Oral History of Roger M. Adelman

This interview is being conducted on behalf of the Oral History Project of The Historical Society of the District of Columbia Circuit. The interviewee is Roger Adelman, and the interviewer is Stephen J. Pollak. The interview took place on April 20, 2009 at the offices of Goodwin Procter LLP, 901 New York Avenue, N.W., Washington, D.C. 20001. This is the seventh interview.

Mr. Pollak: Good afternoon, Roger.

Mr. Adelman: Good afternoon.

Mr. Pollak: You may have had something you wanted to say about Judge Bryant and the Sentencing Guidelines if it differed from Judge Harold Greene and the Sentencing Guidelines.

Mr. Adelman: Judge Harold Greene and Judge William Bryant didn’t like the Guidelines as was true of many judges. Judge Bryant felt that he was being deprived of the discretion to impose a sentence. By the time the Guidelines came into effect, he had become a senior judge so he could take cases as he saw fit. He would try criminal cases, but my recollection is if there was a conviction, he would never sentence a defendant under the Guidelines. He would refer the case to another judge. He felt that strongly about it. Some defense lawyers would say that the Guidelines – have made it so dangerous to go to trial that people are more willing to accept plea dispositions proposed by the government than to go to trial.

Mr. Pollak: Is there a balance now that the Guidelines have become advisory? What’s your evaluation of the best of the reasoning that would support having Guidelines?

Mr. Adelman: The main rationale is that they create uniform sentences around the country and some predictability in the sentence that you’ll get. But I think those are false
predictions. Sentences in my view should be tailored to the individual and not to a rigid calculus. The Guidelines amount to “sentencing by the numbers” as a Washington Post series once put it. Sentencing to me is an individual undertaking, depending on the individual defendant and the details of the particular crime. Though they’re now deemed to be advisory, the courts still heed them, the appellate courts in the federal system will look to the Guidelines to see whether the judge strayed too far away from what the Guidelines would prescribe. So in some ways, they’re still in effect.

Mr. Pollak: The other items that you may want to put down, down the road, one you referred to as you described your practice where you have your own firm but you relate to the California firm and you were going to speak to that.

Mr. Adelman: I have since 1997 had my own practice but then I also do extensive amounts of litigation with the California firm involving class actions, principally securities class actions. I am not part of the firm, but I work with them pretty steadily on particular cases. We’ve done a series of cases, a series of class actions, involving the tobacco industry. I may have mentioned that. And a large number of securities class actions cases.

Mr. Pollak: What’s the name of the firm?

Mr. Adelman: It’s now called Robbins Geller Rudman & Dowd.

Mr. Pollak: You were speaking to your experience since in private practice since leaving the U.S. Attorney’s Office in 1987, and my notes indicate that you’d spoken about the demise of white-collar boutiques and the movement of practice of law to become a business, all unfortunate developments in my view and I think in
yours. Had you finished speaking to an item on the outline called “litigators supplanting trial lawyers?”

Mr. Adelman: It seems that the people who appear in court and try cases stand apart from the people who prepare cases, analyze cases, and do the general sort of workup of cases. Not all litigators are trial lawyers. Most trial lawyers are litigators. It’s roughly similar it seems to me to the difference between a barrister and a solicitor that the English observe. I think the growth of the big law firm litigation has also been accompanied by the growth of the litigator concept, you know, taking depositions, gathering documents, analyzing documents, going into privilege issues, and things of that sort. Put it another way, I think there are less and less opportunities to try cases. We’ve sort of talked about that. So I think the number of trial lawyers is probably correspondingly diminishing. I don’t have statistics, but I have that sense.

Mr. Pollak: Because of the risk-averse nature, the cost, or panoply of reasons?

Mr. Adelman: A panoply of reasons. One, the Guidelines in criminal cases. Two, I think generally litigation, civil and criminal, particularly civil litigation, is extremely costly and involves a huge risk on either side so there’s a strong tendency to settle, and that being the case, there’s less of a chance of actually going to trial.

My sense is that the practice has changed drastically in Washington, the number of lawyers, particularly in litigation, has enormously expanded in the years that I’ve been here. Largely the product of the litigation explosion, and there is that to some significant degree. And the fact that the government produces and trains trial lawyers and litigators, and every year people leave the
government in Washington and go into practice, and many of them stay in Washington.

