



WILLIAM J. CLINTON PRESIDENTIAL HISTORY PROJECT

INTERVIEW 1 WITH BERNARD NUSSBAUM

September 24, 2002
Charlottesville, Virginia

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To cite an interview, please use the following general format: [name of interviewee] Interview, [date of interview], William J. Clinton Presidential History Project, Miller Center, University of Virginia.

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TRANSCRIPT

INTERVIEW 1 WITH BERNARD NUSSBAUM

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Riley: This is the Bernard Nussbaum interview for the William J. Clinton Presidential History Project. Everybody here has been involved in many of these before, and we know the ground rules. So we can go ahead and proceed. We're delighted to have you here.

Nussbaum: I'm delighted to be here.

Riley: We thought we would start by asking you a little bit about your own political biography. I see you ran for the Assembly in New York. That's not a story that, at least in our research, gets elaborated on very much. So that's the kind of thing that we would love to hear more about.

Nussbaum: After I graduated from law school, which was in 1961, I had a fellowship, and I traveled around the world for free. I'm leading up to this political race that you asked me about. The grant was called the Sheldon Traveling Fellowship, which I received from Harvard. I was 24 years old, and I traveled around the world. I celebrated my 25th birthday in Cairo, Egypt. I went to 30 countries. It was an amazing and wonderful thing. It was like a prize that you get from the university, from Harvard. I've paid them back for the prize many times over. *[laughter]* Their return on investment has been good with respect to this prize. But I had no money then, so it was a great thing. I went around the world for free.

Then I returned. Prior to leaving, I had obtained a job as an Assistant U.S. Attorney. I've always been interested in public life or public service, and I was able to obtain this job as an assistant, starting at the age of 25. It would be very difficult to do that today, right out of law school. I worked for a man who is still very prominent and very famous, named Robert Morgenthau, who was the United States Attorney for the Southern District of New York. Today he is the District Attorney of Manhattan, and he's indicting all of the executives from Tyco and doing various other things. He is 82, 83 years old, and he's still a very relevant figure in the city of New York. He was my first boss, so to speak. I worked for him. I've known him for a long time. But that was one of the initial manifestations of my interest in public life. Actually, I really should go back further.

Do you really want me to talk like this, to just do it this way, in this sort of semi-stream of consciousness? I mean, I'm happy to do it if you want.

Young: Yes, absolutely. We might interrupt from time to time. *[laughter]*

Riley: We won't let you get too far off-kilt.

Nussbaum: I really should go back even further, if you want to start knowing a little about me.

Riley: Please do.

Nussbaum: You know, where I came from, and how I developed, so to speak. I should have started with my parents, I guess.

Riley: You sure you don't want to go with your grandparents? [*laughter*]

Nussbaum: My parents were not born in the United States. They were both born abroad. They met in the United States. My father came here when he was a teenager, I think, and my mother came here when she was about 20 years old. She came here in 1929. She's still alive. She's going to be 93 years old next month. My father's been dead now a long time. But they came here.

Riley: Where did they come from originally?

Nussbaum: They came from adjoining areas in Poland. They didn't know each other, their families. They were very poor families. My grandfather was a shoemaker, and he was brought over by a relative who had a little money. Then, years later, he brought my grandmother here, and my mother came. These were very poor, modest people. They couldn't speak English when they first came. Yiddish was the language that was spoken in my neighborhood. We lived in the Lower East Side of Manhattan. A lot of Eastern European Jews lived there. That's the milieu I was brought up in.

When I was born in 1937, my mother and father were both working. They were both dressmakers. They worked in the garment making area. My father was a member of the International Ladies Garment Workers Union. Eventually, he became an officer of that union. He was not a high official, but a business agent. In 1947 he became that, when I was 10 years old. When I was born, both my parents were working. My grandmother used to take care of me on the Lower East Side during the day. I slept in the evening in my parents' apartment. I didn't speak English, because nobody spoke English. So, when I started school, about 1942, in kindergarten—I guess I must have spoken some broken English. They thought I was some sort of refugee. Some people tell me I still speak broken English—maybe it hasn't changed all that much. [*laughter*] Then, of course, I went to school where I did learn to speak English.

My mother then stopped working. I had two brothers. One is a quite successful lawyer. The other is an even more successful businessman. Things have worked out okay.

I went to the New York City public schools. This also influenced me. Meanwhile, my father had gone into the union itself. He was a very idealistic person and he even became a district leader for a political party, the Liberal Party, which was in New York at that time. Today it still exists in name only, but it is neither liberal nor a party at this point. But then it was, and my father was there.

I remember campaigning with him from time to time. So, there was that element. He never ran for office, other than as a party official—no real races. It was left wing, but anti-Communist at the time.

We grew up with Rudolph Halley in New York, who ran at the time. Harry Truman was a hero. Franklin Roosevelt, of course, was the hero of heroes. If some of you want to remember this, later on when I get to the White House, you can start asking me what Presidents I used to think about in the White House. Roosevelt happens to be *not* one of them, and neither is John Kennedy, for various reasons. This was my own experience in the White House.

So, I went into the New York City public schools. Everything I have today I owe, other than to my parents and my family, obviously, I owe to the New York City public schools. I went to an elementary school on the Lower East Side, P.S. 15. I went to Junior High School 188 on the Lower East Side when it was on Fourth Street and Avenue D. This is Alphabet City, the worst area in the city of New York for many years. It was a pretty tough area then, although it got worse later on as the demographics started changing somewhat.

Then, I went to the single most important school I ever attended, which was not Harvard and not Columbia, but was Stuyvesant High School. I am now on a national committee, and we are raising \$12 million as an endowment for a public high school, which never has happened before. It's a sign of the times and very sad. I, and a number of other graduates—very distinguished and well-to-do graduates, some of them—we are trying to raise money for this public high school, which has this magnificent plant. But it's not really being supported by the city.

In any event, this was a competitive high school. You had to pass an exam to get into it, and I passed the test and got in. I went to Stuyvesant from 1951 until 1954. When I started at Stuyvesant, I don't think I'd ever heard of Columbia or Harvard or Yale or the University of Virginia. I knew City College. There was always a great desire in my family, even though we were of relatively modest means, to have people go to college. I always thought I'd go to City College. Then I got into Stuyvesant, became an editor on the paper, and started learning about Ivy League schools and things like that. I decided to take a crack at that. I was admitted to Columbia. I was given a Columbia scholarship of \$375, which was half tuition. I got a state scholarship, which was the other \$375. Tuition then, as you know, was about \$750. So I used it and I went to Columbia.

I lived at home for the first couple of years. My mother would not like me to say this and she claims it's not true anymore, but it is true—they protested mightily against my going to Columbia. They couldn't understand why anybody would take \$375 the state gave them, and give it to some school, when you could keep it yourself and go to City College for nothing. *[laughter]* Today, my mother is a major expert on the Ivy League so she will deny all of this.

Anyway, I did go to Columbia, which was also a wonderful place in the 1950s. I went from 1954 until '58. I liked it very much and I'm still very active in it. We're just about to have my 45th reunion, as I was saying outside. I did well. I became Phi Beta Kappa at Columbia. I also was editor-in-chief of the *Columbia Daily Spectator*, which was a prominent college newspaper then,

and still is. I was a very big activist on campus at that particular time. I tried to make the life of the president and the deans miserable, and from time to time I actually succeeded.

I'll tell you a funny story. I tried to be a crusading editor in the tradition of some other editors of the *Spectator*, such as James Wechsler, who became editor of the *New York Post*, and people like that. We did a series on who owns the slum houses in the Morningside area. It was Columbia. So, we released that. In fact, we put that series in for a Pulitzer Prize. The president got furious. The president was Grayson Kirk at the time. They called me in and said the articles were somewhat inaccurate, which they were. They said that we shouldn't be printing it. "It's not nice." They made noises that they might throw me out, which would have delighted me. Then, I would have been a *really* great editor in the tradition of the *Spectator*. [laughter] But they didn't do that and we kept running our articles.

Actually, I went down to meet with Wechsler, to try to hire lawyers from the *New York Post* just in case we did get thrown out and had a suit for libel. That's the kind of editor I was. At the end, after I stepped down as editor of *Spectator*, I decided I was going to go to law school. I really was going to be a journalist originally, but something hit me at one point. I decided I could always be a lawyer and a journalist, but not a journalist and a lawyer. In other words, if I went to law school, I could always become a journalist. If I didn't go to law school, my options would be limited. I really did intend to go into journalism. [laughter] I'm glad I didn't, for various reasons, as we can discuss later.

Anyway, I stepped down as editor. I had not yet graduated from Columbia College. I went to some party at the Faculty Club and I met the president of the University, Kirk, who I knew from all of my run-ins with him. He was really a nice man, actually. He said to me, "What are you going to do next year?" I said, "I'm going to law school." He said, "That's a good idea." So, we chatted.

He said, "Where are you going to law school." I said, "It's between Columbia and Harvard." I was offered a full scholarship to Columbia Law School. Harvard, I was still waiting to hear about a scholarship. I didn't get one the first year. I got one later on. "So I'm trying to decide, President Kirk, as to where to go between Columbia and Harvard." I later said this in a speech to the Columbia freshman class when they asked me to come back to speak. So the President of the University looked at me. He said, "Mr. Nussbaum, I really think you should broaden your existence. [laughter] I mean, you've spent so much time on this campus. You should see another campus. [laughter] Harvard is a wonderful school," he said. "Harvard Law School is a great institution. It would be so good for you to go to Harvard." I said in my speech, "I was the only one who ever received a recommendation from the President of Columbia University to go to Harvard," which I did. [laughter]

I went to Harvard. I accepted his advice although I would have made the same decision. That was a great time. I entered Harvard in September of 1958 and went until June of 1961. It was a very exciting place. Obviously, 1960 was the year of Kennedy's presidential race. I met Richard Goodwin and various other people who had gone to Harvard Law School. Abe [Abram] Chayes, people on the Harvard Law School faculty, were connected with the Kennedy campaign, and I started meeting some of them. Because I was fortunate, I made *Law Review*. So, I became part of

this elite group—elite in the sense that you get a little bit better known—they were no better than anybody else. You had to make it solely by grades at that point.

I met a lot of interesting people, such as Nino [Antonin] Scalia, who was my predecessor as note editor of the *Law Review*. We became good friends. I became note editor of the *Law Review* in my third year. He was note editor in his third year. I succeeded him as note editor. Actually, Scalia received a Sheldon Traveling Fellowship, the same fellowship I received. So, he was note editor one year and then got the fellowship. He traveled around the world for a year. When he came back, he went into practice.

And I succeeded him. I became note editor of the *Harvard Law Review*. Then I got the fellowship, and I went around the world. So, he had it for a year. I had it for a year. Then, he went around the world for a year, and I went around the world for a year. A year after he was appointed to the Supreme Court of the United States, I went down to see him. I was in Washington and I went to visit him because I had seen him over the years. I went into his chambers, and we chatted. We're old friends. We don't see each other that much, but we're old friends. Except we didn't agree on anything then and we don't agree on anything now. But we've still known each other a long time and we're friends.

"Nino," I said to him in his chambers, "you were note editor of *Law Review*, right?" And he said, "Yeah, sure, that's right." Then I said, "You were note editor for how long?" He said, "A year." I said, "Well, who succeeded you as note editor?" "Well, you did," he said. I said, "That's right. Then what did you do after you finished as note editor?" He said, "Well, I had the Sheldon fellowship. I traveled around the world." I said, "Right. How long did that last?" He said, "A year." I said, "Who got it after you?" He thought. "You did, didn't you?" I said, "Yeah, for a year." I said, "How long have you been here, Nino?" [laughter] He said, "Wait a minute! No, no, no, no, no!" [laughter] I said, "Every good job you have for a year, then I replace you, and you're still sitting here. You know, they've got to get you out of here."

That's a true story. That happened before I went to Washington. Then in Washington, when I started getting active appointing Supreme Court Justices, he kidded me that maybe I could have done what I was suggesting at that point.

Anyway, I did meet these people at law school, the Nino Scalias, [Anthony] Kennedy was a classmate of mine. I didn't know Kennedy at the time. I've gotten to know him. The class at Harvard was about 500, and I really didn't know Tony at the time, although I think he knew me. We met later on when we were both in Washington and we became somewhat friendly. We've seen each other from time to time.

It was a great school and a great class. Then I received this fellowship, as I indicated. Before I left, I got a job. I worked summers at good law firms. One was Covington & Burling, which is a prominent firm in Washington at that time with Dean Acheson. That was the summer I worked at Covington. This really all has an impact on me. This is interesting. I've never quite talked about it or thought about it totally in this way.

The summer of 1960, I worked in Washington for Covington & Burling. I was finishing my second year in law school. I was becoming note editor of the *Review* at that time. I remember meeting with Acheson. They used to take the summer law clerks out to lunch at the Metropolitan Club—very fancy places for all of us.

I remember him talking about Harry Truman. That summer, Truman had come out against John Kennedy running for President. He said, “He’s too young to run. He should wait,” and things like that. He told me how he called Harry and how he pleaded with Harry not to say anything, and Harry promised him he wouldn’t. The next day, he made a statement. Acheson says, “That was typical Truman.” But he really loved Truman. Obviously, I was doing legal research on cases, but even that summer job got me interested in public affairs, or increased my interest in public affairs.

Then I graduated and went on this fellowship, but prior to that, I obtained this job. I wanted to be a trial lawyer, a litigator. By this time, I’d given up any thought of going into journalism. I wanted to be a lawyer. So I got a job in the U.S. Attorney’s Office upon my return. Then I was a prosecutor for three-and-a-half years, which was typical at the time. I was married. I had met my wife when I first started law school. She was a junior at Brandeis when I was a freshman in law school. We’re going to be married 40 years. We’ve known each other 44 years. We met in September of 1958 and got married in 1963. We got married after not seeing each other for two years. I went around the world for a year and went into the Army.

Then I did work in the U.S. Attorney’s Office. I had a great experience there. I learned how to litigate. I learned how to try cases. I learned how to deal with judges and issues like that. Then we had a child and another one was coming. It was typical to leave after three years, and I went to a small firm that had just begun. Because of my record, I could have gone to some big firms, but in one of the wisest moves I ever made in my life, I decided to go with four or five young men. They were 33, 34 years old. The firm was then called Wachtell, Lipton, Rosen, Katz & Kern. Kern left many years ago. He is a very wealthy businessman in Colorado. He’s the one who actually brought me in. He and I went to high school and to college together. I went to this new firm, which began in January of 1965. I met with them in November of 1965 and started in April of 1966.

Nobody ever heard of it. Everybody was young, but it did okay. It was like going to Xerox when it was named Haloid, before it got so big. The firm has been very, very successful. It’s a corporate law firm, a litigation law firm. It has maintained its size. We haven’t become like other law firms. Actually, if you remember to ask me about this, it’s an important part of this discussion. Let me tell a story about my experience after I came back from the White House, and you’ll understand at least some of the things that drove me or affected me.

After I came back from the White House, I had lunch with one of my partners. Not a name partner, but somebody who was in the firm as long as I was. When I came to the firm, there were seven lawyers. He was one of the seven lawyers at the time. We had lunch. He said to me, “That was sort of crazy, you going off to Washington like that, right?” Everybody was writing newspaper stories about me—I did *this* bad and I did *that* bad, and I was fired, and all of this bad stuff. He said, “That was sort of nutty.” I said, “Oh no, it wasn’t nutty.”

He said, “What do you mean? You’re not sorry you went?” I said, “Of course I’m not sorry I went. It was wonderful. It was a great adventure.” He said, “I mean, all of these criticisms of you—your testifying before Congress, and now you’re being investigated.” I said, “Oh, so what? It was great. I appointed Supreme Court Justices, Attorney Generals, I was involved in policy at the highest national level. I’m not sorry I did this.” He said, “You would do it all over again?” I said, “Of course I would do it all over again.” “Knowing everything?” I said, “Knowing everything, I would do it all over again.” “Even the way it ended?” “Absolutely, the way it ended, I would do it all over again.”

He looked at me. “All right,” he says, “I guess in your case, I understand why you can say that. The *only* reason you can say that is because you had four things going for you.” I said, “What are you talking about? What four things did I have going for me?”

He said, “The first thing you had going for you—and you needed all of these things—was that you were personally honest. They can investigate you. There’s nothing in your background, no affair, you didn’t steal any money, you didn’t do any bad things. So you were personally honest, and you had that going for you.” I said, “I hope so. I think I’m personally honest.” He said, “A lot of people are personally honest. A lot of people have that going for them too. You’re not the only person in the world who is personally honest.” I said, “I’m sure I’m not.” “You needed that, but that’s not enough.

“The second thing you had going for you was you’re relatively self-confident. You have some self-esteem and you’re relatively thick-skinned. I mean, you don’t like criticism, like anybody else, but you’re a litigator. You’ve been in the ebb and flow, so you can take that kind of stuff. You’re self-confident and thick-skinned. You had that going for you.” I said, “Well, I guess that’s true. I had that going for me.” He said, “But a lot of people have that. You’re not the only one who’s personally honest and thick-skinned and self-confident. Those two things were not enough. You needed a third thing.”

He said, “Here I’m going to narrow the universe. At the time you went to the White House, you were in your mid-50s. You were relatively economically independent. You had made a fair amount of money. You were well-off. You could support your family easily. You weren’t worried about your next job. You weren’t worried about earning a living, about paying mortgages, sending kids to college, or things like that. The firm had been quite successful at that point. So, you were economically independent. That narrows the universe. People are personally honest and thick-skinned, but maybe not all of them have all of those three things. So you had those three things, and you needed them all.” And I said, “Well, yes, I guess that’s sort of true.” He said, “But it wasn’t enough. Even the economic independence was not enough. You needed a fourth thing.”

I was sort of amazed. Nobody could make up this story. [*laughter*] I said, “What was the fourth thing I needed?” I didn’t know where he was coming from. He said, “What you really needed most of all, or as much as even the other things, was a home to come home to. You needed this law firm. You needed your partners and your associates. You needed the City of New York. You needed the Bar of the City of New York. You needed your friends in the City of New York.

Even with money, if you had left Washington without someplace to come home to, and if you had sat out at your place on the beach in Puerto Rico looking out over the ocean, you would have made yourself miserable and your family miserable. With all of those three other things, the most important thing you needed was a place to come home to.”

And that story is very important because it’s all true. It really affected how I thought in Washington, because I always knew it instinctively. The things he was saying to me had an impact on me, but I didn’t think in terms of those four things when I was in Washington. That’s why I think—I hate to say this—I was different than most of the other people in the White House. I was older than a lot of the people in the White House, including the President, but not older than everybody. I was not older than Tony Lake and not older than Bob Rubin. But I was certainly older than the President and Hillary [Rodham Clinton], older than [George] Stephanopoulos, older than Al Gore, and various people. But you see it in my speeches—I was delighted to be there, and I was *not* afraid.

I was really, by and large, not afraid. I don’t want to say I had no fears or anything like that. I was just trying to make the best judgments I could, offer the President the best advice I could, and protect him as best I could. This turns out to be a tragic story in the final analysis, because he didn’t listen to something that was very important. But I really didn’t care too much about the criticisms and I wasn’t worried. I didn’t worry about my next job. I wasn’t worried about my next paycheck. I wasn’t worried about what people would say.

I was worried—and that’s one of the reasons I’m here—about the judgment of history, how history will look at us. I was worried about that since we were in this position, and historians will obviously write about it for better or for worse whether we want them to or not. And they should, obviously. But I really wasn’t concerned about history every day. I was concerned about doing the right thing every day. I felt the judgment of history would take care of itself. I wasn’t worried what the newspapers would say the next day. I wasn’t worried what the TV would say that night.

Now, some of what I’m saying right now is foolish and naïve, because what the newspapers say the next day or what the TV says that night really affects conduct. So you have to take that into account, and we can discuss that more as we go along if I ever let you ask a question today.

[laughter]

Riley: Let me step in and maybe pose a question that relates to having a place to go home to. You obviously had a world of experience coming into the White House that some people didn’t have, and that goes back to the question that I had raised about your running for public office at one point before. What about your career before you came to Washington was most helpful to you, in terms of gaining a sense of politics, in terms of gaining a sense of balance and judgment, or any of the things that you feel you need to have to do a good job in advising the President?

Nussbaum: Well, there were a number of things. I’ll go back to how we started this thing today. I did run for public office after I left the U.S. Attorney’s Office, and I went into the law firm. That was helpful to me. I was 31 years old. I ran for State Assembly in Brooklyn. It was a part of my desire to become part of public life, and it made me appreciate the difficulties that political figures have, people who run for office. I’ve never looked down on people who’ve run for office.

I only ran once in my life but I have great respect for the difficulties and agonies of running for office.

I think it's good. It's a great part of our democracy that people do that. So, it gave me a respect. I didn't disdain—I may have been angry with a lot of Congressmen and people like that in the course of political battles—but I never looked down as if these are not worthy people. They really are worthy people. They may be limited people in a lot of ways, but anybody who has to go through the turmoil of running for office is really—it's something to respect. That helped shape me.

I lost that election. I moved into a district and ran in the Democratic primary in that district, which is the only meaningful election. It was 1968, the year that Bobby Kennedy was killed and Eugene McCarthy ran for President. I was the peace candidate—sort of the liberal candidate—but I was running against a local boy who lived there.

I came close. I had the best of all possible worlds. The *New York Times* reported the next day that I'd won the office and I got a lot of congratulations, but I didn't have to go to Albany for the next six years. A friend of mine, Steve Solarz, ran in the adjoining district. He won and he *had* to go to Albany. I said this at a toast last night for his wife.

So, I lost. I wanted to win, obviously, and I worked very hard to win. But I realized near the end of the race that this was a crazy thing for somebody who has to earn a living. The key to going into political life—it's become so much worse today—is to make yourself economically independent first. It wasn't so much the money to run races. That's a separate issue. Being independent economically affected me in the White House, as I indicated earlier. It's not to need the job for a living, because it changes how you do things. Putting aside the dangers of corruption itself, it even changes how you act and how you react to situations if you need the prestige of being in office to assure you make a living after you leave office.

I wasn't economically independent in 1968 at 31 years old, and I realized that this was not for me. I wanted to win, but if I lost I was not going to run again until I could make myself economically independent. By the time I did, I ended up being in other positions. But anyway, that's the first thing that prepared me to do what I ultimately tried to do in the White House.

What else comes to mind? My experience as a prosecutor, obviously, was useful. It's a public arena being in the courts, and I also did other things. I went to Watergate. In 1973, I got a call from John Doar, who was just appointed Chief Counsel to the House Judiciary Committee Impeachment Inquiry, saying he would like me to come down and work on the [Richard] Nixon impeachment inquiry. He didn't know me, but he'd heard of me. And I said no. I had a wife and children. I'd also been asked by Archibald Cox to join what would become part of the Independent Counsel's Office, the Special Counsel at that time. I had rejected that nine months before, and I said, "No, I'm not going to do it."

I got a call the next day from Robert Morgenthau, who Doar had talked to. He said, "Bernie—" and you have to know Morgenthau—"you know I never recommend you take jobs from anybody else, only from me," which is true. Morgenthau believes the only thing that's worth it in

the world is working for him. He said, “But I really think you should consider this Doar thing very carefully. I know John Doar called you yesterday. There are two things about this issue—the impeachment inquiry of Richard Nixon, which is about to begin—that I think are unique. I think you should really consider going down to meet with Doar.” I said, “What are they?” He said, “The first thing is, it’s history. To be part of an impeachment inquiry is to be part of history. The second thing and just as important, is that it’s short. How long can you keep a President hanging?” [laughter] “With respect to history and since it’s short, go meet with Doar.” So I went and met Doar. Of course, the minute I met him, we were so compatible, it was attractive to do. I had three young children at the time—8, 5, and 2. This was a tough time, but I went down.

I went to Washington—this is in some of the books—I met a young woman down there named Hillary Rodham, who had just graduated the Yale Law School. I’ll tell you this famous story, which I’ve told before. It’s a true story.

I was 36, 37 years old. I was one of the oldest people on this staff. Doar was 50 and he had one of his other friends who was 48. He liked young people. Eventually, I tried to get him to hire certain people who were sort of like me. They’re now very famous judges. One is Judge [Charles P.] Sifton. Another is Judge [Pierre N.] Leval. But Doar wouldn’t hire the people I suggested, and it would frustrate me. He said, “I have enough of you. *One* of you is enough.”

I had a car and I used to drive people home in the evening. I mean this was Washington in 1974. It was a dangerous place. I was this big, fancy law partner, a partner of my firm, and I had a very important job—I had to take all of these young staff members home. I had this huge, red Oldsmobile Toronado and I used to drive people home at night. [laughter] They’d all pile in, and I’d drop them all off at midnight, one in the morning. Then the next morning, they’d get to work on their own, but I’d have to take a lot of them home various nights. We were all working around the clock on the Nixon impeachment inquiry. One of the people in the car I used to take home was Hillary Rodham.

One night, I dropped her off last. I remember driving up to her place where she was living with a woman who eventually ended up in the White House administration also. I liked Hillary very much. She was very smart and very tough, and I got along with her very well. As I dropped her off, she says to me, “You’ve got to come and meet my boyfriend tomorrow. He’s coming in.” I said, “Boyfriend, you have a boyfriend?” I didn’t even know she had a boyfriend. She says, “Yes.” I said, “Well, who is he?” She says, “His name is Bill Clinton. I went to Yale with him, and he’s from Arkansas. I’d like you to meet him. He’s a lawyer, graduated from Yale.”

I said, “Oh, great. What firm is he going to be with?” She said, “Actually, Bernie, he’s going to run for office.” I said, “Hillary, how old is he?” She says, “He’s 28,” or something like that. I said, “What’s he running for, the state legislature?” “No, he’s running for Congress this year.” “He’s running for Congress? He’s 28 years old.” She said, “Yes, he’s running for Congress in Arkansas this year.”

I said, “Hillary, he should go to work first. He should get a job and get some experience.” She said, “No, no, he’s going to run for Congress and he’s going to win. You’ll see, Bernie. He’s

going to win, and then he's going to go on to be a U.S. Senator or Governor from Arkansas." I said, "*What?*"

Now, you've got to understand what I was doing at this time. I was in charge of this staff, a bunch of young people. Doar was not hiring any of these people I want. I was in charge of the Nixon tapes, distributing them to the committee, interpreting them, transcribing them, because I was the senior litigator on the staff.

We had made a presentation of the tapes to the committee. When the committee came in the first time, they heard the Nixon tapes. The Republicans had the earphones on and their faces got red with embarrassment from the stuff on the tapes. Then they came in a week later, and all of a sudden the rationalization started. They really didn't hear what they were hearing or they were misinterpreting it. I knew we were going to be in a big battle to try to hold this thing together with respect to making history, making an impeachable case against Richard Nixon. So I'm under this great strain with a lot of young people, and I had this woman in my car, who I liked. She's telling me her boyfriend is going to run for Congress. He's going to be Governor or Senator from Arkansas. And then, the *coup de grace*. "Bernie, he's going to be President of the United States."

At this point—this is a true story—from all the pressures, I crack up. I start screaming at her. "Hillary, that's the most idiotic—" What difference does it make if somebody tells you her boyfriend is going to be President of the United States? Why should you get mad at her? I got mad. I start screaming, "I'm working with a bunch of idiots! [*laughter*] They think their boyfriend is going to President of the United States! These crazy people! What are you saying?"

It was really these other pressures, obviously, that were affecting me. Normally, I would laugh if somebody said their boyfriend was going to be President of the United States. I was furious at her for telling me this, which is crazy. [*laughter*]

But you don't know Hillary. Hillary is a tough lady at 26 years old. I don't know if I should use the actual words, but I remember the actual words. She looks at me and says, "You don't know a goddamn thing you're talking about. You're a *blank*. You're a *blank*." She used a strong curse word that she uses—she is still is a public figure, Senator Clinton of New York. You know, "You're a—" God, she started *bawling* me out. I mean, she worked for me on the staff but she was reacting to this. She walks out and slams the door on me and she storms into the building.

The next morning, I was sort of sheepish about this. I walk in to see her and I apologize for screaming at her. And she apologizes for screaming back at me in a much more effective way than I screamed at her. She introduced me. Her boyfriend came in. He was a very nice guy. He was a handsome guy from Arkansas. I asked him. He said yes, he's going to run for office. I wasn't going to get into more fights with Hillary. [*laughter*] And ultimately he does run. Bill Clinton did run for the Congress in 1974 and lost by four percentage points, which amazed me at the time. It was the Watergate year. At the end of the election, she goes off to Arkansas, contrary to my advice. I mean, I am cautious in giving advice now. She goes off to Arkansas to live with him and then marry him.

And we stay in touch because we really were good friends. So she went to the Rose Law Firm. He runs the following year, 1976. I think he was Attorney General. Hillary writes me a note that he's running for Attorney General, would I contribute? You want to know how I became White House Counsel. This is how. I contributed to races for Attorney General in Arkansas. [laughter] Then he runs for Governor at the age of 30 and he wins.

I was invited to the inauguration. I didn't go. I couldn't go, I was very busy. But I believe I sent in a contribution to that campaign too, of \$100 or \$200 or \$250.

We stayed in touch because my firm's practice was very active in corporate takeovers, mergers and acquisitions. We used Hillary's firm, the Rose Law Firm, from time to time because we were fighting state statutes and things like that. So we stayed in touch over the years and we saw each other from time to time, not that often. Sure enough, he became Governor of Arkansas four years or six years later.

Baker: And, you're starting to reassess your— [laughter]

Nussbaum: I am starting to reassess is right. I don't say anything—I'm just watching him. Then he runs again for Governor and he loses. "Ah," I said. "See? [laughter] History will have proven me correct. I knew this man was never going to go anyplace. I was *right* in that car. He's now an ex-Governor of Arkansas. What could be lower than an ex-Governor of Arkansas?" [laughter] But two years later, he runs again, and I contribute. He wins and becomes Governor of Arkansas again. And then in 1988, Hillary calls me and says, "Bernie, I don't want you to commit to anybody for the Presidency." I said, "Me committing to anybody for the Presidency wouldn't mean anything to anyone." She says, "Don't commit to [Michael] Dukakis or anybody else. Bill is thinking of running for President. I want to come to New York to talk to you." I can't believe it.

To this day, I still remember the dinner we had when she came in to talk to me. I said, "Fine, we'll talk." So she flies into New York and we go to dinner at a restaurant near my office. We talk about Chelsea [Clinton] and family and kids and life. She says, "Look, he's thinking of running. We're going to make a decision soon. We'd like your help. Don't commit to anybody. I'll be in touch with you soon."

Baker: And she meant for the '92 election?

Nussbaum: No, she meant for '88.

Baker: Ah, that early.

Nussbaum: I said, "Hillary—" I was very cautious because I remembered this conversation in the car. "Hillary, I know we've discussed this before, but I think it's a little too soon." [laughter] I was very tentative at this. He's around 42 years old at this point. I said, "I mean, I know he's done very well, Hillary. I have no doubt that he's going to—" I'm covering my bases like crazy. I said, "But it's a little too soon." "No, no, Bernie. We're thinking about it." You know, she was just brushing me off, basically. I said, "All right, whatever you think." A week later, I get a call

from her. “You’re released. We’re not running.” I’m released, like I was in jail. [laughs] So I breathe a sigh of relief. I really thought it was too soon at the time. But that was my great judgment about this.

Riley: Can I ask you a question?

Nussbaum: One more thing, let me just finish this. In 1992, four years later, I get a call. It was not from Hillary or Bill Clinton, but from an investment banker who was a friend of mine, a guy named Ken Brody, who became chairman of the Export Bank. He says, “We’re having a party. We’re having a get-together of people to raise money for Bill Clinton, the Governor of Arkansas. I’m told that you’re coming to the gathering.” This is interesting, how presidential races and politics come together. “Hillary says you’re on board.” I hadn’t talked to Hillary in a year. She’s telling people I’m on board. All right.

