



GEORGE W. BUSH ORAL HISTORY PROJECT

TRANSCRIPT

INTERVIEW WITH JOHN BELLINGER III

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Charlottesville, Virginia

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Russell Riley: Welcome back, thanks for coming. My pledge is to try to get this done today, so we're good until about one o'clock. A couple of us have had a chance to look at the transcripts from the first session to make sure we don't do too much backtracking. Having all these pleasant chats and with the weather being so nice, it seems a little bit contradictory to get into some of these hard questions that we have to deal with.

John Bellinger: You should have heard Anne-Marie [Slaughter] on that subject last night. She said this is going to be a depressing lecture.

Riley: I certainly don't want this to be depressing. Most of what we want to talk about is the Secretary of State period, but there were some loose ends from the NSC [National Security Council] time that I had made notes about. Some of these may take 30 seconds, some may take longer. Let me go through serially the ones I have listed to see if anything registers with you, if you had any piece of them. The first one was the anthrax business.

Bellinger: There were two things. There was the anthrax business, the ones that went up to the Hill, and then there were the ones where the Secretary and others thought they might have been exposed.

Riley: Exactly.

Bellinger: I don't think she even told me about that.

Riley: Those were internal registers in the White House, biological registers.

Bellinger: To my recollection, I was not aware of that.

Riley: You weren't in the loop on any of this. There weren't any legal or foreign policy issues.

The next one I have listed was the assassination ban. I would guess that there must have been discussions after 9/11 about its relevance. There must have been a revisiting of the assassination ban.

Bellinger: Not really, that I recall. The lawyers had agreed, even prior to 9/11 based on work that had been done back in the [William J.] Clinton administration, that targeting individuals with whom you were at war, where you were acting in self-defense, would not violate the assassination ban.

Riley: Okay.

Bellinger: I inherited a legal opinion that had been prepared by the Office of Legal Counsel. I think it was when they were actually targeting [Osama] bin Laden previously in the TLAM [Tomahawk Land Attack Missile] raids. That had been coordinated by my predecessor, Jamie Baker, and worked its way through the assassination ban and then through the summer of 2001—a lot of this is covered in the 9/11 Commission Report, when we were reviewing the authorities that we had. We looked at the assassination ban and concluded that it would not be a bar to the use of lethal force, either in self-defense or in the context of a war.

Riley: Okay.

Bellinger: So throughout the entire period, the assassination ban has never been viewed as a bar to the drone strikes, strikes against bin Laden, or anything like that. There was a version—I did dig back through the material a lot myself, just to make sure that we were getting it right.

Riley: This was pre-9/11?

Bellinger: This was pre-9/11. There was an earlier version, as you know. The assassination ban went through a number of different iterations throughout the 1970s, actually, in the way it was issued. It varied slightly in the different Executive orders from the [Gerald] Ford ban to the [Jimmy] Carter ban to the [Ronald] Reagan ban. One of them did say something about a prohibition on the ban of “political assassinations.” At one point that phrase was in; at another point it was out. But we took that to be further evidence that the intent was to stop political assassinations, that assassination didn’t mean just killing somebody. Assassination was a particular kind of killing, an illegal killing, because it was for a political purpose or something like that.

So for a defensive purpose or a military purpose, the assassination ban would not be triggered. There was never anybody at any point who said this is a barrier to things that we want to do.

Riley: Okay. We didn’t talk about the Iraq intervention.

Bellinger: Yes, I was trying to remember. You guys cut me off if I repeat myself, because I have no recollection what I said three weeks ago.

Riley: We didn’t either until we went back and read it. We did not talk about that.

I’m not quite sure where to start. Your engagement on the issue would have been the justifications for intervention.

Bellinger: Yes, but the whole thing is a long story so we should probably try to cap it to 15 minutes. When I got to the White House, I was surprised to find the number of people in the administration who did remain fixated on Saddam [Hussein], and long before 9/11 we were—In fact, I didn’t get a sense that anybody wanted to immediately invade Iraq, but there were certainly people who were dissatisfied with the state of affairs with the tit for tat of our policing the no-fly zones, and then Saddam would lock on and we would shoot back. They seemed to be, I would say, spoiling for a fight. Again, I was not aware of any broader plans, but they were dissatisfied with the state of affairs.

Riley: Can you tell us who? What is your recollection?

Bellinger: [REDACTED]

I guess probably to be efficient, the best thing to do is jump to 2002, end of 2002 to 2003, and I've forgotten my dates a little bit here, when we began the negotiation of what became UN [United Nations] Security Council Resolution 1441. Does anyone remember the date of Resolution 1441?

Nancy Kassop: The Congress acted in October of 2002.

Bellinger: All right, so I was involved in that. I can't remember a lot about that. I think I was not leading on that. Where I was a central player was the negotiation of UN Security Council Resolution 1441, if you can pull up that date. Essentially, in discussions between the U.S. [United States] government and the British government, the American government was pushing to get Saddam to comply with the existing UN Security Council resolution and the British government—let me try to remember and get these things in order. It will jog my memory if you get the date for 1441, because I don't want to get these things out of order.

Riley: All right, 8 November 2002.

Bellinger: Okay, so it was right about that period of time. We'll have to come back to a little block of time here because I can't remember in that October–November period as to what led to it, which are good questions, but the decision *was* made—let me put it in the passive voice—that we would go back to the Security Council for an additional resolution to put additional pressure on Saddam to get him to comply with his obligations for inspections. We had great internal debates inside the administration as to whether we ought to do even that. Probably unbeknownst to me, there were higher-level discussions amongst the principals, and particularly the Vice President's office and the Defense Department, about what we would do if we didn't get another resolution. It was pretty clear that the Defense Department and the Vice President's office did not want to go back to the Security Council, even to put further pressure on Saddam.

In conversations between the British government and the U.S. government, though, it was clear that Tony Blair felt—And again, you're going to ask was it clear that we were going to go to war at that point if we didn't get that? It certainly wasn't to me, but it may have been to others. Blair had convinced the President early on that we needed to go back and put additional pressure on Saddam. So the decision was made that we would go back to the Security Council.

Now, this is where it started getting interesting. The Vice President's office and the Defense Department didn't trust John Negroponte, even though he was quite a hard-nosed, conservative diplomat who was our Ambassador to the UN, to negotiate a tough resolution. This was at the high point of the friction between the OVP [Office of the Vice President] and the Defense Department, and the feeling that everybody at the State Department was soft and willing to give away the farm.

So they suggested to Steve Hadley that maybe someone from the Defense Department would go up along with John Negroponte to help to negotiate the resolution. Steve wavered a little bit on that because, having come out of the Defense Department, he was very sensitive to their needs. But he ultimately felt that it was inappropriate; this is why we have a State Department. So he compromised by saying all right, we will send somebody up from the NSC to essentially coordinate back with Washington and make sure that the needs and concerns of other departments—It was originally going to be me and Elliott Abrams. I think Elliott got sick or his wife got sick, so I went up alone. I ended up, over about a three-week period, being John Negroponte's right hand for the negotiation of this resolution, which took weeks. I would have secure video conferences with the Defense Department, the State Department, and the Vice President's office and literally go through word-for-word as to what would go in it.

This was the critical resolution that set up the Iraq War. People to this day debate over exactly what it means. But I do know what it means because every single word in there was pregnant with meaning. The key to the whole resolution, and I explained this recently—actually it's not so recent anymore because it has taken them a very long time to come out with their report, with the [Sir John Anthony] Chilcot Commission, which is the British commission that's exploring whether the Blair government should have gone to war in Iraq.

The key to the whole resolution is operative paragraph number one, which says—and since it's an operative paragraph it's a binding finding, and it finds that Iraq is in material breach of its obligations under previous resolutions. So anybody who knew anything about international law either knew or should have known that if they were in material breach of their previous obligations, then it triggered the authority to use force under the previously existing resolutions, Resolution 678 and Resolution 687. Actually, it didn't even trigger them, because they'd already been triggered because we'd been using force throughout the Clinton administration. So it wasn't that they needed to be retriggered; it was reaffirming.

So here we had the entire Security Council reaffirming that Iraq was in material breach of its obligations: "Decides that Iraq has been and remains in material breach of its obligations under relevant resolutions, including Resolution 687." So that's the key to the whole thing. It's a binding finding that they have been and remain in material breach of their obligations under relevant resolutions. Just in case anybody had any doubt, we said "including Resolution 687."

We had huge fights over every single one of these words. Do we mention 687? Do we make it an operative paragraph? Do we say, "material breach"? Do we say they "have been and remain in"? All of those words together were code for "we have legal authority to use force against Iraq."

Riley: You say huge fights, this was in New York or—?

Bellinger: In New York. I'm sure it went back to capitals as well. To make sure that there was not any further confusion about this, we started the whole resolution up at the top with a provision recalling previous resolutions, in particular 661, which was the authority to invade Iraq back in 1990. And 678 and 687 are the resolutions that provided continuing authority to use force against Iraq throughout the 1990s.

Then we placed further obligations on Iraq to comply with inspections. At the end it said something like there would be serious consequences. That got to be where the debate was. This may be one of those good or bad things in diplomacy, where people have different views about what they have decided on. It was clear that we had viewed that we have, as the term has been used, "refreshed" the use of force authority that we thought already existed because we had been relying on it.

If you had asked me or anybody at the State Department between January and October of 2002 what was our authority for the no-fly zones and the use of force against Iraq, we would say we had it, and it was Resolutions 678 and 687. So there was authority.

Then, just to be clear, we passed 1441, a new resolution reaffirming that authority and finding Iraq in material breach. So we had freshened up the authority.

Riley: But that's a diplomatic necessity rather than a legal necessity?

Bellinger: Right. But it gave even further authority.

Riley: Sure.

Bellinger: The French, who were the last holdouts on this—You'd have to interview someone from France, but I have read some of the accounts that said they somehow felt that 1441, rather than refreshing the use of force authority, put a new bump in the road by saying yes, it required Saddam to do all of these new things with respect to inspections, but it then said if he didn't comply there would be serious consequences. They thought the serious consequences were that everyone would come back to the Security Council and they would talk about it some more. We had a different view about what the serious consequences would be. Will Taft also explains that in his article in the *American Journal of International Law*.

So that was 1441.

Riley: Okay.

Bellinger: Then we went through the inspections.

Riley: Before you begin, let me ask, because you were an interlocutor between New York and Washington during this period of time, do you recall pushback?

Bellinger: This was a painful period.

Riley: Good, that's my job, to refresh, to use your language, the pain.

Bellinger: Actually, it was not as bad as some of the others. It was painful only in that it was laborious. The interagency was so distrustful that the State Department would screw it up that they wanted to help negotiate every word. So I was appreciated for being an honest broker here, although there were some who were distrustful even of me.

Riley: Sure.

Bellinger: But by forcing me to go through every word—we would be okay with that, and can we use this word; this was the discussion—it provided a degree of transparency back to others in the interagency process that we were not just up in New York saying, “Look, we’ll negotiate this; we’ll tell you what we get when we get done with it,” which was the feeling of the Defense Department and the Vice President’s office. This does happen.

State would go into negotiations and come back and say, “This is all we could get. You have to be satisfied with it.” So they wanted to get, once or twice a day, reports on the negotiations and what were other countries saying and could we try this or that. So it was painful only in that these would result in something like four- or five-hour meetings, reporting back on every detail of the negotiations. I would sit up with John Negroponte, who was fairly tolerant, but I felt a little like the political commissar, because he would be negotiating and then he would suggest something and he would look down the table at me, and I would nod my head.

Kassop: Let the record reflect John is nodding his head.

Riley: Who was your interlocutor in OVP?

Bellinger: I don’t think it was David Addington. We know David Addington does not do interagency. I can’t remember if it was Joe Wood; it probably would have been. It may have been John Hannah. It was probably John Hannah.

Riley: But not Scooter [I. Lewis Libby].

Bellinger: No.

Riley: Why not?

Bellinger: Because it was sort of in the weeds. As we came to conclusion on 1441, I would have to report back at higher levels to deputies and ultimately to principals. If I recall, there were periods where we were at inflection points where I would then—maybe John Negroponte and I together would—come back with five or six major decision points that the principals themselves would chew on.

Barbara Perry: Can I ask, what was Will Taft’s role at this point? How much involved was he?

Bellinger: Not much. One of his lawyers, who was really good at UN Security Council resolutions and whom I relied on heavily, was part of my negotiating team, but Will chose not to be centrally involved.

Kassop: Wouldn’t you think that the State Department legal advisor should be involved?

Bellinger: His office was. He had an assistant legal advisor who was all over this and who was part of the team, and who had probably the most experience with UN Security Council resolutions going back a long way. His name was Todd Buchwald; he was very good.

To compress a little bit of this. Saddam did not comply with his obligations. Then the question was, what do we do about that? There were some very high-level discussions that you will have to get from others, that, as reported back to me, Blair told the President that even though I accept that we have legal authority under the previous resolutions as refreshed by 1441, as a policy and political matter I have to be seen to be going back to the Security Council again. Then there were some very brief discussions up in New York in which I was not involved. They happened quite quickly—You should probably talk to John Negroponte about that—in which it became apparent that any further clear resolutions were not going to be forthcoming, so the French were not going to agree to a new resolution authorizing all necessary means.

Perry: Could I ask at this point, is anyone saying in any of these conversations, the President wants X, Y, or Z, or the President is thinking, or we have word that the President wants to do such-and-such? I realize that you would be involved in the actual negotiations, but is anyone saying that they're speaking for him or referring to him?

Bellinger: I can't specifically recall at that point. I was having my instructions primarily from Steve Hadley and Condi [Condoleezza] Rice on what they wanted on these issues. In fact, on these issues the counsel of the President, other than asking to be briefed, was letting me run this a bit more with the NSC. I did find out about five years later that they were checking up on me, because they had asked, unbeknownst to me, the Office of Legal Counsel to prepare a legal opinion on the legal force of Resolution 1441. Of course, the OLC did it on its own without ever talking to either me or anybody at the State Department, who actually negotiated the resolution.

