

ORAL HISTORY OF ROGER E. ZUCKERMAN
Eleventh Interview
April 7, 2015

This is the eleventh 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 in Washington DC on Tuesday, April 7, 2015 at 2:00 p.m.

Granof: The last time we talked, you had just finished talking about the animal rights/Ringling Brothers case which, I guess, is still on-going in some respects.

Zuckerman: Yes, we're still engaged in litigation over insurance coverage that we believe we have – that regrettably one insurance company believes we don't have – and that litigation will go on for a bit. If you count all of its iterations, the case is now in its fifteenth year at least, which is painful, not silly and a real diversion of focus from what people ought to be doing.

Granof: I don't know if you saw the article in one of the papers this morning about the delay in getting similar cases heard in the courts, particularly the federal courts.

Zuckerman: No, I didn't see that. Actually, I must say it surprises me a bit because are the federal civil dockets that crowded?

Granof: Well, at least according to this article they referenced one particular district I believe in California in which the plaintiff had filed a discrimination case in 2007 and it's still not resolved.

Zuckerman: Yes. California being the mother of all anomalies – weather extremes – and in this case judicial extremes, but the phenomenon I guess that expresses itself in California, now that I think about it, is that the system deals so poorly with civil disputes that there is a huge and burgeoning

private mediation business that retired judges do. My impression, derived from a colleague who had been a state court judge there for many years and is now a mediator, is that private mediation is a real burgeoning business. If you're a litigator in California, your typical course is to hire a private judge to do a real hard mediation to try to bring the case to conclusion.

Granof: Or they do arbitrations.

Zuckerman: They do it here, but my impression is that it is much more vibrant as a matter of necessity in California. What I thought that I would talk about today is my perspective. I would talk about the firm which is about to celebrate its fortieth birthday. A little bit about my perspectives as they have been formed over forty years.

Granof: What I wanted to ask you before you get to perspectives, where are you now in the firm?

Zuckerman: I want to get to that and I think later a reader will find this interesting. It has a certain instructive quality. The firm began in the mid-seventies. We have, I think, been through its origins and the buoyant and probably overconfident young people who started the firm when they were in their early thirties, many of us, and how we've had to negotiate the marketplace to stay alive. We're now roughly 100 lawyers and many of our peer firms have disappeared. Shea & Gardner, Miller Cassidy, firms like that, which we admired, and which were first-rate firms, have for one reason or another not been able to get, in a meaningful way, to the second generation and beyond, and we, I think, all of us were of the view that we wanted to try to accomplish that. We felt an obligation to the younger lawyers who came with us – the lawyers who had tremendous opportunities elsewhere but came with us, made their lives and careers here – to keep this place as a place that they would enjoy, control, and

prosper in, after we reached our retirement or semi-retirement ages.

Granof: One thing that you said that fascinates me is that you started this in your thirties when you were overconfident. People wouldn't start these things in their fifties. Isn't it that you have to be that age to do it?

Zuckerman: It's much easier I think if you're 30 or 32. You haven't known failure. Your professional and personal responsibilities are not great. You tell yourself if it doesn't work out, I'm still young, I can go to a law firm. I mean it's classic. You've seen it in the somewhat irrational buoyancy that young people have in all fields. You know you're going to take on the world, you can't fail.

Granof: I can do this.

Zuckerman: Yes, and you haven't been smacked around too badly. For us, it was a good time. I think we've – the founding partner generation is now late sixties to early seventies – we've made a conscious effort in the last five years at least to turn the management over – the last ten years – to the proceeding half generation. The existing manager partner, Graeme Bush, I think, is 65. That generation or half generation is now kicking the management of the firm down a notch with our pleasure. And we ideally would like the firm to be a law firm where the core is a group of lawyers in their forties – early forties to mid-fifties – which in some respect are the core years, the key years in many lawyers' lives. To some extent, we've been frustrated in that wish, but we've been frustrated because we have been, in some sense, victims of our own success, or at least victims of our own success in recruiting people. Many of our fortyish or 45-year-old partners have been importuned to take major government positions – to go to the White House Counsel's office or to go to the Commodities Futures Trading Commission or to go to the Justice Department or to run for political office.