Mr. Pollak: Nobody who has looked at the practice today and for the past evolution over 20 years or 30 years could reach any other conclusion. I guess the question is, or a question is, is that process just going to continue on and what is its meaning for people becoming lawyers and what is its meaning for clients who need lawyers?

Mr. Adelman: I think as the practice becomes more dominated by big firms and then their fee structures, it’s more and more difficult for an individual who doesn’t have great resources to get representation from those firms. And it seems to me that, except if it’s something pro bono or something out of the ordinary, firms aren’t going to represent somebody, particularly an individual. I think it makes it harder for people to become trial lawyers because frankly the economics of doing that are not as attractive as other areas of practice.

Mr. Pollak: My observation, Roger, is that almost the only way really to become a trial lawyer today is to go through a United States Attorney or a state’s attorney office.

Mr. Adelman: Or a public defender service. Because in a big firm you simply don’t have a steady diet of triable cases.

Mr. Pollak: A good-sized firm may have just a handful of trials in a whole year, even though a large number of people may be in litigation, preparing cases which ultimately settle.

Mr. Adelman: Right. And if you want a sense, I suspect that will continue. There’s no pressure for that to change.
Mr. Pollak: It’s always struck me that it has significant implications for the law schools and significant implications for young people in selecting careers.

Mr. Adelman: The law schools – particularly the larger law schools – don’t necessarily prepare people to be trial lawyers because that’s not truly a marketable skill. But the curriculum of most law schools is geared toward things that people will need to know to work for a large firm.

Mr. Pollak: Legal memoranda.

Mr. Adelman: Research and writing. Sure.

Mr. Pollak: What about TV lawyers? Do you have a comment about TV lawyers?

Mr. Adelman: I do. I think in the last few years there’s been quite a bit of – particularly on the cable networks – the commentary by lawyers, on cases and I think it’s a tough situation for the lawyer actually trying a case to have a person, especially a lawyer who is not that familiar with the case to make definitive, analytic comments about the case.

Mr. Pollak: You have an item on the outline called “the function of the trial lawyer.”

Mr. Adelman: I feel very strongly that in an individual practice, you have a one-on-one relationship with a client, you don’t have a group of people representing the client, just one person, you. Particularly in a criminal case you have to develop a sense of trust and support. As a trial lawyer you have to stand up by yourself and do what you do in court and some people like that, but many people don’t like to do that.

Mr. Pollak: You were a prosecutor and being a prosecutor, did that train you to be a defense lawyer?
Mr. Adelman: I think so. I never had the practice during a court prosecution of talking to the defendant – for a variety of reasons, so you didn’t look over and really see the impact of – you saw the impact but you had no personal sense of what it was. A prosecutor has to talk to witnesses, talk to police, talk to various kinds of individuals, get the feel of the case and understand it. You don’t have clients as such but you have parties in interest like the victims of the crime and so on. I think it’s a different dynamic if you’re a defense attorney. I think you somewhat more live the case. That’s not to say there aren’t prosecutors who live the case, but they’re not living it on an individual basis.

Mr. Pollak: I’m sure you like to be in a position of having laid out a full road map so the client doesn’t end up being surprised.

Mr. Adelman: As best you can. One thing of course you can’t do is predict the outcome. I tell folks, if you know a lawyer who can tell you how your case is going to end, hire him immediately. Fire me. Because I don’t have that skill. There may be lawyers who think they can do that. There are so many issues that impinge upon the resolution of any case that you can’t predict. You can talk about likelihoods, but you can’t predict.

Mr. Pollak: Did we discuss selecting a jury for a criminal case?

Mr. Adelman: Jury selection is an idiosyncratic process. I may have mentioned Assistant U.S. Attorney Harold Sullivan who was a prosecutor here, and according to the legend, he was in the U.S. Attorney’s Office for 13 years, and he only struck three jurors in his whole career. He usually would take the first twelve that were seated. I had nowhere near the confidence that he did when I was an
Assistant. I was always careful to try to find jurors who would be favorable to the government’s position. Voir dire in the federal courts is restricted compared to state court so you don’t get a chance to make a detailed inquiry of the jury, so you’re sort of going by the seat of your pants and you’re dealing, as Judge Bryant would say, when you have twelve people in the box, they represent about 600 years of human experience. It’s very hard to predict exactly how anybody, one individual among those twelve, is going to react. You can make general judgments. The other thing that is totally unpredictable is how those twelve people who don’t know each other will coalesce and reach a verdict.

