ORAL HISTORY OF ROGER E. ZUCKERMAN
Eighth Interview
September 23, 2014

This is the eighth 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 Tuesday, September 23, 2014, at 2:00 p.m.

Zuckerman: I am going to try to cover today at least the *Bailey* case and the beginnings of life into the 2000s, even though in the first or second interview I talked somewhat about the *Bailey* case because I remember talking about my early years with Lee.

The case that engaged me for an extensive period of time in the 90s was really the last and hardest case, in which I represented my friend and client of several decades, F. Lee Bailey. In simplest terms, Lee had begun to represent Claude Duboc, an international marijuana dealer, who had been arrested and was being prosecuted in the Northern District of Florida before Maurice Paul, the Chief Judge, in both Jacksonville and Tallahassee. Lee had just come off the *O.J. Simpson* case, and Lee was brought into the *Duboc* case by Robert Shapiro, another prominent member of the O.J. Simpson defense team. Lee defended Mr. Duboc aggressively and ultimately reached a plea disposition in which Duboc was to enter a plea and among other things forfeit or repatriate his tainted assets, including the repatriation of tens of millions of dollars in real and personal property located in Europe, to the U.S. Government. After the repatriation of that property, his sentence would be reviewed and theoretically reduced. Lee, as his lawyer, was to superintend the repatriation of the property, which was no easy task because it involved residences and other illiquid items. In addition to the real property, there were funds, however, that were also subject to forfeiture that were taken from Duboc, specifically, stock in a company called BioChem

Pharma. So there were funds available. Since there was property in Europe, Lee set about in 1994 or so to travel to Europe to inventory and then cause the sale of the property there and effect its repatriation. In the process, he incurred a wide variety of expenses – travel expenses, hotel expenses, expenses hiring local individuals and personnel, and of course, he invested a lot of his own time. Before seeking the approval of the Court, Lee made the decision to reimburse himself for all the expenses that he had incurred, including the time that he invested in this project, from the stock which Duboc had posted and which he controlled.

Granof: Lee Bailey controlled it?

Zuckerman: Yes. In early 1995, after this process had gone on for a couple of years, Duboc grew weary of Lee's representation, wrote the court that he wanted to terminate Bailey, and wanted to hire a new lawyer. And Judge Paul in early 1995 said, "Fine, Mr. Bailey will you appear in court on a set date and time in January and bring with you, or be prepared to turn over, the property that you were given control of a couple of years earlier." Given that the Court had ordered Lee to turn over the repatriated property in fairly quick fashion, Lee, I think, was resistant to Duboc terminating him for certain reasons, but also was unable to comply with the Court's directive, because - of the roughly $5 or 6 million in stock proceeds that he had controlled, at least half, something like $3 million had been expended – unbeknownst to the Court and unbeknownst to the government. Lee came to us and we appeared on Lee's behalf – I did – at a series of hearings in the Northern District of Florida before Judge Paul, who was increasingly intemperate and frustrated with Lee. The hearings morphed into a show cause hearing as to why Lee ought not to be held in contempt for violating the court order, namely, to return to the Court all the assets that Lee had been given two or so years ago to hold in trust for the government pending the outcome of this repatriation process. Lee and we insisted that the agreement that he had with the government allowed him to liquidate the assets on an as-needed basis during

the previous two years, and to apply to the Court at some point in the future for what amounted to retroactive approval of the expenses that he had incurred, including what it is that he paid himself for his time and efforts protecting and liquidating Duboc's former assets. There were furious arguments and evidentiary presentations. Lee testified; Bob Shapiro, his referring lawyer who was a part of this at the beginning, testified; and the prosecutors who made the repatriation deal with Lee testified. After this testimony, Judge Paul found that the agreement with the government did not allow Lee to obtain retroactive approval, but required "pre-approval by the Court" before any funds were taken. The Judge gave Lee something like 30 days to return all the funds, including the $3 million that he had paid himself, or be held in contempt of court and put in jail. Much of this I spoke about earlier.