So, he’s running. I go to this gathering. We go to Tommy Tisch’s office. Tommy Tisch is one of the sons of the Tisches, who are friends and clients of ours. He’s not there, but we go to his office. Ken Brody’s there. I’m there. This is September of 1991. We sit down. There’s less people in that room than around this table. There’s me, Brody, and maybe four other people. Maybe the equivalent number of people. So we’re sitting there. I know Brody because he’s a partner at Goldman Sachs, and we’ve done work together. We represent Goldman Sachs from time to time.

So Brody says, “I’m glad you’re all here. We want to talk about Clinton. How much money can we raise for him?” I’m sitting there listening. There’s four other people in this room and one guy says, “Who’s Clinton?” [laughter] Brody says, “He’s the Governor of Arkansas.” He says, “Ken, I’m here because you asked me to come. I never heard of this guy. I’m not going to support a guy I never heard of. What are you, crazy?”

The second person says, “Ken, I came here because somebody called and told me to—I’m a *Republican!* [laughter] Why should I be here?” Finally, a third person says, “All right, I’m a Democrat. I’ve never really heard of Clinton, but why the hell should we give Clinton any money or raise money in New York for him? This is a hopeless case.” This is October, 1991.

All of a sudden, this gets my competitive juices up. So I say, “I’ll tell you how you’re going to raise money for Clinton.” The person looks at me. “You’re going to tell the people that you’re going to ask that he’s going to win. You’re going to describe a guy who almost became a Congressman at 26, who’s been Governor of Arkansas now for 10 years, and who’s the single most charismatic figure you’re going to run across. He can carry part of the South and he’s going to win. They have a chance to get on board with a winner and when they meet him, they’ll see. That’s how.” They say, “Well, okay, maybe. We’ll meet him, then we’ll decide.” Then we started the fund raising, and the rest is history.

Okay, I’m taking too long on this thing.

Riley: No, not at all.

Nussbaum: But this is how it happened. Hillary never asked me. Clinton never asked me. I was signed up. They told the people that I was there. I became part of that fund raising effort. We started giving parties and we invited the Clintons to New York.

Baker: You hosted the Arkansas delegation.

Nussbaum: Oh, yes, you know that? We had a party for the Arkansas delegation at the Brooklyn Botanical Gardens. We got involved with the campaign.

One final footnote to that story in the car. After he's elected and I'm down to discuss becoming White House Counsel, which we can go back to later on, we're sitting in the Governor's mansion in Arkansas. And I tell the story to the two of them. And she denies that it ever happened for a moment. "Oh, I never said that he would be President. I didn't curse you out." She denies it. I said, "Hillary, come on. He's sitting right there. Tell the truth. Did that happen?"

Riley: The respondent nods *yes*. [*laughter*]

Nussbaum: Yes, it happened. She vaguely remembered it. But then, I guess it wasn't as vital to her as it was to me, because she always knew he was going to be President. I had just learned at the time that he was going to be President.

Baker: So this was the first time Bill had heard the story.

Nussbaum: That's the first time Bill had heard the story.

Baker: And how did he react?

Nussbaum: I had never told him that story. I hadn't seen him that often over the years. See, I didn't really have any strong relationship with him over the years.

Baker: You maintained it with Hillary.

Nussbaum: I just maintained it with her. And it wasn't even—I don't want to overstate that. Yes, we were friends all of those years and we liked each other. We still like each other and see each other, and we helped a little bit in the Senate race in New York. But we're not intimate, social friends or anything like that. We didn't see them that often then. Even now, although they're in New York now. We see them from time to time, but mostly at big gatherings and things like that. But we do have this long relationship going back almost 30 years. And she did confess to the story.

Riley: This was during the time that she was supposed to have undergone a kind of public transformation, and I'm wondering if this is something that you had recognized or had taken note of. She accepts his last name at some point during this period of time.

Nussbaum: Yes.

Riley: Did you get the sense that she was grooming herself in some way for this?

Nussbaum: No. They have a very close relationship. I know all that they have gone through and how they've become these mythic figures with the [Monica] Lewinsky situation—this terrible analysis of their marriage and reputation and things like that. But in my view—I may be wrong but I have been with them and seen them—they are closely tied together.

I guess any married couple can split up. Even the Clintons could split up some day. It would shock me if the Clintons did. That doesn't mean it can't happen, but it would shock me. They have a close bond to each other. They need each other on various levels. Psychologically, politically—they just rely on each other. They can fill needs of each other on very fundamental levels.

They've helped each other over the years. Obviously, they've fought with each other, and from time to time they've had a difficult marriage, I presume. Some of it I've seen, but not a lot. They have a *marriage*. Any marriage is hard. Maybe theirs is harder in some respects. I don't know for sure. But I do have a sense of their tie to each other, and it's very close and very strong, and she was very supportive of him all those years.

She may have been critical from time to time with temper tantrums and things like that, but she was very strong and he needed her desperately. He would not have been President, I don't think, without her. And she needs him to be a good Senator and whatever else she does in life. From what I understand and what I believe, he's her closest advisor. He's a genius, politically. They have a very close tie.

So when she sort of changed herself, I don't think she was grooming herself. I think she was reacting to a reality that would require a change to happen in order to foster his career. And it's not surprising that she did it, just like he's shaping his life now to foster her career. And he says it overtly. It's not covert. They're a unique team in American history. I don't know, we'll see what historians write 100 years from now. But the Clintons couldn't do it without each other. I'm not sure, maybe that's true for other couples too, but it's certainly true for them.

Riley: So you were doing fund raising in 1991 and '92?

Nussbaum: Yes, in '91 and '92, I was introducing them to people in New York. Nobody knew them. People were laughing. It was a long shot. George Bush, the elder, was the victor of the Gulf War. This really made it possible for Clinton to become President because Bush scared every other Democrat away. Clinton figured he would take his shot. He and Hillary have basically said this. "We'll run. If we can get the nomination, great. If we can't get the nomination, we'll have the experience of a national campaign." There's a lot to learn. National campaigns are different from other campaigns.

I was involved in fund raising. And then I got involved in a big case—litigation against the government. I represented a firm named Kaye Scholer in New York, which was caught up in the savings and loan crisis. The government almost put them out of business. I had to go in and get very involved in that. I had to settle the case and rescue them. So that took me away from the

campaign. The reason I mentioned that is that it also affected how I acted in government, *vis à vis* the RTC [Resolution Trust Corporation] and the OTS [Office of Thrift Supervision]. This was the same agency that did that. I thought I would be more involved in the campaign, but I got involved in this case. The case was very important for this law firm. The lives of hundreds of lawyers, thousands of people, were at stake.

But I did continue to advise with respect to the campaign, such as when the Gennifer Flowers issue came up. People would talk to me, and from time to time I would go to Little Rock and meet. But other than the initial fund raising, I was not a major factor. I didn't go full-time on the campaign. I might have gone full-time on the campaign if I hadn't been involved in this case. But it was tricky, and I was just as happy not to. I gave advice to Betsy Wright and Susan Thomases

Baker: You really weren't a trouble maker? [much laughter throughout several following exchanges]

Nussbaum: What?

Baker: I mean, not a trouble maker—

Nussbaum: You got me just right.

Baker: That was a slip of the tongue.

Nussbaum: A Freudian slip, all right. That's what a lot of people in the administration said. That was—

Baker: My face is red, I do apologize. But on the Gennifer Flowers incident, for example, when you were brought in, were you providing political advice or legal advice?

Nussbaum: Political-slash-legal. We were thinking, *What can we do? Should we hire private investigators? Should we sue? Should we issue statements?* and things like that. I was very cautious with respect to those kinds of things. So they sought my opinion to make sure they didn't do or say anything stupid. And I would give advice on the phone. I would talk to Hillary on occasion, and Betsy Wright, who was a key figure in the campaign. I went down and met with Betsy and Susan Thomases, who was a friend from New York. I would just give general advice: "I *don't* think we should do this—I *do* think we should do this."

But I was really practicing law. I wasn't devoting my time to the campaign. I was really busy on this major matter, which then ended in March or April of 1992. Clinton was doing well in the sense of getting the nomination, but very poorly in the sense of getting the Presidency. When Clinton got the nomination in July of 1992, he was running third in the polls, behind Ross Perot and President Bush. But it looked like he was going to succeed in getting the nomination.

I went around with Bill Clinton during the New York primary. When he came into New York in April, my case was basically over at that time. I went around with him when he spoke. Those

were interesting days, actually, that political time. Here this man was on his way to getting the nomination. He and Hillary were going to accomplish this enormous feat, but everybody with the Clinton campaign was super-depressed. It was incredible. April, May, and June of 1992—June, that's when he was running third in the polls. Everybody was enormously depressed. "What can we do? A Democrat is going to run third in the election. Not even second." Clinton was tired. He was working so hard.

I remember one dinner. My wife was the co-chair of a dinner for an ethnic group. We had 800 people and we raised a lot of money. We raised \$800,000, a lot of money. He was going to get the nomination, so it was now possible to start raising money. He was going to be the candidate of the Democratic Party. People were going to meet the candidate of the Democratic Party at that stage. It was not like when we first started and they'd ask, "Who is Bill Clinton?" But on the other hand, he looked like a loser! What you normally do at these dinners is you invite a small group of people back after the dinner to somebody's nice, fancy apartment in Manhattan, and you chat with the candidate. Obviously, you try to get them to give more money to the party.

I was supposed to get people to come back. I couldn't get anybody to come back. Nobody would come back. So I would go begging people to come back. This is true. This is in June of 1992.

I'm going to tell another story about a judicial appointment and it's going to weave into this. It's June, and nobody would come back. Finally I beg and plead. I get like ten people to come back, including the actor, Richard Dreyfuss. We walk into this gorgeous apartment, Carl Spielvogel's apartment. We've got maybe ten, 15 people by this time in the Spielvogel apartment—it wasn't that easy to get people to come. Clinton comes in shaking hands. He was very good at the dinner, but he was tired. He was down and depressed. He sits down in the middle of the living room with his head down. All of us are standing in a circle around him, and everybody starts talking. They're all going to talk to the candidate.

What happens is everyone starts lecturing him, including Richard Dreyfuss most of all. "You're doing *this* thing bad, you're doing *that* thing bad." I'm throwing softball questions to him: "Tell us what you're going to do when you're President of the United States," or something like that. He's mumbling, and these people are just beating on him! I've never forgotten. He's sitting in this room, and they're all beating on him, and he's so depressed. Finally, he rouses himself and starts talking. It showed how tough it was at that time. But I was trying to pump away there. Hillary told me in the car that he was going to be President, and damn it if he wasn't going to be President! Even if he was running third in the polls.

Of course, that changed with the convention in New York, which was very successful. Perot then began self-destructing, Bush started tuning out, and Clinton went up in the polls. The rest is history.

The story I wanted to tell is from when I was in the White House, as Counsel. We were going to make an appointment for a judgeship for the Court of Appeals, one of the first appointments. I'm the head of the committee with Bruce Lindsey to appoint judgeships for the Appellate Court.

Baker: This was early?

Nussbaum: This was very early in the administration. We didn't have an appointment in the Second Circuit, which is the circuit I come from. I put in the name of Pierre Leval, who was a district judge for 13 years. He is a very distinguished guy, a former Chief Assistant District Attorney, and somebody I was in the U.S. Attorney's Office with. He was somebody I had great respect for and he was really a good choice. He'd been sitting on the bench for 13 years as a district judge. The committee decides on Leval.

So I go in to the President and I sit in the Oval Office with him. I say, "Mr. President, this is one of the first appointments, and the committee and I recommend Pierre Leval to the Second Circuit. He says, "Who?" I said, "Pierre Leval." I figure this is a no-brainer, whatever we say he'll do. What does he care who's going to go on the Second Circuit? He says, "Bernie, I've never heard of him." I say, "Mr. President, he's a prominent district judge in New York. I don't expect you've heard of a lot of district judges in the country, but he's a very able guy." I'm trying to end the conversation. He says, "But Bernie, the Second Circuit is an important court." I say, "Yes, Mr. President, it is an important court, and Leval is a very good man." I'm sort of perturbed that he's questioning me. We all met, we agreed, and I know Leval personally. It's a great choice. Why is he hassling me on something that's not that important?

He says, "Bernie, it's an important court and one of my first judicial appointments." I say, "Yes, it is one of your first judicial appointments, and I really would recommend that you do appoint Judge Leval." He says to me, "Bernie, there must have been a thousand lawyers in New York who were supporters of mine and who helped me. You're asking me, in my first appointment in New York, to appoint somebody I never heard of?" I said to myself, *This is trouble. I'm in trouble now with this appointment.* I thought it was a lay-down hand. I thought there was no problem. So I say, "Excuse me, Mr. President. How many lawyers in New York supported you?" He says, "A thousand lawyers in New York must have supported me. I had widespread support, and you're asking me to appoint somebody I never heard of."

I say, "Mr. President, I think you're right. I think in June or July, the time of the convention, a thousand lawyers did support you. But I think back in April, 90 days before, when you were running in the New York primary, I remember just *one lawyer* supporting you in New York!" [*laughter*] He said, "Who was that?" I said, "He's sitting in front of you, Mr. President! So don't tell me a thousand lawyers in New York supported you in July when *nobody* was there. One lawyer supported you!" [*laughter*] He started laughing, because I trapped him.

I had to go further. It wasn't enough. I say, "Look, Mr. President, Pierre Leval is a great judge. He's sat on the bench for 13 years. He symbolizes every Democratic district judge who wasn't promoted in the old days." The old days, ten years before, will never come back. In the old days, people used to be promoted automatically to the Court of Appeals, regardless of party, on the basis of distinction. Basically, in the [Dwight] Eisenhower and Truman years, once you made it to the District Court, if you were considered a very good judge, you could get promoted to the Court of Appeals, whether you were a Democrat or Republican. Obviously, some efforts were made to get Leval. John Walker, who is now the Chief Judge of the Court of Appeals, is a nephew or cousin of Bush, and he tried to get Leval on. He couldn't get him on because he couldn't get him through the White House—the White House was very political in the Bush

years. “Mr. President,” I say, “he symbolizes every Democrat who waited and was disappointed. It is a message to all of them that we’re going to take care of those that are good.”

“All right,” he says, “You wise guy, I give up. [laughter] You can appoint him to the Second Circuit.” The reason the story came to my mind is about the convention. “A thousand lawyers supported me.” Baloney! In those days, no one supported him. Leval is on the Second Circuit. He just took senior status, and now George W. Bush will appoint his successor.

Riley: You had some relationships with Mario Cuomo earlier, according to the briefing material. You raised money for Cuomo also?

Nussbaum: Yes.

Riley: I’m a bit curious about Clinton’s relationship with Cuomo and how that played out.

Nussbaum: That’s an interesting story.

Riley: In New York, how did you manage to get some of those Cuomo folks?

Nussbaum: First, I do know Mario Cuomo but I never was really an active supporter. I’m a Democrat in New York and obviously I supported Cuomo, but we didn’t have a close personal friendship. Evan Davis, a partner at a firm in New York called Cleary, Gottlieb and president of the city Bar Association, was one of the people who worked with me on the impeachment. He was a senior figure who worked with Hillary and became a friend of hers. He was counsel to Governor Mario Cuomo, so I did have that relationship. That was a way of dealing with Cuomo. I would always have supported Clinton over Cuomo. My relationship really was much more with Clinton than with Cuomo.

Now, Clinton and Cuomo’s relationship is a very interesting story that I have indirect knowledge of. This is real stream of consciousness. It weaves back and forth from the White House to before the White House. I guess Mario will hear this some day. I was furious at Cuomo during the campaign, because he tried to strangle Clinton in the cradle. This is a very interesting insight for me about Clinton, which is not all that complimentary in a sense, but you can make your own judgment.

Mario Cuomo tried to strangle Clinton’s candidacy in the cradle in April of 1992. This was after the Gennifer Flowers thing came out. On the tapes, there was a remark by Clinton about Mario Cuomo about the Mafia or some allusion to that sort of thing. It wasn’t very wise. It was very stupid for Clinton to say or do, but Clinton is Clinton. Obviously, he called Cuomo to apologize. He’s running a race for President. He’s not the Democratic candidate yet. It’s still the New York primary, and Jerry Brown is the opposition.

Cuomo decided not to run, for whatever reasons. Everybody thought Cuomo was going to run but he didn’t run. That’s another interesting historical matter. So what Cuomo does right before the New York primary is make some statements about Clinton that are interpreted as very

critical. Really, I was furious because he tried to strangle Clinton's candidacy in the cradle. That's the way I thought of it at the time. I was furious.

During the campaign, I did nothing about the matter. I wasn't really that high up in the campaign. But then we get to the White House. We come to the first Supreme Court appointment and who do they want? Who does the President ultimately want, after some discussions? I'm in charge of the process, gathering names—that's a whole interesting story in itself. One of the first names that comes up that the Clintons are enthusiastic about is Mario Cuomo. Now this is April or May of 1993. [Byron] White resigned in March of 1993. It's eleven months after this effort to strangle him, and they're talking about Mario Cuomo.

I'm from New York. I know Mario Cuomo. He's an activist and he's consistent with my world ideology. Normally, I wouldn't be opposed to Cuomo and I didn't register violent opposition at this point, but I was curious. To me, it was an insight. If somebody tried to kill me eleven months before, I don't think I'd want to appoint him for the Supreme Court, however good he might be. I'd find somebody else who also might be good. But the Clintons were very enthusiastic about Cuomo. They thought he'd make a strong candidate, and Hillary, to my surprise, was positive about him. I thought she was more like me—likely to support friends and remember enemies. I said to her, "Why is everybody in favor of this? If you want it, we'll do it—whatever the President wants." Hillary was not making the decisions, but she was weighing in on certain things, as she should.

"Oh Bernie, you don't understand. He's a strong man, he's—." I was trying to deflect them off it, but they were really adamant. I found that very interesting. I think I said this to somebody last night at the party. It reflects in part the weakness of the Clinton Presidency, which we'll get to talk about sometime today.

The weakness of the Clinton Presidency—I don't know if I said it to one of you last night—is manifested in this book by Virginia Kelley, Clinton's mother, in her autobiography. There's a piece in that book that says when she and her son, Bill Clinton, walk into a room, and there are a hundred people in the room, of which 99 love him and one doesn't like him, Bill will spend all that time with the one person to try to get that one person to like him, to love him. That's an enormous defect in somebody who is the President of the United States, because you're never going to get everyone to love you. To need it is terribly needy and weak.

Yes, you have to try to make as many friends as you can, but you're never going to be loved totally. What you have to do is be respected. You've got to be feared, to some extent, and hopefully you'll be admired by enough people. But to bend over backwards to get everybody to love you is a terrible weakness, and it dramatically changed his administration. It especially affected the appointment of the Independent Counsel. This was a way to get the media to love him, to get it off his back, and of course, history was changed as a result of that.

The Cuomo thing is just a manifestation of that. Cuomo turned the job down. His son wanted him to take it. I talked to Andrew [Cuomo]. [George] Stephanopoulos was involved. We tried to reach him through Evan Davis. We tried to get Cuomo to accept the Supreme Court. He wouldn't return calls for two or three days. Finally, he did call and told the President he was too

busy in Albany. He had some budget—it was crazy, but he turned it down. He would have been an interesting, maybe a very good Supreme Court justice, but he turned it down. So we went on with the process and ended up choosing Ruth Ginsburg.

Riley: We'll want to hear more about that later. Let me take you back. We'll take a break here in just a minute.

Nussbaum: I was just getting started.

Young: We'll have a brief break.

Nussbaum: I'm just joking. Of course we'll take a break. *[laughter]*

Riley: My question was about whether you were involved much in the campaign during the course of the general election of '92.

Nussbaum: No, not a tremendous amount. I gave advice as issues arose from time to time, but if you don't go on the campaign in a permanent fashion, you're not going to be involved in the campaign. You may think you are. Yes, I would talk to Hillary from time to time. I would visit. When he came to New York, I'd be with him. If he came to New Jersey, I would be with him—not every minute, but I would be with him. At fundraisers for the party, I'd be with him. If a legal or semi-legal type issue arose, or if a scandal-type issue arose, I would be called upon from time to time. But I was not a major figure in the campaign like [James] Carville or Stephanopoulos or Susan Thomases or Mickey Kantor or Betsy Wright—well, Betsy dropped out. All those people were with him all the time. That wasn't a role I played. I was practicing law and I gave advice. I didn't go in the campaign early because I was involved in this major case. That's how it worked out.

Riley: Jim, you had a question.

Young: I'd like to ask about what Clinton saw in you to make him want you to be part of his team. This is a “before the break” question for an “after the break” answer. *[laughter]*

[BREAK]

Nussbaum: I've never been asked that one before. That's an interesting one.

Young: What did Clinton see in you? Why did he need you? Why did he want you, and how did that come about?

Nussbaum: I have to lead up to it. First, when he won the election, I was asked very rapidly to become part of the transition team. Peter Edelman—a law school classmate of mine, an old friend who I've known for a long time—and I were asked to head up the Justice Department transition. The Edelmanns were very close friends of the Clintons for many years on a social basis, much closer than I was. I had a professional and friendly relationship with Hillary. Peter and I were asked to head the Justice Department transition, which we did, and we headed a staff

of 125 people. We did all these books and we can talk about it some more if you want later on, but it leads to your question of what I think he saw in me. I'm not sure I can answer that precisely.

So we headed the Justice Department transition. It was a very interesting process. We met a lot of interesting people and learned a lot about the Justice Department. But during this time—November, December—we had no role in choosing the candidate for Attorney General. That personnel process—certainly the senior personnel process—was kept separate under Dick Riley and other people. So we really had no role in picking. I would have liked the role, but we had no role in picking candidates for the top levels of the Justice Department, certainly not the Attorney General slot. We were basically each having to deal with the substance of these things, which we did. There was no certainty if we ourselves would be offered any position in the administration. In fact, a lot of transition leaders were not—at least a number were not—and maybe not everybody expected it.

I wasn't sure what I wanted to do either. It was a tremendous thing that he won, obviously. We were in Little Rock the night he won. There are all sorts of great memories of that. But I wasn't 100 percent sure what I wanted to do, although I think I did want to do something. I don't want to make it sound like I was a shrinking violet. I was ready if the right position was offered.

What were the possible positions? One was Attorney General. History would have been different. They did want a woman for Attorney General. They nominated Zoë Baird.

Baker: Was it primarily that Hillary wanted a woman?

Nussbaum: No, not from my perspective. Maybe you can speak to other people in the administration and they'll give you a clearer perspective. It was not *Hillary wanted a woman*. Hillary and Bill Clinton are one mind on a lot of these things. They wanted women in high positions, and the Attorney General slot seemed like a good one for a woman to be appointed to.

Riley: Do you know how you found this out? Was it just in the air, or did somebody tell you?

Nussbaum: No. I was out of the personnel process. I wasn't involved in selecting anybody—man or woman—for Attorney General. They announced out of Little Rock that Zoë Baird was going to be the nominee designate. I had nothing to do with it. A lot of historians said I made that appointment too, but that's not true. I made the next appointments, Janet Reno and others. That's a whole different story. I'm talking about December of 1992 and I'm really leading to how I became Counsel. I didn't really know Zoë Baird, but it seemed like a good appointment. The press said the White House wanted women, and I wasn't involved in the appointments process then, so that was nice. I never expected to be appointed Attorney General.

Then I got a call from Susan Thomases. I was in Puerto Rico—I have a place in Puerto Rico. This was the end of December. The transition was just over, and Susan asked, "What would you be interested in if you could have anything you wanted? Would you rather be Deputy Attorney General—" which is a key position in any administration. It really runs the Justice Department. The Attorney General is much more a public position. "—the Deputy Attorney General, or

Counsel to the President? And I said, “If I had my druthers, I’d rather be Counsel to the President,” which is a different kind of position. To be in the White House, to be close to the Oval Office, to be involved, the way things have evolved, is a very important role. It is also very risky, as I’ve proven and as has been proven over and over again. But the notion of being able to do that was more appealing to me than even being Deputy Attorney General and running the Justice Department. So Susan asked me to go down and meet with the President-elect in Little Rock.

I flew from Puerto Rico to New York to change clothes—I had my shorts on. Then I flew to Little Rock on the same plane with a guy named John Podesta, who I’d never met. He was also going down to be interviewed for a job, Secretary to the President. He ultimately became Chief of Staff, obviously. So I went down and I met with the President-elect and the First Lady. I met with them separately, and then I met with them together. That’s when I told the story that I told you earlier. I was being considered for Counsel to the President. I said that’s what I wanted to be considered for. He was clearly talking to me and considering other people.

The other person who came down at the same time—I didn’t really know it then—was Jamie Gorelick, who became General Counsel in the Department of Defense and then Deputy Attorney General. She is now Vice Chairman of Fannie Mae. She is a very able person, and she was also being considered for Counsel to the President. Actually, Jamie and I are pretty similar in a lot of ways. She’s tough, she’s feisty, she’s smart. She’s different from me—she’s *really* smart. [laughter] She understood Washington better than I did. She was President of the Bar Association of Washington.

In the conversation I had with the President—and this is the great irony when I think back—I said that I saw my role as being to keep the President out of trouble. I said the last few Presidencies—I said this to Hillary first and Hillary didn’t want me to repeat it to him. Let me see if I can remember it precisely, I haven’t talked about this in a while. I said, “Ever since Hillary and I were down here in 1974, we’ve seen our Presidencies undermined—and destroyed, even—by scandal. Richard Nixon, impeached. Gerald Ford was here a very short time. Even he was tarred by the pardon of Richard Nixon, and it probably cost him the election. Jimmy Carter, the whole peanut Billy-Gate thing. Ronald Reagan, Iran-Contra. George Bush, the legacy of Iran-Contra. So each one of our Presidents has faced these scandals or mini-scandals or crises or Independent Counsels investigating them. Each of these were legal-type problems. They’re legal—Billygate was legal—and become a massive political and constitutional problem, and the job of the Counsel to the President, in this day and age. I had this vision. That’s why it’s so ironic. I had this vision, and I tried to act on it when I was in the White House, which came up ultimately against Clinton’s character.

It’s an interesting thing. See, he’s brilliant, he understood it, but he couldn’t live it the way I wanted him to live it when I got into the White House. I said, “The role of the Counsel—my vision of the Counsel—is to try to prevent this from happening to you. To try to prevent these legal-type problems from mushrooming into these political and constitutional scandals or problems.”

Young: This was your conversation with Hillary?

Nussbaum: No. And with him too. First, I had it with her, and then when he came in, she said, “Bernie, tell him what you just told me.” In fact, she walked out of the room. She was in and out, and we were in this kind of big family room downstairs in the Governor’s mansion in Little Rock. She said, “Tell him.” The reason I met with her alone was he wasn’t around. I came to meet with him, but he was coming back from visiting the President of Mexico. He had just flown back and he was delayed, so I ended up speaking to her. There was no intentional meeting with her.

I thought about it coming down—what I thought a Counsel should do, and what he might face. My job, the job of the Counsel, as I represented to Clinton, was to have the wisdom to prevent these legal issues from mushrooming into political and constitutional issues. Now, I had experience in Watergate, and I worked with other Special Counsels over the years. I’ve tried major criminal cases, and I was an active lawyer defending corporations and various executives. I was also in the takeover game, the merger game, the restructuring of American business, which went through the ’70s into the ’80s, during the Reagan years, in which major companies took over other major companies. We’d represented the largest companies—my firm represents the largest companies in the country. Today we represent AT&T, Wal-Mart, Philip Morris, and I’ve been involved in a lot of major battles. I represented a company just last year against Tyson. I got an injunction for a multi-billion, multi-billion dollar takeover. This was recently, but this is stuff I’ve been doing for 25 years in one form or another as my firm grew and became more successful.

So I was involved in fairly visible things with chief executive officers. I had had experience in those areas, in the civil area, in the criminal area, in the public area. Not politics, but public relations. I’d done well in tough situations, and I was fairly aggressive. You wouldn’t think so now, because I’m very laid back. So I had this kind of experience, which I thought would be useful. I really thought I was ready to do this. In a funny way, I became a laughing stock in the media later on, but we’ll talk about the consequences to Clinton of not listening later. But I was right, in my view—the experience was valuable. It was helpful because I did understand the consequences of certain actions, such as appointing an Independent Counsel, which we’ll get to. My job was to keep him out of trouble, and that appealed to him.

Now, he knew Hillary liked me, and he liked what he knew of me. He didn’t know me that well, and we were never really friends in that sense—Hillary and I were friends. We were never *friends*. But Hillary liked me, he trusted her judgment. I think she was supportive—I don’t know the conversations between the two of them. So I think he was relying on the recommendations of Hillary and Susan Thomases, but I also think he bought the vision that I just tried to articulate about what the key role of the Counsel should be—that we shouldn’t go through another Iran-Contra or Watergate or things like that.

When he called me up to ask me to be Counsel—he didn’t do it that day, I went back to my hotel. I think he did it either that night or the next day. I was still in Little Rock. He called me and said, “Bernie, I want you to be my lawyer.” It was an interesting way of saying it—“I want you to be my lawyer.” He didn’t say, “I want you to be Counsel to the President” or “Counsel to the White House” or “White House Counsel.” He just said, “I want you to be my lawyer.”

Baker: So did you see, when you were in that position, or did he articulate a distinction between a Counsel to the Presidency, lawyer to the Presidency, versus lawyer to the President? Because it sounds like in your writings you very much identify that Bill Clinton was your client, not the Presidency *per se*, although they were intertwined.

Nussbaum: That's not what I said. I say, Bill Clinton was my client in his official capacity.

Baker: As President.

Nussbaum: As President. The notion that you represent the Presidency or the White House or a building is foolish. You represent a person—an individual in his official capacity. That means that you can act on things that affect him in his official capacity. It doesn't mean you do everything. For example, you don't do his *will*—or as I say in a speech I give, fortunately for the President. [chuckles] There are certain purely personal things—you do not act on his behalf. For that, you get personal lawyers.

The other tricky thing happens if in fact he does things as President that conflict with the interest of the Presidency—if he turns out to be a real crook, for example. If you find that he's stealing money from the Treasury, now *that* affects him in his official capacity, and certainly if people found out about it. But you cannot go contrary to the institution of the Presidency in that sense. That's where you would have to separate out the individual from the institution, if he acts in criminal matters or if he commits treason. That affects him in his official capacity, so you can't say, "Whatever he does, I will represent him to the hilt." I might represent him as a private lawyer if he were committing treason or taking bribes or stealing money in effect, but as Counsel to the President, I couldn't do that.

On the other hand, when it comes to the things like these phony investigations or these phony charges—those things that affect him—you can't just withdraw from him there. There's nothing that he did, that I knew of at the time or to this day—I wasn't there during Lewinsky, we'll put that aside—that was inconsistent with his duties as President, and I continued to represent him with respect to all those things that did affect him in his official capacity. And that's how I viewed the job. Yes, I represented Bill Clinton as President. Not Bill Clinton as a person.

Young: When he said, "Bernie, I want you to be my lawyer," do you think that's what he also meant by it?

Nussbaum: Yes.

Young: As President.

Nussbaum: Yes. I don't think he thought about it a lot, but he understood. Remember, I told him to get a personal lawyer as certain things started arising. I was the one participating in the hiring of David Kendall. We understood that there were things that would be purely personal and private, and at some point it would be the better part of politics and public relations to get a private lawyer. But the point is, the Counsel's job is to represent the President in his official

capacity—to act on things that affect him in that official capacity—and all these investigations and things did affect him in his official capacity. As long as he didn't do anything inconsistent with the principles of being President, it was the job of the Counsel to try to protect him—to be his lawyer in the grand sense. And I think he thought that I saw the dangers for him, and that I would do a good job.

