bipartisan commission was charged with investigating and determining the causes of the crisis, modeled after the Pecora Commission that examined the forces behind the Great Depression in the 1930s. It held more than 19 hearings and interviewed more than 700 people in the span of 15 months from September 2009 through December 2010. The commission reported its findings in January 2011.

Cohen, a corporate lawyer for Sidley Austin specializing in financial services, took a sabbatical from his practice at the request of commission chairman Phil Angelides and on the advice of colleague and longtime public servant, Newton Minow, to provide wide-reaching advice to the commissioners and staff, helping them to set administrative policy, obtain interviews, conduct public hearings, and edit the final report.

Cohen returned to Sidley Austin once the FCIC fulfilled its mission and retired from practicing law in 2018.

[*This transcript of a telephone interview has been edited for accuracy and clarity.*]

YPFS: How did you come to be the general counsel for the FCIC?

Cohen: As a lawyer and a partner at Sidley Austin in Los Angeles, I had an opportunity to work a with Phil Angelides. I also knew him slightly politically; I contributed

[1] The opinions expressed during this interview are those of Mr. Cohen, and not those any of the institutions for which the interview subject is affiliated.
[2] A stylized summary of the key observations and insights gleamed from this interview with Mr. Cohen is available here in the Yale Program on Financial Stability's *Journal of Financial Crises*.

to his campaign for governor. Also, he was trying to do a transaction with one of my largest clients and so I got to work with him in that capacity. And I became friendly with him socially. Nancy Pelosi, who was Speaker of the House of Representatives at the time the Financial Crisis Inquiry Commission was created, appointed Phil to be the chair of the commission. Phil had a relationship with Pelosi through Democratic politics in California.

I called him when he became chairman of the commission and told him if he needed any administrative or logistics help, we at Sidley Austin had an office in Washington, D.C. and would be glad to provide whatever assistance we could to get him up and running and maybe loan him a young lawyer to help out.

YPFS: **Would that have been pro bono?**

Cohen: We didn't get into any details as to how services would be paid, but I certainly didn't expect we would make any money on it. It really was very, very unformed, just an offer of assistance. He asked me if I felt like going to Washington and working with the commission. I laughed and said, "What would I do?" because I was not a litigator. I knew they would need a lot of litigation expertise to do the investigation, the kind of work the commission was created to do. His answer was something along the lines of, "You'll figure out something."

I thought about it a bit and called Newton Minow, who was the head of the Federal Communications Commission in the Kennedy administration. Newt Minow was the guy who famously referred to television as "the vast wasteland." He was a partner at Sidley and had done serious government service himself, going in and out of the legal practice. Newt said you really owe it to yourself to do it; it would be a fabulous experience and you'll figure out what you're going to do when you get there. I called Phil Angelides back and I said, "Sure, I'll go to work." I got to Washington in December 2009 and the commission had been up and running for a few months. We didn't have a full staff and we made up some title for me, I don't even remember what it was. But it was not general counsel.

YPFS: **I believe it was special business counsel or something along those lines**.

Cohen: Yes, something like that. It was completely fictional because nobody had any idea what I was supposed to do. I started dealing with all the commissioners, primarily Bill Thomas, who was the vice commissioner, the ranking Republican commissioner. After a while, Bill realized that I didn't have horns, even though I'm a self-admitted Democrat and have been so for all my life. Bill finally acquiesced because he saw I was playing it pretty much down the middle, as far as whatever I was involved in. He agreed with Phil that I could be general counsel, as I was pretty much acting in that role anyway. That's how I became the general counsel.

YPFS: **So both sides had to agree on staffers then?**

Cohen: Yes, a senior position like that would require, not as a formal matter but certainly as a matter of comity, agreement between the two of them. They generally tried to get along; there were very few times where they had open conflicts. Both Bill and Phil agreed I would be general counsel and it was primarily Bill's call because he wanted to make sure I wasn't going to be overly partisan.

YPFS: **From there, how was your role defined?**

Cohen: It was pretty much whatever I wanted to do within the very broad concept of GC.

