Oral History of Roger Adelman

This interview is being conducted on behalf of the Oral History Project of The Historical Society of the District of Columbia Circuit. The interviewer is Stephen J. Pollak. The interview took place on December 18, 2008 at the offices of Goodwin Procter LLP, 901 New York Avenue NW, Washington, D.C. 20001. This is the fifth interview.

Mr. Pollak: Good afternoon, Roger.

Mr. Adelman: Good afternoon. Good to be here.

Mr. Pollak: Well, we scheduled today and possibly even another session for you to talk about the matter of the prosecution and the issues raised by the prosecution of John W. Hinckley, Jr. So, why don't you introduce this topic and your role in it for our oral history.

Mr. Adelman: Fine. Background is important here, particularly because the insanity defense had been the subject of a great deal of litigation in the District of Columbia. The "insanity defense" is actually a misnomer. It's really the "criminal responsibility" defense. The issue in such a case is not whether the defendant is "insane" at the time of the crime, the issue is whether the defendant is "criminally responsible" for his crimes. There may be people who suffer from mental diseases or defects who are criminally responsible for their acts.

Mr. Pollak: I did bring down 18 U.S.C. § 17, and you could read into your record the relevant provision and also you could orient the readers of this oral history because the relevant federal statute may not have been reading the same way at the time of the *Hinckley* case.

Mr. Adelman: Until 1984, two years after the 1982 *Hinckley* trial, there was no federal statute governing criminal responsibility. Until then the standard was governed by case law. The most significant decision for the District of Columbia was that of

Judge Bazelon in 1954 in the *Durham* case. He ruled that the standard for criminal responsibility would be whether the crime was a "product" of a mental disease or defect. That standard was applied, with some modifications, until 1972 when the D.C. Circuit *en banc* in the *Brawner* case ruled that the standard would be changed from *Durham* to the American Law Institute standard. The ALI as described in *Brawner* was the standard used in the *Hinckley* trial. Another important issue was the burden of proof. In the late 19th century, in the *Davis* case, the Supreme Court ruled that if a defendant raises a defense based on criminal responsibility, the burden would be on the government to prove him sane or responsible beyond a reasonable doubt. That was the rule under which the *Hinckley* case was tried. After the *Hinckley* verdict, one of the issues widely discussed was that the prosecutor had the burden to prove Hinckley criminally responsible beyond a reasonable doubt. That is a pretty high standard. The Supreme Court case *Davis* was decided in the 1890s. At that time, a lot less was known about human psychology, so the view of the Supreme Court then was probably not that sophisticated.

Mr. Pollak: I think you indicated what the *Durham* test was. Can you state the *Brawner* or ALI test?

Mr. Adelman: *Brawner* basically says that "criminal responsibility" is determined by whether the defendant, as a result of a mental disease or defect, was either unable to appreciate the wrongfulness of his conduct or conform his behavior to the requirements of the law. In 1962, after the *Durham* decision in 1954, the D.C. Circuit provided a definition of mental disorder as an abnormal condition of the

mind that substantially impairs behavioral controls or mental processes. And after *Durham*, there was concern in Congress that *Durham* would result in people who had been NGI'd [found not guilty by reason of insanity] being set free. Congress enacted legislation requiring mandatory commitment to St. Elizabeths Hospital after a successful defense of insanity. It also established that a person found NGI could not be released from St. Elizabeths Hospital, unless a judge decides that he is no longer dangerous to himself or others because of mental disorder.

Through the 1960s, 1970s, and 1980s, the District of Columbia had a number of criminal cases involving the insanity defense because the *Durham* standard was liberal and the government had the burden of proof. I did a lot of work in the criminal mental health field before 1981. In the 1970s I tried a lot of murder cases, and the insanity defense was often raised in these cases. So I got experience dealing with the insanity defense. I learned how to cross examine psychiatrists, of course with the assistance of Vic Caputy, whom I've discussed.

Mr. Pollak: Did you handle release hearings? What are those, and how do they come up, and what was your role?

Mr. Adelman: People who had been sent to St. Elizabeths hospital after being NGI'd could not be released, either on a limited release or on full release, unless a judge approved. The United States District Court had jurisdiction on most of these because before 1971, the local courts didn't have felony jurisdiction. People who had been tried and who had been NGI'd in the 1950s and 1960s and early

1970s – had been tried in the District Court and their release hearings were held in the District Court. In the 1970s, I happened to handle a number of those release cases and the related litigation. We would retain independent doctors to evaluate people applying for release. These are judge hearings, not jury trials. There were appeals to the D.C. Circuit in some of the cases I had, particularly *United States v. Louis Ecker* and *United States v. James Snyder*. The decisions in *Ecker* and *Snyder* set the standards for release at the time.

