WILLIAM J. CLINTON PRESIDENTIAL HISTORY PROJECT

INTERVIEW 2 WITH BERNARD NUSSBAUM

November 4, 2005
New York, New York

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TRANSCRIPT

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Nussbaum: You're getting me just before I'm going into the nursing home, I think.

Riley: Well, I can tell you that our time with you last time was one of the highlights of the project so far, so we're looking forward to—

Nussbaum: Thank you very much. I didn't read the transcript recently, but I read it, obviously, and we made some corrections and we sent it back. We didn't meddle too much with it. It was enjoyable reading, but I haven't read it for a long time. I didn't read it in preparation for this. You're the only people I'm really doing this for. I hardly even read the books that come out. I do the Washington read. The Washington read is you look at the index and see if your name is mentioned and you read the page before your name is mentioned, you read the page where your name is mentioned, and you read the page after your name is mentioned. Then you close the book and put it down and that's it. That's how people read books in Washington. Nobody has ever read a book in Washington from page one to the end. There are certain bad habits I've taken from Washington, and one is the Washington read.

You notice I read the *Washington Post* every day. I never did that before, but I do that now because it's a good paper in the sense that it tells you what's going on in Washington. The *Times* and the [*Wall Street*] *Journal* are good newspapers too, but not the same insights—what's going on in Congress and things like that. So that's also another habit I've taken out of Washington. Other than that, I think I've managed to shed every other possible habit.

Also, frankly, I don't like to look back. I think it's a good part of my personality. What happened, happened. I think I'm the only member of the Clinton administration who hasn't written a book yet or anything like that, which is fine. I don't want to do it. I'm fulfilling my minor obligation to history just by talking to you. I don't really talk to anybody else. It's not that I'm saying anything that's so sensitive anymore, but I just don't want—

Young: There's no problem about letting it out.

Riley: Absolutely.

Young: But I'm rather surprised to hear you say you don't like to look back. I thought you got something by looking back in the first interview. I thought it was—

Nussbaum: That was a couple of years ago. It's not that I don't think, don't talk, sometimes about what happened. Indeed, from my parochial, narrow view, I was involved in, as it turns out, a very historic event that almost changed the history of the world, which is a grandiose statement to make. That simply being, it's a very narrow view. The impact on the Clinton administration, by appointing the independent counsel over my vehement objection and then being forced out of the White House shortly thereafter—it turned out to change history in a way even I didn't quite imagine at the time, although I knew it would have profound and bad effects.

By appointing the independent counsel, I think Clinton acknowledges in his book—I've seen him since and talked to him; I see Hillary [Rodham Clinton] from time to time—but I think Clinton says in his book, and other books have said it too, in effect, in their own ways. By appointing the independent counsel, which was not necessary—there was no law, there was no basis for appointing an independent counsel, except to respond to media pressure. By putting into effect that institution at that time, and then having that institution and the people who were heading it, eventually Ken Starr, conduct this continuing investigation of non-crimes until they finally came up with something, they finally caught Clinton in a lie about sex. Then of course resulting in the impeachment—he was impeached, not convicted, and that had profound impacts on what the administration could or couldn't do. It certainly made the second term a very difficult term, especially the last two years.

That in turn had a profound effect on the next election, which caused basically the election of George [W.] Bush. This very close election that we had in 2000 because Al Gore, whose wisdom, or lack of wisdom—I think lack of wisdom—felt he had to run away from Clinton at that particular point in time, which I think was a terrible mistake. Clinton was clearly very popular in certain areas, and that resulted in George Bush becoming President. Also it resulted in undermining the Supreme Court because the Supreme Court did this horrendous thing in *Bush v. Gore*. This is not a partisan thing; I'm talking as objectively as I can.

In turn, the impact on the Supreme Court, Bush taking office, and then of course the Bush Presidency, which is an historic Presidency, and a lot of which I agree with, by the way. I'm not talking as a dyed-in-the-wool Democrat. If anything, I'm sort of a conservative Democrat, a hawkish Democrat, to use that phrase. I'm not opposed to Bush's foreign policy, the war in Iraq, or anything like that, although a lot of the Democratic Party is. Not all of it, but a lot of it is. I'm not in favor of Bush's social policies or economic policies or cultural policies. I'm not a fan of Bush in that regard. I am a fan in the sense of his muscular idealism, which I think is necessary in the world at this time.

Having said that, I'm not debating whether Bush is right or I'm right or anybody is right, I'm just saying I happen to be at this point where history went off in a different direction. For want of a nail—and it's true, and it's sad.

Young: Why do you think they didn't see this, they didn't accept your advice on what would unfold, what you were risking if you went this route? What was the thinking that prevailed?

Nussbaum: I'll get back. Look what's happened now. They still haven't learned. The [I. Lewis] Libby indictment, [Patrick J.] Fitzgerald—this notion that you set into force somebody looking at

just one thing, the dynamic that that causes. This is going to have a significant effect on the Bush administration. You'd think they would learn about independent—now of course people are railing and railing and railing about it.

Why? Because in Clinton's case, he knew he did nothing wrong in Whitewater or anything like that. You have to start off with that. So why do this? It presents all the dangers that I told him about. Why do this? Because he wanted to be loved. The *Washington Post* and the *New York Times* and the *Wall Street Journal* were critical. Democratic Senators were saying, "Appoint an independent counsel." If he only did it they would understand. They would see he did nothing wrong and they would love him.

Whereas I'm telling you, the nature of this institution—and this doesn't take great insight or great genius on my part. All it took is knowledge of history, especially recent history. Lawrence Walsh was an independent counsel on Iran-Contra for seven years. Lawrence Walsh is responsible in part for the election of Bill Clinton because he conducted his investigation. He indicted these people after seven years. He stopped in 1992. Bush was rising in the polls at that particular point. Walsh came down with an indictment that time and then Clinton ended up winning by whatever he won by, three or four or five points at this time.

This institution has a history of demonizing people. When you have one case—as I told Clinton, I mean, when we were arguing this in the White House. This is an evil institution because it's subject to no control, basically, and all the incentives are to find something, one way or another. They'll investigate you and all your friends. Somebody did something wrong in Arkansas in the last 20 years. They're going to try to squeeze people to get them to say bad things about you, even though there's nothing to say. This is the nature of that independent counsel process.

This is vivid now with the Fitzgerald thing going on. It brings back a lot of these memories. I said, "You know, Mr. President, if you appointed me as independent counsel—me, right, you like me. You know what I would do? I would spend three or four years turning over every rock I could turn over, because I wouldn't want to go back to New York having people say I missed something or I didn't do my job fully. You could appoint *me* as the independent counsel and believe me, I'd be fair, I guess. But I would spend a lot of time digging up; I wouldn't let you off easy if you appointed me independent counsel. Imagine if somebody else is appointed the independent counsel."

This is crazy, this notion that you have to find something to justify your existence, to build up your career. It's a career-enhancing thing to come up with something on somebody. The Libby indictment—he never would have been indicted for those kinds of differences in recollections and what he said to reporters. But it's too—now Fitzgerald is, and he's an honest guy.

Ken Starr was also a decent human being and an honest guy, in a sense. He was less experienced in this thing and more ideologically driven, and more moralistic probably about Clinton. Fitzgerald is just a career prosecutor who is an able career prosecutor. But the temptation, the inner temptation—he would believe he's totally sincere, and he is. The inner temptation to do something. You become a famous man in the United States. Sure, you convict Libby, which he

may well, because once you get indicted, it's not so hard to be convicted. You become a figure in history. So you don't create this kind of thing.

Young: Was the Whitewater investigation active at the time you were making this recommendation, or did the question of an independent counsel or renewal of the independent counsel statute that you were counseling against appear—was that independent of anything that was coming up?

Nussbaum: The renewal of the independent counsel statute was put into motion prior to Whitewater. Prior to the Whitewater investigation blowing up, I urged the President that we shouldn't have the statute passed. I got a call from the Senate majority leader's office saying, "The statute is going through. If you guys don't think it's so wise, it doesn't really have to go through." Remember, we had a Democratic Senate, a Democratic Congress at the time. I went to the President and said, "I've been thinking about this thing. This statute is a really bad idea. We don't need the statute. We don't have to make a public statement or anything like that. We just tell the Congress that this is not one of our priorities."

He said, "I can't do that, Bernie." I said, "Why can't you do that?" He said, "I made a campaign promise." I said, "Mr. President, you made a lot of campaign promises; not everything is going to be fulfilled." "Ah Bernie, just leave it alone. Don't do anything." That caused the statute to go on. The statute didn't pass, or wasn't signed, until June of 2004 after I left.

The independent counsel that affected Clinton was not selected initially, at least pursuant to the statute. It was selected, sort of like Fitzgerald was selected in a sense, by the President requesting the Attorney General to appoint an independent counsel. Then later when the statute came into effect, they went to the court to get that appointment renewed and the court did this famous thing by throwing out this absolutely fair—the Attorney General did appoint one of the most experienced prosecutors in the country, one of the fairest men in the country, one of the greatest lawyers in the country—Bob Fiske.

If anybody could have resisted the temptations I talked about, it would have been Bob Fiske. Bob Fiske obviously was recommended by Louis Freeh, who was then head of the FBI [Federal Bureau of Investigation]. He just mentions this in his book, which people should read for at least his view of this. I also gave that the Washington read. I'm reading more of it. I helped appoint Louis Freeh, so he's sort of a friend of mine. For Louis maybe I'll read the whole book.

Then of course when it went to the court, two of the conservative judges overturned, in a shocking act, the Fiske thing, and appointed Ken Starr, a known conservative and also an inexperienced prosecutor with respect to these kinds of issues. Ken Starr is an able constitutional lawyer, a scholar, and he's a good person to the extent I know him. I know him personally but not that well. But for this job—then he surrounded himself with a bunch of rabid, radical, right-wing prosecutor types who really were out to get Clinton one way or another.

Then when Clinton made the mistake with Monica Lewinsky, they ended up "getting him" and affecting the country in that way.

Riley: If I hear you correctly, your sense is that if Fiske had remained in that position, then the history would have differed.

Nussbaum: I think so. Fiske is one of the few people I think who really would have called it straight. In fact, one of the reasons they got rid of Fiske is because a few months after he became independent counsel—Fiske is very aggressive. In fact, I was sort of mad at him. The first thing he did is subpoena me and the White House counsel's office, which is crazy. He shouldn't have done that.

Actually, it's interesting, since we're talking background. It just shows you how even Fiske—normally, he's appointed independent counsel, and I have great admiration for Fiske. He's a professional colleague, although he's then attacked as being a friend of mine because he's a lawyer from New York. I'm a lawyer from New York and we've had dealings together in the past. We've been on cases together on the same side; we've been opposite each other. I've been practicing law for 40 years and he's been practicing law longer than that at this point in time. Then it was 30 years, 10 years ago, 12 years ago.

I was pleased when the Attorney General appointed Fiske because I thought that was one of the best appointments she could make. I didn't want to have an independent counsel at all, but the President insisted. I was the one who wrote the letter asking for her to appoint, over my great objection. But she appointed Fiske, which was pleasing, which was good.

Fiske came recommended by Louis Freeh. The head of the criminal division in the Department of Justice at that time was Jo Ann Harris. She is a person also out of New York who was an experienced prosecutor, and she also knew Fiske. So that's where a lot of the recommendations for Fiske came from to Janet Reno, who had heard of Fiske but really didn't know him.

It was her choice, but she had people from New York such as Freeh and Harris who were very familiar with prosecution and things like that. She got recommendations from various places, but I think that's how Fiske was appointed. As I said, I was pleased. So Fiske was appointed, fine. So now he's going to conduct an investigation, of [Vincent] Foster, I guess Foster's suicide, then the Whitewater thing, the so-called removal of documents from the White House and all these phony scandals.

Ten days later, even Bob Fiske—this great insight—all of a sudden he issued subpoenas to the White House, to the counsel's office, the people in the White House—not normal. Of course it causes a great round of publicity. White House subpoenaed. I don't know if I was subpoenaed personally. I don't remember. But the White House subpoenaed.

Normally what somebody would do, when you're dealing with the White House, you would call up the White House or write a letter to the White House and say preserve your documents. Can we work out a system? You don't issue a rash of subpoenas, which is going to cause massive publicity and create all sorts of thoughts of possible wrongdoing. If you get resistance, then of course you issue subpoenas. There's nothing wrong with issuing subpoenas. If you're dealing with the mob or something, you can issue subpoenas right away, or some criminal enterprise, you can issue subpoenas. There's this enormous outcry.

So even Bob Fiske felt—I never really discussed this with him. I've seen him in subsequent years. We don't talk about it that much. Even *he* felt he had to show the world how tough he was. Even he didn't fully appreciate—when you subpoena the White House and start doing things like that, it causes an enormous stir. Maybe he didn't fully appreciate it, but he's a smart guy. Even he felt he had to really show—and that distorts the whole investigation process. Now, in the end, I think, on whatever issue arose, from Whitewater to anything, he would have reached a fair judgment on things.

Indeed, a few months later, after I was gone—I actually left, I think, shortly after. The subpoenas contributed, I think. It sounded like we all did something wrong. A few months later he issued a report about Foster, the second or the first of many reports that reached the same conclusion, that Foster just committed suicide. He was depressed. There was no conspiracy or anything like that. His note expressed his feelings basically when it came to light. But that report angered people. The Republican right wing was one of the things that contributed in all probability to his replacement by Ken Starr by the three judges on that court.

Riley: You felt like the Fiske team was, from your perspective, a more respectable group of—

Nussbaum: Yes. Yes, it was. And they all ended up leaving. I know the Fiske team professionally as a group of very successful lawyers. They are some leading lawyers in New York and elsewhere. I see them from time to time. I knew some of them before. They were all experienced prosecutors and experienced lawyers in private practice too. They're all well respected; they're partners in major law firms. They have no affection for Clinton or anything like that. They would have done their job. They would have investigated. They're one of the few groups that would have reached, I think, a fair conclusion. But it's a tough thing to do. Even Fitzgerald, I think, has been sort of distorted by all this.

If you can't find any substantive crime—the deliberate uncovering of a covert agent. There's no substantive crime—you go into the classic perjury thing. It's like if I'm going to describe conversations to you that took place a few years ago and your recollection is different. If I said something to you at the University of Virginia a few years ago and you recollect I said this, and I recollect I said that, they decide to indict me for perjury because they're going to rely on your recollection rather than my recollection. You know, it's crazy. It is. And it's going to have a serious effect now on the Bush administration.

Part of me thinks they deserve it because of what the Republicans did basically during the Clinton administration. But really that's the bad part of me. The better part of me thinks it's terrible for the country. This undermining of the President and the executive in this way, this criminal way—I don't care, you can criticize the executive. You can say he's wrong, he shouldn't have gone to Iraq, he shouldn't have done this, and you can run against him. But the use of this process to paralyze the White House—and that's what's happening. The stories now coming out are the same. The White House is paralyzed, people stop functioning. You're worried about subpoenas, worried about testifying, worried about getting lawyers. I discussed some of this the last time. This is a tragic thing.

Young: Yes.

Nussbaum: And for a guy like Libby, it's interesting. There's a story in the *Washington Post* the other day. Libby is not necessarily a wealthy man. They're going to raise a defense fund now for Libby. I was a very lucky guy in a sense. I had this nice place to come back to, as you can see. I had all these partners. We do fairly well here.

Riley: Wonderful view.

Nussbaum: Nice views here. I don't know if I mentioned this last time. When I left, I was under attack. I left, not like Harriet Miers; I wasn't attempting to be appointed to the Supreme Court. When I left I was going to be indicted. I testified before the grand jury and Congress on a number of occasions. And of course, testifying before the grand jury—what they were trying to do is to see if they could find perjury. Maybe I remembered something different than somebody else remembered something. It's a very tricky and dangerous time. I was very aware of that. But I was very fortunate because I had this law firm, and I have a number of partners here who are very experienced lawyers and prosecutors, top-notch people. I came back to the firm. They helped me, people I've been with a long time, protégées of mine. In a sense they were at a time. Now I'm a protégée of theirs, I think. These are really superb lawyers, especially two of my partners who really represented me. It's very hard to represent yourself.

We found out—this is fascinating. If I'm repeating myself from last time, you can stop me, but—

Young: Some, but not all.

Riley: We'll interrupt—

Nussbaum: But it's insight into the process. The reason I'm talking about it, because I remember it so vividly, but also because of what's happening now with Libby and Fitzgerald, it's come up again. We put a team together here, headed by these two people. We amassed all the facts or documents that we could in order to prepare me for these various investigations and Congressional testimony I was involved in. My partners end up learning virtually everything about it.

I used to say one of them used to tell me what I did every day and the other one would tell me why I did it. So I was totally prepared to go into it. It's true. They knew; that's what good lawyers do. They learn more about the case than the client knows. I was totally prepared to testify before the grand jury and this thing, even though people were trying to trap me a little bit. I was careful and cautious. I have a lot of experience. Indeed, even the White House began relying on us because they kept calling us. What happened here, what happened there? What do we know about this? The White House didn't have the same ability to function that I had here at this firm.

Riley: Who in the White House was calling, Bernie?

Nussbaum: People from the counsel's office.

Riley: Do you remember in particular?

Nussbaum: People like Jane Sherburne, who was one of Lloyd Cutler's people in the Counsel's office, Bruce Lindsey. We'd just exchange information. In some respects we were just as knowledgeable, if not more knowledgeable than them about all these events. Not only because I knew a lot of things that happened, not only because of me, but generally. But I think, if I recall correctly, I had to hire lawyers in Washington to help. My firm hired lawyers. This is not known generally. I may have mentioned it to you last time.

The cost of this, over the space of three years, if you add up the lawyers' time and the amounts we expended, was over $5 million.

Riley: Just for you?

Nussbaum: Just for me. If you added up all the time and all the money we laid out, the money we paid out was in seven figures. You can say, "You're using your own lawyers." We are. I never applied for recovery of fees. The courts end up rejecting all applications, virtually rejecting on some cockeyed theory that the Justice Department would have— You only get paid your fees if in fact the only reason you were investigated was because there was an independent counsel. On the other hand, if the Justice Department would have investigated you anyway, you're not really entitled to recovery of fees. This court ruled virtually everybody would have been investigated anyway, which is ridiculous.

Young: Does that still stand?

Nussbaum: Yes. Well, the independent counsel act is now over. But fee applications that were made pursuant to it were virtually rejected. I never made a fee application. First, to make an application for $5, $6 million would have caused massive publicity. Two, I knew it probably never would be accepted. You could almost argue you make it as a matter of principal. Three, obviously I don't need the money and the firm doesn't need the money. But it shows what it takes to defend yourself in one of these kinds of things. When the whole world is coming at you in this way, it shows. That's why I feel a little sorry for Libby. I don't know Libby. I don't remember meeting him. Maybe I met him. But I really feel sorry.