By the time I became legal advisor, the Office of Legal Counsel was beginning to make public a lot of opinions that had not been previously seen. They started circulating them to us to see if we had any objections to them, and I started finding all sorts of opinions that they had been preparing, including this opinion on 1441. I remember thinking, *How could they possibly have prepared a legal opinion on the meaning of UN Security Council Resolution 1441 just by looking at it?* But that was their black-letter view of the law.

Anyway, Blair had apparently persuaded the President that they had to go back one more time. That effort at the Security Council was short-lived, and I don't have a lot of insight into that.

Riley: You didn't go back to New York?

Bellinger: I did not go back to New York. My sense was that John Negroponte must have had a week or two of quiet discussions up there and that there wasn't even anything to negotiate. So he didn't need to have a—

Riley: Commissar.

Bellinger: Assistant.

Riley: I do have to ask: Elliott did or did not go up?

Bellinger: I think Elliott was sick or his wife was sick and he could not go, so it was all left to me.

This brings us to the issue with Peter Goldsmith. That put the British government apparently into a difficult position because they only had 1441; they didn't have any resolution. Blair and the President had apparently been talking about are we now going to use force against Iraq? Blair was talking internally to his own government, and his Attorney General was having some concerns about whether or not there was legal authority. So Peter Goldsmith, the Attorney General, a very prominent British lawyer, was then dispatched to Washington. I don't have the background on his dispatch. Since he had not been personally involved in the negotiation of UN Security Council Resolution 1441, although he could certainly talk to the British government, he came to talk to us to understand why it was that we thought that the combination of UN Security Council Resolutions 678, 687, and 1441 gave current legal authority.

He came and did a tour and met Will Taft at the State Department. He met Judge [Alberto] Gonzales. He met Condi. Condi told him, "You really should talk to John, because John was the principal negotiator," so I spent probably an hour and a half with him, explaining essentially what I just explained to you. I principally argued the point that we had legal authority throughout the 1990s, so that was either illegal or it was legal, and it was continuing in some way and then was refreshed in 1441. I walked him through all of these operative paragraphs.

I've been asked by the Chilcot Commission if he seemed skeptical at the time. I don't recall that. I don't think he showed his hand; he just asked a lot of questions about, literally, the particular meaning of operative paragraph one and the preambular paragraphs and so forth. He apparently went back to London and wrote a legal opinion that was essentially consistent with the U.S. view that the combination of these regulations gave current legal authority. He's been bashed for that. I gather it damaged his reputation in Britain.

Riley: All because of you.

Bellinger: Supposedly. So a liberal international lawyer, whom I used to be rather fond of, wrote this book in which he quotes unnamed sources as saying that Peter Goldsmith had doubts about the legality of the use of force and came to Washington "where he met with a shadowy and powerful figure in the White House named John Bellinger. Bellinger said later, 'We had trouble with your Attorney General but we straightened him out.'"

So anyway, to my recollection that story is not true, and that's not what I would have said to anybody.

Throughout this period maybe I missed the big picture as to whether we were going to use the authority that we had. It was not entirely clear to me that this was absolutely a march toward war. Now, we were doing all sorts of additional war planning. There were all sorts of meetings on postinvasion planning and so forth. So it should have been pretty apparent that people were thinking about this. I guess I continued to think that people would flinch at the last minute. This was during the major prewar battles between the State Department and the Defense Department about who would be in charge of postwar planning.

Then the war came.

Riley: You were engaged in those discussions about phase four?

Bellinger: Yes, phase four, exactly. I'm trying to recall which came before and which came after. A good deal of what I was focusing on was the occupation law and The Hague regulations that governed the treatment of occupied territories. So I was running a legal group that was looking at all the different strands of applicable law, which started before and continued afterward. I did brief the President on those fairly regularly about The Hague regulations on occupation law.

Riley: Do you have any specific recollections of your briefings on these things? Was he on top of your game?

Bellinger: This is the sort of stuff that makes different parts of the Defense Department become more political. The Defense Department felt that these old rules on occupation are quite restrictive, because under international law an occupier is really just exercising the sovereignty of the people of the occupied. So you're not supposed to make changes to their political form of government. Of course, the political view of the Defense Department was, well, that's the whole idea, isn't it?

Kassop: To do change.

Riley: Right.

Bellinger: So trying to explain what we could do and what we couldn't do consistent with international law took some discussions.

Perry: Who else would have been in the room with the President?

Bellinger: Initially these would have been discussions amongst the lawyers—Defense Department and State Department lawyers—and me. As we would get them briefed up, we would work up to the deputies and up to the principals and ultimately up to the President.

I guess one question is, as we know, after the war there was a huge number of accusations that this was all about oil. I never saw that. Certainly our prewar planning had a lot of discussion on how we would treat the oil in Iraq and how that would affect the international economic situation, but I never detected from anybody that this was all about the oil for us. If it was all about anything, it was really more about deep concern about what Saddam was doing in the region, that he was a destabilizing influence in the region, that he was supporting terrorism and you could—I guess we haven't gotten into the whole intelligence mess. I never got a sense that this was about the oil.

[1.5 pages redacted]

The rest of the world was so shocked that this had happened, but then they essentially wanted to be involved. Of course, the Defense Department and the Vice President's office didn't want to have the rest of the world involved.

We had this big tussle with the State Department and the British government and our allies

saying we want the international community to be involved in the reconstruction of Iraq. I then was dispatched over to London just a few weeks after the Iraq War to have high-level meetings with Tony Blair's National Security Advisor, David Manning, and his deputy, a fellow named Matthew Rycroft, to see if, between the U.S. and the British, we could come to some sort of agreement as to whether there was going to be a role for the international community in the reconstruction of Iraq.

So I spent about a day and a half at Number 10 Downing Street, which is a wonderful experience. It's such a small place. You come in the front door and there's Tony Blair pounding down the steps, "Hello." Actually the story gets a little bit better. We sat down and framed out what a UN Security Council resolution would be that would provide for the postwar reconstruction of Iraq. The issue was that there would be some kind of a UN Security Council resolution. The U.S. view of the UN Security Council resolution would be that the UN would pat the United States on the back and say, "You're in charge."

The British view was more that the Security Council would say, "All right, now there will be a role for the UN, and the international community will all help." So we had a framed-out resolution, which I had worked out, that was leading to a summit in Northern Ireland. The President was going to fly over to work out these final details with Tony Blair.

The amusing incident, before I get to that actual summit, is that the night before we were going to head over to Ireland, I told the Downing Street people that I had to leave because I had to go get my flight. They said, "Why are you going to fly over? Oh, just come with us." This would never happen on Air Force One. So they said, "Be here at Downing Street at 7:45 and we'll pick you up."

Sure enough, the next morning a cab drops me off at Downing Street. I say to the bobby, "I'm here to fly to Ireland with the Prime Minister." He looks at me and he says, "Oh right, Mr. Bellinger, right over here." I stand up outside Downing Street and there's a row of limousines. They put me in one of the limos, we roar off, lights and sirens. I get onto this airplane and there I am, sitting one row away from Tony Blair as we fly over to Northern Ireland.

So we meet. We have a one-day summit where the purpose of the meeting—This was widely reported as Bush and Blair getting together for a postwar summit to agree on the next steps on reconstruction. The real issue in the meeting, if there was going to be a divide, was this issue of the role for the UN. The Vice President's office and the Defense Department had made it extremely clear to Dr. Rice that there was going to be no role for the UN in the reconstruction of Iraq. I knew this was going to be an issue because the British government had a diametrically opposed view.

In any of these summits or Presidential meetings, there is also a private meeting. About half of any of these private meetings is spent discussing what you're going to say when you go out. So you discuss the substance, then you discuss what we are going to say. You don't discuss the substance and then go out and say completely different things.

Blair was working really hard on the President in this small meeting—I was there; there were about eight of us—about how the UN needs to be involved. The President was sort of nodding.

As they went out to the camera site, it was unclear what the President was going to say on this. So, standing out in front of the cameras, the very first question is, “Mr. President, will there be a role for the United Nations in the reconstruction of Iraq?”

The President says, “It is an important question. Of course there will be a vital role for the United Nations.” I could see Condi blanch. The President looked at her and I think he realized that something had gone wrong here. They finished the press conference. Blair was beaming. The President went over to Condi afterward and said, “What’s up?” She said, “I’m going to have some explaining to do with the Defense Department and the Vice President’s office.”

I then went back up to the UN and went through the whole negotiation process of what became UN Security Council Resolution 1483, which was the resolution on the postwar reconstruction of Iraq. Again, the Defense Department and the Vice President’s office were very concerned about every line, and I would report back and so forth. At that point, the President had made the decision that the UN was going to be involved in the reconstruction of Iraq. So those are my Iraq legal stories.

Riley: Splendid.

Bellinger: I’d be happy to take questions now.

Long: I have two questions because of something that you mentioned there. I guess the most related question is about the contracting for reconstruction work. There was reporting about some no-bid contract, meaning implications—You know, it’s the press—of preferential contracting. Did you hear any of that? Were there any discussions within your circles about that? I don’t suppose you were directly involved.

Bellinger: We did have some discussions on that. I was pretty centrally involved. The Defense Department and the Vice President’s office, largely the Defense Department, felt that the countries that had been involved in the war effort should have preferential contracts in any postwar contracts for anything. It seemed logical.

The French, who had fought this tooth and nail, shouldn’t necessarily get the big contract to rebuild ports. That said, while one could understand that as a matter of policy, it did raise a number of legal concerns. At that point we had the U.S. Trade Representative’s Office and the State Department expressing concern about whether this would violate certain trade rules and so forth on national treatment. I can’t remember precisely how we resolved that. I remember we had some concerns that if we were to have preferences for those who had participated in the war, it could raise trade issues. If it raised trade issues and they challenged it, would we, could we, have strong defenses? And if we had strong defenses, would we win or lose? I can’t remember what we ultimately decided on as a matter of policy. What did we do?

Long: I don’t know. A related question that came up first in my mind when you mentioned that it was decided that some of the previous UN resolutions that had applied to Iraq under Saddam still applied after the regime change: You know very well that under international law there is a notion of, say, odious debt, for instance, where a new leader after a nondemocratic regime may or may not be held liable for the contracts, and especially the debts of the former regime.

Bellinger: Yes.

Long: So how were Saddam's other international commitments, say trade agreements or export agreements, to be treated under the new system?

Bellinger: That was all hugely complicated.

Long: I'm sure it was; I'm curious about it.

Bellinger: Every one of those things was handled differently. We had meetings and more meetings on what traditional international law would require on debt. I remember at one point we had hours of meetings on whether we could keep the currency of Iraq. If I recall under The Hague regulations or traditional principles of international law, you are not allowed to change the currency of the country if you're an occupier. Yet all the currency of Iraq had Saddam's picture on it, so that somehow seemed to be incongruous. In fact, somewhere in the war, since we knew it was going to take a while to print new money, I think we had the Treasury Department send in something like 50 pallets of dollars. I have pictures of these pallets of dollar bills being unloaded. We spent a lot of time, even at the White House level, talking about this. I've forgotten how we specifically addressed odious debt.

Riley: I want to circle back, because we started down this road partly based on a question about the President's—You said you were in meetings with him, briefing him about these various things. Let me refine the question a little bit. This is very helpful, because one gets the sense in reading some of the accounts that he has a kind of disdain for lawyers anyway, maybe a higher-level disdain for international lawyers that are working in dark arts. I guess first, is that consistent with your experience or is it overstated? Secondly, did you get the sense when you were dealing with the President, I guess preinvasion—I'm assuming some of this must have been phase-four discussions—that these are the things that we're going to have to deal with? Did his eyes glaze over at this enormous raft of very complicated international legal issues that he had to deal with? Did you get a sense that this is a man who has a high level of tolerance or not for dealing with that kind of detail?

Bellinger: [REDACTED]

Riley: [REDACTED]

Bellinger: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Riley: Were you, from your perch, surprised at the problems that occurred during phase four? I'll stop there.

Bellinger: I guess I didn't personally know enough about Iraqi history to know what to expect. I certainly can't say that I thought then, *You don't know what's going to happen when you get in there.*

Riley: Sure.

Bellinger: I guess what I had seen in the run-up was the Defense Department trying to elbow the State Department out of the way and put their own people in charge. They were constantly vetoing individuals who had been proposed by the State Department to run certain ministries because they felt they were ideologically unsound in some way.

Riley: Let me phrase the question in a slightly different way. Did you get the sense in the run-up for the invasion that the senior policy makers were sufficiently informed and were trying to inform themselves about the complexity and the nature of the problems that were going to exist on the other side? You were looking at this from only one narrow part, but I'm wondering if you were leaving meetings feeling confident that people were on top of these things. Or were you leaving meetings thinking that these guys have no idea what is going to be at issue when we get on the far end of this?

Bellinger: I don't really remember. I was not in all the meetings. There were so many different things to do. A lot of this was being coordinated—both in the run-up to the war and then after the year—by the NSC, so Frank Miller, the Senior Director for Defense, would be a good person to talk to. He was coordinating a lot of it. We had a number of different working groups. There was an economic working group and a defense issues working group and a reconstruction and legal issues working group.

Frank had to pull that all together. I certainly don't recall meetings in which there were lengthy discussions about how the different factions in Iraq might break down. Certainly Paul Wolfowitz had been pushing the idea that the Iraqi people were oppressed by the Ba'athists and that after the invasion they would welcome us.

What I don't recall is whether there were meetings saying, "There's this group," then "There's *this* group," and that these groups may start fighting with one another. So I can't say that happened or didn't happen.

Perry: I want to go back—You've mentioned a number of times that the Office of the Vice President and the Defense Department were sort of allied together and antagonistic to State and also to the types of work that you were doing for the NSC. Would that have come out in meetings with the President? Were representatives from the Office of the Vice President and the Defense Department in the same meetings that you were in with the President at the same time?