Granof: So he had 30 days to either return the funds or –

Zuckerman: Or go to jail. At some point in mid- or late February 1995, Lee set about raising at least $3,000,000 to deposit in the Registry of the Court to make up the shortfall for the funds that he had reimbursed himself for his fees and expenses. We had extensive hearings about what Lee spent, whether he was entitled to spend it and the like, but the net result was that the Judge really never ruled that Lee was wrong. Rather, I think his ruling was, in effect: "Before I render a ruling, I want the money back in the Court." And Lee, over the ensuing 30 days, could not raise the funds. Ultimately, we took an appeal to try to keep him from being incarcerated on civil contempt. I argued in the Fifth Circuit in Atlanta. That argument failed, and at some point in March or April 1995, Lee was incarcerated in the Federal Detention Center in Tallahassee, Florida for having committed civil contempt; there to remain until he paid the Registry of the Court 3 or 3.5 million dollars. He remained in jail for approximately 41 days. I negotiated with the prosecutor an arrangement ultimately by which Lee was able to pay some of the money in cash that he borrowed, and he collateralized the rest with property that he

owned. Judge Paul, who was none too happy that the government supported my request for his release, and still being very intemperate and testy, ultimately agreed to release Lee. And the litigation continued before Judge Paul with questions about whether Lee was entitled or not entitled to take the money he did. It ended in circumstances in which we terminated certain of our claims, and, for want of a better phrase, "got out of Dodge," because the litigation before Judge Paul was going poorly and we held very few cards. That litigation terminated in about 1996.

After that, the question arose, much like a cancerous cell, whether the findings by Judge Paul that Lee had held a vast sum of money in trust for the United States and breached that trust by invading it, and whether that "finding" would metastasize into a bar complaint against Lee. The result in front of Judge Paul, the ignominy of 41 days in jail, the loss of the funds, all of that we could abide. The bar complaint, that would be a lot tougher. Lee, at the time, was in his mid-sixties so he had a lot of years of practice ahead of him. And in this very slow but inexorable way that cases sometimes take two or three years to develop, the Florida Bar appointed a state judge in Tampa, I think a Special Master to look at the repatriation case and make a recommendation to the Florida Supreme Court. I got the most eminent Florida practitioners I could find to represent Lee in the bar action, and worked with them, and the matter slowly made its way to the Florida Supreme Court, I am guessing in about 2001. The matter was argued before the Florida Supreme Court and the Florida Supreme Court voted, I think unanimously, to disbar Lee. That decision was reciprocal to the bar membership that he held in Massachusetts. Thus, Lee was disbarred in 2001, and he was no longer able to practice law - the disastrous end of a brilliant 40-year legal career. To give you some idea of the full extent of Lee Bailey's fame – fame that is not known to the younger generation of this day and age – sometime in the 1980s, I think, *The National Law Journal* conducted a poll of practitioners to identify the most famous lawyer, real or

fictional, living or dead. The results were roughly this – Abraham Lincoln was 3, Perry Mason was 2, and *F. Lee Bailey was 1*. Although again it's very hard to get this across to the twenty-something generation, many of whom have never heard of him, but in the period of the mid- and late twentieth century, Lee Bailey was visualized as *the epitome of what a great trial lawyer should be*.

Granof: Did he have already have a Florida bar license or did he have to take the Florida bar?

Zuckerman: Finally, there is a postscript that you will find interesting. Lee decided to try and get back in the bar, and has spent the last six or eight years in Maine as a kind of legal consultant and a businessman. He is very well known to senior members of the Maine Bar and has been through two or three years of very intense litigation to try and get his law license in Maine, the matter going on several occasions to the Maine Supreme Court and the Maine Supreme Court coming close to granting the license. I will spare you the details. The end result of this is that in its last iteration before the Maine Supreme Court, the issue of Lee's fitness to practice was decided negatively. And the Maine Supreme Court decided not to grant the license. One of the things, however, that was required in this process was that Lee take and pass the Maine Bar, and at the age of roughly 79 he took and passed the Maine Bar Exam. Lee believes he is – it could be true – that he is one of the oldest, if not the oldest human being in the history of this great country, to have taken and passed a state bar exam. He is an extraordinary fellow and has had an extraordinary career, and one hopes that this tale, which spanned the last fifteen years or so of his life, does not detract from the great work that he did, which really runs back to – and I've talked about it before – runs back to the early 1960s when he was an extraordinarily young person in his 20s having come back from Korea, having gone to law school after he flew jets in Korea, having done very well, having come out of law school as this brash young man in Boston, and then having this string of extraordinary cases – Carl Coppolino and the

Boston Strangler and Sam Sheppard and the William Calley/Ernest Medina case – I mean a whole classic set of cases back then, that this brash very talented lawyer handled during what I guess turned out for him to be his "heyday."