YPFS: **So how did you define it?**

Cohen: I was free to meddle in almost anything. I dealt with a lot of the administrative tasks, the nuts and bolts, creating the employment manual as it were, and the ethics policies. Nuts and bolts included how staff members should conduct themselves and the way we would reach agreements with the various entities we were investigating. Citicorp was one example where we had a lot of back and forth with their outside counsel Brad Karp, from Paul, Weiss. I would deal with document requests, whether to issue a subpoena to someone, obviously subject to Phil's and Bill's approval, but those kinds of things.

On occasion, when I would see an interesting interview scheduled, because we interviewed a lot of people, I would participate if I thought I could be of some value. Some of the higher-level interviewees we had included, Liz Warren, with whom we spent quite a bit of time, and George Soros, among other folks. I didn't participate as a regular matter. I didn't go to the lower-level interviews. Along with Tom Greene, the initial executive director of the FCIC, I was probably the oldest staff member. He and I were the old men. Staff members were generally in their late twenties or early thirties.

YPFS: **How old were you at the time?**

Cohen: I was in my mid-sixties.

YPFS: **That's a strange moment when you're the oldest guy in the room.**

Cohen: Yes.

YPFS: **How did that play out? Did you feel the need to do a lot of educating?**

Cohen: There was a lot of tamping down. Some of the staff were very eager to, I don't know how best to describe it, but they thought they were going to fix the entire universe by being on the commission staff and they were asking really aggressive questions. They kind of thought they were investigative reporters. I was helpful in putting a stop to that behavior and having commission staff treat people with appropriate courtesy. I'd been in the financial services industry for a long time and I was older and so I saw what could and could not be accomplished.

I think I won the trust of both the Republican commissioners and the Democratic commissioners; all of them would come to me with questions. I tried very hard to not treat things in an ideological manner, but to treat each situation as it presented itself.

YPFS: Did your approach seep into the culture of the commission after a while?

Cohen: The staff was less polarized than the commissioners. There were some staff members who were lifelong Democrats and believed in a lot of regulation. And there were Republican-leaning staff members who did not have that view. But by and large, there was not a lot of ideological back and forth among the staff members. There were very few conflicts that I can remember. We had a couple, but they were not particularly significant in the work of the commission. Everybody on the staff got along pretty well.

YPFS: Had you ever served in any similar kind of position or in any capacity that was equivalent to this?

Cohen: No. The only time I ever did anything like this at all, and it really wasn't like this, was when I left my law practice 30 or 40 years ago to become the president of a client company for a year. I had some executive responsibilities as the president of the company, but I don't think I learned very much from that at all and I went back to being a lawyer pretty quickly. This was new to me. I've been on charitable boards but I never really had any day-to-day responsibility about anything other than managing my own law practice.

YPFS: What was your ultimate goal at the FCIC? What did you hope to accomplish in your role? How did you get up each morning and approach the day?

Cohen: I had very little in the way of a formal schedule, other than meeting with commissioners. If there were a commission meeting or a hearing, hearings in particular required a lot of preparation, we created very large hearing books for the commissioners, big notebooks full of documents for the commissioners to review. I would help assemble those, deciding what would go into them and so on. I'd, of course, attend the hearing and sit behind the commissioners and pass them notes when I thought it necessary.

The rest of my time was spent having people come into my office with questions. I always had an open-door policy and people felt free to walk in and talk. My typical day was answering questions and being available and dealing with a lot of the focal points of our investigation. When somebody from the Fed or other agencies or financial companies would call and say, “We don't want to make this available,” I'd try to negotiate some way to get the information that we wanted without bending people too far out of shape. If somebody from Citicorp, Goldman Sachs, or Morgan Stanley rejected a request, I'd try to work through an accommodation so we could get what we needed without having to threaten to subpoena, which we did very, very rarely.

YPFS: Were you successful in getting the info you wanted most of the time?

Cohen: Most of the time. I even had the situation of sending out an email, or assisting on it, with questions from commission members to the hedge fund community, some of which I had represented as an outside lawyer. But these requests were for data and not for internal fund operations. Once I sent out a mass email to a large number of hedge funds, I figured I would never get another client as long as I lived. But people were pretty good-natured about it and they mostly responded. When I got back to practicing again after I left the commission, I still had clients and so it didn't destroy my career completely.