Young: Let me press you a bit more on that. Was that a unique view of the Counsel's job among the people he might have interviewed?

Nussbaum: No, I don't think so.

Young: So I'm asking, "Why Bernie?" if it's not a unique view.

Nussbaum: No, I think what was unique was not so much the view of the role as I think he appreciated my sense of the dangers that he faced because of what happened to these other Presidents. I've had to think it out now because of the controversy that arose when I became Counsel, and the battles that I got into as Counsel to the President, and I've now articulated that role in a way I wouldn't have done at the time. I didn't think all this through in the same way that I've thought it through since. This philosophy was basically my philosophy.

I discussed with him the importance of not letting these legal problems mushroom into political and constitutional scandals—to be aware of that, and to be aware of the various institutions that could cause this to happen. I was very aware of that. I had worked with the Watergate Special Prosecutor. I had worked with other Special Prosecutors since then in New York State.

This is the area I knew. This is the life I lived. I knew about Independent Counsels. I knew the dangers of Independent Counsels. I spoke against them, even with Watergate. Remember, I worked for the House Judiciary Committee, and the Watergate Independent Counsel was enormously important in gathering the evidence—the tapes that I talked about earlier—but I knew the dangers of that institution. I knew the dangers of that institution—how sparingly it should be used, if ever. I was aware of it. I was very sensitive to it. I knew this.

None of the other people in the White House knew this, or understood it, including the President. Hillary did, but none of the other people did, and this is what ultimately hurt so much. The [David] Gergens, the Stephanopouloses, the people who came in, they were clueless. See, they thought I was clueless. They thought I was politically naïve—"You don't understand, you have to worry about the media tomorrow"—but they were *clueless*.

They were smart guys about a lot of things, including politics, but they were *clueless* about the dangers of putting into place institutions that, yes, may calm down the press for the next 24, 48 hours, but would act as a knife in your heart for the next eight years. They were clueless about that, and they talked the President into it, and I failed. The crucial discussions we had in January of 1994 were when this administration turned—also when I ended up having to leave shortly thereafter—but it really turned because they were clueless about this thing.

This was my world, I knew this better than any of them. I'd lived this. I'd done this more than any of them. I'm not a shrinking violet and I was close to Hillary, and I was not afraid of the President. As I think back, I couldn't overcome both the weight of the White House staff, who were basically clueless on this point, and the character of the President, who felt ultimately, *If I just do a little more to win over the hundredth person in the room, he will love me too*. I couldn't overcome those things.

Even though Hillary's instinct was my way, even she folded. I will tell the story. We've discussed it since, she doesn't remember it totally the same, but she does. Actually she does.

Young: We'll go back to the other part of the transition, when you were going to be Counsel, when that was settled between you and the President-elect: how did the transition go between Boyden Gray and his people and you and yours? Is there anything that ought to be noted from this time?

Nussbaum: This is interesting—I feel like a little jazz player—I start riffing off, although I have no musical talent at all.

Young: Your audience is enjoying it.

Nussbaum: This is interesting. Boyden Gray and his deputy—John Schmitz I think his name was—were very nice and very polite. By the time we went into the White House, I had met with Boyden a couple of times and I knew him. Wilmer, Cutler & Pickering was the firm he had come from. And we actually met with some of the senior people at the Justice Department during the transition. They were nice, initially. Also there was a dinner given by Abe Sofaer with all former Counsels to the President, mostly Republicans. You have to remember we're talking about the transition—this is going to take three days if I do all of it. [laughter] The Democrats hadn't been in office, for all practical purposes, since 1968. I'll get to the Carter years in a minute.

From 1968 to 1992 is a space of 24 years. Four of those years were the Carter years, 1976 to '80. Carter years. It was like a small interregnum. There was no basic buildup of staff or people who worked in the executive staff, or people who worked in the White House. When we came in, in '92, there was no pool of talent there. I'll tell stories, because it's all relevant to this.

It was very tough, obviously, to put together teams who had experience in this area. I remember at the Oslo signing at the White House lawn in September of 1993 when [Yitzhak] Rabin and [Yasser] Arafat—so sad to think back now, everybody was so hopeful when we were there. I was sitting near Jim Baker on the White House lawn watching the signing, and I was being attacked in the press at this particular point, although it was during a little of a lull in September. So I said to Baker—this was sort of a joke, I didn't really know him that well—I said, “Jim, why didn't you warn me about working in the White House? Why didn't you warn me about what it's like?” or something like that. “Bernie,” he said softly, which I tell people, “There's no experience that prepares you for working in the White House *other* than working in the White House.”

Here I thought all these CEOs, the heads of these major American companies, the Jack Welches or the Mike Armstrongs of AT&T, or people like that, they're in the spotlight. You read stories

about them, and we deal with them—Sandy Weill, I mean, these are clients of ours. Yes, there's a story today, there may be a story next week, maybe there's a story next month, maybe there's a magazine cover. But in the White House, the spotlight shines upon you 24 hours a day, 7 days a week, 52 weeks a year. The whole world is looking at you continually, the whole media is looking at you all the time. There's no other position like it. No matter, you can be the head of Wal-Mart, you can be the head of any major American or global entity. You can be the Governor of a state or the head of a foreign country. There's *nothing* like the spotlight that shines on the White House, and no one can ever be prepared for that other than working in the White House. And that we didn't fully appreciate.

Baker: And even there it changed, because I think in one of his speeches Lloyd Cutler pointed out the tremendous differences in the White House Counsel's Office between the Carter—

Nussbaum: When he was there under Carter, yes. And then, of course, as these legal-slash-political-slash-scandal issues start arising, then the focus is, as the media culture starts doing the kind of things they do—

Baker: Increased polarization—

Nussbaum: It increases polarization and it makes that the spotlight. You've got to get your rhythm, you have to get used to that once you get to the White House. As I say, there's nothing that really prepares you to do it, and that's what make it very tough.

Baker: So were you able to rely on—

Nussbaum: Well, Boyden Gray's experience in the White House Counsel's Office was helpful. He assisted some of the transition. But I'm a little angry at Boyden Gray, although I've calmed down a little bit now as the years have passed. Boyden Gray was a very nice, polite man. But there used to be a tradition, the White House Counsels really don't criticize other White House Counsels. You know, unless somebody did something terrible—I mean, John Dean was a White House Counsel and he went to jail.

Actually, the best compliment ever written about me was written by Paul Gigot in the *Wall Street Journal*. He wrote a column when I was testifying before Congress, and the beginning of the column was, "If Richard Nixon had had Bernie Nussbaum as his Counsel, he would still be President." [*laughter*] "Whereas Dean cracked like bone china. Nussbaum got before this committee and didn't concede a damn thing." It was a backhanded compliment. [*laughter*] This was not a complimentary column in the *Wall Street Journal*, but anyway, this is a theme I want to point out. Boyden then started the so-called scandals—I want to deal with this, this is a very important issue. It started coming up, Boyden started being very critical: "We never did it this way." It's all baloney. We were doing things exactly the same way in terms of certain procedures.

But what it reflected was not only partisanship, the bitterness that you were talking about—although that's key—but it reflected something fundamental here. And this also plays in with Clinton's personality. The Clinton Presidency, from the very beginning, this was very dangerous

that it was never accepted as legitimate by the Republicans. It was a strange thing. They couldn't believe it, this '60s hillbilly—a combination of both hillbilly and Rhodes Scholar—won this election. These pot-smoking, sex-driven creatures are now in the White House and he didn't win a majority of the vote. Look at Bush today, certainly a legitimate President, but he didn't win the majority of the vote. Some people were saying, "We're not going to accept Clinton as a legitimate President." This was the underlying feeling—not merely of the crazy right wing, not merely all the way to the right—it was widespread at different levels.

The attacks that started coming are a manifestation of this. Even Boyden Gray—when the FBI files thing and other things even before that arose, he'd say, "Oh, this White House Counsel's Office is acting very improperly," and things like that. He started saying things like that. It was wrong. It was part of this attack on the Clinton legitimacy. This was an underlying thinking that Clinton didn't really appreciate quick enough—and maybe even I didn't appreciate quick enough, but I understood the dangers of putting certain institutions in place. It became a very bitter and partisan place. At a fundamental level, if you don't accept somebody's legitimacy then almost anything goes.

You must understand, let me just say this before I veer off. This whole notion of Clinton scandals: this is *phony*. Lewinsky aside—Lewinsky happens at the end—there are no Clinton scandals. Twenty-nine people in the Reagan administration—high officials—were indicted for various malfeasance. Name me one, in eight years of the Clinton administration—Mike Espy for taking two tickets to a football game, and he was then acquitted in effect. One. Who, who, *who* in the Clinton administration? Webb Hubbell for stealing from some of his partners before he came to Washington. He should never have come to Washington. He's a wonderful human being, but it's a terrible thing. He shouldn't have come to Washington. You have to be personally honest and have those things going for you. But who in the administration? Did the White House Counsel go to jail? Did the Attorney General go to jail, as John Mitchell did? Who in this administration?

The Travel Office, the Whitewater affair. All these so called "scandals." There were no scandals. They're *phantom* scandals. There was never any real scandal. It was all political nonsense to try to undermine this President, played on by our media culture that doesn't appreciate that 30 or more high officials in the Reagan administration went to jail. I'm not saying Reagan was a thief or a crook or anything like that, or that it was a terribly corrupt administration, but the fact is that the Clinton administration turns out to be probably the most honest administration of any administration in, I don't know, the last hundred years—compared to Truman, compared to Roosevelt, compared to Kennedy, compared to anybody, and yet it has the image of the *scandal-ridden* Clinton administration.

Whitewater. He stupidly invested some money and lost it—\$30, \$40 thousand. Fifty to seventy million dollars is spent trying to find something in Whitewater, because Clinton appointed the Independent Counsel. He set into motion this institution, which was a knife in his heart. Then when he does commit an act of personal indiscretion or stupidity with Lewinsky, then it's there to leap on it and to use it. Finally they found something, which results in another Presidential impeachment.

I talked to Hillary about a year ago. We were talking about the impeachment. She said, “Bernie, you mean, the only *constitutional* impeachment.” She looks at Watergate as a constitutional impeachment and this impeachment—the Lewinsky impeachment—as an *unconstitutional* impeachment. Look at this: this is an administration that ends up with impeachment because of a personal indiscretion, because an institution was put into place that made so much of it. But there were no scandals. Lewinsky’s a *personal* scandal, but not corruption, and yet Clinton would roll over time after time.

We should really talk about the first year and how it had this kind of impact. Want me to talk about it?

Riley: Sure. But Steve had a—

Nussbaum: Go on.

Knott: You had this conversation with him when you were brought out there under consideration to be the White House Counsel. You talked to him about these scandals that had hit prior Presidencies. Did you focus primarily on the Independent Counsel’s Office when you talked to him about the dangers that he faced or were there other elements to your—

Nussbaum: We talked about the Independent Counsel in a sense, because one of the reasons Clinton won the election, in 1992—one of the things that was helpful to him—was the Iran-Contra Independent Counsel, Larry Walsh, who came out with something four days before the election, a new indictment or something, which alluded to Bush in some fashion. There was a momentum building for Bush and that was stopped. Clinton won by four or five points in ’92 over Bush. Clinton got like 43 percent, Bush got 37, 38 percent, and Perot got about 19 percent, 18 percent, something like that.

So, we talked about the scandals, and we talked about the Independent Counsel in a general sense: “This is the kind of thing we have to avoid in this administration.”

Young: He had come out for continuing in the campaign though, right?

Nussbaum: Absolutely. It was the Democratic position. The Democrats had been out of office so long, they would favor an Independent Counsel because the Independent Counsel is a weapon against the Executive Branch. But I knew, when we were in the Executive Branch, we didn’t want a weapon against the Executive Branch.

Knott: Has your position changed over time on that?

Nussbaum: No, my position has been consistent over time. When I testified before Congress on this thing, I said, “I’ve always agreed with you about this, you were always right on this,” on the Independent Counsel. My position never changed on the Independent Counsel. I’ll tell you a story about this thing. What time are we breaking?

Lee: We’ve got time.

Nussbaum: You want me to do this this way or do you want to do it question and answer? I'll do it any way you want, but tell my wife I didn't talk too much. Tell her you barely could get a word out of me. [*laughter*] Let me give you a little bit—there's a lot to talk about, actually.

When we came in, the first day—January 21st, 1993—I'm having lunch in the White House mess, and I get a call saying, "The President has to see you immediately." All of a sudden I'm a real big shot. I'm in the White House, and on the first day the President has to see me immediately. "Come to the Oval Office." I go to the Oval Office and there's Stephanopoulos in the office. Other people too, I don't remember who, and Clinton says to me, "Bernie, we have a big problem on Capitol Hill. Zoë Baird is testifying, and it's this nanny thing—they didn't pay their Social Security tax. The Democratic Senators are saying we should pull her name. You've got to help me. You have to get involved with us."

As I indicated, I had nothing to do with Zoë Baird. I didn't know she was going to be appointed, but she was appointed. I had nothing to do with the vetting process. I'm now White House Counsel, it's the first day, and we are vetting candidates for other offices. I had nothing to do with Zoë, I didn't know Zoë, I never met Zoë, although I heard all these nice things about her.

So I say, "Wait, Zoë sounds pretty good. I understand that she has this problem, and I think it's too bad that she has it, but didn't we *know* about it?" I mean, I wasn't involved in the vetting. They said, "Oh yes, we found out some stuff about it."

Well, if we knew about it, I think we need to stand by her. I had no vested interest in this appointment at this point. I wanted a good Attorney General, but I hadn't been involved. So here, I'm in the Oval Office, an hour into this Presidency, the first full day, and they're telling me there's a discussion about pulling our nominee for Attorney General, Zoë Baird. Even though I was the head of the Justice Department transition I didn't know her. There was some public perception that somehow I was involved in her appointment, but I was not involved in her appointment. So I started tentatively: "Mr. President," I say, "I think it may be a mistake. I think we should just try to ride it out until the Democratic Senators back us. We should be sticking with her. Yes, she'll pay her taxes and we'll put new rules into effect," which I eventually did. "No, no," Stephanopoulos said, "That's crazy." I don't know, maybe I'm overstating it a little bit.

Others were disagreeing all over the office. I'm the only one who wanted to stand up for the appointment. This started happening a lot. I'm the only one. The President is listening. Everybody else is taking another position. They were campaign people and they were worried about what the media is going to say tonight and tomorrow morning. But I'm trying to think more long range. This may sound like bragging—I hope this thing stays under wraps for a long time. I'm the only one there with knowledge of history—speaking of the Oral History Project. Other people don't know the history. So I say, "Mr. President, one of the things I'm worried about if you do anything with Zoë Baird is what Jimmy Carter did with Ted Sorenson."

First of all, half the people there don't know what Jimmy Carter did with Ted Sorenson. Stephanopoulos knew. I said, "Carter appointed him to be the Director of the CIA, and then,

because of an outcry, he withdrew the nomination, and right away you got the impression that he could be rolled. So I'm not saying that we would appoint Zoë if we had to appoint her all over again—understanding the full magnitude of this problem or how it's playing out. But now that we have, if you pull back, you start showing signs of weakness, that you can be rolled. I don't like that feeling on day one of this administration."

"Oh Bernie, you don't understand," this from Stephanopoulos. "You don't understand." This conversation lasted a year in different forms. "You don't understand. That's a whole different thing, Sorenson and Zoë Baird. Sorenson was a substantive thing, it was about policies and CIA, and things like that, but this has to do with ethics and she's the Attorney General designate." And I said, "Yes, that's true. There's a distinction, to some extent." But I tell you, in the macro sense, George Bush stood with John Tower—I argued in the Oval Office. John Tower, the Senator from Texas, was nominated for Secretary of Defense. He was accused of being a womanizer, a drunkard. It has an impact on a very significant position. George Bush nominated him, and he stood with him. He lost, 52 to 48 in the Senate. He never became Secretary of Defense. All the Democrats voted against him, but George Bush stood with him. And then, when he lost, he appointed Dick Cheney, who became Secretary of Defense.

I said, "Let's stay with Zoë Baird. We lose, we lose. We'll appoint somebody else, but at least we haven't withdrawn." I'm saying this a little more affirmatively now than I did in the Oval Office at that time, but that was my position. It was the first hour of this administration. "Let me think about it," the President says. An hour later he says, "I can't do it. We're going to have to get rid of her."

So I was the one who then goes down and talks to Lloyd Cutler and Warren Christopher, the Secretary of State, who were her sponsors. I go to tell Zoë Baird and her husband that she has to withdraw. This is what I do, so I do it. I'm the lawyer for the President. I'm the Counsel to the President. I didn't like this and I felt uneasy about it, but I did it. So I went down to the hotel. It was a little hard. Her husband Paul is a professor at Yale Law School who was a friend of my brothers. I didn't really know them in any way, but I did it. And that was the beginning. That was the beginning of a series of events that took place the first year that were going to culminate with the appointment of an Independent Counsel a year later. This is January of 1993, and this story doesn't end, in a sense, until January 1994.

One thing after another starts happening. I'm out of sync with these people in the White House, like I'm a half turn away—including, to some extent, the President. He and I got along very well. We always got along very well, when he wasn't mad. The President was famous for screaming. One time he was mad at the Justice Department for a position they took on some child pornography issue where if you don't see the child actually naked, but if you show suggestive clothing, it's different. The Justice Department took a position, declaring that some pornography statute was unconstitutional, or something like that. It was in the paper, "Clinton, Justice Department defends—"

Clinton is furious. So I'm standing in the Oval Office with Stephanopoulos, and Clinton starts *screaming* at Stephanopoulos who had nothing to do with it. I had nothing to do with it either; it was the Justice Department. "George, this is the stupidest thing the Justice Department has ever

done! That's how we get killed in these things! Democrats always get killed in these socialist, economic justice things. We do these dumb things, George!" And he's screaming, like it's George's fault. But if anything, I was sort of in charge of Justice—I mean, I found Janet Reno, we'll talk about that separately. So Clinton is furious. I said to George, "George, he's not screaming at you, he's screaming at me. I don't know why he's facing you." But he really was screaming at me. He didn't want to scream at me directly, so he was screaming at poor George. [laughter]

George and I disagreed on so many things, but the President was blaming George for the Justice Department. If he was going to blame anybody, he should blame *me* for the Justice Department. So I said, "George, don't worry, don't get aggravated, he's really screaming at me." [laughter] So it calmed everything down.

So this starts happening in the White House with Zoë Baird. Zoë Baird is very important when I look back now. And then of course Lani Guinier comes up. All of a sudden, this outcry—she's a friend of the President's, she was at their wedding. But he asked me to appoint her. I was vetting all the appointments at this time, making decisions on appointments, or advising. I'm not making decisions—the President makes decisions—but advising. Once the Zoë Baird thing collapsed, we had to keep the Justice Department going. There was an acting Attorney General. We found Janet Reno, then we had to appoint senior people there.

Janet has just come in. I'm now, if not the *de facto* Attorney General, at least working with the Justice Department to try to make sure they're staffed. Since I was head of the Justice Department transition, it was somewhat easier, but it was very important. So the President wants Lani Guinier, a perfectly reasonable appointment, woman of color, scholar, things like that. We read her stuff. She was an academic, there was nothing wrong, it was fine.

Of course, the Lani Guinier thing blows up. She's attacked as the "Quota Queen," and all that kind of stuff. All right, my thinking was, *we'll see it through. We'll have hearings, we have a Democratic Senate and a Democratic House in 1994.* But all of a sudden it became a *cause célèbre* in the White House. I said, "What's going on? I mean, we nominated her." They said, "Oh, have you read these articles?" "Yes, we read the articles, I gave somebody else the articles to read." They said that there were problems with some things in the articles. I said, "We set policy. She'll follow whatever policy we set. She's not going to make policy." They said, "Oh, it's terrible."

All of a sudden we have a meeting in the Oval Office. The President says, "Well, we've got to make a decision on Lani Guinier. I'm getting all this heat. Healthcare is coming up. There are going to be healthcare issues—it will interfere with healthcare. What do you people think, what should we do?"

Everybody says we have to pull the nomination. "Anybody against that?" I couldn't believe them. The others in the White House were accusing me of causing the screw up. "We never should have nominated her." Unlike Zoë Baird, I did consent. I'd interviewed her. I consented to nominate her. We had looked at some of her articles, maybe even all of her articles. I had Walter Dellinger, who was working with me, do it. Then the President makes a statement: "If I knew all

about these articles”—these *Law Review* articles—“if I knew about all these *Law Review* articles, I didn’t have a full appreciation—” I’m not going to tell it all. But we withdrew.

The Travel Office and Vince Foster’s death come up. This actually shows our political naïveté in a large sense, which was a weakness of ours. The Travel Office was a terribly run office in the White House. They found the head of the Travel Office with money in his own bank account. He was investigated by the Justice Department; the White House had nothing to do with it.

Everybody accuses the White House of getting the Justice Department to prosecute these guys. We sent people in. We sent Peat Marwick in. It was a terribly run office, money was unaccounted for. I wasn’t involved in this at all. I wasn’t involved in the Travel Office. Bill Kennedy on my staff, and Vince Foster over him. I was working on Attorney General nominations and Supreme Court nominations. So we find this office and we fire these people. By we, I mean the White House—and we bring in other people. But there’s an outcry, a huge outcry over firing these people in the Travel Office.

It so happened it was justified to fire them. They ran an incompetent office at best and a corrupt office at worst. But who are they stealing from? They’re not stealing from the government, they’re stealing from the media companies in Washington. And who are their friends? Who do they take care of when they fly? Who do they give the rugs and the bottles of liquor and the wine? The media, the reporters and the television figures. The Reagan administration, I discovered, also did a review of the Travel Office. They found bad things, and decided not to do anything. I never fully appreciated how smart they were. *[laughter]*

Okay. We in the Clinton administration—although not me personally in this thing—in our naïveté, decide we’re going to reform the Travel Office. So the White House brings in some people from Arkansas, so it makes it look like we’re trying to get some boondoggle for Harry Thomasson. Harry Thomasson is one of the richest TV producers in the country. He cares about making some more money from renting planes? It’s ridiculous. But we’re doing the right thing, or we think we’re doing the right thing, we’re bringing in Peat Marwick.

I heard about it and said, “We should go slow.” I said to Kennedy and Foster, “If you’re going to fire people, I want to make sure there’s a basis. Bring in the accountants, have them do a report, and let’s see.” “Oh yes,” they say. They’re going to do that. They bring in the accountants, they write this report and we fire them. Also in the accounts, there’s an indication of possible corruption, so we report it to the FBI.

So it’s an enormous blow up—how we fired these people “unfairly.” How it was designed as a corrupt thing for people in Arkansas. How we tarred these people. They say it’s terrible, we’re a bunch of hillbillies to do this, and we get attacked like this. Okay, that’s life in Washington. They’re attacking. How do we respond? I never really got angry at the attacks. The attack on Zoë Baird or the attack on Lani Guinier. I’m not saying people shouldn’t attack politically. People can twist anything, and I understand that. This is a political battle, and we’re trying to achieve a political—what I’m talking about is how we reacted to those attacks. What did we do with the Travel Office affair?

We had a number of meetings in the White House. And they said, “We’re going to investigate how we handled the Travel Office.” I said, “We’re going to investigate ourselves? How we handled the Travel Office—we know what we did.” I got involved there. Now, when the proverbial — hit the fan, I then started stepping in. It was down at the lower level. I said, “I’ve had enough trouble. I’ve represented major corporations. You start internal investigations, you don’t know what you’re getting into. Yes, if there’s a basis to investigate, obviously, you can’t turn your eyes from wrongdoing. But why are we investigating ourselves? Why are we going to do a report? We know what we did, we believe we acted properly. We still believe these Travel Office people are crooks, maybe, certainly incompetents.”

I said, “Maybe we shouldn’t have been as precipitous in throwing them out so fast. If we were really wise” —I didn’t understand at the time— “we would have done nothing and let them steal from the press. Let them be friendly with the press, what do we care? But *certainly* we shouldn’t investigate ourselves.” This is June, May, I don’t remember when.

“Well, Bernie”—this is the other White House staff talking, all senior people, Stephanopoulos, [Thomas “Mack”] McLarty, all these people—“Well, Bernie, you don’t understand the media. We’re being criticized, we have to.” I said, “We’re going to investigate ourselves? We’re going to write a report spinning it in a certain way? To criticize people who didn’t do anything wrong?” “Bernie, you have a conflict of interest.” “What do you mean I have a conflict of interest?” “Your staff was involved in this—Bill Kennedy, Vince Foster.” I said, “Yes, they were involved, because they were brought in, but so what—nobody did anything wrong that I can see. I know what happened. It’s a small White House.”

The White House is small. The West Wing of the White House is much smaller than the Boar’s Head Inn—this room would be bigger than any room in the White House. I said, “I know what happened. I talked to Kennedy, I talked to Foster, I talked to other people, I know exactly what happened here. We went in, we found these people did wrong, we fired them. Yes, it was precipitous, and we did it a little too fast. I’m sorry it happened. But we should just say, ‘we did what we did, people are investigating’ and that’s it.” But they said, “No, McLarty and [John] Podesta are going to appoint a committee to investigate, and they’ll write a report.”

Sure enough, the staff secretary and the Office of Management and Budget—[Leon] Panetta’s job at the time—they write a report. First they don’t want to show me a copy of the report, because I have a conflict of interest, but then I see a copy of the report. Sure enough, there are criticisms. And indeed the report recommends that four people be censured—including Bill Kennedy, who is on my staff.

I said, “We are writing this report criticizing ourselves when people who did nothing wrong, to this day, acted in good faith in the White House. Now we’re acknowledging that we did something wrong? That these people acted improperly in notifying the FBI when they thought a crime had been committed? And we’re going to say that’s wrong? We’re going to buy the good will of the Republicans or the media by confessing that we’re wrong when we’re not even wrong?” This is the argument I was making. “Oh, Bernie,” they said, “you’re really too emotional about this. You have a conflict of interest, because your own people are involved.” I said, “You’re going to censure these people?” “Yes.”

So I walk into McLarty's office, and I say, "You're going to censure Bill Kennedy, who is on my staff, who is in White House Counsel? Fine, you censure Bill, but you can't just censure Bill, because he reported to Vince Foster. You're going to censure Vince, too. I want you to censure Foster. Now, of course, you can't just censure Foster. If you're going to do this, you've got to censure me. These people all work for me. I'm in charge of this. So, I want you to censure me. You think it's going to do so much good, then I want you to censure Foster and Nussbaum. I want a commitment from you that if you censure any of these people, I'm censured too." He said, "All right, maybe that's the best way to do it." That's okay, I wanted it. I really thought they were going to censure me.

So I walked back up to the office in the second story, and I see Foster, who became a great friend and was a wonderful human being. I said, "Vince, I've got good news and bad news. The bad news is everybody is going to be censured. The good news is it's going to include you and me." He looked at me. I said, "Yes. You can understand. If they're going to censure Bill, they've got to censure us. We can't let Bill hang out like that; he didn't do anything wrong. Everything he did, he did under you, and everything you did, you told me about."

He said, "We'll see." Something like that. He was very friendly with the President and Hillary and Mack McLarty. They all came from Arkansas together. Two hours later, he walked into my office and said, "They're not censuring you, and they're not censuring me, because you are too important, and even I am too important to be censured. So they're just going to censure Bill Kennedy." And I went bananas. I got so mad, I called McLarty, "You broke your word to me, you promised." "I can't do it," he said. "The President won't let me do it," that kind of thing.

So we ended up having done nothing wrong in the Travel Office thing. We'd gotten rid of Zoë Baird. We'd gotten rid of Lani Guinier. We were then censuring ourselves in the White House over something that wasn't wrong. Now, what's the dominant impression that's being given off with this thing? Weakness. This guy can be *gotten* to. This administration can be rolled. All you have to do is keep up the pressure. Then, of course, the final thing. Whitewater starts emerging in the Fall, and Foster then kills himself. His criticizing people in the famous note, that's a whole story. He started declining—in retrospect everything is clear. Of course at the time, nothing like that is clear.

He was a wonderful, able guy who basically stopped functioning for the four or six weeks prior to committing suicide. I was getting worried about him. The *Wall Street Journal* was writing pieces asking, "Who is Vincent Foster?" I had staff meetings every morning with my people, and I would start criticizing. I'd say, "Vince, this is terrible, 'Who is Vincent Foster?' How come the Deputy White House Counsel is getting so much more publicity than the White House Counsel?" I was trying to make fun of the stories.

He wasn't laughing. He was very upset by this stuff. I kept trying to calm him. I said, "This will all pass. Maybe you should go home—for vacation or something like that." I really liked him. I was close to his family at this point. But I couldn't count on him anymore. I had to fire [William] Sessions, the FBI Director—I had to do a lot of stuff during this time. All of a sudden, where I used to count on him all the time—he was enormously valuable—I couldn't count on him.

You see, I wasn't worried about my job. Even though I just met him in December, he was so close to the President and the First Lady. I thought that was a great advantage—to have somebody else so close. I was very self confident about my own position, my own relationships. But he started failing on me, and then, of course, he committed suicide. Enormously sad, tremendous blow. And it probably also affected the history of this administration, because I think if he had stayed around and been supportive of the views that I took later on, it might have made a difference with the President.

But the final thing that I'll talk about for the moment is the end of 1993—1993 was one exhibition of weakness after another. The final thing is when this Whitewater thing blows up. This discussion is in *Shadow*, [Bob] Woodward's book, and it's basically accurate, because I talked to him after talking to the White House. This is sad. All of a sudden, the media is crying for an Independent Counsel and I go bananas. The other stuff is all minor by comparison to this. We have this meeting in the Oval Office. I'm sort of trying to bring things to a head. The President's not there; he's in the Ukraine. He's on the speaker phone, and Gergen and McLarty are with him. I'm there, Bruce Lindsey's there. Stephanopoulos is there, Hillary is there, maybe Kendall was there too. We're going to have a debate, this is the final debate. There are a lot of discussions internally with the staff. And I'm furious. I'm telling people in these discussions that the Independent Counsel is an evil institution.

At one point I said, "You could appoint *me* Independent Counsel and it would be bad, because all I would think about if I became Independent Counsel is my own career and what it would be like." In fact, someone was taking notes of this at a meeting—Mark Gearan, with the DOS, was taking notes that came out at congressional hearings. I saw him at a party recently. I never took notes, just like I said last night. I had no notes, no memos, because I knew the danger of this stuff. He's taking notes. And I said appoint *me* Independent Counsel and it would be bad.

The reason it would be bad is because once I got control of that institution, if I was the good Bernie Nussbaum, I would spend years trying to turn over every rock to be sure there was nothing under any rock, because I don't want to be embarrassed when I go back. If I was the *bad* Bernie Nussbaum, if I turned bad, I'd see this as a way to bring down a President. Then I would twist ambiguous facts and things like that to try to make a case at all costs against the President to help me, myself, and my party. That would be the bad Bernie Nussbaum. The institution itself has a dynamic that causes that. Look at what Larry Walsh did to Bush and to Reagan. Look what happened under Nixon, even though it was justified. This is a dangerous thing, and we didn't do anything wrong.