He doesn't have the same kind of support mechanism that I had, very few people do have that support mechanism. He can be subject to total destruction. Now he has good lawyers at the present time. He just hired a very good lawyer who I know, Ted Wells, but that's going to be expensive. Lawyers are not going to represent Libby for nothing, as my firm in effect represented me for nothing and indeed laid out money on my behalf. Well, this is my firm, I'm one of the founding partners here. My partners would do this for me. Very few places in the world would do that for anybody.

But it shows, and this is so destructive of having people come into government. This is profound; this is a bad thing.

Riley: Bernie, I want to ask you a question. You touched on something that I know we didn't talk about last time and that very few of us would have a window onto. I wonder if you could take us back into the grand jury room. What's it like in there? Who's with you? What's going on? What are the interchanges like inside the grand jury room? That's something—

Nussbaum: I was familiar with grand juries because I was a prosecutor a long time ago. When I came out of law school my first real job, was assistant U.S. attorney, federal prosecutor, in New York. I presented cases to grand juries as well as tried jury trials. I was familiar with the grand jury. I was on the other side of the table, obviously. I was the one asking the questions and subpoenaing people to the grand jury. I was as full of myself—I was 25 to 29 and a prosecutor. When you're 25 to 29 you think you know everything and you're on top of the world, especially when you have those powers as a prosecutor. I was a pretty tough prosecutor at the time. I'd have people before grand juries.

Now in the Clinton years, after I left as White House Counsel, it was the opposite. I was now the witness before the grand jury, not the prosecutor. But I was familiar with the process, obviously. It can be pretty scary for people who don't understand it and are not prepared for it. I both understood it and was prepared for it with the help of, as I said, my firm and my partners. You're in a room larger than this room, maybe as large as the conference room next door. You have 23 people. All of them may not be sitting over to the left-hand side. You have a table like this we have here. You have the prosecutor sitting at the other side of the table.

Riley: These were Fiske's prosecutors, or Starr's prosecutors?

Nussbaum: Starr's prosecutors. I think I testified before Fiske left also. I testified on a number of different occasions, which is also quite dangerous. Because the more you testify, the more the possibility of contradictions. Nobody gives you a transcript of your testimony before you testify the next time.

Young: Really?

Nussbaum: So you have to remember it. I'll tell you in a second what you do if you're prepared. You sit in a witness chair. The prosecutor is over there, the grand jury is sitting over there. Over here, where you're sitting right now, is a court reporter taking everything down you say, and they start asking you questions. You have no lawyer there.

Riley: Your lawyer is outside.

Nussbaum: The lawyer is outside. They will tell you you can go out to ask him questions. I could and would if I wanted to, but it's a tricky thing to do. He can ask you questions and show you documents and ask you whether you saw this document, what you remember about this document. Grand jurors normally do not ask questions; every so often they might. That's rare. You can be there for hours—asking you question after question. You don't have anything in front of you. You can't bring any notes in. If you brought them in, they'd take them away from you. They'd mark them as an exhibit.

So you have to give your recollection, "Yes, I had this conversation, I met with these people. I did this, I did that. This is the reason I did this, this is the reason I did that." They ask anything they want virtually under the sun and you're alone in that room. For a lot of people that's hard. In a deposition or a trial even, you have a lawyer with you who can object, who can stop things, who can clarify, who can intervene. This is what lawyers do at times. In a grand jury you don't have any of that protection.

Now you can refuse to testify—you can say, "I won't testify because of the fifth amendment." You can claim your privilege. Or if Lewis Libby didn't testify, there would be no perjury, and he had a right not to testify. But if you're the Chief of Staff to the Vice President, or the White House Counsel, or former—not testifying has a tremendous deleterious affect on reputation. Nussbaum takes the fifth amendment or Libby takes the fifth amendment—right away something's wrong. Normally we advise clients to take the fifth amendment if they're the subject of investigation, but in certain positions it's very difficult to do without serious consequences to your career and your reputation, so you're sort of forced into testifying. It's a fairly frightening process.

Young: And the questions don't have to be germane. You don't know what they're germane to.

Nussbaum: Correct. There's no judge there to rule on the relevancy or whether it's germane. So you have to keep your wits about you. Clever prosecutors—it's much easier to ask questions, because I've been on both sides of this, than to answer questions—can really trip you up or cause you to make mistakes.

I'm not saying prosecutors are trying to do that necessarily. Some do try to do that, but many don't. I'm not saying they're not honest, but they're using their power to try to find out the facts and see if there are any contradictions. If you're called back a number of times, it's hard to remember what you said. You don't have the transcript, as I said. So what you end up doing, if you're smart and you have the resources, what I would do, when I'd leave after four or five hours of testimony, I'd come into a room like this and I'd sit down and repeat what I remembered.

Even if it's imperfect, what you repeat, somebody would take it all down, so we would have a record, to the best I could recollect. It wasn't perfect ultimately. I didn't remember everything and I don't remember exactly how I phrased something, but nonetheless I would be debriefed in an extensive manner. But then you have to have people do the debriefing, sit down, take it, we'd put it in our files. Then when I'd go back the next time they'd look at it. When I'm prepared the next time, "Okay, this is what you were asked last time, and this is what you might be asked this time," and you have that.

Riley: You're sharing that with others going before the grand jury, the White House, or others?

Nussbaum: The grand jury things are secret, but a witness himself is entitled to say anything he wants to say coming out of the grand jury. I think there's nothing wrong with that. The prosecutors might say from time to time people are trying to mesh their testimony, shape their testimony. Yes, that's one way of putting it. Another way of putting it is people are trying to

remember their recollections and get it right. That's sort of looked suspiciously on by prosecutors. They really want to catch people in contradictions.

So from time to time we did coordinate with other counsel, but it's a very imperfect process and everybody first worried about obstructing justice and then worried about cooperating with each other too much. Good lawyers do it. If you have good lawyers, lawyers do it among themselves. In other words, witnesses don't talk, but my lawyer would talk to a lawyer for somebody else, and lawyers who know each other and trust each other talk. What is your person saying, what is my person saying. No good lawyer, no ethical lawyer is going to say you should change his testimony and do that. They say fine, he should give whatever recollection he has, but you should know, but we know this and we know that. You talk to your client and see if that refreshes his recollection. Good lawyers do that. We did that. In the end no one in the Clinton administration, no one on all these phony scandals was indicted for anything.

The indictments from this independent counsel that were appointed—yes some people were indicted. Mike Espy was indicted for taking football tickets and acquitted by the same lawyer, by the way, who is representing Libby—a good lawyer, a very able lawyer. He's an African-American lawyer, which is helpful in the District of Columbia with the juries, but he's a very able lawyer. He'd be a good lawyer whether he's African-American or not, although in the District of Columbia, if you have a very able African-American lawyer, it's important. Ted Wells tries cases all over.

Young: Did you keep notes that were subpoenaed, your own diary or notes?

Nussbaum: The answer to your question is no. When I went into the White House, somebody said to me, "You could be part of history. You really should keep a record of some sort. Maybe the easiest thing to do is to tape record each night, which people have done, what happened during that day. Really that's the most immediate record, and ultimately some day you'll look back on these things. You can do whatever you want with it, you can write a book, whatever you think." So I went out and bought a little tape recorder.

I came home the first night after I bought it after some day in the White House. I turned it on and I couldn't talk. I said, "This is crazy." I went through Watergate. I had a lot of experience. I was a prosecutor, I'd been to Watergate, and I'd been a defendant. I said, "This is nuts. I can't do it." My wife actually urged me to do it, but even she then understood. I clicked it closed. I put it into a little cabinet next to my bed. I never took a note; there was no diary. I warned people not to do that either. Because I understood the dangers, especially after Watergate, after Iran-Contra. These investigations start up, and all your notes are subpoenaed.

I remember after the subpoenas started coming, they wanted all my memos, all my notes, all my emails. I said, "Turn over anything." There were no notes, no memos, no emails. I wasn't using email then; email was just starting. So I had nothing and I knew it. I warned people not to do it. I said, "Look, if you do it, I can't tell you not to do it, but you do it, and some day—" And sure enough, huge amounts of notes were turned over, also containing conversations with me in these notes that used to be read before Congress, but they weren't my notes.

Young: Josh Steiner kept a diary.

Nussbaum: Josh Steiner kept a diary. Those are the hearings I'm talking about. What's his name, I've forgotten names already. The guy who's president of Hobart now.

Riley: Mark Gearan.

Nussbaum: Mark Gearan kept a set of notes. There was a meeting; I'm going to get it a little bit wrong because I don't remember precisely. There was a meeting we had of the Whitewater team at the time, headed by Harold Ickes and people I knew. I'm at this meeting and Gearan's there. All these people are taking notes, like Steiner. Gearan's there and he has notes and we're talking through this meeting about the independent counsel. He has me saying something like I just told you that's really more vivid.

The independent counsel is a terrible thing, an evil institution. I'm arguing with the whole White House staff to try to convince them that—the point I made to you. I told the President, "You can take me as independent counsel, the good Bernie. There's a bad Bernie and a good Bernie. If you appointed me as the independent counsel, if I was the bad Bernie, what I would do, if I really, really get carried away, I would go out, I would turn over every rock, and I would come up with something, because I want to go back as a big hero. That's the bad. You know what the good Bernie would do? Exactly the same thing. Maybe wouldn't indict in the end." And he's writing all this down.

Later on, when the whole thing blows up before Congress, I'm watching television one day. I'm looking at these hearings and I see Gearan—everybody was subpoenaed—and I see Gearan reading from his notes: "And then Bernie said, 'The good Bernie would do this and the bad Bernie would—'" Of course these pompous Senators, "Oh you mean Nussbaum was arguing against the independent counsel? He didn't want all the facts to come out," or something like that. Well, he says, "The good Bernie, the bad Bernie."

He's reading these notes on television of what I said. I didn't even remember. I mean, I remember the meetings, but I didn't remember what phrases I used at that time with respect to these things. I started laughing when I see all these people taking notes. I didn't stop them. I just decided for myself I wasn't going to do it. You can't tell people not to take notes. They take notes and they get things wrong, like Josh Steiner. He jumps to conclusions from things people said. He's writing everything down because he wants to be able to show he's part of history and writing a book. He's a very smart and able guy who's now a very successful investment banker in New York. He's done okay.

Morrisroe: I think it would be useful to go back to the start of your tenure as counsel. At what point did Whitewater come on your radar as something you were going to potentially have to be involved in? What was the first indication of that, and how did you respond to that? Maybe walk us through a little bit of that year, even before the independent counsel is named.

Nussbaum: Whitewater first arose in 1992 before Clinton was elected. Now this has to be checked. It's going 13 years back. I'll give you my general impressions of what happened at the

time, but it may not be precise. I may get some facts or some sequence wrong a little bit in this thing.

Riley: We're not a grand jury.

Nussbaum: I know. I understand that. Jeff Gerth at the *New York Times* wrote the story about Whitewater. Whitewater is now such a morass, Clinton, Madison Guarantee Savings and Loan, and also he invested with Jim McDougal, and Whitewater is this land deal up there. He invested with a guy who later had a savings and loan. As it turned out, of course, Clinton lost money on the so-called Whitewater. He lost, I don't know, twenty thousand, forty thousand, sixty thousand dollars, which is an enormous amount of money for the Clintons at that time, who had no money, never had any money, until they left the White House. Now they have a lot of money.

So an investigation was done at that time by a friend of theirs, Jim Lyons, who is a very prominent lawyer, a friend of mine from Colorado. He wrote some report that turned out to this day to be one of the most accurate—and that was it. It was a blast of publicity a little bit during the primary campaigns and the Presidential campaign of 1992. But it ended relatively quickly. It arose at that time.

I was busily engaged in some difficult case at that time. I was helping the campaign and I was called about the Whitewater thing, what should be done. I was just asked my advice but I really wasn't part of the campaign. I was working in New York on some other big case. I gave advice as to how it should be handled, and it was handled correctly. Lyons is a good lawyer. He did his report.

I first became aware of it at that time, but I didn't really play any role in the investigation. But it was a legal issue or a thing that arose. That's the kind of thing people from the campaign, since I knew Hillary Clinton and since I knew Bill Clinton a little bit at the time, I certainly knew some of the people running the campaign, like Susan Thomases. So I'd get a call. I was called, I believe on Whitewater, and giving some advice of how it should be handled, what lawyer should be hired, and things like that. But my role was insignificant. Then of course I go to the White House after he was elected.

Morrisroe: When you came on as counsel did you anticipate at that time that Whitewater would be something that would occupy your time?

Nussbaum: Not in the least. Whitewater was totally off the screen. Some of this I may have said last time, but if I did, this may be a difference. Whitewater was nonexistent when I came to the White House. I think at that point, if you mentioned Whitewater to me, when you were talking about—this was a thing that blew up for a short time in March of '92. I'm now in the White House in January of '93, becoming White House Counsel. He's inaugurated January of '93. None of us talked about Whitewater. We barely knew about Whitewater. If you mentioned Whitewater to me, I'd say, "What are you talking about?" Now maybe you'd say, "Remember that thing that happened last March, those newspaper stories?" I might have remembered something. So it wasn't at all on the screen.

I may get my facts mixed. Actually a lot of this, just for history's sake, is contained in my very careful testimony, not before the grand jury as much as before Congress, because I testified in Congressional hearings in 1994 and 1995 and in 1996. I prepared opening statements. I should get those opening statements in those hearings. Those were carefully prepared. They were very precise. Some of them were 20 to 25 pages long, giving my version. Those things I look to from time to time. Obviously they were prepared, obviously by my lawyers, but I wrote a lot of it myself. I can do that stuff. It's a very careful kind of thing. We really crafted those things accurately to just to convey all the facts.

Riley: It's helpful to have on the record.

Nussbaum: It really is. If anybody really wants to know, I may say things now that somehow don't mesh with that, because I don't remember at this point. I have them downstairs—if I had them in front of me, it would be very interesting, because I really laid out just what I learned, when I knew it. The 1994 hearings mostly were concerned with Whitewater. They were the investigation of the Resolution Trust Company and my involvements and how we learned about Whitewater and things like that.

The 1995 hearings concerned the Foster suicide and how that related—that was a huge set of hearings designed basically to get me in this thing because I—so those hearings are very interesting too.

The 1996 hearings were the hearings on the FBI files, which were related, but not—I also laid out basically what happened there. So when I ever want to review the facts of those three things, I look basically to those three documents. Of course then I testified for days. I was asked questions with respect to these issues, and I didn't say everything in my opening statements, obviously. There were a lot of things that came up that I was prepared for, and I answered questions fully at that time.

Now I'll just give you a general thing. I really don't have it again precisely in mind anymore. I haven't prepared myself for that.

Morrisroe: I think one thing that would be useful for us, which may not have come out in the context of hearings as opposed to exact sequence of events, etc., was what the mood was like in the White House during the course of these different events. How did you see the President responding to things that were happening? That might supplement your account.

Nussbaum: The first year was a difficult year in the administration. There were attacks. You think back, these crazy attacks. The White House did feel a little bit under siege. The press was really dumping on the President, a new President. There were things from the haircut in the airport and the travel office imbroglio, which probably I discussed last time. The Whitewater thing itself emerged, I believe—I don't want to get this wrong—in the fall of 1993. The RTC [Resolution Trust Company] was looking to Madison Guarantee. We heard there might be leaks. The White House had to prepare itself for leaks. That turned into a whole imbroglio later on. I really can't discuss it in detail because they claimed we were trying to prevent the investigation from going forward, or fixing it, which was just not true. All this is laid out in my testimony.

Then of course Foster committed suicide. I supervised a search of his files in the presence of the Justice Department. I looked into the case of attorney-client privilege. I decided to look at the documents myself, in the presence of them. I would describe what the document was. Then if they said they wanted something, I'd put it aside and would decide whether to give it to them. As it turned out, whatever they wanted we gave them. Ultimately they got everything with respect to that. That caused a big blow up. That issue, that I was somehow preventing the Justice Department from doing its job, which is ridiculous. They go into a lawyer's office—you don't—in the end they got everything anyway. That happened in July. Foster committed suicide July 20 of 1993.

Then later on two things happened. We're being very general. Later in 1993, somewhere around Thanksgiving, Christmas time, the *Los Angeles Times* started running stories about state troopers bringing women to Clinton and that kind of stuff. So that started up. Then a story came out about how I removed documents from the White House, which I did, after the Justice Department told me what they wanted and we basically gave them what they wanted. Then I sent the personal Clinton documents in Foster's office, including some documents that had reference to Whitewater, totally innocent things, as a potential investment, because Foster was involved in filling out their financial forms. He worked on that kind of stuff. I wasn't involved in that. He was involved in that. He knew them.

So after his death I sent all these things back to the Clintons, who then sent them to their lawyer, David Kendall, at Williams & Connolly. That became a big story that blew up, resulting in a huge request for an independent counsel that happened in late December '93, early January 1994. Of course then after this battle that went on in the White House when I fought the independent counsel, the rest of the staff supported it, Clinton asked Reno to appoint an independent counsel over my objection. The rest, as I said before, is history.

It is true, the mood—it's an interesting question. The White House did feel under siege from all these attacks. Whether it was the haircut or the travel office, which is another phony scandal, the notion that we want to get rid of people. The guy in the travel office stole money, in effect. He was acquitted because at a trial in the District of Columbia—Libby should be so lucky—he had a good lawyer, which is fine, and he had all these media people testifying on his behalf, giving him character references. What this guy was doing basically was helping the media smuggle things. And also, the money that was basically stolen was stolen from media companies, not from the government. It's amazing. These stories—I'm reading about [Abraham] Lincoln now. I don't read the books now about Clinton stuff, but I'm reading about Lincoln.

Riley: Your name doesn't show up—

Morrisroe: You don't look at the index for that.

Nussbaum: I don't know, maybe I should. I'm reading Doris Kearns [Goodwin]'s book about Lincoln, *Team of Rivals*. It's very good, very interesting. I'm reading about Lincoln and I'm reading about [Franklin] Roosevelt now actually. It's fascinating too. I find it more interesting to

read that stuff. I don't read about [John] Kennedy—that's too recent. But I read, and I go back. But especially the Roosevelt book and the Lincoln book, they're also quite good.

But the White House, right. There was a mood, and one of the reasons I was a little glib before, one of the reasons Clinton appointed an independent counsel was he wanted to end these attacks on the White House. It was a culmination of things. Even though the special prosecutor was supposed to investigate Whitewater or investigate the Foster documents or anything like that, he really wanted to end it. This was a way of ending it, and people thought that in good faith, but they were fools. This doesn't end it, this institutionalizes it. This feeds the beast, in effect. It makes sure it will go on forever.

I came up with—I think it is mentioned in some of the books now—this absolutely brilliant idea, which was rejected out of hand. This idea, you want to end it? I'll tell you how to end it as best we can. I don't know if we'll end it. You're going to be President; you're never going to end it. They want investigations? We'll give them investigations. You'll announce tomorrow that you'll go down and testify before the Senate Judiciary Committee. You and Hillary will go down together. You'll sit there as long as they want. You'll answer any questions they have on Whitewater or anything else they want, for that matter. Go down on national television. This is the Senate Judiciary Committee. It's a Democratic Senate, Democratic staffs. If you did anything wrong, I wouldn't advise you to do this.

