ORAL HISTORY OF ROGER E. ZUCKERMAN
Fifth Interview
April 3, 2014

This is the fifth interview of the oral history of Roger Zuckerman as part of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewer is Gene Granof. The interview took place in the office of Mr. Zuckerman at his law firm in the District of Columbia on Thursday, April 3, 2014, at 2:30 p.m.

Granof: The one thing I wanted to ask you, maybe to begin with, and I got thinking about it this morning, whether in light of your comments about the excitement of being in a court and being away and presumably an adrenalin rush, and I was thinking are trial lawyers/litigators quirky? But quirky really isn't the word I wanted to use. They're different – there is something different and intense about them.

Zuckerman: Well, yes. They are probably a little click of the dial off center, I suppose you could say. It is, I think, in significant measure a function of an ego-driven need to compete. Not so much in a physical environment, although there is a lot of physicality in keeping up with the grind that a trial imposes on you. But in matching wits with an adversary over things that are different than the outcome of a chess match or card game or a parlor game, but matching wits in a very demanding and intellectual way, where there is someone's future or some company's future that's very much on the line. And it's swordsmanship – it's really a type of dueling – that creates a high if you succeed and creates a sense of incredible excitement. I think in that sense it's something that's attractive, but certainly not attractive to everyone.

Granof: I mean litigators – and I have heard this from other litigators – that they find it difficult to give it up.

Zuckerman: Yes. I would put it a little differently. I think it is difficult to do and difficult to give it up. The basketball player Bill Russell always used to

vomit before he went on the court because of his anxieties and the tension that was created. I think for many litigators – certainly for me, it's not in all respects – I think I may have said this earlier, it's not in all respects a process that is natural to my personality and my body. It probably over the years has taken its toll in a variety of ways. It's probably more natural to others who are more naturally extroverted and combative. For some deep psychological reason there is a need that many people have to test themselves in one way or another. You can test yourself in rock climbing or you can test yourself in sky diving. But you can also test yourself by having somebody put their life in your hands in a very difficult environment, where you have a lot of hostility thrown your way and you can deal with it. Such a test was the test that I and others confronted in the *Knisely* prosecution, which I don't think I have discussed.

Granof: I don't think you have.

Zuckerman: It's an example of putting yourself in a position of extreme difficulty and then trying as best you can to extricate yourself and more significantly, to extricate your client. We were engaged in the early 1980s – I was engaged in the early 1980s – by William Knisely, then incarcerated in a federal penitentiary in Lewisburg, Pennsylvania. Bill had been indicted for the murder of a grand jury witness shortly before the witness was to testify. Allegedly Bill had received directions from another to kill the grand jury witness. It was not the first homicide case that I handled, but it was amongst the most hostile in that it was indicted as a federal civil rights violation before United States District Judge Louis Bechtle in the Eastern District of Pennsylvania in Philadelphia. I and my partner at the time, Steve Glickman, who is now a judge on the D.C. Court of Appeals, tried the case against Greg Miller, who was a very fine Assistant U.S. Attorney and became the head of the Criminal Division of the U.S. Attorney's Office in Philadelphia. Our client was not the principal defendant. The principal defendant was the man who purportedly paid Bill to kill the witness, and the

principal defendant was represented by F. Emmett Fitzpatrick, who was at that time the former District Attorney for Philadelphia and a very prominent man. Emmett had a lot of juice at the courthouse, was highly regarded by the judges, and since his was the principal client it was agreed that he would do the lion's share of the cross-examinations. The government's case primarily relied upon a cooperating witness, who claimed that he had been at the junkyard where Bill had fired the fatal shots into the body of the victim after the cooperator and Bill had kidnapped the victim and taken him bound and gagged to the junkyard. The cooperator was due to testify at trial; there were a few other witnesses.

Granof: The guy they bumped off was this a –

Zuckerman: Mob.

Granof: Was it a state grand jury proceeding?

Zuckerman: It was a federal proceeding.

Granof: I can understand why the Feds would be pretty upset about whether their witnesses –

Zuckerman: It was a federal proceeding. It was a life count. It was not a death count. We prepared for trial. The environment was needless to say quite hostile, but we were at least in good company because Emmett Fitzpatrick, the former DA, was representing the lead defendant. Two weeks before the trial began, I received a telephone call from Emmett. Emmett said, "I'm out of the case." I said, "What are you talking about?" He says, "Well, my client was murdered last night outside Cuz's Restaurant, which is a south Philadelphia restaurant. So, I have no more client and I'm out of the case and your client has risen to the top of the indictment, so good luck."

Granof: And prepare your cross-examination?

Zuckerman: Prepare your cross-examinations. There was another smaller defendant in the case represented by Bobby Simone. I became the principal lawyer in the case.