Mr. Pollak: Now I come to a point where I want to ask you this question about how you unfold the *Hinckley* case. You could start with Roger Adelman, and that is, how did it come to your attention, and then what ensued and address matters as they came up in your movement through your responsibilities in the case.

Mr. Adelman: I was still trying cases very frequently in the U.S. District Court at that point in 1981. The United States Attorney was Charles Ruff. The Reagan Administration was in place but Chuck was still the United States Attorney. He was a very wise man, a very smart guy. The shooting occurred in the afternoon on March 30th. I got a call from Mr. Ruff shortly after the shooting and he told me that that he wanted me to handle the case along with him. I then talked to the police and the FBI. That evening there was a presentment hearing before the United States Magistrate in Washington D.C. Mr. Ruff and I represented the government. That's how I got involved.

Mr. Hinckley was a young man who had been born in Texas in 1955. His father owned an oil company in Colorado. He grew up in Dallas and then moved to Denver with his family when he was a young man. He had an older

brother and sister. John Hinckley seemed to be sort of the fifth wheel. He became increasingly alienated from his family. He developed some conflict with his parents, particularly his father. Eventually, I believe in late 1979 or early in 1980, his father told him to leave the house and do productive things. Mr. Hinckley left and told them that he was attending Texas Tech University and that he had a girlfriend. As it turned out that was untrue. The departure from his home was important because that set him off on a cross-country trip in 1980 and 1981. He had developed an interest in the actress Jodie Foster. I didn't know who she was until the Reagan shooting took place, but she was about 19 years old at that time. She had been in several movies, one of them was *Taxi Driver* that was released about 1976. Mr. Hinckley watched that movie many times and was most interested in Jodie Foster. Basically, the movie was about a taxi driver in New York, Travis Bickle, who goes off the track psychologically and becomes a stalker of a political candidate and wanted to shoot him. Bickle was played by Robert De Niro. Bickle becomes enthralled with the Jodie Foster character. Hinckley watched this movie many times, and at trial the defense contended he was influenced by the movie. In 1980 and 1981 he purchased hand guns.

Before the election of President Reagan, he had stalked President Carter in Dayton, Ohio and Nashville, Tennessee. We know he did that because the Secret Service customarily takes pictures of the crowds whenever the President appears in public, and after March 30, 1981, they were reviewed and revealed pictures of him in the crowds in Dayton. When he was in Tennessee, he was

stopped at the airport carrying a gun, but because one could lawfully carry a gun in Tennessee at the time, they let him go. That led him eventually to Washington, D.C. He had purchased a gun at a store in Texas where at that time you could easily purchase a gun. He arrived in Washington D.C. a few days before March 30, 1981. He checked into a hotel near the White House. At trial we put into evidence pictures of him standing outside the south fence of the White House and in front of Ford's Theatre. So the idea of shooting the President was based on a lot of things, including this movie and his infatuation with Jodie Foster. By 1981 Jodie Foster was a student at Yale University. Mr. Hinckley had followed her through the quad at Yale and left notes for her at her room. But he never interacted with her. On March 30, 1981, at his hotel here, he wrote a letter to Jodie Foster. In that letter, he professed his love for her, he stated he was going to do an historical act so that he and she would go down in history together. He left that letter on the bed in his hotel room, then he went up to the Washington Hilton Hotel where President Reagan was speaking. He had the .22 pistol with him, it was a Saturday Night Special. He had loaded it not with standard .22 bullets but special .22 bullets called Devastators. Those bullets have a device that explodes on impact. They're used to shoot animals. He selected those particular bullets to put in the gun, a six-shooter, and his use of Devastators became an issue at the trial.

On March 30, President Reagan was speaking to a labor group in the early afternoon. Mr. Hinckley was in the crowd, waiting with, actually standing with, the press group when the President arrived. The President got out of the

limousine, went in to make his speech. Hinckley didn't act then, and we argued at trial that this was important because it showed his ability to conform his behavior to the requirements of the law. He waited for about 45 minutes until the President came out to enter his car. At that point, Hinckley then turned, assumed the attack position – he crouched down, he put his hand, held his right hand as one does when they shoot a handgun seeking accuracy – and he fired several rounds. The first round hit Jim Brady, who was the President's Press Secretary. Brady was just a few feet from Hinckley. He was hit in the head with a Devastator bullet. Mr. Brady suffered permanent brain damage. Then Hinckley fired and hit a Metropolitan police officer, Tom Delahanty, and then he fired at the President and at the President's limo. Special Agent Tim McCarthy of the Secret Service turned and took a shot in the chest intended for the President, and the President meanwhile was protected by Gerry Parr of the Secret Service. Gerry Parr was a senior Secret Service agent on the scene. He pushed Reagan into the car and saved his life. But one of Hinckley's shots hit the divider between the front and back doors, and then ricocheted and struck the President in the chest. The car immediately drove away, and at Gerry Parr's direction, they took the President to GW Hospital. He was operated on there by Dr. Giordano. He survived the shooting. Of course, Jim Brady suffered permanent damage and has been impaired ever since. Tom Delahanty retired from the police department. Tim McCarthy retired from Secret Service. He's now a Police Chief in Illinois.