It's not going to be an independent counsel with 20 FBI agents and 25 assistant U.S. attorneys trying to make their careers. You go down. It's not so crazy. "Oh it's crazy, it's crazy," everybody started screaming at me. "It's just the nuttiest thing we've ever heard." But it's not so crazy. Nothing I've ever suggested hadn't been done in one way before. [Gerald] Ford, after he pardoned [Richard] Nixon, went down and testified before the House Judiciary Committee. Watergate, which I was involved in, and Hillary was involved in. He did it. He testified the whole day, why he pardoned Nixon. The Democrats beat on him. He came back at them.

Fine, he pardoned Nixon. Then he went away. Yes, he lost the election later on because of pardoning Nixon maybe, but he pardoned Nixon. So it was done. Lincoln testified during the Civil War; apparently he went before the Senate. There were certain charges. Obviously it's a different world, no television and that kind of stuff. So it's not unusual that the President of the United States would even testify before Congress.

Oh, crazy, this and that. Fine. That way you end it all. You do this, this will guarantee you that it will never end. But that's a long-winded answer. I've given you a lot of long-winded answers. It's because it was a siege mentality. People were getting their feet wet, it's sort of hard. This is the first Democratic administration in a long time and they did feel under siege. The President felt under siege. He'd go to Europe and they'd ask him questions about Whitewater. I described the conversation last time, the conversation from Europe over the phone in which the independent counsel issue was debated. He wanted to end it. He wanted Dan Rather to ask him about Europe rather than about Whitewater and if I only do this, or about the travel office or anything, it will end it, it will stop it. They didn't understand. It doesn't stop it. It may calm down the stories for a week. Then the news stories will start coming about the investigation and you'll have an institution that will try to destroy you.

Riley: Were there any particular members of Congress or their staffs that you found to be especially helpful or beneficial to you? And conversely, were there any members who gave you a particularly difficult time?

Nussbaum: The person who I remember as being the best and most sensible was the majority leader, George Mitchell, who was really a good, smart, experienced person. His office was the one that called up and said, "You really want this independent counsel act to go forward?" I don't remember speaking to Mitchell myself directly about it, but I may have. I have this vague memory. I guess it must have been a senior staff member, not Mitchell himself, but I'm not sure of that. It could have been Mitchell. He was very good. He was very helpful to the President.

Riley: Mitchell had been a judge, right?

Nussbaum: Mitchell had been a judge. I think he had been a prosecutor. He'd been a lawyer. Mitchell is a good guy, was a good guy. He left government to make money. He got married again. He turned down the Supreme Court. This is after my time. He was a good guy. Most of the other Senators—it's not that they're bad people, or anything like that. One of the reasons Clinton ended up appointing an independent counsel is because certain Democratic Senators were requesting it. [Daniel Patrick] Moynihan was requesting it. [William] Bradley was requesting it. This was idiocy.

They get on television, on *Meet the Press*, and it's the easiest thing to say, "Oh, it will clear up—" They don't understand. They weren't doing it to harm Clinton. What's the Senator's life? He has a staff; he has no real power. Although in the majority—the whole thing is publicity and getting on TV. They don't really have an understanding of the consequence of what they're even saying.

Young: Was there anybody in the Judiciary Committee of the Senate who was—

Nussbaum: Yes, I think so. A number of Democratic Senators. I don't remember if Bradley was on the Judiciary Committee at the time or Moynihan was, I don't remember. But I remember Bradley and Moynihan being two of the prominent Senators who come out and say, "Oh, the President—clear everything up. If you've done nothing wrong, appoint an independent counsel." So the Democrats were notably unhelpful with respect to this.

I would talk to some of them at the time. I almost don't blame them. They don't understand. They don't know. They don't think about it. They're not really worried about preserving, or cognizant of executive power. They come from a different branch. There are tensions because of that. They have their own interests. But a President should understand that it doesn't make sense in effect, especially if he gets advice from people who I think do understand the process as I thought I did understand the process. The rest of the White House staff really did not.

I had virtually no support in the White House. Lindsey says he supported me a little bit, and I think he did. Hillary supported me, which was the support I needed until she rolled over and

didn't support me on this issue. She understood it, but she just—to this day, I've talked to her. She reminds me how she supported me on this issue. She does. I remind her that it's too bad—

Young: You didn't prevail.

Nussbaum: Yes, that's right.

Riley: Did you know Moynihan well? His relationship with the President is a kind of interesting one.

Nussbaum: I knew him; I didn't know him well. I was a leading candidate for U.S. Attorney in New York in 1980. It was the end of the Carter administration. I met with him. I was interviewed. I and two other people were interviewed for that job. I was 43 years old at the time. I was recommended by various people and I was interested in being the U.S. Attorney, but somebody else got it, a friend of mine, then became a federal judge. So I knew Moynihan. As it turned out, I'm happy. Life has turned out okay. It's worked out. The U.S. Attorney job is a powerful job in New York. It's a very good job in New York.

Indeed, after Clinton won, I could have been U.S. Attorney, obviously in New York at that time. I also could have been Deputy Attorney General probably at that time. I almost had a choice. Nobody quite offered it in this way, but it was fairly clear that if I wanted to be U.S. Attorney, although I had to go through the Senators to be U.S. Attorney—the President appoints, but you have to—it's fairly likely I could have been U.S. Attorney, since I ended up appointing the other U.S. Attorney. Or I could have been Deputy Attorney General, a significant position that ends up running the Justice Department.

Indeed, because of what happened with Zoë Baird, who knows what would have happened if I had accepted that? I probably could have become the Attorney General—maybe. That's a stretch; that's interesting. [Alberto] Gonzalez became the Attorney General from the White House Counsel. He's doing okay. I could have been White House Counsel, which is what I ended up becoming. But Moynihan, I knew him. He was a brilliant guy, but he was very flakey and very—this is unfair—unstable in some ways.

Riley: Did he get along well with the President?

Nussbaum: Not really. I don't know what the President would say. Moynihan is dead now. He was difficult; he was eccentric, he was Moynihan. He did some great things for the country. He was a prominent figure. He was an interesting guy, but he wasn't a stand-up guy for the President. He didn't really support the President. Look, the President was a newcomer to Washington, he was a 46-year-old kid from Arkansas, in effect, some bright kid from Arkansas. All of a sudden lightning strikes and he's President of the United States. All these guys in the Senate, they look in the mirror in the morning and they see a President or potential President, and this guy—they're all afraid to run against George [H.W.] Bush, the first George Bush, after the Gulf War. Clinton runs to get the experience, and then lightning strikes. Ross Perot runs, and together with Larry Walsh served to elect Bill Clinton as President of the United States.

Now Clinton turns into a fabulous, charismatic figure, an enormously able speaker able to reach groups, and of course one of the few people in the world who could overcome a Lewinsky kind of scandal to become today what he always wanted to be, which is celebrity-in-chief, doing wonderful work. He really is. He's now a world figure. It's amazing. He's an amazing figure in history. Probably some people think he's a disappointing President. In some ways he was a disappointing President. Part of the disappointment stems from the things we talked about. He was becoming disabled—I have these mixed feelings, as you can see.

He was really starting to get it and catch on, which is not unusual, into the Presidency. He was really starting. He was a good President on most issues. On some issues, even on foreign policy issues, where I was still a little more hawkish than him, maybe he was right and I was wrong, but he was even starting to get it there. By the fifth, the sixth, or seventh year of the Presidency, until of course the whole thing blew up in the impeachment later on. But he's an incredible character.

But the Senators—this is how we started. It took a while for them to really get in synch with him. By the end of his administration, they basically were. Indeed, they saved him in the final analysis. I mean they saved him from being impeached. They could have thrown him out of office at that point, he was so disgraced in that sense. They really could have done it. It could have happened. You have these hard-right Republicans. But the Democratic Senate basically saved him in the final analysis. Partly because, by the end, I think he was getting on with most of them.

When I was there, they were sort of getting used to each other. There was a little jealousy. They thought he was inexperienced; he wasn't from Washington. So it took a little while for him to hook up. But Moynihan, Bradley, were not really great friends in the beginning. Some of them became better friends as time went on. I think that may even be true for Moynihan. Remember, my experience is only the first year and a half, or the first year and a quarter. I spent the next few years being back here but defending myself, dealing with the White House.

[BREAK]

Young: Was Kennedy in the picture at all? I won't tell you what he told me to ask you.

Nussbaum: Pop it on me.

Riley: We thought what we would do is go back. There were some things that we had in the original topics that we did not get to thoroughly and we thought we'd dial back and deal with them sequentially.

Nussbaum: Fine.

Riley: The first one being the transition process. You touched on this last time but we really didn't discuss it in any detail. That was the role that you had, as the head or co-head, I suppose, of the Justice Department transition process. I wonder if you could tell us a little bit more about

how you came by that job and what you did there. This is something that is of interest to political scientists.

Nussbaum: Yes, it was an interesting time, actually. After the election, which I didn't really participate in a great deal, much as I indicated earlier, although I had peripheral roles—I was quite busy at the time, actually in a major case which affected me later on. This is a case that the RTC was bringing against Kaye Scholer, a major law firm, and almost ended that law firm's existence. I came in to litigate it and ultimately realized I had to settle it. I saw the huge powers that the RTC had with respect to these kinds of things. Also I really grew to distrust some of the people in the RTC. Then of course later on, when I was in the White House—these things sort of ran together. Life is funny in that respect. Everything relates to everything else.

But that prevented me in part from participating. I was also head then of the Federal Bar Council, which is the organization of litigators in New York—people who try cases in the federal courts. I think that was my year as president, and I had a number of functions I had to attend.

I remember when the Gennifer Flowers thing came out I was on a trip to the Caribbean with my group. All my friends were making fun of me, saying this is the end of Clinton, the guy you're supporting, your own personal nose in this, it's over. I said, "Well, I don't think so." I was on the phone actually with some of the people dealing with the Flowers issue too. I was really on the edge of the campaign, but I was connected with some of the people in the campaign. I went to see Hillary during the campaign, who was a fairly important person in the campaign, and Susan Thomases, who's a friend of mine and who was a very important person in the campaign at the time.

I had this professional relationship with Hillary over the years. We'd work together in certain things—not a lot. I knew her from that. So it wasn't a surprise as much. I expressed my interest to Susan and to other people. It's not that people were running after me. It was partly they were running after me, partly that I was expressing interest, too. They asked me, which was a natural thing, to co-head the Justice Department transition, which I was pleased to do. It was nice to do. Peter Edelman, my co-head, was a classmate of mine in law school and has been a friend of mine for a long time. He knew the Clintons through his wife, Marian Edelman, who is a very prominent, as we all know, figure in the nonprofit world, a great lady.

So we decided to head up the Justice Department. We were asked to head up the Justice Department transition as co-heads. Obviously, he had his connections with the Clintons, I had my connections with the Clintons, they made us co-heads. It was fine, because we could work together.

Young: Who set that up? Who asked you to do it? Was it Clinton or Hillary?

Nussbaum: I don't remember. I think it was Susan Thomases who passed through, who made the offer, but I'm not positive of that. Clinton did meet with the heads of the transition. I met with Clinton. Clinton didn't call me up and ask me to do it. I would remember that, and I don't think Hillary did either. I think it was Susan. It could be Susan, it could be Harold Ickes. It would

be somebody connected with the campaign, much more connected with the campaign than I was. But it was a natural kind of thing.

You have to understand. The transition process was an interesting process too, to political scientists. Every administration has to do it a little bit differently. At least in this transition we had no role in selecting personnel for the next administration, personnel even for the Justice Department. This is the Justice Department transition. Now that's really the powerful area. A whole separate process was set up for personnel, for example, the Zoë Baird nomination for Attorney General. We had no input into that, which meant our process in a sense, was less significant. It was significant in its way, which I'll deal with substantively, but less significant than the people really trying to select the people who were going to staff the administration. I don't want to give you an exalted view of at least my role in the transition process. Dick Riley had sort of an Office of Personnel. They were really picking people. There was all sorts of stuff going on there and we were really not involved in that. Nobody called me up and said, "Who should be Attorney General?"

Now when I became White House Counsel and those things developed, then I had a major role in selecting personnel. Probably my most important role was picking people. I ended up being very important in picking Janet Reno, picking Louis Freeh, picking Ruth Bader Ginsburg, then picking a lot of other people in the Justice Department as well. But that wasn't true during the transition. It wasn't true until after I became White House Counsel.

The transition process, which lasted say from the end of November to the inauguration, that role was not mine. I don't want to overstate the role; I don't want to understate it either, because it was fairly important in some respects. What we did—it was sort of an intelligent way to do it in retrospect, and I was happy we did it. What Peter Edelman and I did was recruit various people to come onto the Justice Department transition, mainly Washington lawyers, because it was going to work out of there. I don't think exclusively Washington lawyers, both men and women, obviously. We each gave them portfolios to do, to write reports on various things.

Everybody wanted to join us. Everybody wanted to do it because many thought it was a way of getting into the administration, and indeed it was. Because many of them, ultimately, even though I had no direct personnel at that moment, it was clearly a way of making yourself known to some of the key people in the administration. Indeed, some of the heads of these subgroups became very important in the administration, either immediately or subsequently thereafter.

For example, Bob Pitofsky is a famous Washington figure who became chairman of the FTC [Federal Trade Commission] and later on headed the antitrust group. He didn't go immediately into the antitrust, didn't become head. Anne Bingaman did, Senator [Jesse F.] Jeff Bingaman's wife. There were all sorts of politics, obviously, in appointing certain people. But people who worked on the transition—Lois Schiffer, I think her name is—headed the environmental thing. She became Assistant Attorney General in charge of the environmental thing and stayed, I think, for all eight years.

So yes, if you're a lawyer and you really wanted to make your way into the administration in some fashion, it was very good to get involved with the transition people, even though the

transition people, myself and Edelman, really weren't having any major say at that point in any appointments.

Morrisroe: Were there subgroups within the Justice Department cluster? Were those corollaries of the DOJ [Department of Justice] institutionally, like antitrust, natural resources?

Nussbaum: Exactly—environmental, natural resources, criminal division, civil division. We broke it down sort of, SG's [Solicitor General] office, office of legal counsel, all the major elements of the Justice Department we sort of tracked. We had people who then would interview people or collect data. They would each write hundred-page reports, which Edelman and I would read and edit. It was designed to be sent on to the people who took over, to the Attorney General, to the Deputy Attorney General, and to the various division heads, these reports. Who knows how much they were used and not used?

A lot of reports were compiled. Some were better than others. There were good ideas, there were silly ideas. It was done. We interviewed people in the Justice Department, both career people as well as political people. I think someone should go back some day and look at the work product. I don't think it was bad. It was done quickly, or relatively quickly, over a six- to eight-week period. But I think if I were an Assistant Attorney General I would read what was collected to see whatever ideas I could get out of it.

Young: Were the career people and the political people in the Justice Department in the Bush administration helpful?

Nussbaum: Yes, they were helpful. People did cooperate, by and large. There were some tensions, but even the political people were willing to talk. There was a lot of good feeling at the time.

I remember when I became White House Counsel, even before that, I met with Boyden Gray. I also met with the head of the Justice Department. In fact, he wrote a story about it. He doesn't describe the conversation accurately. Bill Barr, who is now general counsel of one of the big telecom companies—God, he wrote some piece in a law review or someplace saying he met with me. He warned me to not appoint an independent counsel, he said, or something like that, which is interesting.

We did have a discussion about that. I said, "We have nothing to worry about, we'll always be moral," or ethical, or something like that, making it sound like, believe me, something I would never say. Even if I thought it, I would never say. It's silly. He made me sound—big deal, a lot of people make me sound silly from time to time. It was not an accurate thing, but he was sort of right. I think we did discuss the independent counsel, and I think what I said to him was, "I agree." I developed this position before I came into the administration, so it was not as if—

But the point is, even the highest officials would meet with us. As the head of the transition, I met with the heads of the Justice Department. I don't remember if I met with the Attorney General, but I met with Barr at the time. So we collected these reports. They were eventually turned over to the Attorney General and the new Deputy Attorney General, Phil Heymann, who I

did have a role in appointing, because I knew him. He was a colleague of mine. We went to law school together and he ended up being appointed because I wanted him to be appointed at that time. He ended up not really getting on with Reno and he left, and Jamie Gorelick came in.

Riley: Did you use any kind of model for organizing this? Did you talk to anybody else who had done transition work before?

Nussbaum: Actually, we talked to some of the [Jimmy] Carter people who had done transition before. The difficulty we had—a difficulty that really was reflected in the administration for the first couple of years, certainly the year or so I was there—the Democrats had been out of power in this country since 1968, for all practical purposes, when Richard Nixon beat Hubert Humphrey in 1968. People don't fully appreciate this. Except for a short, some might call it unsuccessful interregnum, from 1976 to 1980—the Carter administration—so from 1968. The next is going to be 2008.

Well, let's go back to 1992. Even there it's a long time. That's 24 years from 1968 to 1992. Out of that 24 years, only four years you had people in the executive branch who were Democrats. So there weren't a lot of people to really talk to. You could talk to Lyndon Johnson people, as we did from time to time, but really Democrats have been out of power, and a whole group of people who have been trained to come up were not really available.

Now we did talk, obviously, to the Carter people. They were there. But there were not a lot of people experienced in the executive branch at the time. There were some and they gave us advice, but times change. It was a much more difficult era in 1992 than it was in earlier years, although some of the early years were difficult also. And it's even more difficult in some ways today.

I think I told this story last time, but it's a very important story. If I make a speech, I talk about things like this. During the White House lawn ceremony for [Yasser] Arafat and [Yitzhak] Rabin, the Oslo announcement, it was September, I think, of 1993, I was sitting in the second or third row. My 15 seconds as a big shot. I ended up sitting next to or very close to Jim Baker, who I really didn't know that well, but I'd met him by that time. Of course my name had been in the paper a lot then. I was being attacked for various things.

I turned to Baker. We chatted waiting for the President and Arafat and Rabin to come out. Although he wasn't a great friend of mine, we were chatting. He was very polite, very nice. I remember he left a bottle of champagne for [Thomas] Mack McLarty when we walked into the White House, which was a nice gesture. Anyway, this was months later, this was September. I said, "Jim, why didn't you warn me—" I was trying to make light— "about coming to the White House, what it's like, all this publicity, all this stuff I'm taking in the press, all this criticism?" I was making light of it, "Why didn't you warn me about that?"

He said something I never forgot. He said, "Bernie, nothing prepares you for working in the White House other than working in the White House." Maybe I said that last time, but it's very true. No one really fully appreciates that. Nothing prepares you for working in the White House other than working in the White House. Even people who worked in the White House, the whole

Bush administration now is filled with people who worked in the White House. Donald Rumsfeld worked in the White House, Dick Cheney worked in the White House, Colin Powell worked in the White House, Condoleezza Rice worked in the White House. Think of it, everybody—

Young: Gonzalez?

