

# Consumer Finance Monitor (Season 3, Episode 13): A Conversation with Former CFPB Director Richard Cordray

Speakers: Alan Kaplinsky and Richard Cordray

Alan Kaplinsky:

Welcome to the Consumer Finance Monitor Podcast, where we explore important new developments in the world of consumer financial services and what they mean for your business, your customers, and the industry. I'm your host today, Alan Kaplinsky. I chair the consumer financial services group at Ballard Spahr. And I'll be moderating today's program.

Alan Kaplinsky:

For those of you who want even more information about the topic that we'll be talking about today, or anything else pertaining to the world of consumer finance, don't forget about our blog, [consumerfinancemonitor.com](http://consumerfinancemonitor.com). We've been doing the blog since 2011, literally the very day that the CFPB got stood up. That's when we began our blog.

Alan Kaplinsky:

And there's a lot of content there, not only about the CFPB, and that in fact is going to be our topic today, but a lot of other topics pertaining to consumer finance. And we also regularly host webinars and subjects of interest to those of you in the industry. So if you want to subscribe to our blog, just log on and you can subscribe to it right on the blog.

Alan Kaplinsky:

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Alan Kaplinsky:

So today I am very pleased to be joined by Richard Cordray. I guess you could say, Richard, that you're really somebody who needs no introduction. For those that have been under a rock for the last eight or nine years, Richard has served for six years as the first director of the Consumer Financial Protection Bureau. We'll refer to it today by the acronym CFPB.

Alan Kaplinsky:

Before joining the CFPB, he served as Ohio's attorney general. He also served as Ohio treasurer, where he led the state's banking, investment, debt and financing activities. He also previously taught at Ohio State's law school. And he served as a state legislator as well as Ohio's first solicitor general. And then he's also got a long history of being an advocate before the U.S. Supreme Court.

Alan Kaplinsky:

Anyway, Richard, a very warm welcome to you. Thank you for joining us today.

Richard Cordray:

Glad to be with you.

Alan Kaplinsky:

Okay. So your book called Watchdog was very recently published. And I must say it's a terrific read, particularly for nerds like me who like to know every little detail about what's happening and what has happened at the CFPB. And it was really a terrific reminder of a lot of things that happened that I had sort of stored in the recesses of my mind. And a lot of it came back. So I want to ask you first, when did you decide to write a book? How did that work?

Richard Cordray:

I had had some thoughts all along, Alan, to write a book about what I thought was a very interesting story that meld several things. First of all, creating a brand new government agency, which doesn't happen very often. Second, the mission of protecting consumers in the financial marketplace, which is of direct, immediate importance to everybody in America.

Richard Cordray:

We're all consumers after all. And melding both the political story and some of the legal battles and some of the fights we took on to try to rebalance the marketplace so that consumers get a fair chance and a better deal. Those were things that I thought were of interest to a lot of people, potentially.

Alan Kaplinsky:

So how did you go about doing it? Did you expect when you became the first director of the CFPB that some time at the end of your tenure you would write this kind of a book and did you keep a lot of notes? How did you do it? I'm curious.

Richard Cordray:

Well, I think I generally hoped that I would write a book someday because I thought it was an important historical record to make, and also a roadmap to what the consumer bureau could be when I was leading it and could be again in the future, even if it's not exactly what that is right now. But also, as I went along, I didn't notes. I didn't have a diary or a journal or anything.

Richard Cordray:

I did though every week write a message to everybody at the bureau, all of my colleagues, to kind of memorialize things that had happened, different accomplishments that we had achieved, some of the quirky, different situations that we ran up against, stories and the like. And I had that record from every week of the six years of my tenure.

Richard Cordray:

Plus most of the matters that we had that were public matters, there was a full public record on those that's pretty easy to research now on the internet. So to any extent I had forgotten something or needed to refresh my memory, it was pretty easy to do.

Alan Kaplinsky:

Right. And how long did it take you to do it?

Richard Cordray:

I started in December 2018 and had a full draft to the publisher by August 2019. So eight or nine months, I guess, is what it took. But a pretty concentrated effort at times. And then sometimes it was slower going. I have said to people that writing a book was a lot harder than I thought it was going to be.

Alan Kaplinsky:

Yeah, I can imagine. So there is a lot of content in this book. I mean, you begin the book with a number of stories about consumers who ran into trouble with the industry, with either payday lending or student loans or mortgages, auto finance. It

really ran the gamut. And I found that very, very interesting. And those anecdotes really played a very important role in terms of how you wrote the rest of the book. Am I right?