Granof: Why do you think Judge Paul was so angry with him? It seemed like Judge Paul believed that it wasn't just an innocent mistake, that there was some bad faith there on Bailey's part.

Zuckerman: I think what you've said is perceptive and fair. I think from Judge Paul's viewpoint, it was unimaginable that a lawyer holding vast sums of money in trust for the government would pay himself "millions of dollars" from those funds without first seeking the approval of the Court or the government. I think it became apparent to Judge Paul that the young prosecutor had failed miserably to paper the transaction. There were no letters back and forth between the government and Lee. There were no internal memoranda that the government had prepared explaining Lee's obligations and duties. The government's course of dealing, after the "repatriation agreement" with Lee had been negotiated, was in many respects inconsistent with, and in fact antithetical to, the idea that Lee was not able to liquidate any of the funds to pay himself along the way. So there came to be a point, I think, where there was some recognition by Judge Paul that Lee and the government probably missed each other very badly. And in a weird way, the third witness to the transaction was the Judge himself. Lee and the prosecutor had gone to see Judge Paul when the agreement was first negotiated to tell Judge Paul that this was to be "the deal." Although Duboc had appeared in front of Judge Paul in May of 1994 with the lawyers saying beforehand in chambers, in essence, "Duboc's going to plead guilty, we're going to liquidate his assets, and we're going to repatriate those assets," at that point Judge Paul did not really nail down Lee's obligations and duties in regard to the repatriation process.

Granof: You would think at some point he would – you know when it got up to be half-a-million dollars, some substantial amount, he would say, well, maybe I ought to get some approval for this.

Zuckerman: It was a hard case.

Granof: For a guy as smart as Bailey.

Zuckerman: Well, but as I said, Lee had an unerring sense of the rightness of his own positions which made him, in some regards, unassailable as an advocate in a courtroom –and I'll leave it at that. He's a dear, dear, special part of the American legal landscape at the end of the twentieth century, and he deserves to be remembered and revered for a lot of great lawyering, this episode notwithstanding.

Now, the experience with Lee in the 90s ended in one sense happily, because Lee was not prosecuted criminally. We had a number of lawyers in the firm who worked on the case that had some concern that it would be referred to a U.S. Attorney's Office for criminal prosecution. I mean his actions might have been asserted to be embezzlement, but that never happened, thankfully, and it shouldn't have happened. But in retrospect, at least in my career experience, this was the first of three or four cases that I had in the seventeen years from 1995 through 2012 that brought home to me what I think is a salient psychological fact that afflicts very important people in particularly high positions. That "salient fact" is that these important people – that is, senior executives and other people of high rank – are under the illusion that when you do something wrong flashing lights will go off, bells will go off, you will know that you have crossed the line, and some sort of electric shock will pass through the atmosphere to warn you or advise you that you've just gone too far. And invariably when you deal with senior executives who find themselves "all of a sudden" under criminal investigation or involved in a non-criminal experience of the kind that Lee found himself caught in, their

reaction – and I'm speaking generically here, not revealing confidences – but their reaction is: "I had no idea!" or "It never occurred to me that this was wrong." Their thought always being that, if they had done something wrong, they would have experienced something akin to an epiphany that a bank robber has when he goes in to rob a bank that "This is wrong!" But when you are engaged in simply a day of business – and it's the 427th day you've been engaged in such business – and you write down a particular number on an inventory sheet knowing that number is understated or overstated, or knowing that certain of the facts you're putting in the company's books are not quite correct, those actions are just significantly different from taking out your gun and robbing a bank; that is *just business* - no lights are going off – it is just the way life is.

Granof: Yes. And the question I had was your involvement. You had indicated that you were clearly involved in litigating it before Judge Paul because you said you did a cross-examination of the –

Zuckerman: Yes, I did all the litigation.

Granof: And so you argued in the Fifth Circuit?