YPFS: Were you instrumental in deciding to approach hedge funds? It seems information derived from hedge funds was a key element in the commission’s learning about the impact of the role of derivative instruments in the financial crisis.

Cohen: I don't remember how many different topics we were supposed to address. The legislation which created the commission sort of gave us a road map as to what we were supposed to look at. We tried to follow that. It was my job to expedite the process and a lot of that required that we do deep dives into certain institutions. We picked a few institutions that were typical of the industry. For example, we looked at Moody's and we didn't look at Standard & Poor’s, but we could've just as easily chosen Standard & Poor’s instead of Moody's. We chose one because we figured that would be indicative of how the rating agencies worked. We did a huge deep dive into Citicorp, but we could've just as easily looked at Bank of America.

YPFS: Somebody on the commission explained that Moody's was chosen because Moody's was being very obstinate and there was already a lot of information about S&P. Is that true?

Cohen: I don't really remember why we decided on Moody's, but they eventually gave us what we needed. It was difficult. We had a lot of back and forth with them. We had a lot of back and forth with Citicorp. We entered into disclosure agreements with a number of entities. All of the them are now available on the various websites that have the results of our commission. We would agree that they could designate certain things as highly confidential and commission-eyes only, and then other stuff was not. We would negotiate that. I was primarily in charge of deciding when the commission would agree to restrictions on use and when we wouldn't and then implementing it through various agreements.

As I had been a corporate lawyer and drafted numerous agreements, that was something that I could do myself. We entered into a number of those agreements. It's been well over five years since the commission's report was released and most of that stuff is now available because we didn't agree to keep very many things, if any, confidential forever. We had a sunset provision in most of the agreements.

YPFS: What did you find most challenging about your role?

Cohen: I don't know that there were any particular challenges. The most difficult part was navigating the tensions which became apparent after the Republicans got control of the House, in the middle of our tenure. I noticed, at that point, a change in the attitude of the commissioners. Positions hardened.

I'll tell you a little story. Darrell Issa, a Republican from California, became the head of the House Oversight Committee, on which Elijah Cummings, a Democrat from Maryland, bless his memory, was the ranking minority member. It appeared to me that Darrell was absolutely convinced that Angelides was abusing his position as chairman. He sent over some burdensome requests for information while he was chairman of the House Oversight Committee. It would've taken us months to respond to his requests. We slow-walked the requests, answered some and kind of ignored most of what we could. But the only way to describe his behavior was as a fixation of Issa's.

I reviewed emails and other things and couldn't find anything wrong. Issa scheduled a hearing about the commission and then he canceled it. Then Elijah Cummings' staff took the opportunity to look at all the material that I had compiled for Issa's staff and other material they had and did their own report. They found that the some of the commissioners appointed by the Republicans had acted inappropriately.

Number one, they found that Bill Thomas and commissioner Peter Wallison, in particular, had been leaking information to some of the banks and lobbyists. Secondly, they had been using non-FCIC emails to communicate about commission business, which was not permitted because one of our rules was that all commission business would be conducted on the FCIC-Internet server. That way all the emails could be preserved and become part of the commission's records. And they have been. They are all available if you dig deep enough.

Elijah Cummings' staff found that some of the Republican commissioners were using outside servers and outside emails, personal emails basically. After the Republicans took control of the House, but after the Dodd-Frank bill had been passed by the Democratic-controlled Senate, the Republican commissioners decided to try to make sure there was nothing in the report that would get in the way of repealing some of the provisions of Dodd-Frank that they found to be onerous.

I wasn't sure exactly which provisions they found objectionable because it's probably most of them, but there were emails to that effect and the thinking was basically, 'Well now that we've got control back, we can perhaps unwind some of this.' This was done outside of the normal FCIC emails. I wouldn't have known about this had Darrell Issa not investigated the commission activities and discovered this material. His investigation never found the smoking gun that he was looking for, but it enabled Representative Cummings' staff to come up with a report on the activities of the Republican commissioners.