Bellinger: It was pretty clear to me that those two groups were driving the Iraq policy. On this one, the Justice Department was less interested. The War on Terrorism issues that we have talked about previously, I would say the Justice Department and OLC were coequally interested. When it came to Iraq, the Justice Department had relatively little interest. Other than once or twice when the Defense Department asked them to bolster their legal view on something, they were not involved. This was really the Defense Department civilian leadership and the Vice President's office pushing.

Kassop: Was it the lawyers or the policy people?

Bellinger: The policy people. David Addington and Jim Haynes were much more centrally involved in War on Terror issues and much less interested in—I don't think I ever had any discussions, much less disagreements, with them on Iraq legal issues at all. I was centrally involved in Iraq legal issues, all of them. There was a lot to coordinate, and I don't recall ever discussing any of the issues with them.

Perry: This would be outside your lane to be sure, but before the invasion of Iraq, did you ever think about going forward, what turned out to be a criticism looking backward, and that was, we're already in Afghanistan; what is it going to mean for that war? I'm sure that people weren't saying, at least in the meetings you were in, What's going to happen in Iraq when we remove this dictator? But did you think about, Are we going to take our eye off the ball in Afghanistan? Do we have enough resources to do that? Just as someone who would be concerned about our foreign and defense policy?

Bellinger: I certainly think that now. I'm personally more negative on the Iraq War, as to whether this was a good idea or not, but I can't remember whether I was thinking that at the time. My feeling at the time, as somebody who had not been centrally involved in the first Gulf War—I had been at CIA [Central Intelligence Agency] but not centrally involved—was that I was surprised by the fixation, even pre-9/11, on ousting Saddam. That surprised me. I don't recall now whether I had formed a view that this was going to be a distraction.

The one thing I will say, which is really unfair, is the criticism—in addition to the criticism about it was all about oil—that the intelligence was cooked. Certainly the Vice President's office was putting pressure on the CIA to build the case, but the liberal critique that the intelligence was somehow cooked is certainly something that I never saw at the time, and to this day think is not true. Anything that I ever saw suggested that Saddam really did have different WMD [weapons of mass destruction] programs. To the extent that the Vice President's office was pushing to

emphasize the information that we had—That's of course what you do when you—If you're going to lead the country into a conflict, you don't say well, it might be this way or it might be that way.

Certainly in retrospect, all of the intelligence seems to have been wrong. Certain things seem to be overemphasized. At the time, it seemed clear to all of us that CIA felt that Saddam had various WMD programs.

Riley: You had contacts, I guess, over a long period of time with the Agency?

Bellinger: Yes.

Riley: Could you comment a little bit—I'm mindful of the clock. I don't want to get too far down in the weeds on this. Did the Agency have confidence in the White House during the Bush Presidency?

Bellinger: I don't know—Of course, it was a multifaceted relationship on Iraq issues, which was the intelligence analysts who may have been feeling pressured, and then the counterterrorism people, who were really selling their ideas to the White House. So I don't know what they thought at the Agency. The CIA at any time, and certainly with the terrorism issues, is always worried, and their worries turned out to be borne out, that the White House is going to sell them out later on. It will be gung-ho on something until it goes bad and then they'll blame it all on the CIA.

Riley: And that was true.

Bellinger: That was true.

Riley: One global question, and then I've got to track us and get you to Foggy Bottom. Could you talk a little bit about your views of Condi Rice as the National Security Advisor, what her strengths and weaknesses were in that? What should we understand from history was her role in the first Bush term?

Bellinger: Of course, she has different roles as the advisor to the President and the manager of a process and the head of a staff. I will say, taking those in reverse order, because those are the ones that I would see the most, I think all of us on the NSC staff, and many people who served previously on the NSC staff, felt that it was one of the strongest NSC staffs in history. We felt that she was an extremely good and strong manager whom people had enormous personal loyalty toward.

She was a fantastic listener, very good at getting in information, very good at appreciating people, very decisive in her decision making, an incredibly efficient processor of information. So to my knowledge—except for Dick Clarke, who was not a fan—the entire NSC staff admired her and felt that she empowered them, that she relied on their advice, listened to them.

Generally the meetings were well run. The criticism, of course, is that she was not strong enough at running an interagency process. There may be some truth to the fact that she did not run it with a heavy hand, but there were reasons for that. It has been made clear from the very beginning

that this President wanted the National Security Council staff to be a staff and not a separate power entity, and that he was going to run his administration like a chief executive. There were people who ran departments, and they were in charge of running their departments. It was not going to be what has now happened in the [Barack] Obama administration, which sort of happened in the Clinton administration, which is that everything is run from the White House staff.

It was made clear that we were staff to make sure that the processes would run. So that was not a role that she was given, to be overruling the Defense Department or the State Department.

Second, of course, she was younger and newer than these other Cabinet Secretaries and the Vice President.

Riley: Everybody was younger and newer than they were.

Bellinger: And they would treat her that way. [Colin] Powell wouldn't, but Secretary Rumsfeld and the Vice President—well, I didn't see the Vice President do it—but Secretary Rumsfeld would certainly treat her that way.

Perry: Describe that treatment.

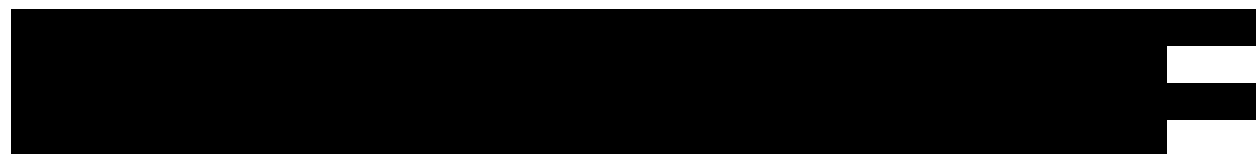
Bellinger: I have to wait for this one to come out in history—I'll tell you an anecdote in a moment—he was disrespectful in the Situation Room. He was generally disrespectful to a lot of people, but he was particularly disrespectful to her. She would try to run a meeting, which is difficult anyway, to try to bring people together. He would obfuscate and object and claim that he didn't have the briefing materials, that the NSC staff had not done a good job of teeing things up, and would generally make it difficult for her to run a meeting.

She has reflected in her own memoirs on the detainee issue, for example. She was starting a meeting on detainees after a second meeting and he walked out. She said, "Don, where are you going?" He said, "I don't do detainees." Of course, he was holding all of them.

With the two wars, it was also clear that the Secretary of Defense was going to be the powerful person in the room. She was in a difficult position. While I understand the criticism, I'm not sure that anybody in her position could have done anything much differently.

Perry: How did you see her respond in those meetings to that kind of behavior?

Bellinger: Basically trying to balance not taking any flak, but at the same time trying to be respectful. She did not want to overrule Cabinet Secretaries on the spot, although she would occasionally. I could see annoyance when they were being really difficult. Tiny flashes of temper. She controls herself extremely well. Essentially when, generally, Secretary Rumsfeld was being difficult, she would finally say [hitting table], "Fine, I'll just take it to the President."



[REDACTED]

Riley: [REDACTED]

Bellinger: [REDACTED]

Riley: [REDACTED]

Bellinger: [REDACTED]

[REDACTED]

Riley: [REDACTED]

Bellinger: [REDACTED]

Riley: [REDACTED]

Bellinger: Yes. There probably is some criticism to the point about not enough things getting decided. I would have to say at the principals level—although Condi herself would not decide the issue because that wasn't her role, she would often, and I think this was partly to force a decision and partly born of a bit of frustration—I saw this not infrequently if we were really having difficulty; she would just say, "Fine, I'll take it to the President."

Perry: Can you think of any examples that you can mention?

Bellinger: Not really; it's just that this was not infrequent. Steve Hadley often would feel that it was his role—and I understand this, in that the Cabinet Secretaries would find that annoying if the National Security Advisor were saying fine, I'll take it up to the boss, so he would often try to walk these back a bit to try to bring more process around to see if he could get people to reach some agreement.

Riley: Did that cover the three points?

Bellinger: I think so. I may not have been sufficiently clear in my three boxes. The last piece

was the advice that she gave to the President. Of course, I didn't see a lot of that directly, as that often was just one-on-one. She was really the President's national security/foreign policy tutor. The two of them had a very good relationship and that worked extremely well. She, as we all know, is extremely smart, very good at explaining things, and very reasonable and balanced. I can't think of a thing where she could bring in the last word to the President that she could not bring him around on something. Of course, on a lot of issues she had the Vice President, who would get in the last word.

Riley: Let's transition. Tell us about transitioning from the National Security Council to—

Bellinger: Did we talk about the transition process last time?

Perry: No.

Riley: You mean from NSC to State Department? No. We may have talked about some of that during the big group, but I haven't looked at that. You decide what's important for us to know.

Bellinger: I will simply say for the State Department, I thought we ran a pretty good transition. It was one of the more fun things that I've ever done. I thought it was well organized. I was in charge of the confirmation, the substantive parts of the confirmation. We had someone from the White House Office of Legislative Affairs who handled the procedural parts.

We were then blessed to have something like two and a half months to plan out the transition itself. So Jim Wilkinson and I organized a series of briefings for her that went very well. I have told the [John] Kerry people I thought they ought to do the same thing, and I think they have had some difficulty doing this, in part because I think Senator Kerry thought he didn't, as the oversight chair, really need to do this. With Secretary Rice there was a little bit of the same thing.

She'd been overseeing the State Department to a certain extent for four years anyway. But it didn't take a lot of convincing that if she was going to be running this department, there were multiple reasons for her to go over. So we had about eight weeks—maybe not quite that long—of twice a week, three-hour briefings over at the State Department. We had a multifaceted transition.

I put together a small group of people that would be advising her on what she would try to achieve over the four years, what she would do in the first year, what she would do in the first hundred days, what she would do on the first day. What would it be like? Would she have a town hall meeting, would she address the staff? Where would the first trip be?

We talked about personnel issues, who would have what positions. Then we went over and met with the under secretaries and assistant secretaries. We'd give every office, main office, essentially an hour to brief her on anything they wanted to brief about. People could decide in different ways how they wanted to do it.

They worried, as I understood it—and there was a little bit of press about this; I think we talked about this in the big meeting—that there was this perception that she was being sent in as the strict schoolmarm to run a much stricter ship.

I think that by the end of the transition people saw that she was really listening to them and that the appointments that we were making were of Foreign Service officers. We planned out the first trip, which was going to include, of course, a first stop in Britain. Then she went to France and played music with schoolchildren. Then she went straight to the Middle East; she went there and then came back, to report back to the Europeans. We had thought out all of these things. I thought it was a pretty good transition.

The confirmation went relatively smoothly. As I may have reported to you last time, the two odd things in the confirmation process were, one, Barbara Boxer was extremely difficult and ultimately ended up holding the hearing over for a second day, accusing Secretary Rice of cooking the books on uranium tubes and so forth. Then John Kerry, who had just lost the election, after everybody else had left, stayed for hours and hours into the evening, so it was only [Richard] Lugar and Kerry left. I don't think this ever got reported in the paper because all the press had gone home by about three o'clock. They were all of the ten-to-two types. They were tired and had gone off to write their stories.

Kerry came in late and stayed and stayed and asked her hours of questions on Iraq, and what about this and what about that. Lugar was calmly presiding over it. There were relatively few of us left in the hearing room.

Perry: Could I ask, at her confirmation hearing—Also I was going to ask about her testimony before the 9/11 Commission, but particularly at the confirmation hearings. Since she was—Gonzales was another example—somebody who had previously served on the White House staff now being nominated for a Cabinet position, Senate confirmed, and the kind of information—Generally White House staff members don't testify before Congress in the first place. So as the person in charge of the legalities of this, how did you deal with the expectation that she was going to be asked questions about her time in the White House, for which she might have difficulty giving them a satisfactory answer?

Bellinger: We were a little concerned about that. I can't remember precisely how we said—She's such a good communicator and is so good at explaining things anyway—by not annoying people, by just saying no—that I don't think I worried too much about it. Essentially, the line is that you don't talk about precisely what you said to the President. You know, "I said to the President," "The President said to me." But one can generally say, "We were concerned about these issues." "Yes, we certainly had discussions about these sorts of things," so one can generally answer the questions.

If a Senator decides he really wants to bore in and say, "I'm asking you, did you tell the President this? What did the President say to you?" Then one has to say, "I can't get into that." Then you have to see if the Senator is going to continue to try to press that. I don't recall that that became an issue for her. She's incredibly good at not antagonizing people by answering the question that she wants to answer, rather than just saying no and immediately picking a fight.

Kassop: Because we're on that same subject of your advice when she is testifying before these kinds of situations, with the 9/11 Commission—In that case, they're asking for exactly that kind of information.

Bellinger: Right, and of course the more difficult issue there was with what did the President know, in terms of the President's daily briefs, and what did you tell him about the threat and so forth. Of course, we caved altogether on the President's daily briefs. We even allowed the 9/11 Commission to sit down with the President and the Vice President themselves. We pretty much gave up most of executive privilege, including the principal of staff not testifying. That had been a real major bone of contention between the counsel to the President and then Dr. Rice, as to whether to allow her to testify.

The whole 9/11 Commission, the legal issues, all had to do with privilege issues. It was all about privilege and so forth. I can't remember at the end of the day whether there was anything much left for us to protect. We walked right up to the ultimate line, short of having the President himself testify, which, of course, we were not going to do. We came about as close to it as one could by allowing the 9/11 Commission—We allowed them to have coffee with the President.

Riley: With a notetaker.

Bellinger: Yes.

Kassop: Was there disagreement among other White House staff members about the fact that you were allowing this?

Bellinger: I can't remember precisely now, but I'm sure there was, because the counsel's office really did not want to—and understandably so, because those are the normal privilege rules—did not want to allow any of these things to happen, although as one of my colleagues said to me along the way, "We will defend this position until it is overrun and then defend the next one."