Zuckerman: Yes, argued in the Fifth Circuit. Again, I think I said this already, argued in the Fifth Circuit to a panel of three judges in 1995. The question was: "Whether the order putting F. Lee Bailey in jail should be stayed?" This is 1995. Ironically, the head of the panel was the Chief Judge at the time – I think he was – Gerald Bard Tjoflat. Judge Tjoflat must have been in 1995 in his mid- to late sixties. In 1973, that same Gerald Bard Tjoflat - who was in his forties – was a then District Judge in Jacksonville, Florida, who presided over the trial of Glenn Turner and eight other defendants, including one F. Lee Bailey. So, Lee, having escaped the clutches of Judge Tjoflat by gaining a severance in the *Turner* case, and then avoiding re-prosecution totally in that case in 1973 and 1974 by claiming Double Jeopardy and Speedy Trial

violations, found himself in front of the Judge Tjoflat on a freedom-related issue for the second time in a quarter of a century. I was effectively his lawyer for a part of 1973 and 1974, and we appeared again in front of Judge Tjoflat in the Court of Appeals in 1995 – 22 years later.

Granof: What was the argument like?

Zuckerman: A number of lawyers from the old *Turner* case came to the argument. In my view, the argument went poorly and I thought there was no question but that the Court of Appeals would affirm Chief Judge Paul, and Lee would have to surrender himself. That's what the Fifth Circuit ruled. First, I would say that the best work I did in the case was my cross-examination of the prosecutor. That cross-examination made a big difference in softening the judge's reactions, and I think in probably keeping the case from going criminal. And the second, I have a style which is not offensive to my adversaries, so I generally try to have extremely strong personal relationships with the lawyers against whom I advocate. I think "this personable style" is actually – in a modest way – effective for a lot of reasons, one of which is it is disarming and makes those adversaries somewhat less aggressive than they might otherwise be in some instances. I had very good relationships with the prosecutors, and I think, at the end of the day, these relationships got Lee out of jail quicker than might have otherwise been the case, and they paid other dividends, but it was a very hostile environment, very hostile.

Granof: Did you argue against his disbarment issue?

Zuckerman: No. The federal work I felt was appropriate for me to do, because lawyers who do federal work are sort of homogeneous in nature, at least they were then. It's not unusual for attorneys to appear in federal court all over the country. But the state work, particularly (1) appearing before the local state judge and the Florida Supreme Court, and (2) dealing with issues regarding membership in the Florida state bar, that's purely Florida – purely local – and

there are many others who are much better at it than I. Although we have a very substantial professional liability/disbarment practice in the District of Columbia, you can't export that local expertise to other jurisdictions. The law is so *sui generis* from jurisdiction to jurisdiction, and the personalities and the politics are so local, that you are really better off with an in-state bar member providing the representation.

Granof: And I take it that was true in Maine too?

Zuckerman: Yes.

Granof: You raised an issue, which I think is really interesting because it goes to the way you practice law. That is, this notion of in-your-face, the aggressive lawyer, you think that's not as effective as a lower key, more disarming style?

Zuckerman: Yes, you can only speak in generalities. I think there are lawyers who are most effective as lawyers, who are very strong courtroom advocates and powerful courtroom advocates, and are confident and speak loudly and are extremely well-prepared. But there are also lawyers who treat the judge well and treat their adversaries well, and I think that pays dividends in front of a jury. It also pays dividends in the hallway where you are dealing with your adversary and he needs things, she needs things and you need things. I think as a general proposition it's much more effective than a lot of the posturing that you used to see on these old time TV shows, where the lawyers refer to each other as counselor and they speak in a kind of a jargony, "Not this time counselor," and so forth. No, that's just not where I am. My philosophy has always been, and I don't think it's something that lawyers are taught in law school – quite wrongly – that the practice of law is about 50% knowing the law and about 50% knowing people. I have said this before: it's a people profession. There's a sales quality to it. There are some effective lawyers who grow up to be mediocre legal analysts, but have an extraordinary feel for

people; they can read people and know the angles by which to move people and they are really great. But the lawyers who are even greater are the ones who know the angles, can move people – are great at that – but are also really legally adept. In my view, one of the characteristics of the lawyers at our firm is that the people here are very nice, decent, caring and well-liked. And I think if you talk to people about the firm, you will find that this perception about our lawyers generally exists within the local legal community. While that may sound superficial and unrelated to the practice of law, what that means in "everyday" reality is that they are very effective advocates because they understand how to deal with people. They understand how to get the most out of people. They are respected. Doors open for them. Judges listen to them. It makes them much more effective than they would be if they were jerks. I don't think you get that in law school. I don't think you get that from a lot of mentors of young lawyers.