Hinckley was immediately apprehended. The people in the crowd jumped on him, the Secret Service jumped on him. He was disarmed and taken into custody. He was brought first to the police headquarters here in Washington, at the homicide squad, where an initial interrogation took place. It was decided that these were federal offenses as well as D.C. offenses. Mr. Hinckley was transferred to the custody of the FBI and taken to the FBI Field Office. Later that night he was brought before the court for a preliminary presentment. Chuck Ruff and I represented the government.

Mr. Pollak: And a Magistrate took the presentment?

Mr. Adelman: Yes. Magistrate Lawrence Margolis. Mr. Hinckley had requested counsel when he was in police custody. Hinckley had told the FBI and the police when he was arrested and processed that he wanted to speak with a lawyer. And he even named the lawyer – a lawyer in Texas who had some connection with his dad. The FBI tried to reach that lawyer. Shortly after the 30th of March, Williams & Connolly was engaged. Vince Fuller was the lead lawyer, Gregory Craig was his assistant, as well as Judy Miller and Lon Babby. They represented Hinckley throughout the pretrial period, the trial, and for several years after 1982. Both sides immediately recognized that the issue in this case would be insanity, or as I have put it, "criminal responsibility."

Mr. Pollak: And how did you conclude --

Mr. Adelman: Well, it's not too hard. When you learn that a young man shoots the President of the United States to impress an 18-year-old actress, you may want to check into his mental condition. We also learned that he was being treated by a

psychiatrist in Colorado. So mental condition was something we knew right away we had to deal with.

Mr. Pollak: And is it an inference that you make that the defense immediately centered on insanity?

Mr. Adelman: In this case it was virtually understood because there was no doubt about who did the shooting or what was done by Mr. Hinckley. Almost immediately both sides took steps to engage the services of psychiatrists and psychologists and other mental health professionals to examine Mr. Hinckley. First he was sent by the court to the Federal Correctional Institution in Butner, North Carolina for a mental evaluation. Butner has a mental health hospital. That examination was conducted by the Bureau of Prisons. And their chief psychiatrist was Dr. Sally Johnson. She became a government witness in the case at the trial in 1982. In addition, the government engaged several independent private psychiatrists to work on the case. Those people include Dr. Park Elliot Dietz, who at that time was at Harvard, Dr. Jonas Rappaport, who was a forensic psychiatrist in Baltimore, and Dr. Jim Cavanaugh, who was a forensic psychiatrist in Chicago. As time went on, we retained other experts.

Dr. Rappaport was then the dean of forensic psychiatrists. Dr. Dietz was a younger doctor, very thorough, very meticulous, very studious. Dr. Cavanaugh had a well-regarded forensic psychiatry practice in Chicago. In the selection process, I talked to other psychiatrists, but those people were the people that I thought would do the best job. What we were looking for was of course skill,

their experience, and their ability to testify in court, because this case was clearly going to trial.

Mr. Pollak: Did you cross any trail of the defendant's in searching – did you center on a psychiatrist that they were talking to?

Mr. Adelman: There might have been an incident where we contacted someone who had been contacted by the defense, and of course you can't cross paths that way. The defense selected a number of psychiatrists. Dr. William Carpenter, who was then, and still is, at the University of Maryland Medical School. He was a specialist in schizophrenia. Their other experts were Dr. Thomas Goldman from Washington, D.C., and Dr. Ernst Pralinger, who was a professor at Yale. How and why they were selected, I don't know.

With the criminal responsibility defense, you have quite different rules of evidence. In the ordinary criminal trial, the issues are *who* committed the crime and *what* crime or crimes were committed. In most insanity cases, those questions are usually already decided. Rather than those questions, the insanity defense involves the more difficult question of ***why*** the defendant committed the crime. So the trial has a much broader scope. So you look for forensic psychiatrists who are willing to go back in time and look at the factors indicating the "why." As an example, Dr. Dietz read everything that Mr. Hinckley ever read or wrote. Mr. Hinckley wrote poems and stories. Dr. Dietz read all of those things.