Now, people said if we didn't do anything wrong, then it will be over in six months. No, it's not going to be over in six months. "This will last," I said in this meeting in the Oval Office. "This will last as long as you're President and beyond. They'll be investigating things years from now that we haven't even dreamed about today." When I said that, Monica Lewinsky was a junior in college. "They will chase your family. They'll chase you. They're not going to find anything on Whitewater. They'll chase your family. They'll chase your friends. Bruce Lindsey will be under investigation in one year," I said. We walked out of the office and Bruce said, "What did you say that for?" [*laughter*]

I was just trying to indicate that his close friends would be chased by the Independent Counsel—within one year, Bruce Lindsey was under investigation, close to being indicted over nothing. I said, “They’ll chase your family, your friends, and it will last as long as you’re President and beyond. Don’t do this. This is destructive. You did nothing wrong.”

Let me switch back to the Fall and tell you about something. I got a call from the office of the majority leader, George Mitchell. I can’t quite remember who called, maybe it was Mitchell himself, saying, “You know, this Independent Counsel bill is going through, it’s a Democratic bill. You think it’s a good idea for us to pass this?” I said, “No, I don’t think it’s a good idea to pass this; I think we should put it on the back burner, but I better talk to the President, so don’t do anything until I get back to you. I really don’t like this institution. I think it’s dangerous, and I think it’s wrong. It’s not necessary. Congress has impeachment power.” That kind of thing. “So get back to me.”

I walk into the Oval Office. I don’t remember if Stephanopoulos was there or not. I remember Stephanopoulos at many meetings; he was always taking the opposite position on this stuff. Maybe the President was there alone with me on this thing. I said, “I just got a call from the majority leader’s office about this Independent Counsel bill, and I sense a willingness to put it on the back burner. I *strongly* urge that we do that.” And he said to me, “Oh no, I don’t think we can do that.” I said “Why not.” He said, “I promised during the campaign that we would support the legislation.” I said, “We made a lot of promises during the campaign. We don’t need this bill. I really don’t think—” “Bernie, no,” the President said. “I promised it.” And I have a feeling George *was* there, saying “We can’t do that—it’ll get into the newspapers.” I said “Fine, fine. So it gets into the newspapers. Let it go slower. It’s much better if this thing doesn’t pass.”

He said, “No, just let it go through.” I said, “It’s a mistake.” “Let it go through.” So I went back to the majority leader’s office and told them, “Just let it go ahead in the normal course.” This is Carl Levin of Michigan’s bill. And the bill passes. But the bill is going to go into effect in June of 1994. The bill passes sometime late in 1993. We’re in the Oval Office in January, there’s no Independent Counsel legislation in effect, and somebody then says, “We should have an Independent Counsel appointed now by Janet Reno. She’ll appoint somebody fair and that person then would be sanctified or reappointed by the court.”

And then I, in this moment of great prescience, say, “No, that’s not going to happen. Whoever she appoints, at our request—” Well, let me back up to this: first they say Janet will have an appointment anyway, because the statute will be triggered. I said, “No, Janet will not appoint anybody unless the statute really is triggered, and there’s no triggering event here. There’s no proof of any wrongdoing in Whitewater to trigger the statute. So there’d be nothing triggered.” They disagree with me on that. They say, “Janet will bow to media pressure to trigger the statute.” In fact, later on she appoints Independent Counsels to certain cases but doesn’t appoint in other cases such as campaign finance reform. It’s very important that she doesn’t. I didn’t think the statute would be triggered unless there was a basis, and I had this ability to communicate and make a point of view known. She would have to make her own decision.

But they said, “In any event, if she appoints somebody, that person will be reappointed or sanctified by the Special Division of the Court of Appeals.” I was very prescient at one point. I

said, “No, that’s not going to happen. These are conservative judges. They’ll dismiss anybody Reno appoints and put in their own person.” Everybody starts screaming at me in the Oval Office at this point. Stephanopoulos, all the others. “This shows, Mr. President, how hysterical Bernie is, to claim that anybody Reno appoints won’t be reappointed by the Special Division of the Appellate Division.”

They started screaming so much that even I started backtracking at this point. I said, “Well, all right, whoever she appoints has no better than 50-50 chance of being reappointed.” I started backtracking. “But the point is, we should not create this institution. We should not appoint anybody.”

The President started screaming at me over the phone. This time he did scream over the phone. He said, “You’re telling me I shouldn’t do this. You’re telling me how terrible it is to do. The press is on me. I’m in the Ukraine. I can’t have a press conference about foreign policy without somebody asking me about Whitewater. What do you suggest? This is terrible, what’s happening.” And I then came up with an idea. They really started screaming at this one.

“Mr. President,” I said—remember nobody is supporting me on this thing. Hillary is sitting there. She’s not opposing me, but she’s not supporting me. I said, “Mr. President, if you think the pressures are so great—I don’t think so but you’re the President—the pressures are so great with this Whitewater stuff and the questions, and you can’t get answers, and you feel something has to be done, I suggest the following: first we turn over every document we have. I change my mind with respect to not turning stuff over. I don’t care. We’ll turn everything over—there’s nothing in them anyway. But that’s not going to end anything at this point, that’s only you. And then, the next thing you will do is you’re going to announce—” This was genius. If he had done this—this was true genius. [*laughter*] See, I’m praising myself in this room—it’s the truth.

But I knew history, and this is why I learned history. I said, “You will announce that you’re going to demand a congressional hearing—before the United States Judiciary Committee, the Democratic Senate—with no Independent Counsel, no special staff, no impeachment staff, even.” Remember, when we came down, there was no special staff, just the normal Democratic staff. “We want a hearing within 30 days. We’ll turn over all our documents to them, and you and Hillary together will go down and testify, jointly, before the Senate Judiciary Committee about Whitewater. They can ask you any question they want, and you and Hillary will answer everything they ask about Whitewater.” People were looking at me like I’d lost my mind.

“This is crazy,” I said. “Think of the publicity, think of the massive televised hearings. Think of that. It’s not unprecedented. When Gerald Ford—” nobody knew anything about history in the White House— “when Gerald Ford pardoned Nixon, he went down and testified before Congress. He spent a whole day as President before the House Judiciary Committee,” the committee that I worked for shortly before.

“How’d he do?” they asked. “They beat on him,” I said. Elizabeth Holtzman, who was an old friend of mine, beat on him. He answered them, saying, “I thought it was in the best interests of the country, so I did it.” Ultimately, it disappeared. It didn’t disappear as a political issue. But that was the end of it—there were no investigations or things like that.

So it's not unprecedented that a President comes down to Congress. [Abraham] *Lincoln* testified before Congress, something to do with his wife. He did. It happens. I said, "It's very rare, and I don't like it. But if you think *this* is such a crisis, we'll do this. Appoint an Independent Counsel, and it will last forever. We do this, you have 60 more days of grand publicity. Now, I don't think this necessarily has to be done, I don't really think it's that crazy. I think we just say no. But if you think so, we do this."

"Oh, Bernie, this is nuts. This is crazy." Hillary gets up and says, "Okay, okay, enough of this. Mr. President—" I think she called him Mr. President—Bill? "These are the five points George has made," and she lists them very strongly for an Independent Counsel, "and these are the five points Bernie has made." And she lists my points better than I did, in a less hysterical fashion. And she says, "Everybody should leave. Let us think about it." We went out. That's when Lindsey said, "How come you said I was going to be investigated?" So we walked out. But I knew—from the tone of the President, not from anything Hillary had said—that this was bad.

She walked into my office the next morning, which was sort of unusual. She walked in, put her arm around me—which is also unusual—and said, "Bernie, you were great. You were fabulous." Anytime somebody says that to me, I know I've lost the argument. [*laughter*] "But the President really feels he has to do this. He really feels he has to get together on this healthcare agenda. The press will not leave him alone, so write a letter to the Attorney General asking to appoint the Independent Counsel." I said, "Hillary this is a great tragedy. We've just created a great tragedy for this administration, but I'll write the letter." So I write the letter to the Attorney General, and she appointed a very good person.

Baker: And she also is on record opposing—

Nussbaum: She's on record opposing it. Hillary called me a couple of years ago, when she was running for the Senate—or maybe before she was running for the Senate—the 15th permutation of the investigation. We're talking about something, and then she starts talking about the investigation. "When is it going to end, Bernie?" This was 1996, '97, '98. I think it was before Lewinsky. I said "Hillary, I don't want to bring back bad memories, but you remember when we were in the Oval Office that day, one of the things I said—which I hope is wrong, but I believe was right—" and obviously I still believe was right— "It will last as long as he's President, and beyond."

It lasted until the last day he was President. And it lasted. They settled it the last day he was President, January 19th, with his disbarment. And all this nonsense about sexual indiscretion in the White House, other Presidents have had in peace. Of course they shouldn't do that kind of thing, but because you've created the Independent Counsel institution, it's smeared Clinton now throughout history.

And also, what makes me sad—this is a story that I've told before. It shows I took the right position, and I said the right things, and I had prescience to see the future. So on the one hand, I did the right thing. On the other hand, it's a story of failure—that somehow I couldn't stop it. I mean, I saw all the things—maybe it's worse to see it and not be able to stop it—and I couldn't

stop it. Now I've forgiven myself a little bit for not being able to stop it, because ultimately, it's the President, it's his character, and the "hundredth person" issue. "If I just do this, then the *Washington Post* and the *New York Times* and the *Wall Street Journal* and the congressional leadership will love me. I've appointed an Independent Counsel, I've even done *that*, so they'll love me."

But rather than that, they try to use it to kill him. And Clinton himself is recognizing it in interviews. It's going to be interesting to see what he says in his memoirs. He gave one to Joe Klein, which is in the *New Yorker*, the one that has the cowboy thing on the front cover. He talks about the things he regrets the most. This is an oral interview too, and he says an interesting thing, which I have here. "The thing I regret the most is the appointment of the Special Counsel," he says. "They were out to get me. It had nothing to do with turning over papers or more papers. They were out to get me." And he says in the interview—this sort of startled me when I read it—he says, "Two of my aides—Bernie Nussbaum and Bruce Lindsey—were screaming at me not to appoint the Special Counsel."

Now, Lindsey never screamed at the President in his life. There was only one person who screamed at the President, and that was me! I screamed! [*laughter*] But it's interesting that the President said that. Lindsey never screamed. Yes, in the last conversation, we were screaming—I was screaming at him not to do it. But he remembers Lindsey screaming at him. Lindsey was not screaming, Lindsey was talking. There was only one person screaming. So he remembers the screaming at him.

Then he says something to the effect—I don't have it in front of me right now—he says, "I appointed the Special Counsel because—" and it's interesting what he says in the interview, we'll see what he says in his book—"I did it because I was exhausted, my mother had died." His mother had just died, I'd forgotten that she died in December. "I did it, I was exhausted, my mother had died, and all these other people were after me to do it." I think he meant Stephanopoulos and Gergen in this article. "I did it, but it was the single biggest mistake."

Riley: Gergen did this because he felt like the President, having made a campaign commitment, needed to do it?

Nussbaum: Gergen no. Stephanopoulos and Gergen supported it, and a lot of the White House people supported it, because they were short-term thinkers. They have what I call the "campaign mentality." When you run a campaign, a presidential campaign included, there's a *campaign*. We have a congressional campaign now. It's going to take place on November 4th this year. It is now September whatever, 24th, and we've got short-term mentality. The news stories tomorrow are important. There's a certain date, November 4th. The presidential campaign is the same thing. So the emphasis is on trying to spin the media, dealing with the next media cycle—the next news cycle is very important. And it's important because it has impacts on people who are going to vote on November 4th.

But when you're in the White House, when you're elected, when you have four years at least, then you can accomplish things. You have to change that mentality, but these people couldn't change their mentality. They were always talking about what the next news cycle was going to

say. I never cared about the next news cycle. Maybe I should have cared more, but you've got to start thinking about the long term.

I said to the President once—this he won't like me to say. I was alone with him once in the Oval Office, I don't remember the issue. It was '93. I wanted him to do something, and he wouldn't do it. And I said, "I think we should do it." He said, "No, I can't do it because this will happen and that'll happen, and something else will happen, and they'll criticize us here, and we'll get killed here."

It was a friendly conversation. And I said to him—this was a little arrogant, but I said this because we were alone. I would never have said this if somebody else was there. I mean, I liked him. I said, "Mr. President, what's the point of getting here if we're going to be afraid? You've got to see it. We're in the Oval Office. We can do all sorts of things here, this is 1993. In 1996, we'll do whatever is reasonable, whatever has to be done. You'll want to be reelected. But this is 1993. We've got time to *do* these things. So what's the point? Are we here for the *house*? For the *plane*?" This is a pretty arrogant thing to say to the President, but he and I were on good terms. He said, "You don't understand."

Even he had this media focus. You can say it involves pressing congressional legislation, and things like that, but you can't think short term, and these guys were always thinking about the next media cycle. They were always trying to control it, as if somehow there was an election in 90 days or in 60 days. But I was thinking what it was going to be like in one year, two years, three years from then. Yes, when we run again, we'll do whatever we have to do to get reelected. We'll have to do what's plausible. But when you're in there, in the beginning, let's be strong, principled, consistent. And if we do that, then I think we'll do well politically, but certainly we'll do well by history.

Knott: At this point, by the time of the Whitewater decisions, what was your assessment of this man that you were working for?

Nussbaum: He was enormously charming and charismatic. He was extremely bright. He was very knowledgeable about policy, obviously, and about history. It never troubled him. He was a very smart man. But ultimately—and I've expressed it a couple of times here—he was weak in certain respects. It came from his personality. He came from a dysfunctional family. I've thought about this. A stepfather who was an alcoholic, obviously. This is just amateur psychology, I guess, but I think it's true.

What you try to do in that kind of situation is you try to keep peace. The father fighting with the mother, people throwing chairs around—all you want to do is make peace, you want to get everybody to stop fighting. And that's what he wanted. He wanted to do great things. He wanted to pass healthcare, and he wanted to do great things. When somebody hit him, he could take a punch. He's taken a lot of punches. Look, only he could have survived Lewinsky. To survive the impeachment is amazing. To be able to get up in the morning and function in the face of it—can you imagine? What he did is amazing. He could take a punch and keep going, but what he couldn't do was give a punch and fight back. He had the strength to resist all these blows, but he

didn't have the strength to deliver them, to respond to your enemies, to fight with them. And he generated this impression, I think, of weakness in this first year that I worked with him.

This even had an impact on foreign policy issues. There was one foreign policy issue that I meddled into—I poked my nose into various things. When we sent the boat to Haiti—the Harlan County. It was supposed to go there, and there was a bunch of thugs on the dock with sticks. We turned the boat around and went back to the United States. I storm into Sandy Berger's office—he was then the Deputy National Security Advisor. I said, "What are we doing?" He said, "Oh Bernie, we weren't ready, nobody thought." I said, "We weren't ready for a bunch of *thugs* on the *dock*? Fine, we weren't ready. Let's go back again. Let's get ready. You can't let the world see a bunch of guys on the dock sending our ship back. It's going to affect our foreign policy all over the world."

Two years later we finally go back to Haiti, but there was weakness. Bosnia. Rwanda. Things happen. I went to National Security Council meetings every so often. I bullied my way in to one or two, because I was worried about Iran-Contra. So I'm at the National Security Council meeting—this is my memory, the other participants can tell it their own way. The President's there, the Vice President's there. Warren Christopher. The Secretary of Defense is there. Les Aspin, National Security Advisor, is there. Tony Lake—I'm sure Tony will tell it differently than this, but that's his personality. The Attorney General is there, Janet Reno. We're sitting there and beginning the discussion on Bosnia. Oh, also the most important person, the charismatic Chairman of the Joint Chiefs of Staff, a man named Colin Powell, is there.

So we're sitting there. I'm worried about legal things, making sure there's nothing wrong done in Bosnia. So I'm sitting, listening to the discussion, and Powell starts to make these presentations about how this war is going on, there are people being killed on the ground, there are slaughters. But we should not do anything, because it's too dangerous. And he holds up pictures of paratroopers, how tricky the operation would be. He is making strong arguments against doing anything, although these people are being killed. But I believe we *should* do something. I'm sitting there and I look at Christopher, and he's not saying anything. I look at Aspin, who sort of rambles on about something, but doesn't really take on Powell. Lake is keeping his counsel. You can see by how I tell these stories, what a place I'm in with this administration. [*laughter*] I raise my hand. I start talking.

I say, "Well, I understand what General Powell said." I liked Powell, and we became friendly. "But don't you think, maybe," and this is the most tentative suggestion, "that maybe there's another argument to be made on the other side, and we really should intervene in Bosnia at the present time." "Aahh," they say, and everyone glares at me. Some scream at me. "How can you say that?" And I saw the President. He was very impressed with Powell and was taking it in. But he really didn't want to use force to save lives in this situation, and Powell just knew how to play it.

Powell is very smart and very charismatic in his own right, very experienced. Maybe the best Washington politician of all time, and now he's proving it again as he's switching to support Bush at this particular point. Gore was a little more hawkish at that time. So it's that sense of—at least with respect to these foreign policy issues—passivity and weakness, which created a trend.

It took a long time to reverse. It took until six years later, in Kosovo, when I was long since gone, before bombers were sent—and even then it was in a tentative fashion. But that was his mentality, basically, on a foreign policy level. But it was also a personal trait not to really be strong, not to take the heat, not to stick by people.

Look at the present President, whatever you think of him. It's very interesting. He's been in two years. Now, there's no Independent Counsel, and there's none of those kinds of pressures. Imagine if you had an Independent Counsel today. Ken Starr did one great thing in his life: he killed the institution forever. I used to say Ken Starr did what I failed to do. I tried to kill it. He succeeded in doing it. Imagine if you had an Independent Counsel today investigating how George W. Bush turned \$600,000 and the Texas Rangers into \$15 million. Six hundred thousand, which he never even put up—it was apparently a loan that was guaranteed—turned into \$15 million. And the way they got it was they got a stadium. They got the city of Arlington, Texas, to provide public funds to build a stadium. Obviously, various municipal entities create stadiums, because it's good for the public. There's nothing wrong with that.

But was any money given to anybody? Was any politician involved in that? What was George Bush's role? I mean, if you can't find George Bush, maybe one of his partners did something wrong. Maybe somebody else didn't pay his taxes or did something wrong.

Can you imagine if you had this investigation going on, and all the White House aides being subpoenaed at this point, while we're trying to deal with Iraq or 9/11 or things like that? Imagine what that does to the Presidency, to the people in the White House, how they're not able to function. That would be a disaster if we had an Independent Counsel now—nor should we for George W. Bush.

That's what I tried to tell Clinton. You asked, "What is his personality like?" "If I do it, it will work, I'll be loved." That's the answer. It undermined his Presidency in the early years. I left—which we can talk about maybe after lunch or something like that—in this blaze of controversy later on, but it went on for a while. And then I think he finally got his footing. Remember, I was only there for a year-and-a-quarter of an eight-year Clinton Presidency. I wasn't there for the whole thing. There were six White House Counsels. I was almost the second longest serving, I think. *[laughter]*

I think Chuck Ruff served longer than I did, but there were six White House Counsels: Nussbaum, Cutler—who was a mistake—a very wise man, but he only stayed six months. Abner Mikva, who came in and they said, "Oh, he loves it, he's going to stay forever." He was a very experienced man, was in Congress, obviously, a judge of the Court of Appeals, a wonderful guy: eleven months. Jack Quinn, an old friend of mine of great fame now because of the Marc Rich pardon—he stayed about 14 months. Chuck Ruff stayed about two years. Now of blessed memory, a wonderful guy who died. And Beth Nolan, the last White House Counsel. Six White House Counsels in eight years. It was a tricky job, a difficult job. It's tough to be a strong lawyer sometimes for a client who may not be as strong.

Baker: I think someone wrote a number of years ago that the White House Counsel's office is at the hub of virtually all presidential activities, so that implies really you have to have your finger

on the pulse of everything going on in the White House. You only had a dozen lawyers on your staff.

Nussbaum: That's correct. I had a dozen lawyers on my staff. The White House Counsel's office has become more and more important in that role. It's important today too, by the way. I'll discuss a dozen lawyers. There was a story yesterday in the *New York Times*. We'll see how accurate it is, but the present White House Counsel is Alberto Gonzales, and he is right at the center of all these war resolutions and things like that. I noticed in the story that the resolution sent to the Senate, asking the Senate to pass, to allow, to sanctify, or to approve action in Iraq, was sent in a letter. It was not sent under the signature of the President; it was sent under the signature of the White House Counsel and the legislative liaison. So it makes it easier for them to negotiate back and forth, rather than the President saying, "I want you to do this and that." It gets a little trickier. It shows how the White House Counsel's role is. You could send it from the Secretary of State or you could send it from the Assistant Secretary. But the White House Counsel has become the hub of everything. It's a very tough job, and the President has to stand behind you ultimately. You're going to take heat.

Baker: Does it help if the White House Counsel is a close personal friend to the President, like Gonzales is?

Nussbaum: I don't think Gonzales is a close personal friend. I'm probably as close to Clinton and to Hillary as Gonzales is to Bush. It's a different personality between Bush and Clinton. This administration has had two years. Harvey Pitt has been under enormous attack, Paul O'Neill has been under enormous attack, Donald Rumsfeld was under enormous attack for the first eleven months until 9/11. The press has been at Bush, saying, "Let Larry Lindsey go, this guy knows nothing about economic policy." In the Bush world—this Bush and in the first Bush world—there is a sense of loyalty—maybe misguided in some places—and strength that you didn't see exhibited in the Clinton administration. Nobody from this administration has been forced out over—Look at Paul O'Neill. The stock market is down enormously, the economy is doing badly, but Bush has stood behind his people. That gives a message off to the world that Clinton, within the first year, did not give. Like I said, Zoë Baird, Lani Guinier, and then me, a year and a quarter later.

Young: Bush did drop Linda Chavez.

Nussbaum: In the beginning. Very quickly, before it became a big to-do. They did drop Linda Chavez, that's correct.

Young: Only one.

Nussbaum: Only one, but there were no hearings, none of that stuff. Maybe Clinton could have dropped Zoë Baird very quickly too. But the Linda Chavez stuff they didn't know about. By and large, the people who vetted Zoë Baird did know, but didn't understand the impact it would have, and that's what made it tougher. If you don't know about something, you can say, "Well, I didn't really know."

Knott: Did you ever consider resigning prior to the point where you actually did? In other words, were these particular incidents that you just recounted so disturbing that you thought—

Nussbaum: No, I was there to try to help him. I always tried to give this advice, and I don't think my resigning would have helped. I was still loyal to them—loyal to her and loyal to him. I didn't think my resigning would be helpful to them, and more important, I thought it would actually be harmful.

The story of my leaving is relevant to this question.

Riley: You might want to hold off on that.

Nussbaum: Well, let me tell it, and we'll come back to this. There were all sorts of attacks on me with respect to the meetings with the RTC and the recusal thing with Roger Altman. I had done nothing wrong. A lot of these pressures were coming. I realized near the end that something could happen. I really had a lot of confidence in him and in her not to do something like this, but I'd been in Washington long enough to think it was possible. Then I went into the Oval Office that day, and McLarty said to me, "You know, Bernie, it's a lot of pressure on the President. People think he should get rid of you. If the President asked you to resign, would you resign?" I said, "Of course I would resign." They were really worried about me. They thought I would tough it out, that I would turn it down. I was considered fairly strong in the White House, I guess. They were really worried I'd face down the President. I said, "Of course, if he wants me to resign, I'm going to resign."

Anyway, later on I get a call to come to the Oval Office. The President says, "Look, there's all this turmoil, Bernie. I really need peace on this thing. If you resign we'll have political peace. We'll even pass healthcare if you resign." [*Chuckling*] I said, "Mr. President, you really think this whole outcry in the newspapers about Whitewater, the RTC, all this stuff and this effort is about me? Do you think the media of this country—the *Wall Street Journal*, the *Washington Post*, the *New York Times*, the *Los Angeles Times*—they care about Bernie Nussbaum? Some New York lawyer who came down to be White House Counsel? You think they're trying to get me? If they get me there's peace? That I am so significant, so important a figure, that if I can be brought down—my God, you think this is about me? It's about you. They're trying to get you. Me is just a way of getting to you. If I leave in the face of all of this, and I will if you want me to, all you do is put blood into the water. The sharks are coming to get you, not me. Me is just a way of getting to you. You will not have peace, ultimately. You'll have eternal conflict, and they'll see they can get to you." So that's one consequence.

"I would resign," I said, "and will resign if you want me to. I would leave or quit if I thought it would be helpful to you. I really would if I thought it would bring peace or something like that. Nor should you keep me on out of any friendship or loyalty. Your loyalty is to the institution of the Presidency, to the country, and to the people. It has nothing to do with our friendship with each other. We're friends and we'll stay friends, hopefully. But it has nothing to do with that, it has to do with what's best for you as President and for this country. If my leaving is best for the President, then of course I should leave. But it's not, I don't think." And I also said, "I know it's going to sound like I'm trying to hold onto a job, but I'm really not. I know what it sounds like,

but I'm not trying—I can go back to my firm. I'm going to make a lot of money if I go back.” All the things came true in spades, by the way. “I can go back, I have a place to go back to.”

I said, “One consequence of this is blood in the water. Once they get me, it's going to be easy to get you at some point. But the other thing that is also very important is what impact it will have internally in the government. Forget about the impact it has on the President. I was here at a very crucial, historic time. I am not the best lawyer in the United States. I don't have the best judgment in the United States. I'm not the smartest guy, I'm not the toughest guy, and there are other people who probably could do this job very well, better than me. Not many, but some people.” [laughter] “But I happen to have been here by circumstances, at a historic time—when you came into office a year and a quarter ago. We've been together because I was Counsel and we've had to do certain things together.”

Now, we did crucial things. First of all, we appointed a Supreme Court Justice. In a sense, that's not important for what I'm talking about now, but we did two other very important things which greatly impacted this administration. One is we appointed the Attorney General together. I found Janet Reno, and we appointed her. Two, I appointed the FBI director. I found him, and I appointed him—Louis Freeh from New York, who I knew somewhat. I found him, the President agreed, and he appointed him. We put them in office.

I said, “These are the two most crucial positions in this administration, especially in this era of scandal and things like that. I know these people, I appointed them, and they have great affection for me and great trust in me. They know my success is bound up with their success. They believe that I'm tremendously loyal to you as your Counsel, and I am. And they believe we're great friends, which is an exaggeration, but we're friends. They also know that I have their interests at heart too. That I put them into office, and I want them to succeed also. They're very grateful to me, obviously, and they will listen when I talk.

“They will have to do their jobs. I would never tell them to do anything improper. So this is a line of communication that exists between us, which is enormously useful.” For example, when Dan Rostenkowski was going to be indicted I got a call from the Justice Department letting me know, so that I could warn the President before he went to Chicago. I didn't say, “Stop the indictment.” I said to continue to do whatever had to be done, but I can warn the President with respect to these things. This pipeline is very important. This is a way I was dealing with these two very sensitive institutions and these very sensitive individuals.

I said to the President, “If you fire me or if I quit or resign in response to this media pressure, you will lose this pipeline, this ability to communicate with these people. Just as significantly, you will blow their mind. Because if they think you got rid of me in the face of media pressure, they will believe that you'll get rid of them ten times as fast in response to appearances, which means they will become totally self-protective. It has nothing to do with serving you or serving the administration. It is, ‘How do I protect myself and what's good for me?’ That's what will happen almost subconsciously to the Attorney General, and it certainly will happen with the FBI Director. They will think, *If he fired Bernie Nussbaum in response to this thing, I've got to protect myself, and I'll do whatever I have to do.*”

And that's exactly what happened for the next seven years in the White House. The Attorney General never had another—I mean, she'll say she acted exactly the same as she did prior to my resignation. I used to have dinner with the Attorney General, I used to have dinner with the FBI Director. Was that the right thing? There's nothing wrong with that. Rather, it's the right way to proceed in government. The Republicans and the media made it sound bad. This is the way of a President controlling the levers of power, so to speak, in a proper fashion. And Clinton is a smart man. He has a higher IQ than me, but he didn't understand this.

He sort of looked at me strangely as I was saying this. He didn't respond. He could normally answer any argument. He really didn't answer this, and I said, "That's why it will hurt. And I know that this sounds like I'm trying to hold onto my job. I know this sounds like a rationalization for staying on as White House Counsel, but believe me, this is going to happen. I know these people. I deal with these people. It will be impossible." The way the conversation ended, he said, "Let me think about it." I went back to my office on the second floor of the West Wing, and a couple of hours later McLarty and Harold Ickes came up. Harold Ickes had been in the White House about three or four weeks at the time. So he was taking the other side. He said, "You have to be investigated by another Independent Counsel."

Anyway, they came into my office and he handed me a typewritten letter from Senator Levin to President Clinton, saying, "I'm sorry to tell you that your Counsel has been acting very unethically." He was playing off a *Washington Post* story which he knows nothing about. He hadn't called me. "He has acted very unethically, and I really believe you should get rid of your White House Counsel." This is, "Dear Mr. President, you should know this, Sincerely, Carl Levin, Senator from Michigan." This was two or three hours after we had had this conversation. McLarty and Ickes handed this to me. And I said to them, "The President told you to show me this?" They said, "Yes." I said, "Okay, you go back and tell him I resign. He'll have a letter tomorrow." So I resigned.

What happened happened. My predictions regarding the FBI—Louis Freeh gave back his White House pass after a time. He conducted this enormously vigorous, foolish investigation of Whitewater and all that stuff. Clinton felt sorry in later years. I went to the White House from time to time, not a lot. I think he always felt a little guilty about me leaving, about how I left, but he would always get mad about Freeh. "Look what you did, you put Freeh in there, the guy's terrible."

Once in the White House in '96—maybe it was before the election—I said, "If he's that terrible, then do what we did to the last FBI director—fire him. We fired Sessions. You're the President, fire him. Freeh is a friend of mine. I appointed him, fire him." Clinton would say, "Oh I can't do that." "Or fire Reno if you think she's so bad, or ask her to resign." "Oh I can't do that." So he lived with Reno and Freeh for eight years. They were very standoffish, very self protective, very proper. Freeh formed his relationship with the Republicans on the Hill. He was basically an Independent or a Republican to begin with, so he became a hero to the Republicans on the Hill. Reno became this massive public figure in her own right, but Jamie Gorelick made sure that Department was being protected. She appointed an Independent Counsel to investigate me over the FBI file thing without ever talking to me.

I'm the only person in this room who has a report saying he's innocent. None of you have that kind of report. But that's the kind of thing they did. I spent millions in legal fees with respect to this stuff, none of which I'm seeking to recover from the United States government. I don't care. For me, it was a great adventure. I said earlier today, I would do it all over again, knowing everything. But look what it did to the rest of the White House staff. That's what Clinton feels guilty about. All these people spent hundreds of thousands of dollars, which they could not afford. Whatever I spent was affordable.

And this really changed. These 14 months—and undoubtedly I'm giving myself too much credit—really shaped the nature of the administration. The weakness he conveyed by abandoning people, including me in the end, and the consequence that it had on his relationships—in the short term and the long term—with the Justice Department and the FBI, were profound. Ultimately, Reno appointed a fair number of Independent Counsels. But in the final analysis, she did not appoint one on campaign finance reform, which would have been a disaster to Gore's campaign or anybody's campaign, because you can't have campaign finance without breaking some rule. It's impossible. An Independent Counsel obviously would make mince meat of anybody.

In the face of enormous media pressure, she didn't appoint one. As I told them in the Oval Office that January in 1994, she would not appoint one if the statute weren't triggered and if I were there. She made decisions. I didn't make the decisions, but I had a lot of influence if I had a good argument. Not that we didn't fight sometimes. We did, but that's fine. Administration officials should fight. So that's what he did. He gave off this message of weakness and he also destroyed the lines of communication that I had with these agencies, which hopefully would have continued for a while. And not understanding that was a powerful thing.

Riley: We have a lunch break here but we still have a lot to talk about this afternoon.