Richard Cordray:

Yes. Exactly, Alan. I think in the first chapter, the stories about consumers, I'm trying to convey a couple of points that it's important for people to understand. You can talk about consumer problems and it's easy to say, "Well, they made a bad decision. That was not wise on their part. I would not do that myself. That's their problem. I don't have to worry about it."

Richard Cordray:

That's really not true in a lot of instances. A lot of places consumers get cheated or mistreated or they're exploited, or they're confused or taken advantage of in some way. And I thought it was important for people to remind themselves of that, especially if not you, friends, family members. Many of us know that these are common situations people get into.

Richard Cordray:

The other point was that when consumers in the aggregate get into a lot of bad situations, it's going to affect the rest of us as well. That's what happened with the mortgage market meltdown that broke the economy in 2008. That caused a lot of people to lose their jobs, even though they never had a mortgage or never thought about a mortgage.

Richard Cordray:

And it caused a lot of people to lose big chunks of their retirement savings, even though they might've had a very responsible mortgage themselves. These things have effects and innocent bystanders get hurt in large numbers. And we're going to start to see that right now with the fallout from how the coronavirus is affecting the economy as well.

Alan Kaplinsky:

You mentioned the coronavirus. Because as we're recording this podcast today, the country, indeed the world, is going through a crisis that we've never experienced before. And I'm wondering, let's assume you were the director of the CFPB today. What role do you see the CFPB playing in this crisis that we're experiencing?

Alan Kaplinsky:

I may be wrong, but so far I haven't seen anything that has been published by the CFPB. There's been a lot of things published by the federal banking agencies and in deed, we're going to be doing a webinar on the topic very soon. But I haven't seen anything from the bureau. I'm wondering what you would do.

Richard Cordray:

So I'd say two things, Alan. The first is that this is a very different economic crisis than what happened in 2008. That was a problem caused in the consumer finance markets, the mortgage market in particular. A lot of bad mortgage loans that were transmitted through to Wall Street and that ended up breaking the economy. There were safeguards put in place by the consumer bureau in the wake of that, that have helped prevent that from happening again.

Richard Cordray:

But this is an economic problem that's been created from sources outside the United States. Of course, the infection began in China, spread to Europe, now has spread to the United States. It's caused supply chain dislocations, but also it's starting to shut down economic activity here pretty dramatically. And that's going to cause a recession. When you have a recession, consumers get hurt. Many of them are living on the margin.

Richard Cordray:

They don't have breathing room. They lose their job for a period of time or they get less hours. They're going to have economic problems. They're going to get behind on loans. They're going to get behind on credit cards. They're going to get behind on mortgages. And we're going to have to try to figure out how we try to minimize that damage. And we don't know how long it's going to last. So it's going to be a problem.

Richard Cordray:

And I think consumer protection becomes important because also people look to exploit other people in times of crisis like this. If they get a sense that they can create a scam around coronavirus medicine or treatments or things like that, unfortunately there are bad actors that will do that kind of thing. And it's all the more important that there be good protection in the marketplace.

Alan Kaplinsky:

Well, yeah. That's for sure. I know from looking at it from an industry standpoint, there are a lot of problems as well. In a lot of the regulations, there are time limitations on when a company needs to respond to consumer complaints. And now with a lot of people working from home and connectivity not being that great for a lot of companies, I'm certainly hoping that there will be some indulgence on that end as well. So let's talk about your tenure at the bureau. What do you consider to be the biggest achievement that you had?

Richard Cordray:

I always have trouble with questions like that, Alan, because it's like asking, which is your favorite child? But I've kind of learned as I thought about it over the years to say that I think there are three things that stick out the most. The one that maybe has been most important in the wake of that last financial crisis is safeguarding the mortgage market with new regulations that were put in place that helped ensure a slow but smooth recovery of the mortgage market.

Richard Cordray:

And by the way, interestingly, in the case in front of the U.S. Supreme Court right now, the Mortgage Bankers Association took pains in their brief to say, "Whatever you do to the court, don't shut down the bureau and disrupt the mortgage rules that have been foundational for this market. And everybody has adapted and built around those for the last seven years." So I took that as a compliment.

Richard Cordray:

Second, our enforcement actions, which were needed to rebalance the marketplace, put \$12 billion back in the pocket of 30 million consumers. That's money that they were cheated out of in one way or another. They deserved to have it back. People are always surprised when you get their money back for them.