Granof: Or to become judges.

Zuckerman: Or to become judges. Positions that are very, very significant, but that rob us. That type of job movement has been much more impactful in our demographics than in the normal firm. We have probably always had 20 to 30 partners, and we've lost 5 to 10 over time to these very senior government positions.

Granof: Do they come back?

Zuckerman: Some come back. We just got Gregg Bernstein back who was the elected District Attorney of Baltimore. But I think, in fairness, many who have enjoyed the responsibilities and perquisites of being an Ambassador or being in the White House Counsel's Office – many in those circumstances do not easily want to return to a life in which you are sitting around billing by the hour and looking for clients. It's a – I don't mean this in a pejorative way – but it's a coarser, less elegant, more pressure-filled existence than where you have a big office and you have a high government position. Therefore, we have not gotten all of them back and, in the life of the firm, the demographic of the firm has been affected to some degree because this key generation that should be there with a great deal of fullness is not there in a great deal of fullness. Those of us who are seventy plus or minus would like to contribute to the firm in meaningful ways. We confront the very same issues, I think, that larger firms confront when larger firms decide how to deal with 65- or 70-year-old partners, retired partners, senior counsel partners, how to give them a meaningful existence and yet how to center the firm in all respects – management, income, case responsibilities and the like – how to center that firm in a fortyish to fiftyish range. The notion, I think correctly, is that a vital institution in the marketplace is generally – there are exceptions – but is generally not superintended by a politburo of 70-year-old people such as ran the Soviet Union in the 50s and 60s. My

generation has been very encouraging of that transition to younger firm management. But speaking only of myself and personally, there's a very interesting psychological phenomenon that a founding partner – particularly a founding partner who was there pretty much at the first – has to go through to convince himself that it's better to let the kids run the store and better that you keep your hands out of it and let the kids make these decisions.

Granof: Yes, because after all, your name is on the door.

Zuckerman: I am 72 years old, but even at 72 there is a period of growth and development and wisdom and maturity that you have to go through before you can say that it is better for the institution to allow a younger group of people to develop and flower and feel as if in a genuine way that they are driving the bus. As time goes by, you are much further to the edge of the action. But there are competitor firms that we have nationally where lawyers of just tremendous national prominence continue to be impactful in the marketplace well into their seventies, seemingly, I think, without adverse impact on the firms, but you never know. You really never know. But the idea at this firm is to, slowly and effectively, transition whatever brand we have developed to a younger group of people, and for the older lawyers to accept their somewhat diminished position with equanimity and satisfaction. I suppose if one were being philosophical about this, to accept that at the end of the day as your future years diminish somewhat, there is much more to life than being in a legal dispute five days a week. You can do very meaningful stuff for the D.C. Historical Society or you can paint or write or travel, and your ego and self-worth are not bound up in sitting in a law office and writing briefs. Now Jake Stein would disagree and Plato Cacheris would disagree.

Granof: And F. Lee Bailey would disagree.

Zuckerman: And Lee Bailey would disagree, but we all make our own choices. However, I assure you it is a fabulously interesting transition particularly for somebody who is a founder. When he or she begins to give the keys to the kingdom to another generation of people in a meaningful way, the following interesting issues materialize. “Should we let founding partner Jones keep his office?” “Do we have enough office space to allow founding partner Jones even to come around at all?” Firms answer those questions differently. I have many friends in their 70s who are extraordinarily prominent in the lives of major firms in town, who have basically been encouraged or told outright, “This is your last year. We love you. We’re going to give you a big going away party, but you better find another outlet if you want to practice law.” And it’s the way the world is. Not all firms are like that, and we are wrestling with those issues as the founding generation here.

Granof: Doesn’t it to some extent depend on individual circumstances? So, for instance, if you have a partner who may be in his 70s but he’s bringing in \$10 million a year in billings and he has clients who are extraordinarily loyal to him personally, I would expect that the management committee of the firm would encourage him to broaden that so that if something should happen or if he’s going to retire, his clients will still stay with the firm but at the same time you just can’t shove him out the door.