Nussbaum: Gonzalez didn't work in the White House.

Young: He was White House Counsel.

Nussbaum: He worked in the White House before—I'm talking about people who came into this administration.

Morrisroe: Had previous White House experience.

Nussbaum: They all had previous White House experience. In the Clinton administration, nobody had previous White House experience. But even people with previous White House experience, I've learned, even that is almost not enough anymore because of the way the world changed. I think the Cheneys and the Rumsfelds had worked in the White House for Gerald Ford and for Richard Nixon. They go way back—much less Ronald Reagan and things like that. The vast amount of heat, publicity, partisanship that has happened. Even they, I think, are a little shocked.

Now I'm fully prepared once again to work in a White House because I've worked in a White House. But if I ever went back to a White House, which is not impossible I guess, since there is another Clinton who may run for President, although it's not likely either that she'll win, or even if she won that I'll do anything. But right now I feel much more equipped to work in the White House than I really was then. Actually it's true for Hillary Clinton too. And there's another person who worked in the White House, for all practical purposes—George W. Bush.

He didn't have an official role in the White House, but George W. Bush worked in the White House. He was involved. But if you do it without working in the White House—it's an important point. This one historians should really understand. I thought, *This is a fairly successful firm. We are involved in major cases.* In fact, we're starting a major trial soon which will get a lot of publicity. It's one of the largest institutions in the United States and there will be a lot of newspaper coverage about this thing, which I'm probably not going to try myself. One of my partners is doing it. I'm deeply involved, I may have to get more personally involved. But there are newspaper stories and stuff like that. We represent some of the largest companies in the United States, some of the most important people in the United States, some of the richest people in the United States.

Someone gave me a cartoon not too long ago, a lawyer sitting behind a desk and somebody handing him something. The lawyer says to the client, "You've come to the right place. We specialize in securing justice for the ultra rich." So it was sort of kidding me. But the point is we're involved in highly visible things and our clients are involved in highly visible things, some

of the most famous businessmen and business institutions in the country. So you think you're prepared for the White House. Nobody is a stranger to getting their name in the newspapers or even being criticized from time to time. There's nothing like the White House.

Even these people are shocked. Twenty-four hours a day, seven days a week, the spotlight shines on you all the time. It's changed. It's been written about. But some people don't fully appreciate it. I'm reading Conrad Black's book on Franklin Roosevelt. Franklin Roosevelt could go off for four weeks on cruises to Newfoundland to see [Winston] Churchill or to do various things. There's press with him, but reports are limited. You can't do that anymore. Twenty-four hours a day, seven days a week, the media spotlight shines upon you in a very adversarial kind of culture generally, much less a media culture. Everything being read against you. You're screwing up here, you're screwing up there, and you're doing wrong things. Both the media want to say that because that's in their career interest. It's not even political. They don't have a political agenda; they have an entertainment agenda, in effect. And of course the opposition party, Republicans or Democrats have their own agenda.

It's very difficult. But the only thing that prepares you for it, the only way you fully emotionally understand it, is if you worked there before. That was the problem with our transition. We had some people—Lloyd Cutler had worked before in the White House. He worked in the Carter White House as White House Counsel for a while, and Mike Cardozo. There were some people from the Carter administration who tried to be very helpful, but that was a very limited period of time. That's what made the transition quite difficult.

If either Hillary or another Democrat wins in 2008, which is still a big if, then there will be a cadre of people such as myself who have been around. Bob Rubin, a lot of other people, probably including me, will not go back in one way or the other either to the White House or the administration, but on the other hand will be around to discuss the kinds of things we're discussing right now and to warn people who are going in who haven't been there before.

Also there will be a large number of people who will be prepared to go back in higher positions. There's sort of a bench now that was built up during the eight years of the Clinton administration, however difficult that administration ultimately was. That will be very useful to the Democrats. On the other hand, if the Democrats lose in 2008, as they may, and they're out of power for again another eight years; if there's a new incumbent from 2008 to 2016, then you're going to have the same situation that we had. All of a sudden the bench disappears. The Nussbaums and the Rubins and all those other people start getting old. I'll be glad to talk to somebody from the nursing home, but I don't think it will be that valuable.

Riley: Maybe they'll come read this transcript.

Nussbaum: That's a good point.

Riley: You mentioned Phil Heymann as somebody that you had a role in, and one of the things that we wanted to talk to you about was the extent to which you were involved in the personnel decisions, both in the transition stage, and I guess more importantly, the period before the Attorney General.

Nussbaum: I may be repeating some of the things I said the last time. If these answers are too long you can cut me off. You decide. As I said, I wasn't really involved in the personnel decisions during the transition. I didn't know Zoë Baird was going to become Attorney General until shortly before they announced she was going to become Attorney General, that she was nominated for Attorney General. But then I became White House Counsel. I was appointed, or it was announced, something like January 6 and we started work on January 20.

I think I said this last time too—it was an amazingly difficult thing to do. The White House is an empty place. We had to set up this whole office. We had to hire staff, and while people were cooperative, there was no institutional memory. It's like opening and creating a new law firm. So it's an enormously difficult task. I had to get a deputy. I had a deputy, Vince Foster, who was a wonderful human being, one of the great tragedies of the administration. In my view, Foster was some day going to be on the Supreme Court if we stayed and if he stayed healthy. He may have been on the Supreme Court, maybe not.

After the independent counsel, everything was going to change, in any event. So I basically had to put together this team and this staff. You can't work alone. Foster and I had to do it together. Foster was selected as, I think, Deputy White House Counsel before I was selected as White House Counsel, but we got along instantly and we had a wonderful relationship for the seven months we knew each other.

Morrisroe: Can I ask what type of people you were looking for to fill the positions in the counsel's office?

Nussbaum: We were looking for good lawyers.

Morrisroe: Were you looking for area specialists? You needed a judicial selection person, or an ethics person?

Nussbaum: Yes, that's correct. We were looking for good lawyers, but we also knew who could do the tasks. We needed a person to help with judicial selection. We had gotten Ron Klain, who was able, very political, but very good in his own context. We wanted constitutional scholarship. I got Walter Dellinger, who became a very prominent and famous person and who's now a dear friend of mine and worked with me on this case that's going to trial in two weeks. He's now a partner at O'Melveny & Myers, a very large law firm in the United States. So I was trying to get very good people to join my office. But I'll come back to that.

What happened in a sense increased my role, my visibility, and whatever little power I had, but in some ways it was also unfortunate. The Zoë Baird nomination. I walk into the White House on January 20. I had nothing to do with her appointment, and the first thing that happens is her appointment is blowing up because of the nanny situation, the non-payment of withholding taxes. Indeed, as I think I mentioned last time, the first official act that happened to me was to be consulted with respect to that. The first day that the President is in office, January 21, I guess, 1993. I'm sitting in the White House mess and I get a call asking me to come to see the

President. This is lunchtime. It's the first day. Shows what an important figure I am; the President can't get along without me even for the first morning. I didn't know what it was about.

So I walk in. I liked the President. I hadn't seen the President. There are other people there including [George] Stephanopoulos, maybe McLarty, Chief of Staff. He says, "Bernie, you know we have a problem, there's Zoë Baird, there's the Hill." She's testifying that day. There are confirmation hearings going on. This nanny thing, didn't pay withholding. I said, "Did we know about it?" She's been paying her taxes and everything. They said, "Yes, we knew about it, but nobody really appreciated—" They knew enough, but nobody really appreciated the significance of that thing. So we have to make a decision as to what to do about it. There are all the others in the room saying, "We've got to get rid of her." The President said, "What do you think?"

I said, "I think that's the wrong—we knew about it. I can understand the implications, but we appointed her. For us to withdraw her at this time—she's a respectable person—is a tremendous sign of weakness." Then I tell stories. I began with, "If we do this—" I'm very tentative. This is my first conversation, and all these other heavyweights are saying we should get rid of her.

"It reminds me of what happened with Carter," I said, "when Ted Sorensen was appointed the head of the CIA [Central Intelligence Agency]." They had this enormous blast. "We have a Democratic Senate. She should be able—" "Joe Biden's calling up." "Well tell Biden you're the President, and help us with this thing." Carter then lets Ted Sorensen go. It gives the sign of immediately being rolled and being very weak, right at the outset of the Presidency.

I always remembered Stephanopoulos saying this stuff; it may be unfair to George. But mostly he did say, "That's wrong." This is the beginning of a long series of battles with Stephanopoulos that ends with the independent counsel a year later. "That's wrong; this is different. That was a policy area that Sorensen was too liberal, couldn't be the head of the CIA. This is an ethics issue." I said, "Maybe you're right. There is a difference, but it's not ethics. It's going to be perceived the same."

You know what I remember? I remember the first George Bush nominating John Tower to be Secretary of Defense. You've got to know history, people in the White House especially. John Tower was a former Senator; normally it's easy to get through. There was this vicious attack around him, around the country, that he was a drunkard, a sexual harasser, all sorts of things. How can he be Secretary of Defense? And things like that.

George Bush—now maybe there were valid criticisms, some of them, but George Herbert Walker Bush stood by him. There was a vote. He lost, 52-48, something like that, and he appointed Dick Cheney, who then became Secretary of Defense, and life went on. Sometimes it's better to fight and lose, which was interesting about the Harriet Miers thing. It's the first thing Bush has done that really sort of surprised me, really shows a weakening of concern. This is a very interesting development. Now maybe it will work and this guy [Samuel] Alito, who's probably an able guy though very conservative, will get through. But this is very interesting what happened here. It's a combination of a lot of things.

But in any event, I'm talking to Clinton at that time. "I think we should stick by her unless something else—" "No, we can't do it. You've got to go tell her." I'm the White House Counsel. So I went to see her, I went to see her husband; I went to see Lloyd Cutler and Warren Christopher, who were the ones who recommended her. Remember, I had no role in appointing her, but now I have to go tell her that she can't be Attorney General, she has to withdraw. I'm a big boy. I can do that. So I went and I told her. It was hard. I've seen her since. She's a very good person, very good woman. I think she would have been a good Attorney General.

Then what happened—it had a tremendous effect on me because I can now find a new Attorney General. All of a sudden I was in charge of the personnel process. I had to find a new Attorney General, a Deputy Attorney General—Phil Heymann as it turned out. I had to recommend people. In fact, there was a story about me in the *New York Times* the first couple of months that I was now the de facto Attorney General of the United States.

I wasn't the Attorney General. I was the White House Counsel. I wasn't really making Justice Department decisions. There was an acting Attorney General, but that was what the perception became and the perception in some ways was accurate in the sense that while I wasn't making Justice Department decisions, they were consulting with me from time to time and Foster and I were going out and trying to find people. We ended up staffing, in effect, the Justice Department. It took a period of a few months: Janet Reno and Phil Heymann and Jo Ann Harris and all the senior people, some of whom came out of the transition.

The people who met me in the transition got very lucky because they knew me and all of a sudden I was a key figure. Normally, Zoë Baird would become Attorney General, a deputy would have been appointed who would have been acceptable to her, and they would have staffed their own Justice Department. We would have had maybe a veto or maybe some input, but they would conduct the process.

What ended up happening, by and large, is I had to conduct the process. My office gives me a fair amount of power to do it, but it really wasn't that great. I had mixed feelings about it. I was perfectly happy to try to find good people, because I considered the Justice Department enormously important, but because of the Zoë Baird unexpected collapse, it was a very difficult situation, but we finally did it.

We got Reno, who turned into a very popular, populist Attorney General, and we appointed other people. We got Louis Freeh, which didn't work out with Clinton in the final analysis for reasons I think I talked about the last time. But I ended up then playing a major role, and Foster did too, for the first three or four months recommending people and talking to people. That's how Phil Heymann became deputy. I convinced Reno to do that. I mean I got Reno's approval and Reno and I started creating a relationship. We had a good relationship. She had a good relationship with Foster too.

Riley: Was [Webster] Webb Hubbell in all this?

Nussbaum: Webb Hubbell was made Associate Attorney General.

Riley: He wasn't one of those people who had been identified in advance in a sort of parallel fashion to Vince Foster?

Nussbaum: No. I met Webb Hubbell about the time I met Vince Foster. Webb Hubbell was also known to us here at our firm. He'd worked on matters. He is, and was, a wonderful man and a decent guy. Obviously there are so many tragedies here. The Clintons—sad.

Webb Hubbell was a wonderful guy, a very able guy, a very decent guy. He was a very smart and very experienced guy. Obviously he did a very stupid thing back in Arkansas when he got over his head in a case and ended up spending more money than he should have spent on that case and then was accused in effect of stealing from his partners. It never would have become anything, certainly not a criminal matter, if he hadn't come to Washington. But he did have perhaps that skeleton in his closet, although it only became a skeleton because he came to Washington.

If he'd stayed in Arkansas nothing would have come of it, except maybe minor civil implications if it ever came to light. But he was an enormously valuable person. Reno liked him, people liked him. Of course the image is he's a Clinton crony. Harriet Miers is a Bush crony. Crony is this loaded word. Harriet Miers has had a very distinguished career. All her life she worked her way up. All of a sudden she's a crony, in effect. So fine, that's the press, that's life in the United States at that time and this time. But Hubbell was very valuable to have in the Justice Department. I wanted people I could trust and who were friends. Hubbell I could really trust. I knew Clinton could really trust him and Reno grew to trust him. That's what was so unique.

You'd think Reno would be bristling at having an Arkansas person who is so close to the President, but Reno was very good in that regard. Secure people by and large make a judgment about other people. If in fact he's not a good person, then you'd be upset to try to stick somebody in the Justice Department. When we put Hubbell there, Vince Foster was reluctant to do that, he was afraid. I don't think Vince knew anything about what Hubbell had done, but Vince was wary about having Hubbell over at the Justice Department. He was afraid Webb would become too visible and would be the subject of attack. He didn't want Webb to get hurt. He didn't want the administration to get hurt.

I said, "No, what's wrong with that? Sure, he'll become visible. Webb's a good guy. Is there any reason why we shouldn't put him there? Do you know something? You know him. You've been his partner for 25 years." He said, "No, there's really nothing." And I believe that. Foster would never lie to me about that. "But," he said, "I'm a little nervous because all these Arkansas people are so subject to attack." I said, "Oh Vince, as long as he gets on with Reno—" I got on with Reno. Vince got on with Reno. Vince really found her and interviewed her. She liked Vince and she liked me. So we'll all work together.

So yes, we staffed the Justice Department with Heymann and with Hubbell and then with Drew Days [III]. I in effect did that because when Reno came in I was recommending people, but I had to get her approval ultimately. Sometimes she fought back, and sometimes we discussed things. She trusted me, so she basically went along with a lot of the suggestions we made. They were all good people. I'm not ashamed of any of the people.

Riley: Other than personnel, were there any policy issues in the first couple of months at Justice because of there being something like a leadership vacuum over there that you had to play a part in?

Nussbaum: Yes. I tried to keep hands off mostly. I really wanted people there to do their jobs. I understood the sensitivity of the White House dictating things to an area such as the Justice Department. On the other hand, the White House is the White House and the Justice Department still is part of the administration. You have to strike a balance here as to how to do it. Clinton used to get mad at certain decisions the Justice Department was making from time to time.

One thing I remember in particular in the early months. Later on we in the White House Counsel's office were somewhat less in the firing line. In the early months we were in the firing line because certain policy decisions had to be made, although I kept insisting that they make them over there. I remember once they took a position on a state pornography statute that barred showing children in underwear. The lower court ruled the statute constitutional; you can't show pictures of children in underwear. The Justice Department decided to take the position in the appellate court that it was unconstitutional. It wasn't really obscene and things like that. So they took that position. "Clinton's Justice Department Favors Showing Children in Underwear, Fights Obscenity Statute." That was the headline when the Justice Department took that position. I never forgot this.

So I'm in the Oval Office. They made the decision. They didn't call me up in advance. Those are the kinds of decisions they make. I'm in the Oval Office the day it comes out with Clinton and George Stephanopoulos, and the President is furious. He's screaming at George. "George, that's the stupidest thing I've ever seen. That's how Democrats get killed, these stupid decisions that people make in this administration. This is the way we lose elections. George, it's the dumbest thing I've ever seen."

I'm standing right next to him and I say right in front of the President, "George, he's not screaming at you. He's screaming at me, George. He doesn't want to really scream at me. I'm older than he is," stuff like that. But he's screaming at George, George who had nothing to do with it. I said, "George, he's really mad at me, not mad at you." I said, "Mr. President, that's their view, their judgment on this thing. There's a whole history about these statutes and things like that. I'll talk to them and make sure that somebody is really reviewing it."

That's the kind of role I really tried to take. "I'll talk to them. I'm not going to tell them to change anything." I didn't. I'll just say, "Look, somebody should be looking at this. Make sure the proper people are making the decisions here." But basically I tried to stay away. But other things came up from time to time where, for example, I'm trying—I remember HIV [human immunodeficiency virus] people in Guantanamo. They tried to get into the United States. I'm going to mix this up a little.

Morrisroe: That's all right, I think actually you told the story in the last one, about the Haitians and whether they would be transferred to the U.S. for AIDS [acquired immune deficiency syndrome] treatment.

Nussbaum: That's correct. I won't tell that story again. But I told the Justice Department—it's really the Justice Department, the President won't do anything about it. The Justice Department lost the case. I called them and told them they should seriously consider not appealing. So the court had ordered them to come into the United States rather than—it was that kind of thing. But basically I tried to stay away from policy.

Morrisroe: When you were having conversations with the Justice Department in these instances, at that point were you observing the protocol that emerges later, where you're talking to the deputy or associate and then they're talking to the Solicitor General? Or in this early stage, when there is no Attorney General, are you directly calling the Solicitor General's office or the heads of the divisions?

[*Phone Interruption*]

Nussbaum: I basically talked to the heads among senior people there. I understood the power of talking to some lower-level people if I would call somebody up there. But I was very cautious. For a while a guy named [Stuart] Stu Gerson, who was a Republican holdover in effect, was the acting Attorney General. I would deal with Gerson, with Hubbell, people like that. I wouldn't really want to go down in the ranks and start ordering people around. I was very conscious of the sensitivity. I believe there's nothing wrong with it, but I understood the sensitivity.

The Justice Department works for the President. The President is the chief law enforcement officer in the United States. But there's such distrust now. It's sort of crazy. But this is what has happened in this culture of ours. There has been an enormous change here, which is not good. What it undermines is the effectiveness of the executive branch. That's why the Fitzgerald thing bothers me. The Starr thing bothered me. This is bad stuff. There's ways of dealing with Presidents. It's the impeachment process. Really, the Congress does it. They can do it; that's their role. But to appoint prosecutors to start chasing people down—it has a terrible impact on undermining the executive branch here. I was sensitive to those issues, I believe. Once the Justice Department got rolling, when Reno was in place and Heymann was in place and these others were in place, I would only deal with the top people in the Justice Department if any issue came up. We had a lot of trust in each other and we consulted each other. Have you interviewed Phil Heymann?