Riley: Was it a given that you would go with her to State?

Bellinger: No, it wasn't. I didn't know what was going to happen, and I wasn't even sure I wanted to stay. I was exhausted. We had had a huge amount of bickering. It wasn't clear exactly what she might do, that she might go to the Defense Department. So I thought a little bit about would I want to go to the Defense Department, would I want to go to the State Department? But I was also thinking at that point about leaving.

She asked me, I think on Day One, would I run the confirmation, so that locked me into three months. Then at some point during that, she said, "I'd like you to come with me. What job would you like? Would you want to be chief of staff? Would you want some other position?" I had said to her, "I certainly would like to come with you, but I'm more of a lawyer than a staff manager."

She said then, "Would you like to be the legal advisor?" Then she had asked if I would still sit up with her on the seventh floor in one of the small offices over there even though I was the legal advisor.

I said I would enjoy doing that, but that I thought it was more important for me to be down with the legal advisor's office. She said all right, if you can just come to my early-morning small staff meetings and end-of-the-day staff meetings. So I ended up having the best of both worlds, in that before we had the general staff meetings in the morning, we had a group of about eight or nine of us that included the deputy and the under secretary and the counselor and me and spokesmen.

We had that both in the morning and the end of the day.

Kassop: You wouldn't have been included in that meeting routinely?

Bellinger: No, not necessarily. Each Secretary runs things the way they want to run them, and they decide. I don't think Powell had a little interoffice meeting each morning.

Kassop: The point of being legal advisor is to be there when things are discussed and to detect if there is a legal issue.

Bellinger: Right.

Kassop: So it's surprising that it wouldn't have been automatic that you would have been there.

Riley: Why don't we take a break for a few minutes and we'll come back and figure out what's going on at State.

[BREAK]

Riley [to Kassop]: You were asking John about the staff structure in the legal advisor's office. Why don't we go ahead and get on that?

Bellinger: As I was saying, the legal advisor's office is a funny place to run because all four of the deputies are career people. The legal advisor is a political appointment, but the only other appointment that you have is your special assistant, which is a Schedule C position. I inherited from Will Taft a man named Jim Filippatos, who had been a young lawyer from Cleary Gottlieb. After about two years, Jim left and I hired a man named Dan Kearney, who had just left clerking for Chief Justice [John] Roberts.

One does get, for all of you academics, a half a political appointment because the legal advisor has a counselor, which is done as an IPA [Intergovernmental Personnel Act] transfer. So you can take an academic—Well, you can take anyone, but generally the legal advisor will take an academic for one or two years, who is then “lent” by the institution to the legal advisor's office.

Kassop: What's the role of the counselor?

Bellinger: It can be used in different ways. There have been some very famous people who have been counselor. Phil Bobbitt, at one point, had been counselor. It's called counselor on international law. They can be used in different ways. That person often is treated as a political appointee, although it's not controlled by the White House as a Schedule C position. You can have them on special projects. They're not supposed to be managing anything, but you can assign special projects to them.

Riley: You said to remind you to tell your ICC [International Criminal Court] story.

Bellinger: You want to launch right into this?

Riley: Why not?

Kassop: I was going to ask if it would be possible for you to describe the functions of the State Department legal advisor's office? The average person is not that familiar with that particular position, and the responsibilities of that office are fascinating, so for the record it might be helpful.

Bellinger: To go back even further than that, I came over with the Secretary on Day One and then served as her senior advisor for about three months, and I did sit upstairs with her. Within just a couple of weeks of getting there, I was nominated in February to be the legal advisor. I had my confirmation hearing in March and was confirmed in early April, so I became legal advisor.

Nick Burns and David Welch, who was nominated to be Assistant Secretary for Near Eastern Affairs, were the first people in the State Department, other than the Secretary, who were nominated, and we had our hearings together. I always apologize to Nick and to David because their light was hidden under my bushel. They wanted to be very careful because I had been at the White House and had been at the center of a whole lot of controversial decisions. Nick—very famous, well thought of on the Hill; everybody knew him—probably would have enjoyed having a big hearing. It was carefully decided that we would have it on a Friday in March. It wasn't quite spring break. The Senate wasn't on recess, but they might as well have been. We had very few members show up. It all went very smoothly.

The legal advisor is the general counsel of the State Department. The Office of the Legal Advisor has 180 lawyers. It has grown exponentially over time. It is an old position that goes back 60 or 70 years. It advises both the Secretary and the whole department on both international law and domestic law relating to the foreign relations of the United States. And really *through* the Secretary of State, is the principal international lawyer for the U.S. government.

As we talked about last time, in any administration, but particularly in our administration, there is some tension between the legal advisor and the Office of Legal Counsel at the very end of the day on who is the absolute final voice on international law issues. But most of the time the Justice Department is not going to dispute that the legal advisor is the principal international lawyer for the U.S. government; certainly representing the United States outside the United States, it's going to be the legal advisor. So it's a fascinating position.

One of the reasons the office is so large is that the legal advisor does have to oversee all of the administrative law functions for the functioning of the State Department, which can be mundane, about the building of embassies and management of the department and trade disputes and so forth. But the core of the office, which is why people come to the legal advisor's office, is to practice public international law and negotiate treaties, negotiate peace accords, negotiate the dissolution of states, and UN Security Council resolutions, so it's a fascinating place to be.

I may have mentioned this last time, but it sets it up. In November of 2004, Secretary, then Dr. Rice, asked all of the members of the NSC staff to write short memos on what had been accomplished in their area—did I say all the members? She asked all the senior directors of the NSC staff to write short memos on what they had accomplished in their area in the first term and

what remained to be accomplished in the second term, looking back and then setting goals for the second term.

To my recollection I wrote a short memo on essentially three things. One, saying that we needed to clean up the whole detainee set of issues, from Guantanamo to allegations of torture to all the issues having to do with—and particularly the legal framework, what rules were we applying, some of the things that we discussed last night with Anne-Marie Slaughter.

Two, I said that we needed to emphasize more generally that this administration is committed to international legal rules and that there were some things that we could do more generally to demonstrate to the world that we take law seriously. Then three, as an example of two but standing alone, was to address perceptions around the world that the United States was trying to kill the International Criminal Court and was against the International Criminal Court. I said we needed to recalibrate so that without changing our position, that while we were not going to become party to the Rome Statute, we shared its goals.

Secretary Rice didn't really agree or disagree. I think she said it's fine to work on those things. That little memo became my blueprint for my time as legal advisor in the second term. Of course, Nancy, I've laid out all of this about my four years later in my chapter. But the big issues that I worked on as legal advisor were, of course, the War on Terror issues and the detainee issues, and the dialogue that I instituted with the Europeans is probably the biggest thing. I spent maybe 50 percent of my time on those sorts of things.

Then I set a goal that I felt I had succeeded in by the end of the four years in recalibrating our approach to the International Criminal Court. It was something that I had worked on pretty much single-handedly for four years and had moved the dial, which was that we had a clear policy that we were not going to become party to the ICC. Of course, President Clinton had had a clear policy that we're not going to become party to the ICC.

We had stated firmly to the Secretary-General that we did not intend to become party, but as I pointed out to Europeans, that's not all that different from President Clinton announcing publicly that we did not intend to become party. He just announced it publicly; we sent a letter to the UN.

We had an opportunity to immediately begin recalibration in April, March or April. We were confronted with the UN Security Council resolution to refer the Darfur situation to the ICC.

Riley: This is in '05?

Bellinger: Yes, '05. I'd just become legal advisor. The question was whether we would support that even though we were not party to the ICC and were on record as disapproving of the ICC. We had a bit of an internal battle inside the administration with John Bolton, who was still in office at the time, arguing the principle, which I can understand, which is, if we don't think the ICC is fair for us, how can we support it for other people? But we had looked at other options, like using the African Union to try to create a separate court, and there were no other options to put pressure on [Omar al-] Bashir.

So we participated in negotiation of that resolution. Other countries were extremely difficult in that they did not make it easy for us. We wanted, for example, a preambular paragraph that

would state—which seemed to be pretty easy stuff to provide—that not all parties are members to the Rome Statute. If you’re the Security Council and you’re referring something to the ICC but you’re not a party, it would seem to be pretty easy to note that while we’re not all in the same boat together—But no, other countries didn’t want to do that because they had felt we were trying to kill the ICC, so they didn’t want to give any.

The issue ultimately went all the way up to the President. I’m told—I wasn’t party to that—but I think the Secretary discussed it with the President and he said, I am told, “I am more concerned about the genocide in the Sudan. I’ll deal with the ICC later.” So we abstained on the Resolution 1593 referring the genocide in Sudan.

Riley: Was that a problem for Bolton?

Bellinger: He was not very happy about it. For the next four years I essentially implemented the policy that I had set, which I felt was consistent with what the President’s policy had been in 2002 when we *unsigned* the Rome Statute. Marc Grossman gave a speech explaining the unsigned. I think Marc wrote a lot of it himself. It’s a really good speech, very soft in its language about how we shared the goals but that we just wanted to be clear that we were not going to become party, and that it left us in this odd situation if we were signature but we were not going to become party. President Clinton had said we were not going to become party, but there was common ground and we would work together. It was not a John Bolton speech.

Nonetheless, it did not go down very well; well, the policy didn’t go down very well. I think nobody read the Grossman speech. The policy had been a common ground with the ICC. What had happened between 2002 and 2004, though, was because Congress had passed the American Service-Members’ Protection Act, which required us to negotiate these Article 98 nonsurrender agreements with a lot of other countries. John Bolton was extremely vigorous in beating up on these countries to sign these agreements, so the rest of the world came to think that the combination of the unsigned and our beating other countries into signing these Article 98 agreements, coupled with various hostile statements about the Court, meant that the United States was trying to throttle the baby in its infancy.

Ironically, no one knew this at the time—The history is beginning to course-correct a little bit, and I’ll tell you a story that happened last week in just a minute. This whole American Service-Members’ Protection Act was blamed by all Europeans—Go ask any European; they all blame this on President Bush, as if he cooked this up and passed it. This was drafted by Republicans in the House, Tom DeLay. I was the White House negotiator at the time in 2002. Because this so tied the President’s hands to ever cooperate with the Court, we had to put in a bunch of waiver authority. I would negotiate with Steve Rademaker, a former NSC deputy legal advisor, and say “Steve, surely you understand that whatever ideologically you think about the ICC, you are tying the President’s hands in a way that borders on unconstitutionality.”

Far from us seeking this legislation, while I certainly won’t say that people like John Bolton and others weren’t sympathetic with it, as an official matter we were building in waiver authority. Then, as I am extremely fond of reminding Europeans, when it is voted on, overwhelmingly by both parties in the House and the Senate, Hillary Clinton voted for the American Service-Members’ Protection Act, including the famous provision to invade The Hague. So I remind

Europeans that actually, thank you, before President Bush signed the law, Hillary voted to invade The Hague first.

So, in any case, this combination of the American Service-Members' Protection Act and the unsigning had led the rest of the world to believe that we were out to kill the Court. I then began, and did so for four years, to give a series of speeches and in meetings with other countries, going back to the Grossman speech and expanding on it, and talking about the common ground and that we shared the goals of the Court and that we provide more support for international criminal tribunals than any country in the world. It's not that we are against international institutions, that we have shared the goals of this Court, we continue to share the goals of the Court to bring accountability for war crimes, crimes against humanity and genocide, that we supported its referral in Resolution 1593. Then, with authority from the Secretary, I began to say, "And this is not just an idle acquiescence, we'd be prepared to support the prosecutor if he needs intelligence."

When I said that, it made headlines all around the world. There was a *Washington Post* story about "U.S. Official Floats Possibility of Aid to the Court."

But I started giving these talks over and over for four years. At one point I had given a speech that resulted in the *Wall Street Journal* running a headline that said, "U.S. Warms to ICC." When I got in one morning—already by the time I got in at something like 7:30—there was a copy of this sitting on my desk. The Secretary said, "John, what have you been saying?" So I explained that.

This began to sink in over time. Sadly, it's too bad—and I plan to keep focusing on this in my public speeches now—It was a missed opportunity by Europeans who, as I have said to them, essentially I held out my hand to work with them, but they were so ideological in their own way that they decided they didn't like the Bush administration, that they really didn't want to work with us, they would rather wait four more years and see if they could get a better deal with the next administration, whoever that might be, than even meet us halfway.

I said that we can meet halfway here. Let's agree to disagree. We share the goals, but we can work together, and they just didn't want to. They took what I had to offer, but did not want to work with us. Nonetheless, after a whole series of these speeches that got a fair amount of press coverage—And then the military was beginning to feel that the restrictions in the American Service-Members' Protection Act that cut off counterterrorism assistance to countries unless we waived it was causing us more harm than good.

Then Secretary Rice said in a hearing at one point, when she was asked about ASPA [American Service-Members' Protection Act], she said that cutting off counterterrorism assistance to our friends on account of their being parties to the Rome Statute was a little bit like shooting ourselves in the head. By then John Bolton had left and Secretary Rumsfeld had left and it began to tip a little bit toward a more pragmatic approach toward the ICC.

By the end, in the last year, Luis [Moreno] Ocampo, the prosecutor, had indicted Bashir, something that we had not supported, not because it had anything to do with the ICC, but just because we thought it would be more difficult to pry Bashir out of the Sudan. Then once he was

indicted, we were not about to let him off the hook. The Chinese, of course, who had great interest in Sudan, then began to float the idea of deferring his prosecution. Under the Rome Statute you can defer an investigation for a year, but the Security Council has to vote it. In theory, if you were trying to let Bashir off the hook, that's exactly what the Security Council would do. They would say that we're going to defer the criminal investigation so that the political process can go forward.

