

A Midwestern Soul

Nancy Sher Cohen is firm but fair

BY JOE MULLICH
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The jurors in the Fort Worth courtroom, some with arms crossed, looked curiously at Nancy Sher Cohen.

It was 2012. Cohen, now a partner at Lathrop Gage, had flown from Los Angeles to Texas to handle the voir dire in the last phase of a case she had already tried and won. The current issue was attorneys' fees, and the attorney on the other side had gone on and on to the 42 prospective jurors about the "Hollywood lawyer" and the exorbitant rates she charged. A decade before, Cohen, the "Hollywood lawyer" in question, had indeed represented Clint Eastwood in a case against his former girlfriend Sondra Locke, which had generated enormous press coverage. But in the courtroom, Cohen didn't seem particularly Hollywood. She wore a burnt orange suit that was far removed from anything found on Rodeo Drive. Walking up to the jurors, she said she needed to ask an important question: "How many of you are Aggies fans?" A few puzzled hands went up to show their allegiance to the Texas A&M football team. "I'm a Texas Longhorn," she said. "You won't hold that against me, will you?"

Over the years, Cohen has helped policyholders recover well over \$1 billion

in insurance coverage lawsuits. She's represented Fortune 500 companies and Holocaust victims. She helped the city of Los Angeles with insurance issues surrounding its successful bid for the 2028 Summer Olympics.

And then there's the multibillion-dollar post-9/11 insurance lawsuit.

At heart, though, Cohen remains a Midwesterner with a plainspoken style.

Mark Friedman, who worked with Cohen when he was a senior counsel at Arco, says that, following three mock trials for a nine-figure business interruption case, the jurors commented on how much they liked her. "She has a Midwestern soul, and her style is like having a conversation with a neighbor over a back fence," he says.

In the Texas case, after both sides were done presenting, the jury came back unanimous in her favor.

SITTING IN A CONFERENCE ROOM at her firm's handsome Century City office, Cohen announces she has given thought to some of the topics to be covered in the interview. She goes through them pleasantly, quickly, as if checking off items on a to-do list. Her storytelling, though, unfolds with the leisurely pace of someone trading stories at the general store.

She was born in Kansas City, Missouri, and grew up a tomboy. She played shortstop during baseball season and "tackling dummy" for her brothers during football season. Her father ran a trucking company that delivered movie prints to local theaters, and he would occasionally bring them home to watch in the family's basement theater, replete with projector and director's chairs. Despite her father's nickname, "Bulldog," there was little doubt who ran the show. His chair was labeled "The Assistant." Mom's: "The Boss."

"My father was a conservative guy, and he was puzzled by my wanting to become a lawyer," Cohen says. "My mom was not. She saw a woman as being able to do anything a man could. I come from a family of strong women."

Still, Cohen wasn't interested in the law at first. She graduated from the University of Texas at Austin as a government major in 1973. When Cohen was a junior, Page Keaton, the dean of the University of Texas School of Law, called and asked her to meet with him about attending law school. He was trying to recruit women, but Cohen was more interested in broadcast journalism. "I had no idea who he was," she says. "Law school sounded boring."



Nancy Sher Cohen

Lathrop Gage
Insurance Coverage; General
Litigation; Class Action/
Mass Torts; Defense
Los Angeles

After she graduated, however, she found her government degree did not elicit many job offers. Because she could type, she landed a position as a legal secretary at a law firm. The head of the firm asked her to run his collections business, which secured overdue sums for both the firm and its clients.

"I loved the problem-solving," she says. "I wasn't just calling and beating money out of people. If they couldn't pay, there was a problem. There was also an analytic aspect to it—deciding which court to file in and what strategy to pursue." She was so successful in collections, the head of the law school offered her a position both in the law school and at his firm.

Instead, Cohen followed her new husband to Japan, where he eventually landed a position as a scholar at the Museum of Modern Art in Tokyo. "The notion that I deferred to my husband surprises people, but that was the time," she says. "We went with a one-way ticket and my bat mitzvah money."

After two years, she wanted more. She told her husband, "At some point we have to start a life," and the idea of law school grew on her. In Tokyo, she took the LSAT, then attended Loyola in LA, graduating in 1978. She quickly landed a job at Tuttle & Taylor, a prestigious firm that generally preferred students from more illustrious schools. But they were short a litigator, and put her in the litigation department from the start. Her first case was a lengthy trial against Pacific Homes, a string of retirement homes allegedly run by the United Methodist Church and its related entities. Residents had purchased lifetime care contracts, but the church agency ran out of money. The plaintiff side of the trial alone lasted six months, and the case was eventually settled. Cohen found her calling during voir dire.

"I love learning about the jury," she says. "I establish a relationship with the jury, because they have to believe you have integrity. During the cross-examination, you might ask an odd question and they wonder where it comes from. They have to believe you have something. That starts in voir dire. You can win a case in voir dire."

"She is intensely focused on the outcome," Friedman says. "She thinks the endgame backwards." He recalls a meeting about a mass tort hearing where

the judge and various attorneys were going to hash out some important matters.

"Nancy showed up with an agenda she had written out, and the judge said, 'I don't have any better ideas,' so it became a fait accompli." He adds: "If you have an issue with an insurer not paying off a policy, Nancy is the first and maybe the last person I would call."