In the ordinary trial, the rules of relevance are pretty tight. In the area of insanity, or criminal responsibility, it's quite different. The D.C. Circuit Court

has established that basically ***any*** evidence that influences mental process, regardless of how tenuous or how old, may be relevant in a criminal responsibility case. In the *Hinckley* case, the criminal acts occurred within a few seconds in 1981, but yet Mr. Hinckley was permitted to introduce evidence from his parents of what he was like as a teenager and a sub-teen, such as that he was obsessed with the Beatles. I raise that because it is certainly logically important to go back into the past to understand one's mental condition, but still, it is tremendously distracting and may be confusing to a jury to introduce such evidence, because they may think, right or wrong, that because he was treated harshly by a school teacher, or he didn't complete his math assignment, or something like that, he suffered from a mental disorder and was not responsible for a criminal act years later. Criminal defense opens broad areas of relevance. At the trial, the defense, for instance, was able, over our objection, to play the movie of *Taxi Driver* for the jury. It was good entertainment but was diversionary because it was later argued that Mr. Hinckley was influenced by the movie, which I thought was problematic.

Because of the broad rules of relevance, we engaged in extensive investigation. With the insanity defense in mind, we asked the FBI to look for "proximal witnesses," people who had interactions with Hinckley immediately before the shooting. They found the maid who serviced the hotel room in D.C. in which he was staying. She was called as a witness. We found a maid that serviced a room in a motel in Denver where he had stayed, and she testified. Those people are important because although they don't know anything about

psychiatry, they speak in common sense language that the jurors understand. It's more understandable and sensible for one to say, "Well, I didn't see anything odd." Mr. Hinckley on the other hand called people to say just the opposite, particularly his parents. We engaged psychiatrists to do an independent evaluation of Mr. Hinckley. Those were Dr. Dietz, Dr. Rappaport, Dr. Cavanaugh, and Dr. John Monahan from the University of Virginia who is an expert in the prediction of violent behavior. So we developed what I call a wall between us and the psychiatrists. In other words, we were not permitted to have the psychiatrists interview Mr. Hinckley in the next few months and report back to us on what he said.

Mr. Pollak: Not your psychiatrists?

Mr. Adelman: The prosecutor can't do that.

Mr. Pollak: Because that would be giving you a discovery opportunity?

Mr. Adelman: Yes. We gave the psychiatrists we retained access to all the evidence collected by the FBI, all the witnesses that they wanted to talk to, all lay witnesses, to any experts they wanted to use. But we never, until the spring of 1982, when they filed a report, never got any information back from them.

Mr. Pollak: I see. But so the flow, just to be clear about that, was they did a lot of work to try to form opinions about whether the act was a product of mental illness?

Mr. Adelman: They did it independently of any input from us. In other words, nobody steered them.

Mr. Pollak: Then they wrote a report?

Mr. Adelman: Yes.

Mr. Pollak: Each one wrote one?

Mr. Adelman: They wrote a joint report. It details all their study and their analysis. Basically they reached the conclusion that Mr. Hinckley suffered from personality disorders but not from a psychosis. On the other side, the defense –

Mr. Pollak: Well let me ask another question. So you received a report, and was it your intention to put them, or one of them, or two of them, on the stand?

Mr. Adelman: Yes.

Mr. Pollak: And under the rules, what opportunity did you have to prepare with the psychiatrist?

Mr. Adelman: Quite a bit.

Mr. Pollak: You did? And you could handle your wall and still prepare them?

Mr. Adelman: Well the wall came down after they handed us their report and it was given to the defense. Their report was filed months before the trial.

Mr. Pollak: I see.

Mr. Adelman: The need for the wall is to insure that the prosecutors or the FBI do not use the psychiatric interview as an interrogation device. This was not novel with this case by any means. The defense, on the other hand, didn't have such a restriction. Now I don't know what they did because they operated under attorney-client privilege and doctor-patient privilege. When the defense doctors actually testify, the privileges are waived. Eventually, their doctors, particularly Dr. Carpenter and Dr. Goldman, came to the conclusion that Mr. Hinckley was not criminally responsible because he suffered from schizophrenia, or as Dr. Carpenter put it, that he had "process schizophrenia." That of course became a

big issue at the trial. Much of the testimony of Dr. Carpenter was devoted to that. But in any event, during the pretrial phase, there were some significant legal developments here, motions. One of them was --

Mr. Pollak: And who was trying the case?

Mr. Adelman: Well, Judge Barrington Parker was the trial judge.

Mr. Pollak: I have in the office here two District Court opinions that probably were issued pre-trial to rule on issues that would address the kind of evidence the court would receive. And those District Court decisions were decisions of Judge Parker?