Granof: You know this last two or three minutes of advice, if nothing else comes out of this interview, that should be posted on every law school bulletin board or given to every law student.

Zuckerman: That's what I tell people. You are really not doing much other than – this is going to sound bad – than selling shoes. You are selling justice, at least your version of what justice is, but the operative word is "selling." You are trying to find a way to get your customer – a judge or somebody you are trying to settle a case with, or a recalcitrant client who can't buy into what he ought to be doing – you are trying to get him to buy your argument. Generally, most people think that it is about – that it is all about - the kind of argument you are making, the quality of your argument: "Did you cite the judge the right cases?" "Did you make to your adversary the right arguments?" "Did you make the right and persuasive remarks to your client?" **But it's way more than that.** It's like, if I can say, a gestalt. It is a whole universe of interpersonal dynamics that you have engaged in long before the argument, long before your adversary and you wrestle, long before you and your client

have that one critical conversation that leads the person who is receiving your words to be more receptive to what you are saying than he or she would be to what some equally, or more, brilliant lawyer who is a jerk might say. That, I think, is something that some lawyers never get. The ones that are still practicing in their 60s and 70s probably got it.

Granof: I think that's just great advice. Irving Younger says the same thing. He says the jurors want to trust you and have confidence in you, and I think it's true even in the Supreme Court.

Zuckerman: But it's not only jurors. It's your adversary. Your adversary doesn't want his pocket picked. He wants to feel as if you are being fair to him. He wants to feel as if you are not conning him. He wants to feel as if your way is a very effective way, and might indeed be pretty effective with the jury or a court. I mean I went through, and we can talk about the litigation with the Circus, in which I was brought in to defend "The Fund for Animals" and to a lesser extent "The Humane Society." In a matter in 2011 and 2012, these organizations were being sued by the Circus for allegedly committing RICO violations during another piece of civil litigation that was badly mishandled, badly received, and resulted in a horrific judgment from Judge Emmet Sullivan.

Granof: This was Ringling Brothers?

Zuckerman: It was the Ringling Brothers who had been sued by these animal rights organizations. The judge basically found that the primary plaintiff in that initial civil case had been wrongfully paid by these animal rights organizations? Did I talk about this?

Granof: I don't know that you did.

Zuckerman: It was acrimonious in the extreme, and when we entered the case I believed that we needed to adopt a completely different tone and approach. In a

future time, we can discuss that case more fully. For now I want to go chronologically, but that case required a different tone and approach that I think was extremely useful as the case progressed. So veering back, Lee's deviation from the norm without cosmic bells and whistles was a precursor of what I was to confront in three very interesting cases in the first decade of 2000 – the 21st century.

Granof: Before you leave F. Lee Bailey, I have to ask you one question. Was F. Lee the kind of attorney that you've tried to be, which is works well with his opponents, doesn't undermine them, doesn't come across as "I'm F. Lee Bailey you know?"

Zuckerman: No, Lee had, as many lawyers do, a very powerful sense of his own power, which he should have had. As a consequence I don't think he was as – I'm trying to think of the psychological concept here. "Insecure" is the wrong word. I'll put it to you this way, he was not as outwardly focused as many lawyers, including myself, are. For me, it is very important to pick up any cue that I can from you. "Did you laugh at this?" "Have I offended you with that?" "Do you want to talk to me about certain things?" "Do you interrupt me?" "Are you uncomfortable talking about yourself or me?" Again, it may be a defense mechanism because of insecurity. But I have a very strong antenna for other people and how they respond unfavorably and favorably to me. That was not a strong thing with Lee; he basically didn't care, I think. He wanted people to like him and be friendly with him, but it was not high on his list to look at others' reactions to him. Do you watch the Larry David show?

Granof: Yes.

Zuckerman: You know Larry will say something and then he will stare at the person that he is talking to, like this, in an exaggerated way, visually conveying the idea that he is asking that person, "How am I doing?" Lee was too powerful and

too proud to be bothered with that.

Granof: I guess if you have his talents, you could succeed in spite of that.

