

OF COUNSEL

The Legal Practice and Management Report

Of Counsel Interview ...

Immigration Lawyer Founded, Grew Practice Now Poised for Major Changes

Robert Bodian remembers his partner Susan Cohen hard at work serving clients when she probably should have been in bed healing broken bones. But that's the way Cohen rolls. It exemplifies her commitment to her immigration law practice, says Bodian, managing partner of Boston-headquartered Mintz Levin Cohn Ferris Glovsky and Popeo.

"Five or six years ago, Susan had a very serious horseback riding accident," Bodian says, "I remember seeing her in the office, very shortly after that, limping around and probably bandaged up, but doing her thing, going to see clients. She didn't want to leave her clients or her partners [without her services]."

Cohen came to Mintz Levin in the mid-1980s as a first-year associate, and within a few short years she founded the firm's immigration practice. She serves as chair of the immigration department and, over the last three decades, has succeeded in growing it into one of the premier such practices in the nation.

"Susan is very creative and individualistic—she took a sabbatical from her career, which not many lawyers do, and traveled the world—and she built the immigration practice from nothing more than an idea she had into a very substantial practice," Bodian says. He adds that Cohen brings "energy, great personality, drive, and intelligence" to the firm and her clients.

Cohen and the group of 10 immigration lawyers she manages will need to bring all of those traits to their work as they anticipate challenges and opportunities that are likely to come to immigration law under a Trump administration.

Recently, *Of Counsel* spoke with Cohen about her career and how she became an immigration lawyer, an

early case that inspired her, the types of matters that she finds particularly rewarding, and how she expects the incoming administration will affect immigration law and her practice. This is the first of a two-part interview that will stretch over two months and run in two *Of Counsel* issues, the first-ever two-part interview for this publication.

Of Counsel: Susan, what was it that compelled you to become a lawyer?

Susan Cohen: I was at Brandeis [University], which is of course named after the famed Supreme Court Justice [Louis Brandeis], and I focused on civil rights issues in the law. I kind of grew up there. That's where I experienced my awakening in terms of understanding that the law can be used as a tool to help people. By the time I graduated, I realized that I wanted to take the LSATs and become a lawyer.

I had a lot of lawyers in my family while I was growing up. My grandfather and uncle were lawyers, and my brother became a lawyer. But it wasn't that. It was really a social-consciousness awakening at college that led me to the decision.

OC: Did you become fluent in Spanish before or after you decided you wanted to become an immigration lawyer?

SC: It kind of coincided. I didn't know exactly what kind of lawyer I was going to be. I had a long-standing interest in the Spanish language. I had been studying Spanish since the third grade. It just evolved and evolved until I became fluent in Spanish, and I used my Spanish after I graduated college and worked as a paralegal. It just happened to help me get my first job out of college working for an immigration lawyer. I didn't plan to become an immigration lawyer.

Case That Helped Shape Career

OC: You anticipated one of my next questions so let me ask it now: Why did you gravitate towards immigration law? You just mentioned that your first job in the legal profession was working for an immigration lawyer, but you could have gone in a different direction with your law degree. What was it about immigration that made you want to focus on and practice in this area?

SC: Well, it was in some ways a business decision and I'll explain why. I thought I wanted to be a litigator, fighting battles in court for people. When I joined Mintz Levin—and I didn't want to work anywhere but Mintz Levin because I really liked and still do like the firm's culture, although I did have many other offers—I didn't get my first choice [of practice area] my first year, as is the case at most corporate law firms. You have to pay your dues before you get the one you want.

So, as a first-year associate, I was placed into the corporate law department. It was not what I wanted to do but it ended up being the best thing that could've happened to me because I got grounding in corporate law, which I wouldn't have gotten otherwise. And, I got to work with transactional lawyers not only within our law firm but in the city, including the managing partner of our firm at the time. He worked with me on some special projects. I learned the basics of corporate law and then I rotated into the litigation department.