Zuckerman: I agree. There is a balance and deft way to deal with that that is very important. The dilemma is that you, from an institutional point of view if you were a management consultant, what you would really tell the firm’s management partners is something like this, “It’s bad to have a significant portion of the firm’s business within any significant control of somebody who is 75 years old. You want to transition that business

to someone who is 55, and you want to do everything humanly possible to get that business on a more stable, more secure footing, so that you don't have to worry about what happens when the 75 year old doesn't practice anymore."

Granof: That may be easier when the 72- or 75-year-old realizes that – as you do – and says that makes a lot of sense. It's much more difficult if the very reason that the 75-year-old has \$10 million worth of billings is because he has a tremendous ego, a tremendous sense of self-worth and self-confidence.

Zuckerman: Or is simply uniquely able and extraordinary. Again, it's all just incredibly personal but to me it is very important – I feel this very strongly – there are talented younger lawyers – younger, they're now 60 – who came with us when they were 35 or 30 and who could have gone to the best firms in town, but came with us. You want them to say, if not every day or every week, you want them to say at some point, I really made a great life decision. I'm really thrilled and I made a great life decision. The firm has an obligation to them, I think, to really make that a reality – not to squeeze every nickel you can out of the firm such that their position at 60 in the hierarchy of things in the firm is not much different than it was when they were 30 and you were 40. You want them to feel that (1) they have inherited this law firm that you have helped to develop, and (2) it's just the most wonderful thing that could have happened to them, and (3) they would not have had their life develop in any other fashion. If the seventy year old lawyers don't feel that way, then they, in my view, possess an attitude that is very selfish and tends to take advantage of people. At least, that is my view and that is what I have tried to do, and to their credit I think that's really – there are 5 or 6 of us who have been around since the beginning – I think that's really the way all of us see it. It's just a wonderful gift to be able to give to people who have cast their lot with you when they could have

gone anywhere, and who deserve all good feelings and every reward you can possibly give.

Granof: And this raises a question.

Zuckerman: I want to keep my office – that’s the only thing I’m trying to keep.

Granof: You have a nice office.

Zuckerman: Don’t make me leave my office.

Granof: Nobody is pushing you out of your office yet.

Zuckerman: Not yet.

Granof: Not yet, but your firm has a 100 lawyers or so?

Zuckerman: Yes.

Granof: By today’s standards, it’s got to be qualitatively different than DLA Piper which has 3,000 lawyers or something like that or these mega firms that basically have different departments, have continuity of clients.

Zuckerman: While we are not a one-and-done client relationship firm, we are very different than the large firms because we do not have quite the large amount of institutional relationships that create some level of stability for those larger firms. Some of that is illusory, as for instance when the General Counsel of Exxon changes and it’s not clear that Exxon stays with the same law firm or whether the firm loses a huge amount of business. We have a fair amount of institutional work, but we have a much higher percentage of work – I’m sure I talked about this – that involves individuals. Generally we don’t represent “the company,” we represent “the president,” we represent “the senior vice president or

some executive.”

Granof: And what do they ask you to do for them?

Zuckerman: Well, typically in a white collar case where Company X is in trouble, Company X will have an internal investigation. In order to conduct that investigation properly and have top-notch representation in any related litigation – criminal and/or civil – that may follow, Company X will need to hire outside counsel. The Company X has a president and a series of executives who are also in trouble, and they need counsel. Typically, if you were the general counsel of a Fortune 50 company and the company was confronting a major FCPA issue that could cost the company not millions, but tens of millions.

Granof: FCPA?

Zuckerman: Foreign Corrupt Practice Act Investigation. Your thought process would be, “My butt is on the line. Foreign Corrupt Practice Act compliance is an area that I am responsible for. I’ve got to find a firm that is so well regarded, at least superficially, that if this thing craters nobody can say to me, ‘Why did you go to them? Why didn’t you go to x, y or z?’” And in this marketplace, that insurance for the general counsel is provided by firms, in my view, that have between 500 and 4,000 lawyers – mega firms. If as a general counsel I go to Akin Gump or if I go to Sullivan & Cromwell or I go to DLA Piper, nobody is going to bat an eyelash. If I go to Zuckerman Spaeder, a 100- lawyer boutique, I may or may not be criticized if the thing doesn’t turn out well.