The jurors come to court and they are sitting and waiting for a long time beforehand and they read books, so you see the books that they were reading. That would give you some kind of clue, maybe, maybe not. Customarily, jurors are asked about their attitude about the case, knowledge about the case, those kinds of things, and you pay attention to their response. As far as the defendant is concerned, his lawyer wants to be sure the defendant himself is comfortable with the jury. Many defense counsel, just before they say “satisfied” with the jury, turn to the defendant and say, “Do you want anybody else stricken?” Just to be sure that the defendant is comfortable with the jury. That assures the defendant that it’s his jury too.

Mr. Pollak: Right. Well I think that would be a wise thing to do.

You have control over your oral history. You can publish it right away, you can put it under seal for a little bit of time. So that’s all in the interest of your making a history that is candid and represents your views. There are often trial
lawyers who speak sort of on the record about their feelings about juries, that they always reach the right result, that they do this, they do that, they do the other thing. You are a very experienced lawyer before juries and I think your oral history ought to include your experienced views about juries and what one can expect from that.

Mr. Adelman: I’ve had some jury verdicts that I was surprised by and disappointed by. I’ve had jury verdicts that I was surprised that they voted for conviction. Over time, talking about 300 trials, give or take, I think the juries did the right thing. Sometimes you disagree in individual cases, but if you look back on it, very rarely can you find a situation where the jury was irrational or flatly wrong. Sometimes the verdicts are hard to accept.

Among their rights, most people in the United States would feel most strongly about is the right to a jury trial. That’s why I have such negative feelings about the Sentencing Guidelines because I think they have effectively deprived people of a jury trial. If you’re asking whether the jury system is worthwhile, my answer is clearly yes.

Mr. Pollak: That’s a very important part of this history that you’re making. Your views come out of a wealth of experience. In any generation there are some people who’ve done 300 trials, but not a great many.

Mr. Adelman: Largely in this jurisdiction, Washington, D.C.

Mr. Pollak: It’s interesting that in some respects, a criminal defense lawyer has a relationship with a client that’s very much like a medical relationship. The
client has a grave problem and the client is looking to the doctor or to the lawyer to help him through the problem.

Mr. Adelman: And that’s one of the reasons for the attorney-client privilege because, as with doctors, there should be free interchange of information and also, the relationship with the client lasts for a long time. Some doctors of course treat you one day and you’re gone and never see them again. But if you’re representing somebody in litigation, you may represent them for years. This is not a one-shot process. Criminal investigations run a long time. Criminal trial proceedings run a long time. Appeals run a long time. So you may have an ongoing relationship.

Mr. Pollak: You’ve had experience with the movement in the law practice of electronics with all of its unusual capabilities.

Mr. Adelman: I think it’s changed advocacy and changed trials tremendously. When I started trying cases basically the case was a verbal description by witnesses of what had happened. There’d occasionally be a photograph, other graphic evidence. Now you supplement that verbal description. You can create graphics of an auto accident scene or a murder scene. The other change is that the argument to the jury was basically oral. You’d get up, make your argument, and very little reference to exhibits or graphics. Now, I’ve seen not only arguments in jury trials, but arguments on legal issues, with full electronic outlines being displayed on the screen. The lawyer basically becomes the narrators rather than pure advocates. I learned a little bit about what I do by working with or being taught by some of the great orators of the time – Vic Caputy, who we’ve talked
about, being one. Vic Caputy would argue without notes. He’d just put his hand on the table, put his notes down, and talk to the jury. And now, that’s unheard of these days because you have a whole outline, you can illustrate just about anything you want in the case so the advocacy now is narration.

Mr. Pollak: In a closing, particularly, the advocate may call up some document or may create something.

Mr. Adelman: Trial arguments are largely visual events now, not oration, particularly in complex cases, where seated next to the counsel table are the electronics people who flash up the electronic exhibits on the screen, videos or all kinds of exhibits, and cue them in the argument and examination of witnesses. Simple criminal cases probably still are oral presentations, but as you move into the complex cases, civil and criminal, there’s much more electronic displays, videotapes, audiotapes, dramatizations.