It was actually pretty funny and this happened after we were pretty much done, but it was an interesting development.

The Republican commissioners also objected to using the term Wall Street for the financial institutions. We were using that as shorthand for all financial institutions, and the term Wall Street would encompass hedge funds in Chicago, also. There were a fair number of points like that which came up as we were completing the report.

Still, I had a pretty decent relationship with most of the commissioners. Even with Peter Wallison, who was the outlier among the commission members. He did not join any other commission members in the conclusions of the final report, which were adopted six to three to one. The six Democratic appointees, five of them were Democrats and Heather Murren was an independent, but she certainly was appointed by Democrats. Three Republicans, Bill and the other two, issued their own report.

Peter Wallison issued his own report, because Peter, to this day, is sure that lax housing policies and the insistence on lending to unqualified borrowers, mandated by certain congressional and executive action, was what caused the crisis. Fannie Mae and Freddie Mac making bad loans was the reason why the whole financial system fell apart and that was because of misguided social policy, he maintains. That's been Peter's position consistently. That was his position before he became a commissioner and it's his position today. He occasionally writes on the subject and he's not changed his view at all.

The other three Republican-appointed commissioners downplayed that substantially in their minority report, which is available as part of the commission's report. They adopted most of the findings of the six-member majority, with a bigger emphasis on overseas effects and some commentary as to why the financial crisis was a worldwide phenomenon, which we as the staff did not focus on very much. We didn't get into what happened in Spain and Italy and Greece very deeply. Indeed, it was a worldwide crisis and there was some truth in what the three Republican appointees put in their minority report.

Generally, the three Republican appointees generally agreed with the findings of the majority, which were that a lack of regulation, ignoring risks, and overleveraging were to blame.

YPFS: **And no one could sway Peter Wallison from his set of facts?**

Cohen: Ron Borokowski, one of our senior investigators, is a very, very good guy, and very thorough. He treated the Wallison position with appropriate respect and dealt with a lot of the issues that Wallison raised. He didn't think Wallison's account was an accurate description of the causes of the crisis. He spent a lot of time going through the material provided by commissioner Wallison and a fellow named Ed Pinto, who worked closely with Wallison. Pinto is at the American Enterprise Institute. We did look at their views because it's a serious issue and a lot of conservative commentators believe it to be a primary cause of the crisis; lack of lending standards imposed for social and political reasons as opposed to economic reasons.

YPFS: **Let's talk about the subpoena power. Did you make that come about or was that in the charter of the commission?**

Cohen: I didn't have the power to create a subpoena power where none existed. I believe it was part of the authority that we had in enabling legislation. We didn't use it very much. We may have given a subpoena to Moody's. When somebody would object to doing something I would say, "Listen, you can do it voluntarily or I can give you a subpoena," and they would say, "Okay I'll do it voluntarily," because there were very few people who wanted a subpoena. One of my funniest subpoenas was the one I gave to Warren Buffet, but that's a whole separate story.

YPFS: **Tell us what happened with Warren Buffet.**

Cohen: We wanted to talk to Buffet because you know he's like Adam Smith, he's a major financial figure. It wasn't that we thought he was in any way a cause of the crisis, but rather we wanted to get his views on what caused the crisis and what, if anything, should be done in the future. Even though it was not our mandate to make recommendations, we were interested in his views. To go through the entire investigation process without talking to Warren Buffet would've been weird.

YPFS: He was a major stakeholder of Wells Fargo at the time, correct?

Cohen: He was a big shareholder in Moody's in particular.

YPFS: Okay.

Cohen: I called up the offices of Berkshire Hathaway and I spoke to Mr. Buffett's assistant. She told me how Mr. Buffett was very busy and he wouldn't be able to talk. I said, "This isn't really a request, this is more like a command." She said, 'I'll talk to Mr. Buffett.' We went back and forth and back and forth. They were very cordial, it was not obnoxious at all, but the attitude was please leave us alone, he's got other things to do.