[LUNCH BREAK]

Riley: We'd like to get on the record the comments that you made about the record-keeping business within the White House, the recommendations that you were giving people about what they should and shouldn't do. This is important for our purposes, because we bill this as providing something to the historical record that otherwise wouldn't exist.

Nussbaum: I guess very early in the administration I realized from my own experiences in the law in representing major companies, from my experiences in Watergate, but also from just looking to see what Lawrence Walsh did in the Iran-Contra investigation, that it is very dangerous to start keeping diaries or contemporaneous records, because they are subject to subpoena and to controversy and to being misinterpreted. Therefore, in this sort of litigation/media/partisan political culture we were living in, it's just foolish to create those kinds of documents which then are used against you, even though they may be completely innocent. People start parsing over words—what you meant and what you didn't mean, what you knew and what you didn't know. They make all sorts of judgments which may be incorrect. I saw this a lot in civil litigation. It happens all the time, but it is now happening in the government. I think the first George Bush's diaries were subpoenaed by Lawrence Walsh.

In a meeting in the Oval Office, I advised the President, that one, he shouldn't keep any diaries. I don't believe he did, but I'm not 100% positive—I didn't make him report to me. But I thought he should be very cautious in writing down any recollections or keeping any diaries. Two, certainly he should do no taping, as prior Presidents had done. Not only Nixon, but other Presidents too. Johnson and maybe even Kennedy, to some extent, did taping. We should not do that, and we should just be very cautious about the records that we create. That's unfortunate, because I know it's a loss to history to do that. On the other hand, the partisan, political world that we're engaged in involves the tactics of criminalization, of Independent Counsels and things like that. It was the prudent thing to do. You'll have to ask President Clinton whether he followed that advice totally, but I believe he followed it mainly.

Riley: Did the advice extend to other senior White House officials?

Nussbaum: Yes, I told that to other senior White House officials. Not to everybody, but I said it, and by and large you'll find very few memos and contemporaneous records that could be used. Those that existed were used against him in the various investigations that followed. Some other people did take extensive notes at meetings. Josh [Steiner] a very junior person in the Treasury Department, had this diary, and it was blasted, made fun of, got certain things wrong, repeated things people told him. The media and Congress were all over it, trying to show that Stephanopoulos was trying to reach Roger Altman in some fashion. It's a perfect example of the misuse. The diary was partly accurate, partly inaccurate, mixed up, but look what happens—it becomes a *cause célèbre*. Josh Steiner is doing very well in New York today. He's a partner in an investment banking firm. It's sad, and it's a great loss to history, but that was my advice. With exceptions, I think by and large it was kept.

Although when it wasn't kept, I sometimes get happy. Like when Mark Gearan would take these notes at these staff meetings when I was railing against appointing the Independent Counsel—he has these notes describing in detail how I'm making these arguments. I'm sort of happy they exist, looking back, because it just confirms my own memory. Obviously, I remember it, but it proves what I'm saying. I really did make these arguments at that time, in very vivid language.

And those notes were used. I learned of those notes by watching the congressional Whitewater hearings, which ultimately happened. They started reading from those notes how Nussbaum is saying, "Under no circumstances is an Independent Counsel—" The good Bernie story, the bad Bernie story, the things I told before. They're using that to show that I was trying to suppress investigations and the facts from coming out. They were using it not against Gearan, more against me. But I was amused by it at the time. It was good advice then, it is good advice now, and this question just proved it was good advice.

Knott: I think you served on the impeachment committee for the Nixon impeachment, you see another twenty years or so go by, and then you're in the White House. What do you think happened that produced this culture in Washington where you couldn't write a memo, you couldn't send an e-mail, you couldn't keep a diary? Did you—did the Nixon impeachment unleash some forces that were not entirely healthy?

Nussbaum: Absolutely, yes. The Nixon impeachment and Vietnam, but the Nixon impeachment in particular. Watergate unleashed this tremendous distrust of government. Vietnam of course played a role in that too, and combined to create this investigatory culture that you criminalize even. Remember, Nixon's senior White House aides were sent to jail. John Mitchell, the Attorney General, went to jail. John Dean, the White House Counsel, went to jail. The Chief of Staff, H. R. Haldeman, went to jail. John Ehrlichman. Think of that. It became clear that they engaged in what we consider, and I consider to this day, egregious conduct. They really misused the powers of the FBI and the CIA. They really did do bad things. They destroyed documents, tried to stop investigations of the Watergate break-in. This was real bad stuff, and it was a misuse of power at the time.

And I think that an Independent Counsel at that time was warranted, and so were the impeachment investigations that ultimately took place, in which I participated. But having said that, it created this investigatory culture where you can get the executive by use of these devices, and it continued thereafter in circumstances where these devices were not warranted—and I knew it could happen. It happened, as I indicated earlier, to Jimmy Carter. It happened to Ronald Reagan, it happened to George Bush, and now it happened to Bill Clinton.

This institution, the Independent Counsel, became a weapon by the legislative branch and political opponents generally, to try to get the President, to try to get the Presidency. That's what made it impossible to create documents and things like that, because all those things were going to be used against you. To some extent, that still continues to this day. If it wasn't for the potential war we're going to have with Iraq or the situation that exists with Al-Qaida and September 11th, I think there would have been a lot of pressure on George W. Bush, especially in view of these corporate scandals, to try to smear the White House in some way or connect the White House. I shouldn't say smear. Maybe there's justification to connect some people in the White House. But the foreign issues and September 11th overwhelmed everything.

While it is unfortunate September 11th happened, I don't think it's so sad that there are no independent counsels. I think that the President should be allowed to be President. He should be allowed to act. You should fight him politically. If you don't like his economic policy, you should criticize that. If you don't like his foreign policy, you should criticize that. But the way we got used to fighting, which is to try to find something criminal like that, is bad. That's bad for the country and it's bad for our society, but it's a fact of life. Maybe once this foreign policy crisis ends, which I hope it will, we may get back to that, which would be unfortunate. Only time will tell.

Young: Your criticism of the Independent Counsel, basically, is that it creates a career based on destruction?

Nussbaum: That's correct. It's a career-enhancing event, to become Independent Counsel investigating a President.

Young: You've got to find—

Nussbaum: Yes. It creates a dynamic in which you make your place in history if you can find something. It becomes like a roving spotlight. The Whitewater investigation is the classic of not finding anything. There's nothing to Whitewater. Whitewater could have been finished in three to six months, as the people who supported the Independent Counsel predicted it would be. But I knew. The Iran-Contra investigation took seven years. Why should it end in three to six months? They'll go on from this thing to another thing. This is what happened. They investigated the Travel Office, then they investigated this bureaucratic screw-up with FBI files. The *Washington Post* was writing editorials about how this was a great abuse of power like Watergate.

The press is superficial in many respects. Oh, there's another thing about our culture which I alluded to. We have a very sensationalist media now, and sex and scandal obviously sell. People try to generate those kinds of stories, and if you can involve the White House and the President, it's even better. In this kind of media culture, anything goes. This is a big change from 50 or 60 years ago when Franklin Roosevelt could be in a wheelchair and no one knew about it. John Kennedy could do whatever he was doing and nobody knew about it. Lyndon Johnson—in fact, Roosevelt may or may not have had a female friend. You could do that. They were different times. There were different limits. Today those are gone. I'm not saying that's all bad in some respects, but you have to understand the kind of culture we live in right now. It lends itself to abuse, and there's been a lot of it.

Baker: Were there any responsible media outlets during your time as White House Counsel? I know you refer to it as “feeding the beast,” but I also know that you planned on a journalism career initially. So are there any reports we can look at historically and feel some confidence in?

Nussbaum: It's sad to say—well, the *Wall Street Journal* news pages are very good. The *New York Times* isn't bad sometimes, but I must say—we're going to keep this under wraps—I've lost a lot of respect for journalism and journalists as a profession. I'm probably overstating and over-reacting, but the career path in journalism became clear to me as I was down in Washington. Journalists are not liberal or conservative, they're careerists. This is their main thing. Their career path consists of one, trying to go to a good school and getting into some sort of important media company such as the *New York Times*, *Washington Post*, the *Wall Street Journal*, and two, trying to write a sensational story or two to get themselves known, so they can go on television and become a talking head of sorts. That's the key. Because once you go on television, you become a celebrity. We have a celebrity culture. Once you're a celebrity, you can make a living. See, a celebrity is somebody who can make a living. I became a celebrity. I could have made a living from being a celebrity instead of speaking here for free. I could have gone around and made a version of this speech all over.

I saw some of them who came to the administration. You make a hundred thousand dollars or so on a newspaper, which is a good salary. And then maybe if you go on television you make another \$150,000 from the television appearances, but that's not the money. The real money is when you're a celebrity. Then you can start speaking to grocers' conventions or dentists' conventions and telling them Washington stories. Now you can make \$15-20,000 or more per speech, depending on how big a celebrity you are. You give 50 speeches or so, you make a million dollars and you can buy fancy houses and send your kids to private schools. That's the

career path for journalists, and writing sensible and balanced stories doesn't foster that career path. It doesn't get you on a talking head show or the lecture tour.

There is one story, and this is true. I guess he was joking, maybe he was joking. I was once walking to the White House and a pretty good reporter started saying to me, "Bernie, I'm running this story. I have this great story, let me just tell you about it." We're just walking. He starts telling me something and I say, "Wait, wait, wait, you've got it all wrong, that's wrong." He said, "Bernie, please, this is too good to check." I think he was kidding. Really, the purpose of telling me this was not to interview me or to get my comment; he just wanted to tell me he had something. He wasn't really trying to get a comment. All of a sudden I started commenting. He said, "It's too good to check."

There's an element of that, and you see it in this effort with Clinton—the Michael Isikoffs and people like that who really made names for themselves. They're on television, they write books, and I think they're an embarrassment. But think of the scandals. Where are the scandals? What happened? Ex Monica Lewinsky out for a moment—what happened? Where were all these scandals for years and years? Monica Lewinsky arose in 1998. Before that, for six years, investigation after investigation after investigation. Terrible scandal after terrible scandal after terrible scandal. There were no scandals. But the *Washington Post* ate us up, the *New York Times* ate us up. Whitewater is a creation of the *New York Times*. All this other stuff is a creation of the *Washington Post*. They really did a disservice to the President and to the country. And the President, of course, did a disservice to himself by then creating an institution which sought to investigate these things.

Young: Wasn't there also a sort of "get Clinton" or "hate Clinton" movement even before he was President?

Nussbaum: Absolutely.

Young: I went out to Little Rock for the first meeting, actually to meet Clinton and talk about the Oral History Project with him. When I was there, I read letters to the editor in the newspapers, in the *Democratic Gazette*, that were just appalling.

Nussbaum: Yes.

Young: And I also remember, very early—he had hardly been inaugurated—seeing pick up trucks around here with "impeach Bill Clinton."

Nussbaum: This sort of surprised me. We thought there would be political battles, but the sense of illegitimacy surprised me. The Clintons came to symbolize the '60s, sex, drugs, rock-and-roll. They became symbols of that among a fair number of people on the right, and they would never accept him as a legitimate President. If he's not legitimate, then anything you do to bring him down is justified, I guess. Lying state troopers, his sex life, his personal life. This effort to get, get, get was pronounced from day one, and in the final analysis, he just played into their hands, contrary to my advice, by appointing a special counsel.

He just played into their hands instead of saying, “Baloney, I’m going to go forward.” He kept playing into their hands over and over again. The thing I talked about earlier today that bugs me was the Travel Office. “Stop flagellating yourself for these people. If you made a mistake we’ll correct it. If we did something wrong, we’ll admit it and we’ll correct it. We didn’t do anything wrong, so stop bending over to people who just want to kill you!” But, “They won’t love me then. I want everybody to love me and I’ll keep working on them until they do.”

This is a terrible thing. Combine that personality with this sense of illegitimacy and desire to get him, as reflected in those letters in the Arkansas *Gazette* and Little Rock newspapers. Then you have a potent brew which ended up almost destroying his Presidency. He was almost driven from office.

Young: He had enormously stable public approval.

Nussbaum: Yes, because the public, by and large, unlike the media and the political elite, is sensible. The public is basically sensible. The public knows what’s real and what’s not real. And if you trust the good judgment of the public, you’ll do okay. Yes, before an election, I understand the public is—but, in the long run the public is basically sensible. It’s actually amazing that the public stood by him throughout the Lewinsky thing.

Knott: I wanted to ask you about the Vince Foster suicide, because it seems to me that that incident generated more crazy conspiracy theories. I don’t really have a question here, other than to me the Foster episode was a particular low point in media coverage of the Clinton years. Do you have any recollections or reflections on that event? This is a man you knew quite well and all sorts of rumors began to swirl.

Nussbaum: Yes, you’re right. It is a low point in media coverage. Foster was a decent human being and an able lawyer who basically suffered from a serious illness, the illness being depression. We didn’t know he had depression before, but clearly he suffered from depression. This was exacerbated by the Washington culture, the media pressure, and things like that. Ultimately, he snapped under it.

When I think of Vince, it’s like he had a heart attack. In effect, it’s almost physical in nature, maybe chemical. So he was enormously depressed. We should have gotten him out earlier. We didn’t recognize it. I don’t know if he recognized it until near the end, and it was very unfortunate. Obviously, I was under the same pressures, maybe even greater pressures, but I just have a different personality, maybe a different chemical make-up. I sort of reveled in it. I enjoyed the battle, to some extent.

People—my wife and others—dispute this. I don’t ever remember getting down when I was there. They want to fight, we’ll fight. Until the last week, I thought I could always count on the President and the First Lady. It turned out I couldn’t count on them either, but for a good reason. I mean, I became so controversial that they felt it was interfering with the Presidency. Of course, as I indicated earlier, it was the wrong conclusion. But Vince, nonetheless, succumbed to this kind of thing. Now when you have this notion of an illegitimate President where anything is fair

game to try to get him, then you take that event, which on its face is not all that complicated. It's like somebody dying of a heart attack or dying of depression, killing himself in effect.

He writes this note which sort of indicates what's on his mind. The Travel Office was on his mind. Not Whitewater or anything connected with all these investigations. It was the Washington culture of blaming innocent people. What did he say, something like Washington is a blood sport. It's fairly clear. You have a note or a contemporaneous writing—it may not have been a classic note. The event was clearly suicide, and this media culture twists it, turns it to something. He was murdered. I carried out his body. He was having an affair with Hillary, she rejected him. I mean, all sorts of nonsense which, unless you had some kind of proof—

I can't say there shouldn't be coverage of a senior White House aide committing suicide. James Forrestal committed suicide as Secretary of Defense, and you should look into it to see if there is blackmail or anything like that with respect to it. But there was nothing, as was rapidly shown. Investigation after investigation trying to develop something, showing nothing. We were totally cooperative in these investigations, but it was blown up. There were a whole series of hearings in 1995 at which I testified concerning the removal of documents from the Foster office. The whole thing became—

Baker: Even the FBI started to treat his office like a crime scene.

Nussbaum: Later on. At the time it happened, it wasn't a crime scene. That started mushrooming later on, and then I did what I did, which was explain a lot of it in my testimony. But my point is that they took this event and tried to turn it into some kind of grand crime, grand conspiracy, but it wasn't. For a little while after his death I thought, *Maybe it will calm people down*. But it did exactly what I told the President it would do when he fired me later on, it just revved it up. Foster thought he would find peace in a suicide? Foster obviously found peace, but it revved it up for the administration and for his family. That's what happens in Washington.

Riley: Did you see any lasting impact of that event within the White House itself? Obviously, there was a personnel change that had to be made, but something that traumatic—did you witness any behavior with the President or the upper levels?

Nussbaum: No. I think it had an impact on history, but I didn't see a change among the upper level people who were working in the White House. We all recognized what a sad thing this was, but depression is like an illness, and it's unfortunate, but it happened. Unfortunately, as I indicated earlier in this conversation, the loss of Foster was a big loss for me and for the President and the First Lady. It not so much impacted our actions, but when it came for the great debate on the Independent Counsel issue, I'm sure Foster would have been a strong supporter of mine. No one else was. Hillary was for a while but then backed off. Having that support from somebody like Foster might have made a difference in that crucial January of 1994. Also, the person I appointed who is now the chancellor of the schools in New York, Joel Klein, was very close with Gergen and Stephanopoulos, and he was a supporter of the Independent Counsel.

Riley: Leaning in the wrong direction.

Nussbaum: He was leaning very much in the wrong direction.

Knott: You also mentioned at lunch that another possible effect on history of the Foster suicide was the [Paula] Jones case. I don't know if you want to elaborate on that.

Nussbaum: Actually that's true, because Foster and I weren't in the White House, Foster because he killed himself and I because I resigned, or was fired to be more precise. We had no one there who could deal with something like the Jones case, who could deal with Hillary with respect to the Jones case. It was clear to me, and I think it would have been clear to Foster that the Jones thing is something that you don't let linger, that you resolve, that you settle, if you can. At least in that early stage, she was willing to settle it in some fashion, but the White House didn't do it.

I don't know the insides. Clinton had a very good lawyer, Bob Bennett. I know Bob. He's an able guy, but again it's a relationship issue. It's not, "I'm a better lawyer than Bob Bennett," or "Bob Bennett's a better lawyer than me." I think Lloyd Cutler was the White House Counsel at the time, very able. I just think that, knowing my personality, knowing my thinking on this thing, and knowing Vince and his personality, that we could have gotten the Jones thing settled. Now I'm not positive, but I think I could have gotten to Hillary, and I could have gotten to Hillary's friends. I would have insisted that we settle the Jones thing, and I think the President would have fallen into line on something like that. It was very tricky in this situation.

Maybe I couldn't have, maybe I wouldn't have succeeded. I don't want history to think I'm positive. I am pretty positive I would have done it, but I can't be 100% certain. No one could know. And I think that was too bad, because they allowed that case to linger. Then the Supreme Court, in its naïveté, which is the most favorable word I use, permitted this case to go forward in an active fashion. It was clear that the right decision was the lower court decision, which was to say, "Yes, you can bring your case, but unless you can show some overwhelming need, we will hold off discovery and the prosecution of this matter until the Presidency is over." But the Supreme Court said, "This will have no impact on William Jefferson Clinton at all." It is one of the most disgraceful Supreme Court decisions. Not disgraceful, a foolish Supreme Court decision. *Bush v Gore* is a disgraceful Supreme Court decision. This is foolish. [laughter]

Baker: One that really undercuts the power of the President.

Nussbaum: Absolutely. I don't think anybody could do it now. I think we've learned. If somebody tried to sue George W. Bush today, the courts would not easily permit that lawsuit to continue. I think they've learned the foolishness of the Jones case.

Riley: You didn't talk to your friend, Justice [Antonin] Scalia.

Nussbaum: No, I don't talk to him about cases that they decide. Lawyers don't talk to judges about cases they decide. It's a violation of the canons of ethics to do that. But they really did make a foolish decision in that case. And let me just say this: I've talked about this with friends of mine. The impeachment results from Clinton testifying in the Paula Jones depositions, which

finally take place. Of course, the Jones lawyers are sort of tipped off. I wasn't around my former secretary, Linda Tripp. Linda Tripp was my secretary for a year—did you know that?

Riley: I'd forgotten.

Knott: We noted it on the chart.

Nussbaum: Somebody noted that Linda Tripp worked for me. I had trouble getting a good secretary in the White House. Linda Tripp had worked in the White House. Linda Tripp worked for me for a long time. She was sort of flaky in some ways, but very loyal to me. Even after the whole thing, she was on Larry King, and she wouldn't say anything bad about me, and I never said anything bad about her publicly either. For this tape, I think what she did was outrageous, but I don't bother talking to the press. They called me about Linda Tripp, obviously. Since she worked for me, she was pushed out of the White House as a consequence of my leaving. "Get his own secretary, his own people." I don't blame them for doing that. So she ends up going over to the Defense Department. She's sort of angry at the White House, and of course some young intern then ends up at the Defense Department next to her, Monica Lewinsky, and the rest you know.

But the story is so much more about Ken Starr and the Independent Counsel, which we've been talking about. This may sound naïve. Because of Linda Tripp, who tells the Jones lawyers, who are in contact with the Independent Counsel's office, you hear that the President of the United States is going to testify the next day. He's going to be asked about women other than Paula Jones, and the President is likely to lie about it. Obviously, that's what people are going to do—they're going to lie about an issue like that. So you sort of know that. If you're Ken Starr, look what this institution has turned into. The President of the United States is going to be asked tomorrow about oral sex in the Oval Office and things like that, and he's probably going to lie about it or not tell the truth or not come clean.

Here you have created an institution which is now designed to trap him. Why doesn't somebody pick up the phone and call the President and say, "Mr. President, you're the President of the United States, you're in charge of our foreign policy and the American people. I have a feeling you may be making a mistake tomorrow." In other words, warn him. This is the President of our country, and what you're looking to do is trap him.

Now you say, "Well, he's going to commit a crime." It's like you're treating him like Al Capone. "We're trying to get him. We couldn't get him for Whitewater or anything, so we're going to try to trap him." Wasn't it Ken Starr's duty to warn him? It will hurt him, it will hurt the Presidency, and it will hurt the country if he lies about Monica Lewinsky, this woman they're going to ask him about. So be patriotic. If I thought George Bush was going to do something tomorrow and I could reach him, I would warn him off it. I would try. I mean, if he did it, he did it. Because I'm not particularly worried about George W. Bush, the individual. I'm worried about the country, the nation, the President.

So here we've created a culture, an institution, where the President is going to lie. He's going to lie about sex and things like that.

Baker: “And then we’ll get him.”

Nussbaum: “And then we’ll have the perjury trap.” I used to do this—this is what we used to do when we were trying to get mobsters. When I was in the U.S. Attorney’s office, we investigated the mob and we would try to trap these guys. We’d try to entrap them somehow into a tax investigation, because these were really bad guys. They were murderers. They were killers, and we were trying to figure out a way of convicting them. So we’ve turned, and this became a design to trap the President.

“Oh, that’s naïve. You can’t call him up.” Why shouldn’t you call him up? If you knew that the next day he was going to take a bribe from Saddam Hussein in the Oval Office, I wouldn’t warn him about that. If he’s really a traitor or a corrupt thief, I wouldn’t warn him. Then I would want to trap him in the Oval Office trying to get that bribe, because I’d really want to get rid of him and impeach him. But you always warn the President if you discover he’s about to do something that will be a foolish mistake. To testify in a civil deposition about consensual sexual conduct? You want that to happen? “Yes, we want it to happen because he is an illegitimate President and we’re going to get him, and this is our way of getting him. We’ve got the institution and now we’ll get the act that enables us to get him.”

Baker: I’m going to jump in here because I know you’ve spoken a great deal on the Independent Prosecutor’s office, but before we leave it, I know Robert Fiske was basically given a *carte blanche* by Janet Reno to design the mandate for the—

Nussbaum: Yes.

Baker: When he was replaced by Ken Starr, did Ken Starr just inherit that mandate, or did Reno have an opportunity to reissue at that point?

Nussbaum: As I understand it, Ken Starr rather inherited that mandate.

Baker: And it was such a broad mandate.

Nussbaum: And then it was expanded later on. I talked earlier about the conversation with the President about what would happen if I leave. It became an easy thing for the Justice Department to dump things and get rid of things, instead of fulfilling its responsibilities. “Travel office? You investigate it, Starr. FBI files? You investigate it, Starr.” Rather than taking a look and saying, “Is there really a conflict of interest?” It became easy, because if you’re going to be self-protective at that point, that’s the thing to do. Let Ken Starr do it, or let the Office of the Independent Counsel do it. There was no loyalty any more in the Justice Department to say, “No, we should protect the administration.”

If they didn’t do anything wrong, we should protect the White House. No more. I warned Clinton, “You get rid of me, that’s the message you give. The message you give is it’s everybody for themselves. Everyone protects themselves.” This is the message he conveyed, and I warned him about that, and it happened.

Baker: Justice did not appoint different Independent Prosecutors, though. Everything kept going into Starr's—

Nussbaum: No, no. There was Espy, [Henry] Cisneros, Alexis Herman, Bruce Babbitt, I mean it became this great scandal administration. Look at all these Independent Counsels. Who was indicted? Who was charged with anything? Who? Who went to jail? Which Cabinet member went to jail? Which senior White House aide went to jail? Was convicted of anything? Who, in this scanded administration? All these Independent Counsels, hundreds of millions spent. Look at the force he put into motion in this thing.

Baker: I agree. It just seemed like a lot of the ones dealing with the White House and White House aides ended up going to Starr.

Nussbaum: That's correct. The White House ones all went to Starr. It was a natural kind of thing to do. My investigation over whether I lied to the Congress, about whether or not Hillary Clinton recommended Craig Livingston—it's incredible. An Independent Counsel investigating that.

Riley: I wonder if we could dial back to some things from the early days of the administration we want to talk with you about that you touched on. Several things relate to your role in the appointment processes. You talked a little bit about the Attorney General process earlier, but I think we might want to deal with that in a more organized fashion. We sort of marched through that. You find out that they're going to nominate Zoë Baird—so pick that trail up. Then you identified Reno as one of your finds. Tell us how you get from Zoë Baird to Janet Reno.

Nussbaum: Once Zoë Baird's nomination was withdrawn, the President delegated me to find him another Attorney General nominee, and Foster and I worked on this together. We compiled a list of people and we checked around. It has to be carefully done. One of the people who was on our list and who I interviewed at the White House was Kimba Wood, a Federal Judge in New York, who I knew and I liked and respected. She was never nominated by the White House. Everybody thinks she was the second nominee. Janet Reno was the second nominee, but because of a very undisciplined White House and an enormous amount of leaks and no punishment for that, it affected the appointment process.

Her name leaked out before the vetting process was completed. She really didn't have a Zoë Baird problem, but she had some similar issues which she didn't tell me about up front. She should have, because we could have dealt with it. I asked her in a general way. I didn't do the vetting, I had a whole team doing the vetting. So we never nominated her. It became embarrassing. Newspaper stories saying, "The White House is in disarray." This kind of thing happened.

I didn't like the White House in disarray, but it was important to try to get somebody good, try to get the right person. I cared more about that than about the disarray stories. So Foster and I continued the search. We considered Judge Richard Arnold of the Eighth Circuit. He would have been a great choice, but at the time there were some health issues to have him come off the bench. Maybe we would have put him on the Supreme Court later on.

But we were focused. We were trying to get a woman, but there was this notion that Hillary was pushing a woman. Yes, all things being equal, a woman would have been preferable, but if we found the right man—At one point we considered Chuck Ruff. We considered men too. It actually wasn't as easy as I thought to come up with names of somebody who would meet our needs. We were under political pressures: who would get public approval, congressional approval? And then, I don't remember who, but some lawyer recommended Janet Reno. I know Paul Sarbanes also did.

She was a prosecutor down in Florida. She had run for office down there to become a prosecutor. Vince met with her. He liked her, and then I met with her and we thought, on balance, she would be a decent choice for the office. Foster and I ended up recommending her. We vetted her greatly with respect to some issues that came up, and she passed that vetting process. I think I put Lanny Davis in charge of it at the time, before Lanny became a presidential spokesman. And we nominated her.

What did the President say to me? As we were standing in the Oval Office, we were about to go out in the Rose Garden to announce that we were going to nominate Janet Reno, and I was there with the President, I think the Vice President was there, and he gave his final approval. Right before we went out, because everyone was talking about nominating a woman, "Bernie," he said, "this better work, because if it doesn't work, we're going to cut your blank off and we'll nominate *you* for Attorney General." [laughter]

I said, "Mr. President, I hope it works now with even greater strength than I even thought before." [laughter] Fortunately for me, it worked. I hadn't remembered that until now. It's been a long time since I told that.

Baker: That's a good story.

Nussbaum: He'll admit that, the President will never know.

Baker: One of the misconceptions of this process, as well as the idea that Hillary was secretly pulling strings to get a woman nominated, but one of the common news stories at the time was that the Justice Department was in disarray. Stuart Gerson was insisting that he was the acting Attorney General reporting only to the President. Meanwhile, you had Webb Hubbell reporting to you. Could you explain what that interim period was like before Janet Reno came in March?

Nussbaum: The press has a vested interest in this and they did a good job. They tried to diminish the President. That's okay. Once Zoë Baird was pulled, the administration was already in office, so we needed an acting Attorney General. Nobody had been confirmed at that point, so Stuart Gerson, who was the Assistant Attorney General in charge of the Civil Division, who I see now as a lawyer in practice, became the acting head of the Justice Department. We did send Webb Hubbell over there. Webb Hubbell was a former Chief Justice of the Arkansas Supreme Court, a former mayor of Little Rock, a former senior partner of the Rose law firm, a very experienced and able litigator. He is a wonderful, sweet, decent human being, whose life has been enormously changed and affected by his coming to Washington. We sent him over there

ultimately to make him Associate Attorney General. He was enormously popular over there, and he got along enormously well with Gerson. The three of us got along very well. I was continuously in touch with them to make sure things were on an even keel. There was never any serious problem while Vince and I were trying to find an Attorney General.

Baker: So there wasn't this big competition?

Nussbaum: There wasn't a competition at all; it worked very well. You reminded me of something. One of my themes here is about the notion of Clinton illegitimacy. One thing that started happening very early is the Republicans in the Senate started to prevent us from staffing the administration. The Republicans in the Senate considered Clinton, as I said, illegitimate. While we did have control of the Senate, as you know, the Senate can be affected tremendously by a minority. They started to prevent us from staffing the administration. It got worse and worse as it went on, and of course now there's payback going on today. Jesse Helms and other people were really trying to prevent people from being confirmed. They weren't going to vote them down on the floor. They wanted to delay the process by not giving people hearings. And I'm not just talking about judges. We were having trouble getting hearings for our Assistant Secretaries or our Under Secretaries. It was very hard.

First we stretched out the vetting processes. Nanny taxes, nanny-gate. We made it so difficult for people to begin with, and that was an accretion of various events over time. That's our fault, as well as the fault of other administrations. Lloyd Cutler has been trying to change that ever since, but it's impossible to change at this point. Again, it's a way of a legislature really holding the executive in check in our form of government. In any event, they were preventing us from putting people into place. That's why there was no confirmed person in the Justice Department, and Stuart Gerson had to be there.

Finally, we got Janet Reno in in March, and then we got Phil Heymann, the Deputy Attorney General. We got Webb Hubbell to be Associate Attorney General, and we got Drew Days to be Solicitor General. But Foster and I were really the ones trying to manage and run that. This was not something we intended to do. I mean, we intended to be White House Counsel. White House Counsel is enough problems.

Baker: So you basically had two jobs there for a while.

Nussbaum: Yes, that's correct. It made me also a bigger target for things, but I didn't care about that.

Baker: Were you the one who chose Heymann and Drew Days and some of the other top folks?

Nussbaum: Yes, I chose Heymann. I knew Heymann from law school. Drew Days I knew of, and I met and interviewed him.

Riley: Were you given an open field on those appointments?

Nussbaum: Yes. The President and people on the White House staff had input, and they made the final decisions. I'm not the President of the United States, but I had a lot of input on those appointments, especially the FBI Director. They wanted to appoint somebody else, an old friend of theirs who we made a judge in Massachusetts, and I didn't want to do it. I said "No, it's too sensitive an appointment." I had the sense of not doing that.

Riley: Could you go ahead and elaborate on that? One of the next things on my list was the FBI situation. Can you tell us how that came to your attention?

Young: Could I just tie up one loose end?

Riley: Sure.

Young: When you were recommending these people, was Bruce Lindsey at all involved?

Nussbaum: Yes, he was. Bruce Lindsey, at one point, was head of the White House Personnel Office. Bruce Lindsey was involved. He was an important figure, a key figure.

Baker: On the legal justice appointment?