At that point we said no, we're not suddenly going to become Bashir's backers here. I was not involved in this, but I am told that Rich Williamson, who was the Deputy UN Ambassador, discussed that with the President, and the President also agreed that we were not going to let Bashir off the hook. Then Secretary Rice, either publicly or privately, made it clear that the United States would veto any resolution that attempted to defer that, resulting in us coming full circle from our essentially being the principal antagonists of the Court to—I shouldn't overstate it, but I will—the principal saviors of the Court, because we were saying we would exercise our veto authority to prevent the Chinese from—Frankly, the French were supporting this as well—of all people who had been bashing us on this.

If I recall correctly, this resulted in Ken Roth of Human Rights Watch writing an op-ed in the paper saying that the Bush administration had come full circle on this. So from the point of view of what I felt was our policy and should have been our policy, I felt that we had moved that. Now, as people look back four years later, it's widely regarded that there had been a significant shift toward a pragmatic approach toward the ICC in the second term.

I was on a panel last week with the former prosecutor Luis Moreno Ocampo, who was waxing eloquent about how this had been a major change in the Bush administration. In fact, he went so far as to say it was really easier to work with the Bush administration than it was with the Obama administration. What this did was—It's made it easier; it's provided cover now for cooperation with the Court in certain circumstances. So that was a project that I had worked on, and I would keep the Secretary informed on what I was doing. This was one of those areas where she had hired people and if they were—This is not something that she was particularly pushing herself, but I kept her informed about what I was doing. As long as I stayed within certain bounds, she was comfortable. This was scratching a concern that was causing scratchiness with our allies.

Long: On the ICC still, of course you had to represent the President's position, by default the Secretary's position on the ICC, but as an international law expert, what did you make of the most contentious part of it, which was the claim of universal jurisdiction, even over the nonratifying states? What was or what is your sense of that?

Bellinger: It's interesting. I had to constantly correct the mis-legal statements by other parts of our administration who claimed that it was a violation of international law for other countries to assert jurisdiction over us without our consent. Of course, other countries assert jurisdiction over us all the time. If you or I commit a crime, we could be prosecuted. So I had to constantly—Even talk coming out of the White House would sometimes illegally subject us to foreign prosecutors. I'd say no, that's not the issue.

The issue was a slightly more complicated one. That is, can a country transfer its jurisdiction to an international body without our consent? France could prosecute an American who committed

a crime in France, but can France, without our consent, transfer its right to an international body? That does raise some issues under international law. Critics state the illegality too starkly and, unfortunately, in ways it then gets a counterreaction. But the ICC, the Rome Statute, does raise international law issues. This idea of—It's not just the—It's asserting jurisdiction over us and we're not a party. It's the transfer of national jurisdiction to an international institution.

Long: How would that be different from, say, the European Court of International Justice or European Court of Human Rights? One of the EU [European Union] supranational courts—

Bellinger: Right.

Long: —where the European powers agreed together to allow jurisdiction over their own Supreme Courts? Is that any different?

Bellinger: That's because they've agreed. If they agreed amongst themselves and then they were to subject Libya to the European Court of Human Rights, that would be essentially the equivalent of what has happened with the Rome Statute. That is, a bunch of countries get together and agree—We agree we're going to assert jurisdiction over someone else.

Long: So it's the jurisdiction over foreign nationals; that's the element that the EU is concerned with?

Bellinger: Right.

Long: Interesting.

Kassop: I have a PR [public relations] question for you. Did you write your own speeches? If you did, or even if you didn't, did you have to run them past anyone, including the Secretary?

Bellinger: That's an interesting question. I'm not sure if I want to confess this. For most of my speeches, of which I gave a lot, I would get somebody to do a first draft for me, but I'm pretty much hands-on, especially for most of my major speeches. I would spend a lot of time playing with them, rewriting them. Some of my staff had a pretty good sense of what I wanted to say and could get it pretty close on the first draft; others, about five or six major public statements that I think will go down in time as a principal statement on certain subjects, War on Terror and Geneva Conventions and the ICC, I spent a fair amount of time on those.

I would lightly send those around so I could get enough cover, but I would essentially target them to particular people to get a sign-off. The State Department's normal process is to try to get everybody in the world to sign off on something so that you have complete cover. I didn't want anybody at the Defense Department or the Justice Department or the NSC to be tinkering with my speeches. They could just endlessly tinker.

On the other hand, I also realized that I did not want, on most things, to try to make policy and then get people to fall in line. I wanted to have enough cover, more on the War on Terror speeches that I had to be pretty careful about. On the ICC speeches, I think I sent those around. I got pretty far out on the limb waiting to see if I was going to be reeled back in. I was pretty confident that this was consistent with the original Grossman speech. So it was really putting

flesh on a softer exterior on our position as opposed to the antagonistic, provocative approach of attacking the Court that John Bolton had taken.

It seemed to me that that was not the decision that the President made. That was not the tone of the Grossman speech, that there was no value in trying to provoke other countries, and that we ought to go back to the common ground. So I extended and revised the common ground.

Kassop: A question about Secretary Rice early on in her tenure now as Secretary of State, and going back to your description of her in the White House. Do you see any changes in her, in her style, in her meeting style, leadership style, personality, anything that would differentiate or seem that she was growing into this new job?

Bellinger: Yes, I will say two things. One, she was clearly growing more on certain levels, exponentially over time as Secretary. She was much more confident, much more directive; she clearly had the President's backing on things. You could see that. You could see her acting as a leader almost from Day One because it had been made clear to her by the President that, as she has said in her—and I think we talked about this the last time—confirmation address, she said the time for diplomacy is now. She clearly had the backing of the President that now the State Department was going to be in the lead in our relations with other countries. The Defense Department had been in the beginning and leading in two wars. There had been a lot of broken china. Now the Secretary of State was going to be in the lead.

From Day One, she was no longer a coordinating staffer but the leader of an organization. You could see that growing over time, with much more confidence on all issues.

Of course, when Secretary Rumsfeld stepped down and Secretary [Robert] Gates stepped in, the two of them were extremely simpatico, so all friction was reduced with the Defense Department. Steve Hadley, to his great credit, from the beginning had set as his goal to make the Secretary of State a successful Secretary of State, so he gave her all his top staff. She basically swept out the entire senior NSC staff and took them with her to the State Department.

Steve, if anything, was even more self-effacing than when she had been National Security Advisor, and really worked to have her succeed. You could certainly see that. The only thing that went the other way, it didn't affect me, but if she was busy as National Security Advisor, she was even busier as Secretary of State. Whereas at the NSC, even though it was meetings all day long and heads of state would come in to see her, there was still remarkably a fair amount of time for her to meet with NSC staff on different issues all day long.

My guess would be that if you looked back at her calendars, part of any day at the NSC was that she was rarely traveling unless she was traveling with the President. So on any day there might be three or four internal meetings, where there might be a meeting on Russia, and then Dan Fried would come in. So it gave her a chance—and this was what she was *particularly* good at—to talk about policy and hear people out. She's phenomenal at it. I don't know quite how she manages to do it. She is very good at eliciting people's views, stroking them and giving them confidence as they're presenting, absorbing it, nodding, agreeing, and yet not letting it run out of control, because you have to keep these meetings kind of limited.

That was one reason why the NSC staff was loyal to her. They felt that they were providing

information and that she was listening. At the State Department there was less time. There were certainly plenty of internal meetings, but my guess is that there was less time. Certainly assistant secretaries would be up with her. If we were working on Egypt, then the assistant secretary would be up, but there was less time for a group of people to come in and talk through an issue. There seemed to be constant movement.

Riley: John, I wanted to ask you, because of your purposes as you describe them, you had a kind of portfolio as an ambassador-at-large on the issues that you're talking about, so you did an awful lot of traveling and public speaking. That's unusual for somebody in the position that you were in, or not?

Bellinger: Yes, that was. I suspect I was probably the most traveled legal advisor, so I became more of a sort of international public diplomat. That was in addition to the things the legal advisor generally does, heading up a treaty negotiation, heading up an argument at the International Court of Justice, heading up a presentation to a UN body, all of which I did. I realize that, as we discussed last time, we were on the back foot on all of these terrorism issues, that our embassies either were inadequately equipped substantively or just didn't want to do it. We were not explaining and defending ourselves around the world. I had set that goal for myself and it was something that the Secretary wanted to do, so that was certainly another defining characteristic of my tenure.

I think I had talked to you about these different groups that I had set up, meeting with the West Point Group—

Riley: I want to move ahead on that and ask you a follow-up question to help us understand how you were—You said that the French were pushing back and so forth, but please talk a little bit more about the greeting that you were receiving in the various groups and in the various countries that you were dealing with. The predicate for this is that, because of my experience in Salzburg, you were on the radar there always as one of the guys in the white hats in an administration that, from the international community, was somewhat suspect. That may be wrong on both counts, maybe you weren't wearing a white hat all the time; maybe the administration wasn't wearing the black hat all the time. It's merely a comment about one perspective of where you were seen as being positioned within the administration. Was that what you were picking up when you were out there, and what were the advantages and disadvantages to you of being seen in this role?

Bellinger: That's a great series of questions. I did get to be—Over four years of bilateral meetings, multilateral meetings, and a whole variety of different groups and public talks and lectures, I was really out there. The answer to that question—particularly the European legal advisors and European counterterrorism officials and people who would see me all the time—I think they found that I was easy to deal with, not sharp-edged. I was good at explaining the U.S. position pretty firmly but in an understanding way; tell me your views, let me respond. I can understand why you're concerned; let me tell you the dilemma for us. There were hundreds and hundreds of these meetings.

To cut to the end of that, I think all of these countries, through their legal advisors and their senior political officials who I would deal with, came to recognize that I was someone who was

reasonable to deal with, that they could understand what I was saying, that they didn't necessarily agree with at all, but that they felt that the Bush administration and Secretary Rice were reaching out to them. Also, it gave an opportunity for their views to be heard and taken back to the White House.

One story I tell, that to me was always indicative of it all, is about one of these different groups. There were a couple of different groups that I had set up to do this. The principal, biggest one was the regular set of meetings, something like five times a year, with the legal advisors of all the European countries. They had a group that they met with on their own, which was intended to pull further European integration at the legal level, called the COJUR [EU Council Working Group on Public International Law]. The funny thing is, they would get together but they had no idea why they were getting together and they didn't even know each other's names, but they knew they were supposed to get together.

Riley: This is the EU?

Bellinger: Yes, EU. In the end of 2005 I gave a speech in Washington at the Atlantic Council defending our positions and saying I understand the Europeans are concerned about these things. I think I called the speech "Mars and Venus in International Law." We're talking past each other. They think we're all about war and we think they're all about love, and we really need to sit down and just talk through some of these issues.

The Austrian legal advisor—and Austria was about to take over the EU Presidency; this was a speech in November and they were going to take over in January. He was sitting there in the room and he came up to me at the end and he said, "I was taken with your speech. This is the first time we've ever heard any American official talk this way. Are you really serious that you would like to sit down and have a dialogue?"

I said, "Absolutely, just give me the time and place." He said, "Well, let me see what I can do. We have a group where we get together. Let me see if I can get you invited to this meeting."

Riley: Who was this?

Bellinger: Ferdinand Trauttmansdorff. He would kiss the backs of the ladies' hands. He would kiss the hands of my staff. He was a great Austrian count, a lovely man. So he invited me to the first meeting of the COJUR in Brussels to present the U.S. position. When I came to this first meeting I thought, *Oh, my gosh, I may have made a mistake here*. I particularly thought that if my colleagues, my harder-lined colleagues back home, had seen this that they would have total fits. We were in one of these long meeting rooms in the European Commission. They had to be able to fit all 27 legal advisors plus the commission. So way down at the end of the table with their little flags up were the Austrian Presidency and the European Commission, and all of these countries were all down the side. Here I was at the very end with my little "The United States" from the very end.

"So, Mr. Bellinger, we're delighted that you're here today." I'm thinking, *Oh my, the people back home would not be pleased to have it appear that the United States is being interrogated*. But I then started in and started what became known, I learned after four years of these, as the Bellinger Dialogues. I started essentially saying, Look, I can understand your concerns; we have

not done as good a job as we should have in the first term in explaining these difficult positions, in part because we were so focused on doing what we were doing. You've raised some legitimate concerns, so I want to talk through each of these, and let me explain the legal basis for Guantanamo and the legal basis for holding people, and all the way through.

We went through a series of probably 14 or 15 meetings, through the rotating EU presidencies. I got to know all of these people very well. One of the first things I said to them at the beginning of the first meeting, which then—I like to joke. Actually it goes back to my time at Virginia, when I was mostly focused on European integration. I like to think that I contributed to European integration because at the end of the first meeting I said, "Look, I recognize that what I have been explaining to you is not necessarily clearly the right answer. People may disagree. Clearly, you all do disagree, so please come back to me and tell me what *you* think the rules are that we ought to apply. What rules should we be applying?"

All of these people look at one another and finally the Austrian President says, "We'd like some time to think about it." It took them about six months to come back with—That apparently forced them all to have a flurry of papers back and forth, trying to agree on what they thought the legal rules were. In any case, they finally all got to know each other and they got to know me, and we got to be very friendly and we would talk through these things. To cut to the end of that part of the story, in the very last meeting four years later—I think in January we had the last meeting. Again, we were in the long room but the French Presidency and I sat at the head of the table and the Commission sat at the other end.

When I left, all 27 of them signed a card to me saying we want to tell you that while we may not have agreed with all the U.S. positions, we could not have had a better interlocutor. That was just the formal group. I had bilateral meetings with almost every country, which did similar things. Then the one that I really—This has not been publicly written about, but it was a source of particular pride. I alluded to it lightly between the lines. I realized that the most I could ever do with 27 countries was to simply explain, but that what I really wanted to do was what Anne-Marie—because Anne-Marie and I are on the same page on this, we were talking about this last night. We wanted to get countries to agree on the rules and to accept to a certain extent that existing rules did not fit these conflicts with non-state actors, and to try to get people to agree at least on some basic principles.