Finally, he agreed to have us come out to Omaha to talk to him and he said: "But I'm not going to testify in the commission hearing unless you subpoena me." I asked why and he said "because if I agree to talk to you guys without a subpoena, then everybody's going to insist that I talk to them without a subpoena. You have subpoena power, so use it."

We flew to Omaha and he had somebody pick us up at the airport in a very old Cadillac. We went to his office, an exceedingly modest office. He took me aside, and showed me his private office, also exceedingly modest, typical of what Warren Buffet seems to signify. We did the review; we spent a couple of hours with him and we taped it and it's available online. Interestingly, Mr. Buffet showed up with a senior staff person, who was not a lawyer, just a senior assistant and we had a very, very nice conversation. He was very forthcoming. Many of the other people that we interviewed, for example, were all lawyered up. I went to the interview with Sandy Weill in New York and he was all lawyered up, even though we weren't blaming Sandy for anything. That's how they operate.

At the end of our meeting, I said to him, "Mr. Buffett would you appear before the commission next month?" We happened to know he was going to be in New York, which was where we were going to have the hearing on Moody's, because his sister had something to do with a prisoner education project and he was going to appear at his sister's event.

He said, "No." So, I gave him the subpoena and he said, "Thank you." He knew it was coming, but I figured maybe he would change his mind because he seemed to have a good time talking about the commission. He's a very charming man. And then, I'm not telling this outside of school because this is public record now, my two colleagues -I went with two of my senior investigators- people who basically were dying to go see Warren Buffett both pulled out books and wanted Mr. Buffett to autograph them. And he did.

The next day or so, there was an article online about the interview, written by the woman who apparently is the person who does the Berkshire Hathaway annual report.

YPFS: Carol Loomis?

Cohen: Yes. It relayed the whole story about how Warren Buffet was at the interview and how the interview was conducted and how he then got a subpoena and then he autographed a couple of books. The nice thing was that she did not identify the two investigators who asked for the autographs, but she said, "Mr. Cohen was not one of the people who asked for an autograph.”

She made sure that I didn't get in trouble with Phil Angelides or Bill Thomas. And the truth is the two investigators who came with me, one was from the Republican side of the table and one was from the Democratic side, so neither the chairman nor the vice chairman got too upset about it. It shows you how smart Warren Buffett is.

YPFS: He thinks of all the angles.

Cohen: By releasing that little vignette, he was able to deflect any criticism that he might have received had somebody put a different spin on it, like how he needed a subpoena in order to comply with a request from the commission. Instead it became a cute little story.

YPFS: Did he finally appear?

Cohen: Absolutely. It was a real subpoena. He was not going to decline the subpoena.

YPFS: Any other fascinating stories like that in trying to get people to testify?

Cohen: No. But what I found out about Washington is how replete it is with rumors. There were a number of times when people who I would deal with, outside lawyers and lobbyists, would call from time to time saying, “You know, people have got some real dirt on Angelides and it's going to come out in the next couple of days,” as if they're doing me a favor and giving a heads up.

I was cordial with a lot of these people; most of them were lawyers, as I was, and there is honor among thieves, as they say. But none of the rumors were ever borne out. I'm not sure exactly what they hoped to accomplish, but

Angelides, to my personal knowledge, bent over backwards to be squeaky clean. And I never saw an inkling of anything inappropriate.

I would tell Phil if it involved Phil, and it almost always involved Phil because it almost always came from someone with a Republican leaning, or someone in the financial services industry. I don't think anybody ever called up and said, "I've got some dirt on Bill Thomas or I've got some dirt on Keith Hennessey or Peter Wallison." It was only Phil's got this problem and Phil's got that problem and Phil never had those problems, as far as I know.

Indeed, I didn't see anything inappropriate from the commissioners at all until the Elijah Cummings' report came out, which talked about the Republican commissioners' use of non-FCIC emails and the agreement among them to try to limit the report so that it wouldn't interfere with a later repeal of provisions of Dodd-Frank.

YPFS: **What about the Citicorp whistleblower, Richard Bowen?**

Cohen: Richard was complicated. What would you like to know about him?

