

Part of the Richard Nixon Oral History Project

An Oral History Interview with BERNARD NUSSBAUM:

Interview by Timothy Naftali:
October 1, 2011
New York, NY



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Descriptive Summary

Scope and Content

Biographical Note

Bernard Nussbaum served as a senior member on the staff of the U.S. House of Representatives Impeachment Inquiry Staff in late-1973 and 1974. Prior to joining the staff, Nussbaum graduate from Columbia University in 1958 and from Harvard Law School in 1961. In 1962 he became an Assistant United States Attorney in the Southern District of New York, then led by Robert Morgenthau. He served in that position for over 3 years during which time he prosecuted a number of major criminal cases. In 1966 Nussbaum joined the law firm of Wachtell, Lipton, Rosen & Katz, one year after the firm was founded. He left the firm in 1973, but later rejoined it after President Nixon's resignation in August 1974. Nussbaum left the firm once again in 1993 when he was appointed White House Counsel to President Clinton. He resigned on March 5, 1994 as a result of the Whitewater controversy. Afterwards he returned to his law firm and became a senior partner in the Wachtell firm where he specialized in corporate and securities litigation.

Administrative Notes

About the Richard Nixon Oral History Project

The Richard Nixon Oral History Project was created in November 2006 at the initiative of Timothy Naftali to preserve the memories and reflections of former Nixon officials and others who had been prominent in the Nixon era by conducting videotaped interviews. Naftali insisted from the project's inception that it be a serious, impartial and nonpartisan source of information about President Nixon, his administration, and his times. A second goal of the project was to provide public domain video that would be available as free historical content for museums and for posting on the Internet. Donors to the project neither requested nor received a veto over interview questions or interviewee selection. Accordingly, the project includes interviews with former staff members of the Nixon administration as well as journalists, politicians, and activists who may have been opposed to the Nixon administration and its policies. Taken as a whole, the collection contributes to a broader and more vivid portrait of President Nixon, the Nixon administration, and American society during the Nixon era.

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Suggested Citation

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The following is a transcript of an Oral History Interview conducted by Timothy Naftali: with Bernard Nussbaum: on October 1, 2011 in New York City, NY.

Naftali: Hi, I'm Tim Naftali; I'm Director of the Richard Nixon Presidential Library Museum in Yorba Linda, California. It's October 1, 2011; we're in New York City, and I have the honor and privilege to be interviewing Bernie Nussbaum for the Richard Nixon Oral History Program.

Bernie, thank you for doing this.

Nussbaum: Glad to be here.

Naftali: So, to help the viewer understand 1974, and you, let's go back and tell us please a little bit about how you became a lawyer.

Nussbaum: I was born in 1937, so I was 37 years old in 1974. I was born in Manhattan – on the Lower East Side of Manhattan. My parents were immigrants. They were the first in their family to come to the United States. They met and married here, but they were born in Poland and I was the first child born in the United States. I grew up on the Lower East Side, which is a – was primarily a poor neighborhood populated by Jews and others at the time. And it was a very modest, but very warm and loving upbringing.

I went to New York City public schools. I was educated in the public schools; I entered public school in 1942. I graduated from Stuyvesant High School in 1954, and then I went from there, with honors actually – and then I went from there to Columbia College. I got a scholarship, but I went to Columbia College. I was the first in my family to attend college. I went to Columbia College where I did well. I became editor-in-chief of the Columbia Daily Spectator, which was the college daily newspaper and I was Phi Beta Kappa.

And then I went to Harvard Law School. I got into Harvard Law School and I did pretty well in Harvard Law School. Also I made the Law Review and I was Note Editor of the Law Review. A year after law – at the end of the law school – at the end of my third year in law school – my contemporaries in law school were Anthony Kennedy, who is now in the Supreme Court, who was in my class and Antonin Scalia, with whom I served with on the Law Review. So I knew these people a long time ago at that time.

After law school I received – I didn't clerk, but I received an award called the Harvard University Sheldon Traveling Fellowship, and I traveled

around the world for a year. I traveled to 30 countries; I was 24 years old at the time. I came back to the United States at the age of 25.

I decided I wanted to be a trial lawyer, so I applied to the U.S. Attorney's Office – actually I applied before I left. And there was a new U.S. Attorney; John Kennedy had just been elected President a short time before. The new U.S. Attorney was Robert Morgenthau, and he interviewed me as well as other people on the staff, and he offered me a job as an assistant U.S. Attorney. It was unusual to be able to get a job right out of law school, but the office was sort of turning over at that time and I managed to do it.

So I was 25 years old when I obtained that job – when I got that job. And I started it when I returned from this trip around the world; I went to 30 different countries. And I started that in 1962, and I worked in the U.S. Attorney's Office from 1962 to 1966, prosecuting criminal cases. I took six months out to serve in the United States Army Reserves, which I did during that period. And I got to know Morgenthau fairly well obviously; he was my boss at the time. And it was a great office. It was an office of prosecutors and you really learned to try cases in that office, and to deal with judges and to deal with juries and to deal with factual presentations and confictual gathering and investigations.

I left the U.S. Attorney's Office in 1966, and joined a firm, which a friend of mine was involved in starting. It was a firm called Wachtell, Lipton, Rosen, Katz and Kern at the time. It was seven lawyers, eight lawyers at the time. I joined that in 1966. That firm has now grown and it's a very successful firm. And I've been with actually that firm for 45 years from 1966 until today, other than leaving on a couple of occasions, one of which was Watergate and the other one was to go to the White House in 1992, 1993.

So I joined that firm and became a lawyer at Wachtell Lipton and I became a private practitioner and we – I spent time with my other partners – I came as an associate; I became a partner two years later – building the practice that we now enjoy.

In – I was actively politically to some extent. I ran for office actually in 1968; I ran for the State Assembly in 1968 in a primary in Brooklyn, where I lived at the time. Fortunately I lost so that I could move to the suburbs with my wife and my children. I ended up having with my wife three children and I moved to Scarsdale, New York at that time. And so I was involved in the Morgenthau campaign, actually Morgenthau ran for Governor in 1970, and I was his campaign manager in 1970.

And I met Elizabeth – Elizabeth Holtzman had worked – a woman named Elizabeth – worked in Wachtell Lipton for a short time. When I came to Wachtell Lipton, she was there for a short time, so that’s how I met her. She had left Wachtell Lipton and went into government to work for John Lindsay, and then she went into politics. She left government to go into politics and she ran, I think it was in 1970, yes, it was 1970 – it was – yeah – for state committeewoman, which is sort of a party position in Brooklyn.

And she was attached legally claiming she didn’t really live in Brooklyn. Her parents lived in Brooklyn; she didn’t live in Brooklyn. And she asked me to represent her in that case. And I did represent her in that case and we prevailed. We showed that she spent a great deal of time in Brooklyn. Her parents testified and all sorts of issues, but we won that case in 1970. So she was sort of solidified in politics. And I tried it in the Brooklyn courts; I was the trial lawyer in that case.

And then two years later – this is all related actually to Watergate and the impeachment obviously in some respect – two years later she decided to run for Congress. She ran for Congress against a long-term Congressman named Emanuel Celler, who’d been in Congress for many years – 30 years, 35 years. Very powerful figure in Brooklyn and in Congress. He was the Chairman of the House Judiciary Committee. Everybody – nobody thought she had a chance at that time. Even I didn’t think she had a chance. She told me she was running. But she ran and she won by 600 votes against Celler in a primary, it was a big surprise.

The Brooklyn organization and Celler then brought a lawsuit against her to set aside the election and asking for a new election claiming there was – she stole the election. There was fraud; people voted who shouldn’t have voted – all ridiculous charges. I mean the Brooklyn organization controlled the electoral process and she was an outsider who just happened to pull it off by campaigning very hard and being very attractive.

So she asked me to represent her again. I was sort of reluctant to do it, I had a summer vacation planned and this is taking place during the summer. My wife wasn’t too happy about this. We took a cabin in Maine, which I never got to. But I did represent her and in a very tough fight we won. We won in the Brooklyn courts, which was – people didn’t think we would do, but we did win. And then we won in the Appellate Division and then went to the Court of Appeals and we won in the Court of Appeals. So we sustained her victory at that time, which was – which I’m very proud of and she was very happy about.

That had an interesting impact that we didn’t know in 1972, but we know now looking back. Because she won and went to Congress, Celler of course wasn’t in Congress, which meant he had to step down as Chairman

of the House Judiciary Committee. He was no longer in Congress and a new chairman was appointed, and that was Peter Rodino.

And Peter Rodino of course ultimately became chairman during the impeachment proceedings involving Richard Nixon and he performed enormously well. I mean I'm sure in these interviews you'll hear about Rodino, it's – he just died a few years ago. He lived well into his '90s, but he had a very – he had the right temperament. Even though he had been attacked as a party hack and things like that, he really performed at a very high level.

I wonder – we wonder, no one can tell for sure how Celler would have performed, but Celler was a very partisan person, you know when you come from the Brooklyn organization. He was an able guy in many ways and I don't want to deprecate Celler, but I think it would have been a different impeachment proceeding looking back, and most people who were there who know more than me also think. So that in a funny way, although I ultimately was involved in the impeachment proceedings, what I did two years before – what Elizabeth Holtzman did two years before, probably has a greater impact on the impeachment proceeding as anything we did in 1974.

Holtzman turned out as a Congresswoman to be on the House Judiciary Committee, and she was there – she was a part of the impeachment proceedings and an important part of the impeachment proceedings. But I think her victory two years before and my sustaining of that victory as a lawyer, had probably a greater impact on whatever she did or I did two years later when we were part of it.

Naftali: You're being a bit modest. There's a little courtroom drama in your victory two years before.

Nussbaum: Oh –

Naftali: It's a great story though.

Nussbaum: Well, there was a lot of courtroom drama in that one. No, it was – it was – the Brooklyn organization really wanted to win that case and one of the judges – the judge was a judge named Dominic Rinaldi, who was an old time judge who came up through the organization, which most of the judges did at that time. And what I did in that case was – I knew it would be tough to win below, in the trial court, I was hopeful I would win in the Appellate Courts if I lost in trial court.

So what I ended up doing with people from my firm who assisted me on the case, was to submit a brief to him at the beginning of the trial, a very

lengthy brief, sort of summarizing all the law and which made it – which really showed how really judges shouldn't upset elections except in the most unusual circumstances. And I really told the judge at the beginning of the trial, this is the brief I'm gonna submit to the Court of Appeals. So, you know I said it in a nice way and I got on with the judge because it's my job as a trial lawyer to try to get on with the judge. And so I really showed him that, you know that I was gonna take this all the way. That was a surprise, but exactly what I was gonna say to the Court of Appeals.

And then we started trying the case and of course the – the organization had very good lawyers actually, they really fought very hard in this case. The lawyer who opposed me in this case ultimately became a judge, which is not surprising. But he was a very good lawyer, so it was a hard fight. But I was fighting back very hard. They were accusing us of fraud and things like that, which was ridiculous.

We were the outsiders; we were the reformers. And at one point I said to demonstrate that we had no control over any processes at all I'm gonna call Meade Esposito, the chairman of the Brooklyn organization. The whole courtroom started shaking. Everybody in that courtroom one way or another had gotten his job through Esposito. They all started like screaming basically. So I withdrew my – I was getting along with some of them at this point, so I withdrew my request to subpoena Meade Esposito.

And then surprisingly, the judge – the judge below Justice Rinaldi, ruled in our favor and then when I argued the Appellate Division, his law secretary came to watch me argue and told me the judge had just been the subject of an article in the Village Voice. I guess it was by Jack Newfield, listing the ten worst judges in New York. And they listed Rinaldi first. And he asked me if I saw that article and I said I did and I thought it was a terrible thing, I thought the judge was fine. Obviously I'd won this case now.

And actually I thought he was fine. He really tried a good case. And he said well the judge – he says well, I'm glad you think that, the judge thinks that too. He thinks this is a very bad article and he would like to sue the Village Voice for liable and he would like you to represent him. That's one of the biggest compliments I've gotten as a lawyer, the judge asking me to represent him. I backed out. I said I can't do that, I – I still feel guilty about that to this day. The judge did get a lawyer and they did sue for liable and the case went to the Court of Appeals, and the Court of Appeals ultimately determined – not that there was immunity, that the Village Voice, you know – the judge lost in effect in the Court of Appeals, his liable suit. But it was a very interesting byplay, that case.

But the point is, in terms of Watergate, in terms of the impeachment, that the House Judiciary Committee had a different leader than it otherwise would have had.

Naftali: I just also like the story of how you changed your whole strategy when you heard

Nussbaum: Oh, that isn't – the judicial complexity here. At the same time we were fighting to preserve Holtzman's victory against Celler – she won by 600 votes against Celler – there was another case going on at the same time. Allard Lowenstein, who was a prominent liberal Democrat political reformer on the same political side as Holtzman. He had run against a Congressman named Rooney, John Rooney, and he lost by 900 votes. In other words Rooney won by 900 votes; Holtzman won by 600 votes.