Zuckerman: I appeared before Louis Bechtle, who is a former U.S. Attorney, now a district court judge, who had to some degree – I will say this gently – retained his mien and his affinity for the world of prosecutors and prosecutorial activities in general. He was not a naturally sympathetic judge to the defense in the average case, particularly unsympathetic in this mob hit man case, and extremely unsympathetic to this fellow Zuckerman and his partner Glickman, who had driven up from D.C. and were ensconced at the Bellevue-Strafford which had been ravaged by Legionnaires' disease. We unpacked our goods – made the hotel our Command Center – and began the process of our week or two-week long trial defending this alleged hit man before a judge I can only describe as very hostile. My treatment was sufficiently bad that my client considered discharging me midway through the trial because he felt that his ability to get justice was being compromised by the beating that I seemed to be taking from Judge Bechtle. I can't say that I blame him. But I persisted nonetheless. I did what I regard as one of the better cross-examinations of my career – I'm trying to be modest here – of the cooperator, the informant, and gave what I thought was a very powerful closing. I will never forget that the judge was insistent that I limit my closing to one hour. I presented to the judge the fact that my client, who was in fact in jail on an unrelated charge, but if convicted on this charge, could get life. It seemed to me that he deserved more than an hour for his lawyer to tell his side of the story. The judge did not agree. I literally had an hour to close. The trial lasted six or eight days. The jury went out. Fifty-five minutes later, there is a note we've reached a verdict. Now a 55-minute verdict in a criminal case – not 90% but 99 times out of a hundred – portends conviction. So Greg Miller, the prosecutor, who has since become a very good friend, invited – as the

custom – all of his "buds" from the U.S. Attorney's Office to come and watch the jury return its anticipated guilty verdict and then to join him in a very polite celebration of the case well tried. Judge Bechtle took the bench and received the jury's note from the Foreman, looked at it and his face turned ashen white, because in fifty-five minutes, the jury had returned a "not guilty" verdict. My client almost fainted. The judge was beside himself with frustration because as a former U.S. Attorney and as a jurist trying to do justice, he was convinced that my client was a killer who had just cheated the system. But justice is as justice is given by the jury, and there was nothing the judge could do about it. I turned and looked to my partner, Steve Glickman, and I said to Steve, "I think the prudent thing is for us to get out of town as quickly as possible." We hightailed it back to the Bellevue-Strafford, checked out, loaded up my car with the files and got on 95 and sped back to Washington. The postscript is that in my experience, at least, it was one of the harder experiences that I have had as a visiting team in someone else's stadium. I have generally done very well with judges around the country and with prosecutors around the country and have tried to be polite and personable and deferential, as appropriate. This was for me a situation where none of that worked. There was an extraordinary degree of hostility expressed by the Court, I think more than was appropriate, and it was a source, I would say, of perverse pleasure, but I think the pleasure was legitimate that we were able to persevere and that we were successful in what was a very hard case.

Granof: How does the hostility manifest itself? You already said he limited your argument time to an hour. In what other ways? I suppose the judge has to be somewhat careful that he doesn't become so hostile that an appellate court will overturn it.

Zuckerman: I think experienced trial lawyers may feel this more than non-trial lawyers. But there is a texture and style to the Court's treatment of you that can be officious, brusque and otherwise unpleasant. It can be neutral; it can be

complimentary, understanding, and supportive. The human personality has an unusual ability to convey those attitudes even within the constructs of the dynamic that surrounds making an objection, getting it ruled on, and moving ahead with your business. You can feel it. One might say it's almost palpable. I think it's clearly noticeable to lay people. You can see it in the judge's eyes, attitude, hear it in the court's tone of voice. And what you hope is, that in those circumstances, the jury will look at you, the jury will look at the judge, and the jury will say, "I have a certain degree of sympathy for and support of the lawyer who is doing his or her job even in the face of this difficulty." I have been in cases where other lawyers have had that problem and I haven't. The last case I tried, which was in New York, was a month-long trial in which that same kind of hostility existed. It was clear that the judge, who was a former Assistant U.S. Attorney, did not like the defense that we were putting on. My partner and I, who both had been Assistant U.S. Attorneys earlier in our careers, were acutely aware of the Court's attitude, and I think it was clear to many who watched the trial that there was a level of hostility and distaste that the judge manifested.

Granof: Can you say who the judge was?

Zuckerman: It's too recent. I would rather not. The case is not actually over but –

Granof: Can you say at least what kind of case it was?