Richard Cordray:

And we had plenty of people ask, what were these checks they were getting from the CFPB? Should they cash those? Is that a scam? Who's the CFPP after all? And we would always sort of chuckle about that. But that was important work for us to do. The third thing is that we gave consumers a voice. They often lack a voice. And you mentioned consumer complaints earlier.

Richard Cordray:

People can file a complaint with the consumer bureau very easily. Just go to [consumerfinance.gov](https://consumerfinance.gov) if they think they have a problem with their credit cards or their student loans or auto loans or mortgages, or any kind of household credit, or if debt collectors are harassing them, or they have problems on their credit report. We feel that about 1.3 million complaints over the first six years of the bureau.

Richard Cordray:

It's up over 2 million complaints now and got a lot of responses and relief for people who really deserve it, but were having trouble getting it. And companies actually much better at responding to these complaints. And I think found that it was to their benefit to do that.

Richard Cordray:

Because you'd much rather have a customer come back to you and complain, then just walk off and take their business elsewhere. And if you treat them right when they complain, you often can maintain and even deepen the relationship. And I think many companies came to realize that over time and found that beneficial.

Alan Kaplinsky:

Yeah. And you spent a lot of time early on in the book talking about setting up the complaint portal, the complications involved, the pushback you got from the industry, the big complaint, which you mentioned in your book that these were unverified complaints. And by that, what the industry was trying to tell the bureau was that the CFPB had not conducted an investigation to determine whether or not any of these complaints were valid or not.

Alan Kaplinsky:

That the bureau acted more as a clearing house and intermediary. When it got the complaints in, it forwarded them to the companies and hoped that the companies would address the problem, but didn't really get involved and investigate the complaints. So a lot of companies felt that they were getting undeserved bad publicity. How do you respond to that, Rich?

Richard Cordray:

Yeah, I think that that was not a well-grounded criticism or complaint, if you will, on the part of the companies. People can field their complaints now in many different forums. And especially on the internet, it's easy to do. This at least regularized and created a channel for complaints, where there was a process where we would work with the company and with the consumer to try to get to the right answer.

Richard Cordray:

We weren't trying to be a judge in a courtroom on it. You couldn't do that for millions of complaints. And it was never going to be realistic to do that. But with us looking over their shoulder, companies got much better at responding to complaints. And they benefited by that.

Richard Cordray:

The other thing, Alan, that was important was the public nature of the database meant that if you're a company and right now all you really know is what your customers are saying to you, this gave you an ability to look across the marketplace and see what other customers were saying about other institutions and other people that you're competing against. And you could get a better picture of the marketplace. A lot of companies benefited by having more information available to them in that way.

Alan Kaplinsky:

Right. So I asked you what were your greatest achievements, and you mentioned three things. What were your biggest disappointments while you were at the bureau?

Richard Cordray:

Well, I would say that first of all, it's an immense job. The consumer bureau is dealing with all aspects of household credit. And as I describe in the book, household credit has become a bigger, more important and more complicated thing for every household in America. There was a time, as I describe it, right after World War II, where people had very little access to credit.

Richard Cordray:

They didn't build up big debt. And there was just less opportunity, but also less danger for them. Now, fast forward to today, two generations later, maybe three people on average carry about \$40,000 worth of consumer debt. It's a very important thing in their lives. Just about every major purchase they make, whether that's a home or a car, or even some sort of major household appliance is done on credit.

Richard Cordray:

They have to think about not just buying the thing that they're setting out to buy, but also understanding the credit transaction and interest rates and terms of conditions and so forth. It's a more complicated life for people, and it matters a lot to their financial future that they get it right. And so one of the things that we found was that as the consumer world is more difficult and more complicated, it's important to have protection there.

Richard Cordray:

And it's important to think about how we can strengthen consumers so that they're better able to handle the choices that they're making, which is an ongoing, slow project. You probably saw I devoted a whole chapter in my book to the importance of personal finance education, something we're still doing pretty poorly on around the country. And that's part of the answer too. But I think it's not the whole answer. Consumer protection is also very much needed for people.

Alan Kaplinsky:

So I thought what you were going to say is arbitration and payday lending. If I were to bet on what your response would have been, I thought it would have been those two things because the goals didn't get achieved. How come I'm wrong?

Richard Cordray:

I don't know that you're wrong. When you ask, what are your biggest achievements, biggest disappointments, you narrow it down to a couple of things. I mean, there's plenty of other things that we achieved and plenty of other things I was disappointed about, certainly. But I would say a couple of things. On the arbitration rule, that was a big disappointment.