Rooney – rather Lowenstein brought a suit to try to upset the Rooney victory. So what we have here is Lowenstein trying to upset a 900-vote victory and Celler trying to upset a 600-vote victory. So even though we were on the same side politically, we were on the opposite sides legally. I'm making the claim in the Holtzman case basically that you can't upset elections unless there's overwhelming proof. You just can't, you know this is all nonsense about irregularities and things like that. And that was the thrust of my brief in effect, and the thrust of my witnesses.

I called a statistician from Columbia Law School to point out that the odds that the election would have changed because of certain alleged irregularities were greater than all the grains of sand on all the beaches of the earth. I mean I had all sorts of testimony like that. So I'm saying you can never overturn elections, although under certain circumstances you can, and Lowenstein's arguing you can overturn elections because he's arguing against Rooney. So we had different sides legally although we're on the same side politically.

So I win in the lower court and – but for Holtzman – Holtzman wins in the lower court and Rooney wins in the lower court. The election's not set aside. Then we go to the Appellate Division and the Appellate Division sustains the decision below. The Holtzman election is not set aside, the Holtzman victory's not set aside and the Rooney victory's not set aside. So that's the Appellate. That's the second level of it.

Then we go to the Court of Appeals, which is the highest court in the state. And I think I'm sort of home now, you know I won in the court which is most political below, I won in the Appellate Division, which is not that political, but you know. Now I'm in the Court of Appeals, which should be the least political court of the circumstances here. And at the same

time I'm winning, Rooney's winning and Lowenstein's losing too, which I sort of expected, you know if I can win.

So I'm now in the Court of Appeals and we're sitting there arguing in the Court of Appeals this major case although I'm fairly confident and I have an argument planned out obviously along the lines I argued earlier before. The first case they hear is the Lowenstein-Rooney case and Lowenstein's lawyer gets up to argue that the election should be set aside, which is contrary to the position I'm gonna take in the next case. And he's treated sort of very nicely by the Court of Appeals. And then Rooney's lawyer gets up, says you can't set aside elections, making similar kind of arguments to the kind I made – it's a different case.

And the Court of Appeals is all over him. Really questioning him very hard and saying why can't they do this and wasn't there this error and that error. Now, it's true that Rooney was the organization candidate and Lowenstein was. But nonetheless, they really said oh, no, we can set aside the election, you know. That's sort of the thrust of some of the questions, and I – he's getting a really hard time, you know. I realize – I realize if they're gonna – if they might go in that direction in that case in which there's a 900-vote victory, what will they do in my case where there's only a 600-vote victory.

So sitting there, and this is what you're alluding to, I realize I have to throw out my whole argument and I start writing notes to myself. And I get up and the first thing I say is you just heard that case in which you discussed whether you should set aside that 900-vote victory. Now you're hearing my case, which is a 600-vote victory. My case is not that case. There are 12 differences between my case and that case. And I start listing one after another. And one of the main differences was we were of course, the insurgents, the reform, you know and Rooney was – the machine was behind Rooney.

But I listed, you know – that happened in this case, didn't happen in my case. So I started listing the – so I started distinguishing ourselves from the other case fearing that we would be dragged down because of their attitude in the other case. And the Court of Appeals also gave me a tough time. I didn't get a tough time in the Appellate Division, but I got a tough time in the Court of Appeals. And then I sat down, and I didn't know what the result was going to be. I mean I was questioned and I fought back and I – the way Rooney's lawyer was questioned.

And then we went back to the hotel to await the decision. In those cases decisions come down right away because the elections take place shortly thereafter, or if you had another election it would have to take place shortly thereafter. And about five hours later we were sitting in the hotel,

the decision came down. The Rooney victory was upset, the 900-vote victory was upset by a vote of four to three. And the Holtzman victory, the Holtzman 600 victory was sustained. We won by a vote of five to two. There were two dissents; the first judges that dissented. And that was in the circumstances was an amazing thing, that we could sustain a 900-vote victory – a 600-vote victory and Rooney could not sustain a 900-vote victory.

Now there were differences in the cases as I argued to the Court of Appeals and that had this great result, that Holtzman went up to Congress and Celler had – was no longer Chairman of the House Judiciary Committee and the rest is history.

Naftali: How did you get hired by John Doar?

Nussbaum: How did I get hired by John Doar? I gotta go back even before being hired by John Doar. As I said I was an Assistant U.S. Attorney, and I also said I took – I went to Harvard Law School and I met a lot of people obviously at Harvard who I knew very well. And one of them was Archie Cox, who was my professor in agency, and Phil Heymann who was a contemporary of mine in law school – he was a year ahead of me. He was in Scalia's class.

And I get a call from the special counsel, the independent counsel, the special prosecutor, which had been appointed as a result of Watergate. This is prior to the impeachment proceedings – prior to any impeachment proceedings. This, of course, this special counsel, Archie Cox is ultimately fired and that results in the firestorm that causes the House Judiciary Committee impeachment inquiry. So I get a call six, seven, eight, nine months before from Phil Heymann, I think I got the call, some senior member of the staff, who I knew because I knew them from law school.

And they called to ask me to come down to consider joining their staff, to leaving my law firm and joining the staff as a prosecutor on the independent counsel staff – the special prosecutor staff. And I turned it down on the phone. I'm now a partner in law firm, I have a wife and children, I'm doing fairly well, I live in the suburbs, I'm working very hard and I don't wanna be a prosecutor again at this point in my life. I'd been there, done that kind of thing. And I tell them that on the phone. And I just turned it down, turned down an opportunity to join that staff.

And you know, you know it was interesting, obviously it's a significant thing, this special prosecutor was appointed. But it's an institution I'm not a fan of, as later on I – although I thought it did a great job in that thing and it was proper to have it in that situation.

So I turn it down. Then of course life – time – some time goes by and Cox is fired in the Saturday Night Massacre, the famous Saturday Night Massacre. And then the House Judiciary Committee starts indicating that it's gonna conduct an impeachment inquiry regarding President Nixon. And they appoint John Doar as Chief Counsel. They're gonna set up a special staff, they're not gonna use their regular staff and they're gonna appoint him as Chief Counsel.

So John Doar calls me. I get a call from John Doar asking me – this is how I remember it – asking me if I would come down and meet with him because he wants – he would like me to join – probably to join his staff. He wants to meet me first. And I say no on the telephone. I say well, I got this – a similar call months ago. I didn't say that – I don't know if I said that to him, but this was what was in my mind. I said no, I'm not, you know I'm here, I'm really not prepared to leave. I understood this was no longer a prosecutor thing, this was the House Judiciary Committee, but I – so I sort of turn it down.

The next day I get a call from Robert Morgenthau. Now, my old boss who now happens to be in my firm. He just – in '92 he retired as district attorney and is now is sort of a counsel to our law firm in New York. This is 50 years after he hired me, he's now at our firm. But this is 1974 I'm talking about – 1973 actually – late 1973 I'm talking about. The Saturday Night Massacre was October '73, so this was after that – the month after that, November 1973 – early December 1973.

So Morgenthau calls me now, I don't know Morgenthau – I know him fairly well from my – Morgenthau is a guy who was a wonderful U.S. Attorney, a wonder district attorney, a great man, but thinks the only job in the world worth having is working for him. This is – well, a lot of people are like that you know. So – and I know that, so it's – because he tries to get people to work for him and he got very good people to work for him. He had great staffs; that's what made him – that's why he's had such a great career.

So he calls me up the next day and he says I was just talking to John Doar, you know and I recommended you for this thing as did some other people, to Doar. He said and Doar told me you weren't interested. I think you should think about this. This sort of shocked me because I never I thought Morgenthau would ever recommend anybody working for anybody else other than Morgenthau and it wasn't working for Morgenthau. I really think you should think about this.

And then he said something that I never forgot. He says you gotta think about this in two different ways and I think it may make it more attractive

to you. Number one, this is an impeachment, this is history and how often do you get a chance to participate in an event – an historical event. And number two, just as important, it's short. How long can you keep a President hanging? So you're not gonna be gone for so long, you're not gonna be – you know this is not a career thing, you're not gonna be gone for years, you know. I can understand not going to a prosecutor's office. It's history and it's short. Now Doar's gonna call you again, or somebody's gonna call you again and I really think you should consider that.

I hung up the phone and I really thought about that and it really struck me that he was right. It was history and it was short. Now, my partners weren't very happy; this firm was not all that big at the time. We were pretty successful. But I did get a call and I agreed immediately to go down and see Doar. And I went down in Washington and I met with Doar and he was very attractive and, you know we talked about how this thing would proceed and it sounded very important and very exciting. A real challenge to a lawyer.

And then I went back and I was enthusiastic about it. Once I met him it a full gone conclusion, I wanna do it. So I went back and I talked to my wife, who was wonderful. I mean we had three little children, one was eight, one was five, one was two and I was gonna go off now on this thing, which was gonna be hard for us. And it turned out to be hard. That was a tough year for the – in a family sense; I was away a lot that year. It was a very hard year, but it worked out.

And then I had to talk to my partners, who most of them were understanding. There was only a few partners, you know they thought I was sort of crazy to go off and – I resigned from my firm because this was a very sensitive thing. My firm was not as well known as it is today; it was not as strong as it is today. It was successful – was not. So I resigned. Some people after the impeachment didn't have to resign, but I resigned because I felt if things went badly on this impeachment, and they could go badly and who knows what kind of attacks we would be under, and I knew there would be attacks. And there were attacks to some extent. I just didn't want it to hurt the firm. And I was even guaranteed I could come back to the firm under that circumstance.

But I said I just wanted to do this, this was a great challenge. My wife was supportive although it turned out to be a hard year she said. And I went and I did it, and my partners were understanding too, even though they were reluctant to see me do this. But I did it. So I went down and I did it and that's how I got hired.

Naftali:

Did you recruit any of the staff?

Nussbaum: I was involved – I was involved in sort of vetting and discussing with Doar certain people such as Evan Davis for example. I was supportive of him hiring certain people who sort of came along. I tried to induce him to hire certain additional people, which he decided he didn't really want to do. Actually people who turned out to be very prominent later on. One is Pierre Leval, who's now in the Second Circuit and the other is Tony Sifton, who became Chief Judge of the Eastern District of New York; they're both federal judges. Sifton unfortunately died a few years ago; Leval is still alive and still a judge on the Second Circuit.

But Doar decided I don't want to overstay this. He – I wanted more litigators, I wanted more trial lawyers for this thing. I envisioned the trial of the Senate, I wanted guys who were my contemporaries. Doar, you know he had me and he had some other people. He had Joe Woods, he had Dick Cates; he felt he had enough people along those lines and therefore he passed up the opportunity to hire Leval and to hire Sifton. But somehow their careers managed to do okay without coming down to our staff. So I did try to get him to do that.

He was more comfortable with the staff that he sort of put together and a lot of the younger people we had such as Hillary Rodham and Maureen, who was not a lawyer at the time. But – and it worked out. I mean he was – he was – his comfort level was important. He had me and I was sort of both very useful to him and an irritant at the same time, but you know. I was very aggressive. I was 37 years old, I'd been – I was a trial lawyer; I'd been a trial lawyer, and we had disputes from time to time as to how things should happen and, you know how things should proceed.

When I think back he was right most of the time and I was wrong most of the time. He wanted to be – he understood that we couldn't come off as prosecutorial; he understood – and this is very important – he really understood – and Rodino did too – I understood it to some extent, but less so. He was – I understood what he was saying and I sort of agreed with what he was saying, but I still wanted to be more aggressive in terms of the – he was very cautious about how we should investigate this thing.

He understood that the papers we'd be writing if we sent out investigators – he basically wanted to do it in a low-key fashion. Have the information collated from various sources, especially the special prosecutor who ended up giving us sort of a report, some sort of roadmap so to speak, although it wasn't – I mean we – so – and then of course we got the tapes. We didn't do a lot of original investigation. We did some, but not very much.

We interviewed the witnesses obviously before – John Dean and John Mitchell and people like that, but we didn't go out to aggressively

investigate the facts, which is something I wanted to do, I felt we had to do. This was my background, both as a prosecutor, as a private lawyer. Doar was much more cautious about doing it knowing that we sent people out, there'll be newspaper stories, who knows what we'll get, who knows how we'll be attacked. So he was just take it step-by-step.

Other people were gathering information or information was coming in, let's just put it together. Let's just collate it and we'll present it in a neutral fashion. That judgment, which I – some of which I opposed at the time, I realized after it was all over happened to be a correct judgment and I think it was very helpful in achieving what was the ultimate outcome.

At the beginning we weren't sure – I wasn't sure at least and I don't think Doar was sure either, although articles have been written contrary to this, that we were going to recommend the impeachment of the President. That wasn't – you know we didn't come in to – and this is how I remember it and I – I truly believe this. We weren't coming in to drive him out of office. We were going to see where the – what the facts really were.