In my very first year, the firm had an immigration case that nobody wanted to work on because no one had expertise in immigration law except for a couple of senior associates and junior partners who dabbled in it. I had some immigration law experience as a paralegal. It was a wonderful case. I volunteered to work on it throughout my first year and into my second year. It concerned a Japanese potter whose style of pottery had been handed down to him through generations of family members in Japan, going back hundreds of years. He was an artist-in-residence at Harvard and he decided he wanted to stay, with his family, and make their home in the United States.

I ended up, with minimal supervision, preparing an application for this gentleman to get permanent residence status, green card status, on the basis of his extraordinary ability as an artist; there's a special category in immigration law for that. It was so much fun putting that application together and advocating for him as his work was being distributed to museums all around the world. We got his whole family their green

card. They were so thrilled with the work; it was very personal to them. [When the green card came in] we had a party in the office and I was thinking to myself, "Wow, this is a lot of fun. It's gratifying, meaningful, and very enjoyable work."

So with that in the back of my mind, I started doing litigation, but it didn't resonate with me in the same way. At the same time, during my second year as an associate, I saw that the firm had all these institutional clients that were companies with immigration needs. They had employees from other countries, but they were using boutique firms in Boston to do their immigration work. A light bulb went on in my head and I thought that if we could develop an expertise in immigration law we might be able to bring a lot of this work back into Mintz Levin. It could be a growth opportunity for the firm.

I was very, very junior in the firm but had gotten to know the managing partner fairly well because of the work I did in the corporate department during my first year. I guess I've always had some chutzpah and this is a very entrepreneurial firm. So I said, "I think that if we could build the expertise we may be able to really do something with this." I put a proposal together and presented it to the management of the firm. I was extremely passionate and enthusiastic about this and I said, "All I'm asking for is the opportunity to do something. Just give me the following things and give me a chance." I asked for money for a law library on immigration law, and I wanted the firm to pay for me to go to conferences, so that I could gain the expertise that I knew we didn't have.

And, they said yes.

Growing into Its Own Group

OC: That's a great story, and you tell it like it happened just yesterday.

SC: I keep that first case bound on my bookshelf in my office. Every few years I dust it off and look at it. It was filed in 1986. It serves as a good reminder, taking me back to my roots. I keep it out even though we've had thousands of cases since then.

Anyway, one thing led to another and the firm saw that the practice really started to work. I put the first brochure together for the firm. They didn't do marketing back then, and for many people marketing wasn't looked at as a positive thing. People just got their business from word of mouth. But I wanted to bring in

business in this new area, so I put together the very first marketing brochure the firm ever had. And companies came. Existing clients came and new clients came. We started getting business so I had to start hiring people. Little by little, I had a paralegal and a lawyer and another paralegal and another lawyer.

Initially, the practice had been housed in the corporate department because no one knew what to do with it. In the mid-80s most big firms didn't have an immigration law practice. So it was housed in the corporate department and then moved into the labor and employment department and eventually we outpaced the growth of those other practices in terms of revenue, pretty significantly at that time. Things are different now because they've grown as well.

The immigration practice grew organically to the point where it became such a growth engine that the managing partner at the time came to me and said, "We see from your numbers that you're doing so well that we believe you should be your own independent, separate department in the law firm." It wasn't my idea but I said, "Okay. Sounds good to me." I wasn't going to say no. So since the early 90s our group has been a stand-alone department and that's still somewhat unusual for large firms as most house their immigration practices in labor and employment or international or other groups.

OC: What a confluence of forces that really came together, first to get you into the practice of what you're doing now and then to create the immigration group. Does your fluency in Spanish help much in your practice?

SC: Our clients are very sophisticated corporate clients, for the most part, and we don't usually need to speak foreign languages except in our pro bono work and we do a lot of pro bono. So, for those clients we do need the language skills.

OC: You mentioned the initial case that got you interested in immigration law. What other matter or case or regulatory work comes to mind as being very important to you, one that was a real landmark for you and maybe for this field of law? Or more generally, maybe what stands out is a type of case.

SC: There have been many

OC: Yes, I know it's a tough question.