Mr. Pollak: There are sometimes quite large or even giant criminal cases where a corporation is a defendant. Do you have comments on that kind of practice? It came up over the 20th century, often in antitrust areas.

Mr. Adelman: I don’t represent corporations, but of course I represent individuals who are employees of corporations. It’s still rather rare I think that a corporation alone goes to trial. But part of that I think doubles back to what I was saying which is the internal investigation. The way the Department of Justice has proceeded under the Guidelines and under some internal policies is that a corporation, once a criminal activity is suspected, is almost obliged to conduct its own internal investigation to find out what happened. They hire outside counsel and then the
outside counsel interview the people involved, make recommendations to the
board or a special committee which in turn may or may not be turned over to the
government. The Department of Justice encourages companies to do those
investigations and to turn over the results to them. That raised some problems
because the argument was that the corporation would, as the holder of the
privilege between it and an employee, would have the right to turn over
information the employee gave to the government and if the employee is under
investigation, it creates a serious problem. But there’s a great motivation on the
part of companies to do an internal investigation, find the problems, find the
wrongdoing, expel those who are doing it, and then persuade the government
not to prosecute. And that is an expanding area because big law firms are
particularly well equipped to do these investigations. They have a lot of people
and they can interview a large number of employees in a short period of time.
There are corporate guidelines as well as individual guidelines. The guidelines
reward corporations that come forward with their own information which has
been learned in an internal investigation. My role in that is simply to represent
individuals in the corporation who are in the mix.

Mr. Pollak: And there are many problems there because the individual may not serve the
individual’s interest by cooperating with the investigation because the results
may all be turned over to the government.

Mr. Adelman: That’s a particular hazard, and if you don’t cooperate with your company, you
may be fired. So you have to make that judgment, and a lot of things weigh on
that – how much you want the job versus whether you want to have what you say turned over to the government.

Mr. Pollak: So you might have some privileges, the putative defendant/employee might have some privileges? What about representing people who are either the subject of a grand jury investigation or who have a concern with a grand jury investigation?

Mr. Adelman: First, you have to find out this person’s status from the government. The Justice Department, theoretically anyway, has three categories: you’re a target, or a subject, or a witness. Counsel would want the government to commit before the grand jury interrogation of a client what the status of that witness is. If a person is determined by the government simply to be a witness, then there’s no concern about incrimination. If the client is a target, customarily you would advise him not to testify, to take the Fifth Amendment. The toughest situation is where the client is a “subject.” “Subject” is loosely defined as somebody against whom criminal charges might be brought. Then you’re in a really tough situation. Once a person goes into the grand jury, his lawyer can’t go with him. Now the practice here and the practice in the Department I think is to allow the lawyer to wait outside and to periodically consult with the person outside the grand jury. You have to do a fair amount of investigation and get information from the government as early as you can. That’s one of the points that I really want to stress, which is in the older days you waited until trial and then you received the information, you went to trial. Now you have to get the case under your belt and know it early on so you can advise the client on the possible Sentencing
Guidelines exposure. So that’s where you have to spend time with the client and try to get information from the government which you may or may not get because grand jury investigations are secret, and they’re not going to disclose documents and too much information. So you really are flying – I wouldn’t say flying blind, but you’re flying in a cloudbank. And it’s somewhat hard. So I think many times counsel defending somebody in that situation, where there’s a question, will advise him to take the Fifth Amendment because they don’t know whether they’re going to incriminate themselves. Now a grand jury investigation has another part which is that the government issues subpoenas for documents which you have to comply with. That may give you some idea as to what the grand jury is interested in. But it’s a very difficult situation sometimes, particularly where you know there aren’t many people being interviewed by the grand jury so you don’t know exactly what the focus is.

Mr. Pollak: I’ve taken a lot of people to grand juries in my time. If there are enough who go, you can become pretty educated as to what’s going on.

Mr. Adelman: Well you can do that because maybe if you enter into a joint defense agreement with the other defense attorneys and you find out from them what the questions of their clients have been or what information they’re looking for.

Mr. Pollak: Well, we are down to the.

Mr. Adelman: Okay. That is something I started to do in 1997 with my friends in California. As I mentioned, it’s covered a wide variety of things – tobacco, securities, human rights, and so forth. I do that regularly now. My part in this is getting the cases ready for trial when there’s indication the case will go to trial. These
are massive cases because they’re usually complex issues against large companies, large corporations, involving stock fraud, involving misrepresentations and so forth. And there is a huge discovery period that runs a long time, a number of depositions are taken, documents assembled, and so forth.