Obviously we were suspicious about the events that led to the Saturday Night Massacre and the President's conduct and the conduct of some of his chief aides. But there was no real – no real animus, no real desire to say we're gonna try to get Nixon – President Nixon out of office.

Even, look at what I just said. Nixon, I said, but really it's President Nixon. Doar – and we all remember this – Doar charged us all with never calling the President other than by the name the President. Not Nixon and certainly not anything, you know derogatory. We had to call – he was the President, we called him the President. We were trained to call him the President. And he was – and that's a very interesting insight, you know he understood that.

Something I don't think I would – I might not have understood at the time, but of course he – we understood, we called him Nixon, we tried to treat it with respect and, you know we wanted to aggressively find the facts. But as I said before we didn't really go out and investigate on our own, but collate the facts. And also when we started collating the facts and gathering the facts, especially of course when the tapes came, then yes, then we did make a determination that the proper recommendation to the committee would be to impeach the President.

But we didn't start off like that. People claim we did and a friend of Doar's wrote an article and Arthur Adler sort of claims that he always intended to do this. I never saw that and I don't think it's true. I think Doar also sort of had an open mind until the facts sort of came in together and then at some point they jelled and we made the decision, yeah,

especially after the tapes came in that we really have to go all out to try and convince the committee that the right thing to do would be to impeach the President.

Naftali: Tell us a little bit about how Mr. Doar took advice. When you were having this discussion with him, and I'm sure it happened more than once – was Joe Woods also part of a –

Nussbaum: Yes.

Naftali: – discussion whether or not to continue the investigation started by –

Nussbaum: Yes. Yes.

Naftali: – the Senate?

Nussbaum: No, Joe Woods was a, you know very sensible person. Doar surrounded himself with good people. You know he used them – different people in different ways and he consulted with them. He was fairly close to the vest at times. He didn't really know me before and we – you know as I said we had a good relation, but a rocky relationship to begin with. But, you know it had ups and downs. But over time I think it became pretty good and pretty close, which I think exists today. We were different personalities. He was more of a Midwestern type I was sort of an aggressive East Coast prosecutor I guess.

But he relied on other people too. He relied on Woods, who's a good example, who's a very common sense guy. Also a cautious person. He relied on Dick Cates, who was more of a trial lawyer and I related to him very well. But he liked Cates a lot; they used Cates a great deal to interface – a word I don't like – to be a contact with the committee itself. So Doar, you know – and he was comfortable with the younger people. He was comfortable with Hillary, he was comfortable with Evan Davis, who was about 30 years old at the time.

We had Bob Sack, who was a few years younger than me, who came in. We had all sorts of good people, sensible people. He put together a good staff partly through his Burke Marshall, who was also a key advisor. He had sort of a kitchen cabinet in effect who he looked to. Burke Marshall, Owen Fiss, Bob Owen, you know then Joe Woods and Dick Cates were on the – some were on the staff, some weren't on the staff. So Doar sort of reached out. He knew he was in a very sensitive situation and when I think back it was handled, you know as well as anybody could handle it.

Naftali: Would you and Woods participate in discussions with the kitchen cabinet?

Nussbaum: Sometimes yes and sometimes no. Not always. Sometimes, you know Doar would – Doar was always in contact with various people on his own. There was no formal meetings a lot. But sometimes – yeah, sometimes I would talk to Marshall myself, or who's really the key figure in the kitchen cabinet. Marshall – Burke Marshall was also a key figure in recruiting people for the staff. Hillary I think came in from Burke Marshall, Mike Conway came in through Burke Marshall. Various people came in through Burke and the Yale connection, Bill and Hillary Clinton obviously went to Yale. Well, she wasn't Hillary Clinton then, she was Hillary Rodham then.

So Burke was a key figure both in recruiting people and advising Doar. And Burke was a very sensible guy. He was a great Assistant Attorney General in charge of Civil Rights Division prior to Doar having that position. I met Burke Marshall actually – I worked in the summer of 1960. I graduated law school in '61. So I think I met Burke Marshall 14 years before when I was just a kid before I graduated law school even, when I worked at Covington and Burling for the summer. And Burke Marshall was then a partner at Covington and Burling.

That was through the year that Kennedy was running for President. This was 1960. Kennedy hadn't yet been elected. I worked the summer of 1960; Kennedy was elected November of 1960. And I knew of – I knew Burke slightly. He was a partner, a young partner and I was a second year – a summer associate. But I had a great respect for him and he was a wonderful Assistant Attorney General. I knew from my Justice Department days because I was in the Justice Department the same time he was.

I was in the U.S. Attorney's office in New York; he was in Washington, but I knew of him then. And he was a wonderful advisor I think to Doar. And I kept in touch – I met him from time to time over the years after the impeachment, normally at Doar's farm. And he was just a good guy. He's also dead now; he just died a few years ago. A wonderful guy.

Naftali: Can you remember some of the effects that his influence had?

Nussbaum: No. Not specifically. I just thought – he generally was cautious and he gave good advice. You know I don't remember any particular issue at this point. I mean I think Doar consulted him on a lot of things – virtually anything. The key person to interview here is Doar, but – and he could tell you much more obviously because he's still – I don't know if he's going strong, but he's still – but he – but he relied on Burke a great deal [inaudible]. And that was good. I didn't – I just wanted to do our job; I wanted to get the facts, I wanted to present the facts.

My job on the impeachment – I was a very senior person on the impeachment obviously, Joe Woods and I and a few others – you know nobody was really sort of number two. There were a number of number twos in effect for different purposes. Joe Woods might have been, but he only – didn't stay the whole time. I was there the whole time. Cates, there's no Deputy Chief Counsel, at least the way I remember it. My title was Senior Associate Special Counsel and I had the highest salary anybody could get, \$36,000 a year at the time. I think it was a little less than I was making – a lot less than I was making as a partner in my law firm, which I just resigned from with three children.

But – so different people sort of had different tasks, and my basic task ultimately as a very senior aide to Doar was to sort of oversee the factual investigations. We set up various task forces at the time as I remember. Others who you've interviewed of course could be more specific. You know there was the Watergate Task Force, which Evan I think worked on; there was the Agency Task Force, which Bob Sack worked on. We had people in charge of legal research and writing. John Labovitz was sort of a leading figure there. And we divided people among these various task force – these task forces.

I was sort of over all the tasks forces in effect. They didn't sort of directly report to me; it was not all that hierarchical, you know I was sort of in charge, in my mind, of the factual investigation. I would work with each of the task forces to some extent. And then when the tapes came in later on, I was sort of in overall charge, at least as I remember it, I don't know – other people can remember it differently, but I do remember it in dealing with the tapes. In having the tapes transcribed, analyzing the tapes and deciding how are we gonna use the tapes. So that was sort of my role.

And then I was gonna be – in charge is too strong a term, as if I'm the only person, I'm not the only person, but I'm one of the key people because there wasn't a lot of trial lawyers there. So then I was gonna be in charge – again, I used that word – **[inaudible]** – I was going to have a very important role, let me put it like that, in planning the trial in the Senate. That's what I was really – I was convinced that Nixon – President Nixon would never resign, even, you know – and that we would have to try this case in the Senate.

So I was always – I was always thinking how do I try – as I do in private practice when I have a case or I did in the U.S. Attorney's office when I was a prosecutor. How do we try this case? Who're we gonna call? Who are our witnesses? What are our documents? What are our themes? You know this is the kind of thing we did.

My other function in connection with that, I was tasked to make a key presentation to the committee on the necessity for a third article in the Article of Impeachment, which involved our inability to get tapes and documents directly from the White House. The tapes we got obviously, were from the independent – from the special prosecutor who received them as a result of litigation against the President and the Supreme Court. They refused to turn over many documents and tapes to us and we – and under my leadership here, we claimed that was in itself an impeachable offense, not to cooperate with the committee. And we had law going back to the mid-1800s to support that. That was a very important position.

I took a very strong position, which Doar basically agreed with – or mostly – that we're not going to go to court to try to get documents or tapes. The courts had no role in this process. That the Constitution set up the impeachment process if there was a basis to try to impeach a President, that was a Congressional prerogative.

When Congress had started a legitimate impeachment inquiry it was entitled to reach into the dark recesses of the administration to get whatever documents and tapes or whatever existed, to help it formulate a decision with respect to impeachment. And if the executive branch and the President refused to cooperate, that itself was an impeachable offense. That was contrary to the Constitution; that undermined the Constitutional scheme.

So we didn't go to court. We didn't bring a case in court. You know the recent Clinton impeachment, I proceeded differently, but that was a phony impeachment; that was a political impeachment. This was a – as Hillary once said to me the only Constitutional impeachment was the one we did in 1974.

But – so one of my key roles was to be involved and in charge up to some extent with factual gathering and that meant trying to deal with the White House to get these things. And when they didn't give us a lot of the stuff, which I thought undermined our ability to present a proper case to the House Judiciary Committee, that itself turned into an impeachable offense, I thought.

We drafted an article, which I was involved in drafting, and then I was also involved in making the presentation to the committee in support of voting out that Article of Impeachment. And it was voted out. It was the Third Article of Impeachment. And indeed to my – in my mind I always thought about it then and I still think about it now, it's still a key historical precedent in Constitutional precedent in the event of any future impeachments, which I hope none really come up, that the executive

branch is obligated to cooperate if there really is a legitimate impeachment inquiry.

Naftali: What happens to the – so you believe that then the concept of executive privilege has to be completely waived then, by the White House?

Nussbaum: In an Impeachment Inquiry, yes. Not in any other inquiry, but in an Impeachment Inquiry, yes. Not in a criminal case or not in any other case, but the executive privilege falls in an Impeachment Inquiry, and that's the only place it falls. That's what I believe.

Naftali: Oh, okay.

Nussbaum: That's not the way it worked out in Watergate and it hasn't worked out since. In Watergate it so happens the Supreme Court, as we discussed – the Supreme Court decided that there is such a thing as executive privilege, but it can be overridden by the needs of the criminal case. That resulted in them ordering the tapes to be turned over. President Nixon then turned over the tapes and then the tapes were then sent to us by the special prosecutor.

Naftali: But, if –?

Nussbaum: But that's a different –

Naftali: Well, I was gonna ask you, if the impeachment proceedings involved a crime by the President, are you not then asking the President also to waive his Fifth or her Fifth Amendment rights?

Nussbaum: An impeachment proceeding is not a criminal proceeding. The impeachment proceeding doesn't send anybody to jail. The impeachment proceeding is to decide whether somebody should stay in office – is fit to stay in office. And in that proceeding the President takes the Fifth Amendment, you can use – or refuses to testify because they might be subject to a criminal proceeding, then you can take that into consideration in effect in deciding he's not fit to stay in office.

It's a whole different thing. And that's the whole – and also we had big discussions about this and other people can discuss this as well, or better than I, you know to impeach a President you don't have to prove that he committed a crime. This was a major discussion. We have misdemeanor a felony, a high crimes and misdemeanors has a different meaning under our Constitution and we thought that the word crime or misdemeanor normally has. It's – it had to be something that only a President can do that undermines our Constitutional structure, that an abuse of power,

whether it turns out to be criminal or not. That was a very interesting discussion at the time.

And the misuse of the FBI to investigate your political opponents may or may not be a crime, but that's an impeachable offense. The misuse of the CIA, you know whether or not it turns out to be a crime is an impeachable offense. When you send the CIA to, you know to act outside its proper parameters for your own political interest, that's a crime. That's rather an impeachable offense, it may not be a crime. That's an impeachable offense. Those are the issues we tried to deal with at the time, and that's what we tried to articulate at the time.

Naftali: Well, it's articulated in that document, the *Grounds for Impeachment* –

Nussbaum: *Grounds for Impeachment*, right.

Naftali: Can you tell us what you remember of the – who was on which side in that debate?

Nussbaum: No, I don't think – others may have different memories and it's been a long time obviously – I don't think we had different sides so much in that. I think we were all – we all reached the conclusion, I know I reached that conclusion, but I think there was no – there was not a lot of opposition to this. The more we looked into it, the more we realized that what we really were investigating was not whether the President committed a crime and we didn't have to – but whether there was an abuse of power by the executive branch and by the President with respect to the Watergate matter. And that's all we really needed to show ultimately. Whether we had to do that.

And I don't think there was a lot of conflict on the staff. You know it took time to reach that position because this was all new. There hadn't been an impeachment of a President in a 100 and some odd years. The last one was Andrew Johnson; that was clearly a political thing over this act, you know, which Congress passed saying he couldn't fire the Secretary of War. It was a much more confined, much more narrow thing and he almost was impeached over that.

It's true Congress can impeach a President for anything it wants to impeach a President, but the proper way of looking at it is to see whether or not there was a fundamental abuse of power by the executive branch contrary to our structural government, contrary to our Constitutional principles, and that's what we concluded. I don't think there were people on different sides of that.

Maybe some people at the beginning said no, we really are – we really have to prove some sort of crime, but I don't remember anybody pushing that that hard. Labovitz, I think was one of the key people who wrote that memo, The *Grounds for Impeachment* memo and I think Hillary helped on it too – on that memo. But that's the conclusion we reached at the time and I think that's the conclusion that's still correct.