Zuckerman: It was a month-long securities fraud trial. It goes with the territory and the lawyers who have done this for a long time develop a Teflon-type personality and style. It rolls off your back, you maintain your civility, you maintain your deference, you keep your eye on the ball, and you hope that you have jurors who pay attention to the witness and do not pay attention to the byplay. You hope at some point that the Court understands, accepts and sympathizes with the fact that you're a good person and an honorable lawyer, who is simply trying to do the best job that one can and the job that

the client deserves. It's a very significant problem. It's why many clients – many individuals – feel much more comfortable with lawyers who "know the judge" because they feel, with some justification, as if the interplay between the Court and the lawyer is not an issue they're going to have deal. Their case has other issues. They may be short on evidence, the prosecutor may be overbearing and all kinds of other problems, but at least they don't have to worry about a judge who is going to be hostile.

Granof: Did you ever find out or learn why the jury acquitted your client so quickly or at all?

Zuckerman: They acquitted my client because I did a great job and because there was a reasonable doubt that he was the killer. That's basically why they acquitted my client, and my assumption is that they felt that the government's evidence was beyond thin and that it was highly inappropriate for them to rely on so sketchy a figure as the cooperating individual.

Granof: So the cooperating individual was clearly the key witness for the government?

Zuckerman: Yes.

Granof: On your cross-examination you must have done, as you said, a good job.

Zuckerman: I destroyed him. What is interesting about the whole thing is that the prosecutor became the head of the Criminal Division there and later went out and started his own firm. We did a lot of work with him and his firm. We became very close friends. It's now 25 or 30 years later, he has a vacation home near Rehoboth Beach that's about two blocks from mine, I attended his 60th birthday party about two years ago, and we still talk about the case and the experiences that we had – my perceptions and his. To carry you back to the point you were making earlier, it was an experience that remains very vivid to me even now in the degree to which it indicates – the

kind of resolve, the kind of commitment, the ability to withstand pain – that a trial lawyer has to have.

Granof: You have to have a thick skin.

Zuckerman: You have to have a thick skin and, however many nights you sleep in a fetal position because you've taken a beating, you have to persevere, you have to persevere. The three most hostile judges that I confronted, that occur to me at least now, were first Louis Bechtle in this case - the hit man mob case in the 1980s. Second, Maurice Paul, since deceased I believe, in 1995 was the Chief Judge of the Northern District of Florida, who superintended and handled the matter of F. Lee Bailey's departure from the *Claude Duboc* case in circumstances that I will describe later in which Lee was required to return a vast sum of money that he had paid himself. He was required to return that money to the Court. There was a hearing on the Court's order to show cause and subsequent proceedings in which I represented Lee in the Northern District of Florida before Chief Judge Paul and against the U.S. Attorney and his Principal Assistant. The level of hostility was extraordinary – I think in part because of the perception which is natural for judges to have because they are human, but something they all fight against – the perception that justice lay overwhelming with the government in that case. That was Judge Paul's perception.

Granof: I'm sure they did not like F. Lee Bailey down there.

Zuckerman: No. But that was in the 1990s, and I had similar experience in the Southern District of New York in 2008 before a judge who is third on my list of the three most hostile jurists that I appeared before. These cases appeared throughout my career, at least, relatively significant, "bet-the-ranch" cases that affected the future lives and well-being of our clients before judges who were very hostile, very hostile. I want to swerve, if I can and you will permit me, from that to a few minutes about the growth of the firm.

Granof: How many cases do you think you have tried over your career?

Zuckerman: I haven't tried as a private attorney more than twenty to juries. I tried 15, 20, 30 in the U.S. Attorney's Office. However, the breadth and depth of my trial experience cannot be found in the number of cases that I tried, but rather in the length of some of my cases and the amount of time that I spent in a courtroom. I can give you four cases, which in the aggregate, kept me in front of a jury in a courtroom for more than a year. My longest was nine months, my second longest was six weeks, and two were probably month long trials. They were relatively long experiences. It's not been a trial lawyer's life of the kind that you see in the old TV show L.A. Law where you are in front of a jury every other week. What we do here, and what I do, has involved cases that have two characteristics which make them unlikely to go to trial. One is they are criminal cases, and the number of criminal cases that go to trial in this day and age are few are far between, because the Sentencing Guidelines exacerbate the fears that defendants have about the length of sentences they will receive if they fully litigate their cases. And two, they are immensely complex cases. These cases often involve millions or tens of millions – or in the case of Enron – a hundred million documents. The gestation, the maturation period of these cases, is oftentimes years or years and years and years. That phenomenon as well ultimately reduces the number that go to trial.