Mr. Pollak: Is there sometimes a criminal prosecution in the background?

Mr. Adelman: Yes, but not many. The closest one I can think of was Enron. With Enron, there was sort of an overlap. There was a criminal prosecution of several executives, most notably, Mr. Lay and Mr. Skilling. Those folks were also defendants in our class action but there were many other corporate defendants and financial institution defendants in the class action so there was an overlap. So sometimes there’s one or the other and of course where there’s a criminal investigation, that generally takes precedence and the court will proceed with the criminal case. You can’t depose somebody who’s got criminal liability because they’ll take the Fifth Amendment. I wouldn’t say that that many cases have involved parallel proceedings with a criminal investigation but many of them have involved proceedings before the SEC because these are securities cases and the SEC does its own investigation. I wouldn’t say the SEC and the class actions proceed in synch, but they do proceed along the same lines.

These class action cases are brought under the securities laws. There’s a provision in the securities laws for private enforcement of shareholder rights. Class actions are large endeavors in terms of manpower, in terms of the issues. We’ve tried some of these cases, in particular, we’ve tried a tobacco case that
lasted several weeks. I’m preparing, working with people now, for a case that will go to trial this summer that should last fairly a long time. These are usually all in federal court and, as I say, in different parts of the country. We tried a case in Trenton, New Jersey in federal court. A wide variety of issues within the range of stock fraud. A lot of economic issues, scientific issues, a lot of expert testimony on both sides and that’s a whole other realm of these cases, preparing the experts, selecting the experts, deposing the other side’s experts.

Mr. Pollak: Are they generally tried to a jury?

Mr. Adelman: Yes. In my experience, they are. Which of course then is a whole other challenge for selecting juries in these kinds of cases. In any event, I’ve done a lot of that work. Cases in Texas – Enron – other cases in Texas, California, and even in the Northern Mariana Islands.

Mr. Pollak: What did you do in the Marianas? Because Howard Willens is a colleague.

Mr. Adelman: Mr. Willens I think worked on creating the constitution for the Mariana Islands.

Mr. Pollak: Yes. He was attorney for the government of the Marianas.

Mr. Adelman: The Northern Mariana Islands was captured by the United States in 1943. The Marianas had been controlled by Japan. I’m talking about Saipan and those islands north of Guam. The United States continued to administer the islands as a territory until the mid-1970s. Thereafter, in the mid-1970s, they then obtained territorial status or independent status, and adopted a constitution. In the 1970s, 1980s, and 1990s, one of the principal islands in the Marianas – Saipan – became the site of a large number of garment manufacturing operations conducted by Chinese entrepreneurs wherein women were hired from China and
induced to come to the Marianas Islands, some of them being told they were coming to the “United States,” and basically worked there under what we alleged were slave-labor conditions, involuntary servitude. The products they produced were sold to the major retailers – Target, Ralph Lauren, and other garment purveyors in the United States. In 1999, the firm that I’m talking about brought a class action on behalf of the workers against the garment manufacturers and the garment retailers. There were 20 or 30 defendants.

Mr. Pollak: That’s who you meant when you said “we.” That would be the law firm and you?

Mr. Adelman: I did not get involved in this case until it was being prepared for trial. I don’t decide who to sue. There is a U.S. District Court on Saipan, and that’s where the case was set in for trial. I participated in a lot of the discovery. Eventually, the case was settled. Damages were obtained for all of the women workers and distributed to them. That’s still going on. There’s a fund being administered that the defendants, both the garment manufacturers and the retailers, that contributed to the settlement fund, and that fund is being disseminated to the workers.

Mr. Pollak: Very interesting.

Mr. Adelman: We took depositions on the island of Saipan when I was there. It was quite an experience.

Mr. Pollak: And why was it quite an experience?

Mr. Adelman: You’re helping people. These women were brought there from China under false pretense. The allegations were that they worked more than 40 hours a
week, they didn’t receive proper compensation, they weren’t free to travel, they were restricted in how they could even move around the island. Brian Ross of ABC did an exposé on this in the late 1990s.

Mr. Pollak: Do you want to speak at all about the tobacco litigation.