Early on, the very few people who were willing to meet me partway would immediately say, "Well, John, you've persuaded us that maybe the Geneva Conventions don't fit these. Shouldn't we negotiate a fifth Geneva Convention?" I said, "No, not so fast. Trying to get 194 countries to agree on controversial principles like this—Let's start smaller. What I'd like to do is get a group of like-minded, affected countries together to talk about a smaller set of issues and try to really wrestle with them and agree on certain legal rules."

Can you be in a conflict with a non-state actor? Can a conflict go on in more than one set of countries? What are the rules on the use of force? How do you deal with people who don't identify themselves as combatants? What I wanted to do was start a regular group of meetings that might result in a group of principles that might ultimately, if we succeeded, form the nucleus of a convention or set of rules.

We had our first meeting, I think in 2006, up at West Point, New York. We had about five more meetings and it became known as the West Point Group. I hoped that it might ultimately produce something called the West Point principles. [REDACTED]

[REDACTED] We had our second meeting actually here. Do you know this, that we had it right here in Charlottesville?

Riley: No, at the JAG [Judge Advocate General's] School?

Bellinger: No, even better than that. We might have been at the Boar's Head [Inn]. Then I got, through—and I can't remember who I did it through, it would have been through someone you know—some Virginia connection, a candlelit tour of Monticello. Oh, my gosh, my legal advisor friends lapped this up. They thought this was the best. We made enormous progress. I think the Obama administration would have liked to have killed off this West Point Group because it was a Bellinger initiative, but it had become so popular with the allies that they wanted to continue it. So they've now had four more years of meetings.

In fact, I do regularly hear from these other countries in a very nice way, saying, John, the West Point Group that you started is—Not a meeting goes by that we don't start the meeting by talking about your vision for the West Point Group, and it's continued.

Riley: Who were the members?


Bellinger: Britain, Canada, Australia—no surprises there—the Netherlands, Denmark, and Germany. We were trying to get countries that had troops on the ground that had to deal with detention, so when you were talking to them about, "Oh, well, you can't send an individual you're detaining back to the country that they came from," you're talking to someone who's actually doing it. It's very easy if you're Sweden to say, "You must take them back home to your country." The British, the Dutch, and others have had to wrestle with that more, so they understood this. That's all. That was the second group.

Kassop: When you say that you had success, obviously diplomatic success and opening up the lines of communication, were there rules that you developed that are written down anywhere?

Bellinger: While I was in office we had—Both these meetings were kept pretty closely under wraps because they were—I probably didn't fully appreciate this, but even for the COJUR, there was such suspicion on the part of European parliaments and the press of any dealing—It was a bad thing to be talking to the Bush administration.

Riley: Of course.

Bellinger: Somehow it was odd that they would be agreeing on things with us rather than just beating up on us, so the West Point Group was kept pretty quiet. We did agree on a number of principles. [REDACTED]



I kept Secretary Rice pretty closely apprised of what I was doing. Then to the second part of your question, outside the United States, I think it helped a lot. Europeans and Australians and the Canadians know—They really did like this a lot. They got a lot of credit. The heads of government would even mention it to the President or the Secretary. In the EU summit between President Bush and the Austrian President of the EU, which I think took place in Vienna, I was amazed; he actually said we'd like to express our appreciation for the work of the legal advisor of the State Department for beginning this dialogue on these important issues.

It also helped me back home because I think, although I'm probably not the best person to judge, that my colleagues realized that for the first time there was somebody out there actually in a pretty tough way—They didn't know that much about what I was saying behind closed doors, but—I would often go and give these press conferences, which would have pretty tough statements. Not in a nasty way, but in a very firm way, explaining the U.S. position. So it would give me some credibility in the Situation Room when I would come back, that there was somebody out there who was explaining these things. It gave me a little more running room maybe than a typical State Department official who would appear to be coming back and hand wringing that our allies don't like us.

If I would go out and be giving these speeches and talking and meeting, then I would come back and say, "Let me explain a particular concern that our allies have." They would know that this was born of more direct experience.

Riley: Please expound. I helped arrange for you to be over there.

Bellinger: Maybe you didn't come. Somebody was really pressing me in front of a room of about a hundred people about how awful and evil the Bush administration had been and how we had completely wrecked all of international law. I was explaining some of the things we'd been doing on the ICC and other things. This person was having absolutely nothing to do with it. I lost my temper a little bit, in part because I'd gotten used to it, being in office. The people who I was dealing with got to be very easy to deal with. When you have to suddenly start all over with somebody who is starting from square one, I had taken my normal armor off.

Riley: This was after you were out of office?

Bellinger: That was about a year and a half ago.

Perry: Tell us what your tantrums are like in that public diplomatic setting. The reason I ask is that it's hard for me to see you like that.

Bellinger: That wasn't a public meeting; that was an academic conference.

Perry: So what was that like? Do you get upset at the person? Do you strike back linguistically?

Bellinger: I was just pretty sharp with her. In my public conferences, when people are coming back and pushing on something, I can be pretty firm in terms of explaining no, this is not right. But I hope it was always in a polite way. I always expressed a good deal of understanding of why people might have a different view, but would try to explain pretty firmly. Not that we were right. I never, I don't think I—In fact, I got called on this when I would use a line like, "I'm not here to try to tell you we have absolutely got this right. I'm here trying to explain to you what our position is, but I concede there are disagreements on these things and other people may have views." I remember at one point being on a panel with someone from Human Rights Watch who said, "That's a great thing if the U.S. government can't even say that they think they've got it right."

Kassop: You describe this in a nice way as being international legal diplomacy, which is a nice way to put it.

Riley: What about your bilateral relationships? Were there any that were particularly notable or historically important?

Bellinger: I developed really good relationships with the British legal advisor, the Canadian legal advisor, the Danish legal advisor. I had pretty good relations all across the board. It resulted in my—Certainly this is my advice to all future legal advisors. In this way the role of legal advisor has changed now. If you develop these personal relationships, when other things come up, you're three-quarters of the way there. In fact, you can even get it done by email.

I can imagine in the old days, and even early on, even when I was there and I would have to deal with some legal advisor from some country who I had never really heard of or might have met once, all this is laboriously put together and it's going to be at ten o'clock and it's, "Oh, hello, Ambassador Kahn, this is John Bellinger. We met briefly on the board of this and I'm calling you about that."

But if it's somebody who you have gotten to know extremely well, you can either call them up or send them an email that says, "Daniel, your delegation is giving us an extremely difficult time at the UN on paragraph three. This is the wrong interpretation of law; please go and look at it." So these personal relationships are extremely valuable. I got to know legal advisors across the board.

Riley: Do you remember any other specific instances—You touched on one earlier—where you got too far out on your skis and you—?

Bellinger: I know what you're saying. I generally try to be pretty careful. The one that I worried a little bit about and no one ever called me on it, and I was convinced that it was absolutely right, but I imagined that if I tried to get interagency clearance on it, it probably would have—It was a small thing, but I decided early on that this term "the Global War on Terror" was hurting us internationally. The Europeans just hated it; they still hate it. It's funny. They refer to it as the GWOT [Global War on Terror]. When they talk to you about it, they kind of roll it around in their mouth like it is a bittersweet GWOT. So I knew they didn't like that. I also knew it had no legal significance.

Early on in a bunch of speeches, I decided to do this, to explain right up front that the Global

War on Terror is not a legal term, and that I understand how this can be troubling to you in Europe, who have lived through two world wars, that the idea of a global war is extremely troubling. It may suggest that we believe that the only way to deal with terrorism is through military means, so I want to address all of that. I want to be clear that this is not a legal term; this is a political term. This is the President making clear that we are going to fight terrorism in all its forms, everywhere around the world. There cannot be good terrorism and bad terrorism, so we're going to have a global campaign against terrorism.

That doesn't mean, one, that we're at war with all terrorists, and it doesn't mean that the only way to deal with terrorism is through war or warlike means. This is a political term. That said, we are in a legal state of war; but much more narrowly, we're in an armed conflict with al-Qaeda. I would repeatedly try to explain this. This administration has tried to claim credit for this by saying that we, unlike the Bush administration, are not in a Global War on Terror, that we're only in a conflict with al-Qaeda. But if you go back and look at my speeches as far back as 2005, 2006, this is something that I—

I was a little bit worried, because this was an important political label, that if I tried to clear that, I would have people striking it out. So I just started saying it.

Riley: Doing it yourself.

Kassop [to Riley]: Your question was, did you get pushback over here from it?

Riley: From either the Secretary or your other colleagues?

Bellinger: I did not. I'll give you another example, which I did run by some people and they didn't like it and I then did it anyway. One of the principal objections—Maybe I touched on this with you all the last time—that Europeans have with the idea that there is even a global armed conflict and that we have the right to defend ourselves anywhere in the world, is that we could therefore use force in any country in the world. They think that suggests that you could use force in their countries.

I knew I needed to scratch this itch. At one point I ran by [REDACTED] the idea—I told him that I was about to give this major speech in London and I'm just going to say that we are not going to use force in London, that just because we think we have the right to defend ourselves around the world doesn't mean that we have the right to shoot people on the streets of London.

[REDACTED] said, "John, I don't know. I don't think you can give a speech that would limit the President's flexibility in that way." I thought about this and I said it anyway.

Riley: And it didn't come back to haunt you?

Bellinger: It did not come back to haunt me. [REDACTED]

Riley: Exactly.

Bellinger: Here's another one where I did make some policy on the fly. I should have been smarter in terms of wriggling out of this box, because I've done enough press. I'm getting too far down in the weeds with you all.

Riley: No.

Perry: Not at all.

Riley: It's spectacular. Go ahead.

Bellinger: I was in Brussels for one of these COJUR meetings and I was giving a press conference afterward. Unfortunately, just a few minutes before the press conference the Italian judge, [Armando] Spataro, had indicted the 27 or so U.S. nationals for the kidnapping of Abu Omar in Florence. Of course, the first question in the press conference is, "So, Mr. Bellinger, is the United States going to be prepared to extradite the U.S. nationals to Italy to stand trial?"

I said, "That's a speculative question; it hasn't arisen yet. I'm not going to address it. Next question." They said, "Well, so you're not ruling it out." I said, "It's a speculative question, I'm not going to address it." They said, "You refuse to rule out that you might extradite them?" I said, "Next question." Then, as the press conference is going along and I'm rolling around in the back of my mind, I'm thinking, *Wait a minute. Headline: U.S. Official Refuses to Rule Out Extradition of Nationals to Italy*. I'm talking to you, and then I want to come back to the question. "Let me be clear, the United States will not be extraditing their nationals to Italy to stand trial." Then it was headline: "U.S. Will Refuse to Extradite."

Then, an hour after the press conference, I get a call from another U.S. government official in an intelligence agency who said, "Atta boy, John." So that was an example of my inadvertently making policy on the spot.

Kassop: That's an interesting question, because I was at a conference earlier this year and it was of all people who do national security, legal advising work. The big point they made was how difficult it sometimes is to decide where that line is between giving legal advice versus making policy. So it's interesting that you just gave this example, but obviously that's a dilemma you must have run into many times.

Bellinger: This was more the difficulty of doing press conferences, which is why most people really don't like to do them. I was really lucky that, of all of the press that I did, I rarely got bitten. I don't know how that was. I don't know whether it's that most of the members of the press had done their homework and realized that I was—because you can spin in a negative way, in a nasty way, almost anything anybody says if you don't like them. I got remarkably flat-up press, so I was pretty fortunate in that regard. Most other people always believe they're going to get screwed by the press, so they just don't do it.

Thinking about the fact that I was constantly out on the—Our policy officials are out on the high wire all the time, but lawyers, I think because we tend to be such an incredibly cautious bunch, almost never do these press conferences. Instead, they fall back on these bullet points and the spokesmen who will say, "Everybody in Guantanamo is held under accepted provisions of law." That does you no good at all. You have to have the give-and-take.

Anyway, I was fortunate, despite giving a lot of press conferences. The point on separating legal advice from policy advice is an important one. It was something that I constantly gave to my lawyers at the State Department, because they had a reputation of being outstanding lawyers, but of sometimes shading their legal advice to fit their more liberal policy preferences. I made clear to them that we will be more respected in the morning if we will start with our legal advice and say, “Look, if you want to do that, here’s the legal argument. You could make a plausible legal argument and this is how you would do it.” Then, though, say, “But look, if I can offer some additional views, here are some additional views.” Often in the past, when someone would get caught saying to a client, “No, you can’t do that,” either liberal or conservative, liberal clients on something might well say, “We want to provide humanitarian support to these people.” No, you can’t do that.

If you get caught by a sharp client, many of whom are lawyers, he will say, “Wait a minute. Are you saying I *can’t* do that, or are you saying you think it would not be a wise idea to do that? If you’re saying I can’t do that, what precisely is it that prevents me from doing that? Is there a law against doing that?” “Well, it’s just never been done before.” “Oh, okay, so you’re telling me it hasn’t been done before. That’s different from saying that it’s illegal.” Then if you get caught as a lawyer in that, your clients lose respect for you. So I tried to get all my lawyers to never say no when what you really mean is that it hasn’t been done before. You can say it hasn’t been done before, but here are some legal arguments.

Most of our clients, including the Secretary for me, did want our policy advice, but they wanted us to separate the two of them.

Kassop: Can we move to the *Avena* case [*Mexico v. United States of America*, formally *Avena and Other Mexican Nationals*]?

Bellinger: I didn’t know you were interested in that, okay.

Kassop: As you said, it took up all four years of your time at the State Department. It was a particularly embarrassing opportunity for the United States and you were trying to put the best face forward, and it’s still ongoing, isn’t it?

Bellinger: Yes. This was a great success in many ways. Other countries, virtually no one appreciated—on the ICJ [International Court of Justice], people saw the change in policy. The *Avena* case, which I did get the Secretary involved in, was—In 2004 the International Court of Justice had ruled that we had to review the convictions and death sentences of 51 Mexican nationals in a variety of states, including Texas, who had been denied their Vienna Convention rights.