Richard Cordray:

And as you know, that rule was adopted by the bureau to give people the right to go to court, to band together and file class actions against large financial companies. And it went to a 50:50 vote in the Senate. And ultimately Mike Pence broke that tie and the rule was overturned. I do believe that there's been enough visibility on this issue. And it's not just in consumer finance. It's in nursing home abuses.

Richard Cordray:

It's in sexual harassment claims. It's an employment disputes. That eventually the Congress will overturn the current law and allow people to bring those cases in court. I believe that will happen. It may take one or more elections, but I think it will happen. On payday lending, that's always been an issue that's been handled predominantly at the state level.

Richard Cordray:

There's about a third of the States, as you know, that don't allow any payday lending. There have been additional States that have put this on the public ballot and the people have voted down payday lending that happened in Colorado and South Dakota most recently. And there will be more of those.

Richard Cordray:

Our rule was the first time a federal agency was trying to restrict payday lending and it set a floor on what the States could do to say that if you're going to make a loan of this kind, you have to make a reasonable assessment that the borrower can repay the loan immediately without reborrowing. That's a similar principle to what Congress said about mortgages.

Richard Cordray:

It's the exact same principle the British government has now applied to payday loans. That whole effort is now tied up in various proceedings, including there'll be court challenges and so forth. And I don't know where that will land eventually. But in the meantime, there's continued effort in the States to tighten up what are seen as abuses in that area. And it's just an ongoing struggle. So I'm sure we haven't written the last chapter in that by far just yet.

Alan Kaplinsky:

Yeah. I certainly would agree with you on that, Rich. It's somewhat ironic that here we are, almost near the end of president Trump's term, and if a Democrat were to be elected president, there's pretty good chance that he would put in somebody else as director of the CFPB. And I'd be very surprised if the payday lending regulation or the changes that the CFPB is trying to make to them, that that's all going to get done between now and the end of the year. So it's really I think a lot of irony.

Alan Kaplinsky:

The other thing that it demonstrates is how long it takes to go the regulation route. And that raises another issue I want to bring up with you. You talk about it quite a bit in your book. And it's another criticism of the bureau under your tenure. That you were regulating by enforcement. And people, the industry complained about that constantly. Any truth to that?

Richard Cordray:

So I would say that you can shorthand that criticism a bit more, which is that they complained about enforcement. They didn't like enforcement. They didn't like the fact that we were bringing actions and identifying problems in a very public way. That we were imposing penalties where those seemed to be deserved.

Richard Cordray:

They called it regulation by enforcement, but the reality is we were looking to shift the marketplace and create more balance for individual consumers. And we were doing that by regulation, adopting rules, of which we did a number. We were doing it by supervision, which is sending in our examination teams to make sure companies are doing things right and fixing things when they're getting them wrong.

Richard Cordray:

And we did it by enforcement actions. And if you're going to wait around to write a lot of rules before you can enforce against people who are cheating other people or misleading or deceiving them, then you're going to make it very hard to enforce the law effectively.

Richard Cordray:

And one of the things I think that's really important to keep in mind is when you enforce the law even-handedly and effectively, you not only are protecting consumers. You're also protecting the high road companies in these markets who are trying to do the right thing, who are having to compete against others who cut corners and violate the law to get an advantage. And that's not fair either.

Richard Cordray:

And strong enforcement helps raise the standards in the market and the better companies, the ones who are treating their customers well are going to be benefited by that. And that's what we should want.

Alan Kaplinsky:

Yeah. So am I right that... I'd always get questions, some clients, when the CFPB would come down with a new consent order, that was considered precedential. That other companies who were in the same industry, engaged in the same practice need to follow that. And what I would say to them, it's not precedential in the sense that a court is bound by it, but you know what the CFPB thinks of the practice. And if you don't follow it, you're going to be the next person who gets targeted.

Richard Cordray:

Well, that was exactly the way we thought companies should understand. And look, that's even-handed enforcement of the law, equal justice under the law. If it happens that company A is the first company at which we notice a problem, a violation of the law that's hurting consumers, then just because we haven't yet been to company B, C, D, and E, they should know immediately, we thought, that if they're doing the same thing, they need to stop because they too are violating the law.

Richard Cordray:

They're not different. The same principles should apply to them. And that was exactly the message we were trying to get across to people. And it did change the marketplace faster as a result. And when we did get around to companies, B, C and D, if they were still doing the same things and still hurting consumers, that would be an enforcement action too. They could count on it. And if we knew that they hadn't bothered to even look at and fix their problems, it might be the basis of a penalty as well.