Naftali: Since you oversaw as much as a kibitzer or as a supervisor of the task forces, tell us how you came to conclude how to present the information to the committee? Because you had an enormous amount of information.

Nussbaum: Yeah. Well, this was – here I give most of the credit, not to myself because I don't deserve the credit, but to Doar. This is an interesting problem. Doar – well, look, the thing really took off after we got the tapes, we realized the stuff on the tapes was very powerful. And of course you had the 18-minute gap and you had all those issues.

Doar was the one who decided that we would present this in a sort of low key, neutral fashion. These sort of statements of facts, whatever we called them at the time, I have to refresh myself on this and these books that were given with listing fact after fact after fact – Statements of Information, that's what they were called.

I still have those books, Statements of Information – I think it was called Statements of Information. Not even facts – it was interesting. We weren't even – we didn't want – it shows how cautious John was, we didn't want to say they were facts; they were information. So we present this information in the form of a sheet of paper, which was read to the committee and behind there was documents demonstrating where we came up with this Statement of Information, not statement of facts. Gee, I remember that, I said why can't we call this statement of facts because thought was – if you say it's a fact you're sort of making the judgment that something happened.

If you say it's a Statement of Information then you're just presenting some data, which somebody else could make a judgment as to whether it's accurate or factual or not. So Statements of Information. It even shows how careful this thing was thought out, but I give all the credit here to John. You know this is not the normal way you present to a Grand Jury or – but he did it like that. So he came up with the scheme.

I was, I think dubious at the time whether this is the most effective way of doing it, and indeed it was kind of boring to the committee. You know as a trial lawyer and as an investigator too because I conducted Grand Jury investigations in my time, you sort of wanna, you know spice it up a little bit. You want to make it interesting.

But Doar wanted it to be boring almost, which is right, which was the right decision. It's like it's kind of intuitive. But it was right. So they set this committee and Evan Davis would read from a Statement of Information, you know on June 18, this happened; on July 3, this happened, you know and then this document and this piece of Grand Jury testimony, which we got or this tape or – back that up. And he wanted it to have some sort of cumulative effect. I think without the tapes it would have fallen flat.

But then we had the tapes. And then also we did – finally they called witnesses; finally we did have witnesses testify. And then I was actively involved in the witness preparation, which is more my *métier*, you know I prepared John Dean, who I must admit turned out to be sort of the perfect Nazi corporal in the sense that whoever was in power he would sort of – I'll tell a – I'll tell a Dean story which is interesting.

I sat with John Dean for four or five days preparing him to testify before the House Judiciary Committee, and he's very intelligent and he was very smart. And he was very knowledgeable about what happened. He was a key key witness before the Senate Watergate Committee, and so I'm preparing him for his testimony. And of course there are gaps, you know like in everybody, you're trying to sort of figure out.

So I play the tapes with him, you know we'd listen to the tapes and then I'm trying to figure what happened between let's say incident one and incident two, or day one and day two. And like I normally would do with a witness sometimes, I would try to – we would try to sort of logically figure out what would have happened to sort of connect certain things. But I didn't know for sure. And sometimes I would start making suggestions, well isn't the most logical thing that happened this, since this happened here and that happened there. Is this the most logical thing that happened between this?

And all of a sudden I start seeing Dean start agreeing with every logical – logical hypothesis that I would forward. Because he wanted to go along with me. I really didn't want him to go along – I just wanted to try to figure out what happened. But I realized he was going to go along because, you know so I got very cautious. Because I didn't want to put words in his mouth, and I didn't want to make things up, and I didn't want to create facts that weren't facts. Now, some prosecutors do that and as I've learned over my career. I didn't really wanna – but Doar was – not Doar – Dean was sort of – he's perfectly willing to sort of accept my hypothesis.

So I became, you know somewhat cautious about – and then I realized listening to the tapes, listening to Dean on the tapes with President Nixon,

that Nixon would be doing the same thing with him. So he would start going along with President Nixon, and Nixon was oh, that didn't happen, John, and this happened. And sure enough Dean would start folding on the tape. He was sort of being directed by Nixon. Nixon was trying at this stage to sort of direct him to thinking in a certain way and to going to a certain fashion. And then I found – what I found when I was talking to Dean that the same thing was happening again, except I was – I was in sort of, quote, the position of power.

I represented the House of Representatives, not me personally, I was, you know – so he was like going along with me just like he was going along with President Nixon. I was very cautious. Having said that, I'm not saying he lied or he made things – I think he was just willing to bend very – so we were careful. Anyway, he testified before the committee, but the committee testimony turned out to be somewhat anticlimactic. I mean James St. Clair, the President's trial lawyer, who's a good lawyer who I got to know during the hearing, you know cross-examined.

But really, the truth is the witnesses didn't have a great impact. John Dean's testimony didn't secure President's Nixon's impeachment, or John Mitchell. I met with John Mitchell; John Mitchell was a tough guy. He wouldn't talk, he was – he was – I tried to break him down – I tried to – Dean was easy. Mitchell, he was tough – he was – friends of mine in New York had represented him in a criminal case. Guys from the U.S. Attorney offered me into the defense lawyers and they ended up representing him. He was a tough guy. Mitchell, he wouldn't give an inch, in effect, you know. I guess he testified before the committee too, but he didn't get –

Dean testified, similar to the way he testified obviously before the Senate Watergate Committee. But the testimony – everybody said we gotta have witnesses, we gotta have witnesses, we gotta have witnesses – I said it in the early stages. It turned out, Doar's instinct as I remember it was the right instinct. The witnesses – well, yeah, fine. We had witnesses, we had to satisfy the Committee. If it was up to Doar we wouldn't have witnesses I don't think. He didn't want witnesses, but the pressure of the Committee was we had to have some witnesses, so Doar said we have to have some witnesses.

It was my job then to prepare these witnesses, so to be me and others to prepare these witnesses. And the witnesses, which I had great hopes would be a – have a great impact, really didn't have a great impact. What had a great impact was these Statements of Information one after another, which were boring, plus the tapes. The tapes were, you know once you heard the tapes and you could put the tapes together with documents and

with some of the testimony, that created this tremendous impetus for impeachment.

Naftali: Tell us about please, the first time you heard the tapes. If you can remember.

Nussbaum: Well, I'll tell you a story about how I heard the tapes and I'll tell you a Hillary story in connection with this. The first time – well, I heard the tapes by myself – it was not – you know I was one of the first people on the staff to hear the tapes. Doar obviously heard the tapes at the same time. And we were, you know we were – shocked is the wrong word. This was tremendous proof to us that really there was a significant abuse of power by the White House, which went to the very top in the White House. So it had a big impact on Doar, it had a big impact on me that we really had a case here, which was reflected the Articles of Impeachment that we ultimately drafted to the Committee.

And then – and we had them transcribed, and then we – I have this vivid memory of then playing them with the Committee for the first time. And I remember sitting there – this is a private session obviously when we play the tapes for the Committee. The senior members of the staff and the Committee were there, and everybody in the Committee had their earphones on listening to tapes. But I didn't have my earphones on. I heard the tapes a number of – I wanted to just watch the Committee and I've never forgotten this.

I saw this Committee – I saw – especially the Republicans, the people, you know we would desperately try to make this non-partisan to reach over to the other side if we recommended impeachment. And after we had the tapes we knew we were gonna recommend impeachment.

And I saw the faces of the members like flush – get red, the Republicans. They were – they acted very disturbed when they were listening to the tapes. And I sat there, see I said, they realize that this is something we have to do, I said to myself as I was sitting there just watching the Committee in the Committee Room in this private session. And I remember the session ended and I remember everybody taking off their earphones and they're just walking out and I was really pleased to see that it had that impact.

A day or two later we have another meeting with the Committee to discuss the tapes – to discuss what we heard. And we're gonna lead the discussion, you know engage with them – Doar. And all of a sudden they came in and they – and I started hearing rationalizations. Oh, well, he really didn't mean that. He didn't really say that, I mean this is just hypothetical. You know all of a sudden you saw them trying to escape the

language of the tapes. I mean the 24 or 48 or 72 hours that had passed since they heard the tapes, they came in with all sorts of rationalization.

So now, of course we answered some of that with other things and you know just friendly discussion. I mean we were the staff; they were the Committee. But I feel oh my God, this is gonna be – this is gonna be a tough sell I said. So I was really concerned about how this thing was gonna come out at the time.

And then since – this is a Hillary story – then sort of that evening or an evening just at about that time – I had a big Oldsmobile Tornado. Remember I was a partner of a law firm. I'd resigned, but I still was in a better economic position than most – I was older, I was one of the oldest people on the staff. That was another thing, it was a very young staff. I was 36 years old, I became 37 during the impeachment. I was an old man on the staff. Everybody was younger was me other than Joe Woods and Dick Cates and John Doar.

And since I had a car, and this is Washington in the '70s and it was sort of a dangerous place, it was my job to drive young staff members home off at night. I told this story before, but it's a good story still. So I would pile people into my car at 11:00, 12:00 at night because we were working around the clock on this stuff. And I would just drop them off one after another and then I would go to my little apartment that I had.

And so one night I'm dropping all these people off and the last person in the car with me that night is Hillary, who I'd been working with and – Hillary Rodham, who was a star on the staff and Doar liked her and I liked her. She was a hard worker, really aggressive and really smart. So anyway I'm driving – she's now in the car alone with me and I'm about to – I'm driving to where she lives. She was living with a woman named Sara Ehrman, who ended up in the White House later on with me.

In any case, I'm about to drop – I'm sort of pulling up to her place, not quite there yet, and she says to me, you gotta – oh, I want you to meet my boyfriend. He's coming in tomorrow – something like that. I said oh, great. I said I – what's his name? And she said Bill Clinton, you know I met him at law school; we've been going out. And I said – you know I didn't know – I wasn't paying attention to people's personal lives at the time. Really, I was so driven, you know at that point. I didn't know she had a boyfriend even, you know. And she said no, you gotta Bill Clinton. I said oh, that's great, I'd be happy to meet him.

I liked Hillary a lot and, you know I'd be happy to meet him. She says yeah, you know. I said he just graduated, what firm is he going to, or something like that. And she's said oh, no, he's not going to a firm, he's

going into politics and he's gonna be the Senator from Arkansas – he's from Arkansas. He's gonna be the Senator from Arkansas and he's gonna run for Governor or something from Arkansas and he's gonna be President of the United States.

And I look at this woman, this 26-year-old woman and I say – and I remember this to this day, I say what have I gotten myself into. I am now a senior person on this staff. I'm sort of in charge of the tapes, I presented these tapes to the Committee, now these tapes are devastating evidence with respect to the impeachment. The Committee hears it and realizes it and then it comes back later and rational – and it [inaudible] rationalized them away. We're not gonna be able to make the case, we're gonna be looked upon as the dumbest lawyers in history not being able to make a case of this thing. And Doar refuses to hire people that I want down here such as Pierre Leval and Tony Sifton, real trial lawyers who could help me make this case.

He hires a bunch of kids, who are bright kids, one of these kids is now sitting next to me, it was a young woman who I like a lot and is very bright, but never really tried a case or anything. And now she's telling me her boyfriend's gonna be President of the United States. I said this is nuts. So I started – I blow up, I start screaming at her. I mean it's [inaudible] I said that's idiotic. I said that's the stupidest thing I ever heard. I said what kind of child are you that your boyfriend's going to be President of the United States. And I started screaming.

I guess all this frustration, away from home, the tapes, the Committee, you know not hiring certain people, you know I start screaming at her because she tells me her boyfriend's gonna be President. I was like I'm working with a bunch of children – they're children here and I [inaudible]. And she looks at me, she glared. We pull up to this place, we just – I still remember this. She looks at me, she glares at me, she says to me, she gets really mad – because I – and she said you're an asshole, she says to me. You don't know what the fuck you're talking about. She says this guy is great and you know you haven't even met him and you're just a big jerk or something. And she opens the door and slams the door and storms out of my car and goes into her place.

And I was sitting there. I say what – I was sort of blaming myself. I said what did I do? I mean I should have – she says her boyfriend's gonna be President, what do I – why should I get so upset about it? I mean because – oh, God, I was very upset.

So the next day I go into the office and the first thing I do is seek her out to apologize – I wanted to go to apologize to her, you know her superior so to speak because I screamed at her. I mean I started to scream. And

before I could apologize to her, she comes to see me to apologize to me for saying that. So we apologized to each other and, you know we make up immediately.

And then, well sure enough she brings in this tall, good looking guy, who I never met, named Bill Clinton. And he comes in and I chat with him for a little while, you know five minutes, I mean I'm very busy. He tells – I don't say anything, he tells me he's gonna run for Congress or something that year. I said oh, good luck, you'll need it – I don't wanna start any more fights with Clinton – Bill Clinton or Hillary Rodham, his girlfriend. And he – and we agreed and then it's the last I see him from, you know at that particular point in time.