Granof: I’m not so sure, and you would know better than me, but it seems to me that if Zuckerman Spaeder is at the point in terms of reputation that if you went with Zuckerman Spaeder, people would say they’re specialists in this area – they’ve got a 40-year reputation.

Zuckerman: And I don't mean to denigrate what we've done in the FCPA area because we've done Fortune 50 firms, but I do think the phenomenon of general counsel types believing that the safe course –

Granof: The CYA course?

Zuckerman: The CYA course is to take a 1,000 lawyer firm, not a 100 lawyer firm. This is something that's real in the marketplace, and it's not necessarily bad for us. For example, we did not represent Enron – we represented the third highest executive at Enron, which was an important engagement. We didn't represent REFCO, we represented the President of REFCO. We do not represent Massey Coal in the West Virginia coal mine disaster case, we represent Don Blankenship, the President of Massey Coal. We did not represent the Stanford International Bank when it went down, we represented the Bank's president. That's just the way it is, and the reality is the amount of legal work that you end up doing for the executive oftentimes is greater than the amount of legal work you would have ended up doing for the company. That's (A), and (B) – our skill set includes not only the capability to understand the law and litigate effectively within the framework of the particular law that's involved, but I think we are especially good with people who are in crisis periods of their lives. I think we have good people skills. Where you represent people who are significant, who have never had any bumps in the road, and who all of a sudden see their world crumbling, it's challenging and it is within our sweet spot.

Granof: Why isn't this more one-and-done?

Zuckerman: It is. Ours has a much higher percentage of one-and-done cases, I think, to address your point. This creates a lot less institutional stability circling back to the institution and requires a level of aggressiveness and optimism in the marketplace that you do not quite have when you are at

Sullivan & Cromwell just waiting for the next phone call. You are a little bit on the frontier. The future is a little bit less certain. It can oftentimes be a pressure-packed environment.

We are at “a transition point” – to use the language of the 21st century – an inflection point, where we are hopeful that the firm will flourish over the next twenty years in the hands of younger people. We have a new managing partner who will take over at the end of 2015, Dwight Bostwick, who is a great leader. We’ve got an increasingly younger management committee, and those of us who are founding partners find ourselves in the role of the House of Lords as opposed to the House of Commons, and in some respects even much more in the role of the Queen of England than the House of Lords. We give moral suasion and make observations, but we recognize that the decision-making authority no longer resides with us, and, in our view of how the institution should develop, we acknowledge that it really ought to be elsewhere.

Granof: So, what do you do on a day-to-day basis? You have an office and you come in and what do you do?

Zuckerman: I still do my cases and the phone still rings. People and entities are still in need of our services. However, if you ask me what I do that’s different – and I don’t know that it’s all that different – but I try very hard to involve other partners in my cases, in particular younger partners, partly because my rate is very high and it becomes off-putting to some clients, and partly because it’s the correct thing to do institutionally. I still travel. Without becoming too introspective about this – I don’t have a lot of avocations – my sense of self-worth or self-fulfillment is still very much bound up in my ability to do legal work, my ability to accept stress, to be challenged, and to feel at the end of some period that I somehow met the challenge that I’ve been facing, and that I am pretty much about as good as I was 20 or 30 or 40 years ago. I

think that's not particularly healthy. I have learned that part of growing and evolving is to take some time off to enjoy food, wine, good books, travel, and my grandkids, and put this legal stuff that we're doing to one side during that time. I think doing that has probably been harder for me than for the average lawyer. For whoever reads this, my observation about myself would be that a by-product of being a founder of the firm is that one becomes almost obsessive and compulsive about its success, its continuation and your life in it, because without that 24-hour-a-day attention, without going to bed every night worrying about some facet of your business, you have the feeling you are not going to make it. My current narrow view of the world is very much, I think, a by-product of what I've been through for 40 years and its effect on me, and to be perfectly candid to future lawyers who may read this, I'm not sure it's particularly the healthiest thing in the world.

Granof: It seems to me that what you're doing is very much like what you've done, except a little bit pleasanter and a little bit lighter.