Alan Kaplinsky:

Right. Right. Right. So I want to get your thoughts now on the transition. You talk in the book of... It's very, very interesting at least hearing some of the inside baseball that was going on at the time. How there was a long period of time where it seemed like maybe it wasn't actually that long, where you didn't know whether president Trump was going to try to remove you, and if he was going to try to do it with or without cause.

Alan Kaplinsky:

And it sounded like they weren't communicating very well with you or anybody else at the bureau. And I guess you probably felt it's better off letting sleeping dogs lie. That the administration had other issues and problems to deal with and they weren't getting to you. Tell our listeners a little bit about that period of time.

Richard Cordray:

Yeah. It was a difficult period in part because of the uncertainty and in part because it was very clear that I was out of step as a pro-consumer regulator with the Trump administration that was trying to back away from regulating companies. So there was clearly a disconnect between them and me. And it wasn't clear, as you said, for months, really, whether that would lead to them trying to fire me.

Richard Cordray:

Now, the first move I think was just to watch and see what happened. Because if they could get us to back off of doing anything, then they could pretty much achieve their goal. And one of the decisions we had made under my tenure at the bureau was I knew all along that we would have been subject to a lot less criticism in the Congress from Republicans if we had just done less, if we had let more things go, if we'd gone easier on financial companies.

Richard Cordray:

But that wasn't the way the bureau was designed. That wasn't the role it was supposed to play. It was very important for us to stand up for consumers and rebalance the marketplace. So we did that. And we always felt that when we took action and if people could see that it was benefiting the public, that that would make the agency stronger, even though it also would subject us to criticism and some fights and some opposition that otherwise we might not have had.



Richard Cordray:

That was at least the judgment I made. It would have been reasonable to make that judgment a different way. But I felt strongly that that was how the consumer bureau should be run.

Alan Kaplinsky:

And basically the bottom line is that the Trump administration let you alone and let the bureau alone. And you were able to continue. And you voluntarily left to go back to Ohio to run for governor. Am I right? I mean, it seemed like it was business as usual during that period of time.

Richard Cordray:

Yeah. It was anything but usual. But we took the same approach we had taken before. And as I say in the book, president Obama, before he left office, had suggested to me that if I thought I could stay and be reasonably effective, it would be good for me to try to stay and keep doing what I was doing. And so I did.

Richard Cordray:

And as you note, chapter 14 of the book and that whole last part of the book I talk about what it was like to be dealing with the Trump administration, where we were not on the same page on consumer protection, and some of the fights that we took on.

Richard Cordray:

The big fights that we still needed to finish, it seemed to me, and could finish within the limited amount of time I had left on my term. And so we did continue to go full speed ahead. Rightly or wrongly, that was what we did. And it was important, I thought, for us to continue to stand up for consumers, even when many thought that we should back off.

Alan Kaplinsky:

Right. So in the book, you talk about after you left, Leandra English, you had appointed as deputy director, and then there was a litigation that grew out of that because Trump used a statute, which he thought applied that it would enable him to appoint an acting director until he could appoint a director that was able to get Senate confirmation.

Alan Kaplinsky:

And you're pretty critical of Mulvaney. Am I right? And then he eventually left the bureau once Kathy Kraninger got confirmed. I don't think we have to go through the Mulvaney's tenure, but I'm wondering what you think of the bureau today, to the extent that you can comment on. How much different is it than it was during your leadership?

Richard Cordray:

Yeah. And I'll answer that at two levels, Alan, if I might. At a very general level, there were always fights over the leadership and structure of the bureau, going back to the fight over my original confirmation, which you remember in the book I described took about two years of political infighting to get that done. Even now, that is an issue.

Richard Cordray:

It's a constitutional challenge in front of the US Supreme Court as to whether a single director agency that has the kind of power and influence that the consumer bureau has is consistent with the constitution. And that'll be decided sometime later this spring by the Supreme Court.

Richard Cordray:

But in particular, in terms of the shift in the bureau, there are a lot of things that I have disagreed with since I left in terms of how the bureau has handled some things, I've disagreed with the shift in direction on payday lending, where we were trying to restrict some of the worst excesses and they have taken a U-turn on that. I have disagreed with the dismantling of fair lending enforcement.

Richard Cordray:

People get discriminated against in the marketplace based on race or ethnic origin. That's not right. People are getting cheated all the time. They really know it. And it took the bureau looking at statistical patterns sometimes to show it. There hasn't been a single fair lending case brought or even referred to the justice department since I left, which has been more than two years.