Cohen approaches law strategically. After 9/11, she immediately reached out to one of the World Trade Center policyholders, GMAC Commercial Mortgage, but the executives there had already engaged another firm. However, a pattern began to develop. The execs would meet every morning between 8:00 and 9:00, then call their attorneys with questions. Often, they weren't available. So they began reaching out to Cohen, and, though their 9:00 was her 6:00, she made sure she was in her office every day to take those calls.

"Six weeks later, when the lawsuit got filed, they took the lady that was accessible and understands all these issues," she says. "That should be a lesson to all young lawyers."

The case was a landmark one. Real estate titan Larry Silverstein had purchased the World Trade Center only a few months before the attack. As was common for a closing, he received a "certificate of insurance" explaining the coverage. It was only three pages long, listing more than 30 insurance companies, with scant details about the individual policies other than the coverage amount.

All together, the policies provided \$3.5 billion in coverage "per occurrence," and the major sticking point was whether the two planes hitting the tower counted as one occurrence or two. Cohen had to sift through the policy language and varying definitions of "occurrence." "Today, we have a lot of rules for electronic discovery," she says. "In 2001, we had to approach one person at a time, and ask desk-to-desk what they had on their computer."

Ultimately, the court granted Silverstein a payout of approximately \$4.55 billion, roughly a third more than the maximum allowable for a single "occurrence." Cohen's proudest moment, she said, was "protecting her witness," a 26-year-old junior executive working for GMAC. Somewhat inexperienced, the young woman had



Cohen, who was "raised Royal," maintains her Midwest roots with season tickets to the Chiefs and, here, a World Series game with the Royals.

taken copious notes at meetings. "Her notes turned out to be a critical document at the trial," Cohen says, "because it told the jury what was happening at a meeting only a few days after 9/11. But she didn't remember what was in the document, because she was just taking notes and didn't understand it. I wanted her to keep her dignity and to not be ridiculed. ... I had to protect her, prepare her and get her through the process safely."

Ralph Duggins, a partner at Cantey Hanger in Fort Worth who worked with Cohen on the Texas life insurance case, says, "She's not afraid to tee it up." He recalls her cross-examination of a local attorney, who'd given a lengthy opinion on why he thought the fees charged by Cohen's firm were exorbitant. "She had done her homework and found three or four areas in his opinion that were flawed," Duggins says. "She got him to acknowledge that some of his opinions weren't sound. It's not easy cross-examining another lawyer, especially a highly regarded and experienced trial lawyer who is testifying on his home court. She did a masterful job."

She's tough in another way, too. In 1997 and again in 2010, Cohen was diagnosed with breast cancer. She continued to work even while she spent as much as nine months going through chemotherapy, radiation therapy and surgery. "I don't believe in letting an illness define you," she says. "While it is very much part of

you, and there are times one can't function during treatment, I immediately get back to work, because I don't want to wallow in the sickness. Breast cancer is part of my journey, that's all."

Cohen's approach to law is supported by her religious beliefs. "My faith and the practice of law go together," she says. "I practice with certain views of how someone should conduct themselves. The study of Torah is very much the study of law."

In the 1990s, Cohen was a key player in a class action lawsuit of worldwide and historical importance. During World War II, insurance companies had issued policies to people who were put into concentration and extermination camps. In some cases, insurance companies even commissioned prisoners in the camps to sell life insurance policies to other prisoners.

Fifty years later, a class action suit was filed against the companies for refusing to pay policy beneficiaries or their surviving family members. The insurance companies said that in many cases they were required to turn over money to the Third Reich—so

the policies were already paid off. In other cases, they simply said they had no record of the policies.

"In one case, we begged and begged the insurance company for a copy of the policy, but they said they didn't have it," Cohen says. "When the insurance company filed paperwork for their claim that the policy did not meet the jurisdiction limit of the federal court, the policy magically appeared, attached to their motion. If ever I thought we were doing God's work, it was that moment."

This claim of ignorance was especially galling given the cozy relationship between some companies and the Third Reich. "One of the insurance carriers wrote property damage insurance for the Nazi property," Cohen says. "They'd go in once a year and inspect camps and complain the barracks were not kept up."

Most of the carriers settled, resulting in more than \$100 million in payouts.

Cohen says she can't imagine ever repping an insurance company. "I don't want to imply the people who work at insurance companies are bad or ascribe bad motives to

them," she says. "But the financial model for insurance companies is dependent to some extent on holding money as long as possible if there is uncertainty."

IN OCTOBER 2017, COHEN JOINED

Lathrop Gage to co-head the firm's insurance recovery and counseling group. She jokes the main appeal was that the Kansas City-based firm has a suite at Arrowhead Stadium—and Cohen was a Chiefs season-ticket holder even before the move. But the real draw was starting something from the ground up.

"We have to explain to clients that it might not have the same brand name as O'Melveny or Gibson Dunn out here, but it does in the Midwest," she says. The firm was founded in 1873 on what it calls "the heartland principles of honor, service, trust and value." And that could describe Cohen's Midwestern philosophy: "firm but fair."

"Plenty of people who do what I do just want to win for the sake of winning," she says. "But I take a Jewish attitude: It's not about the fight; it's about the solution." 