The three biggest cases that I have had in the last ten years have involved first, Lou Pai, who was the head of Enron's Retail Unit, whom I represented from 2001 almost until the present. He was sued for having sold his Enron stock shortly before the company collapsed and for receiving gross proceeds of $271,000,000, which made him the insider executive who had liquidated the largest amount of Enron stock. The aggregate insider sales were about $1.1 billion, and more than a quarter of those sales were Lou's. Second, I represented the President of the Stanford International Bank who sold $7 billion worth of bogus Certificates of Deposit. This was a case in

which my client's employer, Allen Stanford, went to jail for 100 or 150 years in the mid- to late 2000s. And third, the President of REFCO, Tone Grant, who was prosecuted for securities fraud violation in the mid-2000s. Those were major business frauds of their day. Cases of incredible complexity and length.

The optimal result for the client in this day and age is not to have to deal with a trial. If you have to deal with a trial, your chances of success are dramatically reduced. Your big victories are oftentimes really no longer pleasurable "not guilty" verdicts that juries render. Your big victories are really when the prosecutor calls you and says, "We've decided not to take this case any further." That, as I said, is a function of the Sentencing Guidelines. It's a function of the record complexity that surrounds these cases in that what you have is a pre-indictment period in which the parties – the government and the defense – although not formally joined because there is no indictment, are engaged nonetheless in combative grappling over a million e-mails and three dozen witnesses in an effort to see whether or not there is criminality that would merit a formal charge. And that's really the nature of the modern battlefield that a defense attorney deals with in the vast number of cases that he or she has. It's very different from the pre-Guidelines, pre-e-mail era when you had much less documentation, much less material and a much greater propensity to accept risk and go to trial because of the absence of Guidelines.

Granof: Let me go back to that murder case. I had two questions. One is, I think it's Irving Younger who said that one of the tests of a trial lawyer is to get the jury to trust you. They may not be in favor of your client, but they at least trust the lawyer as a straight shooter. Do you think he is right about that?

Zuckerman: I do. They may not like you, they may not want to have a drink with you, although both of those would be good things, but they trust you, they

believe that you are being honest and honorable and they have sympathy for your effort. I think that's 100% true, but I have long said that the practice of law – the practice of trial law and in many respects the practice of law generally – is as much the ability that one has to deal with people, to understand them, to relate to them, and to figure out a way to put them on your side; it is as much about that skill as it is understanding a particular set of regulations or rules of law. I had lunch with one of our young associates a week ago. She had had a clerkship in the Ninth Circuit, and she's been with us for a year-and-one-half, so she's a very young lawyer. I asked her "What has been the most surprising thing to you in the practice of law over the last year and one-half?" Well, she said, "What's most surprising to me is there are oftentimes no clear answers, a lot of what we are doing is common sense and a lot of what we are doing involves the ability to relate to people." I think that's true. I think it's not something that you glean so easily in law school.

Granof: Since you raised the issue of L.A. Law, I can't resist asking you this. I remember years ago I asked a federal district judge "Have you ever had a Perry Mason moment or seen one where the witness breaks down on the stand." And he said, "No, he had never." Have you ever had that?

Zuckerman: I would say I have never had a moment in which the witness was so completely flummoxed that the case evaporated before our eyes. In that sense, no. I have had two cross-examinations where I felt that it was apparent – not only to neutral observer, but also to a hostile observer – that I had done great damage to the government's effort. The first we've talked about and that was the informant in the *Knisely* case. I felt that I had seriously hurt that individual. Whether the judge and the prosecutor could recoup the government's position was unclear, but I felt that I had really hurt the witness. The second, oddly enough, was my cross-examination of an Assistant U.S. Attorney. It occurred again in hostile environs before Judge Paul in the *Bailey* case. Lee had a particular version of an agreement

that he had made with the government that he believed allowed him to pay himself, without court approval, for the work that he was doing in repatriating assets from a client who had pled guilty. He went abroad, with his client's authorization, to sell a variety of very expensive property and to deposit the proceeds in accounts which would then be turned over to the U.S. government as a part of the plea bargain. Lee expended a lot of time and a lot of money, without court approval, thinking he would get the approval from the judge at the end of the proceedings. Then Lee paid himself about $3 million out of the proceeds from these sales without any approval from Judge Paul. And there was no written agreement that either allowed him to do that or disallowed his doing that. There was a hearing before Judge Paul in which any number of people testified. Things looked pretty grim for Lee and I would say the judge was close to locking him up in civil contempt – he's got the key to his cell – requiring him to repay the $3 million and only then letting him out of jail.

Granof: I remember that. That made it in the newspapers.