Of course a time goes on, before – at the end of the impeachment after President Nixon resigns, she tells me she's going to Arkansas. I'm trying to talk her out of going to Arkansas. Nice guy, I'm not telling her what to do with her romantic life, but I really think she should go to New York or Washington to a big firm. No, she's gonna go to Arkansas to live with Bill Clinton. I said oh, all right, [inaudible].

So she's gonna go, and sure enough she goes and we stay in touch with each other. And he runs for Congress that year, in 1974, and he loses, but not by very much. He ran against a guy who was in office for eight terms or something like that. He loses by four or five percentage point. Really a very good race. He's 27 years old at the time. And the next year I get a letter from her saying he's running for Attorney General of Arkansas, would I send a contribution. I'm not gonna fight with Hillary anymore so I sent him a contribution right away. And I'm back in my law firm so I have money now, so I sent him a contribution and sure enough he wins as attorney general.

And two years later, 1980, I think it was, he runs for Governor and she gets in touch with me and asks me to contribute – to help. And so I do a little bit, you know I'm busy. And actually I was in touch with her over the years also because she's at the Rose law firm, and my firm was using that firm – we were working with that firm on certain major matters. So I'm sort of in touch with her, not very much. But, so I did, I contribute to the 1980 race, and of course he's elected Governor.

And I'm thinking oh, my God, see, all of what she said. But this is crazy I said. And she invites me to the inauguration in Arkansas, but I can't go because I'm in the middle of some big trial at the time. So I never went to a gubernatorial [inaudible], so I didn't go. And two years later he runs for Governor again in 1982, and he loses. I said see, I always knew I was right. He should have gone to a law firm back then. And he runs for Governor two years after that he wins. Then the rest is sort of history. I

get involved with them when he's running for President. She calls me in 1988, says he's probably – she comes into New York to see me in 1988.

Naftali: 1988.

Nussbaum: Yeah, 1988, Hillary came into New York. I think she had some other business in New York although she said she wanted to see me. She comes into New York and we had dinner together. And she says, Bill's thinking of running for President. Now this is 1988. This is 14 years after the conversation we had in the car. And Bill Clinton at this point is I think 43 years old in 1988. He was born in '46. How old was he in 1988?

Naftali: Uh, he's 42.

Nussbaum: Forty-two, he's forty-two years old in 1988. He's forty-two years old and she tells – and she's the same age – oh no, she's a year younger than him. She's about 41. She was born in '47. He's thinking of running for President and she doesn't want me to commit to support anybody else **[inaudible]** as if my support for anybody makes any difference, which – although I've been a contributor of campaigns now and then, it makes no difference.

So I say to her very tentatively, I says, well Hillary I know we discussed this in the past, something like that, but he may be – very tentative now – I don't – he may be kinda young as 42 years old to run for President. Although John Kennedy who ran when he was 42, 43. She says, well he's deciding. You just don't support anybody else. I said, okay, I'm not supporting anybody else **[inaudible]**.

And a week later I get a call from her I believe – yeah, I did – saying he's not running in '88. So I said, well, not running. I ended up supporting Michael Dukakis in 1988 to great effect, as you can tell. I went to – okay – actually I went to the convention in 1988. And I was on the floor of the convention in Atlanta in 1988 when Bill Clinton spoke. Made the – turned out to be a disastrous speech in the – which I was there when he made – just – I didn't even know he was gonna speak.

But he – and then in 1992 – or 1991 – 1991 – October, 1991, 20 years ago from – not today but from this month, I get a call from a partner in Goldman Sachs saying we have to have a – I get a call saying we – there's gonna be a meeting – we're gonna have to have a meeting shortly – I know this partner – to see if we can raise some money for Bill Clinton who's gonna run for President. Hillary says you're onboard.

Hillary never called me, never asked me anything. This is 1991. I hadn't heard from her in a while. She doesn't call me. Nobody from – this Ken

Brody, the partner at Goldman Sachs called me. He says you're onboard. Let's have this meeting to see if we can raise some money for Clinton.

So I go down to this meeting. This meeting is in Tom Tish's office, who's a Republican and wasn't in the meeting – in his office. And there's six people sitting around in this meeting. And Brody's there and I'm there and four other people. I don't remember who they were. They were investment bankers, or maybe one lawyer. There's very few people.

They said, well we could have a – we're here to discuss the Governor of Arkansas, Bill Clinton to raise some money. And one of the guys says, who's Bill Clinton – a guy in this meeting. **[Inaudible]** the Governor of Arkansas. He may run for President. He said, I'm a Republican. Why – he's a Democrat gov – so we have six – and then somebody says – this five or six people – somebody says – I'm sitting here listening to this, I – somebody says, what, this is crazy, he says. I mean, even if – nobody ever heard of this guy. I mean, how are we gonna raise money for this guy? This is nuts. Well, why – he came here only because the Goldman partner asked him to come.

What's the **[inaudible]** used to raise money for some Governor from Arkansas? And I starts – I get agitated at this point I guess and I say, no, this is what you're gonna tell people. This is how you're gonna raise money for the Governor of Arkansas.

You're gonna go and tell people that when they see him and when they meet him and when they hear him speak and when they see the quality of his mind, his charisma, his intelligence, his good looks even, you're gonna tell these people this guy's gonna be the President of the United States. And if they contribute money now they're contributing very early for somebody that's gonna be President of the United States. And all they have to do is see him and come into contact with him and he's gonna win.

And I said that to sort of rouse them up. I – what I believed or not I'm not even quite sure at that point. They said, all right. We'll, you know – so then we had a party. This group arranged a party in October at some fancy apartment on Sutton Place. And Clinton showed up and Hillary showed up, who I hadn't seen in a while. And we started raising money at that party. And the rest is – the rest is history.

Okay. You wanna go back to the tapes?

Naftali: I'll go back to the tapes. You heard these tapes – the special prosecutor hands them over in a satchel, right?

Nussbaum: Yes, that's right.

Naftali: And that's in March.

Nussbaum: March of 1974, right.

Naftali: And then in April somebody decides to enhance them, right, 'cause it's hard to hear them.

Nussbaum: Yes, yes. We had – correct. It's hard to hear certain points, yes. It was hard to hear them. But we listened and the special prosecutor sent them – I don't remember – he didn't send up – did he send up a transcript? I don't remember if he sent over transcripts. But the White House did release transcripts. And this became a big issue because the White House transcripts weren't accurate in certain key portions. Now, whether it was deliberately inaccurate or not, even to this day I don't know. People like Buzhardt and other people, they were under tremendous pressure in the White House too.

Listen, 18 years later I was in the White House. I was in the White House from the beginning of the White Water. I know – I mean, you might think the White House is a very efficient place with dozens of people who perform well. It's not true. So I don't even – I mean, poor Fred Buzhardt and Jim St. Clair and a handful of people in the White House – but in any event they – for whatever reason the transcripts they released were inaccurate. And then we made it our business to try to put together accurate transcripts. And then we presented that to the committee obviously to demonstrate that what we were given was not accurate. So they – and they could draw whatever conclusions they wanna draw from that. Obviously we weren't in the business at that point of drawing favorable conclusions under those circumstances.

Naftali: So it was after the White House [inaudible] –

[Crosstalk]

Nussbaum: I believe so, I believe so.

Naftali: -- that you start the transcription process.

Nussbaum: Correct.

Naftali: And how – what kinds of checks and balances do you put into that process so that your transcripts are better?

Nussbaum: Well, we just devoted a lot of time. People really made an effort just to get it right. And once we realized the other transcripts were wrong we really – the way I remember it – this is somewhat vague in my mind so I

don't wanna overstate this, but we really wanted to get it right. We wanted – and also we wanted to be fair. I mean, it's not – look, we're good people but that's something – we had a committee to deal with and we had Republicans as well as Democrats. This is not the special prosecutor's office, the independent counsel, things like that where you have to answer to no one. We had to answer to a committee.

And the committee, while it was – the Democrats were in the majority, they were – there were conservative Democrats in the committee who by no means **[inaudible]** votes for impeachment unless we could present a case. Jim Mann, Walter Flowers, people like that are key members of the committee. These are Democrats by no means whose constituents in South Carolina and Alabama but by no means certain to vote for impeachment unless there's a case to be made, putting aside the Republicans.

So what we were trying to do is get it right. Make sure that the transcripts were as accurate as possible so when they make their decision they could make it in a coherent, factual, logical, accurate fashion. And that's a big – even I didn't think of that 'til recently. We really were working for both the Republicans and the – sure it was a Republican staff, too that were Bert Jenner and then Sam Garrison. But we had the Republican staffs overlooking. They were working together with us. That's one of the great things Doar was able to do. Doar was able to meld the two staffs together and Bert Jenner was very influential in that process. So we wanted **[inaudible]**.

On the other hand we were being questioned all the time as to whether this should be done or that should be done or what the consequence of this is or the consequence of that. Or how do you analyze this and analyze that. This is a very important concept to understand during that impeachment. This is a real sort of joint effort in part, but also an effort where we were subject to checks and balances, as we had to be in that thing. So we tried to get it right. We tried to get the tapes right. And I think we did get it right.

Naftali: Some people have remembered the tapes having a major impact on Bert Jenner on his thinking.

Nussbaum: Yeah, I think that is in accord with my recollection. Bert Jenner also – look, Bert Jenner was a – he was a – as the way I remember it, he was a wonderful man, a wonderful guy. He was a very prominent and well known lawyer who created a great firm, Jennifer & Block. And he wanted to do the right thing. And if we didn't have a case – he wasn't out to get the President, as some Republican's later accused him of in effect and just

pushed him aside. He was out to do sort of an independent fair investigation.

And wherever the facts lead the facts lead. And that's the way I felt and I think that's the way Doar felt also, again subject to these charges that he didn't feel it. But he did feel like it. Yeah, once we got the tapes and by the time -- and talked to some of the people, yeah, we did conclude that impeachment was appropriate. But that took a while to get there and it took a while for Jenner to get there too. And I think the tapes had a big influence on all of us. And that's why the irony is if the tapes wouldn't have been there who knows what would've happened.

Naftali: When you put together the subpoenas did you -- were you hopeful -- were you hopeful or optimistic or you just felt you had to do it but you didn't think the White House was gonna give you anything?

Nussbaum: No. I -- well, I was -- the way I remember it one of the key people not the only one. No person was totally in charge of anything other than Doar was in charge of sort of everything overall. But I was one of the key figures in putting together the subpoenas. And that was led ultimately Article 3, which as I told you I was deeply involved in. No, we felt we had to do it and we felt we were entitled to the material. And knowing the way the White House was reacting we felt they would stonewall us because they wanted to turn this into a political process. This was a huge battle here. They wanted to say this is like -- this is a political fight. And what the Democrats were trying to do is pervert the impeachment process really just to reverse the last election. And we were resisting that at all times. So we were trying to get the facts. And that's -- and we were trying to keep the Republicans -- we tried to satisfy them that really we were trying to do it in a fair way.

But the White House was gonna stonewall the committee, and it did stonewall the committee to a large extent. The mistake the President made was having an independent counsel, a special prosecutor who then took him to court and secured the tapes in effect. Although it's my view that, as I expressed to you one other occasion, that the Supreme Court and the *United States v. Nixon* probably made the wrong decision in ordering the tapes to be tolled over. That the President's executive privilege is absolute except in impeachment proceedings. That's the right way.

It probably wouldn't have come out but the way it came out if what I consider the right way was followed. The fact that the Supreme Court did rule, the President did decide to turn over the tapes, which in retrospect was probably the historic mistake from his point of view. And turning over the tapes resulted in the impeachment of the President. If he'd have destroyed the tapes he probably would not have been impeached.

Other people can argue that differently and maybe I'm wrong on that. Actually I hope I'm wrong on that but who knows. I mean, it's – he did turn them over, we did get them and we did present them to the committee and we laid it all out. And the tapes combine with all the other facts we gathered or collated. I'm not – I don't even take credit – I'll have our staff take credit for sort of uncovering all these facts. There's nothing that I remember we uncovered that wasn't obtained by – from somebody else.

What Doar understand is that, as I indicated earlier, our process was to gather, to collate, as I said before and to present.

Naftali: And you made the case before you had the smoking gun transcript.

Nussbaum: Yes, we made the case. I did actually – we – we – actually that's a very – we described to the committee – and I was involved in that along with others – what we thought happened on the basis of witnesses we had talked to or seen or heard, on the basis of documents we've seen, what probably happened in these crucial meetings.

And I remember in one committee session we were sort of giving our analysis – hypothesizing, giving our analysis based on other things. This is then when you put these things together this will probably happen. And the tapes, it was one of those amazing things when the tapes came out, they confirmed it. It confirmed it. I remember feeling so proud that – and I wasn't the only one doing this. I mean, others on the Watergate task force were – we were putting together.