Mr. Adelman: That's right. On the evening of the shooting, Mr. Hinckley was first brought to the D.C. police headquarters, then later taken to the FBI office. He asked for a lawyer when he was at the D.C. police headquarters. Under *Miranda*, once counsel is requested, no interrogation can occur. So the police and the FBI didn't interrogate him.

But during the processing at the FBI, as they took his fingerprints and they took his picture and did other processing, he and the agents engaged in banter about the national college basketball final that night. LSU was playing. Mr. Hinckley told the agents that he was an LSU fan and talked to the agents about the merits of the LSU team – typical sports banter. That may seem totally innocuous, but that was very important from our point of view because it was some evidence of his ability to relate to reality on March 30, 1981. He knew about the game, he knew who was playing who, he talked about some of the

stars for LSU, and the agents said, nah, they liked the other team, you know, typical back-and-forth that sports fans do.

We sought to introduce that to show his mental state. We argued that it showed he was in touch with reality, because he was accurately telling them about what was going on that night regarding the game. The defense made the argument that his earlier request for counsel prevented this under *Miranda*. We answered by saying *Miranda* only covers statements offered to incriminate. We contended that we were not seeking to introduce the banter to incriminate him, but as evidence of his mental state. Judge Parker ruled in favor of the defense. We appealed to the D.C. Circuit. They ruled in favor of Mr. Hinckley. So we couldn't introduce that evidence. It was suppressed.

There was another issue I might mention. While he was at Butner, the guards seized papers from Mr. Hinckley's cell. We wanted to introduce some of those. The judge ruled that he had a right of privacy in the jail cell, therefore the seizure of those papers violated the Fourth Amendment. We appealed to the Circuit, and we lost that one as well. Some years later, the Supreme Court, in another case, ruled that a person doesn't have a right of privacy in a jail cell.

One other point became a theme in the trial, as I mentioned, part of the standard was whether you can appreciate the wrongfulness of your conduct, and the defense took the position that "appreciate" means subjectively appreciate. In other words, the focus on each individual's ability to appreciate. We took the position that appreciate means objectively appreciate. The issue was never resolved at trial, but Judge Parker ruled, when Dr. Carpenter testified, that he

had to confine himself to a form of objective appreciation. The trial started in late March of 1982.

Mr. Pollak: A year later?

Mr. Adelman: A year later because we had these appeals, and we had an extended time for examination of Mr. Hinckley. The examination was not only oral examinations by the different doctors but also physical examinations and psychological tests. And I recall that Mr. Ruff was still the United States Attorney when these issues arose so it must have been late in 1981 or early 1982, we were still litigating these motions.

Mr. Pollak: There's generally a speedy trial requirement. Did the parties agree on the schedule?

Mr. Adelman: Yes. Because it was certainly in the defense's interest to have as thorough an examination of the case and of Mr. Hinckley by their people as they could do, and likewise with us.

Mr. Pollak: Did you spend your full time preparing the case in that year?

Mr. Adelman: Yes. In the spring of 1981 I was devoted almost entirely to that case. I had some other trials, but I think after then, I was doing that entirely. We formed a team of prosecutors, Assistant U.S. Attorney Dick Chapman and Assistant U.S. Attorney Marc Tucker. We were three prosecutors in court. When Mr. Ruff was U.S. Attorney in 1981 and early 1982, he was in court and spoke for the government. In early 1982, Mr. Ruff was replaced by Stanley Harris. Mr. Harris became the United States Attorney, and he supervised the *Hinckley* case.

Mr. Pollak: By then, you were fully in charge, although you might report to Stanley Harris?

Mr. Adelman: Yes. That's right.

Mr. Pollak: Was there any possibility that when you appealed these rulings that you lost in the Court of Appeals and you lost there, that you'd try to take them to the Supreme Court.

Mr. Adelman: That was considered – I think the Solicitor General's Office looked at these issues. The Solicitor General decided, on balance, that we should to go forward with the trial.

Mr. Pollak: The trial.

Mr. Adelman: The trial began in late March with jury selection that consumed several days. We had an individual voir dire, which takes a long time because you bring each juror up to the front of the judge and ask questions privately, of course, specific individual questions, and the typical question of course was have you heard, or what you heard and read, can you put that aside and decide the case for which you're in court, and people would tell us one way or the other. Other issues of course included whether any of the jurors had any background or treatment or whatever in the area of psychiatry or psychology and so forth, so it was rather extensive. This one took a long time.

Mr. Pollak: We skipped over the indictment. Is there anything to put on the record about that?