Riley: No.

Nussbaum: You should interview Phil Heymann. You're going to get a different view on some of the things. He was a little angry about certain things. Phil would be very interesting. You should interview Phil because Phil was there for however long he was there and he ended up not leaving on a terribly friendly basis. He testified before Congress contrary to certain things that I did or didn't do at the time, even though he was a friend of mine. We're not enemies now, but we don't see each other anymore. It would be interesting. Also he's a very smart and knowledgeable person. He would have very good insight into the beginnings of the Clinton administration. He probably would be much more critical of a lot of things than I am, and maybe even critical of me in some respects. I don't know.

Riley: Gays in the military was something that flared up. We're just going to go down through the timeline and touch on some of the major issues and see if you have any observations.

Nussbaum: I have observations. Gays in the military is an issue that blew up right in the beginning. It came out of the blue. I really didn't have a very big piece of it, although I was involved. As in any crisis I was involved to some extent in it. My view, I mean, Jamie Gorelick, who was then the General Counsel for the Department of Defense, later became a very important Deputy Attorney General after Heymann left—I brought her over as Deputy Attorney General and convinced her to become Deputy Attorney General. It was a very important appointment after Phil Heymann left. She's a very smart, aggressive, able person, a good lawyer.

Riley: We have talked to her.

Nussbaum: She really ran this thing. I didn't really agree with a lot of things. She was really representing her client, the Department of Defense. I mean she's a good lawyer. This is her client. She's going to try to do what her client wants, and gets—it turns out, obviously, her client didn't really want gays in the military so she was trying to prevent, evolve a policy. I, on the other hand, was worried. This view I expressed, although again, because I wasn't directly brought into the issue—and then the Senate was horrible. Sam Nunn.

Here again, lack of loyalty, the Democratic Senate, at least in the beginning. Sam Nunn thought he should be President rather than Bill Clinton. Sam Nunn is a respected Senator for all these years; Bill Clinton is some boy Governor out of Arkansas. I thought, again, Clinton was making a mistake. I don't remember telling Clinton this to his face, although I told it to other people in the White House. I may have even told it to his face.

The thing blew up. I was sorry it blew up. I didn't want it to blow up. We needed to deal with this issue, but this is what you should do? He was afraid. You should sign an order ordering gays to be permitted to be in the military by executive order just like [Harry] Truman did with blacks. If Congress wants to override it, let Congress override it. You were true to what you said in your principles. Let's keep Zoë Baird. If Congress wants to turn her down, turn her down.

Unfortunately, gays in the military came up. It would have been better for you—now we could write an executive order, not saying that gays have to be admitted overnight. We can craft it any way we want to craft it, but let's take the heat right now. All of a sudden you start backing away from things, it undermines your own credibility. This is something Clinton didn't appreciate. It's something I did appreciate. I know it's sort of self-serving to say. Now some of these things I saw clearer than others at the time. Maybe I was suggesting foolish things. Clinton probably was right on the Haitian thing. I wanted to bring the Haitians over. He said no. As it turned out since the court ordered them to come over, it was sort of clever. They came over but we didn't order them over. I just stopped an appeal to prevent them from coming over.

I'm not saying I was always right on every one of these things, but I felt that the President had to act strong, act consistently, even if he lost. It was better to lose. It doesn't harm you if you lose and you fight; it's better than to withdraw from various things. That harms the Presidency more.

Some fights I'd rather not have gotten into. I don't want to lose. But gays in the military isn't something I wanted. Now Jamie, on the other hand, at least in my memory, she was pushing, "No, no, no, you can't do this to the military. Clinton has to create a relationship with the military," which is true, because he was considered this left-wing draft dodger, Vietnam War evader, and things like that. So it was more complex. Colin Powell wasn't very helpful. Colin Powell was protecting himself and his institution, Chief of Staff, but a President has to be fairly tough and fairly strong.

Now you take risks when you're tough and strong, but you take even greater risks. You can't avoid risks. Some of the things I suggested might not have worked out, maybe would have been a disaster if he signed that executive order, but that's what I wanted him to do. But it wasn't my issue. I didn't push it. It wasn't like the screaming fit about the independent counsel. It didn't rise to that level because I was sort of on the side of that thing. But I made my view known. It wasn't like even Zoë Baird, where I clearly made my view known to him, or Lani Guinier later, where I clearly made my view known. Don't abandon Zoë Baird, don't abandon Lani Guinier, don't abandon the people in the travel office, don't conduct internal investigations. I was in a series of battles, all of which were designed to strengthen the President, all of which he kept retreating.

Riley: One of the other things that we didn't talk about last time—there was a big piece of White House activity in the first year and a half, roughly, the healthcare reform act. There's a question for you in there about was there counsel presence in that reform effort?

Nussbaum: Yes.

Riley: Can you tell us a little bit—

Nussbaum: It wasn't my presence. Hillary of course was put in charge of the healthcare thing. Nobody asked me about that. Hillary wanted to do it obviously; the President wanted her to do it. It sort of worked in Arkansas when she headed an education thing. At least they said it worked in Arkansas, and presumably it did. I was uneasy about it.

Riley: For political reasons, or for—

Nussbaum: Yes, I felt this would expose Hillary. Hillary was an enormously valuable person. She's very smart, very tough, and very good. It would be better for her to stay behind the scenes and not expose herself. Healthcare was going to be an enormously important issue. For her to go out front on this thing so early in the administration I thought would expose her. I thought it would make her less available for other issues where she could effectively be behind the scenes.

I had great admiration for Hillary. Hillary is a tough lady, a tough person. She's much more experienced now. And I've known Hillary since she was 26 years old. Hillary and I go back a long way and I have great affection and respect for her that continues to this day. I was reluctant, but nobody asked me and I wasn't going to go in and tell the President he shouldn't do it. He didn't ask me and I wasn't going to go and tell Hillary that she shouldn't do it. She didn't ask me. But I sort of made it known.

Then something funny happened in the White House. When we went into the White House, I knew Hillary very well. I really didn't know the President very well. On the other hand, Vince Foster knew Hillary very well and knew the President very well. As a kid, he was Hillary's partner, Vince Foster. We were like partners. I was Counsel, he was Deputy Counsel, but it was like we were senior partners of a little law firm. You might think I'd work more with Hillary, and he'd work with the President, because I didn't know the President, and he knew both of them. I only knew one of them for all purposes.

It ended up just the opposite. I worked with the President most of the time, although Vince worked with the President too. The President loved Vince, and Vince worked with Hillary most of the time. I didn't really work with Hillary very much. I would talk with Hillary and see Hillary. When the healthcare thing came up, Vince was tasked, by Hillary really. I could say by me, but I guess I approved it. I was happy about it. Hillary wanted Vince, and I was perfectly happy to have Vince work on it.

So he was tasked, he was dealing with issues, more legal issues, what should be done about malpractice, the various legal issues that are involved in formulating any healthcare system. He ended up working with her and her teams with respect to that. One, I was uneasy about the whole Hillary thing, doing it in the first place, and two, I had so much to do in those early months, early years. I was happy that Vince was involved in it. Vince also had other things to do that he did do in addition to healthcare, but he was the one who dealt with her on those issues. He would tell me generally what was going on from time to time.

Riley: Who handled—maybe this happened after your time—the court case about the closed—

Nussbaum: That started to happen during my time. One of my associates handled it in the White House Counsel's office, a guy named Steve Neuwirth. He came with me. Actually, he was in this firm. I brought him down. He was an experienced litigator. He's now a partner of David Boies. He's a very successful lawyer at this time. He basically worked with Hillary and her people and with Vince putting affidavits together, which were then accused of being—this is kind of a silly political attack. We just couldn't believe the partisanship. All they were trying to do was a job. There was no secret, but this is the game there. It's the way the Democrats are playing it now. Bush lied us into war.

When you look at all the intelligence, this is all partisan stuff. There was a good column the other day just listing all the comments Clinton made and other Democrats made, other Republicans made, prior to the Iraq war about everybody fearing there really were weapons of mass destruction. Obviously there probably weren't. There was a mistake, the intelligence was wrong. But the notion that this is terrible, they lied us into war. The political process just does that. You may say the war is a mistake and we should never have gone to war. But to say Bush, Cheney lied. It's the same kind of thing happening here.

Hillary is closing the doors because they don't want it to get out. They're trying to do this radical restructuring of health.

Riley: Do you recall there being any internal discussions before the case was brought about, whether there was a vulnerability of the task force on these grounds?

Nussbaum: Vaguely, yes. We consulted with people at the Justice Department. I vaguely remember—again, I was on the periphery. I really wasn't focusing—I didn't consider it that significant an issue at the time, although it was sensitive. Everything was sensitive.

I remember there were arguments why it was a plausible thing, the positions they were taking. They wanted closed sessions for a while. You can't conduct a lot of things in the open. It was an issue, who's a government employee, who's not a government employee. I mean you can make arguments on both sides. The impression I got at the time—we had the better of those arguments. Now whether it was worth fighting those battles or not is a separate issue, but we weren't involved in making those decisions.

Riley: It occurs to me here I want to ask a hard question because it's something—

Nussbaum: Ask a hard question.

Riley: That bubbles up occasionally. That is that in the commentary on Vince Foster there had been allegations that he and Mrs. Clinton had been involved as something more—

Nussbaum: That's correct.

Riley: Did you give any credence to that?

Nussbaum: No, because he told me that it wasn't true. I might have mentioned this last time. When I met Foster, we got on immediately well. We in effect interviewed each other, we vetted each other. You can say, "What are the bad things people could find out about you or say about you?" He said that to me. I said, "Well, you can say I'm a New York lawyer. I come from a wealthy firm. I'm a tough litigator." I'm trying to think of bad things. It's very hard to think of bad things people can say, but I was trying to make them up.

So that kind of stuff. Who knows, major clients, some of them didn't do wonderful things in life. They can say that. That's what I know are the worst things people can say about me in terms of attacking me. Then I say, "What's the attack on you?" He then said, this is just a conversation, "What's the worst thing people will try to attack you, what will they say?" "People are going to claim that I had a relationship with Hillary, a personal relationship other than professional relationship." "Really? People can say that?" I mean, I knew Hillary a long time also. I said, "So what's the answer to that?"

He said, "It's just not true." Could he have been lying to me? I guess so, but I don't think he was. I really don't. Is it impossible? Nothing's impossible, but I don't think he was lying. I just don't think they ever had a personal relationship, I mean, they were very good friends. Nor does his wife. I've discussed this with Lisa Foster after his death. This has come up. We were very close friends too. She doesn't believe it. Maybe she's wrong, maybe we're all wrong. Maybe only Hillary knows at this point. But I don't believe it.

Riley: Okay. Going down through the timeline, you said you have a World Trade Center thing coming up. I don't know whether you want to deal with the original World Trade Center bombing in '93.

Nussbaum: The World Trade Center thing I have has nothing to do with—

Riley: Okay, I wasn't sure.

Nussbaum: No, it has nothing to do with '93. This is the recent case where there was—that's what I was just signing, our brief that we're sending today. I can read the letter at trial to you, which won at trial at the beginning, late last year, which a jury ruled—we represented the lessee in the World Trade Center, Silverstein parties—that what happened on September 11 was two occurrences, which means we're entitled to twice the insurance limits, so we're entitled to $2.2 billion. That may not be a lot of money to the Miller Center, [*laughter*] but it is a lot of money.

Young: You are so wrong.

Riley: It's obvious that our development people have not been in touch with you.

Nussbaum: The other side is now appealing. The papers I just signed actually happened to be the brief that we're submitting in response to that appeal. That's the World Trade Center thing that happened.

Riley: Happened while you were there.

Nussbaum: Happened while I was there, but we had minimal involvement with that. It was considered a crime, in effect, and it was handled by the U.S. Attorney's office in New York, and they did a good job with respect to it. It was the beginning of the war we're in right now, but we didn't appreciate it in time.

Morrisroe: Can I ask a question that's only somewhat related to this? Did you as counsel ever have any role in taking an interest in prosecutions that U.S. Attorneys were doing or that any of the other litigating divisions were involved in?

Nussbaum: No. The only things I was concerned about were things that could possibly affect the President in some way. There you have to be very sensitive. It was clear to me, even though I have this view that the Justice Department works for the White House and the President can make the ultimate decisions with respect to even prosecutions, but I understood in our society that's a very tricky thing to do. So I was careful, though Republicans would dispute it, to make sure that the White House didn't interfere with any investigations, prosecutions that were going on.

I had sense to know the Justice Department lawyer. I'm now in the White House. On the other hand, the White House has a right to know certain things that were going on. This notion that you have to have this total wall, which happened after I left, partly because I left—I warned the

President about it, which he didn't appreciate, which was another enormously crucial event in the history of the administration. As the Louis Freeh book makes clear, and everything like that.

The only specific thing that I recall is when, for example, Ron Brown was being investigated early in the administration. He was the Secretary of Commerce; he'd been confirmed. There was some issue about some of his business dealings. What I did do there—I think the investigation was out of Miami—he has a good lawyer, Reid Weingarten, with whom I met, who told me there was nothing to this, it was nonsense. I was looking to protect the administration and the President. If there's anything wrong, you want to get rid of somebody, including even Ron Brown, whom the President liked very much and who was close to the President. He had been the Chairman of the Democratic National Committee, now Secretary of Commerce. Unfortunately he died in a plane crash.

So I talked to his lawyer, for example, who told me there was nothing to it. I said, "Well, you're talking to a defense lawyer." Then I called the Justice Department. I didn't tell the Justice Department to stop the investigation. I think it was Reno I talked to. If it wasn't Reno it was Heymann, who was very high.

I said, "Look, you're investigating Ron Brown." It was an independent counsel, unfortunately. "You should do a complete job. If there's anything wrong I want to know about it. You should fulfill your function and do whatever you think is right, but when you investigate a Cabinet member, it would be nice if it could be done in a very expeditious manner. And hopefully, unless it's unduly complicated, maybe you could consider trying to complete this in 90 days, but if you can't, you can't. But really try to do something to clear it up one way or another. If at the end of 90 days you can't do it, you tell me you can't do it." I know investigations go on for years and stuff like that. Maybe this thing can—

Reno had great—I wasn't telling them not to bring a case. If Ron Brown was a crook, bring a case, indict him, we'll get rid of him instantly. But do that. It turned out, I don't know, maybe it took more than 90 days, but eventually reached a conclusion that there was no basis for the indictment and Ron Brown stayed on until—

I did one other thing, I remember, which was sort of sensitive. [Daniel] Rostenkowski was ultimately indicted and sent to prison, a powerful Democratic Congressman. I was in contact with the Justice Department about sensitive prosecutions. I didn't tell them not to go after Rostenkowski. They did. I knew Rostenkowski was being investigated. That was in the press. All I wanted to know was if anything was going to happen. I wanted to be able to warn the President in advance. I didn't want the President to read about a Rostenkowski indictment in the newspapers.

Then what happened once, I vaguely remember, I saw the President was going to be campaigning with Rostenkowski in Illinois, so I called the Justice Department. I said, "Can you tell me what's happening in the Rostenkowski investigation?" It was very sensitive. I didn't say is it going forward. I'm not asking for anything, because I just want to know. The word I got back is the investigation is very serious and it looks like there's going to be an indictment in this thing. I said, "That's all."

Then I went to talk to the President. Just the President and I, maybe McLarty was there. I said, "Look, I talked to the Justice Department. This Rostenkowski is quite serious. There's probably going to be an indictment and you should consider whether you want to campaign with him in Illinois." He said, "I'm campaigning with him in Illinois." And he did. He went and campaigned in Illinois. He got indicted and he went in. That's the kind of thing.

I didn't tell them to stop. There's nothing wrong with it. If that was in the *Washington Post* at the time, it would be twisted into, "Nussbaum is telling the Justice Department not to indict Rostenkowski. Nussbaum is performing—" Cutler would have agreed with me. Lloyd is now dead, unfortunately. We never really got together very much afterward. He was my immediate replacement. That's the role of a White House Counsel. It's a sensitive role in balancing these things. The President should be ignorant of what's going on in the Justice Department totally? No. Should the President put his finger in certain prosecutions? Theoretically, he can. He's the boss of the Attorney General, but he shouldn't do that either, not in our society, not in our country. You've got to balance these things out.

So you need a White House Counsel who's basically sensitive to those kinds of issues, and I think I basically was sensitive. I was accused later on of trying to fix the Whitewater investigation. That's part of the political thing, but of course I didn't do any of that kind of stuff. If I had done, I would have been indicted by the special counsel, who would have loved to indict the White House Counsel and indeed spent three or four years investigating the White House Counsel and explained all the things we had to do to deal with that.

But that's the kind of interaction I would have with the people with the Justice Department, who liked me, who trusted me, who knew I wasn't going to ask them to do anything wrong. Indeed, if I did ask them to do anything wrong, they wouldn't have done it anyway. They weren't going to follow orders from me. Janet Reno and other people were not going to—if I said quash this investigation, they wouldn't have done it. I wouldn't ask them and they wouldn't do it. They're that kind of people.

On the other hand, should we be aware of certain things? Should they understand our input in certain things? Absolutely. There's nothing wrong with that, except in the Washington culture they try to make it sound bad later on. That's what was the result of a lot of hearings and things like that, but nothing happened.

Riley: One of the other big events in '93 was Waco, and that was something that you had mentioned you thought we should cover.

Nussbaum: Well, Waco. Obviously Janet Reno came in and the siege of Waco was going on. We were new in the administration. I met with Reno. My advice to Reno was similar to what I was just saying. Look, the advice was probably not correct advice in retrospect, but my advice was let's look to the professionals.

I think I said, "Consult with the FBI. They're the professional people who have been conducting the siege. It's your decision as to what we do or not do at any particular time, but if I were you, I

would consult with them and really look to them for advice and guidance with respect to this thing. They've been on the firing line there. They know more what's happening. And I have confidence that they'll give you disinterested advice."

I don't feel the same way now about the FBI or the Secret Service or anything that I did then. I really came in with a high opinion of them at the time; my opinion is now somewhat less. Don't overstate it. It's a little bit like the Bay of Pigs, relying on the CIA. This advice that I'm giving now, it's logical and sensible, but somehow I'm sorry about it in retrospect. But ultimately it's your call.

Then the President—there was a lot of publicity about Waco. This is prior to the attack, and the President spoke to me about it and said, "What do we do about Waco?" I said, "I met with the Attorney General, I talked to the Attorney General, and I told her she should look to the professionals and make a decision as to what to do. We should stay out of it." He said, "No, I know a lot about this stuff, Bernie, I was Governor of Arkansas and there were prison riots and all that sort of stuff." I may, in retrospect, also have given him bad advice about this thing, although I thought the advice was good at the time. I said, "No, Mr. President, you really should stay out of this. The Attorney General is handling it. She has the FBI to consult with and various things. You really shouldn't do it."