Richard Cordray:

Their efforts on student loans have been anemic and pathetic. But there are other places where I think the bureau continues to function. They have preserved the public database of consumer complaints. They continue to answer individual complaints, about 330,000 a year. That's a lot of good work that gets done.

Richard Cordray:

They've continued the supervision program, which prevents a lot of harm and oversees a lot of issues at the different banks and financial companies. They have backed off on enforcement and they have been much lighter on enforcement. I think that's unfortunate because I think you have to be aggressive and even-handed enforcement if the market is going to prosper.

Richard Cordray:

And as I said before, remember, not just for consumers, but for high road businesses that don't have to compete against cheaters in their marketplace. That's important too. So on a set of different issues, I think that the bureau has gone in a wrong direction. But in many other ways, it continues to function. It's clearly here to stay.

Richard Cordray:

Even Mick Mulvaney acknowledged that as he was leaving his interim tenure. And I think that there's lots of opportunities for the bureau to continue to stand up for consumers and I'm going to strongly continue to encourage them to do that.

Alan Kaplinsky:

Yeah. Just as a practitioner like myself, who's dealt with the bureau during the entire period of time, the one thing I would observe and I wonder if you would agree with me, supervision is probably the least changed. That seems like not really much has changed. Companies and banks are still being examined. If they're violating the law, those violations are being brought to the attention of management. Would you agree with that?

Richard Cordray:

I agree with you that that is generally true, and that it's also very important. Because what you want is you want to get into a regular cadence with these companies that they understand this is a relationship. There's no getting around it. They have to be candid and straightforward about what's happening and providing information. And it monitors and prevents a lot of harm.

Richard Cordray:

And I think the current leadership recognizes that that preventative work is very important. Now, where supervision did get hurt was that the bureau was under a hiring freeze for a period of time. And the nature of a hiring freeze is there's nothing strategic about it. People might leave for individual reasons at different places, at different parts of the bureau, and you're not replacing them with a strategy. And it can end up hindering the work.

Richard Cordray:

And I think there are a number of people who left in that area and it got harder to do the work. But they're now hiring again. I believe they'll get back up to form. And at the same time, they do recognize the supervisory work is beneficial and important. And that too keeps companies on a level with one another, benefits the high road companies, and it takes away the cheaters that would try to undercut them in the marketplace.

Alan Kaplinsky:

So let's talk a little bit about the case in front of the Supreme Court, which I know you attended the argument. I saw you there. I mean, I know it's always hazardous to predict what the Supreme Court is going to do in any case. But I'm wondering if you have a view on that. What do you think they might do here?

Richard Cordray:

First of all, I would agree with you that it's hazardous to predict the Supreme Court. Sometimes there are cases where you can pretty well have a sense of where they're going. But I described in the book an important fair lending case where I was convinced that the court was going to undermine law that we had been enforcing. And in fact, they reaffirmed it.

Richard Cordray:

In this case, it's particularly hard to figure out where the court's going, because there's multiple different issues in the case. And the justices have their own idiosyncratic views about separation of powers. I have predicted that there will be five or six different opinions written out of the nine justices in the case. But if I were handicapping it, I do think that they may well find that the single director leadership structure is unconstitutional.

Richard Cordray:

I think that they won't go much farther than that. They will simply sever that provision and say that from now on the director is removable at will like a cabinet official and not like the other independent agencies. And the practical difference that will make is that at the beginning of a president's tenure, they may well replace the director and not have a situation like the one I faced. And I described in my book where I was at odds with the Trump administration for a fairly long period of time.

Alan Kaplinsky:

Right. I mean, it's definitely a... By the way, I agree with you on the outcome. I did a flip-flop in that after I read the briefs, I thought that the Amicus brief made a pretty good case for there not being a live case or controversy. And I thought that the Supreme Court might seize on that because that is an issue where maybe all nine justices could agree on that and basically say, "We're not going to decide the constitutionality."

Alan Kaplinsky:

But at the oral argument, very few justices. I think Justice Roberts and maybe one of the other liberal justices seemed to be concerned about that issue, but nobody else did. I think I'm now back where I was a while ago, that they're going to end up doing what the panel and the DC Circuit did in the PHH case.

Alan Kaplinsky:

But let me say what an irony in the sense that here the Trump administration was pushing for the law to be held unconstitutional and pushing for severance. And yet that might be the very thing that enables the Democrats to put a new leader in place.