Chronologies are very important. John Doar was very big on chronologies and he was right. Chronologies are important, this fact, that fact, this date, that date, this event, that event. You just – that's how you sort of analyze and it was a good way of doing it. That was a good way of doing it. And then there were certain little lacuna, you know, certain gaps, to use a famous word. And we had to sort of use our analysis to fill in the gaps. What the President probably did at this point, what was probably said here. And a view of what happened afterward, a view of what was said before. And we sort of provided that analysis of the committee even though we didn't have direct evidence of that. And then when the tapes came out the tapes provided the direct evidence.

It was – I mean, Dean's testimony was very important. Dean's testimony in front of the Senate Watergate Committee was very important in the study of events that occurred. And we used that to help us create this matrix of facts. And ultimately it worked. It was a wonderful process ultimately.

As I saw us convince – I saw us convince the conservative Democrats who were very important here. As I mentioned earlier, the Walter Flowers from Alabama whose constituents were very pro President Nixon, and the Jim Mann's of South Carolina. People like that were very important and we reached them. And we were desperate not to have a partisan committee vote if at all possible, even reaching them and then voting – I don't know – 17, 14 or something like that. I think that would've been the figures for the Democrat and Republican split. That would've been a disaster. Disaster's too strong a term. It was the wrong way to go about it. That, of course, happened in the next impeachment, the Clinton impeachment in 1998.

But we really – in order for it to be accepted by the country, to be accepted by history for the good of the country we really felt – we really strove so hard to achieve bipartisanship in this thing. And Doar – and I give a lot of credit to Doar and a lot of credit to Rodino. Those are the two key figures in this thing. Doar and Rodino really just handled it right. I mean, it was useful to have a person like me who was aggressive. I mean, I wanted to go hard, and once I was convinced that there was a case to be made. But their balance, their judgment I think really kept this process going along the right direction.

And I'm very proud that not only we reached the southern Democrats, which were important, the conservative Democrats there not all southern, but also the Republications. And all of a sudden we started reaching some of the Republicans. Bill Cohen and Tom Railsback and people like that who then spoke really from the heart. It was a very moving thing ultimately to see that. And then of course after the smoking gun tape came out, the June 18th tape then the whole Republican – that's when the President had to resign. The whole committee sort of – the whole committee then decided that impeachment was appropriate. So many key Republicans – Wiggins was – the President had very able advocates on the committee – on the Republican side of the committee. He became a judge, Wiggins, in the 9th Circuit I think. Very able guy. Different.

Naftali: But you must've seen the emotion that Wiggins **[inaudible]** –

[Crosstalk]

Nussbaum: Yes, yes, there was. I remember – I do remember the emotion. The emotion – particularly the Republic side. That's where the emotion really was. The Republicans who really voted for impeachment before final analysis, were very torn. They understood they were in the process of potentially bringing down a Republican President. And there was agony. There was really agony in their faces because many of them – and this is really interesting. I used to have these discussions even in our staff, especially with the Republican members of the staff, especially Sam

Garrison, who was a very intelligent guy who unfortunately later on he got into trouble after the impeachment – way after.

But he in effect was – Bert Jenner was sort of pushed aside by the Republicans because they felt he wasn't sufficiently Republican enough or partisan enough. So they put Garrison – Garrison was a quite intelligent guy and Garrison expressed a view that even if some of these things happened and even if you – even if there was this abusive power or the misuse of the FBI and the CIA, the fact is he's a good President. And isn't that a fact to be taken into account?

He was a good President of foreign affairs. He did very important things. He did the opening to China. He was hugely important in the Arab Israeli war in 1973. Don't you have to make a judgment about that as well? And the answer's yes. You really sorta do. But on the other hand, he did do all these things that we – he really did abuse his powers as President against his political opponents and is contrary to our system of government. The answer to that was other Presidents have also done similar things. The answer to that is true. To some extent there has, you know – but the fact is he sort of put it all together in a way that nobody else quite did it before. And you can't do that anymore.

And that was a debate. Garrison made some interesting arguments and I think this was reflected in the agony of the Republicans, I mean, when I watched this. They thought – many of them thought he was a good – overall a good President. Not only was he a President of their party but he was a good President, certainly in foreign affairs and maybe even in domestic affairs they thought. And in some ways he was a good President.

He probably didn't like me because I told you I mentioned a book that he spoke – and this is years later after I was in the White House with Bill Clinton. He made some derogatory comments about me after my deputy Vince Foster committed suicide. He said in this book called “Conversations with Monica Crowley” that he thought I was a – to use his language – a tough shit and consequently – maybe I drove my deputy Vince Foster to suicide, which of course is not true. Vince Foster was a wonderful man who unfortunately had a breakdown.

But President Nixon was a very able guy but he did what he did and we did what we had to do. And the Congress reached the decision it had to reach.

Naftali:

Sam Garrison's office, was it close to yours? I mean, was he in the Congressional --

[Crosstalk]

Nussbaum: Well, yeah, yeah, yeah. We were all – we worked out of the Congressional Hotel. It was a very small place and we were constantly together. And Garrison was a good advocate. I have – for – I don't believe he's alive anymore – still alive.

Naftali: No **[inaudible]**.

Nussbaum: He died, didn't he? He was young – he was not old. He was little older than I was at the time. But he was – you should really – well, you did track down some of them, Bill Weld I guess. You should track down some of those Republican staff members and see what they remember. By the end we were all on the – mostly on the same page, which is an amazing feat, which I full didn't appreciate. I know it was important at the time but I didn't appreciate how amazing – in this day and age, impossible, impossible to have done today what we did then. I think it's impossible.

Naftali: What changed?

Nussbaum: Well, the enormous partisanship that exists today, which even existed 20 years ago when I was in the White House with Bill Clinton, when I was council to the President. It became worse and worse. I mean, there's no middle anymore. There's no moderate Republicans. There's some moderate Democrats but there's no moderate Republicans. And the notion of people coming together to make a joint decision. That's why the country has all the difficulties it has now, the economic situation and things like that. It's a really big problem.

Then maybe it was the – maybe historians will look back – they can already look back and it was one of the last times that people can sort of come together. Again it's a tribute to -- as I keep saying, to Doar and to Rodino but we came together.

And also what I was very – what I'm very proud of – I think I mentioned this before, if not in this interview – is that I always thought there would be a historical backlash against the impeachment process, against the Nixon – President Nixon resignation. Because we forced him out of office this was a partisan gang that sort of put it all together for – it was never – that backlash never came. Nobody ever writes that somehow – there's no meaningful position, I'm sure some people have written, but that somehow error was committed.

This was wrong what happened. This was wrong. I mean, this shouldn't have happened. This was sort of a President being driven out of office and he shouldn't have been driven out of office. Nobody's – no respectable

authorities have ever really said that. And that's another tribute to that process that we engaged. I'm very proud of that too. I always thought there would be. I thought history – that's the way it'll go 20 years from – 20 years from now the people who start writing all this was – we – in a moment of hysteria, using the tapes we forced the President out of office and we shouldn't have done. Nobody's ever said that. The decision is basically accepted by history as, yes, this is the correct judgment under those circumstances and those times.

And that's something – look how the people are gonna look back at the Clinton so called impeachment. He was impeached, President Clinton. He was impeached by the House of Representatives. He was acquitted sort of by the Senate but he was impeached. But everybody looks at that as a joke. It's a joke. It's an absolute joke. It's a misuse of the impeachment process. There's been no punishment by the American people of the party that did that but it's a joke. You look back at that as a joke, not as a legitimate process.

But nobody looks back on – most people don't look back, maybe some people do – but most people don't look back on the Watergate impeachment, the 1974 impeachment and the ultimate resignation as a joke. Actually President Nixon wasn't impeached. The House Judiciary Committee voted out all articles of impeachment. And prior to being voted on the floor of the House he resigned because the Senators went to him and said, the article's gonna be voted out and the Senate will probably vote to convict, so he resigned.

Naftali: Did you think that the lessons you'd learned in 1974 were useful or not in 1993, '94. Or had the world changed so much by then that **[inaudible]** –

[Crosstalk]

Nussbaum:

No, no. They – in 1993, '94 when I was in the White House I was affected by what happened in '73, '74. And this is, of course, also part of history right now in various books. The office of the Independent Counsel is a very dangerous office. It was conducted well in '73, '74. Cox and Jaworski did a good job, they did a fair job. It was the proper thing to do but it was a unique circumstance at the time. There was clearly evidence and significant abuses of power. We had the tapes ultimately. But normally that is a dangerous office to exist in for a President to have to face.

When you start appointing independent counsel the dynamic is such that you wanna make a case. You wanna make – when you only have one target and your reputation's sort of at stake you wanna make a case. It's a – the impeachment process is a proper process but the Independent Counsel is a dangerous thing to have because you have to have a unique

person in that position who can walk away without making a case, especially when the President's involved. Maybe with other lower officials is a – so I was very wary, and when I came into the White House in '93, '94 of the institution of special prosecutor of the Independent Counsel.

And when this outcry arose in late 1993 when I was counsel to the President after my deputy Vince Foster committed suicide, this outcry arose about White Water, this so called investment that President Clinton and Hillary Clinton had made a long time ago, which they lost money on, that somehow there was some sort of corruption involved in that or Madison guarantee. And then Jim McDougal and people like that [inaudible] happened, had nothing to do with abusive power, no mis – none of this same kinda stuff that happened in '73, '74. And it was an outcry for an independent counsel to investigate these acts.

I was vehemently opposed to that – vehemently opposed. It was – there was no Independent Counsel Act. I mean, the Democrats will introduce one in place – vehemently opposed to that. And I argued vehemently in the White House to the President that he should not appoint an Independent Counsel. I said, this is a dangerous institution. I said, there's no basis to appoint – you did nothing wrong in office here. You did nothing wrong in Arkansas 20 years ago or 15 years ago, but it has nothing to do with your being President right now. You appoint this it will be like a knife in your heart.

Whoever's appointed Independent Counsel will take years. I said, you know who should appoint? If you'll appoint me as Independent Counsel, appoint me, me, your counsel, Bernie Nussbaum. Make me Independent – you know what I would do, I said? I'll tell you what I would do. I would spend three or four years investigating everything in Arkansas. I would turn over every rock, because I'm not gonna go back to New York not having explored – I'm sure I'll find people who committed criminal acts in Arkansas in the last 20 years. I have a feeling, Mr. President, that probably happened. And maybe those people that, in order to avoid trying to go to jail, will find – will remember something about you, which didn't happen but will remember something about you and say things like – this is crazy. There's no basis to do this.

All you will do is create an institution which will haunt you as long as you're President and beyond. Don't do this. Don't do this. The others were saying, oh that's ridiculous. The Republicans, even Democrats are coming [inaudible] it'll end the media. It'll end the media storm that's going on now with respect to White Water and things like that. I said, no. And we had a big debate on the telephone. It's all mentioned in the recent book.

I said, you have to do something? I said, I'll tell you what you do. I'll tell you what you do, Mr. President. You and Hillary go down to the Senate Judiciary Committee [inaudible] and testify. Ford testified after the Nixon pardon. Go down and testify. Let them ask you any question they want about White Water. And they started screaming, I'd rather – the other staff members, Stephanopoulos and others started screaming, this is crazy, vast publicity, you know. I should – I'd rather have vast publicity. You'll be able to handle any testimony 'cause there's nothing here in any event, than set up an institution with 25 assistant U.S. attorneys and 25 FBI agents who will start investigating you and your friends in Arkansas for the rest of your presidency.

When I said this, by the way, Monica Lewinsky was a junior in high school. She wasn't even around in this time. This was six years – don't set up this institution. They'll be after you, your friends and everything. Oh, I can't – they keep asking me about it. He folded, he folded. Even Hillary folded. Hillary was on my side and then she couldn't deal with it. And they appointed the Independent Counsel who the first one was replaced, Bob Fisk by Ken Starr. I then left the White House because I was now a very controversial figure who gave bad advice about not appointing Independent Counsel as well as other allegations. So I left after a year-and-a – a year-and-a-quarter in the White House. And what happened happened. The rest is history.

He did write it as a memoir the biggest mistake he made was appointing the Independent Counsel. So – but that's – it's a dangerous institution to be used very sparingly, especially with respect to a President. And – but that's what happened. But that affected me. I understood the dangers of – '74 did affect me for '93 and '94. And I also – Hillary was involved in '73, '74 and with me in '93, '94. She understood it.

But the great pressure in the White House, the other staff members and foolish Democratic Senators, they folded. If they didn't fold the Clinton – that'd change history too. The Clinton Presidency would've receded. I'm not justifying any conduct that President Clinton committed or may have committed with respect to Ms. Lewinsky later on. That's, you know – the fact is it wouldn't have had the impact on his presidency it had. There would've been no impeachment. Al Gore would probably have been elected President in 2000 and the world would've been different. But that's what happens. If Nixon destroyed the tapes the world would've been different. If President Clinton had listened to me with respect to appointing the Independent Counsel the world would've been different. But I'm – I lead a good life. I'm a happy man.

Naftali: Bernie, I want to ask you about what you recall of Doar strategizing about how to reach out to Democrats, southern Democrats and swing Republicans.