He said, "I want to have some input into this." I said, "Mr. President, you're the President of the United States, you're not the Governor of the United States. This is not—" It was a good line. That's what I came up with at the time. But the advice, when I think of it now—he basically did what I said. "Okay," he said, "the one thing I want you to do is before she does anything, she should consult with Colin Powell, the Chief of Staff of the Armed Forces, to make sure that the Army—tell the Attorney General that before anything is done in Waco, she should consult with the military, specifically with Colin Powell, to see that whatever they would do, if they go in or they don't go in, makes sense." I said, "That's a good idea, Mr. President. I'll do that."

I called the Attorney General and told her, "Before you do anything, talk to the FBI like I said, but my suggestion is you call Colin Powell," and that's what they did. Colin Powell is the most Teflon person in the world. None of this came up. Before they went into Waco, Powell or some of his people reviewed the plans and said they basically made sense.

We were involved. We didn't know when they were going to go in or if they were going to go in, because I kept the President out of it. I gave her the advice of relying on the FBI, which she then did. They came and told her there were children inside. I then went on a trip with the Vice President to Poland. He spoke on the anniversary of the Warsaw ghetto and I was invited to go with him. I flew on Air Force Two. We got to Warsaw. It was night, we got off, we were in cars, taken to our hotels, and changed clothes to go hear this great speech. I walk into the hotel and I turn on the TV, they're just starting the international news and there's Waco burning on the TV set. I'm in Poland, and Waco is burning.

I call the office. I don't know if I talked to Foster or somebody else. "What's going on?" They said, "What's going on is what you see on TV. What's going on is they broke in and fire started and a lot of people are dead. But we're handling it. We and George Stephanopoulos." And then

they kept the President from making a statement for 24 hours, which was also a mistake. I wasn't involved in that because I was in Poland at the time. I don't know what position I would have taken. Maybe I would have taken the same position they took. I was trying to keep him out of it too. The whole thing was a mistake. You couldn't really keep him out of it. He shouldn't have been kept out of it. I'm sort of sorry—I gave the advice I thought was right. Maybe it's still sort of right. You can always second guess yourself.

So it was compounded. Once it came, then he didn't come out for a while. Then Stephanopoulos made a statement, basically taking the position I took. This is the Attorney General. Go talk to the Attorney General. It wasn't right. You're the President, you've got to come out and say something. I don't know if I would have seen that at the time. Certainly I didn't see it when I was giving him my advice.

Of course Reno then saved herself. She went on TV. She took responsibility, she went on *Nightline.* She made the decision. She didn't blame the FBI. The reason she made the decision was this. She's sad with what happened, but she was the one—and she became a heroine because she took responsibility and didn't run away and didn't hide or anything like that. And Clinton, both by virtue of what happened, and also by virtue of not really speaking out at that time, coming out forcefully, having been kept by the White House, sort of following the line that I created, although I don't know if they were deliberately doing that, ended up being hurt by Waco. It was a great tragedy.

In retrospect, obviously, when Clinton met Louis Freeh later on, he asked him about Waco, and one of the things Freeh said that was a mistake going in, the FBI made a mistake in their advice. They really should have waited and waited and waited and tried to starve them out. Yes, it's easy to say in retrospect. And it's fully correct in retrospect. It's likely Freeh said that because he was very upset about the Waco thing. I don't know what he felt. He was upset he got hurt by it. He never said to me that he was angry at the advice I gave him when I made him stay out of it. But I don't think he thought it was good advice I gave him in the final analysis, although I'm not sure what he would have done if I gave him any other advice.

Riley: Did they feel like the Attorney General managed the fallout from this well, or was there a kind of internal jealousy that she—?

Nussbaum: My recollection is that they were pleased. I mean we had just lost an Attorney General, Zoë Baird, and then this whole thing with Kimba Wood arose, who was never nominated. Everybody in the world to this day thinks there was another nomination. She never was for various reasons. So we were pleased that Reno did not fall at that point and we'd have to go find another Attorney General. There was no jealousy of Reno. They were pleased. They were a little upset that the President was taking this hit and really it wasn't his fault. But that's what happens when you're President. It wasn't his fault. He didn't make the decision to go in; he didn't make the decision to stay out. He was kept out of it by me and maybe by other people also. But we were happy that Reno was strengthened, in effect, solidified and strengthened.

The difficulties between the White House and Reno arose later on after I left. They arose in part as a consequence of my leaving, which is one of the unfortunate things of my leaving, but that was all in the future.

Riley: You mentioned Al Gore, and I don't think we really heard much from you about Al Gore last time. What kind of a relationship did you have with Gore, and what are your observations about his role in the White House while you were there?

Nussbaum: I didn't talk about this last time?

Morrisroe: I don't think so.

Nussbaum: Al Gore and I were quite friendly in the White House for a period of time. I got to know him then. We got on together. I think he thought I was doing okay. I liked him. I thought he was doing okay. The first year of the administration, when we had the successful nomination of Ruth Ginsburg for example, this turned into a great success, which I handled along with Vince Foster—

There was a small dinner party at the Watergate apartments where Ginsburg lived, where I lived, where a friend of Al Gore's lived. We gave a party for Ruth. There were 12 or 13 people. Gore got up at that party, said what a wonderful thing that Ginsburg was going to be on the Supreme Court, what a wonderful White House Counsel I was for doing this. I was his best friend in the White House, which was an exaggeration, as you'll certainly see soon. But it was very nice. It was a nice night, a successful appointment. The Louis Freeh appointment at that point was a successful appointment. Now of course, in Clinton's view, it was the most unsuccessful appointment. That's a separate issue.

Some things were going well, things like that, and Gore was giving good advice. He was, at least in my view, much more hawkish, more direct, and more executive in his approach to things than Clinton. He was more willing to take risks.

Riley: Foreign policy hawkish?

Nussbaum: Yes, foreign policy hawkish and hawkish in other ways. When I was using hawkish I was referring to foreign policy hawkish, but he was also very direct, less frightened of risks and things like that. Sort of the same kind of mentality I think I had. I thought basically he was right on a lot of his judgments, not all of his judgments. He was interested in environmental issues. Sometimes I thought he was going overboard. He tried to lean on me on a certain issue once, which I disagreed with him on, but we had a fairly good relationship. Until Whitewater, near the end. I must have told the story last time about my conversations with Gore. I'll tell it again.

Morrisroe: I don't recall it; I don't think so.

Nussbaum: Maybe I didn't tell it to you, maybe I held it back at the time. It also concerns my new deputy, Joel Klein, who is now a famous person in New York. He was married to the sister

of one of my partners. This will come out in 25 years. I'm going to be a little more cautious in the use of language.

Klein became my deputy. I chose Klein. Klein, now the Chancellor of Schools for the City of New York, works for [Michael] Bloomberg, has done a pretty good job, maybe a very good job. He became my deputy, because I met him, he assisted us, Foster and me, in the Ginsburg nomination. Klein is an able lawyer. He was a Supreme Court advocate. Went to Columbia College, where I went, Harvard Law School. He was a partner in Onek, Klein & Farr]. I didn't know him, but I knew of him. I met him in Washington. He was one of the people who wanted to help the administration. He went to law school the same time as the Clintons went to law school. He knew the Clintons, which is helpful too.

He was very important—when we chose Ginsburg he was like a volunteer, very helpful in that process. He was very familiar with Supreme Court jurisprudence, Supreme Court advocacy. So was Ginsburg, obviously. They worked together very well, the kind of preparation that's going on now with [John] Roberts and Miers and Alito. All the things that are happening now, we were doing then, and he was a key figure in that as a volunteer. He wasn't on the White House staff. He wanted to do it and we were reaching out. We had a small office and we were just staffing the Justice Department. It's not like you've been in office five years when you're appointing Supreme Court Justices. We were in office four months. So I reached out to lawyers, or lawyers were recommended to me to assist us, people I trusted. Jim Hamilton, who is now Robert Novak's lawyer.

So he assisted. I was impressed with him. He was very able. So we get to Gore. I know this is going to lead up to Al Gore. He was very able and I was very impressed with him, and he did a good job in helping us prepare Ginsburg. The Ginsburg thing was a smashing success, partly because of Ruth Ginsburg herself, obviously. Then Vince kills himself the day of the Ginsburg nomination and I have to hire a deputy.

I thought one of my most significant roles in the White House would be in the appointment of Supreme Court Justices. Indeed, the first one had just taken place and another one was going to take place later on, which I only had some involvement in because I was then on the verge of leaving the White House when [Stephen] Breyer ended up being appointed, although my leaving affected even that appointment. Somebody else might have been appointed if I had stayed, somebody who I had great respect for—a guy named Richard Arnold, the Chief Judge of the Eighth Circuit. The only reason he wasn't appointed was because Clinton was worried he was going to die of cancer, and indeed he did die of cancer last year or two years ago, but he would have served on the Supreme Court for ten years. He was a tremendous man, a great judge. So I thought one of my key roles would be to be involved in the appointment of Supreme Court Justices.

Consequently, for that reason I decided to choose Klein. Everybody wanted to be my deputy at that particular point. I could choose from a lot of lawyers who were all eager to come in, but I chose Klein, who I met again during the course of the Ginsburg thing, who I thought was very intelligent. Klein came on. Again, he was very smart, very knowledgeable. We had a problem and he handled some sensitive things. For example, the thing that happened, Les Aspin had to

leave. We had to get a new Secretary of Defense and that thing blew up. I was involved in a search for a Secretary of Defense. Klein assisted on that. Indeed, he did the investigation of that guy who dropped out again—I forget his name—the former admiral who was going to be appointed.

Morrisroe: Bobby Inman.

Nussbaum: Bobby Ray Inman. It brings back bad memories. These kinds of things. He was involved in the Bobby Ray Inman situation. I remember sitting around a table one day asking anybody if they wanted to be Secretary of Defense. [*laughter*] Really. I said, "You should be Secretary of Defense." Anyway, we finally selected Bill Perry, who turned into a very good Secretary of Defense. But even Les Aspin shouldn't have been forced out that fast. I don't like forcing people out too fast. I don't think it helps you that much. After a while it shakes down, but Aspin really maybe wasn't the best person to be Secretary of Defense. He's a wonderful man, but he was more of a legislative type. I could understand some of that.

But then the Whitewater thing happened. Klein, to put it gently, was a Washington lawyer, the same kind of Washington mentality. He was very political, much more political than Foster was or I was. He became attached to other people on the White House staff, always wanted to see which way the wind was blowing. Obviously I was a very controversial figure at this particular point in time. The independent counsel thing then came. I talked to Klein. Klein thought it would be a good idea to appoint an independent counsel. "Under no circumstances is this office, are we, going to recommend an independent counsel. This is a disaster," I said.

"Oh Bernie, why not?" "I'm the White House Counsel. We will not support the appointment of an independent counsel. That's what we told the President, and that's the position of our office." I go away for three days on vacation. I have a place in Puerto Rico. I go away, I come back. I hear the White House Counsel's office is recommending the appointment of an independent counsel. There's a meeting of the staff. I was there. "Klein said you thought it was a good idea."

I was furious. I told Klein this was an outrage. We talked about this. The whole White House staff virtually wanted an independent counsel. This was a major issue of contention on this point. I was against it, which was clear to everybody. Hillary was against it, which was also clear to everybody at the time. Hillary and I were the only two people alone against it. Obviously as long as Hillary was still against it, I had a chance of stopping it.

Klein is now undermining things, saying I was wrong in my position, even though I told him not to do that. Then I had a big blowup with him. I was about to make an effort, and I really sort of fired him at that point. I was going to find him another position in the administration. At that point I wasn't going to throw him out into the street. It wasn't such a bad idea maybe, but I did this. It was a matter of urgency.

Then every morning I would meet with my staff, including Klein, as I started doing from the very beginning. When Foster and I created this little law firm, we'd meet every morning, we'd talk about what was going on and what different people were doing, and things like that. I'd say general things to the staff like, "We're here to support the President. We're the President's

lawyers. We're going to do the right things. We're going to support the President in any way. We're counsel to the President, to the office of the Presidency. We really have to fight for the President, make sure we protect the President as best we can, obviously, with all legal and ethical means." It's the same way I've lived my whole life, for any client, including the clients I have today.

Then these things start emerging, the document issue with Foster. Did the Justice Department do that? All of a sudden it gets back to me that Klein is telling people—classic Washington, other people in the White House—that I have no judgment, that I'm losing all self control in my desire to protect the President. I'm stepping over lines, that kind of stuff, with respect to this thing. He's telling it to various people, including the Vice President, my dear friend Al Gore—not really my dear friend—but telling all these people, and I'm becoming this very controversial figure. Anyway, people are talking to the press all the time. So I hear this.

I was very confident, obviously, of my own position, my relationship with the President, I thought, and with Hillary, but I'm hearing this stuff. This is the end of the first year now. This is not very nice. This thing happens and I hear he's telling these people. I hear the Vice President is very upset that I've been so aggressive, so forceful, in maybe this inappropriate manner. I confront Klein. I said, "You told that to the Vice President?" "Well, Bernie—" I said, "Let's go into the Vice President's office, you and I, right now."

I walk into Al Gore's office with Klein. I said, "He's telling you that I'm unethical or I'm doing this, or I'm doing that." He says, "Well, Bernie." Right in front of Klein I tell him, "What we're supposed to be doing is defending the President. This is our job. This is what we do." "Well Bernie," he said, "I'm sorry. I've talked to Joel. I've talked to other people too. Bernie, I think you really have gone too far in your conduct here. I really think, Bernie, you've forgotten that your moral compass should always point north, and your moral compass doesn't point north. Bernie, I'm going to have to tell that to the President. In fact, I think you should leave."

"That's what you believe? My moral compass doesn't always point north?" I really got pretty angry. I said, "That's sheer nonsense. We're doing our job. We've done nothing wrong. We're trying to protect the President here. I don't overstep any ethical lines. We've acted totally properly. You don't have a damn idea what's going on and you can tell the President any fucking thing you want with respect to me." And I stormed out of his office. Klein knew he was on his way out anyway. I was going to get rid of Klein.

But of course, what then happened is the Vice President went and talked to the President and all this stuff started building up about my leaving, and Klein ended up staying for a while. Cutler came in and then he had to get out of the White House. To the extent that I had allies in the White House, they were very upset at Klein, including, I think, Mrs. Clinton, although she can speak for herself. I don't know what she did or didn't do in respect to that. But I had other people, people who were loyal to me in the Counsel's office, other than Klein. He had his own relationship with Cutler, who kept him on for a while, but Cutler realized he really couldn't stay very easily in the Counsel's office after I left because some of this became known internally in the White House. But the Vice President, all of a sudden, never talking to me, decides my moral compass isn't pointing north. He becomes holier than thou, moralistic, about issues he knows

nothing about and supported the appointment of an independent counsel along with the conventional Washington wisdom with respect to this.

It was part of the independent counsel battle. Because I was preventing the appointment of an independent counsel, I was being very destructive. The White House couldn't get on with life. If we only had an independent counsel, then we'd all get on with life and we could do all these things. I was doing it and of course I had Hillary supporting me because I had a good relationship with Hillary and therefore—I'm giving you their viewpoint. I'm a tough litigator and I will stop at nothing to defend the President—all sorts of clichés and nonsense, because there's things I would do and obviously things I wouldn't do, as I said.

So from their point of view it was important to get rid of me. Also I was a controversial figure in my own light. The press was on my back all the time because I wouldn't talk to them. I wouldn't give interviews with them. It's a big mistake I made at the time because I trusted the President and I trusted Hillary, so I wouldn't defend myself.

In Washington you have to talk to the press because they'll write about you. That's how Henry Kissinger and Jim Baker and all these people maintained their positions. I was the lawyer. I didn't want to do that. I didn't have to do that, I thought—the single biggest mistake I made, looking back. Indeed, it wasn't even good for the President. You have to create your relationships with the media. You have to be careful, as Libby has learned and Karl Rove is learning and people like that. But you have to do that or else you'll be killed, and I was being killed in the press. So the combination of that and this internal White House dispute, that I was preventing the appointment of the independent counsel, and Joel Klein, my own deputy, saying that I was being overly aggressive and things like that.

So Gore and I had this big blowup. We've talked over the years. I've seen him since. For a while we were not talking very much. But I've seen him, and I saw him when he ran for President. We chatted.

Young: So you got defined as a liability.

Nussbaum: Yes, I got defined as a liability. I was a liability and therefore if I left, everything would be peaceful. We'd pass healthcare. I was really—it was all about me. I prevented—it's all about me. Of course it wasn't. I leave, you feed the beast. Then you really start—also you'll lose any ability to communicate with the most important agencies, the FBI and the Justice Department, particularly the FBI. You read Freeh's book. Freeh says that. He says when I left they felt they couldn't trust anybody anymore. It's a very interesting dynamic that took place at that point in time.

But it affected Gore, too, I must admit. My wife makes fun of me. Everything is all about you, she thinks. All history revolves around you. Which is of course not true. It's not about me. Maybe in my head I do think, *Wall Street clearly doesn't revolve around me*. But what happened to the two people who didn't listen to me? Bill Clinton, not listening, had a foolish personal relationship, becomes a major constitutional cause célèbre. There's no excuse for what Clinton did with Monica Lewinsky, but there's no excuse for turning something like that into—so he

goes out in history like that. Because that happens, Al Gore, who turned on me at the end—something happens to him which even I couldn't imagine. It's one thing to run for President and lose. That's a bad thing and it's painful. But to run for President and win and not be permitted to take office. Look what exquisite pain—nobody ever imagined that. I wouldn't wish that on—I wanted Gore to win.

So the consequences, when you just think of these things. Look, this is amazing. The consequences of what happened to Clinton, who will forever go down in history now tied to Monica Lewinsky in one form or another, although he's done fabulous things before and since and as I said earlier, survives much better than anybody could survive, survives and triumphs. And if Hillary becomes President, the triumph will even be greater. Al Gore on the other hand hasn't quite been able to pull it off. I don't know. I've been hard on him, I guess, in this conversation, and I was mad at him.

We were friendly, I did respect him. He did give good advice. I was mad that he jumped to this conclusion without really sitting down with me. It's true, my deputy was saying unfavorable things about me and that weighs heavily. I mean if somebody's deputy is saying unfavorable things about you—but he should have sat down with me and said, "Look, what's going on? What's really happening? What are you doing? Why are you so against the independent counsel? What alternatives do we have?" That kind of thing. But to come into his office and say my moral compass is not pointing north—this ignorant pomposity, which to me that represented after we had this relationship—

Young: But also to say it in front of the source.

Nussbaum: I forced that. That was mine. I insisted. I wanted Klein in there. I wanted to confront Klein in front of Gore.

Young: Couldn't he have said, "Bernie, let's talk."

Nussbaum: He could say that too, but I caused the three-way conversation. I could have had a two-way conversation with him too, and maybe I precipitated. But nonetheless, you're right, he could have said, "Look Bernie, this is something you and I should talk about by ourselves."

Young: Clinton would pay a lot of attention—?