Mr. Adelman: Well, one significant thing about the indictment, of course, was that Mr. Hinckley was charged under the federal statute that makes it a crime to assault or attempt to kill the President. Therefore the investigation of the shooting would be conducted by federal authorities, the DOJ and the FBI. Mr. Hinckley

was charged with several D.C. offenses. I believe it was a 12-count indictment. The indictment basically used standard language. In the District of Columbia, indictments are somewhat formalistic. A lot of the detail that I have mentioned was not in the indictment but was part of the proof at trial.

The presentation of the insanity defense in the District had a different format than a typical criminal trial. In the usual criminal trial, the government goes first and introduces evidence to show guilt. The defense then responds. It may put on no evidence. And there may be some rebuttal by the government if appropriate. That's it.

Where the insanity – or criminal responsibility – defense is involved, the government presents its evidence of the crime. The defense then presents its evidence on the issue of a defendant's criminal responsibility. In the *Hinckley* case, the shootings were televised so they didn't dispute that he had a gun or that he shot the President or the other victims. They called psychiatrists, psychologists, they called Mr. Hinckley's parents, they called other people who knew him over the years and also introduced his writings. Mr. Hinckley wrote poetry and prose, and also there was an occasion where he tape recorded himself, I think on a New Year's Eve, and they introduced that tape. The defense rested. Mr. Hinckley did not testify. Then the government put on rebuttal of the criminal responsibility evidence. We put on our doctors, other witness evidence and documents. After we presented our rebuttal, the judge, over our objection I might add, allowed the defense to present a "surrebuttal," to recall some of their psychiatrists to answer the testimony of our psychiatrists.

But that was the judge's call. As I say, we objected to it. Then the jury was instructed, and we proceeded to the verdict.

Essentially we proved in the first part of the case what happened by showing the tape, by the videotape, by calling the witnesses who were next to Mr. Hinckley including people from the press who were just there covering the President's appearance and speech, as well as other people who were there. We introduced the gun, we introduced all the physical evidence involving what had happened, plus all the things that had been seized at his hotel in Washington. Much of that evidence, like the letter to Jodie Foster, bore both on his criminality and mental condition. This is why it's such a close case – both sides wanted the letter to Jodie Foster introduced. We wanted to introduce it because it showed before the crime, it illustrated his intent to kill. They wanted to introduce it to show this is somebody who shoots a President to impress a teenage actress. Another example, before the shooting, Mr. Hinckley had travelled around the country, almost peripatetically on buses and so forth, to the west coast, Midwest, and so forth, back east, and eventually to Washington. We wanted to show that to show his ability to organize himself, to make, you know, make the schedule in Denver, make the schedule in Chicago, to integrate or organize his behavior. They wanted it in to show that he was acting bizarrely, travelling all over the place without direction. Such evidence supports both sides. That's why this was a tough case. Our basic presentation of the facts was to introduce the facts but also lay the foundation in the fact evidence to show back down the road when our doctors testified that he was responsible for the

acts that he committed. For instance, I mentioned the Devastator bullets which had exploding tips. He had in the hotel room about 34 bullets, only a few of which were Devastators. But he loaded the entire cylinder of the gun with Devastator bullets. He left the ordinary bullets behind. That became an issue in my cross with one of the defense psychiatrists. So that's the way we went about our proof.

The defense then came on. Essentially they said as follows: "This is a bizarre act. This is not the act of a normal person." Dr. Goldman and Dr. Carpenter said, "This man is schizophrenic." Schizophrenia, of course, is a serious mental disorder characterized by delusions and loss of contact with reality. The cross-examination of those doctors was directed to show our position that notwithstanding the label on his mental condition, he still had the ability to appreciate and conform. For example, Dr. Carpenter testified that he didn't have that ability. I led him through the fact that he had a gun in his room. He left the room, and he walked ten blocks to Connecticut Avenue, he got into the crowd, he waited there for 45 minutes. So we would later argue that he was able to hide the gun from detection. As we saw it, he understood the wrongfulness of what he was undertaking, and he could control his behavior. He didn't shoot the President when he first arrived. He didn't go into a rampage. He waited until he got a good shot which was after the President came out of the hotel after his speech.

Mr. Pollak: Was the jury attentive?

Mr. Adelman: Yes. Absolutely.

In any event, I keep mentioning these two psychiatrists. They called other witnesses including psychologists, they called Mr. and Mrs. Hinckley who described in great detail his history from the time he was an infant all the way through and --

Mr. Pollak: They were probably very much convinced that he was sick.