YPFS: **It seems as if he got his day before the commission, but later he claimed a lot of what he said was not entered into the record. He was very critical of the commission and the way he was treated by the commission.**

Cohen: We looked at all the stuff that he had. He gave us some stuff that was irrelevant to what we were doing. He was an interesting guy and I don't want to say anything which will offend him in anyway. I'll just say that he was a challenge and we treated him seriously, but we didn't do everything that he wanted us to do. He wanted us to do more with the information that he had, a fair amount of which was not relevant. But we did treat his claim seriously, people looked at it, people talked to him, read his reports, his submissions.

YPFS: **What about the ethics policy business? Apparently, the commission didn't make its ethics policy available publicly, and did so only after stories about stonewalling on it appeared.**

Cohen: We didn't want to have a staff list published; we didn't want to have the internal workings of the commission published. A lot of that stuff was going to come out at the end of the commission's tenure and it did. Everything is out there now, staff list and all the rest.

An example is the staff list. Although some people could probably figure out who was on the staff by who was at the hearings, we didn't want people bothered and we didn't want lower-level investigators to be approached by industry people or people with a different agenda. We tried to protect them from that.

It wasn't so much that we didn't want to show the ethics policy, we didn't want to have much of the internal affairs of the commission out in public until the end of the commission's operation. But once it became a cause celebre, then we said okay, the hell with it. There was nothing magic about the ethics policy. I drafted it and copied most of it from one of the other commissions, standard provisions that apply to House members or House staffers, as well. It wasn't as if it were an original piece of work, it was a compilation of prior commissions' operating procedures and ethics approaches.

And one thing we did want was for the commissioners and the commission staff, to keep the commissions agreements private. We wanted confidentiality to be maintained forever. When the commission itself entered into a confidentiality agreement with say Moody's or Citicorp or Fannie Mae or Freddie Mac, we would want the commission staff people who had access to that to agree that if the commission had agreed to keep something confidential, that they would respect that as well. So that's why we had non-disclosure agreements among the commission staff members and we had the employee policy, I'll call it, which was copied and modified a little bit from policies to which prior commissions and the House of Representatives adheres.

YPFS: How did the ethics policy become an issue? Was that something leaked by the Republican side?

Cohen: I don't know. There were so many people trying to cast doubt on the commission. A couple of the Republican commissioners, if you looked at the Elijah Cummings' staff report, were leaking information. Some of the outside lawyers got copies of drafts of the report before anybody else did. When the commissioners would get a 200- or 300-page summary of the report, the next day the lawyers at some of the financial institutions would have it. It was remarkable how quickly things leaked in Washington. It was extraordinary.

We had evidence that some of the Republican appointees did it, but I have no idea whether the Democratic appointees did it as well. It wouldn't have been in their interest to do so, but nonetheless Washington is a very leaky place, as you can see by what's going on today.

YPFS: Were you shocked at the level of intrigue in Washington or were you cynical to begin with?

Cohen: There's a saying that you can never be cynical enough. I was pretty cynical. At that point, I'd been practicing law for almost 40 years. Still, I was a bit surprised.

YPFS: You have said in interviews that despite all the years practicing corporate law for the financial industry, you gained a different

understanding of that industry after serving on the commission. Can you talk about that a little? What were your eyes opened to?

Cohen: You know the story about the elephant and the blind men? There are four blind men and they all approach an elephant and one of them grabs the elephant's leg and says, "Oh, the elephant must be like a giant tree trunk" because that's what he felt. Another one grabbed the elephant's trunk and said, "Oh, the elephant must be like a serpent," because that's what he was feeling and another one grabbed the elephant's tail and said, 'No, this is like a rope." Whatever you touch becomes your reality.

As a lawyer I had been focusing for as many years on how to get stuff done. How to make what a client wanted to have happen, occur. That was my role as a lawyer. I wasn't a litigator and I wasn't a regulatory lawyer. I was more of a large picture, how-do-we-get-from-here-to-there, within the realm of legality and practicality, lawyer.