SC: The ones that stand out to me are those where we've been able to do something that changes the

landscape, either for everyone else in the country in addition to our client, or we do something that everyone thought was impossible, and we have quite a few of those. For example, I'm not hesitant to sue the federal government when I feel they've overstepped their bounds or they're not living up to their mandate. When the government does something wrong, I get very upset. We've had a few very successful lawsuits against the government—one against the Department of Labor that they settled very satisfactorily to our client, which made them change their practices, which helps everybody else.

OC: When did you sue the Department of Labor and on whose behalf did you file suit?

SC: It was in 2009 or 2010. It was on behalf of a large national company that used temporary labor to do a lot of their work, and the Department of Labor wasn't holding up its part of the rules regarding the process of bringing in temporary, unskilled labor. Anyway, that was one case that was very satisfying.

There've been many other cases. Often we work for clients who turn to us when other lawyers are unable to help them or tried but failed to accomplish their goals. Sometimes it's relating to one particular, extremely important employee. It could be a C-level employee of the company. We've been able to achieve some results that everyone else said couldn't be done. That's particularly gratifying. We are very creative in our strategy, take a no-holds-barred approach, and don't like to take no for an answer.

More Work on the Horizon

OC: To move on to another subject, and it's a big subject, let's talk about President-elect Trump and immigration. From your perspective as an immigration lawyer, how are you preparing for any changes in the law? What kind of challenges and/or opportunities do you think you'll see in the near future? And, again, I know these are big questions.

SC: Indeed. First of all, the management of our firm is aligned and in agreement with those of us in our department that this represents a growth area for the firm. If things have been challenging over the years for businesses dealing with immigration up until now, they're only going to get all the more challenging in a Trump administration. When immigration rules tighten, when restrictions increase, solutions become farther and fewer between regarding the immigration needs for employers, and our clients primarily are

employers in the United States. They will need good immigration lawyers more than ever.

We are already busier. We've always been busy but since the election results, the phone is ringing off the hook. People who are calling include CEOs and CFOs of major companies who may have their green cards and now want to get their citizenship because they're afraid. We think there's going to be a lot of enforcement in the Trump administration and that could mean increased investigations, inspections, raids, et cetera. So, there'll be an increased focus on immigration compliance. I expect to do a lot of training and seminars for clients to make sure their houses are in order to avoid fines and penalties in a Trump administration.

And then, of course, there's that whole undocumented population and we have some subset of those occasionally among our pro bono clientele. It seems like it's going to be very protectionist. There's already a very protectionist attitude in the US Citizenship and Immigration Services towards many of the visa categories we have for work visas. They're favoring the US workforce and requiring employers that want to hire foreign labor, even highly skilled foreign labor, to jump through a lot of hoops to prove why they need them. It's just going to get more and more intense.

OC: Do you expect to hire more attorneys in your practice area?

SC: I do expect to hire more.

OC: If I spoke to you a year from now, how many attorneys do you suppose you'd have?

SC: I would say two or three more.

OC: Susan, looking at the clock, I see that we are already over the allotted time that each of us scheduled for this interview. I've really enjoyed talking with you, but I feel like we've only scratched the surface, especially regarding potential changes to immigration laws and how such changes will affect your practice. I'd like to see if we could continue this interview next month and make this a two-part interview for our February and March issues. In the more than 20 years that I've been doing these interviews, I've never done this before. But I feel like it's time to break that precedent. Would you be so kind as to pick up where we left off in an interview next month so we can cover ground that we didn't get to today?

SC: I've enjoyed our discussion too, and I'd be delighted to talk with you again next month.

OC: Great. Thank you.

See part two of this interview in the March issue of Of Counsel. ■

—Steven T. Taylor

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Of Counsel Interview (Part Two) ...

Boston Immigration Lawyer Pushes Back Against Trump to Protect Immigrants

On a Saturday night in late January, immigration lawyer Susan Cohen wanted nothing more than to kick up her heels on the dance floor and help a close friend celebrate her 60th birthday at her party.