Nussbaum: To Gore?

Young: —to Gore on this?

Nussbaum: Yes, I think he would, and he did. I think that was one of the—I mean, a number of things all came together that forced me out of the White House. I became, in their view, a major liability. One, I was a very controversial figure in the press. I was the tough New York litigator who was defending Clinton at all costs. Even Freeh says something in his book which is not true, that I'm one of these guys—take no prisoners, you don't show them anything, you don't give them anything. It's just really not true. I recommended, as I told you earlier.

Riley: You have prisoners here in the building? [*laughter*]

Nussbaum: I recommended he testify before Congress. I recommended he release all his documents. The whole image was wrong, basically, but that was the image. I didn't leak that I was advising the President to go before Congress and say everything. I didn't leak that I was advising the President to release every document. For a while I thought he shouldn't release them, but two weeks later I decided this is crazy, release everything. I just didn't want an independent counsel investigating him for seven years.

Young: You referred a while ago to playing the press. I've heard a saying in the course of interviews with all these many different people, not just Clinton folks. There's a saying that if you're not a source, you're a target.

Nussbaum: That's absolutely right. That's the lesson in Washington. That's the best way of putting it. I've used that phrase and I've heard it from others. That's exactly what happens. It's a very tricky business. You're not really used to it when you come from any other—I mean there's PR [public relations] in the world, obviously, but it's nothing like the stuff down in Washington. If you're not a source, you're a target. But I was naïve. I'm less naïve now. I was experienced but naïve. I didn't care that I was a target. I understood that if you're not a source you're a target, but I didn't care if I was a target.

In fact, I was quoted once in the press saying, "I serve at the pleasure of the President. Whenever the President wants me to leave, I will leave. If I have to take the lightning bolts instead of the President, well, that's part of my job." That's what I believed at the time. What I think now is that it sounds great, it sounds tough and smart. It really isn't that great and tough and smart. I realize now that unfortunately it's still tricky. It undermines the President politically if you let yourself become a target. It makes it harder for him to stand up for you in some way. Now he really should. He knows what's going on. If he abandons you it's going to end up hurting him.

What I feel now is more subtle. You almost owe it to him to protect yourself somewhat more than I did. Now how you do that and what lines, how much of a source you become, is very tricky, very difficult. Certain people have mastered it greatly, like Henry Kissinger, maybe Bob Rubin. I don't know. I don't know what Rubin did, what others did. I have great respect and admiration for Rubin. I've known him a long time. But it's a tricky thing. Jim Baker was magnificent at it. I'm talking about the "successful" people in Washington, which I clearly wasn't in that respect.

I thought I was a lawyer to give good advice. Of course the advice I gave, in retrospect, was good advice, it was historic advice, as Clinton—it's now coming out in the books. It took ten years for it to come out, but it was good advice.

Young: Were you alone within the White House establishment staff in your views on the independent counsel?

Nussbaum: Yes, virtually alone. I say virtually alone because Lindsey would tell you that he sort of thought I was right, but I was virtually alone. Hillary, as I said earlier, supported me. She understood it. But she really felt they couldn't hold out against this pressure. I was virtually alone. Clinton's book makes the point that this was a key moment in history and that he was wrong in not listening.

Clinton's take, the way he balances out, he said publicly—it's mentioned in Freeh's book also—he says he rejected the best advice I ever gave him, which was not to appoint an independent counsel. He rejected that advice and he accepted the worst advice I ever gave him.

Young: Which was?

Nussbaum: To appoint Louis Freeh as head of the FBI. [*laughter*] So that's what he said in his book, and he's been quoted to that effect. Freeh mentions that in his book. And this is the sensitivity there. In Freeh's book also—I'm not sure Freeh should have written the book criticizing the President that much. Freeh and I are still quite friendly. We were friendly all along. But there the irony is this. I told the President this because I just knew this instinctively, and Freeh confirms it in his book, although Freeh and I never talked about it.

When he was firing me, when I became the so-called liability—maybe I was a liability in that sense—I said, "Firing me will have consequences. It's not that I'm the best lawyer in the world. It's not that I have the best judgment in the world, although I trust my judgment pretty well. It's not that I'm always right. I'm pretty good, and obviously I'm loyal in defending you, but it will have a number of consequences. One of the worst consequences it will have is the difficulty in dealing with the Justice Department. Because of what happened when I came down here, because we had no Attorney General, because we had no FBI director."

We fired the FBI director. I fired [William] Sessions, so we appointed an Attorney General, we appointed an FBI director. I think I made this point the last time, but it's a very important point, because it affects—that's why it's interesting in his book. I said, "You think I'm a liability. It's wrong. You'll feed the beast. But I can communicate with these people. I helped them. You appointed these people; I was instrumental in the appointment of these people. One, they like me, they have their jobs partly because of me. Two, they trust me. Three, they think that their success is bound up with my success and my success is bound up with their success."

In other words, if Reno succeeds or if Freeh succeeds, it's good for me because I was identified with the appointment. I said, "They know that; they're smart people. So they know I'm not going to do anything to hurt them if I can avoid it. They also know I'm loyal to you, so it's a channel by which we can deal with these very sensitive people. You fire me, you get rid of me, at this stage, because I am this 'liability,' this controversial figure, and they will think that we're so close to each other that you would get rid of me in the face of this media onslaught against me and also this internal White House onslaught against me. They'll think you will get rid of them ten times as fast if something like that happens to them. So they will become totally self-protective, as any rational person would. Their loyalty to you will diminish, and your ability to communicate with them.

"It's not that there can't be another White House Counsel, but another White House Counsel unfortunately can't do what I do. It's not because I'm a better lawyer than other people, it's because I was there when you appointed. This will affect your ability on this most sensitive level to deal with the FBI and deal with the Justice Department. So this will be a great disservice to you. Now, you think I'm trying to hold onto my job. I told you this before. It sounds like it, but I'm really not. I'll go back to my nice law firm in New York, nice views, everything like that, and I'll do okay." Little did I know how well I would do, but I'd do okay. "But it will hurt you."

This is a smart man, Clinton. He's got a higher IQ than I have and a lot of other people. He's not a stupid person. He sort of understood it. In fact, at the end of this conversation, he was going to tell me to leave. He had to think about it at the end of this conversation. Then a couple of hours later he sent me this note that Senator Carl Levin sent him. He read in the *Washington Post* all the terrible things I did, and consequently I was a bad counsel and really the President should get rid of me. This typewritten note from Senator Levin to the President was handed to me by McLarty and Ickes. He told them to go up and see me and hand me this thing, and I realized that was his way of saying I should leave, so I left. But it's interesting, it's sad.

President Clinton I think understands that now. We see each other, we talk. We don't talk about this that much.

Young: This made you bitter?

Nussbaum: No. It leaves me sad because I really feel it did have a major impact—the independent counsel and my leaving because of this inability—on the Presidency. On the other hand, it doesn't leave me bitter, because for me it was much better ultimately. I'd be like Karl Rove now and Libby. It was really much better for me, personally. Once the independent counsel thing went into effect, once Fiske was fired, I couldn't have stopped anything more. That thing had a life of its own and it was just going to go on and on and on.

When I think back about my own position, I think it was the best thing that happened. Once he made the decision to go to an independent counsel, I had to leave two months after that. The independent counsel decision was made in early January. It got started in late January, early February. I was forced out in early March in that thing. But thinking back, my prediction, the battle with the independent counsel, which I'm sure I mentioned last time, was that when the statute does take effect, that whoever Reno appoints—she hadn't appointed anybody at that point—he or she would be replaced. That prediction, they all screamed, "That's the most ridiculous thing ever!" They started screaming so loud at me in the Oval Office on that one that even I withdrew. I said, "All right, it's a 50-50 chance only that that person would be—

[BREAK]

Riley: There are a couple more names that I wanted to float past you as people that you had relationships with or may have had relationships with just to see if you have anything to

comment about your time with them. You mentioned Susan Thomases a couple of times already, and we have been talking with her about coming up and seeing her at some point.

Nussbaum: Good.

Riley: We're generally aware of the kind of role that she had played during the campaign when you, on your own testimony, weren't much involved. Did you have much dealing with her, or were you cognizant of other people having dealings with Susan?

Nussbaum: We were in touch from time to time. She's an old friend and a good friend now. She was obviously a friend of the President, a friend of the First Lady's. They saw them socially at the time. When you're in the White House, a lot of people talk to you about what you might be doing here and what you might be doing there. She's been portrayed as playing a significant Machiavellian role, but that's not true. In my experience it's never really true. Once you're in the White House, people don't quite understand I think, nor would I if I'd never been in the White House. I would have the same misconceptions. Jim Baker is right. You've got to be in the White House to appreciate the White House, in a sense.

People try to get in touch, even friends, good friends. What does the President say? It's like being in the crown jewel of the penal system. You're really sort of in jail. It's very hard for people to get to see you; it's very hard for you to get to see people. Your day is taken up. The Libby thing—I come back to it from time to time. It's so sad. Whenever you come in, at 7 o'clock in the morning, you work until 10 o'clock at night in one form or another, sometimes later. It's very hard for people on the outside to reach you.

My office here, it's fairly easy. My secretary will come and get me, even though I'm a busy guy. But in the White House it's very hard. Even friends. Now a good secretary will call you, make sure that these people get through. An enormous number of calls come in. Actually it's a funny thing. That's why being on the White House staff and being in the West Wing itself, the proximity that everybody talks about in Washington, is important because the truth is, it's hard for people to get in, for people to get out.

Surrounded with these people, there is a lot of interaction with them. Someone asked me about *The West Wing*, the television program. I've watched it over the years. I don't watch it very much now. Somebody asked me, "What is that like? Is it really like that?"

I said something which occurred to me and I've repeated it, which rings true to me at least. I said, "You know, when I watch the show, it doesn't look like the West Wing." The West Wing doesn't look like that, other than the Oval Office looks like the Oval Office. But the West Wing is not broad corridors and nice offices and things like that. It's very little and narrow. I had a nice office, but it was not as nice as any of the offices on *The West Wing*. I said, "It doesn't look like the West Wing, but it feels like the West Wing." It shows the pressures, this interaction with all these people, these actors on the show, with each other all the time, dealing with crises and facing the media onslaught and things like that. Even though it doesn't look like it, it sort of feels like it. So it's an accurate portrayal in that way.

That's why Susan Thomases or anybody, once you're outside the White House you have very limited ways of really influencing. Sure, you finally can reach me or reach Hillary or reach anybody and give your view on something which somebody might do. It doesn't have any major impact.

Riley: In the spring of '93 David Gergen was invited in. Is he somebody you had many dealings with?

Nussbaum: Yes, I had a lot of dealings.

Riley: Tell us about it.

Nussbaum: I had a fair amount. He is somebody who had worked in the White House before and was valuable.

Riley: Not for Jimmy Carter, though.

Nussbaum: Not for Jimmy Carter, right. That was valuable. A strange thing for the President to do, but in fact, there weren't a lot of people available who had worked in the White House before. Gergen is skillful, and he gave decent advice and his experience was helpful. But really I guess it all goes back to the independent counsel thing again. I just heard the other day somebody is writing a book, and they called me. They talked to Gergen and the person called me. She made the point that Gergen says, and he wanted my response. Gergen says that yes, I fought the independent counsel, and obviously in retrospect I may have been correct, but really it was inevitable that Reno would appoint an independent counsel in response to all this pressure. Therefore the idea of opposing it really didn't make a lot of sense. It was inevitable.

It's an insight into Gergen actually. He certainly believes it; they all believe it. There was no choice; it was inevitable. It was not inevitable. It's a typical Washington reaction. The press really wants us to do this and some members of Congress want us to do this. We should do it, just get it off our back. It won't have the consequences that you say. It wasn't inevitable. Reno would fold. She would appoint. Reno wouldn't. I knew Reno. We appointed Reno. Reno was not a Washington person. Reno was opposed to an independent counsel until we instructed her. Gergen was good, he was okay, but his crucial advice on this crucial thing was an error, just like the other White House staff members. I call them Washington people.

It's important to have people who know how Washington operates, I agree. And Gergen was a person who knew how Washington operated. We had very few people in the White House who knew how Washington operated. We had some people who knew how politics operated. But somehow it's also good to have people who are not Washington people. I was not a Washington person, although I'd been in Washington on Watergate and things like that.

So ultimately, while he was useful to have and he tried his best, and I have no real criticisms, fundamentally his advice, like a lot of advice of Clinton people, Gergen wasn't a Clinton person. Stephanopoulos—his advice was wrong.

Young: Was he really a strong voice in these matters, a strong advisor? Or was he doing other things?

Nussbaum: He wanted to be a strong advisor and for a while, you talk to him, he'll tell you he was a key figure. Talk to other people. To some extent the President listened to him—he was. He went to Europe with the President. I think he lost favor in the White House also after a while and left. He was a Republican, obviously. He's been on all sides on these things. While I found him a useful figure for a time, and I talked to him from time to time, ultimately he really wasn't a very strong figure.

One of the problems is there's very few strong people in the White House, almost no one when I look back. They look at me as a disaster, maybe as a liability, but when I look back at them, I don't see very many strong people. There were nice people, intelligent people. They meant the best. Nobody did anything wrong in the sense of committing any crime or any terrible things like that. No White House aide got indicted, even though there were efforts, as did John Dean in the Nixon administration under [H.R.] Haldeman, as did John Ehrlichman, as did all these in Watergate, basically. But there were no real strong people, whether they were from Washington, such as Gergen, or from Arkansas.

Riley: Might that have been different had Harold Ickes been able to come in early on, and were you at all involved in the discussions about Harold's legal situation?

Nussbaum: I was involved in it.

Riley: Can you tell us a bit about it?

Nussbaum: I was involved in that. I knew Harold somewhat from New York. I didn't know Harold that well. Harold is a good friend actually of Susan Thomases. Harold played an interesting role in the White House ultimately. Obviously you should talk to Harold if he'll talk to you.

Riley: We have.

Nussbaum: Good. I'm glad Harold's talking. There was a problem getting him into the White House because there was an investigation going on in New York in connection with a union client that he had and things like that. And therefore Clinton was reluctant to get him in. I had mixed feelings. As long as nothing has happened to him, then why not bring him in? Foster had mixed feelings. Foster was a little leery about having Ickes come in until the thing was cleared up in New York, and that sort of made sense. I was maybe rash here. I said if the President wants Ickes, I don't know of anything Ickes did wrong. He's being investigated. I don't know of any reason to believe that the investigation will turn out badly. Just because somebody is being investigated, there are also some investigations going on. I have a lot of experience in these things. I'm not sure anything is going to happen here.

But they wanted to be a little more cautious, and they were probably right, in retrospect. At this point I knew the investigators. I called up the people in New York. It was a judge I know. I said

basically what I said when I described my conversations involving Ron Brown, which was a whole separate thing with the Justice Department. This wasn't the Justice Department.

I had a conversation with the people in New York who were conducting the investigation. I called from the White House. They're very happy to hear from me, they're very proud of me. They trusted me. I was the White House Counsel, I was a New Yorker. These are New Yorkers. This is an investigation in New York. I said, "The President would really like to bring Harold Ickes into the White House if he can. If Harold has done anything wrong, we would not bring him into the White House. If Harold's done anything wrong, whatever happens to Harold happens to Harold. But he's a part of this investigation. It would be good for the country if we could know in a reasonable period of time."

Again, I know investigations. I've conducted investigations. Sometimes you can't conclude— "If a judgment could be made in a reasonable time—" I didn't give any deadlines. I can't give deadlines. I don't think I suggested anything at the time. If we can know—that's all I ask. If we can know so I can tell the President whether this is doable or not doable. Sure enough, because I called these people. I don't know if Harold fully appreciates this or even knows this. I don't think I even told this to him, although Harold and I worked together in the White House for a while.

I got a call back from this person. I don't remember how long later. It could have been months, it wasn't the next day, saying, "It looks like there will be nothing forthcoming with respect to Ickes." I immediately went to the President and the other people. I said, "Look, I know these people in New York. They told me this. They're not going to surprise us if we bring him down here. Let's bring Harold down to the White House."

I didn't really know Ickes that well. I heard he was a tough guy, a difficult guy. I didn't know if it's going to make my life easier or harder in the White House to have Ickes there, but that's what the President wanted. I'm not afraid of tough people. I would hope he'd be very strong. So he comes, I think in December 1993. Just then the Whitewater independent counsel comes up. Harold Ickes, who was just being investigated by a sort of independent counsel, that's where these people were.

All of a sudden Harold—I've talked to Ickes about this. In the first four weeks or so he's now on the Whitewater team. All of a sudden he becomes a wimp, a Washington person. Why? Because George Stephanopoulos—everybody is telling him this is the thing to do. So of all people to support the appointment of an independent counsel, four weeks after he—he knows the risks of independent counsel. He's now politically attuned to Washington. Now he wasn't a big factor at this point. He may have been a bigger factor than I thought.

The President liked him. Stephanopoulos and others who had been in the White House for a whole year were the big factor, but also Ickes—he and I were friendly with each other, unlike the Klein thing I mentioned, things like that. Ickes and I stayed basically on good terms, but I was too controversial. I had to leave. I think my response—Ickes and I talked about it years later. What happened is Ickes was too new in the White House. He was sort of in shell shock.

I was already there a year. He was just there three or four weeks when this thing happened. Later on, of course, he became enormously experienced, an enormous target himself, who then the President in his wisdom forces out in the beginning of his second term, which is a crazy thing, I think, for the President to do. I was long since gone. But he didn't really have his footing at that time. It took a while for him, like everybody else, to get his footing. Then of course he got his footing and he became an enormously important figure in the White House, a good figure in the White House, and a tough guy in the White House—tough guy in the best sense of the word. When I use the word "tough," I mean tough-minded. I don't mean mean or physical, just realistic, tough-minded. Tough to me means being analytical, understanding consequences. It doesn't mean beating someone over the head.

Young: Doesn't mean macho.

Nussbaum: Doesn't really mean macho, no. It's not macho. It really means being sensible, being realistic, that's what it really means. Of course I was portrayed at that time as a tough litigator, take no prisoners kind of thing. Yes, that's the wrong way of looking at it. There's an element of that, but it's the wrong way of looking at it.

So Ickes unfortunately was not of much help in that very crucial period when the President made this crucial decision. To me it was always ironic. I wasn't expecting him to help me because I got him into the White House, although I clearly helped get him into the White House. I don't know how much he even knew of that. I never said anything like that to him. What sort of surprised me—he was a lawyer and also a potential target of this investigation—even though he'd been a target of the investigation, he didn't fully appreciate what this institution was. Very few people did.

To this day, George Bush made exactly the same mistake. They just don't fully understand the consequences. Really it's crazy. They need this with Rove and Libby? This craziness that now—all sorts of difficulties they have in Iraq and things like that, the White House has to be, "What did you say to some reporter three years ago?" That becomes the political ammunition to hand your enemies? Nuts. Bad for the country.