I knew how to accomplish things in the financial industry, but what I didn't appreciate was the actual plumbing of the financial structure of the United States. I never had a really good understanding of how a multilayer collateralized loan obligation got created and how the loan process really worked. I could build a CLO or a CBO or a hedge fund offering document, but what was the plumbing underneath it? I never had to learn how the water got to the house, I knew what to do when it came out of the faucet but how it got cleaned and divided from the river or the well or wherever, filtered, and all the rest is not something I really knew in any detail.

Being on the commission, I really learned the nuts and bolts of how the whole process worked. And more importantly, what the incentives were for the people who assisted in the process, creating the financial instruments that eventually led to the collapse of the financial services industry in 2007-2008. All the incentives that were built into the creation of these instruments and to the leverage and the overleverage, which eventually led to the collapse, I learned about to a much greater extent than I knew going in. I had some inkling because I'd been around the business, but I didn't have the kind of understanding that I acquired by talking to people and reading the documents and looking at the arrangements and seeing the structure of how Joe Blow's mortgage loan in New Brunswick, New Jersey ended up being in a CLO that was sold by Citicorp to the California Retirement System and how that whole process worked.

That was new to me. It's a very interesting process. Capitalism is wonderful in the way it creates wealth, but it also creates incentives, and they can be very perverse sometimes.

YPFS: **Was it also revelatory to learn about the regulators role in overseeing these products? What did you learn about the government agencies?**

Cohen: Not that much. They didn't have the staff or the power to really understand who it was all connected. I don't think the agencies had the knowledge of the interconnectedness of the financial services industry; that became apparent when the crisis hit. When I spoke to Paul Krugman, when he was still at Princeton, that was one of the interviews that I assigned to myself, he said that he knew the financial system was leveraged and he had an understanding of how it worked, but he had no idea how interconnected it was.

That came as a surprise to him and that was a universal problem, that people didn't realize that the loan from the fellow in New Brunswick, N.J., if it went into default, could ripple through to seven different security instruments, the different collateralized loan obligations, which could be pieces of the retirement portfolio of different pension plans and different investors. That level of layering and multiplication of defaults and things like that was something people didn't have any understanding of because they didn't have the depth of knowledge and I don't think they even knew what questions to ask.

YPFS: **What would you say your lessons were from your experience in the commission? What were your takeaways?**

Cohen: I learned our public servants deserve a shout out. I, like probably most of the country, had a view that people that worked for the government didn't work as hard as people in the private sector and maybe they weren't as smart or they weren't as ambitious and so on. I dealt with a lot of people at the FDIC, a lot of people at the Fed, people at the Treasury, not political appointees but staff people, and by and large I was extremely impressed with the professionalism and the intelligence and the hard work that these people were putting in, and earning way, way less than they would make in the private sector.

My salary was one of the highest of the paid staff people on the commission. The commissioners got something like $130,000 a year. While that seems like a lot of money, first of all in Washington it's not, and secondly, it's a lot less then I was making as a lawyer. I was only doing it for one year so it wasn't as if I were financially ruining myself. These people were doing it as a career, in many cases.

They were willing to do that because they were serving a higher purpose. Whatever gratification they got was certainly not out of getting rich. Not only that, I would sometimes work on weekends and I would occasionally send emails to people at the Fed or people in the Treasury. I would get emails back almost instantly. These supposedly 9-5 government employees would send me something at 8:00 p.m. on a Sunday night.

I was very impressed with the quality and the work habits and the intelligence and seriousness of the staff people in the various financial regulatory agencies that I came across.

Another lesson I learned, which I actually knew but my time on the commission brought it home, is that if you create a financial incentive for something, you're going to get a lot of it. It's in people's interest to generate whatever it is that's going to get them the commission or the bonus or whatever. So if you get a lot of money for creating a lot of mortgages, some of them will be crappy mortgages. That was absolutely clear, and the movie "The Big Short," about the financial crisis, provided a pretty good explanation of that.

YPFS: **What about the role deregulation played in the financial crisis?**

Cohen: I had a theory, which I tried to get the commissioners to agree to, but nobody did.
Hyman Minsky had a theory about economies, about the financial aspects of economies, and his theory basically was that success sows its own seeds of collapse. And if you read his very short papers on financial instability, I thought he had it right.