Zuckerman: Yes, there was a *New Yorker* article about it. One of the last witnesses of the second day's hearing – it was a two-day hearing – was a young Assistant U.S. Attorney who had made the deal with Lee. I believe, or choose to believe, that Lee was on his way to jail in the eyes of the judge until that cross-examination. I cross-examined, I think, the young Assistant U.S. Attorney very effectively. I was able to show the ambiguity of the relationship that the government had with Lee, the ambiguity of the oral agreement between the two, the loose – and, indeed, irresponsible – way the government sought to protect its position compared to the plausibility of Lee's position. I think the judge got it and at the end of the hearing he declined to hold Lee in civil contempt. The Judge said, "Here's what I am going to do. I am going to give Mr. Bailey thirty days to return $3 million to the Court. If he does it, fine. We'll move forward. If not, we'll hold him in civil contempt." It was a signal victory and Lee was thrilled and felt sure

that he could return the money in thirty days and avoid civil contempt.

Granof: And did he?

Zuckerman: No. He thereafter came to be incarcerated for 44 days in a federal facility in Tallahassee, Florida, attempting, with some assistance from me and others, to raise something around $3 million. I finally convinced the prosecutor that when Lee had raised $2.4 million, that we could finance the remaining $700,000. The prosecutor agreed with that and said, "I will not oppose Mr. Bailey's release." I notified the Clerk of the Court on a Wednesday or Thursday that we had resolved the civil contempt, and after Lee's more than 40 days in jail the government no longer opposed Mr. Bailey's release. The judge, Chief Judge Maurice Paul, was at the Eleventh Circuit Judicial Conference in Atlanta, Georgia. Remember, I described him as having no love lost for Lee. The Judge then advised, through the Clerk, that he would set a hearing for Mr. Bailey's release upon his return the following Monday or Tuesday which meant as of Wednesday or Thursday, my client, the lawyer F. Lee Bailey, would have to spend the next four days in jail awaiting the Judge's return from the Judicial Conference. We either filed or threatened to file a petition for a writ of mandamus to require the Judge to hold the hearing forthwith. The Judge then thought the better of staying in Atlanta for the next four days, and returned for a hearing either the next day or Friday at which time Lee was released, boarded an airplane, which was his style, in front of maybe 25 members of the Press, waved and left town.

I want to return back to the cross-examination of the young prosecutor, which was, in my view, about as impactful as anything that I had done in materially affecting, in an obvious cause and effect sense, something very bad that was about to happen to my client in a courtroom.

Granof: When you do an effective cross-examination, you really feel good when you sit down, don't you? It's a unique and very good feeling, isn't it?

Zuckerman: Yes. It's not a zero sum game, Gene. But there are subtractions because for every good cross-examination – if you're hard on yourself or at least honest – you realize on occasion you have conducted a cross-examination that you would do differently, that didn't work, the witness was more than you had anticipated, your approaches were befuddled by the Court, the witness or the prosecutor. Those are bad feelings and detract from your ego-driven feelings of goodness. I do think, and maybe it's just human nature, that the vast number of lawyers who try cases when asked how it is going, feel like it's going really well and in the vast number of cases will say something like, "We could not really be doing any better in getting our message across in destroying these witnesses" – in criminal cases at least – in blunting the government's case. There may be a need to feel that way in order to keep going. Maybe the Germans felt that way in World War II. In a large percentage of the cases that I've tried – as a prosecutor as well as a defense attorney – I've always had the view that things seem to be going pretty well.

Granof: Have you ever had a situation in which, for whatever reason, your client insists on going to trial or a hearing, and you know that the odds are really stacked against you and the likelihood of winning this is almost zero but you have to go ahead anyway?

Zuckerman: Yes. I don't want to give you specifics there. I've had cases in which we've done what lawyers frequently do, and that is we have mock tried the case to test juries and the test juries come back with consistency and indeed unanimity against the positions that we are advocating. But there is no choice because there is no alternative to trying the case. In a criminal setting, it would mean the government has offered no plea that's worth taking. So, you go ahead and do your best.

Granof: Have the results been what you expected?

Zuckerman: Yes.

Granof: When you mentioned mock juries, tell me how that works.

Zuckerman: There are a very sophisticated series of business models in firms that deal in jury research issues. They have developed an incredibly nuanced and sophisticated series of methods to select jury pools that perfectly mirror the jury pool that you are likely to get in demographics – completely in demographics, for example, in Houston. I went through this business in Houston, and there are terms of using precise analytics to get people to serve who mirror what you are likely to find from the jury pool of the venire – the group the jury pool is being selected from. They are extraordinary. They are extraordinary as well in complexity and nuance in what they tell people. You have to be extremely careful what you say to Gene Granof about a case that's being tried down here. You can't simply say to Gene Granof: "We're beta testing some arguments that we would like to make on behalf of Jeff Thompson or Mayor Gray or defendant X. Would you sit on a jury pool?" So you have to cloak what you do in reasonable anonymity, and then you have to make sure it's presented compactly and effectively on both sides. Then on occasion what you have are interlocutors who will question the jury – the mock pool – after it renders its verdict about what it thought about this, that or the other. It's expensive, but it's an extraordinary process that has developed over decades that can be extremely useful. In one particular case, we had not one but three mock juries, twelve people each, who listened to two- or three-hour presentations – some are like these, some are not – these were videotaped presentations by a prosecutor, by a defense attorney and the client, who testified on direct and cross, all compacted into say three hours.