Nussbaum: I don't remember. He was so busy at that time. Not so much in the legal justice appointments, but on general problems and appointments. But I don't remember him because Foster was around at the time. Actually, the best people that I met in the White House or in Washington were mostly the Arkansas people. I mean, all this rap about the Arkansas people being bad is just not true. Lindsey, Foster—Hubbell did a stupid thing and shouldn't have come, I understand—Bill Kennedy, Hillary Clinton—she's not an Arkansas person, I guess—these were the best, most loyal, most decent people. The people from outside and the Washingtonians were the people who really couldn't be trusted, who had their own agendas and things like that. So to me, the Arkansas people, by and large, were really the best people in the White House. Obviously, we were learning, and we were inexperienced in those early years, but they were good people.

Knott: Can you comment on Mack McLarty as Chief of Staff?

Nussbaum: Mack McLarty was a good person too, another Arkansas person, but he really was not made for that job. He was a smart person and a good person, but you really had to be a very strong person to have that job. But it's the President that sets the tone and sets the character. Was I a good person for White House Counsel? I think I was, but look what happened. It shouldn't have happened if the President—but the President is the President. You have to be Washington savvy and Washington aware, and maybe we should have had more people like that in the White House. He brought someone like Gergen in to provide that, but that was a joke. I don't want to criticize Gergen too much, but Gergen is classic Washington: you watch out for yourself, and what's my best interest. So maybe McLarty was not the best choice, but I'm not sure it would have been all that much different with somebody else. Later on, Panetta was obviously a pretty good choice.

Baker: I know some White House Counsels worked primarily with the Chief of Staff, but you worked more directly with the President.

Nussbaum: Yes. I worked with the Chief of Staff, but we didn't have that strong a Chief of Staff. It was easier for me, because I worked directly with the President.

Riley: Did it change when Panetta came in? Did he insist that things be more disciplined?

Nussbaum: Yes, he did, as I understand it. I wasn't there when he came in. McLarty was still there when I left, but I was in touch with the White House thereafter, to some extent. I knew certain things that were going on. I was in touch with my five successors as White House Counsel. But they tried to impose more discipline. It worked to some extent, but the President is still the President. He has his way of operating, and he has his personality and character. Where were we?

Riley: The FBI.

Baker: Sessions first.

Nussbaum: Yes, Sessions. That was another one of my early problems.

Baker: Yes, you inherited that one.

Nussbaum: Sessions, two things. One, there was this report that I recall. I haven't reviewed this for quite a while, but it was regarding certain ethical issues that had arisen with Sessions. I'm not saying they were the most major ethical issues ever, but there were clearly some issues that arose. And we were sensitive to those kinds of issues at that point. But more significantly, this is what I remember. He had lost the respect of the upper echelons of the Bureau, not really because of these ethical things, but just generally, and this was a problem for us. It wasn't that he was a bad person or anything. This was typical Washington maybe, but he wasn't our appointee. He was appointed before our time. He had lost the respect of the senior people of the FBI, and we were concerned about that.

We didn't have an Attorney General in place for a while, and now we had the danger of dysfunctional leadership of the Federal Bureau of Investigation, plus the media and the ethics charges and things like that. So we had to deal with it. We made the decision. The President made the decision, obviously, but I had a lot of input. We really had to make sure that the FBI was stabilized at the top and well-run. That's a very significant agency, the most significant one there is, even more than the Justice Department in a sense, even though it is part of the Justice Department. So we had to get somebody good, because this was going to be a nomination closely watched.

Now Sessions has a very strong wife, Alice Sessions, who to this day is delighted that I was also eventually fired. *[laughter]* I went to talk to Sessions. I said, "Really, you should let the President make his own—" The FBI Director is a ten year term, but at the pleasure of the President. So although it is officially a term, and you have to be confirmed by the Senate, it's not really a term.

It's at the pleasure of the President. I said, "We'll try to do this nicely. You know, I've had past experience in the private corporate world. You can resign, you can become a consultant, you'll do it on your own terms." I'm bending over backwards to be nice, and he's being very nice in his conversations, but he says, "I can't do it." In effect, he's saying his wife won't let him do it. I don't know if he used those words, but she was very angry and I understand that. I said, "Well, you're really going to have to do it." He said, "No, no, I'm not resigning."

So I talked to the Attorney General and I talked to Webb Hubbell. I said, "You talk to Sessions." I said to Janet Reno, "You talk to Sessions and tell him he really has to resign. And if he doesn't, then you fire him. Let me know in advance, but you fire Sessions." So she called me up. I said, "Did you talk to Sessions?" She said, "Yes." I said, "Is he resigning?" She said, "No." I said, "Well did you fire him?" She said, "I can't do that. We have to talk some more."

So I talked to Hubbell, and he talked to Sessions. Sessions won't resign, but Hubbell didn't fire him. Reno would give Hubbell the authority to fire him, but Hubbell did not want to do it. Reno and Hubbell got along very well, and they really liked each other until Hubbell had to leave. They got along.

So they asked me. "You have to come down and you have to do it." I said, "Okay, I'll do it. This is crazy, you're the Attorney General." But no, I go down. I go. I've got to go down, this is my job.

Baker: You get all the good jobs. [*laughter*]

Nussbaum: I had to tell Zoë Baird. Now three months later, I go down. I meet with Sessions. I said, "We've talked again, Director Sessions, but if you don't leave, we're going to fire you." Reno wouldn't do this, and neither would Hubbell. He says to me, "You can't fire me, you're the Counsel. Only the President can fire me." I said, "That's right, the President can fire you, but I'm speaking on behalf of the President. I'm telling you, if you don't leave, you're fired." He says, "You can't fire me. Only the President can fire me." I said, "You want to hear from the President directly?" He says, "Yes, I want to hear from the President directly."

So I get up. I said, "Okay, you'll hear from the President directly." I got up, got into my car, went back to the White House, walked into the Oval Office, and said, "I just came from Sessions. I fired him but he wants to hear from you directly." The President said, "What? I have to call him?" I said, "Yes, you have to call him, you're the President." He said, "Bernie, I don't want to do that." "You call him right now, and you tell him he's fired." I was mad at Sessions at this point for doing this, but I didn't care, I would fire him. Again, it's not about me. He knew I was conveying the message of the President. He knew I wasn't coming there on my own and inventing this. He knew the President made this decision after discussions in the Oval Office.

So I say, "Call him." The President doesn't like these confrontations either. The only one I think he ever fired directly was me, and even there he couldn't do it in a conversation. So I said, "Pick up the phone." I said to Betty Currie, "Get Director Sessions on the phone." The President gets on the phone. "Director Sessions?" "Yes." "It's the President. Bernie just left you, yes? What Bernie said was correct. I want to tell you that I am replacing you as Director of the FBI. Thank

you.” Very good, he hangs up. I said, “What happened?” He said, “I told him. You heard me. I told him, and he said, ‘Fine,’ he’ll leave office.” I said, “When? Did he say when?” He said “No.” “Call him back.” [*laughter*]

Now, I don’t know if I told the President to say this. I remember this happening, but maybe I screwed up by telling him not to do it in the original call. “Call him back and tell him he has to leave by tomorrow morning.” He said, “I don’t want to do that.” I said, “He has to, we’re appointing another FBI Director, I’ve lined somebody up.” We had the whole Freeh process going on at this time. “Tell him he has to leave tomorrow morning.”

He looks at me, very angry. The President picks up the phone, gets the Director. “By the way, Director Sessions, you’ll leave tomorrow morning. Yes, thank you.” And he hangs up. Poor Sessions. After he met with me or something, he then walks out and he trips and falls and breaks his arm. This is in the newspapers. It’s like a sad story.

Baker: I remember that.

Nussbaum: It is, he’s a nice guy, a sweet guy. He’s doing well now. He’s an arbitrator, somebody told me, but that’s what I had to do.

Riley: You broke his arm? [*laughter*]

Nussbaum: No, no, no, I didn’t have to do that.

Riley: A real reputation-builder in Washington.

Young: You only meant to twist it. [*laughter*]

Nussbaum: Well, I certainly did twist it. I didn’t mean to do that. But, these people wouldn’t fire Sessions. That’s the first time an FBI Director has ever been fired, I guess. L. Patrick Gray, maybe, in the Nixon administration. We were really worried about the lack of functioning at the top of the FBI. Now, the replacement for Sessions is important.

I recognized that this was a very sensitive job. We had to get somebody good. I was more concerned about who would run the FBI. Because of my background and experiences, I was very conscious of this effort to undermine Presidents, to bring them down. Even though we had control of the Senate, I was worried about public perception. I mean, I’m accused of never worrying about public perceptions. That’s not true; I am worried about public perception at times, but I’m more worried about doing the right thing, and I try to mesh them. So I wanted somebody who I felt would be perceived as relatively independent, but still somebody we could talk to, who could work in the Justice Department, who had a good reputation.

I checked around. A number of names came up. I was thinking of Federal Judges, which was logical. I really wanted John Keenan, who was a Federal Judge in New York. He is a magnificent man, and he would have been a great director of the FBI, but I recall he was in the hospital, he

was ill. Obviously, I thought of people that I knew. It's helpful to know the White House Counsel. It helps if you want to get certain things.

But I was thinking of people I knew who could fit this bill, who were very independent and certainly appeared independent. So Freeh's name came to my attention. I really didn't know Freeh that well. I knew of him. We were in New York together. But he had a very good reputation. He was a Republican/Independent. He was a Bush appointee. I knew he knew [Alfonse] D'Amato, and that would make it a little easier. I checked on him with other judges, and everything came up very good, by and large. He was a former FBI agent. I mean, this wasn't just a Federal Judge; he was an FBI agent. He started off as an FBI agent, then he became a lawyer. He was a prosecutor in the U.S. Attorney's office in the southern district, and then he became a Federal Judge. He had worked in Washington in the FBI. He had a wife, five children. The whole thing sort of fit.

He didn't want to do it and his wife didn't want him to do it. But we met and I talked to him. He knew of me; we knew each other tangentially. I talked his wife into it; she didn't want him to leave the bench. Today he's Executive Senior Vice President of MBNA. I saw them at a party about six or eight months ago. She told me I changed their lives. I said, "How did I change your life?" She said, "Every one of my kids have their own room." They have a grand house and he's done extremely well. He's a very senior executive of a very wealthy credit card institution. So today they live a life that they didn't live. Each of the kids have their own room, they don't worry about living on minimal salaries. I said, "I talked you into it, you were fighting with me." "No, no." They're very grateful. I mean, there's a lot of people out there who still remember me with some gratitude.

But in any case, I thought he was a good choice. The President was concerned, actually. He wanted his friend, whose name I forget. He is now a district judge in Massachusetts, and I liked him too. His name was mentioned, but I sort of convinced the President that it would be a mistake to appoint a friend. He'd be under a lot of attack in the Senate. We probably could get it through, I thought, unless there was something we didn't discover in his background. I worried about the lack of credibility, ultimately going forward, and sensitive investigations. I figured, on balance, he was not a good idea. I'm not 100% sure I was right about this to this day, although I made that judgment at the time. I felt I was right at the time.

I'm trying to convince the President to appoint Louis Freeh—this is an Oval Office story. I remember the President saying, "I don't understand, Bernie, you say I can't appoint a friend of mine" —this person who he eventually made a judge— "but I can appoint a friend of yours?"

This is Clinton, it shows how sharp he is. "I can't appoint a friend of mine to the FBI, but a friend of yours is okay, right?" I was worried about perception and things like that. I said, "Mr. President, that's sort of true, but there's a big difference between you and me. I'm only the Counsel to the President. You're the President. There's a big difference between being Counsel to the President and the President." So he went along, he appointed Freeh. He's never forgiven me for that. To this day, he thinks it was a terrible appointment. He would say so himself. Maybe Freeh did go overboard in tipping over to the other side and not really being loyal, but loyal in the best sense of the word, not blindly loyal.

But the story I told you about my leaving is important. I warned him, “You’re going to blow his mind, you’re going to blow people’s minds.” It’s logical. Freeh saw this happen, and I had to talk him into accepting the job. Freeh had to come to Washington to be interviewed. They saw what happened to Zoë Baird. They saw what happened to Lani Guinier. It was very tricky to try to get people down. Nobody trusted what was happening because the President would get rid of people. I kept telling him not to do it. When I was there, I used to talk to Freeh from time to time. There’s nothing wrong with the head of the FBI talking with the White House Counsel. I wanted him to do his job. As I said earlier, I wanted him to succeed. I’m the one who put him in that position. I wanted the President to succeed, and I wanted him to succeed. You have to be able to communicate in order for that to happen.

I don’t think the antagonism that eventually arose would have arisen. But it did arise, and the FBI became very antagonistic toward the administration and overly zealous and overly political. Freeh got his budget increased enormously, and there was a tremendous growth of the Bureau under him. Obviously he got out in time, before Al-Qaida and September 11th. Now historians or the investigators will go over that. But it’s too bad what happened between Freeh and the White House. As I said, it’s partly because of my leaving, but I told the President at one point, three or four years later, “Fine, you don’t think he’s a good FBI director? Fire him.” “No, I can’t do that.” “Why not? You fired the last one.”

Riley: You were involved in the Supreme Court nomination very early.

Nussbaum: Yes, very early.

Riley: Tell us about that.

Nussbaum: Ah, the Supreme Court. I had a lot of things going on in the first ninety days. This is an active time. It really was a great adventure. It’s too bad, it could have been even greater. Really, just think if there was no Independent Counsel during the Clinton administration. Just think. Sure, there would have been issues, but he wouldn’t have been driven crazy, he would have had two more years. Who knows what he might have done in response to the *Cole* and the embassies. Because of my own experience, I relate all these things. I think of them all together, they’re all of a piece. If you understand the administration, they’re all of a piece. Okay, the Supreme Court.

The Supreme Court was something that is obviously very important, and I’m pretty proud of that one. It’s an interesting subject. I wasn’t actually able to achieve what I wanted. I had an idea when I came into the White House, and I knew the Supreme Court would be a very important responsibility for me and for my staff. One of the reasons I appointed Klein to replace Foster was that he was a Supreme Court advocate and he helped on the Ginsburg nomination. He was wrong on more fundamental things, as I learned after I made him Deputy White House Counsel, but he was helpful on the Supreme Court. But I considered it a very important thing. The reason I appointed Klein is that I considered that going forward, we probably would have more Supreme Court appointments. [Stephen] Breyer was another one, just as I was leaving, and I thought it

was important to have somebody who was able in this area, and Klein certainly would have been able, and was able in that area. In other areas, I have doubts.

But the first appointment. When [Byron] White stepped down, Ron Klain, who was Associate Counsel, was in charge of judicial appointments. He's a very able guy, a partner in a Washington law firm, but he worked in a lot of major administration positions and was highly respected. So we had to nominate somebody for the Supreme Court.

Riley: Were you given a heads up on this before?

Nussbaum: No. He called Klain, who was his law clerk. We weren't given a heads up. Actually, he did us a favor. He resigned in March but didn't step down until June, so he gave us time to find somebody. The Supreme Court is an interesting story because of that. He didn't give us a heads up that he was resigning in two weeks or tell us 24 hours before. He told Klain and then the next morning he announced his resignation—I flew back from Puerto Rico. I had gone down on vacation for a day or two. I flew back—maybe there was a meeting before I flew back. Anyway, Foster and I were in charge of the Supreme Court process, with Klain. Klain really handled it and did a lot of work on it. But I had an idea, and I discussed it with the President. The President must have gotten input from a lot of people, including Klain directly. I was a very non-hierarchical White House Counsel. I didn't care if the President talked to members of my staff. I'll discuss the White House Counsel's office and the structure, that's a whole other issue which we haven't talked about. There are a lot of issues that are interesting. Some of my ideas of them I think are right—I think most of them are right—but it's interesting how they play into the Washington culture, the Washington phenomenon. But anyway, my idea for the Supreme Court. I spoke to the President, I think I did it before White resigned, before we knew we were going to have an appointment. I remember having this conversation with him and he agreed with me.

I said, "You know, for the next appointment to the Supreme Court, we should try to appoint a non-judge." We've changed the Supreme Court lately. It has become sort of a civil service thing. People sort of step up from Appellate Courts. It was never like that in our history. See again, no one knows history in the White House; everyone thinks the last twenty years is history. It's not history. You have to look over the last 200 years. The Chief Justice of the 1954 Supreme Court, the one that presented *Brown v. Board of Education*, was Earl Warren. He was not a judge; he was a Governor. Some of the key justices were Felix Frankfurter—he was a professor. And Bill Douglas wasn't a judge; he was head of the SEC [Securities and Exchange Commission] and also a professor. You can have too many professors on the Court, but that's a separate issue.

Baker: Hugo Black.

Nussbaum: Hugo Black was a United States Senator. Stanley Reed was a Solicitor General, Robert Jackson was an Attorney General. Harold Burton was a U.S. Senator, and he actually served for six months as a judge on the Circuit. So you have this Court consisting of political figures who have lived, and they're the ones who did *Brown v. Board of Education* in a nine-nothing unanimous decision. That's the kind of Court you really want. Now, you can't change it overnight, but we really should try to appoint a lawyer to the Supreme Court, male or female. A lawyer, a professor, a political figure or something other than a judge, and he agreed.

When a Supreme Court nomination arose, I was determined to affect this. I had his permission, and he agreed with me on the concept. We had a whole list of people, and this is a sensitive thing. My first choice of course, as I mentioned, was Mario Cuomo. He wasn't really my first choice, because I was still mad about his attempt to strangle Clinton in the cradle, but he was the President's first choice. Cuomo turned it down relatively quickly.

Riley: But it fits your theory.

Nussbaum: Absolutely. Cuomo is totally consistent with my theory. Cuomo was a very good choice with my theory; that's why I didn't really oppose it in any way. I knew him and liked him. I thought he was a little flaky on certain occasions, but of course he acted in a strange way and turned it down. So now I'm proceeding. Okay, he's out, or he's probably out—anything can happen until you make the appointment. Then I focus on a number of people and I get the President's permission—maybe I didn't get his permission, but I talked to him. I started thinking, *Who can I appoint?* It's very hard to find one of these figures.

I was also worried about a [Robert] Bork-type confirmation. This is where I did succeed ultimately—I didn't want to have the process be like Bork or Clarence Thomas. I really wanted a Supreme Court process, if I could possibly get it done, which would go as smoothly as possible. That's tricky, and I understood that, but I didn't want to go through another Clarence Thomas or Robert Bork thing. Of course, the Republicans were lying in wait to get even, which I perfectly well understood. I had to balance it out, so I was trying to think of names.

I came up with three names and actually talked to each of them. The President agreed I could talk to them. They were three of the Cabinet members: Dick Riley, Governor of South Carolina; Warren Christopher, new Secretary of State—I understand the Secretary of State is pretty important—and Bruce Babbitt, Secretary of the Interior. And I really went and spoke with all three just to feel them out. I spent three hours with Riley. They were shocked. They were very honored, but shocked.

They're politicians. They liked politics, and they liked being in the Cabinet obviously, but going into the Supreme Court is going into the monastery in a sense. So it's a little tricky, but I appealed to them. Riley sort of felt he really wasn't up to something like that. I convinced him that that was not true. I really believe you have to have common sense. You don't need such encyclopedic knowledge of the law. You need to have knowledge of humanity, knowledge of people, knowledge of politics. That's what makes a great Supreme Court justice.

I had him going for a while, then I went to Warren Christopher. He was also taken. It piqued his interest for a second. He clerked for the Supreme Court. He clerked for Douglas. He knew a lot. Warren Christopher was a prominent lawyer, but he said no. He thanked me, but he said no. It's interesting that the President let me talk to him, because the President indicated he was prepared to lose the Secretary of State if we went through the whole process. So I finally went to Babbitt. And I liked Babbitt. Of all three of them, Babbitt was very high. Babbitt was a lawyer, Attorney General, a Governor, a Cabinet member. Perfect. He really met all those things. He's a good

man, a presidential candidate in 1988. I liked him. So I convinced them that Babbitt was the right choice. Babbitt was willing. And his wife was willing. So I got it going.

We had to do a lot of vetting, because I knew all sorts of stuff from Arizona. There's always allegations and things like that when you go into any political figure. That was probably the reason Cuomo didn't run for President. Everybody is always worried. So I start the vetting process, and now we're very sensitive about vetting, after Zoë Baird and Lani Guinier, and all the bad stuff we're going through. So I have to vet carefully. I have to make judgments of what's important and not important—it's not easy. Is this scandal in the Arizona newspapers important?

I had this whole team working on it, and they were reporting back to me. I'm keeping Babbitt in line, and the President is in favor of it. I got Hillary in favor of it, it's all great. Last night at dinner, here at the Miller Center, the woman who was sitting there was on Babbitt's staff, and she remembered. This is interesting, that's why I was talking about it. We were preparing Babbitt to be nominated for the Supreme Court of the United States, and I was deliriously happy when this came. Babbitt would be nominated, and I'd reach my aim of having a non-judge on the Court. Babbitt wanted it.

I made the judgments that these so-called scandals in his past—there were no scandals in his past. It would all be okay. We're like a day or two away from nominating Babbitt. This is now after several weeks. The President calls me and tells me we're not nominating Babbitt. I ask, "Why are we not nominating Babbitt?" He says, "I can't lose him." "What do you mean, you can't lose him?" I say. "Appoint somebody else as Secretary of the Interior, you'll appoint somebody else." "I can't," he says.

Actually the woman last night described the conversation the President had with Babbitt afterwards, which I never knew about. He said he wanted to do it, but he said something that wasn't totally accurate. In any event, he said, "Bernie, I can't do it." The basic thing, and we remember the same thing, was that he said, "Look, I have this problem out west." We had the grazing fees issues at the time. You've got to be an aficionado of the Clinton administration. Clinton sort of rolled over on that, another early roll. He became much stronger later on. The problem is that the early years have this big impact, especially if you put into place an Independent Counsel.

He said, "I need him. He's the only person who can bridge the gap." It was a logical argument between the environmentalists, who looked to him as sort of a hero, and the business interests, which he understands. "He can balance it out for me. He can help me balance it out. If I put him on the Supreme Court, there'll be an enormous battle over whoever I appoint. I will lose that balance, and therefore get somebody else."

The last minute, I have to get somebody else. Meanwhile, by the way, the press is making predictions, "the administration is in great disarray." After all, President Bush appointed Clarence Thomas within three days, and now it's been 45 or 50 days. Remember, we had until the end of June basically. We had until September—we had until whenever we wanted. So now I have to start this process again. I had a list, and I started focusing on Ruth Ginsburg. A friend of

hers was a close friend of mine. We ate dinner together in Washington when our friends were there from New York. We went to a restaurant in Washington.

Baker: Sort of like matchmaking?

Nussbaum: Yes, she wanted me. Everybody was after me, so I agreed to eat with these friends—nobody can influence me in my mind. Obviously, the President is going to make the final decisions on this stuff anyway, although I have a lot of input. So I meet with Ginsburg, and it was nice. We had a very pleasant dinner; it was very charming.

I looked at the lists that we started, and she was high up on that list. She was good. She was a woman, which was a plus. In my view, although not in the President's view, it was a plus that she was a Jew. There hadn't been a Jew on the Supreme Court in 25 years. I thought that was relevant, and I mentioned that to the President, but he said it's irrelevant. I think he dismissed it out of hand. That's what he did with me at least. I said "It's relevant that she's Jewish." He said, "It's not relevant." I'm Jewish; he's not Jewish. I said, "There hasn't been a Jew since Abe Fortas was forced off the Court." But he says "No, I don't care about that." I said, "You don't?" He says, "We'll find somebody and we'll talk." I think he was serious about it, and then we looked into her background, which I knew a lot about. I had talked to her many years before about one of the kids we were hiring in my firm, making him one of my partners. So I knew her somewhat.

The more we focused on her, she's moderate in her positions, and—

Riley: She had an activist background.

Nussbaum: She had an activist background, but moderate as a judge. She'd been a judge for twenty years, and she was not known as a flaming liberal or a dark conservative, but very balanced. And she was the right age, in a sense. See, we'll have to discuss judicial appointments in even more length. We weren't these ideologues looking to appoint 40-year-olds that will stay forever. We were looking for people who had lived, balanced people who had a life and a wide range of experience. So she fit those criteria, and it looked like it would be an attractive appointment. It went back and forth. There were other names in contention people that were pushing.

Baker: [Stephen] Breyer was also considered.

Nussbaum: Breyer was considered. He came down and met with the President. Vince brought him down. He was being pushed very heavily by Kennedy and others, but some background issue arose, which was nonsense. Everybody was so sensitive at that time because of Zoë Baird. Also, Breyer and the President had had this lunch or meeting alone, and the President didn't really take to him. Breyer was a good choice, too.

I wanted Richard Arnold, who was the Chief Judge in the Eighth Circuit. He was a very close friend of the President and Hillary, a superb jurist who I went to law school with, but he had certain health issues. The President said we would appoint him the second time, and he would have been appointed if I hadn't left the White House. I left just at about the second appointment.

The appointments to the Supreme Court would have been Ginsburg and Arnold rather than Ginsburg and—my leaving really affected a lot of lives. Linda Tripp, Monica Lewinsky. You can see, I'm like Zelig. You know it's not that I'm so important. It's very interesting how these relationships touch on many people.

No, he didn't want to appoint Arnold the first time because there was some health issue, but also because it would have been appointing an Arkansas crony. They were afraid of the cronyism charge. There wasn't that great a drive for a woman, although a woman is a plus on this. Cronyism was the fear. I said, "A crony? This is the chief judge of the Eighth Circuit, he's been—" "No, no, no." See, I didn't win all these appointment battles. I mean, I wanted Babbitt. He pulled Babbitt on me for a political reason. I wanted Arnold, but he didn't want to go with Arnold then. He said he would go with Arnold later maybe. Arnold would have been magnificent, he's one of the great jurists in the United States. If you're going to appoint a judge, you want Arnold. So that's basically how we came to Ginsburg, who I then started pushing and said yes, okay, she'll be the candidate, and sure enough she was.

I'll tell you some stories for the oral history. We were trying to keep this very secret. We were vetting, and she didn't think she had a chance. Then I call her up and I said, "Come back to Washington." She was someplace; she got very nervous and excited, and so I said, "Come on back, I'll meet you at your apartment." She lives in the Watergate. "We've got to look at your financial records some more." I brought some people down with me to look at financial records. Everything was obviously very clean, and then I said, "Okay, tomorrow you'll go over. I'll take you over to the White House and you'll meet the President. He wants to talk to you." She says, "Well how should I dress?" I say, "Oh, the President is going to be coming in from golf." I'm taking her over on a Sunday. "Wear something very sporty, very informal, it's really okay."

So I pick her up the next day, and we drive her over to the White House in secret. It's a Sunday, and we go in. My wife drives, and we walk up to the residence. She's dressed in these slacks, and she looks very nice in a sporty outfit, because the President is going to come from golf. So we get up there, and five minutes later the President starts walking in, dressed in a blue suit, very formal. She says, "What have you done to me?" He had changed his plans. He was coming back from church. "What have you done to me?"

I said, "Don't worry, Ruth, it'll be okay." I introduced the President to her and he's the most charming, handsome guy in the world. She looked up at him, and he looked down at her. They sort of go off together, the two of them. They go off for an hour and a half. I go to my office. I'm sitting in my office, and I get a call to come pick her up. I take her back and I say, "How did it go?" Well, it was wonderful. She saw the President, showed pictures of her children, grandchildren, and they talked about other things. She found him enormously charming and everything, but he didn't say anything.

He met her, but he also met Breyer. He didn't appoint Breyer. Nothing is guaranteed, especially with this President. So she went back to her apartment. She was hopeful, but certainly not certain. So, I talked to the President after I sent her back. I said "Well? We're going to go, right?" He said, "Yes, yes, okay, we'll appoint her." I said "Good. Why don't you give her a call?" He said, "I can't do that." This was in the afternoon, I think, if I have it right. "I've got

some friends coming over, I've got to watch the Arkansas game on television." I said, "What time does the Arkansas game start?" He said, "No, I've got these friends. I'll do it later." I said, "You should really call her up." He said, "I'll call her, I'll call her, but I can't do it now. I'll do it later." I say, "What time is the game over?" I'm in my office on a Sunday, he's in the residence with his friends and everything. He said, "We're going to have dinner, the game will be over around 11 o'clock at night or midnight." I said, "Oh God."

"I'll call. I promise you I'll call, but I can't do it now. I really can't do it now. I'll call." So I go back in my office. I had this problem with Babbitt, so I was a little worried here. Every time I think I've got something done—I sit in my office, but I know he's going to do it. I have no doubt he's going to do it. So about 8 o'clock on a Sunday night, I'm in my office in the White House, mostly by myself, I think. I have this recollection. I call Ruth Ginsburg and I say, "Ruth, this is Bernie. Do me a favor, don't go to sleep tonight until you hear from the White House." [laughter] She started crying on the phone; it was very touching. I didn't say she was going to be appointed. I didn't say anything at all, maybe he'd change his mind. I just told her not to go to sleep. She couldn't believe it. It's really startling.

The only person she called actually, an hour later, was my wife, who she knew from dinner. Because she couldn't tell anybody—she hadn't been appointed. At 11 o'clock or midnight the President called her, after the game. She was up. She didn't go to sleep. He called her, and we announced her appointment the next day. We were all ready, and that one went very well too.

Baker: Did you help prep her for the Senate hearings?

Nussbaum: No, I didn't. Joel Klein did.

Baker: From your office.

Nussbaum: He wasn't in my office then, he was just a volunteer at the time. Ron Klain did too. We had a whole team that worked on prepping her, but she was fabulous and she was fantastic. Actually, I guess this is in the books, in [Bob] Woodward's book and other books. That was a great day in the history of the Clinton administration. This story is like a Shakespearean tragedy in a sense, at least my role in it. I think the great day was July 20th of 1993. July 20, 1993, is when we announced Freeh's appointment to head the FBI, to universal applause.

I got the Republicans in line. I called Bob Dole in advance. It's another time the President drove me crazy. I'm chasing him in the hallway the night before. "Call Bob Dole," I said. "Call the Republicans, and tell them we're appointing Freeh tomorrow." "I can't. I'm busy. You call Bob Dole." "No, you call." "No, you call." There was a lot of this—you call, I call. So I call Bob Dole. I figure I got D'Amato in line. I called D'Amato, who I knew. All these guys. I mean, calling from White House, obviously I can reach anybody. "Senator, the President just asked me to call you. He asked me to tell you that we're going to announce tomorrow the appointment of Louis Freeh to be head of the FBI. We know it's a very sensitive appointment. I'm going to fax you his background immediately. I think you'll find it pleasing. He was a Republican and Independent. I think he'll be fair. I think Senator D'Amato will be strongly supportive of him and we would like your support with respect to this." I'm talking to Dole on the phone.

Dole criticized me in the presidential campaign of '96. We became sort of friendly. I was trying to be friendly with these guys, even though I had this reputation of being this tough guy. In any event, Dole says "Well, thank you very much for calling, thank the President. I'll have to consider what we'll do, and we'll see." So I didn't get any commitment of support. I didn't expect to. The next morning, I walked in at seven in the morning. There was a fax on my desk with a statement that Dole was going to make on the floor of the Senate that day supporting Freeh. It was really a great thing. I mean, this was a sensitive appointment. That same day that we had the Rose Garden thing announcing Freeh's appointment to this acclamation, we could report Dole's support. Ruth Ginsburg was going to testify before the Senate Judiciary Committee that day, and all of a sudden this love fest begins. No more Clarence Thomas. Look at this day. This is the day, July 20th, 1993, and this is the story I've told a number of times.