Zuckerman: Well, I think there are pluses and minuses. I think it's useful to have the traits of a keen observer of people's reactions. It's useful to be able to tell when somebody is saying something to you that they probably don't mean. It's useful to be able to tell when someone is tired of listening to what you have to say, and all of those things are extremely useful to be able to recognize at the time. In truth – I'm not sure any of us can always spot these reactions – but when somebody thinks you're being pompous and disingenuous it's just helpful to know that. Not that I'm particularly great at it, but it was not something that interested Lee.

Granof: Maybe if he'd been more like you, he wouldn't have gone to jail.

Zuckerman: Well, if he'd been more like me, Duboc might have never come to him in the first place. As you say, greatness in the market has its price. One of my theories – another of my theories, born over fifty years of doing what we do – is that the people who succeed, the people who develop reputations as great men or great women in the law, oftentimes have personalities that are in many respects impossible. They are egocentric, powerful, controlling, but they appeal to – very much in the manner of John Wayne – very powerful individuals; they are very appealing to certain kinds of people, more so than they appeal to companies. Certain types of people visualize that their lawyer needs to be a "great man" in every sense of the word. Therefore, at times those lawyers are overbearing and insufferable. It is a style that oftentimes not only produces really good results, but it also produces a steady flow of very important and interesting clients. There's a lot of conditioning and reinforcement.

Granof: It's not just in the law. For example, business – one example is Steve Jobs.

Zuckerman: Yes, sure, or celebrity doctors are kind of self-promotional. Dr. Oz is self-promotional in the extreme in a way that most doctors find distasteful, and it has worked for Dr. Oz and he'll be damned if he's going to change it. So, they are who they are and there's a place for all of us.

Granof: Yes, so maybe enough of philosophizing although I think that's some of the more interesting part of it, but you wanted to talk about other cases.

Zuckerman: Yes.

Granof: And we can certainly start on that.

Zuckerman: Yes, I'm going to start there. One other case of note in the 90s, the firm was engaged to defend the Hospital Corporation of America – Columbia HCA – which was allegedly involved in a huge Medicare fraud in Florida, and in particular in Tampa. Columbia HCA – HCA as it was called, I think, at the time – was one of the largest chains of hospitals in the country run by Tommy Frist, out of Tennessee. HCA was a very lucrative company and it was thought to have in various technical ways engaged in massive medical fraud. We, along with Latham & Watkins, were engaged to represent the company – we more so in Florida, because we are Florida-centric. We had a lot of very fine lawyers in our Tampa office, and I did a lot of work in that case with Sandy Weinberg. And the case ultimately resulted in a negotiated resolution for the company which I don't think involved – it may have involved disgorgement of money – but I don't think it involved a conviction, and after several years, it was successfully resolved. It was a big, but garden-variety, health care fraud case that was interesting to me for a number of reasons. I got to spend a fair amount of time with Sandy Weinberg, who is a wonderful lawyer, and a very close friend in Tampa. I spent a lot of time in our Tampa office, and it really helped cement the relationship between the Tampa office and the D.C. office, which remains very close to this day – twenty years later or so. It also put me in contact with Michael Chertoff, the

principal lawyer at Latham for this case. Mike and I became very good friends, and I remained close to him even after he left Latham for a Third Circuit Appellate Judgeship, and then left the U.S. Court of Appeals to come to D.C. as the head of the Criminal Division at the Department of Justice, and then the head of Homeland Security – or is it Criminal Division, then to the Third Circuit, and ultimately the head of Homeland Security. He is now the head of "The Chertoff Group," a private consulting firm.

Granof: What is "The Chertoff Group"?

Zuckerman: "The Chertoff Group" is a phenomenon that exists more so now in Washington than ever. "Kissinger McLarty" is another one. And so are "The Albright Group" – Madelaine Albright – and "The Cohen Group" – William Cohen, Senator Cohen. If you have a high government position, particularly if you were in the executive branch at a Secretary level, that's significant. And if you're looking for private employment, you set up a consulting group and name it after yourself and focus on what you know. So "The Chertoff Group" has, among other people, working for it the senior most people out of the CIA, the senior most people out of MI6 or 5 whatever it is, the senior most people out of other national security related entities, and it does national security consulting at the highest level. So, for example, if you ran the Port Authority in New York and you needed a security assessment, or you ran a multi-national corporation and needed a security assessment for your executives, or you needed anti-corruption advice – there's a whole host of things – you would go to an outfit like "The Chertoff Group." It's a very common phenomenon.