Granof: What happens?

Zuckerman: There is an opening statement from the prosecution. This is what we intend

to prove, this is what the witnesses are going to say. The defense attorney gets up and says this is what we intend to prove, this is what the witnesses will say. And in this case, we had a mock examination and cross-examination of the actual defendants – all in about a three-hour period. The jury then deliberated. The lawyers and the defendants and the person who monitored this then watched everything through a one-way mirror. We did this with three groups of twelve in a single day and 34 of the 36 voted to convict. They voted to convict all three defendants. We still went ahead and tried the case because we had no choice.

It's a very useful, very sophisticated process. Very expensive, very hard to do in the normal case. I am sure in every big trial of any consequence where there is a money defense, it's done. To give you an example on the civil side – I'm going to shield the participants – but in a major malpractice claim against a major institution, the plaintiff had wanted X. The institution had wanted to pay one-tenth X, and the institution which was being defended by people I knew did a series of mock juries. The mock juries came out way closer to X than one-tenth X leading the institution to make a settlement offer for an amount much closer to X than where the settlement offer otherwise would have been. As a result, the case was settled. So it's a very useful thing.

Granof: It's just amazing to me that you can duplicate with enough reliability in compressing it into three hours when they don't really see the witnesses except for maybe the defendant.

Zuckerman: There are holes in the process. The firms that do this spend an inordinate amount of time and money developing approaches that seemingly have a relatively high social science sense of reliability. There is a lot of social science that attends these processes.

Granof: From what you said, you seem to be persuaded that given the high cost of

these and the benefit, that in many cases, at least, it's worth it.

Zuckerman: I think it is. There are some lawyers who will tell you that they feel this or feel that. It has a second value. And that value is it helps you evaluate what type of jurors are likely to be most sympathetic to your client's position. Also, you get to see different people of different backgrounds debating with one another in a civil case or a criminal case. You get to make judgments about them, but that part of it, I think, is much harder to engage in. It's much harder to engage in deductive reasoning because some guy who has spent thirty years in the Navy thinks that your client is guilty, does that mean that the vast majority of people who spent thirty years in the Navy are likely to conclude similarly. That one is a lot harder.

Granof: Do these firms also help you decide what kind of jurors that you would like on your panel?

Zuckerman: Half the selling point is to try to get some sense of how from the broad demographic you will see them. You will get a sense of how people react and whether young people, old people, different sociological groups – that one, I think, is much harder. The much more reliable result is simply to get a broad sense of the gestalt that is likely to occur when all of this stuff is thrown at jury. What's the chemistry or the vibe likely to be? Is it going to be overwhelmingly bad, overwhelmingly good or is it going to be a real wrestling match? I think you can get that out of this.

But I want to go back and talk about my firm. Can we do that?

Granof: Of course.

Zuckerman: This is an interlude from talking about my cases and talking about some of the broader issues that you nicely raise in the profession of trial advocacy. Going back as how we, as group, developed in the early 1980s. It was a significant period. The firm through the 70s beginning as it did in late

1974. By 1980, there were eight or ten of us. The practice was a good practice. We were all located in D.C. All located, oddly enough, in the very building in which you and I are sitting now at 1800 M about seventy feet below on the third floor instead of the tenth floor. Sort of unimaginable to me that we were here as young people – I with hair – thirty-four years ago. Bill Taylor and I had been doing a lot of work in Miami. We were flying back on a plane one night and we had a colleague named John Evans, who had been a prosecutor with me at the U.S. Attorney's Office in D.C., was a tennis buddy and a friend of Bill's , a University of North Carolina grad, as Bill was. He had left D.C. and gone to his native Coral Gables, Florida, where he joined the U.S. Attorney's Office in Miami and then the Department of Justice's Miami Strike Force. We said, "You know, for no particularly good reason except it sounds neat, we think we ought to have a Miami office." We thought that would give us a bigger footprint. We told John that "we don't have many clients down there – but you can do the same thing that we did in D.C. We can all do this together. Maybe if we have an office that's in Miami, and we advertise ourselves as a firm that's in D.C. and Miami, it will make us look more substantial." We visited John and he agreed to leave the government. In 1981, I think, we opened an office of the firm in a sublease on the top floor of 1001 Biscayne Boulevard. We had an office and some rented furniture. John came and practiced with us and was our partner, and now we were a firm with an office in Miami. We actually were able to grow the Miami business because the market was not mature. It was an easy market to grow in. We ended up taking very high-grade lawyers from the U.S. Attorney's Office – Mike Pasano came with us a couple of years later and there were others. The office grew to six, eight or ten toward the end of the 80s when John tragically died of a heart attack in his sleep at the age of 46 in 1988 in the middle of the night. I remember getting the call. It caught all of us off guard, obviously, and we mourned him in a series of services down there, but continued the office for some time thereafter, growing it to about twenty. In about 1983, we did the