But Cohen knew she had to keep checking her phone because the night before the Trump administration issued the now-famous executive order that banned immigration from seven nations. Sure enough, a text came through telling her that people were being detained at Logan International Airport and desperately needed legal assistance. Without a moment of hesitation, Cohen cut her evening short and rushed off to help.

A partner at Boston's Mintz Levin Cohn Ferris Glovsky and Popeo, Cohen tells that story in greater detail in this the second installment of a two-part interview (see the February issue of *Of Counsel* for the first). Known for her award-winning immigration law expertise and steadfast commitment to serving clients, Cohen created the firm's immigration practice when she was a junior associate decades ago, as she mentioned in last month's interview.

"It was her vision that started the immigration law department, and she built its platform very well," says Robert Popeo, Mintz Levin's chairman. "Susan brings a clear recognition that we are in business to serve clients. It's not about us. It's about our clients and those in need. And, she's very good at what she does."

Popeo also commends Cohen for her dedication to pro bono work often protecting the lives of people who have been persecuted and tortured in other nations; she's has won awards for her political asylum work from the Supreme Judicial Court of Massachusetts, the Political Asylum/Immigration Representation (PAIR) Project,

the *Massachusetts Lawyers Weekly*, and Mintz Levin. "Clients heap praise on Susan for saving their lives," Popeo says.

In this final installment, Cohen talks about what she and her team look for when hiring an immigration lawyer, the executive order banning Muslims and her involvement to fight against it, changes the Trump administration is seeking that would transform the entire fabric of immigration law in the United States, and other topics. The following is that edited interview.

Needed: Precision & Warmth

OC: Susan, last month we talked about how you, and really all immigration lawyers, should expect to have heavy workloads for the unforeseeable future.

SC: Yes, we're very busy and we expect to be even busier. It's going to ramp up even more. As I think I mentioned last month when we talked, we'll be hiring more attorneys to help us with all the work. Already, in the last week [January 30 through February 5], we've been getting a lot more inquiries from our clients than we would in a normal week. It's been growing exponentially. Of course we have to see what changes the Trump administration will ultimately make to immigration law, which might shrink the options for people. It remains to be seen.

OC: Yes, you did say that you thought you'd be adding attorneys. When do you consider a candidate to join your group, what do you look for? What attributes do you want that immigration lawyer to have?

SC: We're looking for people who are extremely precise in their work. They must be very nuanced. The

immigration application can turn on the misuse of a word or a typo, so you have to be very precise and particularly responsive and able to tailor advice to the situation and not approach the task at hand in a cookie-cutter or rote and repetitive fashion.

Some of the other firms that practice in this area delegate much of the work down to the paralegals and they give out a lot of information that is simply repeating what they've been told to say. [When this happens] it's not responsive to the immediate task at hand, and it doesn't always present a high-level, intelligent, collaborative approach that is also proactive and creative problem-solving. We are very focused on problem-solving in a very responsive and proactive way. So we look for people who get the client service aspect to our practice and understand how important it is to everyone involved when there are immigration problems, and who are willing to step it up.

OC: What about communication skills, people skills?

SC: I want people who are excellent communicators and who are warm and understanding people.

OC: I would imagine that you have to have a lot of empathy when you're practicing in this area.

SC: Yes, it's as much social work as it is the practice of law. Immigration is highly personal; anxiety runs very, very high. The ripple effect of an immigration problem is something that takes an emotional toll on a client. You really have to be able to provide information and structure advice that will lead to the desired result without unduly freaking out your client. That's not a common skill but it's a talent that we look for.

OC: You've been working in conjunction with the ACLU to try and stop some of the immigration orders coming out of the Trump White House. What exactly are you doing with the ACLU?

SC: Well first, along with some other immigration lawyers in Boston at boutique firms and elsewhere, we're working to represent plaintiffs to try to overturn the travel ban.