Mr. Adelman: Yes. They also called Dr. Hopper. Dr. Hopper was a psychiatrist Mr. Hinckley was seeing in Colorado before he left Denver. Dr. Hopper conceded that Mr. Hinckley didn't tell him important things. Dr. Hopper didn't have a full understanding of Hinckley because Hinckley didn't tell him, for instance, that he was travelling around the country or that he had a phantom girlfriend. But they called him.

When they rested, then we put on our doctors, first Dr. Sally Johnson. Dr. Park Dietz represented our team of doctors. Plus, as I mentioned earlier, we called a number of ordinary folks, people who saw him along the way, while he was travelling, people who cleaned the room and so forth, to explain what they thought of his mental condition was. D.C. law permits lay people to give opinion as to mental condition. You can't call a lay person to say, well I think he's organic or I think he's got schizophrenia, but they can say, hey, he seemed normal to me. Both sides put on psychological testimony as well as psychiatric testimony, so it was a full presentation. I don't read the newspapers during a trial.

I don't watch TV, so I had no idea how this was registering. I do that because I don't want to be influenced by somebody's view in the media. And

of course the jurors are instructed not to read the newspapers. Jurors are not permitted to do that.

Mr. Pollak: Do you think they obey that?

Mr. Adelman: Yes. The issue is, though, and I argued this to Judge Parker, we had an issue as to whether jurors should be sequestered. That is to say, whether jurors be kept in a hotel during the trial. He ruled no. We argued that the jurors probably would obey the admonition not to discuss the case. But the court can't control people around them – their families, their friends – who might discuss the case with them.

Mr. Pollak: Did you present the final argument, or did you share it?

Mr. Adelman: I did both arguments. I did the opening, I did the closing. And Mr. Fuller did the same thing for the defense.

Mr. Pollak: It perhaps maximizes your chance of making a connection with the jury.

Mr. Adelman: Well, you can debate it. I've seen trials where the prosecutors split opening argument and the rebuttal argument. It just depends. But that's the way it was done here.

Then the judge instructed the jury, and as I mentioned, he applied the *Brawner* standard. That was important, and also instructed that we had the burden of proof to show Mr. Hinckley was responsible beyond a reasonable doubt. The deliberations lasted through the weekend. The case was argued on a Thursday.

Mr. Pollak: How long was the trial?

Mr. Adelman: Well, we concluded on June 21st. We started, I believe, in late March.

Mr. Pollak: Would you go four days a week?

Mr. Adelman: Five. We had one interesting interlude if I can tell you one of the reasons the trial was long. At one point the defense called a psychiatrist who took the position that based on his analysis of the structure of Hinckley's brain on CT scan, if the sulci were wide and so thus would suggest that he might have schizophrenia. We argued that his opinion was outside settled science, was misleading, and was unfairly prejudicial. We had a hearing on the matter outside the jury's presence. The judge basically allowed the jury to hear that testimony. He didn't allow it all in, but he allowed them to introduce the CT scan of pictures of Mr. Hinckley's brain, CT scan, and some testimony about that.

So we argued the case, jury got it. They deliberated through the weekend, and on Monday night they come back with the verdict. They found Mr. Hinckley not guilty by reason of insanity on all counts. The reaction was strong in the public and the media. I have not read all of that, but I've read some of that, and certainly a lot of people didn't agree with the verdict. Mr. Hinckley was immediately committed to St. Elizabeths Hospital under the 1955 statute. That statute requires that an NGI-acquitter be committed to St. Elizabeths Hospital. At the hospital of course they're supposed to receive treatment for the mental disorder. Over the years after the case there have been several requests by Hinckley to be released. Most of those occurred after I left the Office at the end of 1987.

Mr. Pollak: You've been a spectator?

Mr. Adelman: Totally. I've had nothing to do with the case since 1987. We had hearings from 1982 through 1987 periodically on his release, but not anywhere near the number of hearings that have occurred since 1988 going forward to now, and I can just today say the case is now assigned to Judge Paul Friedman.

One more thing about the reaction to the verdict, which was the public reaction and the Congressional reaction. Hearings were held in Congress, shortly after the verdict. I didn't testify on any part of that, some prominent psychiatrists and students in the field testified. Congress also called some of the jurors. Some of the jurors testified. I don't think this was a good idea to put jurors in that position. Jury service is a public service, and I don't think people should have any responsibility beyond their service as jurors, particularly to explain their verdict, especially since jury deliberations are secret. Caution has to be used with post-verdict interviews of jurors, no matter whether by lawyers, a senator or anybody else. The jurors who testified basically said the burden of proof was a factor. It shows the significance of the *Davis* decision by the Supreme Court putting the burden on the government.