Riley: Somebody else who occasionally has a reputation of being a little bit hard-boiled is Rahm Emanuel. Did you have dealings with him?

Nussbaum: Yes. I had dealings with Rahm. Rahm was hard-boiled. He was, again, a strong person. He was under attack early. He may have been a bit arrogant in the beginning. He learned. Rahm is a smart guy. Rahm learned that the best thing in Washington—after he became a controversial figure in the beginning—is to keep his head down. That's very important. It's a good idea to keep your head down.

Somebody said I should have kept my head down. I did keep my head down, except it was very hard because I was in the middle of all these controversies. I was the counsel. I didn't talk; I didn't defend myself, as we talked earlier. Rahm may have learned how to deal with the press, also. There were a tremendous amount of leaks out of the Clinton White House. The Clinton White House was incapable of stopping the leaking. The Bush White House, until recently, has

been much, much better, much more disciplined, partly because these people had worked in the White House before. They understood the consequences of this thing. The Clinton people were new. They were trying to be self-protective. So it was a lot harder.

But Rahm, he performed well for the President, originally during the campaign in the fundraising area, and then helping him get through NAFTA [North American Free Trade Agreement] and various things like that. He became quite effective and he was a good assistant. I don't know how much he weighed in—I talked to him a lot from time to time. We became somewhat friendly. I liked him. He may have liked me, may not have liked me, I don't know. I talked about some of these issues with him from time to time because I thought he was a potential supporter on them. But basically they weren't in his ballpark. He just sort of stayed away, which is another wise thing some people do in the White House.

Some people in the White House—although Rahm doesn't necessarily fall into this category. There are two kinds of people. There are people who, when a fire breaks out, they run to the fire to try and put it out. There are other people who, when the fire breaks out, they run away from the fire: "It's not my fire." I guess the smarter people learn which fires are theirs, which fires are not theirs. I thought my job was to run to the fires and try to put them out. You run to enough fires and try to put them out, and you can go up in flames.

Young: Isn't there a third kind of thing that happens in the White House, people who *set* fires? [*laughter*]

Nussbaum: Yes, that's true. That didn't happen a lot, although in a sense—

Young: Not deliberately.

Nussbaum: Klein helped set a fire for me, I guess, although that fire would have started in any event.

Riley: What about Howard Paster? Did you have many dealings with Howard?

Nussbaum: Yes, I had a lot of dealings with him. He was an able guy, a very nice personality. I haven't met him for many years. I saw him once in a function a couple of years ago. He was a Washington person. As soon as I say that, it's derogatory, but I don't really mean it. You do need people who really know Washington to staff a White House, and using people outside of Washington totally is crazy. Maybe we had too many people from outside Washington. I found his leaving strange. There was some dispute about something, and he felt he wasn't backed up. You should talk to him too, I presume you have.

Riley: We tried, but haven't been able to get to him.

Nussbaum: That's interesting. He's the head of a major PR firm. I wonder if he's well. Maybe he is—something I have in my mind. He was there for a year. Many years afterwards we had a conversation as to why he left. He left suddenly. He left even before me, and I left fairly early, in

a sense. I was there a year and three months. He had some dispute and he felt the White House wasn't backing him up in something. It was an issue, but it didn't seem to be that major an issue.

I think he was worried about this White House. This is speculation on my part, but I think it's accurate speculation. He has to speak for himself. He was just worried about the inconsistency, the weakness. They didn't really stand up for people. People get abandoned. I think that was true. It certainly was true in my case. It was true in Zoë Baird; it was true in Lani Guinier. It was true in Joycelyn Elders later on. So I think he just got nervous. This is a risky place to be. He'd been Assistant to the President for Legislative Affairs. That puts you in a great position to go out in Washington to work for a public relations lobbying firm.

Young: He had a tough assignment.

Nussbaum: The healthcare?

Young: The budget.

Nussbaum: The budget was a tough thing that year. It was one vote, Marjorie [Margolies-] Mezvinsky. Yes, this was tough. He had a tough assignment. It's hard. Life is hard in the White House. Life is hard in Washington. The President was learning too. The President is 46 years old at the time. We were all learning. When I look back, I think the President learned a great deal, ultimately. I think he became, in many respects, a fairly good President. But that was very hard, the first year or two. Then when he got his footing, I think he really did very well.

Republicans miscalculated when they took over Congress in 1994. It was much harder for Clinton when he had the Democrats and control of Congress than when he became the counter-puncher. When the Republicans got full of hubris, they closed down the government. [Newt] Gingrich, the revolution, the Contract for America. Then Clinton started coming into his own, in effect. He governed, especially with the Democrats not in the majority anymore, quite well, ultimately. But the first year was very tricky. I think Paster was worried that this was not that strong a White House, and I think he got out when he thought the getting was good. He just didn't want to deal with it anymore.

Riley: Tough is not a word that we routinely hear associated with Mack McLarty.

Nussbaum: Mack is a wonderful gentleman, a wonderful guy. He's a very able person too. He's very smart. He's been a very successful businessman in many ways. He's a decent human being as far as I know, as honest as the day is long. But he did lack a certain strength and experience that I think are necessary for the Chief of Staff. That's a very tough job.

Clinton finally had some very good Chiefs of Staff. I think [Leon] Panetta was a good Chief of Staff. I guess he came in shortly after—I think McLarty left by June. I left in March, he left in June. Panetta came in—I worked with Panetta because he was in the Bureau of the Budget. I knew Panetta, having met with him. He did the investigation of the travel office, another ridiculous thing. Panetta is an able guy.

John Podesta, with whom I also worked eventually, became a very effective Chief of Staff. That's when the Clinton Presidency was becoming very effective. He was the last Chief of Staff. But in a tough situation, Chief of Staff wasn't a job for Mack. There he really should have gotten a Washington person. He should have gotten somebody—but it was hard, there was no—he wanted somebody close to him, obviously. Your Chief of Staff is a very important position. He knew Mack McLarty all his life. There weren't a lot of available Washington people Clinton knew well who had White House experience. Again, I talked about this, from '68 to '92. Now again from 2000 to 2008. This lack of talent out there. Whereas Andrew Card, the President's Chief of Staff, worked in the White House, was Secretary of Transportation. Bush is also a very strong and loyal figure until recently with respect to certain people.

There was no Andrew Card, no Jim Baker. There were no people around like that. Panetta came close to that. Then Erskine Bowles came in. Erskine was pretty good. By the time Erskine came in—Erskine wasn't a Washington person. But they got better as we went along. In the beginning, the first Chief of Staff was the most difficult time, very important, and clearly, I don't think Mack was the best person for that role. I think Mack would probably acknowledge it himself. But who knows? You talk to Mack McLarty.

Riley: I've only got one other question, and then Jim's usually pretty good about helping me with these sort of broad wrap-up questions.

Young: I am? That remains to be seen.

Riley: I want to move out of the first year and ask you about something that happened after you left. There's been a lot of debate about whether President Clinton should have settled the Paula Jones lawsuit before everything spun out of control. You're somebody who is—

Nussbaum: I guess I didn't talk about this last time.

Riley: What is your take on this?

Nussbaum: I remember this vividly. I left the end of March 1993. I remember prior to that the state trooper stories would come out in the *L.A. Times.* I tried to convince the *L.A. Times,* with Bruce Lindsey, that many of these affidavits the troopers submitted were demonstrably inaccurate. These journalists said, "Yes, that part you showed us is wrong. What about the other part?" It's crazy. This is an affidavit—half of it you show false, you're going to believe the other half? So I knew this was a sensitive subject. They ran the stories around Christmastime.

Then of course, that blew up. I had to leave the White House with the independent counsel battle and other things I've talked about. I was in the airport—I also had been through the Gennifer Flowers thing a little earlier in '92. I was consulted about how to deal with that. I gave some advice, which wasn't particularly relevant, on how I thought we should deal with it earlier.

Then this. I was in an airport in Atlanta, I think. We were going someplace with my wife and I see on the TV screen, it's CNN [Cable News Network], the Paula Jones thing. I never forgot this. I said, "Oh, my God." This woman said he approached her in a hotel room or something. She

was told to go up. He made a pass at her. They had no sex but—I said to Toby [Nussbaum], "This is terrible. This has to be settled this weekend, this week. They should settle it immediately." Who knows what happened? She's probably exaggerating. She admits he never touched her or anything like that, but, "This should be resolved." I remember saying that to my wife in the airport looking at the TV screen.

Sure enough, actually that weekend, I guess, his lawyer, Bob Bennett, who was a good guy and an able lawyer, now representing Judith Miller, and [Joseph] Cammarata who I knew from before [i.e. Bennett]. Apparently there were some settlement negotiations that weekend. They sort of agreed on a figure. There was an apology and all sorts of language. It was very close, and then it was allowed to blow up, which often happens. I said that was a major error. That should have been resolved immediately, and it wasn't. Then history took its course.

That case went on. The Supreme Court made a horrendous decision in the Jones case saying this doesn't interfere with the President to go to a deposition, that kind of thing. It was ridiculous. Then incorrect decision was made after incorrect decision. This is one of the reasons I went to the White House. I was very experienced. Obviously I'm sort of tooting my own horn right now. I would have caused that case to be settled, and I certainly would not have permitted it to be litigated the way it was litigated. I wouldn't have let the President testify at a deposition on a case like this. You had to be very strong with the President, especially in something sensitive like this.

I believe my relationship with him and Hillary and my experience and my own personality—this is easy for me to say, it's a second guess—would have been strong enough to deal with this kind of situation. I wasn't afraid to deal with matters like this with him. I would not let him testify about the Paula Jones thing. Then of course that produced the ultimate trap with respect to Monica Lewinsky, which of course ironically is also related to me. I guess I mentioned this last time. My secretary was Linda Tripp. When I left, she left. She was forced out. She was a difficult person. I got on with her.

She left with a lot of bitterness toward the Clintons. She ended up in the Defense Department right next to Monica Lewinsky, and the rest is history there. So if I had stayed, Linda Tripp would have stayed. She never would have met Monica Lewinsky.

Riley: They're right, Bernie. It is all your fault. [*laughter*]

Nussbaum: Really, the coincidences—

Young: We're talking with the man who broke down the—

Nussbaum: It's true. I left, and my secretary Linda Tripp to this day says nice things about me. She was on Larry King. They tried to get her to say bad things about me. I don't say bad things about her. Publicly I don't say bad things about her. Whatever, what happened—obviously I'm not happy with what she did about Monica Lewinsky. But I lost my train of thought.

Riley: I asked you if you thought it should have been settled.

Nussbaum: Yes. It should have been settled and if it wasn't settled, they shouldn't have litigated in this fashion. They shouldn't have attended a deposition. They could have taken a default judgment. There are all sorts of ways of dealing with this thing. The President should not have acceded to going forward in this fashion, should not have testified. But he said, "I'll just do the next thing. I'll do the next thing."

It's easy to sit. Most lawyers could not stop him from doing what he wanted to do in this kind of thing. Again, this is maybe unnecessary bragging, but I believe, and it's only because of my experience, my personality, and my relationship with both Hillary and him, that I would have had the ability. I may be kidding myself, but I believe I would have had the ability to have stopped that. But I was no longer there. That's that. That's what happened.

Young: If you subtract from your history the issue over the independent counsel and over stances related to that issue, how do you think it would have worked out between you and Clinton?

Nussbaum: I think we got along quite well and I think it would have worked out very well. He liked me and I liked him. Even now it's like talking about your ex-spouse or something like that. You remember the good old days, the early days when the sex was good. [*laughter*] I think we got on very well. I think we get on fairly well right now. He's been complimentary about me in his book. I think he's happy that I've never written a book and never will. I don't intend to write one, at least not in the foreseeable future. I think it would have worked out well.

I think as he got his footing, I got my footing. I was a novice too. I was learning. He said very nice things about me, partly because of the independent counsel thing. He made a speech before about a thousand people a year ago and I happened to be there in the audience. It was after this film came out, *The Hunting of the President*. He walked out and looked at the audience and he started talking and saw me. He said, "One of my heroes is here, Bernie Nussbaum. If I'd listened to Bernie—" It was very interesting, off the cuff. Clinton is a great off-the-cuff speaker, as you know. It was very warm and very moving and something that he really didn't have to do. He saw me sitting there. People were sort of stunned. A number of people in the audience, one of them said, "Now I'm going to start believing your stories."

It's true. It's related again to the independent counsel thing. It's related to the crucial moment when he went off in one direction and didn't follow my advice and it changed his Presidency. But I also thought it was an expression of real personal affection, which is beyond that he didn't agree with me on some crucial policy decision or decisions. So I think we would have had a good relationship because I liked the First Lady. I was a tough-minded lawyer. All I desired was for the administration do well and that we do great things. So it's unfortunate. As I said earlier, I said something interesting today I think; at least for me it was interesting.

Once that independent counsel was selected, in light of his personality, in light of my willing to be a little stronger, however you want to put it. I don't want to characterize it favorably from my point of view. As it worked out, it's fortunate that I left. With Reno, it's very interesting. For a while I used to have regrets that I left. The White House is a heady place and I wanted to

participate in the next Supreme Court appointments and things like that, all the things that were happening, and give advice on whatever I could give advice on.

But as time went on and as things developed, it became clear that it was a fortunate thing for me, on many levels, that I left. That's why there's no bitterness. Maybe there was bitterness at a time, a little bit, but there's been no bitterness at all. There's sadness. I'm not saying I'll do it again, but for the Clintons to do it again, or for Hillary Clinton to do it again. We'll see. History hasn't fully played out here.

Young: You referred to this conversation that you had with Gore, and then with Clinton, at the time when you had become a liability to the administration. Preceding that, he felt very strongly about some things, and apparently he felt very strongly that he couldn't *not* support an independent counsel. How should history understand this? On the issue of the independent counsel—Bernie Nussbaum and Bill Clinton—from the viewpoint of history does this tell you that Clinton had a problem accepting strong advice of the sort you could give, or was it just something special about that case?

Nussbaum: Maybe this doesn't provide any great insight. I don't think Clinton had a problem accepting strong advice, and I don't think Clinton had any personal problem with me in terms of—as I said, our personalities—we did get along and even liked each other, I believe. I just think Clinton had a need that was greater than any—this is psychobabbling maybe, maybe it comes from the family he grew up in, the alcoholic father and the mother, the need for peace, the need to have everybody love you. If I do this, they'll stop fighting. If I do this, then the press and everybody will be off my back. If I just give them this. If I give them this it will work out. There will be peace in the household. I think he never quite got over it obviously, even as President. But I think he got more tough-minded as time went on.

So I think the answer he gave then, of course he had the unanimous White House staff opposing me, all the newspapers opposing me. You had the Democratic Senators opposing me. But I was clearly right. History—prior history, not post history. We just went through Larry Walsh; we went through all these things. It is crazy for us to do this. But look, Presidents do this. Bush did it too.

So it wasn't that he didn't accept strong advice. It was something in his personality, his trait, that couldn't stand up to this kind of thing, and that was unfortunate. They make mistakes.

Young: What did a young Governor becoming a young President, politician, how did a man like that and a man like you, a litigator, a successful New York lawyer—what was the chemistry there? What did you like about him? What did he like about you?

Nussbaum: He's an enormously charming figure. He's funny, he's gregarious, he really is, as everybody knows, and that's why he managed to survive all this. He is a truly charismatic figure. Actually, he's not repelled by somebody like me, a strong figure. His wife, in many ways, who is a great friend of mine, is a very strong, decisive—not always right, and she can be very difficult—but look at the attraction between the two of them, the bond that they have, in effect. So that's, I think, in a sense how the chemistry between us really by and large did work. I liked

him, he liked me. I wasn't always on the inner circle with him. He didn't always agree with me. But I got on with his friends. I got on with the Arkansas people, with Foster, with Lindsey, with Webb Hubbell. They were good people. Maybe I said this last time. The best people I met were the people from Arkansas, not the people from Washington in the White House.

He's enormously bright. He's very funny. He's enormously knowledgeable. He's a tremendous speaker. He lacked a certain inner strength, at least at that time, which I think he gained to some extent later on.

Young: But he chose you, and I've just got to—

Nussbaum: I don't know why he chose me.

Young: What was it about you that made him want to have you? Was it those qualities?

Nussbaum: When he asked me to be counsel, he said, "I want you to be my lawyer." It's very interesting that he used that phrase. I came highly recommended, obviously, by people like Hillary and by Susan Thomases. I had a reputation back in New York. I think he thought that I would try to protect—in fact, in the conversation we had prior to this thing, the job of a counsel is to prevent these political problems. We saw it: George Bush the father had gone through Iran-Contra, Nixon had gone through Watergate. Carter had gone through all sorts of things. Reagan had gone through Iran-Contra. The job of a counsel is really to try to protect you against those things, try to see those things coming. Of course they all blew up. That's the irony. I think that attracted him. I was going to try and protect him from these things.

Of course, when it did blow up, I did try to protect him, and the best way to protect him was not to permit the creation of this institution, which would really try to destroy him. When it all came to a head, I was there to do the job I did. I gave the advice I gave and then something in his personality that we discussed earlier couldn't accept it, even though his wife agreed with me, and she's a smart person basically. Couldn't accept it. His whole past, and a White House staff that was weak—and I had no real allies on this issue. I even had a deputy who was taking the other position at this point. So it just overcame. This went off in that direction, and I'm back here doing okay.

Riley: We're very grateful for the time. You said a few minutes ago that you can't fully understand the White House if you haven't worked there, and what you have done is provide a much more useful window than a television program ever can as to what happened during your time there. I think your contributions on both of these days are going to be—

Nussbaum: Hopefully it will be of use to somebody at some point. The world changes, things change. It has become more difficult. As I said, it's remarkable how the people in the Bush White House have been surprised almost by the changes, even though they all worked in White Houses before. But nonetheless it's an indispensable experience to work in a White House. It's a unique thing in our country. I didn't fully appreciate it until I went in there.

Riley: And you can map those changes against the kind of snapshots that you provide us. The people in the future will only know this because of what you've told us about your experience.

Young: You mentioned who knows if the Democrats will lose it again. If they do—and then there will have to be a whole new generation. One of the things about oral history is it at least allows a record way down the pike for anybody who is sensible and interested to learn about experiences of people who were—

Nussbaum: That's true. It's very interesting. I think you're right. That's an interesting point. If the Democrats lose in 2008, which they may well, whether Hillary runs or doesn't run, I don't know what she's going to do, and the Republicans are in until 2016, which is a long time from now, I'll be 80 years old or something. If the Democrats win in 2016 or 2020 or whatever, it will be very useful for people who are going into a White House, who haven't been there for a while, to sit down and listen to me, to listen to a lot of other people talk about what they went through in 1992. I would have been interested in hearing something like that if I were going to the White House. Now maybe I would have been too arrogant to listen at the time, but I would have been interested. I don't think I would have been too arrogant.

Young: That's one of the reasons we're doing this.

Riley: You've helped them out whether they win or not.

Nussbaum: Thank you.

Riley: Thank you for having us to New York.