The problem was that all of these people had exhausted their rights of appeal under state law, so we had a mismatch between an international obligation and the ability to do anything about it. This was literally Secretary Rice’s and my first challenge. I wasn’t even the legal advisor at the time; it was in February. We had big internal debates. The Justice Department essentially said we really shouldn’t do anything; if we want to try to comply, we should go and seek legislation or simply say that the International Court of Justice has exceeded its bounds.

I managed to persuade the Secretary of three things. One, that we had an international law

obligation to comply under the UN Charter, so that was clear. Two, that it was important policy for us to comply to uphold the Vienna Convention on Consular Relations because, of course, if any American were arrested in another country, we would want to have their rights vindicated. The Vienna Convention is not about them; the Vienna Convention is about us. This is the point of reciprocity.

Then third, fitting with my theme in two of the memos that I had written, this would demonstrate an overall commitment to international law if we were to surprise everybody by trying to comply with the ruling of the International Court of Justice.

The Secretary was persuaded and had extensive conversations with the Attorney General about it. They ultimately took this up to the President. Although I wasn't there for all of this, Steve Hadley must have sided with Condi on this and taken it to the President. The President—and I don't know how they did this, because he had been the former Governor of Texas—decided that we would comply with this ruling.

In February he signed an order that I think was initially drafted at the Justice Department, and then we worked on directing the states to comply with the International Court of Justice's ruling. Literally, I had only been there for three weeks when we had this major surprise. I'm not sure who was more surprised, liberals, who couldn't believe the President would do something like this, or conservatives, who couldn't believe the President would do something like this, and particularly involving his home state of Texas.

Certainly, this was domestically incredibly politically unpopular. Then, of course, a particular Mexican, who was next up on death row in Texas, seizes the President's order and demands his right for review and consideration. Texas then says that they're not going to give it to him because they're not bound by the President's order. That is litigated up through the Texas Supreme Court with Ted Cruz as the attorney general of Texas. The Texas Supreme Court rules against the President. We appeal to the Supreme Court. I'm convinced that we're going to win because, one, we would have the liberals, and then I thought we would have [Anthony] Kennedy as an internationalist. And then I thought we would even have the conservatives, because this was an exercise of Presidential power and they would say he was clearly implementing a treaty obligation. They might say, "I wouldn't have done this, but if the President is going to do it—" I was sure we were going to win that, and I turned out to be wrong.

The Supreme Court then rules against the President, says the President does not have the power to order the states what to do, even if he is implementing an international obligation. Mexico then takes this back to the ICJ in a kind of a bizarre proceeding because there's no appeal right to the ICJ. What they do is, they go with a narrow provision that requests an interpretation saying that the United States must have misunderstood the original ruling because if it had properly understood the original ruling, its Supreme Court would have obviously gotten it right.

I, not surprisingly, said—I argued on behalf of the United States—no, no, no. We completely agree with the original ruling, we're just having difficulty internally getting this done. At the same time, Texas was proceeding with the execution of the lead Mexican because they now had an order from the Supreme Court saying they could do it. I then go—This was rather amusing—to Secretary Rice and say, "In addition to defending ourselves before the International Court of

Justice, we really need to try to stop this execution. Even the Supreme Court acknowledges that we have an international law obligation not to allow this person to be executed. The Court may have said that the President can't order Texas what to do, but that doesn't mean that we still don't have an obligation. So I'd like to propose, Madam Secretary, that you and the Attorney General write a letter to Governor [Rick] Perry in Texas, asking the Governor not to execute Mr. [José] Medellín so that we can vindicate our international legal obligations."

She arched her eyebrow at me and said, "John, you've already convinced the President of the United States to issue this order. He's now been reversed by the Supreme Court. That's about as far as we can go."

I said, "I know, I understand. But we still have an international law obligation and we need to do the most we can. This is an obligation of the national government; you're the Secretary of State. We have a state of the union that is going to violate international law."

She said, "Let me think about it." Steve Hadley then hosts a meeting in the Situation Room on this issue. I drive over with her, arguing all the way about this. We have the meeting. Steve Hadley says, "Texas is about to execute this guy. We've tried to order them that they can't do it. What are we going to do now, Madam Secretary?"

"Well, I'm prepared to write a letter to the Governor of Texas, provided that the Attorney General will sign it with me." So they did. I'm not sure if the Attorney General was prepared to kill me or not.

Perry: He was at this meeting?

Bellinger: He was at the meeting too. So we wrote the letter. It was signed by both the Secretary of State and the Attorney General. We didn't think we were going to get a response. In fact, Governor Perry did write back a polite letter and said that we understand that you in Washington think there's an international obligation, but we here in Texas have a similar obligation to protect our people. They then went ahead and executed Mr. Medellín.

The *Avena* case was decided at the International Court of Justice at The Hague on my last day in office. People said to me through the grapevine—I don't know if this is true or not—that they had it come down on my last day in office so that I could come because they knew I had worked on this very hard. It was Martin Luther King Day; I wasn't even going to be in the office that day. I was going to leave on a Friday, about two weeks before we learned that this was going to come down. First I thought, *Who needs one more trip to The Hague in coach class on a holiday to be whacked by the International Court of Justice after Texas has executed Medellín? We'll just let the Ambassador go do it.* Then I thought, *I have seen this case through from the beginning to the end. I still think we're right on the law, that we accept our obligations here.* I finally thought, *What lawyer is not going to want to be there in the Peace Palace?*

I agreed to do this, give up my final weekend and holiday. The one thing I said I'm not going to do—because I'm going to have to fly back on Inauguration Day, and since I would not be a government official at that point anymore—I'm not going to get stranded in The Hague for the rest of my life. So I got approval from Greg Craig that extended me in office for one more day. Harold Koh likes to joke that I was actually the first legal advisor in the Obama administration.

I flew to The Hague. The judgment of the Court was that they did agree, as a legal matter with the United States, that there was nothing to interpret, that the United States accepted its legal obligations, but because Texas had executed Mr. Medellín, that we had violated the original order. That, of course, was all the headlines. “World Court: U.S. Violates International Law.”

Perry: As one quick follow-up, were you in contact with the attorney general, with Ted Cruz in Texas, back and forth?

Bellinger: My staff went down a couple of times to Texas to work with his staff to see if there was anything that we could work out in any kind of reviews, something that could be treated as a review. Even though it wasn’t an appeal, that we could say that it was a review, so we could go to the Court to say we have more or less vindicated this right, with the clemency reviews, things like that. There were a couple of things that we had discussed, but we were never able to work out something that would be satisfactory to the Court. I think that’s a little-known story. It’s pretty far down in the weeds, but in terms of the Bush administration’s commitment to international law when it is politically difficult to do so, it’s a great example.

This administration, in fact, I believe has done much less. Despite roaring into office saying that they were going to take international law very seriously, they could have, to be consistent with the rhetoric, immediately put forward legislation, particularly when they had overwhelming majorities in both the House and the Senate. Even if they weren’t going to push it as a matter of a priority, they could have at least put forward a bill. Then you could at least say we’re proposing this. They never did that. I don’t know if they could have gotten it through or not. Possibly they could have gotten it through, but they didn’t even try.

Finally, in their third year in office, Senator [Patrick] Leahy, on his own, introduces a bill that the administration then goes up and testifies. Leahy got me to go testify in favor of their bill, to explain why it is that the Bush administration had been in favor of compliance. I’ve always found it somewhat annoying that here was an example of the President making a personal decision to comply with our international law obligations in an extremely politically difficult way, involving his own state of Texas, and getting zero credit for it. This administration, having beaten us over the head on international law doing absolutely nothing to comply, and yet everybody around the world still thinks that they’re great believers and that we were not.

To this day when I see the President, this is one thing he raises with me. “How are those Mexicans, John?”

Riley: I wanted to ask, you had listed a number of routine things, responsibilities that the office has, including treaty negotiations. One is appearing before the United Nations. Did you do those, and do you have any specific recollections of what you were doing or stories to tell about your experience in these areas?

Bellinger: I do. They were good examples. I don’t know if they were too far down in the weeds. There were certainly significant events. Let me take treaties first. The legal advisor is responsible for the negotiation, interpretation, and ratification of treaties. We had a remarkably good treaty record. I think you’ve seen it in there [motions toward briefing material].

Kassop: Ninety.

Bellinger: Ninety treaties just in my last two years; 163 treaties over the Bush administration's eight years. The last two years that I was in office, we got 90 treaties through the Senate. That's more treaties than at any point in American history, and this is for an administration that supposedly doesn't believe in international law. So we worked very hard on treaties.

I'll give you two vignettes. They're probably not relevant to history; one is, one isn't.

Riley: We'll be the judge.

Bellinger: The second example shows the perception. So one set of treaties that I personally testified in favor of were a bunch of law of war treaties, some involving blinding lasers, incendiary devices, explosive remnants of war, The Hague 1954 cultural property convention. We worked very hard to get these through. I went and testified. The Senate approved them. We had the ratification package waiting on the President's desk. It did not get done before President Bush left office, so it was waiting for President Obama. He then ratified them about ten days after he got into office. All the blogs go wild. Finally, a President that believes in international law and treaties. That drove me crazy.

The successful example—and this was actually written up, and Secretary Rice would say this was a small success but an important success for the administration, where she had some personal involvement—was the negotiation of the Third Protocol to the Geneva Conventions, which created a new symbol, the red crystal—It's actually a red diamond—that allows countries that use neither the red cross or the red crescent as the symbol of their humanitarian organizations to become members of the International Federation of Red Cross and Red Crescent Societies. Oddly, the way the treaties were written, to become a member of the federation and the International Red Cross and Red Crescent Movement, it's written into the treaty that you have to use either the red cross or the red crescent.

You would have thought that this would have raised problems originally with countries that were split, like China or Turkey or Indonesia, but it didn't. It primarily became a problem for Israel. For 50 years Israel had been excluded from the Red Cross and Red Crescent Movement. They have an active humanitarian aid society called the Magen David Adom, which means the Red Star of David.

So when Secretary Rice and I got to the State Department, a goal of U.S. policy was to rectify this. The Jewish groups in the United States had been so unhappy about this that they had persuaded the American Red Cross to withhold its dues to International Federation of Red Cross and Red Crescent Societies for more than ten years. So we have been behind in our dues because we were unhappy that Israel's humanitarian society had been denied. The Secretary personally had been pushing the Swiss for the first year or so in office to hold a conference to examine this.

President [Jakob] Kellenberger—whom I talked to you about last time; he was the president of the International Committee of the Red Cross—and the Secretary developed a quite good relationship through me; she mentions this in her memoirs. Kellenberger is a very moral individual and he had decided that this needed to be changed. Normally, everything is done by consensus; they don't want to divide the humanitarian organization. But he had personally decided that this was unfortunate, so he was also pushing the Swiss.

The Swiss, who of course want to be neutral about everything and have everybody agree, were really resistant to holding a conference, but Secretary Rice was pushing them very hard. President Kellenberger was saying that we're prepared to do this. The Swiss said they want to keep thinking about it and talk to people a bit more. Secretary Rice got quite irritated with the Foreign Minister, [Micheline Anne-Marie] Calmy-Rey, and said, Look, enough talking and foot-dragging, this needs to be fixed.

The Swiss finally do agree to host a diplomatic conference with the goal of potentially amending the Geneva Conventions to create this red crystal. I was the head of the U.S. delegation. This was a mammoth thing. There were about 3,000 people in this enormous conference hall. There were people from every country in the world, their foreign ministry or both the government and then their humanitarian organization. So each country was represented by a number of people. I sat next to the president of the Red Cross and I was the head of the U.S. delegation.

The Arab countries were trying to block Israel's entry into this and raising all kinds of objections. So we decided that the way to do this was to make a parallel offer, to say we will support the entry of the Palestine Red Crescent Society in exchange for—This is consistent with overall U.S. government policy for both of them, because the treaties also say that in order to be a member, you have to be the humanitarian aid organization of a state. So we were stretching the rules here a little bit. But we say we're prepared to support the entry of both the Israelis and the Palestinians because, of course, the Bush administration at this point has been going on record as a two-state solution.

Well, even that doesn't really do it for them. That's just not enough. They raise all kinds of objections as to why the Israelis shouldn't be allowed to do this. We negotiate and we negotiate all through the night. It's now been three days and it looks like the whole thing is going to fail. Then, to his great credit, on the third day at about 11 o'clock at night, President Jakob Kellenberger comes to the podium in front of this enormous hall. Everybody is exhausted. He says, "We've worked very hard; we're not there yet. I want to say on behalf of the International Red Cross and Red Crescent Movement that although we normally do things by consensus, this is such an important issue that I release people. I think if people want to vote on this issue, even if we can't adopt it by consensus, we would not oppose that."

As soon as he leaves the podium, the United States raises the flag. "The United States calls for a vote." So I'm hoping we're going to win this vote.

Kassop: Did you have any clue as to what the members were thinking?

Bellinger: We had been canvassing the hall. We weren't certain, but we were hopeful. So there's a huge buzz. There was [knocking on table]. The president of the conference says, "All right, the United States has called for a vote. The following rules will be set. We will have two speakers in favor and two speakers against. In favor, we will have the United States of America and the British Red Cross. Opposing, we will have the Palestine Red Crescent and Ambassador [Abdul Qadeer] Khan on behalf of the Organisation of Islamic Cooperation. We will call for a vote."

This is now taking place at maybe one o'clock in the morning. It goes back and forth with these four speakers. I think the Palestinians went first and then the British. Then the Pakistani

Ambassador and then it comes down to me. There are TV screens all around the hall; the cameras are on me. I had some points that I then decided I was not going to use.

We had just come off of the Annapolis Conference, which if you check the history was literally something like three days before. Secretary Rice had been highly successful. We may have talked about this last time. This is where she told this story that is unbelievably moving that I think she thought of on the spot. She really brought people together in the Annapolis Conference by saying, “I really have sympathy for everyone here because I have been an Israeli when I was a little girl growing up”—she told you this story the last time she was here. “I have been an Israeli living in fear in Birmingham after those little girls were blown up in their own church, and I felt that I was in fear of being blown up. So I know what it’s like to be an Israeli. But I know what it’s like to be a Palestinian too, because as a little girl growing up I was treated as a second-class citizen. I was told I couldn’t go here, I was told I had to go to the back of the bus.” I wasn’t at that conference, but I’m told it was incredibly moving.