Richard Cordray:

That would be ironic. And it's a very possible outcome here. I would agree with you that I don't think people are going to go off on a procedural issue here. It was raised and floated, but there wasn't much take-up on it. I thought Justice Ginsburg had an interesting point she made. She commented that both Congress and the president had lawyers in front of the court addressing their interests, but there wasn't anybody speaking up necessarily for consumers. And she thought that they were important too. I was glad that she interjected that into the discussion and reminded people what's at stake.

Alan Kaplinsky:

Right. So, based on your experience... This is another question. I don't know if you have an opinion on it or not. When the Dodd-Frank Act got enacted, the original version of Title 10 called for the creation of a commission. I don't remember now if it was a three member commissioner or a five member commission. But it wasn't till the bill got over to the Senate that it got changed to become a single director.

Alan Kaplinsky:

And I'm just wondering what you think. I mean, I guess having been a single director and giving you the authority to decide everything, you probably think that's better. But I'm not so sure of that. A lot of the bank trade associations thought that the commission route would have been better and they gave us the model, The Federal Trade Commission. So what's your thinking on that?

Richard Cordray:

Well, as you know, I was not in Washington when those debates were going on. I was the Ohio attorney general and watching that from a distance. So I do understand that's what happened. That it went from a commission to a single director over in the Senate. At some point, obviously somebody thought that was an improvement and the Senate agreed and accepted that model.

Richard Cordray:

What I would say having lived through it myself, I think it was incredibly important, particularly at the outset, as you were trying to build a new agency, which is what we were doing from scratch, which hadn't really been done for many, many years. Homeland Security was a new agency, but it was a merger of lots of parts of the federal government. This was truly a startup. That having a single director allowed us to move faster and cover more ground and made us more nimble.

Richard Cordray:

I think that was very important. And I think it continues to be important and allows the agency to be more nimble. It doesn't have the same balance of views, perhaps, although we tried hard to get a balance of use. And you'll recall our field hearings. We always gave both sides plenty of chance to make their points. And we wanted to hear them, because we wanted to try to know what the weak spots were in all the arguments and think hard about what the right answer was.

Richard Cordray:

People didn't always necessarily give us credit for that, but that was something we were trying to do. But I do think that a single director model has more impetus. Alexander Hamilton said this in the Federalist papers. That that's why he wanted a single unitary executive, although not unitary as extreme as some of the views presented in this case have been.

Richard Cordray:

But that you could act with more dispatch and more vigor in that setting. And I think that's true. That's why a lot of state governments are modeled around that. You have single elected officials. I was a single elected official attorney general, heading up the legal policy for the state of Ohio. And I was single treasure as well and had that responsibility. And it was very accountable. You knew exactly who was responsible for things that went well and things that went poorly as opposed to trying to diffuse responsibility among several different people.

Alan Kaplinsky:

Yeah. We're getting near the end of our recording, Rich. But I also want to ask you about another issue that was very controversial, very contentious. And that is the fact that Congress in Dodd-Frank, in Title 10, proscribed not only the unfair and deceptive trade practices, but also abusive trade practices. And people felt that, at least the industry felt that it was too vague a term, too fuzzy.

Alan Kaplinsky:

It allowed too much discretion, namely giving you too much power to say that anything you didn't like could be considered abusive. And I'm wondering, number one, your reaction to that issue and what you think about what director Kraninger has recently done in coming down with some guidelines as to how they're going to enforce the abusive prong.

Richard Cordray:

Yeah. That was, as you say, a bone of contention. But it was not a bone of contention the consumer bureau was making. Congress had adopted that term in the statute and they had defined the term in the statute. They have multiple prongs that define the term. So we simply tried to apply it in cases where it did apply.

Richard Cordray:

And by the way, it certainly applied in the Wells Fargo case with the account opening scandal, where they were opening accounts in people's names without their consent or their knowledge to make their own bonuses and pump their stock prices. That was a good example of abusive conduct.

Richard Cordray:

But in terms of what it means, I had thought that there wasn't much point in us trying to define it further. Congress had already defined it. I note that the consumer bureau more recently did seek to go about trying to redefine it or further define it and ended up kind of giving up on that.

Richard Cordray:

They never did adopt any different definition of it. Maybe they will continue to think about that for the future. Instead, they put out some guidelines for how they would apply it, which is not the same as redefining it. And some of those guidelines I thought were pretty straight forward in terms of whether a practice would have benefits for consumers that outweighed its costs.

Richard Cordray:

If that were the case, we probably wouldn't be enforcing that anyway. And so I thought it was a fairly limited effort in the end. And I think they found that it was much harder to try to redefine the term than they maybe thought starting out. But I would say that the unfair, deceptive and abusive acts or practices is probably the area where the industry did have this concern about regulation by enforcement, because they weren't always sure what violated those terms.