I'm sitting in my office after the Rose Garden thing, which was about 10:30 in the morning. About 12 o'clock or 12:30, I turn on the TV and there's Ginsburg, charming the Senators and having esoteric discussions about the Fourth Amendment and things like that. I've got the Supreme Court appointment down, smooth, done. I fired the FBI Director the week before and got away with it and put another FBI Director in. It's going great. No political hassle, everything is fine. This is an amazing story—Foster walks in my office about 12:20. His office is right next to mine. I say "Vince, take a look. We hit two home runs. Look at this. You and I, Ginsburg, Freeh, it's great for the President, it's great for the country." It's the last conversation I had with him. He said, "Yeah, yeah, I guess so," something like that. I said, "I'm going to lunch." He said, "I'm going to lunch. I'll see you later."

As I said, I'm full of myself. I'm the best thing ever. I pulled all this stuff off. I go to lunch at the Metropolitan Club. I don't have a drink at lunch. I only drink after dinner, but I smoke my cigars. I would smoke one now, but it's not politically correct. I come back after lunch, and say, "Where's Vince? I want to talk to Vince." "Not around." "What do you mean he's not around? Call him." "He's not around." All right, he's not around. So I wait another hour, then I say, "Where's Vince?" I was asking Betsy Pond or Linda Tripp, one of my secretaries. "We don't know where he went." I said, "Page him," which I rarely do, but we have the White House paging system. They come back, there's no answer to the page. I said, "He must have gone home or something, he must have been tired and went home. I'll talk to him tomorrow." I put it out of my mind.

I go back home to my apartment in the Watergate at 6 o'clock in the evening. I had never been home at 6 o'clock since I started in the White House. That day I get home at 6 o'clock because all these things were going well. It's impossible, I start at 6:30, 7 in the morning, and we'd go until midnight. Six o'clock, I'm home. The reason I'm home is because we had friends coming from New York, Estelle Parsons, the very famous actress, and her husband, who is a prominent lawyer. We were supposed to go to dinner, but everybody knows when they come to go to dinner with me, something ends up happening. I end up not showing up. So I show up earlier than my guests, which is unheard of in Washington. They come over to our apartment at the Watergate, and we go out to Galileo's, this magnificent Italian restaurant, very famous in D.C. I'm sitting in this restaurant with Peter Zimroth and his wife, Estelle. I'm drinking and I'm full of myself. I'm

so great, telling stories about how magnificent I am. I can't stop talking about myself, as my wife will confirm.

Actually, I'm sort of kidding. But really, it was a good day. I was very proud, and all of a sudden my pager rings. This is the story, it's in the book. "Oh," I say, "the White House is calling, you can see how important I am. I can't even have dinner. I'm on call at all times." This is a tragic story. I go to the phone and Mark Gearan, the Director of Communications is on the phone and he says "Bernie, you've got to come back to the White House right away, Vince Foster is dead." Dinner was over, and I went back to the table. My wife is sitting there, our friends are sitting there, and I stand and say, "We have to leave right now. Vince is dead, he killed himself." My wife gasps. The other people didn't know him. They knew of him. "We have to go to the White House right away, so let's all get up."

We don't have any car or anything, so we've got to take a cab. It shows what you think about at these strange times. I didn't have my White House pass. You have to have a pass to get around the White House. Normally I would have it with me. In fact, I was the one in the White House who was most insistent on people wearing their passes and stop being such big shots, thinking you don't have to wear passes. "After all, I'm George Stephanopoulos. I don't have to wear a pass; everybody recognizes me." So I insist people wear their pass. I don't have my pass, and I have to get into the White House. In my confusion, I'm sort of wondering if I can get into the White House.

Now, I'm fairly well known at this point. So I remember going over to the White House worried that I didn't have my pass. It's a strange thing that goes through you. I was so upset obviously, with this news. We drive up to the White House and I walk out and the guards open the door immediately. Everybody recognizes me. So first I was relieved that I could get into the White House. But I was so upset. I went in and saw the President. Then everything is the Foster story. A lot of stories, the papers, the notes and all that kind of thing. But it's a very interesting thing. It's Shakespearean. When you think you're on top of the world—this is a danger for every administration, including George W. Bush—just when you think everything is going for you, there is something in human affairs. Just when you think you've got it made, something happens. It doesn't mean you can't keep trying, can't fight it.

As I said earlier, I think it had a big impact, ultimately. Once he was gone, the conspiracy theories rolled up and gave a darker cast to what people thought was happening in the administration. Another phantom scandal and the loss of a powerful person who could have provided strength and correct advice at a crucial time six months later when I was there all alone. That's life.

Riley: Why don't we take a break for five minutes and come back.

[BREAK]

Riley: I want to ask you a general question, and then I think these two down here want to pose some of these relationship questions about the internal operations of the office. My question relates to the President's decision-making style. We've heard on a number of different occasions

that this was a President who would often seemingly reach closure on an issue, as was the case with Bruce Babbitt, and somebody would find out later on that in fact, closure hadn't been reached, that it had been reopened, and another decision had been taken than the one that had been previously reached.

I'm wondering if you could comment on this, specifically in the Babbitt case. Do you have any sense about who may have gotten to the President on this particular point, in this specific instance? More generally, was this a typical decision-making trait of his? Did he like to re-open closed decisions, and how did you deal with that as a staff person?

Nussbaum: The answer is yes. It is sort of typical of his decision-making processes, when I was there at least. Remember, I keep warning, I was only there for one and a quarter years out of eight, and I think things changed somewhat down the line. There was a Chief of Staff change, and I think it did become somewhat more disciplined. I don't want to exaggerate. I think it's overstated that it became much more. The President is the President. He doesn't like to make a decision until he has to. To some extent that's a good trait, but it may not be a good trait from time to time.

He is enormously open to having information come at him. To me, that's generally a good trait. He is willing to listen to people, to talk. On the other hand, it becomes bad when he sits in rooms, as he did in those early years—it's been written about in various books. You have these bull sessions. You have 30 people talking about economic policy or health policy. He is such a policy wonk that he knows every nuance, which is incredible. I mean most Presidents think only at certain levels. Ronald Reagan and both George Bushes didn't have this sense of nuance and detail that he had. Maybe Jimmy Carter did have it, to some extent. I don't know if that's good. I don't think it's a compliment. I think it is good in some respects and not good in other respects. But in any event, it was an informal, to use a nice word, decision-making process. He wasn't very decisive at times. On the other hand, he would ultimately reach a decision.

In certain areas, such as economics, I thought he reached very courageous decisions. Very good, tough decisions. It wasn't a very disciplined decision-making process, but I'm not sure that's a criticism. I would have liked a better balance, I guess. I like to make decisions. I get the input I think I need, and then I make a decision. I really don't go over my decisions very much, I just go on to the next thing. Clinton was a little more cautious, at least when I was there. So that's what the decision-making process was like.

Baker: I do a lot of research on the Attorney General's office, and one of the stories that kept coming back in the early '90s was this tension between the White House Counsel's office and the Attorney General's office. That the White House Counsel's position was actually more of a competitor for legal advice and in the judicial appointment process, etc. If you would, please clarify your relations with Janet Reno's office. You've talked some prior to Reno's appointment, but once Reno was appointed, what were your relations with her office and with the OLC [Office of Legal Counsel]? That seems to be a very important department within the Justice Department.

Nussbaum: It is a very important office in the Justice Department. The relationships between the White House and the Justice Department, when I was there, were excellent. Partly it's because I

was deeply involved in the appointment of all of the senior people of the Justice Department. That helps create the excellence, create the rapport. It is not that I knew everybody, although I did know Phil Heymann for many years, since law school. Phil Heymann and Nino Scalia were the same class in law school. They were a year ahead of me at Harvard Law School. I knew Phil, and I was one of the people mainly influential in having Phil be the Deputy Attorney General. I didn't know Webb until after the election, but I got to know him very well. We became very friendly. There's a book by Hubbell, *Friends in High Places*, in which he begins by describing a small dinner party that we had in the White House that he and I, Vince Foster, the President and the First Lady, and an actress friend of the President had a very warm, informal kind of dinner. He uses that in his book. It sort of startled me when I read the book. It's a sad book, a nice book about the good times.

He starts the book with a picture of the good times, symbolized by this nice informal dinner we had in the mansion. He and Foster, of course, were much closer friends of the President and the First Lady than I was, but we shared that. In any event, he was in the Justice Department, and you had a Justice Department question. So he was there. I sent Walter Dellinger to be head of the Office of Legal Counsel. He was one of my assistants. He helped me draft the original Executive Orders on abortion and various other things that we did. Actually, one of the most fascinating things we haven't discussed is the creation of the White House Counsel's Office. Anyway, he was the head of OLC.

And then there was Reno. Reno and I got along extremely well. We had candlelight dinners from time to time. We did. Once, we went to a Mexican restaurant, the two of us. People were looking at us, sitting at a candlelight dinner, *tête-à-tête*. That could have started a new scandal in Washington, Reno and Nussbaum. She has a fussy, feisty, interesting personality, and maybe she wasn't the perfect Attorney General, certainly not. I wasn't the perfect White House Counsel, but she trusted me and I trusted her. I knew her aides, and it was a great balance that I achieved.

I was concerned about our relationship with the Justice Department, so I was very conscious of trying to have a good relationship and getting the right people to create the good relationship. And by and large, I succeeded. There were some misunderstandings, like over the Travel Office investigation. I think she would call me. The press made a big deal about how she would call me to bawl me out about how we shouldn't talk to the FBI directly, or something like that. There was no bawling out. There was discussion. Everybody was worried about the newspapers at that time.

But until the end—now I've lost Foster, I've lost Hubbell. Well, Hubbell I didn't lose. Hubbell left right after me, and he was still there at the end. The White House lost Hubbell, and then of course my firing dramatically changed the relationship between—I shouldn't say my firing. My resignation is a more elegant way of saying it—it caused a dramatic change. But the year and a quarter I was White House Counsel there were very good relations with Justice.

Young: Could I ask you to exemplify, to give us an illustration? You said the relationship was very good with the Attorney General, Janet Reno, and yourself. Were you in daily touch? What form did that good working relationship take?

Nussbaum: Candlelight dinners. [*laughter*] No, we had dinner now and then, and I would talk to her periodically, but I would meet every week with Hubbell and with Dellinger in my office.

Baker: They were your primary contacts with the Justice Department?

Nussbaum: Yes. Reno and I were frank, but Reno was sort of at sea. This was a tough situation. We had Waco, which is a whole other story, which we haven't talked about today. But I had a good personal relationship with Reno. It mostly took the form not of candlelight dinners, but it took the form of telephone calls and discussions. The firing of Sessions, as I indicated earlier, but the weekly and daily contact were with people like Dellinger and Hubbell, the head of the OLC and the Associate Attorney General. And Hubbell was sort of delegated by Reno and was the ideal person to be the contact with the White House. Hubbell was very protective of Reno.

The notion of Clinton putting somebody in there to kind of control the Attorney General was not true at that time. I mean, it sounds logical, but it's not. Reno liked Hubbell, Hubbell liked Reno. It was working. Maybe it would have made sense if you appoint an Attorney General who was the head of the opposition of your political party, and you wanted somebody in there to try to control them or spy on them. That would make sense, but that didn't happen. We appointed an Attorney General who we plucked out of Dade County in Florida. Nobody knew her.

Baker: What were relations initially like between Reno and Freeh? I know they only overlap with your tenure a little while.

Nussbaum: No, they overlap totally. Freeh was appointed in July. Reno resisted Freeh at first. She wanted other people to be considered. I was pushing Freeh. She wanted other people. I had her meet with Freeh. She met with Freeh. I said "Fine, we'll talk with other people if you have any suggestions." I had no vested interest in Louis Freeh, although I thought he would be a very good appointment. She wanted Ray Kelly, who was the New York Police Commissioner then. So we checked with other people to see if they were interested. A lot of people weren't. People were afraid to go into the administration. She finally agreed that Freeh would be a good nomination, and she and Freeh had an excellent relationship over the years. The newspaper stories about conflict between them are exaggerated. It certainly wasn't true when I was there, but they were together for the next eight years. They were there six and a half years longer than I was. But as I understand it, they had a very good relationship. You can get Freeh and Reno to come down here and you can ask them. I think Reno and Freeh would say the same thing.

Baker: Do we want to get into a little on the lower courts?

Morrisroe: Yes. If you could discuss a little bit about the selection process for the lower court nominees and the priorities of the administration.

Nussbaum: I was very interested in this, and this was a key part of my job as White House Counsel. You have to remember, I had to evolve a lot of this stuff. Obviously, we followed certain practices and procedures that occurred in the Republican administrations too. We looked to them as a model, but there was no Democratic administration for a long time, except for the four Carter years, and that didn't last that long. In '92 it was 12 years ago, '76 to '80. There were

not a lot of people, not a lot of precedent. A lot of procedures had been put in place by the Republicans, but we were not willing to follow everything.

Basically, this is how we did it. To some extent this was true in past administrations, to some extent not. I wanted the President to have, and I wanted to have, a significant role in the appointment of Court of Appeals judges. I think this is true now in the White House. They're following the basic procedures that we followed in the Clinton administration. It sounds like they're doing what we did. I wanted to make sure that we had good people on the Courts of Appeals around the country, and this is actually an important subject. And we had a different philosophy than Republicans before and since, which I'll get to in a second. Remember, the Democrats had been out of power for a long time. We basically decided to leave the District Court appointments to the Justice Department and the Senators. They come from the Senators.

Baker: Was this sort of a return to senatorial courtesy?

Nussbaum: Oh yes, senatorial courtesy is the order of the day. The Senators control the appointments to the District Court. Their committees or their choices. The White House may insist that they present three names to us, but basically, appointments to the District Court bench and appointments to U.S. Attorney's Office, with some exceptions, are made by the Senators. The White House has a veto in case they don't want to appoint somebody, and there's a lot of wheeling and dealing, but it is made by the Senators and their recommendations. There hadn't been Democratic appointments in a long time, in 12 years, so there was a lot of pent up desire and anxiety here.

Some potential nominees come from the administration. You go to a Senator and say, "I really want you to support this person." But the District Court appointees we basically left to the Justice Department to vet and to consider, and the only times that I would get involved or my staff would get involved was if there were problems that had arisen. There were problems. Some Senator would want somebody who may have had things in their background that raised issues, and there were all sorts of racial issues from time to time. We would get involved on an *ad hoc* basis if problems arose with respect to lower court appointments, but we basically kept the Appellate Court appointments within the White House.

We had a committee, and Bruce Lindsey and I were sort of the heads. I was maybe the head, but we headed this committee together. We worked very collegially, and various people were on the committee from various offices in the White House as well as the Justice Department. But the committee met in my personal office, and we met and discussed potential appointees to the various Courts of Appeals. That's a political process too. Even for the Court of Appeals, you have to get senatorial support.

There is sometimes a struggle between the White House and the Senate. The Senators want to control those appointments too, and we had to resist that. Circuits, of course, consist of more than one state, so the Senator would say, "We're entitled to two from North Carolina for the Fourth Circuit." There's a lot of give and take. We tried to make clear to the Senators that we would try to get their support. They could stop anybody, but basically we tried to control the appointments to the Appellate Courts, and by and large we succeeded. We had some fights with

the Senate. The Republicans would try to block appointees, and this of course has continued to this day.

I once made a speech to a group of Republicans as they were really blocking our nominations to the courts and even to some of the executive branch offices to prevent us from staffing the administration. I was very angry about that, and I said to them, “Do you believe that we’re going to be in the White House forever, and that you’re going to be in control of the Senate forever? Do you know what’s going to happen one day. It’s hard for you to believe this, but we’re going to be out of the White House and the Democrats will be in control of the Senate, and what you’re doing now is going to come back to haunt you.” They all laughed.

Anyway, that’s what happened. The committee would meet to discuss judicial appointments, but we didn’t discuss District Court nominees very much, except when there was a problem. We did discuss Appellate Court nominees. We tried to reach consensus, make decisions, and then I would present it to the President. “For this Circuit, we’re going to—” We had to check with our Senators, we had to check the political traps.

Now, this is probably one of the more important things I’ve said. This is sort of a criticism of the President. He didn’t want to invest a lot of political capital in judicial appointments. He didn’t really want to fight over judicial appointments, and he really wasn’t very ideological with respect to judicial appointments. All he wanted was good judges, good lawyers, moderate. It wasn’t the kind of right wing agenda we saw in the White House Counsel’s office under Bush One and we’re seeing again under Bush Two. Here was our chance for the Federalist Society. I spoke a couple of times to the Federalist Society. I was the left winger they had come down and joke with them.

But right now, the White House Counsel’s Office is really run by people from the Federalist Society. It is very ideological. You’re appointed at forty years old to the Court of Appeals. Miguel Estrada, a lovely young man who worked at our firm, is up now at forty years old. They’re appointing him to the Court of Appeals of the D.C. Circuit. We didn’t appoint forty-year-olds to the Court of Appeals. In fact, I have great experience in this area, because I’ve been a lawyer now for forty years. When I wanted to appoint ideal judges, I was looking for people who were 55 years old and over. As I said before, people who had lived, people with broad experience. The President was of like mind. I wanted to appoint at least some liberals and things like that. He wanted moderates. These people are very ideological. We were not ideological, almost to a fault. Obviously, you worry about things like abortion and things like that, but basically it was a non-ideological appointment process.

Baker: There was no interest group activity that was effective?

Nussbaum: Well, there was interest group activity. The interest groups were mad at us. The liberal groups like the NAACP Legal Defense Fund, Hispanic groups—they were mad. One very liberal judge for the Ninth Circuit, Steve Reinhardt, appointed by Carter a long time ago, was furious at the President and the White House and has since written letters criticizing us for failing to fulfill, but this was what the President wanted. I would have been a little different if I had total rein in this thing, but I was trying to reflect what the President wanted here. Not ideological,

good Democrats. We're not looking for Republicans, but good Democrats by and large, some Republicans from time to time who would serve well, who had experience in life, who would be good judges.

Riley: Was the diversity question—

Nussbaum: Good question. We were very conscious of diversity. That was a desire. And we achieved it without paying much of a cost, I don't believe, in quality. At least, that's the way I view it. Other people may view it differently. The problem with reaching out for diversity is you sometimes accept people who really haven't had that much experience and aren't necessarily that good. They may be women, they may be minorities, but I think by and large, our appointments were well received by the ABA [American Bar Association], well qualified. So yes, we tried to achieve diversity, and we achieved a fair amount of diversity. That was a conscious effort, but we also tried to keep the quality high within the political constraints. We tried to be non-ideological, not to have 35-40-year-old judges.

Scalia went on the bench when he was 40 years old. He went on the Supreme Court when he was 48. Estrada is 40 years old. Alex Kozinski—the Republicans have tried to populate the bench with ideologues who are very young, and who will be there for thirty years. Clarence Thomas will be on the Supreme Court for thirty years. I know Clarence, he was a friend. I met him before I even went to Washington. Nice people. The people I know best on the Court are probably Thomas and Scalia.

I know Ruth Ginsburg too, obviously, and Steve Breyer now. We were not driven to counter Scalia with another Scalia. Ruth Ginsburg was considered a moderate. We didn't want to take it on. Mario Cuomo would have been different, but that was a unique situation. And I think the President overdid it a little bit. We should have been a little more ideological, but he didn't want to. This was his decision. He didn't want to get into big fights over this, and we had no fights.

Riley: Is it because he wanted to invest that capital elsewhere?

Nussbaum: Yes, I think so. He said the courts were important and he respected judges. He didn't dismiss judges or anything, like the discussion I had about Pierre Leval earlier today. He respected them, but he wanted to spend that capital elsewhere. That's my view. If you talk to Clinton, he can give you his judgment. I would have been a little more aggressive. I was also there at an easier time, in a funny way, although it was a hard time too. We had a Democratic Senate and a Democratic House. Six months after I left, we lost control of Congress, and that made life a lot tougher down the line for the people who stayed. But even then, even when we had a Democratic Senate and a Democratic House and a Democratic President, he didn't really want to push too hard. We didn't nominate Peter Edelman, for example, because he probably would have been controversial, and Peter ended up never going to the Court, which is too bad. We could have done it early. We nominated David Tatel, who was a wonderful judge and a wonderful man, who is blind, and yet we put him on the Court of Appeals. He's been a very good judge.

We appointed a lot of good judges. Many of the Court of Appeals judges and the District judges are good. It's a mixed bag because the Senators are in control. Some are excellent and some are not so good. But I put as many appointments on the bench as I could. I filled up the Southern District and the Second Circuit because I had to go home. These guys wouldn't have let me live unless—the White House Counsel is a little tricky. But that was the basic process.

Baker: There were so many openings when he came into office, and even after a year it was hard to—

Nussbaum: Yes it was, because the Republicans couldn't believe they would lose, and they lost and they left us—

Baker: And then they were stalling even in that—

Nussbaum: Yes, they were stalling, but four or five months after we got going, we started to push. I told you the Supreme Court appointment story about Babbitt and Ruth Ginsburg. Of course, this will tell you something about journalism. The press kept writing about how the White House is in disarray, doesn't know what it's doing, Clarence Thomas was appointed in three days. "It's terrible—the White House Counsel doesn't know what he's doing. The White House staff doesn't know what it's doing." Typical. Meanwhile, we're going through the processes.

Finally, we appoint Ginsburg. It's a big success and we decide that I'm going to give a background briefing to the press for the stories the next day. There's an auditorium in the Executive Office Building near the White House, and I meet with all the press. There are 50-100 people there, and I'm sitting on a platform with one or two other aides, and I'm describing the process. What we did, things we looked at, just to help the press. It was going to be background, off the record, although some things can be quoted. I'm going through the process to explain. After all this criticism, I want to explain this whole thing.

Actually, they asked about Clinton on the White House lawn. He got angry at the reporter, which he shouldn't have. The reporter asked if the White House has been in disarray. Clinton says, "All you guys want to talk about process, not substance." But anyway, I'm doing the background for the press. This is a journalism story. So then I say, "How long did it take before Sandra Day O'Connor was appointed? Does anybody know?" Nobody knew. It took about 70 days to appoint Ginsburg, something like that. I said, "It took 120 days to appoint O'Connor." I was just giving the press some background, some history, because everybody is accusing us of this disarray. "How long did it take to appoint Potter Stewart?" They don't know. I said, "Actually it took about 90 days or 120 days." Obviously, I had these figures. And I'm going on. "By the way, how long did it take to appoint Felix Frankfurter?" And a reporter raises his hand in the back of the room and says, "Who's Felix Frankfurter?" *[laughter]*

I never forgot this. Even Potter Stewart, I think they looked blank. They knew Sandra Day O'Connor, but other than that. So I'm listing three or four other Supreme Court appointments, but you're talking to a generation who, even if they went to Harvard, Yale, University of

Virginia, I don't care where, is uneducated about history. They don't know history, and they don't care.

I said, "It took three days to appoint Clarence Thomas." If you want to say it's taking a long time to appoint this Supreme Court nominee, Ruth Bader Ginsburg, then why don't you go look up how long it takes. I mean, wouldn't it be logical? Is this really long? What happened to the last fifteen Supreme Court judges, how long did it take the White House to announce their appointments? Go look it up. Nobody would ever do that in journalism because it doesn't fit in with the story. The story is disarray. That fits in with the story, that's a good story. That will get you on TV, these talking heads, so nobody checks. So I decided as background to do it. I never forgot that, "Who's Felix Frankfurter?" It sounds bitter, but it's not bitter. I consider the press like the entertainment business. You can't get mad at somebody in the entertainment business, because that's their business. I no longer have great respect, even for the editorial boards of the *New York Times* and the *Washington Post*.

I used to say in one of my speeches—I looked at it when I came. We're at the University of Virginia, so we've got to talk about Jefferson. "Some of you may respond to your criticism of mere excesses by quoting back to me Thomas Jefferson who began his career by deifying the press. As many of you know, Jefferson said, 'Were it left for me to decide whether we'd have a government without newspapers or newspapers without a government, I should not hesitate for a moment to prefer newspapers.' What most of us forgot is that Jefferson ended his career after being President by snarling, 'A man who never looks into a newspaper is better informed than he who reads them, inasmuch as he who knows nothing is nearer to the truth than he whose mind is filled with falseness and errors.'" Now you have to admit, he sounds even angrier than I do. I guess it was tough in Washington in those days also.

Young: Again, Jefferson couldn't best that one, but he did say at one time to characterize the press, who would later be called muckrakers, as "people who rise on the ruin of the reputation of others."

Nussbaum: You're right. If you rise on the ruin of the reputation of others, which is a very great phrase actually when you think about it, then you have an interest in ruining the reputation of others. You want to rise, and I realize this was their aim. I said to the President, "We have to not be afraid. They'll be after us, but we're not running now. We're governing now. And we're principled, consistent, and strong." I didn't quite say this to him, although I said, "I think it will do us good in the next election, in which case we can start trimming before the election, but we'll do what we're here to do. What you're here to do, not what I'm here to do. I'm just an aide in this process."

But he ran for office every two years. He was shaped by that. He ran and lost, which was a tremendous blow to him. The story about the Haitians in Guantanamo. There were sixty Haitians in Guantanamo who had AIDS—this is an interesting story about the White House and about the President. We had to make a judgment to bring them to the United States, to treat them for AIDS. On the other hand, bringing people to Florida would cause a big controversy, so we had to decide what to do. There is also a lawsuit pending in the eastern district of New York about

bringing these Haitians to the States. I'm handling these problems, and I'm worried about them, dealing with the Justice Department.

So finally, some staff meet in the White House. It was Sandy Berger, who is Deputy National Security Advisor and I, the White House Counsel. One other aide was there, Stanley Roth, who is a smart guy. I don't remember for sure which person it was. We all meet, and we decide it's best to bring these 61 Haitians over to treat them for AIDS. It's the humanitarian thing to do. We're all going to go in and advise the President. This is a foreign policy issue, but since there are legal ramifications and since there is a lawsuit going on in Justice at the time, I'm getting involved with this issue. I'm reluctant to get involved, but I'm there. We'll go and advise the President to do that, and he'll make his decision. Presumably he'll listen to us, as he normally did.

So we all agree on this policy and we go in. We go into the Oval Office, myself, Sandy and this other person. We sit and the President says, "Okay, what's this about?" Sandy says, "We're discussing the Haitian thing, whether to bring these people over." Sandy's supposed to make the presentation. Before he gets another word out, the President starts saying, "What? That's a terrible idea, I remember when Carter sent these people from Cuba to Fort Smith in Arkansas. I lost the election, it was a disaster. Terrible thing." He's railing about this thing. I'm still sitting there listening and I expect Sandy and the other guy to say, "Well, Mr. President, our recommendation is...."

All of a sudden, they say, "Mr. President you're making a very good point. Bernie thinks we should bring them." I don't know if they quite said it like that. I don't think I'm being unfair. I said, "Wait, wait, stop. Yes we should bring them here." I start arguing. The other guys have abandoned me. This is not my policy issue, it's their policy issue. We all agreed on this thing. We go into the Oval Office, and before we can open our mouths, the President starts about the Cuban thing and then they're all saying, "Maybe it's a good idea not to bring them." All of a sudden it's in my lap. I'm now arguing to the President that we should bring them.

I said, "I think we should bring them." It's like Zoë Baird, like Lani Guinier, it's one of these things. He says, "No, I'm not bringing them." I said, "I think you're making a mistake." "No, I'm not bringing them." I said, "There's lawsuits going on. We may have to bring them." And he said a smart thing. See, he's smart. Actually, I'm not sure I was right on some of these issues, even on this one. I really did want to bring them. It was a humanitarian thing, and we shouldn't be afraid. Sixty-one people. You saw, we lost in Florida eight years later. You can't be too dismissive of this thing. He said, "I don't care. Let a judge order them brought."

Sure enough, I'm following this lawsuit. The judge in the eastern district was Sterling Johnson, who I happened to know. I don't call the judge, I don't do anything like that, but I'm following the case. I want the Justice Department to report to me on this lawsuit to know what's going on. I want to know. I get word that we lost the lawsuit. The judge ordered the Haitians brought. This is just the kind of thing I recommended. The Justice Department calls me up and tells me this and says they're appealing immediately. I say, "Don't appeal." "What do you mean, don't appeal? The judge is wrong." "Don't appeal. I'll be back to you. Don't appeal."

I talked to the President and I say, “We just lost this case. The Haitians have to come. I don’t think we should appeal the case.” He says, “Neither do I.” I went back. “Don’t appeal.” The Haitians came. We didn’t bring them in, some judge ordered him. I was happy we lost the case. I wanted to lose. The guys in the Justice Department were furious. “You’ve got to let us appeal.” No appeal. We lose, we lose.

Riley: Old habit of southern Governors confronting difficult problems.

Barker: That’s true, it is.

Nussbaum: And it wasn’t wrong in this. Maybe I was wrong in arguing. I would have brought them in, but that’s me. That’s why I lasted a year and a quarter, I guess, because it’s me. But I don’t think the President necessarily was wrong on this one, especially with the case pending. I told him about it, but he sort of understood.

Baker: What were your relations with the General Counsels of the other agencies and departments? You did the hiring?

Nussbaum: I participated to some extent in the hiring. It’s sort of a pity I left so early, I think. Because there’s certain things I wanted to do, and this reminds me of that. I enjoyed the job, it was a tough job. Cutler didn’t want to do it again at his age. When he did it, it was a different world. It drove [Abner] Mikva out of the White House. He was older, obviously; he was in his 70s by that time. It’s a very tense, difficult job, but I loved it. And it was also easier for me, because I was in my 50s. There’s a number of things that came together. I wasn’t worrying about a next job or anything, so I really wasn’t scared about what terrible things people were saying about me. My wife was with me, and our children were grown up.

My Nixon impeachment stories, when I had children eight, five, and two, were not the same White House stories. My wife was in New York with our children. That impeachment was very tough. Nixon, when he resigned on August 9, 1974, did a great favor for the country and a great favor for my marriage. I was in Washington with no kids. I didn’t have some of the pressures other people have. And there’s a lot of pressures. You’re working around the clock. If you have little kids at home, it’s hard. If you have kids in college or out, then it’s different. So it was a great time. It was a great age for me to have done it.

I got to know some of the other General Counsels of the agencies. Some I participated in appointing, others I didn’t—the Cabinet member would try to appoint. There’d always be a thing between the White House and the Cabinet to discuss people. We tried to staff the administration with people we wanted, all loyal people. There’s a lot of various pulls. Bruce Lindsey was a key man in that process, much more than me. But we worked together.

My nostalgia was that I had this idea that we would all work together. I know people were shooting each other and I was learning, but I would call meetings with a lot of the general counsels. I would try to get them all together. The White House is always a big, mysterious place to people outside the White House. The White House itself is also a strange place looking out. We were talking about it before with Jim—you feel you’re in a prison. People use this term—

sort of a protected castle. A moat is around you. It's very hard to get out and it's very hard for people to get in. The spotlight keeps shining all the time, and you're under pressure a lot of times.

So people are suspicious of the White House, and the White House is suspicious of the other government agencies, much less Congress. I was also under great strain and pressure too, with all these crises I have been talking about. But I had this idea to reach out to these people, to bring them into the White House. I used to have the meetings in the White House. Everybody used to love to come to the White House, so I would bring them. I mean, our offices are a lot less elegant than the Cabinet members' offices. They have palaces. In the White House, you have tiny little offices. So I'd bring them into a conference room. I would try to do that. I arranged to do that once before I left, I think, maybe twice. We'd talk about current issues, and I'd brief them and I would talk to them.

They were pleased to be there, pleased to meet with me as Counsel to the President. I'd make them feel like part of—I wanted to do that. It would take a while to build that up, and I don't know if anybody else really attempted that. I was going to attempt that. And then my next step was going to be to meet with the leaders of the congressional staffs, the Democrats, who were then in control of Congress. I was going to bring them to the White House, and just talk lawyer to lawyer with them about, “Yes, we have institutional differences, even if we're Democrats,” things like that. But I never got to do it. I never got to do the latter. I did the former to some extent. But I had good relationships with the counsels, because I think I ran an open office, and I tried to be responsive to them.