Nussbaum: I don't remember a great deal. We all wanted certain people to make themselves available to various members of the committee and it was an intelligent thing for him to do. Not only him but actually others such as we talked, Dick Gill, Dick Cates, for some of the Democrats, just give them tutorials basically; reach out to them; try and explain what we were doing; what we were coming up with. It was tricky meeting with the whole committee at once at times because there were a lot leaks and we were always worried about that. The staff never leaked. The staff was – that's another great tribute to the staff.

I'm sure other people must have mentioned this. This is a staff that never leaked and nobody had ever written a book about this from – no staff member has ever tried to write sort of an inside view of what happened here. We were trained. This is confidential. This is private. This is restricted. This is secret and none of us even talked about this for many years except in a most general way. I made a speech now and then about it. It was very good but in any event to answer your question about, yes we tried to communicate with various representatives and I also would meet from time to time with some of them if I had questions but most of my time was trying to spend putting together the ultimate factual presentation.

In fact, I think I've told you this story before. I was so convinced that we were gonna have to go to trial in the Senate after if finally looked like the articles of impeachment were going to pass on a non partisan basis. I remember very vividly the resignation of President Nixon. I remember that day. I remember my wife was in Washington at this point with our three children and she wanted to go back home because I was working around the clock. Our kids were little and they would have to go back to school and she didn't want to stay in the Washington area. She wanted to go back to our home in Westchester County where they would go back to school and I really wanted them to stay.

We were having big discussions about that to put it mildly about I wanted her to stay with me because I really wanted her there with the kids and she wanted to go back because she never say me anyways and the kids never really saw me. So anyway we were having these discussions and then it comes August of 1974, it shows my mindset and what I was direct in doing. I am now past the votes, the key votes in the House in effect. The articles of impeachment have been approved. Now I'm totally focusing on, as I had sort of been all along, how do we try this case? How do we try this first case in the Senate, first trial in the Senate in a hundred or so

years? Who do we call as witnesses? What exhibits do we use? How do we use the tapes? I'm trying to figure it all out. Some people are helping me but there's not a lot of help.

There's not a lot of people on the staff that have tried a lot of cases and none of us have tried a case in the Senate. As an aside, I'll get back to this in a second. Jim St. Clair at one session of the committee when he was there and I was there, he said to me "you know" he said "you and I are learning obsolete skills." I said "what are you talking about?" He says "I'm learning how to defend a President and you're learning how to prosecute a President and neither one of us will have much use of this in private practice." I said "that may be true but" – I started laughing but in any event, I'm trying to figure out how to try this so I'm sitting in my office and I remember Doar or somebody.

I thinking it was Doar who walked in and he says "Bernie, you know the President is about to speak and there's all sorts of rumors about what might happen; like he might resign or he's certainly speaking. So why don't you come in. We have set up a television in sort of the common room and why don't you come?" I said "no, I don't want to watch. He's not gonna resign. Nothing's going to happen. It's gonna be another rationalization. I gotta work. I gotta figure out what we're gonna do." I guess I was a little crazed. When's the trial gonna take place? They're gonna pass the articles of impeachment and the trial is gonna take place in a month or so.

We've gotta be fast and I gotta figure out what are we gonna do? In my mind because we didn't have a lot of trial lawyers, I didn't have a lot of help. Maybe I had more help than I thought. So he looked at me straight and he says "ah you're being silly" and he walks out. Twenty, fifteen minutes later, Bert Jenner walks in and this I remember "Bernie, stop being an idiot. You're being an idiot again. Come and watch with the rest of the staff the speech. We're all gonna watch the speech together and you can go back to work after that." So in a morose fashion and I sort of put my pencil down and I said "all right, I'm acting pretty stupid." So I get up and I walk in and I sit down in the chair to the little television sets – we don't have the fancy television sets we have today and I'm sitting there looking at the set glaring morose; not talking to anyone particularly and President Nixon comes on the screen and he starts his speech and he says he's going to resign. Totally shocked me! I was convinced from listening to the tapes he will never resign. He's gonna resign and I'll never forget this, I thought "gee whiz." I said "now I don't have to fight with my wife anymore."

That's all I thought about. I didn't think about history. I didn't think about the impeachment. I didn't think about anything we did. I thought

“oh my God, I can go home tonight and there’s gonna be no fight. We can go home. We can go home with the kids.” That’s all I thought. I didn’t think “gee this is really an historic event.” A President resigning and we were part of this process. I thought about my wife is gonna be – well I don’t know if she’s gonna be happy because I can go home with her but we’re gonna go home together and she was happy and the next morning I remember watching President Nixon speak to the White House staff, that amazing speech about “don’t get angry because then they win” and things like that.

That famous, actually it was very moving. He was really – but I remember watching it with my wife and my kids were too little. They were there but my mother in law was there to try to keep the peace. We were watching it together and we were “we’re gonna go home.” That’s what I remember about the end, the end of it.

Naftali: Could we get a sense of how you would have tried the case by looking at the final, Doar’s final report?

Nussbaum: You know, first one of the interesting issues is who tries the case? That’s what I was also concerned about. We, you appoint house managers; lawyers really don’t try the case on the floor of the Senate. Now it was interesting, the Clinton impeachment later on, how that sort of worked. Chuck Ruff, who I knew, spoke on the floor of the Senate. I was trying to think would we be able to speak on the floor of the Senate? Would the lawyers be able to speak? And if not or even if they were, which congressman would we be using to present our case? This was all and would we be using witnesses or just documents?

I was just at the beginning of that stage or would we just play tapes or call John Dean and play the tape? This is the kind of things I was wrestling with and we had three articles. How do we prove each of the articles of impeachment along with the Watergate article, article one, article two was the abuse of agency articles. One was the break in and number two was abuse of various agencies and number three was the failure to turn over documents to the committee. How do you make those kind of presentations? I was just starting to weigh those things at the time. To me it was difficult and important to sort of “how do you try a case in the Senate?”

Naftali: Did you talk to anybody in the Senate? Did you have a chance before it all ended?

Nussbaum: No, no, no, it ended suddenly.

Naftali: Did you have a sense of time table when this might happen?

Nussbaum: Yes, I was very concerned about that. That's why I didn't want to leave my office. I thought it would be fairly quick. I thought within 30 to 60 days after the articles of impeachment would come down and that's an important time to prepare a case. And we would have to prepare the congressmen because we weren't really gonna be able – and even in the Clinton impeachment, you have congressmen present it on the floor. So we have to prepare them. They're not as steeped in it as we were. So you have to spend time preparing them. How do I prepare them? Who's gonna prepare them? This was a big job if you really wanted to fight it all the way through as President Clinton did in 1998.

Naftali: What role would John Doar have played?

Nussbaum: That's an interesting – I envision him playing a very important role making a basic presentation. If the congressional, if the Senate would have permitted it, then we had to get Senate permission. The whole procedures things was – I mean I remember reading about the Johnson impeachment, figuring out how they did it there but that was sort of a cut and dry thing. He fired Stanton; there was no real factual issues. It was sort of a legal determination whether he had the right to fire one cabinet member contrary to an act of congress in effect but we've got all sorts of factual things and how do you put them forward? I wanted John to play a big role, not me. I didn't envision myself as the prosecutor. John was the leader of the staff. Although maybe I thought I could play some role but I never really articulated it; depends on John. Anyway, he would make the decision but he, speaking on behalf of the staff, I thought would make a very good impression because he has the right balance and then which of the house members and maybe the more conservative house members like Walter Flowers and Jim Mann would be very effective. They were very effective on the committee when they spoke. Jim Mann was great in the "Watchman in the Night" speech that he made. These are all decisions that were in the process of being made at the time when the President made it much easier by resigning.

Naftali: Did Mr. Doar play any role as a consultant at the time of the Clinton impeachment?

Nussbaum: Not to my – I don't know. Not to my knowledge. I wasn't around at the Clinton impeachment. If you'd have listened to me, there'd have been no Clinton impeachment but I wasn't around. The answer is probably not but I don't know for sure. I don't know for sure.

Naftali: Did you know that Burke Marshall opposed article three?

Nussbaum: No, I did not know that. He did? That's interesting.

Naftali: He and Owen Fiss had a debate about it. Owen Fiss supported it.

Nussbaum: Owen Fiss did support it? Yeah and that was important. See he, I mean I was a strong supporter of article three and I did know that Doar reached out to other people such as Fiss and Marshall to get their judgment on these things. He didn't rely on my judgment solely. He looked to me for advice but he was looking to other people as well. So if I argued as strongly as I did for article three, I knew he would go to other people. He should! That's the right thing to do. Just because I say there should be an article three doesn't mean there should be an article three. I thought there should be and I thought it was very important for history terms.

It was part of my – even article three, it was part of, the reason I wanted article three is because we had to sit down; the President, the executive branch is obligated to cooperate in the impeachment to enable us to try it in the Senate. I'm always taking it to trial in the Senate, the ultimate trial; and if they don't give us the material, it makes the trial that much more difficult and that itself is an impeachable offense in an impeachment process; and that's what I thought was important. It was important because it inhibited us. They had no right to withhold anything, once there is an impeachment. I believe in executive privilege and certainly I was a big defender 18 years later of executive privilege but if there's an impeachment proceeding, there's no executive privilege. There should have been none in the Clinton proceedings and there wasn't. They didn't –

Naftali: It was a tough question though. You'd said a legitimate impeachment. What, who decides –

Nussbaum: No, no, no, no, yes, it's true. You can't, the congress decided in effect whether it's legit. It starts, you're right. I shouldn't even use the qualifier legitimate. There was an impeachment proceeding in 1998, the Clinton impeachment proceeding. It's a legitimate impeachment proceeding. It was just wrong. It's legitimate. I don't think Clinton can claim executive privilege in that impeachment proceeding, claim the proceeding is legitimate. It's legitimate. The committee authorized the impeachment and he has to cooperate or suffer the consequences of cooperating. I mean I think a lot of mistakes were made; not so much in the impeachment proceedings but prior to that.

I don't think he should have testified before a grand jury. I don't think he should have done a number of things but I wasn't involved. I wasn't counsel to the President. I was long gone. I left in 1994. This all took place four or five years later.

Naftali: Couple of points just to see what role you played. Did you, there was a debate within the staff, the '74 impeachment staff about whether this was a grand jury or not; and what rights to accord the President's defense counsel. Whether St. Clair could kind of cross examine, things like that.

Nussbaum: Yeah. This was for the congress to determine. That's what I felt. Impeachment is solely in the province of the legislative branch, the house in the form sort of the grand jury and centers as the trial court and the ultimate finder of fact or conclusions of law in effect but it's up to the house to set whatever procedures it believes appropriate in conducting the impeachment proceeding. I believed in that but I also believed from points of fairness and due process that the President had to be given every opportunity to make whatever defense he wanted to make. You don't have that necessarily in grand jury but I felt that the house didn't have to do it but I felt it should do it. It should do it so the country sees. This is a very significant thing in our country when you try and impeach a President and consequently, it should be fair and perceived to be fair; and therefore St. Clair should be permitted to make whatever arguments he wished to make; to present whatever witnesses he wished to make; whatever documents he wished to do. He might not have that right in a grand jury normally but this is different. It is a grand inquest, grand jury type of proceeding but it has to be done fairly in accordance with due process but congress itself and the committee itself can make the decisions what that requires and what it doesn't require. That's what I believed at the time and I think that's the way the committee acted.

Naftali: It is but, and I believe John Doar shared that.

Nussbaum: Yes he shared that.

Naftali: But there was a debate.

Nussbaum: There was a debate.

Naftali: I think there's some people who were saying "no, he shouldn't have the right."

Nussbaum: No, we should just present it if there's enough for a co indictment or impeachment in effect, we present it, then there's a trial in the Senate and the trial in the Senate both sides have a presentation they make. I didn't feel that was the correct thing to do in the house. The whole country was looking to this, first we had these secret sessions. Then we had public sessions, you know. Actually that was a tricky issue, whether to go public or not with these sessions and we never went public, I believe, we never went public with the evidentiary sessions. That was the interesting issue.

Do you have public sessions on TV all over the country with respect to the presentation of evidence?

Well we did if I'm correct in my memory and this is giving credit to Doar and Rodino, what we did is we had all the evidentiary presentations including witness testimony done in private but the debate, the ultimate debate on whether to vote on articles of impeachment was done in public. I'm correct in that right? And that's the important thing. That was the interesting thing. Do we really want to go on television and have, hear Evan Davis read from statements of information? Devastatingly boring to do it; even do we want to go on television as the Senate Watergate committee do and hear John Dean testify or John Mitchell testify? No, we – in that sense we analogized mostly to a grand jury. You don't have grand jury proceedings in public but trial proceedings are public. We had the sense to realize we weren't looking for exciting public hearings before the House Judiciary Committee. Whatever the Senate did, the Senate did, would do and the Senate presumably would go public but maybe not. I mean the Senate could do whatever it wished to do but we decided here we analogize it to the grand jury.