same thing in Baltimore with an Assistant U.S. Attorney, Herb Better, who was the Deputy Chief of the U.S. Attorney's Office, and we planted a flag in Baltimore. We did the same thing in Tampa in about 1991with Sandy Weinberg, who was a former Assistant U.S. Attorney in the Southern District of New York who had gone to Tampa, and the same thing in New York in the early 90s with Ed Little, who was a former Assistant U.S. Attorney in the Southern District. We made it to five cities using this template of finding former Assistant U.S. Attorneys whom we had practiced with, had a lot of confidence in, and getting them to replicate the same "from the ground up" experience that we had here in D.C. It was not without a lot of difficulty because unlike 500-lawyer firms, we were still a little boutique. There was a lot of interpersonal loyalty, and it worked. It gave us by the early 90s – it gave us over a ten-year period – a much more expansive national footprint than we had had before, which was consistent with my view, and I think Bill's view. My view was born of the *Glenn Turner* case that I described to you where I went to Florida for nine months very early in my career. It was born of the view that in the final analysis, we could pretty much go anywhere and do as good a job or better than any local lawyer could do, particularly in a complex case. We had the ability to be lawyers who could do work nationally. That was the coming thing. Lawyers were a little bit more fungible. Traveling lawyers were more acceptable than they had been in the past. The country was a little bit more homogeneous than it had been in terms of the practice of law. We were, after all, a Washington-based firm, and Washington is where they made laws. It might look odd if a lawyer from Buffalo went to Houston. It was a little less odd that a lawyer from Washington, D.C. would go to Houston. Not that we discovered it. I think there were many who sensed that wave, and in 2014 you can see the "genericizing" – if there is such a word – of law and law firms, such that lawyers from Chicago or Miami will show up in cases in Duluth, Minnesota or San Francisco, or Portland and nobody will think twice about it. The practice of law is much more a national activity

than it was forty years ago. It's one of the bets, one of the perceptions that we had, I think, that was correct. What has made it hard for us is we're still a boutique. In many respects, that's good, but it's a little bit easier for a firm with one-thousand lawyers to maintain a bevy of separate offices, to have the infrastructure that you need to do that than it is for a firm of one hundred lawyers. There are infrastructure costs in having to manage not just one hundred people in D.C., but one hundred people in which twenty of whom are New York, sixty of whom are in D.C., ten are in Baltimore, and ten are in Tampa. Managing that is more burdensome and costly than having one hundred people in D.C.

Granof: Now you have about sixty here?

Zuckerman: I would say yes.

Granof: Ten in New York?

Zuckerman: There's twenty in New York, ten in Tampa and ten in Baltimore. I say this with a sense of pride that the lawyers – certainly the principal lawyers – are lawyers of extraordinary stature not just in the cities in which their located, but in their regions, if not nationally. They are all very impactful lawyers – very impactful offices – that are highly respected in the regions in which they are operating.

Granof: What happened to Miami?

Zuckerman: Miami is a sad story. It is an office that we ran from 1981 until March 2008. We had not one but two deaths in the office of key people. John died in 1988 in his sleep and a dear young partner and very close friend of mine, Bert Peña, died in his sleep of the same kind of inexplicable heart problem in 1994. In my view, there was a leadership void in the office. If either or both of them had survived, the leadership of the office would have been different. The leadership of the office was not what it might have been.

The business of the office declined a bit and it was, I think to some degree, inevitable that the office would fragment. Half of the lawyers went to Carlton Fields and the other half went elsewhere. We still have very close relationships with virtually all of the lawyers there. I would say four or five months ago I went to a funeral down in Miami for one of the lawyers who was in the Miami office in the 1980s, and I saw virtually all of the people. We have very close relationships. We still do a lot of work in Florida, but the Miami office, into which we poured so much of our effort and which was our first out-of-town location, only made it about twenty-five years.

Granof: When you say leadership, what do you mean? Is that a code word for rainmaking?

