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Yale Program on Financial Stability

Lessons Learned

Gary Cohen

By Sandra Ward

Gary Cohen joined the Financial Crisis Inquiry Commission (FCIC) in December 2009 to serve as its general counsel at the request of commission chairman Phil Angelides. The FCIC was a 10-member bipartisan group convened by Congress to investigate the causes of the global financial crisis of 2007-09. Cohen had a wide-ranging and ad hoc position that included advising commissioners and staffers on administrative matters and protocols. In addition, he assisted in document requests and compelling witnesses to testify and, on occasion, in conducting interviews and public hearings. He played an instrumental role in editing the commission's final report. This "Lessons Learned" is based on an interview with Mr. Cohen.

Public service: Its own reward.

Before taking a year-long sabbatical from the corporate law firm for which he had worked for much of his career to serve as general counsel for the FCIC, Cohen sought the advice of colleague and mentor, Newton Minow, a former head of the Federal Communications Commission in the Kennedy Administration, who had devoted serious time to government service. Cohen recalls,

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

Cohen was free to put his stamp on the commission by taking responsibility for a lot of legal-related administrative tasks including creating an employment manual, ethics policies, and terms of agreements with the various subjects who would appear before the committee. Document requests, subpoenas, and high-level interviews also fell under Cohen's purview.

The experience proved immensely valuable and gave Cohen insight into the world of public service and the sacrifices government workers make on behalf of the country. He notes,

I learned our public servants deserve a shout-out. I, like probably most of the country, had a view that people who 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.

They were willing to do that because they were serving a higher purpose. Whatever gratification they got was certainly not out of getting rich.

In addition, on returning to his firm, Cohen says he came to better understand his clients' perspectives, as well as his role as an elder statesman in his firm. The experience helped him transfer more responsibility to younger lawyers at his firm so they could build trust with clients and deliver a level of service that the clients had come to expect. Cohen notes,

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.

Experience matters: Managing expectations and tempering zealotry.

Cohen, then in his early 60s, along with Tom Greene, the initial executive director of the FCIC, were the oldest staff members at the FCIC and, as such, found themselves in the unexpected position of providing life lessons to the younger generation on appropriate conduct and behavior in managing the commission's investigations. Most staffers were in their late 20s or early 30s, recalls Cohen, and were taking what he termed "an overly aggressive approach" to their research interviews that showed a lack of comity and civility and which was proving counterproductive to the ends of the commission.

Noting that the staffers' approach bordered on the obnoxious, Cohen said he spent a lot of time tamping down expectations and tempering overzealousness. Remembers Cohen,

They approached their interviews as if they were trying to embarrass people. I was helpful in putting a stop to that behavior and treating people with appropriate courtesies because I'd been in the industry for as long as I had been, and I was older and I saw what could, and could not, be accomplished.

Ultimately, Cohen said, his courteous and non-ideological approach resulted in him and his team winning the trust of the bipartisan commissioners.

Subpoena power: A powerful tool need not be abused.

Cohen's open-door approach and ability to negotiate on behalf of the commission for the information they needed produced results. As a result, the subpoena authority held by the commission, though a powerful tool, was used sparingly and sometimes in an unexpected manner.

As an iconic figure in American finance, Warren Buffett was high on the list of people the FCIC felt it important to interview. Buffett, chief executive of Berkshire Hathaway, known as the Oracle of Omaha for the folksy business aphorisms he imparts from his Nebraska

headquarters, is also a major investor in banks and financial stocks and had positions in Moody's and Wells Fargo, among other companies that were caught up in the financial crisis.

Buffett repeatedly rebuffed Cohen's request for him to testify before the commission but, after much back and forth, he eventually consented to meeting with Cohen and some other FCIC officials but stated that he wasn't going to testify before the commission unless he was subpoenaed. When Cohen asked why, Buffett responded that were he to agree to testify without a subpoena, others will insist he speak to them without a subpoena. Cohen recalls him saying, "You have subpoena power, so use it."

On arriving at Buffett's offices in Omaha, Cohen notes the FCIC team spent a few hours interviewing Buffett who was joined by a senior staff person rather than a lawyer. He was congenial and forthcoming. Thinking that this meeting might have softened his stance on appearing before the commission, Cohen asked Buffett again if he would testify when the commission convened in New York the next month, knowing Buffett was scheduled to be at an event in the city. Buffett declined. Cohen handed him a subpoena. And Buffett was ready to deflect any criticism that he had resisted cooperating with the FCIC. Says Cohen,

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

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