Putting aside Columbia HCA, in October of 2001, Enron went belly-up, and its accounting figures masked the fact that it had lost hundreds of millions, if not more, in its trading activities. Enron was located in Houston.

In October 2001, Enron went into bankruptcy after last-minute efforts by

Kenneth Lay, its President, to save it. After a long of series of efforts by Jeff Skilling, its theoretical architect and operational leader, billions of dollars in market value were lost. I received a call from one of its senior executives in late 2001, and was engaged to represent the executive in early 2002. The executive was Lou L. Pai, one of the most interesting, nicest, and best adjusted human beings I have ever met, and a friend to this day. What I am going to describe is all publicly available information so that when I give you information about Lou, it is publicly accessible, and not anything that is protected by the attorney/client privilege. Lou, at the time, was about 55, and had been at Enron about five or six years. He was a protégé of Jeff Skilling, who liked Lou very much and thought him to be a brilliant fellow. Lou was from the D.C. Metropolitan area. He grew up in Prince George's County, Maryland. His father was a professor of aeronautical engineering, I believe, at the University of Maryland, and the family had come to the United States in the very early 50s as expats from China and the Communist Revolution. The father obtained a job as a mathematician or engineering professor at the University of Maryland, purchased a nice house, and raised Lou and four or five siblings in Prince George's County. Lou attended the University of Maryland, became an obsessive Maryland football and basketball fan, and made his way in the business world. He veered off into commodities and commodity trading and loved the arcana associated with that, and ultimately found his way to Enron where he did well under Jeff Skilling's tutelage. He was married at the time to Lanna Pai and they had, I think, two children. Lou rose progressively in the hierarchy of Enron, and as befitting an Enron executive, got not only a substantial salary, but got very lucrative stock options to buy Enron stock. By 1998, Lou came to hold a vast amount of Enron stock – a vast amount. He also came to head Enron Energy Services –"EES" – which was what the retail arm of Enron was called. Enron Energy Services was not involved so much in the wholesale trading of derivatives and energy-related items, but was involved in selling Enron's retail services to shopping centers/malls – services that Enron could

perform that would dramatically reduce the energy costs that large companies confronted in any one of a number of ways. Although it was a start-up division, it was considered to be an important division of Enron in 1998 and 1999. To Lou's discredit, which he has admitted, and is publicly known, he began an affair with a young woman and he had a child out of wedlock with this woman, probably around 1998 or 1999. Thus, Lou became part of, what for want of a better way to describe it would be, a clandestine second family as some businessmen do in their lives, and led a not-particularly-disciplined personal existence. All of this is very relevant.

In essence, Lanna, his actual wife, found out about the affair in 1999, and insisted on a divorce. They both got lawyers. The divorce was contested and acrimonious, and ultimately required that Lou sell all of his shares in Enron in 1999 and 2000 in order to split the proceeds with Lanna. He kept a little toward the end, but he sold $271,000,000 worth of Enron stock in 2000 and 2001 giving roughly half to Lanna and half to himself. Various class actions were filed, including a number of class actions against about two-dozen insiders. The lawsuit against the insiders alleged that the insiders, with knowledge of the precarious state of the company, had liquidated their stock in 2000 and 2001 to the tune of about a $1.1 billion in the aggregate. Vast amounts of damages were sought. Lou was one of the named defendants, as you can imagine, since Lou was responsible for about 26% of the insider sales. Of course, Lou had a bulletproof defense.

Granof: The court made me do it.

Zuckerman: Yes. Lou said, "I sold my stock for one reason and one reason only – that's the only way I could divorce my wife." An incredible defense, and essentially with the exception of a little stock he held at the end, it prevailed and it kept him from being prosecuted either criminally or having to part with a huge amount of his money. It's just the most incongruous juxtaposition of events. If he had remained married to Lanna, if Lou had

remained married – if he'd been a faithful husband, if he'd lived by the "Good Book" – he'd be broke and maybe in jail if he had sold his stock. Or, at least he'd be broke because the stock would be worthless.

Granof: And his wife was rewarded.

Zuckerman: She was greatly rewarded and the whole economic arc of the family was completely changed because of his indiscretion.

This concludes the Eighth Interview.