Mr. Adelman: The tobacco litigation were class actions brought on behalf – of labor union health and welfare funds. They acted as a class against the tobacco companies. The theory was that the money that the funds had to expend, or a certain percentage of it, for tobacco-related illnesses, was necessitated by the fact that the tobacco companies had historically, according to our complaint and our proof, misrepresented the dangers of smoking. Some courts accepted the view that there was no direct injury to the funds and therefore no cause of action. One exception was in the Northern District of Ohio where the District Judge ruled that there was a cause of action. We proceeded to try that case. The jury returned a verdict for the defendants. But these were not individual smoker cases. Individual smoker cases were excluded from the class action by courts that have ruled that each individual smoking case is a separate and unique claim and not appropriate for class action.

Mr. Pollak: You listed an AT&T action.

Mr. Adelman: This is an action against AT&T that went to trial in Trenton, New Jersey. It settled in the middle of the trial. It was for stock fraud. It was against AT&T and its then-chairman Mr. Armstrong. We tried that in Trenton in 2004 in front of a jury, and it settled in the middle of trial.

Mr. Pollak: What was the issue?
Mr. Adelman: Essentially misrepresenting to the market the financial status of the company.

Mr. Pollak: I have a few questions that I have noted down. A series of questions come from John Cruden.

Mr. Adelman: Oh! Mr. Cruden. Is he with your firm?

Mr. Pollak: He’s now running the Environmental and Lands Division in the Department of Justice.

Mr. Adelman: And he was President of the Bar. I’ve known John since 1979.

Mr. Pollak: Right. He said that there was a book written about one of your cases.

Mr. Adelman: This was a hijacking case in which in 1978 an East German citizen hijacked a Polish airliner and forced it to land in the part of West Berlin controlled by the United States. It landed at Tempelhof Air Force Base. Because of the post-World War II Status of Forces Agreement, the United States, Great Britain, France, and Russia each governed a part of Berlin that they were responsible for. As a practical matter, particularly in the U.S. sector, by 1978 we let the Germans run their own government and courts. However, for basically political reasons, in this particular case, the State Department decided that the U.S. government would prosecute. The West German prosecutor didn’t want to handle it, so we did. It was prosecuted in “the United States Court for Berlin.”

After World War II, all of the occupying powers set up charters for court systems in their respective zones. The British did, the French, Russians, and we did too. The U.S. Court for Berlin had a constitution, had a charter, but it never convened. But it was decided by the State Department in this case to have the trial. The State Department appointed the personnel for the case. Under
international law – the law of war – a party like the U.S. that occupies the land of another country following a war must apply that country’s substantive law but it does so under its own procedures. So we applied German substantive law but followed American procedure. So we had the American Rules of Criminal Procedure, American Rules of Evidence, translated into German. The two parties and the judge had German legal advisors. The judge resolved constitutional questions, American domestic law questions and substantive German law questions. The gentleman who was the legal advisor in Berlin for the State Department was made the U.S. Attorney for Berlin. I was asked by the U.S. Attorney Earl Silbert to go over there and do this case. At first, I didn’t know whether to do it. I was encouraged to do it, so I went over there and I was made an Assistant U.S. Attorney for Berlin. We were all appointed by the Ambassador. The court had a charter that basically provided for criminal charges to be tried, only criminal charges, by the court and did not provide for jury trial. Besides the prosecution group, we had German lawyers working with us. The ambassador appointed us all. He also appointed a U.S. District Judge from New Jersey, Herbert Stern.

Mr. Pollak: The United States District Judge?

Mr. Adelman: Yes. And also defense attorney Judah Best, here from Washington, and a gentleman named Bernard Hellring from New Jersey and other attorneys both German and American were appointed to represent the single defendant, a male defendant, Mr. Hans Detlef Tiede, who hijacked the plane. We eventually charged a woman who we believed conspired with Mr. Tiede. It took a long
time to prepare the case because of the geography, and we were all busy in other cases in the United States. We would travel back and forth. The case was tried in the spring of 1979. The judge had ruled that Mr. Tiede had a right to a jury trial. The State Department took the position he did not.