Richard Cordray:

But I think that when you look at the actions we took, it's been documented that more than 90% of the relief we got back for consumers was in cases where there was one or more misleading or deceptive practices. And deceiving your consumers, your own customers to get money out of them should be against the law. It clearly has been for a long time.

Richard Cordray:

That's a term that's not even defined by Congress because it's considered so straight forward. And so I think some of this was over-hyped by people. But it was not an enterprise we thought was very useful to try to redefine that term when Congress had already stated its own definition.

Alan Kaplinsky:

I think you make a good point, and that is that there were I think no more than one or two consent orders that I can think of or complaints that you filed, where you relied upon just the abuse of prong. Typically, you would also allege that the practice was deceptive or unfair. So it's not like you went crazy, labeling everything abusive.

Richard Cordray:

No. And it wouldn't be appropriate, because it was a defined term and it only applied where the definition was met. And in the book, I talk about how we tried to use the enforcement mechanism aggressively, but fairly. And sometimes we got some particular issues wrong. But for the most part we took actions that people could look at and say, "Yeah, that was wrong. That should be fixed. That's not the way somebody should conduct themselves." And I think many of those facts spoke for themselves.

Alan Kaplinsky:

Right. So Rich, on your book, Watchdog, which I said at the outset was a really good read, somebody told me they tried to get it on Kindle and couldn't download it. Is that right? Can it be downloaded electronically?

Richard Cordray:

Yeah. You can get it on Kindle. In fact, I think it's one of the top 30 books right now on Amazon financial services in the Kindle form. That's not selling as well as the hard back. But yes, it's available in that form. And ultimately there's going to be an audio book as well for those readers who have said to me, "I now like to listen to books. I don't like to actually look at them." There is an audio book coming sometime in the months ahead as well.

Alan Kaplinsky:

Are you going to read it?

Richard Cordray:

That's not entirely settled yet. One way or the other, it depends on whether I have the time and whether they think a professional might do a better job. But we'll see.

Alan Kaplinsky:

Right. And what is Richard Cordray planning for the future?

Richard Cordray:

Well, right now I'm working on promoting the book. That effort, which had me going all over the country, is getting hurt a bit by the coronavirus problems right now. A lot of things are being postponed. So that'll probably now go into the summer. It was otherwise going to be mostly over the course of the spring. And I'm doing a lot of speaking on consumer issues.

Richard Cordray:

I'm working, as I think you know, in California. The governor is trying to create a state level CFPB, and he's got that in his budget proposal. And it's in front of the legislature right now. That would put California in the forefront of consumer financial protection around the country. And I'm part of a consumer group effort to try to make that happen. And I think that the governor has been quite courageous and very farsighted in the proposal he's put forward.

Alan Kaplinsky:

So is it your thinking that it's necessary for all the States to adopt these many CFPB statutes? Is that a good idea?

Richard Cordray:

I don't know that every state has to do that. I think if a couple of states do it, and both California and New York seem to be pushing forward into this area, that will matter enormously. I talk in the latter part of the book about the dynamics of federalism here. That state governments can protect consumers in the marketplace just as the federal government can.

Richard Cordray:

And Congress opened the door to that and encouraged it. And I think it's a good thing if that happens. And so if you're California, you're not only looking to protect Californians, but you can have a big impact on the national market, the same way they've done with auto emissions and privacy law now.

Richard Cordray:

So we will see what happens with that. But I do think that these laws have been systematically under enforced for many years and having more people take an interest in them and look out for consumers is a good thing. After all, who are consumers again? It's you, me, everybody listening, everybody in every room in America, and they deserve to have protection.

Alan Kaplinsky:

Well, Rich, thank you very much for being our guest today on the program. I really appreciated your candor in talking about a wide range of subjects, including not only the things that were clear achievements, but some of the disappointments at the bureau. And you really did a terrific job addressing a lot of the criticism that had been lodged against the bureau. Oh, I do have one final question, and that is, were you a reader of our blog, CFPB Monitor?

Richard Cordray:

I read everything I could get my hands on, Alan, that talked about the CFPB, because I wanted to hear it all, not just the praise, which is always nice when it happens, and it's few and far between sometimes, but also the criticism to think about what in it was valid, what we should change and adapt. And there were many, many times where we did make changes or adjustments in light of things that we thought were meritorious.

Alan Kaplinsky:

Okay. Well, again, thank you for taking the time today to be with us.

Richard Cordray:

My pleasure.

Alan Kaplinsky:

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