[Because this situation is changing so fluidly and given that *Of Counsel* is a monthly publication and more changes will transpire in coming weeks before publication, we decided it's best to edit Cohen's remarks and simply summarize them briefly. She goes on to talk about her and the other lawyers' efforts before a Boston judge to win a temporary restraining order to lift the ban. He ruled against them, despite that U.S. District Judge James

Robart in Washington State, looked at essentially the same facts as those in the Boston matter and famously lifted the ban. As has been widely reported, Robart was referred to—also famously, and derisively—as a “so-called judge” by President Trump. Of course, a series of judicial and political moves followed.]

OC: So right now, there's a temporary victory. But when you think about the end, what does victory look like?

SC: It would be that the Circuit Court rules that the plaintiffs laid out a case for a full trial on the merits of the illegality of the ban, and that would mean expediting the hearing regarding the injunctive relief to get to the trial on the merits before the 90 days runs out. Then, ideally the ban would be ruled illegal and unconstitutional. I don't know if that's actually possible because of the timing. And, the 90-day part is only one section of this order. There are other sections of the order that are clearly unconstitutional based on religious discrimination, First Amendment rights [and other protections that are constitutionally guaranteed].

OC: That sure looks like victory to me—to get it overturned and deemed unconstitutional.

SC: Yes, that would be victory, but you can get foiled at any one of the several steps. I don't know if we'll get through all of them.

From Dancing to Defending

OC: You had to leave an event you were attending abruptly when you got a call last Saturday night [January 28] so you could rush out to Logan Airport. Some of the other Boston lawyers who are involved also had to leave their own events abruptly. Can you talk about this? And, what was it exactly that made you feel that you had to go immediately—leaving a close friend's 60th birthday celebration?

SC: We had heard that there was a request for an emergency judge. The executive order was issued Friday night, late. People had boarded flights to Boston and didn't know about the order and they were at-risk travelers who might be turned away based on the wording of the order. So we needed to protect them when they arrived to make sure they had representation to demand their rights. They were lawful permanent residents, including professors at the University of Massachusetts, Boston.

When I was at the party I knew there was a chance that I might have to leave. I told the host that I might

have to leave. The DJ had just gotten started and people were dancing. I had my shoes off and was dancing up a storm and checked my phone after two songs and sure enough I had a message: “Come immediately to the airport,” and also that we had gotten an emergency judge to come to the federal courthouse. I flew out of there.

OC: I hope you remembered to put on your shoes.

SC: [laughter] Yes, I put on my shoes and rushed out. My house was in between the house where my close friend was having her birthday party and the airport. So I pulled into my driveway, left the car running with the door open, ran into my house, got on a pair of sensible shoes, because I couldn’t walk very fast in the high heels I had on. I put on a blazer to cover up because I was wearing something incredibly sexy to dance in—it was a very low-cut sexy dress, and I didn’t want to go into court with that outfit. So I threw a jacket over my dress and ran back out to the car and raced to airport.

Then I got a call from a colleague who was leaving the airport and said that everyone was meeting at the courthouse so that’s what I did. I changed course and instead of going to the airport I went to the courthouse. I parked illegally and ran into the courthouse. I was sure my car wouldn’t be there at the end of the night, but it was there.

OC: That’s a great story. It’s also a great example of the kind of commitment that you need to have if you’re going to be able to help people, and clearly you have that commitment and you do help people. Thank you for sharing that story.

SC: You’re welcome.

A Major Transformation

OC: In addition to the emergency regarding the ban that’s happening right now, as you look deeper into 2017 and beyond, what other sorts of changes to immigration law do you anticipate for which you’d have to advise your clients? And you don’t have to go into great detail, but an overview would be great.

SC: We’ve already seen some drafts of executive orders that are coming that have not been issued yet that would translate into an onslaught of potential changes in immigration—from top to bottom.

OC: Wow.

SC: Yes, it’s unbelievable, unbelievable. If they accomplish the things that the Trump administration wants to accomplish, then immigration in the United States will not resemble anything like it is now. These would be wholesale changes. They would mean a lot more oversight and investigations and potentially the elimination of complete categories of immigration benefits including [certain] work visas, options for foreign students, and others.