Baker: This might be a good time then to ask you about how the White House Counsel's Office was organized. You had mentioned that it was decentralized, non-hierarchical.

Nussbaum: Yes, yes. When I look at this, it reminds me. I'm talking about what it was like, walking into the White House Counsel's office the first day.

Riley: This is in your speech to the—

Nussbaum: Yes, this is in my speech to the Bar Association, which was given in November of 1994. I'll sort of paraphrase. I was talking to lawyers, “To envision what it was like, imagine entering your law firm one day in November and being told that by mid-January, everybody would be gone. Every partner, every associate, every paralegal, every secretary, every messenger, every meaningful file, would be gone. But you had to see to it that the firm would be fully operational, that it would be prepared to hear crises on a daily basis, with an entirely new team of professionals and staff. That's what it was like to create—” I'll say it in even more colloquial terms than I used. It was like walking into my office and having everybody gone. Everybody gone, there's nobody there. But the matters are there, more than ever. The cases are there, the telephone is ringing all the time, there's crisis after crisis, and you have to deal with that.

That's what we had to deal with when we walked into the White House Counsel's Office in January 1993, so I had to create a Counsel's Office very quickly. I did not start in November; I

really started in December with Vince Foster, who was the first hire. He was hired as Deputy White House Counsel before I was hired as White House Counsel. Fortunately, we got on, and we had to create this staff. Eventually, we put together a dozen people from various contacts that we had. And we agreed that we would be like a little law firm of a dozen lawyers or so. It got bigger as time went on—with Whitewater it got very big.

Vince and I would be the senior partners, everybody else in this room would be partners, and we would meet every morning in my office to discuss the issues that we were facing. We'd interact with each other and with other people, and the President can interact with some of them if he wanted, which he did. He certainly interacted with Foster and Ron Klain and people like that. People were amazed. Everybody tries to protect their position in the hierarchy. You can't talk to the President, you can't go to the Oval Office. It's a big deal, and it became a big deal again.

Maybe it was too free and easy in the first year we were there. But everybody was amazed. I wasn't worried about hierarchy. I was worried about making the best decision, getting the best result we could achieve, and how to convince the President with respect to that. I was looking for ideas from my staff and other people, and we operated in this non-hierarchical manner. People had their areas of expertise. Ron Klain had judges, Walter Dellinger, who was there until he went to OLC, had some of these Constitutional issues that we faced. Other people had investigations and things like that for a while. I split it up and everybody had areas of expertise, but Vince and I worked very closely together, and it worked. I mean, for a while it worked.

We had these meetings every day. We would talk things through, and there was very little backbiting in the beginning. So that's the way I tried to structure the office. Then Vince killed himself, and I hired Joe Klein a few months later. It changed after a while. Of course, we got caught up in Whitewater. Although the office agreed with me, I determined the office. Klein didn't agree with me on the Independent Counsel, so I just overruled him. It became a little more strained later on after Vince's death and under the pressures of the so-called phantom scandals. The Clinton scandals are all phantom scandals, as I indicated, so it became a little harder. Nonetheless, I was very proud. We had to put this together.

When George Bush and the Republicans—I guess [Alberto] Gonzales had to do it a little bit too when he came in—the Republicans hadn't had to do it for a while. Reagan went to Reagan, and then Reagan went to Bush. And we hadn't been in office for a long time, so we sort of had to create this stuff from scratch. We had to do Executive Orders, and none of us had experience in the White House. Nobody in the White House had ever worked in the White House.

Baker: You said there weren't many files?

Nussbaum: No files. Everybody removes the files. Everything is removed, there's no institutional memory. There's only a conversation with Boyden Gray. It's incredible.

Baker: And a couple of forms.

Nussbaum: Yes, forms on how you did it before. And you have to start as fast as you can, or the press is going to say, as it did say, "They're in disarray. They don't know what they're doing. It's

not functioning properly.” That’s the press. They rise on the ruin of other people’s reputations, either factually or not factually based. It makes no difference. The key is, if you’re strong, you ignore it. You see it through and you’ll get through it ultimately. That’s what you have to have in the White House, you have to have that kind of internal strength. And not a lot of people, including people at very high levels, have it. Maybe it’s the nature of going into politics, but they don’t really have it. That’s what you need in the White House. Now, you need experience in the White House too. I agree with Jim Baker, as I said before. I’m a lot more experienced now to work in the White House than I was then. Now I know things that I didn’t really know at the time.

Riley: You touched on this earlier, but did you make an organized effort during the transition period to talk with some of your predecessors?

Nussbaum: Yes.

Riley: Can you tell us a little about this education experience?

Nussbaum: I met with Gray, but I had the opportunity to meet with other people who worked in the White House, like Len Garment. And this dinner party was given at Abe Sofaer’s house. I think Fred Fielding and a number of other people were there. Boyden Gray was there, as was A.B. Culvahouse. Peter Wallison was there under Reagan. I know all the former White House Counsels. They are mostly Republican. I knew some of them before, and some of them I met at that time. We chatted and we kidded and we had a very nice evening. It was very early in the administration. All the others have been fine, basically. They all suffered, with issues like Iran-Contra and things like that, but there was a nice bond. It became very political later on, and Gray started taking shots at the office, or maybe at me. I don’t recall any more. But this was later on, even after I left, with the FBI file imbroglio and things like that. But to answer your question, I did make an effort to meet with other White House Counsels. It was helpful in part. But the era has changed. We lived in a different era.

The beginning of the Clinton administration—the year I was there—was almost the most difficult of all. I’m not saying Iran-Contra wasn’t difficult for the Reagan administration, but now the partisanship and the bitterness and this notion of illegitimacy, which I keep repeating. Nobody ever thought Ronald Reagan was an illegitimate President. You may not have liked him, you may have thought he was a cowboy, but nobody thought of illegitimacy. This notion that the Republicans really thought Bill Clinton was illegitimate, that infected a lot of the political fighting. It made it a lot more bitter, a lot tougher, and was designed to ruin him at all costs.

Baker: It really permeated the whole administration, not simply the National Security Council or—

Nussbaum: That’s correct. It permeated the whole administration, and it ultimately caused this final incredible, historical act. We went into the impeachment of a President over lying in a civil deposition about a sexual act. It’s crazy. And it’s a fascinating thing for me, when I think back to that. It’s very interesting that the public kept supporting Clinton. His approval ratings were high. Nobody has been punished for that. The Republicans attempted to bring down a President, to me,

in a most illegitimate fashion. Tom Delay and Dick Armey and those people, and there's been no penalty paid for that actually.

Indeed, the Democrats in a funny way have paid the penalty. Gore ran this tragic campaign in the year 2000, running away from Clinton in silly fashion when you had peace and prosperity. That was amazing, not to campaign with him because he became convinced in his head that this would hurt him. So, not only didn't the Republicans pay a penalty. They managed—partly because of what Gore did, partly because of the vagaries of faith in Florida and the rest of the country, and partly because the Supreme Court acted in an unbelievable fashion.

Ask me my policy preferences on foreign policy. Do I favor positions that Bush and Rumsfeld and Cheney have taken or Gore is taking? Who I would favor? Your position may not be the same, but I would favor Bush, Rumsfeld, and Cheney. I'm fairly hawkish as a Democrat in some respects. I may be right, I may be wrong. So it's not that I'm upset that Bush is President right now. I'm still a good Democrat, but I'm not really upset. I think actually in view of 9/11 and various other things, he and his team are probably as good as we have on the foreign policy level. Some people can dispute that, but I'm not angry.

I am angry at the Supreme Court. This is an institution that I had something to do with, having appointed one justice and participated to some extent on another. This is an institution I had a great deal of respect for. I'm a lawyer, and I grew up with it. I understood it makes value judgments at the end. That's why I wanted politicians and other kinds of people on the court. I understood the nature of these things, and I know partisan politics play some role in being appointed to the court, but I thought once you get there, it's like being handed a precious vase. What's important is its credibility, its moral role, its historic role. That's why it was able to do *Brown v. Board of Education* and things like that.

When you get to the Court, it's like being given a precious vase. We handed Ruth Ginsburg a precious vase, and it's yours to keep for the rest of your life. But it's not yours forever, it's just yours for the rest of your life. You have to take care of this very fragile, precious vase. What the Supreme Court did in *Bush v. Gore* is to smash the vase. Now people understand that they elected—there is no question in anybody's mind about what this Supreme Court, what these five justices would have said. If Bush was asking for a recount in Florida and Gore was ahead by 500 votes, no one in the world believes that [William] Rehnquist, Scalia, Thomas, [Anthony] Kennedy, and O'Connor would have stopped that recount. The case was *Bush v. Gore*. If it had been *Gore v. Bush*, nobody believes they would have said—this was totally out of character for the Supreme Court to involve themselves in this fashion.

What they did will have a lasting impact. The court has always been political to some extent, but this has made them more political than ever. It has affected people like me. I supported Scalia's nomination to the Court because I believed in the old days, and I believed it even through my administration, that you should have experience and exercise judicial temperament. Whether you agree or don't agree, that's for the President to determine basically. Now it's totally political. If we have the votes to beat somebody, we beat them. If we don't have the votes, we can't beat them, and that's what this court did to the Supreme Court.

Baker: There are two circuit court opinions that have to do with attorney-client privilege and White House Counsels. I think one was out of the Eighth in 1997 and one was from the D.C. Circuit in '98. The decisions say that a White House Counsel cannot claim attorney-client privilege to stop from testifying before a federal grand jury in a case of a criminal allegation. Is this going to affect the ability of the White House Counsel to do his job in the future?

Nussbaum: The courts have been very disappointing in this area. Those decisions came down long after I was gone. What the Republicans have done—and I said, we're not going to be in the White House forever—is really undermine the role of White House Counsel. Starr and this litigation have destroyed it, and the courts have gone along with it. To me, the notion is inexplicable. Maybe we should subpoena law clerks to get their memoranda. Judges are very protective of their privacy, and yet in their desire to get Clinton—these judges on the Eighth Circuit, except a handful, disqualified themselves from these cases. All judges that were neutral or appointed by Democrats disqualified themselves—the only judges that remained are those that then rendered these opinions in their desire to get Clinton, and I think they've done damage.

To some extent, the D.C. Circuit has done damage, although the D.C. Circuit is more balanced. I don't have the opinions at the tips of my fingers, but they have interfered with attorney-client privilege, executive privilege, protective function privilege. This is a big deal. First, people are not going to do any memos or anything like that. It's very tricky now when you don't have attorney-client privilege. Attorney-client privilege, by and large, is a good thing. It fosters right-doing, not wrong-doing.

If you understand these decisions, they will inhibit the role of White House Counsel going forward. If you're clever and you're smart, you'll still be able to function to some extent, but these are bad signs. The President can no longer totally rely on his White House Counsel. This was not true when I was there, and I think, in the long run, it's not going to be good. It's just a product of this desire to get Clinton, which ultimately climaxed in this impeachment. But these are bad decisions that will have a bad impact going forward, and I am a little worried about them.

Morrisroe: I was wondering if you could talk about the extent of the role that you and your staff played in reviewing Executive Orders and signing statements or speeches and if there are any instances that stand out in your mind where your staff took on that role.

Nussbaum: We worked together with Podesta's office, the staff secretary, on Executive Orders. We used to review them for form and then later on Podesta did a lot of that stuff, working together with our people. The White House is a small and intimate place, so we had a pretty decent relationship with them. We did review Executive Orders. We didn't review speeches as a matter of course. I mean, every so often I would look at a speech, but there was a speechwriting unit. Clinton was very interested in his speeches. He is very good at that, he's a great talker. So we didn't play a major role in reviewing speeches.

Actually, in the beginning we played a much more major role in Executive Orders. In fact, Walter Dellinger and other people with him drafted all the Executive Orders initially. As time went on, we relied more on the staff secretary, as well as the Justice Department, to do those kinds of things, but that was part of the office. The office did pardons too. Clinton didn't grant

many pardons his first year and a quarter in the office, but we reviewed pardon applications. There was a whole process that we did and which, of course, was screwed up in the end. After not granting a lot of pardons, he then goes out and grants too many pardons.

Young: Were you involved in signing statements at all or reviewing routine legislation coming to the President's desk, or was that somebody else's job?

Nussbaum: No, we were involved in that. But the White House was more loosely organized. Not every piece of legislation—you relied on some of the executive agencies and things like that, but anything sensitive, anything that was a potential problem—

Baker: Gays in the military?

Nussbaum: Gays in the military is a very good example, and that came up very early. I remember that I was involved. Our office became, and still is to some extent, a trouble-shooting place. Obviously, we did routine things. We did a lot of ethics reviews, a lot of the vetting process. That was so hard, trying to staff a whole new administration. Even if Bush replaces Reagan, a lot of the administration is still in place. I mean, you want your own people after a while. We not only had to get members of the White House staff, but to staff all the agencies. To get them through, to investigate them, to use the FBI. It was an enormous burden on me and on Foster and our staff to try and do all this. We were faced with a recalcitrant Congress and vicious partisan situation even though we had control, which surprised us. And then we get rid of Zoë Baird, so it even boils the situation more. That's what we were faced with in the early days. But it was always trouble-shooting. I was always going from one problem to another problem.

Now I do this in private practice. This is what I do. I've never done terribly routine stuff, at least not for a long time, so I'm not fazed by this. I sort of like the life. It's an interesting life. When I came back from Washington, somebody gave me something which stands on my desk. It's a quote from the Flying Wallendas and the quote is, "Life is on the wire, all else is waiting," and it's true. Most of the time I would spend crossing the wire until I fell off at the end, but that's what the office is and that's what Foster and I did. There was always another problem.

The office was actually like that even in days before us, to some extent. I don't want to make it sound like this happened for the first time. Lloyd Cutler once said something that stuck in my mind too, which is very true about the White House Counsel's office. He said to me when we got to know each other—I knew him from before in private practice, but he was one of the people I consulted when I was White House Counsel before I really officially took on the role. He said, "One of the things you'll do is you'll make a list of ten things to do each day in the office. And if you get to the second thing, you'll have had a very successful day. Most days you won't even get to the first thing." I remember he said that.

He also told a joke. When you're White House Counsel you'll find three letters in your drawer to be opened only if you get in trouble. So the White House Counsel went in and, sure enough, there's big trouble in a few weeks, so he opens the first letter. It says, "Blame your predecessor," so he blames his predecessor. "Yes, it is a terrible thing but it's my predecessor's fault." The next letter is to be opened when the next problem arises. The next problem arises and he opens the

letter and it says, “Form a committee.” So he forms a committee, and sure enough they handle the problem. Finally, another problem arises and he opens the third letter and it says, “Put three letters in the drawer.” [laughter] I finally opened the third letter. I had to put three letters in the drawer.

Young: I started out today by asking you what Clinton saw in you, and I’d like to ask what you saw in Clinton.

Nussbaum: Actually, I didn’t know him all that well. I really hadn’t been in touch with him. I met him very early, but I didn’t really remember him. I kept in touch with Hillary, and I followed his career, and I knew a little about him through Hillary. She obviously had her own strong relationship with him, being his wife. But I did see things, from a distance at least, which were appealing to me at the time, and I thought I would see some of them in the White House. Some of them, I still feel certain of.

One would think the Presidents I thought about were Roosevelt and Kennedy, but I never really thought about them very much. First of all, they were Presidents in my lifetime who were universally admired, at least that’s the way I remembered it. I was a kid when Roosevelt was President, but he was a God-figure to my parents and everybody. I was in law school when Kennedy was in office, and knew some of the people in the administration who were going in, but he was also greatly admired, even with the Bay of Pigs and things like that. I thought this was wonderful, to be in the place where Kennedy and Roosevelt were. I never thought about Kennedy and Roosevelt though.

Because I knew history, I thought about Truman and Lincoln, who were reviled when they were Presidents basically. When you read history you see they were criticized and reviled. Yet because they were so strong and they stuck to their guns and did the things they had to do, they are now considered great—this was alluded to last night by [Michael] Beschloss. Of course Lincoln is a saint, and properly so, and Truman is considered among the very best. That’s what I used to think about in the White House. I used to think that if we stayed strong and we just kept trying to do the right thing, if we just took the blows and we supported each other and we stayed loyal—the words I used were principled, consistent, and strong—then we’d get things done, and hopefully history would judge us favorably. We have to deal with the crises we’ll have. But if we’re inconsistent, if we’re weak, if we’re unprincipled, if we abandon people, if we criticize ourselves when we shouldn’t be criticized, we’ll be targets, and I don’t think history will treat us well. I was hoping Clinton would be tougher, would be stronger.

I saw his talents. His talents are enormous. He’s enormously bright, which I said earlier. He’s enormously knowledgeable, in addition to being bright. He’s enormously charismatic and fun to be with at times, and he could take a punch, but he sort of lacked something. I missed something internally. I tried to warn him, and it’s like seeing your ex-wife when I see him. I don’t have an ex-wife, since I’m going to be married forty years, so I don’t know if it’s quite like that. But I imagine this would be like seeing an ex-wife. He turned out, at least when I was there, to lack a certain inner strength, which I found sad. It surprised me. Maybe I’m being a little unfair. I don’t know what he would say with respect to this.

Obviously, I believe I gave the right advice. I really believe I was a pretty good Counsel. I said that all throughout. That's a self-interested statement. No one believed it at the time; my friends didn't even believe it. Nobody believed it, because I was such a figure of controversy. I must be screwing up in some fashion—how could I get in all this trouble? But the trouble resulted because we didn't stay strong and fight back. There was no trouble. There was no Travel Office scandal, there was no FBI scandal; this happened after I left. There was no Whitewater scandal, as I said. What we did was go along with it, appoint an Independent Counsel, create institutions which were designed to investigate us and criticize us and drive us nuts. We put those things into place. He put those things into place, thinking that would buy him peace.

And this is the story of my resignation, the story I told earlier today. "I will have peace, I will pass healthcare if you leave." You don't get peace in that fashion. He wanted peace and he got eternal war, which undermined his Presidency. It doesn't mean he didn't do great things. He did some very good things in his Presidency, courageous things even. The economic thing, for example. But ultimately, I don't know how his Presidency will be looked at. It is considered good times, but so were the 20s. I don't know, I'm worried how it will be considered.

And now, he's going to get the rap for 9/11, because it feeds into this impression of weakness. I mean we didn't do anything for the *Cole*. We didn't do anything after the bombings in the embassies, those things. It's easy to say that now, after 3,000 people die on September 11. But I would have said it at the time, and I did say that in the discussion I told about in Bosnia. I'm not saying I'm a big foreign policy expert, although I discovered being in the White House, the top levels of the government, they're no more impressive than a lot of other people in top levels elsewhere. These people are not magical. Some of them are very good. When somebody asks me the differences between Washington and New York, when I came back to New York I said a couple of things.

I said there are differences between Washington and New York. In New York, you're very competitive and you want to fight. You want to win the litigation or you want to win the deal, but at the end of it you want to live to fight another day. In Washington, as Vince Foster said, it's blood sport. You want to kill the other guy, you want to drain his blood, you want him to go to jail. That's the difference between a highly competitive legal and financial world in New York and the political world in Washington, which is designed to kill. It is designed to send Clinton to jail, to disbar him, to impeach him because he committed a sexual act with somebody. That's an enormous difference in those two situations.

And there are differences between people in New York and people in Washington. In New York I know the top fifty people in law and finance and maybe politics. Now they're virtually all highly intelligent, they're all impressive, many of them, and quite strong. They're not all particularly nice. Some of them are not very nice at all, but basically they're all strong people. They're inner-directed people, they know their mind, they've succeeded. They're an interesting group. They're not all lovable. I respect virtually all of them. I may not like all of them, but I respect virtually all of them.

And I also know the top fifty people in Washington. The President, the Vice President, the Cabinet, the Subcabinet, the leaders—they're all highly intelligent, some are very nice, warm,

competent in their own area, but they're virtually all outer-directed people. There's no core. The press, what people say about them influences them much more. They're hollow, a lot of them, and I respect very few of them. They're all competent. It's a different kind of person.

Now this is very New York-oriented. Obviously there are people in New York who are also hollow, but I'm talking about a generality here. People are totally afraid of what the press is going to say about them, totally shape their comments, I didn't see a lot of strong people, both in the Cabinet or the White House staff, or elsewhere. I didn't see people I really admired, a strong person, a good person who stands up. I saw people I liked and I saw people who were highly intelligent and competent in their areas, but I'm talking about fundamental things. In New York, I see people I don't like at times, but really there's much more respect and admiration.

I don't know. That's what shaped my political world. I don't know what the university world is like. *[laughter]*

Baker: You don't want to know.

Riley: None of the above.

Nussbaum: This is one difference. It may be simplistic and obviously it is overdone, but this is the way I look back at my Washington experience. I say, "Who do I really greatly admire?" I'm hard pressed to come up with somebody I greatly admire. Maybe it's my own failing, but I don't really greatly admire a lot of these people, including the President and the Vice President. I respect them in some ways. I'm happy he was the President. I disagree with a lot of the things he did obviously, but great admiration?

In New York, I think there are more people that I like and do admire. They are very strong, successful people who know their minds and live their lives the way they think their lives should be lived. I think it's more important to get those kind of people—not necessarily New Yorkers, but from around the country—into Washington.

Young: What about New York politicians in Washington?

Nussbaum: New York politicians actually are tougher than Washington politicians. The Ed Kochs and the Rudy Giulianis and the Michael Bloomborgs, who are not necessarily admirable people in every way. It's a different kind of culture. Giuliani, who I know very well and I get along with, was Mayor for eight years. He is sort of a friend, but not a great friend; I don't like him in a lot of ways. Ed Koch is now a friend but wasn't a friend a while ago. These are interesting people.

Baker: What about New Yorkers who go to D.C., like D'Amato?

Nussbaum: Bob Rubin did a good job in D.C. Some New Yorkers did a good job in D.C. Harold Ickes eventually did a good job in D.C. Maybe you're right. Maybe New York does have all these good qualities, even when they go to D.C. I think you talked me into it.

Young: That's home.

Nussbaum: That's home, right, but I think as a general matter, it is not so much New York. I wasn't talking about New York politicians, you're right. As a general matter, I worry about this. But this administration may not bear that out. Dick Cheney and Donald Rumsfeld and even Colin Powell now, and George Bush.

Baker: Your experience may have been historically unique. That juncture of a very divisive, partisan atmosphere, with the other party seeing this administration as fundamentally illegitimate and then the administration doing things that reaffirm that view.

Nussbaum: Absolutely. That's a very good way of putting it. There was a juncture which was difficult for us, but I'm almost not angry at that. I'm angry at what we did to reaffirm it. Somehow I don't really get angry at my enemies.

Baker: Because you expect that.

Nussbaum: I expect that. I will fight my enemies. I want to punish my enemies in a reasonable fashion, if I can. I want to defeat my enemies, but I don't get angry at my enemies. I don't really get mad at Jesse Helms or Bob Dole or any of those people. I get mad much more easily at Bill Clinton or people in the administration or myself for committing acts which reinforced this thing rather than acting in a manner that stopped them. And he's now paid the ultimate penalty, and even Al Gore, who advised Clinton in the end.

Al Gore and I were friendly in the White House for a while. I went with him to Poland on an airplane, we were in Waco together, and even he at the end told the President he should fire me. That's the word I heard, because I was becoming too controversial. We didn't talk about the actual acts, the RTC stuff, the media things, and all that was the basis of my having to leave office. Even Al Gore, who I thought was strong and tough, abandoned me in the end, and I was very disappointed.

The punishment that the two of them, Clinton and Gore, have received—this is a very personal and sort of strange thing to say, and anybody reading this later on will have total proof of my dementia. But Clinton's punishment for not listening on this fundamental issue of the Independent Counsel, he's going to go down in history as a very tarnished figure in a lot of ways. Although 100 years from now the Monica Lewinsky thing will drop out, and whatever achievements he got in economics and things like that will remain, he is very tarnished for his lifetime, which is tremendous punishment. The punishment of a Starr report, to have something like that about your life put out on the internet. Think of that, think of what Starr did. Every touching, every salacious detail, this to a President of the United States, this is a meanness beyond regard. So that was Clinton's punishment.

Gore's punishment is even more exquisite in a funny way. It's one thing to be punished by running and losing. That's a bad punishment if you want to become President. But think, what more exquisite punishment it is to run and win, and not be given the office. I tell you, everything

is “but for.” If I had stayed in the White House and they listened, there’s no Independent Counsel, Linda Tripp remains my secretary, and life goes on.

They get rid of me thinking this is going to buy them peace because I’ve been controversial. I have a tin ear, I don’t know politics, I don’t understand the media, I don’t understand Congress, I don’t understand how to deal with these things. All right, I go. They lose control of the Justice Department and the FBI, the Independent Counsel starts, he conducts his roving inquiry. Clinton finally makes a mistake six years later, and they grab him. This tars his Presidency, crushes the Presidency, and causes Gore to lose—or Gore to win but not be given the office.

Knott: You mentioned in passing a few minutes ago, the pardons that occurred at the very end of the President’s second term, and I know you were long gone—

Nussbaum: I was, but I knew what was going on. I was in touch.

Knott: Can you tell us a little bit about your reflections on that whole issue?

Nussbaum: I think what generally happened there is Clinton went back to some of the habits of the very beginning of the administration, which were not great habits. He was staying up all night—you start getting tired when you do that. All these people were pressing in on him for these favors, and I think it had its impact. The Marc Rich pardon makes no sense. He was told that by his whole White House staff. Jack Quinn, who is a former White House Counsel, is a friend of mine. He is a lawyer, making the case, but he’s outside the White House. Bruce Lindsey and Beth Nolan and people warned him. To pardon a fugitive, it’s mind boggling. But he was tired, he wasn’t thinking clearly. These things came in, and they were running out of time. Rather than do it in an organized fashion, they were skipping procedures. It was foolish. He’s been very upset by it, and he’s very angry.

I’ve talked to Clinton about some of this stuff after he stepped down as President. He probably regrets certain things, although he has a tendency at times to blame others, rather than blame himself for things like this. I think there was a concern about the impact it would have on Hillary. It impacted initially but I don’t think it’s going to have any impact going forward. I think Hillary is doing a great thing in New York.

Young: What does she have that he lacked?

Nussbaum: The word that comes to my mind is strength. She has a certain kind of strength that he lacks. He has a certain kind of talent, political talent and speaking talent and communicating talent, that no one has. I mean, she’s pretty good at speaking and stuff like that, but she has a certain strength. She’s very tough. She’s very political too. She’s not this wild-eyed liberal or ’60s person. The reason she did so well in New York, in part, is that she went upstate a lot. Upstate in New York is not New York City. It’s not where I come from. Upstate is the Midwest. It’s like Chicago, and she’s a Chicago person.

These people started seeing her, and what they started seeing is not this mythical figure that they were reading about in the newspapers, this terrible queen. What they saw is this Midwestern lady

or Midwestern matron at this particular point, who is very proper, not overly proper. She's not some hippie or anything like that, as in that imagination, and she has gone over very well in upstate New York. She got 47% of the vote in upstate New York. It was amazing. Everybody thought she would lose. We supported her, obviously, during that race, and maybe some day we'll have another oral history project on another Clinton. I mean, there's two Bush Presidents, why not?

Baker: How do you assess the impact that Hillary has had on the role of the First Lady? Has she made some important inroads?

Nussbaum: Yes, it's interesting. In retrospect, Hillary moved into the West Wing. That was a very important, symbolic act. Her office was—

Baker: Next to yours, wasn't it?

Nussbaum: Yes, it was next to mine. There was one in between us, sort of a secretary's office in between. I don't know in retrospect if that was good. I supported it at the time. I was very supportive of what she wanted to do. I'm not sure that—you're still a spouse, and your role should be important, but it's a tricky thing. Would it be good if a woman were President, as a woman someday will be President, I hope, and her husband moved into an office next door? There's something uncomfortable about using your relationship as a spouse to get into some sort of official position. Although I didn't see any of that at the time. I thought *He's a smart guy, she's a smart person, they worked together in Arkansas on education and things like that*, and I saw no problem with it at the time. I wasn't prescient about this at all. I haven't really thought about it very much, but now I'm not sure that was right. I'm not sure that was smart to try to turn the First Lady's job into some sort of official position.

I don't believe Laura Bush has an office in the West Wing. I'm almost certain. On the other hand, the First Lady has an official role. She does things, she has projects. But for Hillary—I've never said this before—to try to turn herself into an assistant to the President or one of his chief assistants, I'm not sure it was right. It's a tricky role for a spouse to play, and maybe we were a little too un-thinking and arrogant in having that happen.

I was happy to have her next door. I thought she was a great advisor. The problem is, I'm separating out the institutional role Hillary, who I know pretty well. I like talking to Hillary. Hillary is very smart, Hillary is very tough, Hilary is very tough-minded, which is a better word. Hillary is not always right and she can be very difficult, but basically her judgments are pretty good. The problem is, she becomes so formidable, a lot of people are afraid of her. I'm not afraid of her and never was, because she worked for me. I could fight with her and if I didn't agree with her I could disagree, and it would work out. We'd arrive at decisions.

Hillary supported me and the Independent Counsel. Hillary saw it, and if Hillary would have stuck by it—but she felt under such pressure that she couldn't stick by it—he never would have appointed one. If Hillary would have just stuck by it. She said to me years later, “Bernie, you've got to remember, I really did support you.” I said, “Yes Hillary, but not at the end.” I tried to be very gentle. But she understood. Her judgments about this stuff were better, and therefore I liked

having her there. I felt it was a good person to seek advice from or to have input on some of these things. And she didn't have input in as many things as you would think, but if you talk about institutional role of the First Lady, in retrospect I think it was a mistake. I don't think Laura Bush, who is a different person in any event, has followed. On the other hand, Laura Bush is carving out a nice role for herself as the First Lady, in the first two years at least. She's speaking on various issues, and that's the way you should do it.

Young: The healthcare thing was a mistake?

Nussbaum: Yes, I didn't see that at the time. I've told about all these things where I saw the future. I did see the future on some important things. I didn't see the future on this thing. I thought she was able and smart and tough and she'd be very good. I was thinking of Eleanor Roosevelt at the time, who fostered certain things. Eleanor Roosevelt was an important force for a lot of issues and she did have a very positive impact, which we know from the historians on Franklin Roosevelt. But to put her in charge of healthcare, again, was a mistake. They tried to use their Arkansas experience. She was in charge of his education program, but it doesn't work on the national scale. Somebody else has to do that and I think it ultimately redounded to her detriment, although she is a very impressive spokesman for anything.

Riley: Well, our time is up. This has been a most enjoyable and illuminating day for us all and we'll review what we've covered, and you've expressed some—

Nussbaum: I will come back once, if you want. We didn't cover certain important issues. We didn't cover Waco, which is an important event. I'm just taking things off the top of my head. We didn't even cover the whole Whitewater stuff, we didn't cover the RTC and all that stuff and Roger Altman. There's a lot of stuff, I realize. We spent a whole day, but we really didn't get into it.

Riley: We covered the waterfront but there are a lot of items on the calendar that I think we could structure the next discussion, going from item to item and letting you inform us about your role in those things.

Nussbaum: That's a good point. You can go down a timeline, at least during the time I was there. I know you have one in the book here and I'll just tell you what I remember with respect to that event. Some of them are important events. Others, in my mind, didn't play as big a role, weren't that important. But I think, if you want to do it, I'll do it. I'll just fly down one more day and do it. It doesn't have to be right away.

Young: That's great. I hope we didn't tire you out.