So the Annapolis Conference was a success. Building on this, I said, Look—It was kind of the way I had approached the War on Terror thing. I said there are serious issues to debate here. The United States is deeply concerned about some of these issues that have been raised by the OIC [Organisation of Islamic Cooperation] and by the Palestinians. These issues need to be addressed, but we can’t address these issues in a humanitarian conference. We hope those issues are being addressed now in the conference that has just concluded in Annapolis. I’d like to ask that the spirit of Annapolis will descend on all of us and that we move forward, together, in a humanitarian way to bring both of these societies in today. This is the right thing to do; we can address these other political issues at a later time. So I ask for your vote in favor.

Then we go into a vote and we won in a pretty big way. That was a great moment.

Riley: Splendid.

Bellinger: The Secretary had been instrumental in getting that done.

Riley: What about the Supreme Court cases that came down during the second term? My colleagues across the table will recall the specifics of these much better than I do.

Kassop: I’ve been amazed, in the description of the job of the legal advisor, that you confer with the Justice Department and the Solicitor General on domestic legal cases as well, so could you talk a little bit about your role there?

Bellinger: I was worried that we were going to lose each of those cases. I warned the Justice Department. I was still at the White House for the first one; that was 2004. Then 2006 and 2008, for the [Salim] *Hamdan* [*Hamdan v. Rumsfeld*] and [Lakhdar] *Boumediene* [*Boumediene v. Bush*] cases, I was at the State Department. I had concerns about our policy in each of the cases and felt that we needed to take slightly different legal positions. In [Yaser Esam] *Hamdi* [*Hamdi v. Rumsfeld*], the concern was, are we holding the right people and do they need to have some method to show that they were the right people to be held to begin with, a review mechanism. The administration didn’t want to do that, so we lost that case. That started the CSRT [Combatant Status Review Tribunals] process.

In the second case, which we touched on last time because it ultimately resulted in the return of all the HVDs [high-value detainees], the concern was, should detainees have the right of habeas corpus? And should they have some right to review their detention over the long term so that even if they had initially been rightly detained, did that mean that they never got any right ever to challenge their continued detention?

Let me see, am I getting this right? No, that's *Boumediene*. *Hamdan* was on the Military Commissions.

Kassop: And the Geneva Conventions.

Bellinger: And the Geneva Conventions. I had been arguing at that point that we need to make some changes to the Geneva Conventions, and as I explained last time, in particular I had really been pushing on Common Article 3.

Kassop: Correct.

Bellinger: I had said that I was concerned that if we continued to argue that no international law applies at all, then the Supreme Court is going to find something that we're not going to be happy with. So sure enough, they struck that down. They found that Common Article 3 applied. That didn't surprise me too much. I think they're wrong on the law. I had been arguing that I thought Common Article 3 applied as a matter of customary international law. The reason I thought they were wrong on the law is that Common Article 3 specifically says that it applies in cases of a non-international armed conflict in the territory of a state.

Obviously, this was not a non-international armed conflict, but it was not going on in a single territory of a state. In any case, they got to a similar result. With *Boumediene*, I really argued because I said—At this point I was getting fairly scratchy, after eight years—“Look, I have said twice before that if we do not provide greater review mechanisms or address some of these concerns, we're going to end up with rulings from the Supreme Court that we're not going to be happy with.” In the *Boumediene* case, it was whether there would be some long-term review mechanism for continued right to challenge.

We had big debates on that inside the administration. Both the Defense Department and the Justice Department recognized that we were at high risk of losing that case. They made the political decision that they would rather lose the case and have the Supreme Court tell us that we had to provide habeas corpus than—In fact, there were a number of people in the meetings, including those from the Defense Department, who said if there's going to be habeas corpus review for people held in a war, we would rather have the courts tell us that we have to do that than our breaking with past practice and concluding that combatants in a war should be able to challenge their detention. So then we lost that case too.

Riley: John, as part of your portfolio in the second term, if I remember from the interview that we did with the group, did you have responsibility for trying to get Guantanamo shut down or trying to deal with the negotiations on how to deal with the distribution of folks there?

Bellinger: Yes, I was involved with that for all eight years, from the beginning to the end. Did we cover some of this last time?

Kassop: You covered the draft rules that you had tried to write up with Phil Zelikow.

Riley: And we talked about your trips down there. What we *didn't* talk about was the negotiations to try and figure out how to farm—

Bellinger: I see. That started from the very beginning. I was put in charge of the process in January 2002, to coordinating a process for review and disposition of the people held in Guantanamo. In the beginning we had this very complicated flowchart of military commission: hold indefinitely, return to country, and so forth. That initial review process—That initial group then became a regular biweekly meeting and ultimately became a weekly meeting called the Detention PCC [policy coordinating committee], which I chaired when I was at the White House. We discussed a whole variety of detention issues.

Long: Was that with Elliott Abrams?

Bellinger: Yes, exactly.

Riley: We did talk a little bit about that. But when you're in the legal advisor's office, presumably you have more contact with those abroad trying to determine the—?

Bellinger: Actually less so. The person who was the negotiator for all these deals was always the Ambassador for War Crimes, first Pierre [-Richard] Prosper and then Clint Williamson. I always had a lawyer assigned to that and I would meet regularly with them, but I became less involved in the operational detail of negotiating returns.

Riley: Were there any missed opportunities there or anything that is historically important about those efforts? Or was it an unfixable problem at that point?

Bellinger: The problem was that we were caught in a vise of competing forces, in that we had Europeans and other critics wanting us to release people, but they didn't want us to—and we didn't want to—return people to countries where they might be mistreated. But 80 percent of the people came from countries that did not have good human rights records. The countries with good human rights records didn't want to take the people.

Kassop: Were there efforts to talk to Congress at that time?

Bellinger: No. I'm not sure Congress would have helped in terms of finding ways to—As I may have said last time, by the second term I was in favor of closing Guantanamo and moving people to the United States, which we thought we could do without congressional authority, but that it would be useful to have congressional authority. But since the administration's position was that we didn't want to do that, that didn't go very far.

Kassop: Except the point now is that even if this administration wants to, Congress has blocked it.

Bellinger: Exactly. In terms of what we could have done otherwise, it's—I'm not sure how much else we could have done, given that no other country in the world—People were heaping opprobrium on us, but no one was willing to be very helpful.

Riley: Looking back, because we're about at our appointed hour, what are the other big pieces of your time at State that we haven't talked about? Are there particular aspects of your work that you want to be sure that we cover? We never completely exhaust the topics, so don't worry about it.

Bellinger: Let's see. Let me think of things that I dealt with a lot with the Secretary that would be relevant for us. We may have covered a lot of them. So if you have any specific questions, I'm happy to do a couple of more minutes.

Long: [REDACTED]

Bellinger: [REDACTED]

Long: [REDACTED]

Bellinger: [REDACTED]

Long: [REDACTED]

Bellinger: [REDACTED]

Long: [REDACTED]

Bellinger: [REDACTED]

Long: [REDACTED]

Bellinger: [REDACTED]

Riley: I don't think we talked very much last time about this problem of legal exposure of U.S. officials abroad, encompassed under the term "lawfare." Was that something you had to deal much with in the two positions? Do you have anything you want to talk about in that regard?

Bellinger: That was a big issue and it started before 9/11. I'm pretty sure it was before 9/11. In a

funny way, when Henry Kissinger was briefly threatened with detention in Paris in, I think the summer of 2001, he called Steve Hadley. This had to do with—They wanted him as a witness with respect to what he had said to, I think it was the Chileans, but it may have been Argentineans, one of those two. I think it was Chile. Our then DCM [Deputy Chief of Mission] in Paris, Alex Wolff, managed to work out a deal, which was pretty smart of Alex, to basically say that anything that Kissinger knew was not in a personal capacity. Anything that he would have said, he would have said as Secretary of State, so if you need information from us, ask the U.S. government and we will endeavor to get it to you. So they let Kissinger go.

But Kissinger was pretty outraged by that and he called up Hadley. Hadley said let's look into this as a systemic matter. He asked me to convene a group, which we never did reach agreement on because we had—The Defense Department position was that we should make a unilateral statement that government officials enjoy absolute immunity for their official acts, both during and after their time in office. The Justice Department, though, which likes to prosecute other people's officials, didn't want to agree to an absolute statement.

We tried to work out some intermediate compromise and never reached that, so throughout the rest of our eight years, these things would pop up from time to time, like the Rumsfeld incident in Brussels and other issues. So by the end of the period we did become more sensitive to these issues of lawfare and protective of—Of course, critics would suggest that we're trying to immunize officials who participated in torture. It went back to the Kissinger issue, and there was a recognition that groups were in fact beginning to use litigation, lawfare, national proceedings in other countries to harass U.S. government officials when they couldn't get their way through other proceedings. So there was a concern about this as a broader issue, not just the protection of Bush administration officials.

That's continued into this administration in a way that they never dreamed they would have to deal with; as they drop drones on people around the world, their own officials are at risk. It would not surprise me in the least if in the next year or two some provocative human rights group in Europe brings charges against John Brennan, whether they think he's a good guy or bad guy, just to force a change in government policy, because they know the Obama administration would be particularly sensitive. So that was certainly something that we grappled with.

Riley: Was this a subject of discussion with your European interlocutors when you were making these appearances abroad? Were they talking with you about this?

Bellinger: Immunities of officials is a hot topic in international law right now. In fact, the International Law Commission, which is the group of experts to engage in the codification of international law set up under the auspices of the UN, they develop a lot of treaties. They actually have a project right now on the immunities of officials. So yes, this would certainly be—and other governments were concerned as well.

The Russians have been harassed, and others. Tzipi Livni was nearly arrested when she was visiting the UK [United Kingdom] a couple of years ago. Legal advisors are quite concerned. Most legal advisors would prefer not to have other governments' officials arrested in their countries because it becomes a problem. So it's a subject of some conversation amongst different countries.

Perry: I just thought of this because of Anne-Marie Slaughter's talk last night at the law school about bin Laden. Did you have discussions either in the White House or at the State Department about what should happen to him if he was found? That makes me think of the film *Zero Dark Thirty*, and my connection is that I'm sure there will be members of the general public and students who will someday read this oral history and maybe their only knowledge at that point of this time period is that film. So I wondered if you could comment on that, since it ends with the death of bin Laden. Link it back to if you had any discussions about international law and its application to him.

Bellinger: I guess I would pick two things out of the film. One, I think, and certainly CIA would say to you, that the film is inaccurate in its depiction of the treatment of detainees, of people being beaten up and bloodied and so forth. We're all aware of the details of the interrogation program, but what CIA would tell you is that this suggests that people are being beaten up and their teeth knocked out and there's blood running out of their noses and so forth. The CIA would say their program did not result in physical violence in that way. The CIA would say that the film is inaccurate in its depiction and pulls together a couple of things that didn't happen, like people being walked around in dog collars and so forth, which was not authorized. So in that regard at least, the CIA would say that gives a misimpression of what they did.

The second thing—I thought one thing they got right was just one line in the movie, the CIA's subtle pressure on the White House to agree to things that the CIA was suggesting or else the political consequences of saying no would be too great. There's a scene where the senior CIA official is pressing somebody at the White House who I guess was saying no, maybe to the whole raid, and suggesting that, "I wouldn't want to be in your shoes if you say no to this." So that kind of subtle pressure on the White House, it's constantly aware of the political consequences of saying no to something that's suggested by the intelligence agencies.

With respect to bin Laden, I was never involved in any discussions on precisely what would happen to him if he was caught. I am sure the Defense Department must have thought it through, but it was never teed up. We probably didn't decide anything, but probably felt this is maybe an issue that we don't need to get to yet. We'd probably spend more time spinning gears and getting controversy and having leaks on, if he's caught does he go to a federal court or a military commission or an international tribunal? Would we really prefer that he not be caught after all? So, to my knowledge, that issue was never teed up for a formal discussion.

Now, at the very beginning, I think the expectation was that bin Laden and those around him would be caught. That's what the whole military commission process was about. As it went along, I think people began to realize that maybe it might be better not to have somebody brought back as a martyr.

Riley: I'm fairly confident that when we were graduate students sitting in this room 25 or 30 years ago, we didn't imagine we would be sitting here having discussions like this. You've been a terrific and accommodating witness to history for us and we're grateful for it. I wish I could say everybody is as accommodating as you've been. You've been so generous with your time.

Bellinger: I would hope all my colleagues would be.

Riley: Is there anything else you would like to add?

Bellinger: I think Kristin's [Silverberg] point to me—candidly, much to you all—is that she would be concerned if one were focusing only on the negative things than all of the President's accomplishments in other areas. And which, frankly, he really has been underappreciated by the historians because the press wouldn't cover positive things. I think we all know that even now it's beginning to be recognized. Things like Africa and HIV [human immunodeficiency virus] AIDS [acquired immunodeficiency syndrome]. People are now quietly beginning to say well, he was pretty good on Africa and HIV-AIDS. But since the press would not cover those things at the time, it's up to you all as historians to decide if there are things that history has not—And I do see that a lot with the press. The press can have this herd instinct of just focusing on negative things.

You really ought to capture Josh [Bolten] or Kristin and get them to at least play traffic cop for you. Tell them what things you do feel that the history right now is disserving the President and that we can capture, because it's not even *in* the papers and people will never know.

[Riley then tells of Stephen Knott's book, *Rush to Judgment*, and a recent op-ed piece by Knott in the *Washington Post* about this whole issue. In it, he says that oral history is an important part of correcting the story.]

Bellinger: History is important. And for historians later on trying to piece the record together, there's nothing better than the oral history of the participants.