So we tried this case to a jury consisting of twelve West Berlin citizens. We had voir dire. We selected jurors, and we tried the case. Now there were obviously language issues because the jurors spoke German, we spoke English, some of the witnesses were from Poland, so in the testimony, we’d go Polish, then German, then English and back to German and then Polish. The defendant was Hans Detlef Tiede, and we went through a full trial. He was convicted of one count of taking a hostage. That was in May 1979. The hijacking occurred in August 1978. He had been in custody since August 1978. The judge released him with time served. At that point, in 1979, Mr. Cruden became involved. He was then Colonel Cruden. Because an issue arose in a separate case as to whether the court had civil jurisdiction. After the criminal proceeding went to jury deliberations, a German lawyer appeared and wanted to file a civil case. According to the charter of the court, it didn’t have civil jurisdiction. This civil case seriously impacted on the U.S. government’s occupation rights in Berlin. The judge said that he thought he had civil jurisdiction. The Department of Justice sent over two other attorneys from the U.S. Attorney’s Office and Colonel Cruden to deal with this issue.

The jury came back, returned its verdict. The judge sentenced Mr. Tiede.
Mr. Pollak: Mr. Cruden now, not Col. Cruden, asked whether you were a member of the Berlin Bar?

Mr. Adelman: (Laughter) I’m not only a member, I’m a co-founder of the “Berlin Bar.” The Berlin Bar was instituted by me and several others when John Cruden was there, not only have we continued meeting, we’re going to meet in about a week. We have annual meetings here in Washington and those people, we have members from D.C., we have some members from Germany, among whom are Chief Judge Royce Lamberth, U.S. District Court; Hank Schuelke, myself, Andre Surena from the State Department; John Cruden, and Arthur Goeller. All the people that participated on the prosecution team.

Mr. Pollak: John and I are on the Board of the D.C. Bar Foundation.

Mr. Adelman: John was the first government lawyer to be made president of the D.C. Bar.

Mr. Pollak: He’s a really estimable man.

Mr. Adelman: I like John and we’ve been friends since the Berlin case.

Mr. Pollak: I have some I think sort of wind-up questions. I think we’re at the end. I thought that you would want to compare public and private law practice and maybe speak to advantages, non-advantages, or handle it however you might want.

Mr. Adelman: I started out in public service with the U.S. Attorney’s Office and that experience I think has shaped my total view toward the practice of law. I always felt as a prosecutor we had the right guy, we were on the right side, and our cause was just and we didn’t have to compromise anything. I felt very much committed – the standard cliché is you serve the public but you’re also
serving the particular victims, the law enforcement people, and to some extent, the Office. The advantages are, I think, that as a prosecutor you have the prestige of who you stand for – not just you personally. You have the assistance of law enforcement people and between the police, the FBI, DEA, and so forth, they’re there 24/7 and you also have the notion that if somebody in another part of the country is or was an assistant U.S. attorney, you don’t know who they are, you’re talking to them, but you can trust them. Private practice has, as they say, personalized the practice of law for me because I got to see how the process affects people, how this deeply affects people who are charged, families, and so forth. There are limitations in the private practice – and it took me a while to figure this out – you’re engaged by a client to do one particular thing – deal with a subpoena, try a case, do an appeal and so forth. As a prosecutor, you tend to get the idea that you’re a universalist. But in reality, you’re managing the particular case, the police, and so forth. Having spent time in private practice, I got to realize you narrow your focus. But at the same time, I think it’s much more intense. The other thing, in comparing the two, is with the government you get the sense you can spend money willy nilly. You can order examinations, you can order witnesses to come, and so on, and they all happen. In private practice, you suddenly realize you’re financially constrained, not restricted, but constrained. There’s a limit to what you can do. And so that’s part of the mix of how you decide whether to represent somebody in private practice and what you do in representing them. Frankly, the government also necessarily never inculcated in me or anybody the financial value of our service
because nobody was there to make money. We were just there to do what we had to do. In private practice all of a sudden you have to value your time, and it took a little while for me to realize that you could charge a reasonable amount of money per hour for what you did, and then I realized that it was justified. The government never operated that way. You weren’t paid by the hour or the task or the result and so forth. So I think you move from the world of – I used to tell folks who were leaving the U.S. Attorney’s Office, now you’re going to enter the economy. When I was with the government, I was not in the economy in any free market sense, but now I’m in the economy not only from the dealings I have with clients but the competition, with your colleagues, I don’t sense that too much, but there is certainly a strong sense of price competition among some lawyers. I mean people will select people who they can pay less for. Not always. But I had no sense of that when I was with the government.