Zuckerman: You are very perceptive and I think that's 100% right, but it's not enriched with the kind of eclectic catholic – with a small c – studies and activities that many of my friends and people I know engage in that have not the slightest thing to do with the law, but that have to do with researching ancient this, that or the other, or with painting or sailing or building something. I have a very spiritual partner who is a vegetable gardener and has started the vegetable garden equivalent of a Johnny Appleseed movement – developing vegetable gardens around the city and elsewhere under his tutelage so that people can learn about the Earth. Anyway, that's my insight.

Granof: Are you able – how is the firm able – to recruit? Do you recruit people out of law school or do you recruit people out of the US Attorney's

office?

Zuckerman:

We used to recruit very heavily out of law school. We had a summer program and we got very good people. The best summer program we ever had and the best people we ever got came out of Obama's class – the Class of '91 at Harvard – we got four really good people. Currently, I would say for the last ten years, we recruit only out of clerkships and we take laterals out of other law firms or we take associates out of law firms, but for a lot of reasons recruiting directly out of law school is not going to work for us.

I think that one of the interesting features of this process of looking back over forty years is to recognize how people's insights, perceptions and preconceived notions have changed. We did a time capsule at one of the firm retreats – we have had wonderful retreats where we go places and try to get to know each other. We did a time capsule probably twenty years ago in which people were asked to predict the size of the firm in the year 2000 or 2005 or whatever. Some people predicted that we would have merged. Other people predicted a particular number – I can't remember what it was. And I will tell you what was interesting when I thought about that question. I would have predicted that we would have been much larger than we are. That we would have grown to 150 or 200 or whatever, and I think that we have been around 100 for six or eight years. I can't possibly give you the reason in the market why the firm stabilized at that number of lawyers, but I think it has to do with our niche in the market. It's got to do with – I don't want this to sound funny – a very narrow limited sense of who we will accept as a lateral partner. It doesn't really matter if Jones has \$5 million in business. There are other things that Jones must have for Jones to be compatible with the other partners at the firm. He or she must be of a certain quality intellectually and professionally. If Jones does not possess these critical strengths, then we just don't want Jones. And I

think that obsession – and I’ve tried to put it in a nice way – but our firm’s commitment to accepting only partners who possess these qualities of intelligence, integrity, compatibility, and empathy has kept us from going down a path that a lot of larger firms have traveled. They may be more profitable, they may be less profitable, but at least from our perspective the quality of their work and the quality of their personnel is probably diluted somewhat compared to us.

Granof: Would it be accurate to say that you want your people to be hands on, to be able to be the litigators?

Zuckerman: Yes, I think that’s true. We want our people to be perceived by the market as professionally among the best. So the rainmaking in and of itself, and the compatibility in and of itself, or even if the two are joined is not the complete package. There is a necessary condition as well that people in the market generally perceive, and in fact that it be true, that Jones is a superior lawyer. We have a number of partners in the firm who feel very, very strongly about that. So I thought what I would do at the end is to wind this up with a vignette.

Granof: Can I ask one question?

Zuckerman: You can ask more than one.

Granof: Just one. You found that taking people right out of law school is no longer working for you, and I’m curious as to why because at the same time you think that a clerkship – say you’re working for a district judge or an appellate court judge – seasons a lawyer.

Zuckerman: I think people coming out of law school are too green and too expensive for what they will do for you and a young lawyer who's a year or two out of clerkship is much better for us. I think their quality is easier to identify because they've experienced a year or two, ideally, with a really good judge. Their sophistication is much greater, they've been in the market in some fashion for a year or two and understand what they want a little bit better. Thus, the idea that you can marry up in a relationship that works for you and works for them for a long term I think is much more likely to happen with a judge's former law clerk than students hired from law school recruiting days. Law school recruiting is more like speed dating. I mean, if you're a 1,000 lawyer firm, you have a class of 30 coming in at the beginning of the year and you know that at the end of the process you'll have weeded out three quarters or 80% of those people well before they're up for partnership.

I thought what I would do – because in a neat way after you're lovely interviews of me over the last year and a half, I thought it would make a nice at least tentative end piece – is to put on a postscript of two, three or four minutes to describe to you that, as we had mentioned earlier, Amit Mehta, my young partner and one of the many whom I am sorry to have lost, has become a district court judge.