Right now, we allow many foreign students from all over the world to come study in the United States. We educate them in our institutions, and they’re ideal candidates for many employers across the United States. We train them here and there’s a provision in the immigration law that allows students on student visas to get a one-year practical training work authorization after they graduate from college or an advanced-degree program. They work in the field that matches what they studied.

Right now, if you want to get an employment card, it’s not that difficult and employers absolutely depend on that. You can test someone out to see if they’re a good candidate to sponsor them to keep them here longer. And, they don’t have to pay an immigration lawyer to get special visas for these foreign students because they have a very efficient and inexpensive way to get an employment card on their own without a lawyer. It’s very essential to the system for employers in the United States to be able to take advantage of that and employ people. But first, they have to see if they like their performance before they sponsor them for something longer term. [This sort of change] would really jeopardize opportunities for employers in the United States.

There are so many other things like this that they want to change.

OC: Susan, does it surprise you that these measures on immigration are coming out of the White House, given Trump’s business-friendly approach to the world and that the Republican Party is in many ways a conduit for Wall Street and major corporations who need these trained, talented people to work for them and make them profits? It seems counterproductive to their vested interests.

SC: Yes, some of them do surprise me. For example, the Obama administration proposed an entrepreneurial regulation that would improve life in the United States in a lot of different ways. That regulation was published on January 17 and was supposed to go into effect in July. It would allow the use of authority in the immigration law called parole, and in this sense, the

word parole has a positive connotation. The parole status allows someone to enter the United States, often for humanitarian or medical reasons, without that person having a visa per se but he or she would have the ability to enter the United States and get a work authorization card to work here, pursuant to that parole status.

So what the Obama administration did was [craft] a rule that creatively expands the use of the parole authority to allow foreign entrepreneurs to apply to the US Citizenship and Immigration Services/Homeland Security for an international entrepreneur parole approval to work on a start-up that they've launched. It's a brilliant thing and would be very beneficial to the United States. It's highly regarded by the venture capital community and would spur the US economy in a lot of ways. So many people and companies are working on products and services that would help us in the United States and we want them to come here and not to another country. We want to see the benefits here.

OC: I'm guessing that's on the chopping block now.

SC: Yes, that's on the chopping block but there's still time, potentially, to debate it. It's things like that that should be so noncontroversial. These are the best and the brightest people from around the world who are creative and have already succeeded and obtained venture capital investments in the past. And, these people and their [products and services] are very well vetted. It seems almost everything is on the chopping block.

Women in the Profession

OC: I want to shift gears here. I noticed in reading press reports in Boston that several of the other attorneys who were rushing to the airport and the courthouse that Saturday night in late January to help people were female attorneys. That reminded me of something *Of Counsel* follows—the numbers and status of women in the legal profession. Is the profession

getting better at hiring, retaining, and promoting women? Is it still a big problem, or are we improving?

SC: I think it's a mixed bag, honestly. We take a step forward and then go backward, making headway in fits and starts. It's a very challenging issue and one that I know my firm and many firms take seriously. If the statistics are a true indicator of what's happening, it's not a great picture.

OC: I'm guessing that over the years you've faced blatant or subtle discrimination.

SC: I personally haven't. I've got a lot of chutzpah.

OC: [laughter] Yes, you do.

SC: But I know it happens a lot to a lot of women, and it happens everywhere to one degree or another and of course that's bad. I feel fortunate that I haven't had those problems.

I also feel particularly lucky that when I was a very junior associate that I proposed a brand new practice area and my managing partner and the managing committee agreed with me to try it. That would not have happened at most other firms and maybe nowhere else. I got a lucky break.

OC: Well, it sounds like you had shown what you can do in the employment law area, at a very early point in your career, and you were smart and had a very good plan. So you deserve a lot of credit. Susan, thanks for spending time again this month to talk to *Of Counsel*. Is there anything you want to add that I didn't ask?

SC: Yes, I just want to say that I wouldn't have been able to progress in my career if it hadn't been for the support my husband has given me when I was trying to make partner. He cooked, picked up the kids, and did everything possible to allow me to do what I did, and without him I don't think it would have happened. ■

—Steven T. Taylor