So Congress took that into account, and in the fall of 1984 enacted for the first time federal legislation to deal with the defense of insanity, or as I would put it, "criminal responsibility." One important part of the new statute was that the burden should be on the defendant to prove his insanity defense by clear and convincing evidence. 18 U.S.C. § 17(b) enacted in 1984 says, "The defendant has the burden of proving the defense of insanity by clear and convincing evidence." Secondly, Congress repealed part of the defense in the *Brawner*

standard. It said a defendant can be found NGI if "unable to appreciate the nature and quality or the wrongfulness of his acts." Furthermore, 18 U.S.C. § 17(a) says "The defendant must have a severe mental disease defect," not simply any mental disease or defect.

Mr. Pollak: There was a significant move toward the prosecution.

Mr. Adelman: Absolutely. And it was mirrored by later changes in the laws of almost every state. As a consequence, since then there have been relatively few insanity defenses raised in federal court. So that's a significant part of the after-math of *Hinckley*. Also in 1984, Congress modified the Federal Rules of Evidence limiting expert opinion testimony.

Mr. Pollak: Interesting. It's interesting in that I'm aware because I was a practicing lawyer during all that time. I'm aware that there was a lot of back-and-forth and criticism of the *Durham* rule, a lot of people of whatever persuasion thought it went too far.

Mr. Adelman: You're talking in the 1950s and 1960s?

Mr. Pollak: Yes. I'm just not as versed on the criticism of *Brawner*, but I think it probably still drew its share of criticism, and I'm not aware that 18 U.S.C. § 17 has been a subject of much debate.

Mr. Adelman: I don't recall extensive criticism of *Brawner*. The issue that endured after *Brawner* was the loose definition of mental disorder. Secondly, *Brawner* also reaffirmed that the burden was on the government. The 1984 federal statute, 18 U.S.C. § 17, calmed the waters.

Mr. Pollak: You described all of the events and a lot of your role. What would you like to say for history about the whole experience and what you took away from it?

Mr. Adelman: Well, I was honored to try this case. I was surprised at myself that I was not more nervous in court, largely because, and it may seem silly, but you're really not facing the audience when you examine a witness. You face the witness or you face the jury. I also walled myself off, as I mentioned, from outside influence.

Mr. Pollak: In hindsight, would you have done anything differently?

Mr. Adelman: No.

Mr. Pollak: Without either seeking praise or denigration of the defense team, did they make any moves that you thought were unusually helpful to them? How did they handle their responsibilities? I know you have high regard for them.

Mr. Adelman: I do. The one thing that struck me about their presentation was the focus, both in the evidence they brought out from their witnesses and examination of our witnesses. I recall Mr. Fuller and Mr. Craig had particular issues they wanted to develop, and that was it. In other words, they had a pre-planned purpose for direct and cross and got to it and that was it.

Mr. Pollak: Did that serve them well?

Mr. Adelman: Well I guess it did. You never know and frankly I never talked to any of the jurors. So we just don't know why they decided the way they did.

Mr. Pollak: Did anything come out when the jurors were testifying?

Mr. Adelman: Only a few of the jurors testified before Congress. The only thing that sticks in my mind is they mentioned that the burden of proof was a factor. But I caution

you on that. Post-verdict interviews of jurors either collectively or individually are quite unreliable because the jury's reached a verdict; one side is delighted, the other side is disappointed, and depending on who talks to them, they're going to say different things. A jury verdict in a criminal case is literally a collective decision of twelve people, so to ask a few of them "why did you reach that conclusion," they can't speak for the whole twelve. A jury verdict is a collective dynamic. I don't think any one juror or a group of jurors can fully recreate it.

Mr. Pollak: Did you ever talk about the case with Barrington Parker after?

Mr. Adelman: No. Judge Parker was a by-the-book, straight-laced fellow. I tried a lot of cases in front of him afterward, but we never discussed the case.

Mr. Pollak: Were you disappointed?

Mr. Adelman: Yes.

Mr. Pollak: How do you handle something like that?

Mr. Adelman: You put your head down and just keep going forward. Just go back and start trying cases, which I did. And I think that's probably the attitude the other prosecutors had – just get back into the fray.

Mr. Pollak: How long did the jury deliberate?

Mr. Adelman: The court submitted the case to them on Thursday. They were out part of that Thursday, then Friday, Saturday, and for some time on Sunday, and then all day Monday. I can't compute the number of hours, but it was quite a while. And of course you know you're talking about several weeks of testimony, a lot of documents, technical issues, medical issues, and so there's a lot to talk about.

Mr. Pollak: I think it's wonderful to have your report and to have your recall, and I believe that history is the beneficiary. So we'll close it out for today.

Mr. Adelman: Okay.