The main thing is with the government you had the feeling whatever you want you can get. I needed a witness from somewhere, the police would get him.

And if the guy lived in the far reaches of Tennessee, they would find him. Well, if you’re in private practice, you just can’t do that – unless you have infinite resources.

Mr. Pollak: Have you presented appeals in your practice?

Mr. Adelman: I have. When I was with the government, I argued a number of appeals. I was in the Appeals Section from mid-1970 through September, 1971. I liked appellate work, I like academic work because that was what I did in law school and I related to it. Many people didn’t in the U.S. Attorney’s Office, they
wanted to get to trial. But the point was always made to me, and I think John Terry was one of the people who made it, the more law you know, the better trial lawyer you are. And I left the Appeals section with John’s blessing after I argued an *en banc* case in 1971, and I was assigned to Judge Bryant. And he took me to Judge Bryant, and he said, “This young guy here, he knows the law and you can work with him.” And Bryant said, “We’ll see if he can try cases.” And so for the next 16 years Bryant and I went back and forth about the law and cases.

Mr. Pollak: Tell the record in your view of what makes a good judge?

Mr. Adelman: Patience. Learning. First in knowing what happens in the real world, and secondly, knowing the law. The judges who get reversed are those who try to wing it, who say, well I’ll read one case and I’ll know what the answer is. On the other hand, I get back to William Bryant again, if you’d say something to him. He and I got into an argument one time about the meaning of the corroboration requirement in a confession. So I’m down there in the courthouse library at night and who’s around the corner? Judge Bryant. He was committed to understanding the law. The other thing is patience. In the perfect trial, you have important issues to try, you have good lawyers on both sides. Well, that rarely happens. It’s like when the phases of the moon come together. Usually you don’t have all three. So you have to be patient. Maybe the lawyers on the one side aren’t as good as you want and you also have to be sympathetic with the position of the lawyers, they’re advocates, the prosecutors take his or her position, the defense attorneys push you in a position. And that’s why I think
trial judges particularly, should have trial experience – to understand what the lawyers are doing, and Judge Bryant used to call the lawyers to the bench and say, “Mr. So-and-So, I’d like to know why you asked that question. You asked it ….” You know, and/or he’d say, “Mr. So-and-So, you better not ask that question because if you ask that, he’s going to say this and then….” That’s a great teaching experience. But it also shows what a judge really should be thinking and operating. There’s a concern now with less judges coming from trial practice that they are not comfortable with the trial process, and let’s face it, criminal cases in this district and elsewhere, are sort of rough and tumble events. Police do things you hear about, defendants do things you hear about, witnesses, and so forth. Folks with that background are better equipped to be judges. That said, I think Judge Gesell, who I tried many cases in front of, was always a half a step ahead of everybody because he was so smart, he was so sharp. But he was very very conscientious about the law and that was his forte. And you’re right, when he got a reversal, you heard about it. But a great guy.

I thought to myself, I’ve been coming down here for almost eight months, and you’ve showed enormous patience with me, allowing me to go through all of this and hearing me out on things that are close to my heart, frankly things that I generally haven’t talked to too many folks about, particularly in an organized way. I consider this an honor. I consider this an important project. Not so much for me but for the court and the bar. I end by saying we have so many good lawyers in the District of Columbia and such a good legal presence
here that something like this is enormously worthwhile, so I’m honored to be part of it, and I really thank you, Steve.

Mr. Pollak: Well, Roger, I felt myself that it was wonderful that you wanted to put yourself into this and put the energy you put into it. I have been involved with the oral history project of the Society since 1993 or 1994, and I’ve done a couple of oral histories that were extensive, just as yours is, but I believe that your breadth of experience in, particularly the prosecutor’s office, brings something very special to the history and something that is really needed as part of the history. The history project wants to know more about the prosecution’s side. That’s not something that’s easily displayed because prosecutors are often silent about what they’re doing and so it’s great to have it. Now, all you have to do is do the hard work, the slogging work, of reading through it and recognizing that it is not a written piece. Every sentence doesn’t have to be perfect. It’s really an oral presentation. Don’t overtax yourself with editing, but you will want to make sure that you’ve got the names right and so forth.

Mr. Adelman: Which I’m doing. Thank you.

Mr. Pollak: Thank you.