YPFS: **His work seemed to be rediscovered during the financial crisis.**

Cohen: Krugman called it a "Minsky moment." What I came away with is that there is a need for regulation to curb the excesses of unfettered financial engineering. Paul Volcker, who died not long ago, made a similar point when he said famously, "The only financial innovation in the last 30 years or so, that's been of any value to anybody, was the ATM (automated teller machine)."

The primary beneficiaries of a lot of the financial engineering that occurred were the people who created it and lawyered it, and accounted for it, and structured it, and sold it, not the public, because it didn't really do any good on some levels for the overall economy. A lot of the financial engineering was created to create wealth for people who created it, not in any way to make the economy work better.

My thought is that Minsky's idea was a bit like a positive feedback loop in engineering. I was an electrical engineer before I became a lawyer. A positive feedback loop eventually oscillates out of control. The way to make that not happen in an engineering is to put some energy into the system to dampen the feedback. The equivalent in the financial services industry is regulation. The challenge is how much regulation is enough to make sure that that the industry doesn't spiral out of control, doesn't go through a Minsky cycle. How much regulation is appropriate to do that without screwing it up completely and without overregulating.

That's a very delicate task and most politicians don't really address that kind of thing. You have to rely on experts and people who have some understanding of the way the systems work to craft regulations which are sufficiently robust to prevent a positive feedback loop from occurring and blowing itself up and at the same time not to drive it down to zero because that's a bad result as well.

Regulations are very important and the right kind of regulations are vital.

YPFS: Speaking of Paul Volcker, what about the Volker Rule? Does that overreach?

Cohen: No, I don't think the Volcker Rule is bad. You don't want banks who have the benefit of an insured product as the source of their assets to engage in highly speculative activities. The Volcker Rule, while enormously complicated -I was on the lawyering side after the Volcker Rule was enacted to try to figure out how to help clients get through it because it pops up in a lot of places where people wouldn't even suspect it applied- is a good idea because it got the banks, in part, out of certain aspects of speculation.

The whole shadow banking industry, which is half the financial economy, is pretty much unregulated, even now.

YPFS: Did your time on the commission allow you to approach your corporate work in a different way? How did it influence your corporate work? Or how did your corporate work influence your role in the commission?

Cohen: To answer the second question, because I was acutely aware of what was achievable, I was able to bring some level of focus and reality to the more enthusiastic staff members, who were younger and had more energy than I did. On that level, my corporate work and my experience in just being older and having dealt with financial service clients for as long as I had, enabled me to bring some tempering to the way the staff approached its work. Where people would come in very excited about something, I'd help calm them down and get them focused on the end game rather than proving a point.

Once I got out of the commission, it enabled me to understand a little bit better what the clients were doing and how the plumbing worked. It didn't have a huge effect because at that point I was starting to wind down my practice anyway. I was in my mid-60s and thinking about retirement. One thing I did learn, which is a lesson that every single person who thinks of him or herself as an indispensable person, is that nobody's indispensable. I don't know who it was that said that graveyards are full of indispensable people. I went away for a year. When I left, I had a lot of clients. When I was away, those clients dealt with other lawyers in my law firm and maybe some went to other law firms. When I came back they said, "Oh, who are you? Where have you been?'

That was fine because part of the process of getting older and looking towards retiring, which I did at the end of 2018, is transitioning relationships to younger people who can carry on the relationship with the client and continue to service them, to provide them the excellent service that they became used to. That was a good result of me being away for a year, and it enabled me to prove to myself that I wasn't indispensable and allow the younger lawyers in my law firm to take greater responsibility.

All in all, Newt Minow was right: it was a fabulous experience. I helped a little bit. Somebody else could've done what I did, but I got a chance to do it.

YPFS: Thanks, Gary.

Suggested Citation Form: Cohen, Gary, 2019. "Lessons Learned Interview." Interview by Sandra Ward. Yale Program on Financial Stability Lessons Learned Oral History Project. December 12, 2019. Transcript. https://ypfs.som.yale.edu/library/ypfs-lesson-learned-oral-history-project-interview-gary-cohen