Granof: A U.S. District Judge?

Zuckerman: A U.S. District Judge. He's been on the bench a month or two is all. He called me yesterday and asked me whether at a swearing-in that he is conducting on Monday of new lawyers, whether I would come down and give the swearing-in speech to the class of new lawyers of April 2015. I would have only have ten minutes, and I agreed of course. I thought that I would reflect on my experience at the bar over 45 years that you and I have talked about. I want to try to spend ten minutes telling these fine young neophytes everything they should have learned in law school, but

didn't; everything they should have learned when they were studying for the bar, but didn't; and to leave them some life-lessons from the perspective of a 45-year lawyer about what they could have learned, but didn't. I want to give you – this is by no means final – but it's to some degree thematically what you can distill out of what you and I have talked about for the last year. Things that occurred to me that I would tell them that are of real value that your law school professors probably don't tell you and they don't tell you in your bar review course whatever it was – whatever they're using – and here they are. First, something that you and I talked about here at some length, which is that the practice of law involves rules, it involves statutes, and it involves regulations, and you have got to know these things. It's an intellectually demanding practice, but it also involves people. At the end of the day the practice of law is not a mechanical, formulaic undertaking, as medicine or engineering is to some degree. It's a process by which people are moved in one respect or another to a position that benefits your client, and it's an aspect of the practice which is very much underemphasized in law school education. Second, civility. If you look at LA Law, or at some of these old TV shows or some of the new TV shows, you see a level of formality and abrasiveness that pretty much does not accurately characterize the real world and the way lawyers are. Third, because one is involved with people, there is not just an intellectual aspect requiring that you have to master rules, but there is an emotional need that you have to master in your personality. You have to figure out the correct way to meld compassion and passion, humor and fairness, and other personality attributes that will make you as effective as you would be if you genuinely understood every rule of law there is in the book. Fourth, my personal favorite, which I don't know that I've talked about, and that is that the future is inherently and extraordinarily less foreseeable than you think it is. When you get up in the morning you oftentimes have the feeling, because people need to have this feeling because it gives them

stability, “Well, here’s what I have on my plate today.” At 6:00 at night when you come home, your plate oftentimes was 100% different than what you thought it would be. In a broader context, when things are going badly, you assume they will never turn around, and when things are going well, you assume that’s a permanent condition as well. Neither one is true. You need to have a kind of buoyancy that comes with knowing that your experiences are going to be like the steel ball in a pinball machine bouncing all over the place. You can’t get too high or too low based upon where you think you are today, because oftentimes that is not where you’re going to be tomorrow. And finally, the last point – which is sort of obvious and I suppose you are taught it in law school – is that the practice of law is a solemn and serious profession. This fact is not often recognized or believed by people, I think – at least not enough. It is the highest obligation and honor you can have to be a counselor to somebody who is in need of advice and wisdom. It is a very serious, real obligation that needs to be treated with the greatest possible solemnity and honored as amongst the highest callings there are. In some respects, many people don’t see that or feel that. But those notions are the notions that I would convey to a group of neophyte lawyers about to be sworn in by my former partner and mentee who is now a district judge.

Granof: I think that is a wonderful exposition.

Zuckerman: There you go, and I say again this could not have been nicer for me and I am truly lucky to have had the opportunity to spend all this time with you.

Granof: Well, I’m the one who is lucky but I think particularly that last – the speech that you’re going to give – that’s a wonderful way to conclude. Thank you.

I thought it was interesting. I thought that the coincidental aspect of that.

Granof: So I guess that we could conclude.

Zuckerman: Well, except for our lunch and I would tell the listeners – those who listen or read this – I don't know whether I could do as good a job with Gene but I intend to poke around Gene's life.

Granof: It's not as interesting.

Zuckerman: I'm sure it is, I'm sure it is, and see what I can find and to say as well that if you could see – if we were on tape and you could video you see Gene Granof: today, you would see as young and fit and handsome a guy as is out there and somebody who has figured out, obviously, to lead his life in his mid-seventies.

Granof: A little older.

Zuckerman: Lead his life in a very fulfilling and successful way.

Zuckerman: Congratulations.

Granof: Thank you.

This concludes the eleventh and last interview.