Zuckerman: No. No. It is a way of saying that there is oftentimes no congruence between rainmakers and good law firm managers. Rainmakers have quirky, assertive, egocentric personalities that create presence in the marketplace. They are people who, by the nature of what they do and want to do, elbow others out of the way and say, "You got to look at me because I can do that better than any of these guys here." It's oftentimes not a personality that has a sensitivity – the deference, indeed, the humbleness – to be attractive to a lot of one's peers. Managers are firm, kind people who, I think, have a lot of sensitivity to the needs of others; are focused in that direction or not focused inwardly to their own needs; are willing to defer or postpone their pleasures for the needs of others in the group; and have a very different skill set. We have been fortunate in most of the offices that we've had at most times that we have been able to identify people who have this ability to create cohesive, positive relationships and, at the same time, to enforce pretty decent businesslike protocols and regimes in the way the office operates. On occasion, we have not had that. As I said, in a multi-office boutique – if you stop and think about it – it is easy to find somebody who has got really good leadership qualities of the kind I described in a 100-lawyer office. In a ten-lawyer office, it may not be so easy because the pool

of partners you are looking at may be three partners or four partners. Nobody wants to do it or nobody is quite suited to that. I think in Miami we had a lot of terrific lawyers – a lot of terrific trial lawyers – a lot of good rainmakers – but the centrist personality who could cause a group to cohere, who had a selfless commitment that would make that happen, we just didn't have that person.

Granof: How did you grow the Washington office?

Zuckerman: The D.C. office grew differently. Its growth in the 1970s was principally a result of the coagulation of cells that had originated in the criminal justice system in the late 1960s and early 1970s. I hired Roger Spaeder. Bill Taylor was at a very fine firm but wasn't happy. He came to me and said, "Let's have a drink. You and I would be a great team." I said, "I'd be honored to be on your team, as I am sure you would be on mine." It was the three of us and then it became four of us with Peter Kolker and five of us with Mark Foster and six of us with Bruce Goldstein.

Granof: Were these all former U.S. Attorneys?

Zuckerman: No, some like Bill had been in the Public Defender Service. Peter, Bill and Mark had been in the D.C. Public Defender Service together. Bruce was a bankruptcy lawyer. Spaeder and I were prosecutors. That's pretty much the basic corps and we began to hire people in a weird way that is incredibly flattering, and I must say, a way that we were very lucky to experience. In the early 1980s we were attractive enough to a group of lawyers who had graduated from law school probably five, ten or fifteen years after we did. We got an extraordinary generation of lawyers who are now sixty years old, plus or minus. They are ten years younger than we are. They came with us as young lawyers and are still around. For whatever crazy reason, we were attractive to them and they were phenomenal lawyers – Mike Smith, Steve Salky, Blair Brown and Tom Mason.

Granof: Did you guys seek them out?

Zuckerman: They were looking for a job and they didn't want to go to a big firm. It was essentially we and Miller Cassidy that were relatively high-tone smallish boutique firms doing white collar work. They are incredible lawyers who are here to this day and really have become in many respects the core of the firm. We were phenomenally lucky in this regard. We attracted just a whole group of phenomenal Harvard, Yale and Stanford trained lawyers – even an odd Columbia grad, that's Tom – who were spectacular and who were looking for a place that did high quality work and didn't want to go to Miller Cassidy and didn't want a large firm. I think that one of the things that attracted them to us was the fact that by the early 1980s, we were pushing forty in age and we had terrifically interesting cases – phenomenally interesting cases for relatively young people. The menu of opportunities that existed for these people was off the charts. It was a great time. What I would like to do next time is go through some of the cases we handled in the 80s and the 90s to the present.

Granof: That would be very interesting. I could see why the firm would be so attractive in the 80s to young talented lawyers who did not want to go with big firms.

Zuckerman: Here you have Steve Glickman, who is now on the D.C. Court of Appeals, and in the early 80s, was a Yale Law School grad, clerked on the Connecticut Supreme Court, drives up with me to try a hit man homicide case in Philadelphia, which was impactful in his career. At his Investiture Ceremony to the D.C. Court of Appeals, Steve was presented by our partner, Peter Kolker, to the full court, and at that point his chair next to the other judges on the bench was empty. Peter made a speech about Steve, as happens in these investiture proceedings, and then Steve was welcomed by the full court and asked to take his place on the bench. In his speech, Peter described two or three of the major cases on which Steve had worked and

wouldn't you know that one of the cases he described to the full D.C. Court of Appeals – one of the cases he described in some detail, and I can't say it was not to the horror of at least some of the judges on the Court – was his hit man case in which Judge Glickman had gone up and represented a possible hit man in a mob execution in a junkyard and won an acquittal. It was, I've always felt, an interesting – one might say a curious – choice that Peter talked about that case. It obviously had a significant effect on Steve. Circling back, I think those kinds of cases – we had major trials in New York and we had major proceedings on behalf of the Church of Scientology - we had just phenomenal stuff. Those major cases proved to be very attractive to these young people.

Granof: This concludes this interview.