We can, the evidentiary presentation, including St. Clair's presentation – we allowed St. Clair to make a presentation which is different than the grand jury but we allowed him to make a presentation. That's done in private but now the ultimate decision making process will be done in public so we had these public hearings or public sessions which each of the members was able to speak to present his arguments and debate in public.

Naftali: Francis O'Brien remembers there being actually some conflict over whether even to make that part public.

Nussbaum: Correct, no there was an argument which I don't think I would have favored. I'm not sure what my position would have been at the time. Yes, that was a very interesting judgment that was made and I agree with it. It came out very well ultimately. The committee members really shone on both sides of the aisle; including the people arguing in favor of the President; like Wiggins who I remember vividly at this point. We struck the right balance. We understood that you can't make the evidentiary proceedings public one because they would fall flat in effect.

There's no smoking guns, even though we had a smoking gun tape in the end but there was no smoking guns like that. It would fall flat and that should be done in private like a grand jury. It's not a trial; this is whether – but although we gave St. Clair the rights that he wouldn't have before a grand jury. So kind of the rights he would have at a trial but the decision making process should be the articulation of why people are doing what

they're doing; whether the committee is doing what its doing should be made public and it worked perfectly.

Naftali: Francis O'Brien remembered that John Doar was very nervous about that.

Nussbaum: Yes, I agree and if he was nervous, I was probably nervous about it too at the time. I don't remember. I really don't. I just, I remember I didn't want the evidentiary things to go public and certainly John Doar didn't which is what counted here; but I think I wasn't all that nervous about the committee going public at that particular point in time. I wanted that. I thought that would be good if, maybe I'm changing. I don't remember arguing against it certainly.

I thought it would be good because I thought the country should hear these. I thought it would be good for us because it really, committee members would have to be, even those that were opposed to us would really have to be a lot straighter so to speak if they really had to make a public presentation than what you can say in a private presentation.

Naftali: Do you remember the pressure that Chairman Redino placed on Mr. Doar to be a little bit more assertive?

Nussbaum: Yes. Yes, yes, the Democrat, the Democrats, especially the ones who were most in favor of impeachment were very concerned that the staff generally and Doar in particular, were not aggressive enough. Remember, the counter part of Doar's theory about being even handed and looking neutral is that it frustrated some of the Democrats who wanted to prosecute him, who wanted somebody who was really an aggressive prosecutor; and some of them looked to me to try to perform that role. Doar simply would just send me to talk to them to sort of satisfy them. So I would talk to some of the more, I'll call them radical Democrats who were more comfortable with me because I came off more as a prosecutorial type at that time.

Naftali: Also Elizabeth Holtzman knew you.

Nussbaum: Elizabeth Holtzman knew me and I knew Charlie Rangel a little bit. I knew some of the others too. So they sort of looked to me and I would meet with them sometimes. I would tell them "yeah, we're doing the right thing" and stuff like that to try and calm them down but generally, Doar was the out front guy and he should have been the out front guy. He, they wanted him to be more aggressive and then Peter Rodino probably did put more pressure on him to be aggressive but Doar was Doar and ultimately it worked perfectly. It worked as well – Doar's self effacing role actually was very valuable in a sense because when we did go public, it was not for Doar to make some grand speech, it was for the committee members. It

was the right way to do it. It was the right way to do it. The Clinton impeachment, I was watching it. These very partisan committee staff, they just rub people wrong. Doar understood instinctively, this doesn't work. It doesn't work on TV to be overly aggressively prosecutorial. It doesn't work in this kind of situation.

That's why these guys fell flat in the Clinton impeachment so many years later and that's why this sort of worked by Doar sort of being in effect sort of effacing as I said, he left it to the committee members to make the case and it turned out to be better. Yes, some of them were more radical than others, Elizabeth Holtzman as compared to Walter Flowers and Jim Mann but it all came together. It was more effective for them to do it than for any lawyer to do it, any lawyer to do it; at least in the context of an impeachment proceeding, namely a house impeachment proceeding; rather than distinguished from a trial of the Senate.

Naftali: Bernie, what is it that you don't like about pencils?

Nussbaum: Oh yes, this is, I've heard this. Now of course I'm a very laid back guy as everybody can see but I'm fairly intense at times and I guess people remember me breaking pencils. And Doar I think asked me once "who's gonna pay for all these pencils? They are federal government pencils." I said "I'll pay for the pencils!" I would snap pencils. I would walk around sometimes snapping pencils but I don't do that anymore. See I'm a little older now. I don't snap pencils. Still when I try a case I get wound up. Trial work is tough work but it's fascinating.

Naftali: Mr. Doar was very careful about keeping his cards close to his chest.

Nussbaum: Yes.

Naftali: But listening to the tapes had an effect on him didn't it?

Nussbaum: Yes, yes, it confirmed, we all believed that the President really acted improperly. There really was a misuse. It was wrong to break into the headquarters of your political opponents. It's wrong to wiretap. It's wrong to break into the headquarters of a psychiatrist. It's wrong. And then to misuse the FBI, L. Patrick Grey and then to misuse the CIA; this is, we all felt that and when you heard the tapes, it sort of put it all together for us. It did have an impact on Doar. Whether we could have, maybe Doar would have, only he can speak for himself, but he reached a conclusion that we should have asked for impeachment without tapes, I don't know what conclusion he would have reached. I mean I don't know what we would have done at that point.

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- Naftali: Did he give you a sense of what he was thinking or did he not share it with you? How did it work?
- Nussbaum: He, what he said we have to do, he didn't give us his conclusion that we're gonna, this is the object we're gonna seek to impeach the President and we're gonna take all necessary steps to achieve that. He just said "we've gotta gather the facts; collect the facts; and we've got to present them to the committee and maybe we'll present some conclusions at that point but that will be much later on." He wasn't a fire brand prosecutor. He wasn't a forceful figure. He was a strong figure.
- He was very strong but and I think that's why from time to time, I butted heads with him because I wanted to be more aggressive and to do more from time to time but as I said earlier in this conversation, I think ultimately his approach was correct. He just wanted us to gather the facts; present it to committee and then we'll also present some conclusions and then the committee will have to make a determination what it wants to do. I know when he heard the tapes also like for me, it did affect him.
- Naftali: Did he tell you that it did?
- Nussbaum: No but I knew it did just by talking to him. It wasn't necessary at that point. This was March. We'd been, this was, when did we start working? We made our ultimate presentations in July I guess. We had three months.
- Naftali: I was just wondering if you could, since I don't know if we will be talking with Mr. Doar whether you saw an evolution in his thinking. I know his approach was always the same whether his thinking –
- Nussbaum: It became, yeah, there was an evolution I think in his thinking as I remember back. I think like all of us he was somewhat uncertain where we would come out in the end but as time went on and especially after the tapes came in. Whenever they came in, you say in March when they came in, then it was clear where he thought we should head but it was a gradual thing. It wasn't a eureka thing. It was true for me also. I didn't know where we were in December or January or February. I just wanted to start. Let's get everything done and then we'll see what we have. We'll see what we have. Yeah, we thought, obviously there was enough to start an impeachment proceeding which is a lot but the thinking I think was fairly evolutionary. Partisans on the other side will say we always intended this from day one but that's not the way I remember it. I really don't.
- Naftali: Were there any surprises for you when you started collecting the evidence?
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- Nussbaum: Not really. You know I think by the time the tapes came as I said earlier, we sort of had put enough together to know what happened here. The tapes were just a dramatic confirmation of that fact and a dramatic increase in our ability to bring it home. That's what happened. There were no real surprises.
- Naftali: But without the tapes, it might have been impossible to bring it –
- Nussbaum: Without the tapes, I think it would have been impossible. I think the President made a bad mistake for himself. I'm not saying for the country. I think the President should have destroyed the tapes.
- Naftali: And you later counseled President Clinton not have –
- Nussbaum: Yes. President Clinton I don't ever think intended to tape himself but I told him there should be no taping and at least of conversations but President Clinton ultimately did tape his memories of each day with an historian, Taylor Branch who has written a book now called The Clinton Tapes but there was no taping to my knowledge of White House conversations. I wish for history there was. You could hear all my arguments against the independent counsel.
- Naftali: And you didn't know about the tapes, the Taylor Branch taping?
- Nussbaum: No, I didn't know about that. He did that on his own. I didn't know; maybe other people knew but he did that on his own and produced a book and whatever the book says, the book says.
- Naftali: What did you think of the pardon?
- Nussbaum: That's a good question. I was in favor of the pardon. I, you know it was interesting. I shouldn't say I was, that's too strong a way of putting it. I wasn't upset by the pardon. That's a better way of putting it. I don't know if I was in favor of the pardon. I don't know if I would have pardoned Richard Nixon if I was President of the United States but I was not at all upset. I really understood the pardon thing. The country had been through such a difficult – what Ford said really sticks. "Our national nightmare is now over."
- Pursing President Nixon on criminal charges after the impeachment, after his resignation, would have just kept this thing alive in a way I think would have been destructive for the country. And I think President Ford did the right thing in pardoning President Nixon. It helped put the thing to rest. The fact that he accepted the pardon and this is one of the President's problems, was some sort of acknowledgement of improper conduct on his part. I don't think he goes down favorably in history having had a pardon.
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You don't have to accept a pardon. You can refuse a pardon. Do whatever you want to do but don't pardon me.

I'm not accepting a pardon. So I thought it was a wise thing to do. Obviously it had deleterious consequences for President Ford probably and it was a close election ultimately against Jimmy Carter in 1976 but I remember thinking when he was pardoned, I wasn't angry. People say "you're angry! It's been all this time." And I said "I'm not angry. I'm not angry. It worked." The house or the committee voted to impeach. There was overwhelming support for that resolution both in the committee and in the – as there would have been in the house. There was overwhelming support in the Senate because the Senate was the one to really, the Senate would ask him to resign.

I said "we accomplished and he's no longer President. What's the point in pursuing a criminal case against the President with respect to this?" So I thought the pardon was the correct thing to do. A lot of people, friends of mine disagree with this and say he should have been punished if he violated the law; if he committed crimes but I didn't believe that in this circumstance. I was happy with the pardon. Happy, that's too strong a term. I wasn't, I understood the pardon and as time went on, I more and more and more, I thought it was the right thing for President Ford to do. I don't know what the other people you've discussed think about the pardon.

Naftali: Would Hilary have helped you had you tried the case? Was she gonna be one of those that you brought with you?

Nussbaum: Yeah, yeah, yeah sure. Hilary was a star on the staff.

Naftali: What did she do, I mean what –

Nussbaum: She was a very, she was very smart; very aggressive. She was a key researcher. Doar looked to her. I looked to her. Other people looked to her. She was young. She was 26, 27 years old. She was just out of law school but she had a very powerful personality and she was very able.

Naftali: Do you remember her playing a role in any debate or any –

Nussbaum: No, not offhand. I remember, I think she worked with Labovitz on the impeachment, the grounds for impeachment memorandum but she was just whatever she had to do. She was clearly one of the, I understand she's so famous now obviously and so important in our history itself but even then, even we knew then, I remember and I think the other staff members would say this too. I don't remember every 26 year old on the staff but I

remember Hilary and I would remember Hilary whether her husband became President or not. She was just very good.

She's a very good lawyer. A very tough, smart lawyer and whatever assignment she had, she would perform splendidly and she would have been relied on. And she would have participated. Doar looked to her and Doar was good about that and was comfortable with younger people a little bit, good younger people and she was one. We had a very good staff.

Naftali: Are there any stories I haven't elicited from you?

Nussbaum: No.

Naftali: That you'd like to record?

Nussbaum: No, I think this is – I haven't thought about it in a long time. So I really didn't sit down and prepare for this or look back at documents but it's an event I'm really proud to be a part of and I say history has looked upon it favorably. They've looked on it favorably because I think we, on balance; we acted the way we should have acted. Doar did a great job. Peter Rodino who deserves a lot of credit did a great job. We had a good staff. The Staff is still, senior people still certainly see each other a lot. Nobody leaked. Nobody wrote books. Think of that. Think of that. No staff member went out and tried to sell a book about the inside John Doar–

Naftali: Bernie, you were saying that the staff stayed together and –

Nussbaum: Yeah. There were no leaks, and nobody wrote books, and no one – I mean, I have to give a lot of credit to John Doar for that. We really kept his secrets. It was a confidential proceeding, and none of us used it to grandize ourselves, to try and make money out of it or just to try to become famous out of it. No one did that. That's very unusual on anything like that. On any other staff or special prosecutor's office, somebody's always writing a book to tell the inside story. You know, which always puts them at the center of the inside story. None of us did that. That's a very interesting development. It showed the cohesive unit that we had, and that's good. Sometimes I wish somebody had sort of tried to pull it all together, but I don't believe in it. I just believe in going on to the next thing.

Now you want to know what impact it had on my life. You know, on the one hand, I'm a lawyer. I've had a pretty good career as a lawyer. I was happy being as a lawyer. I went to a small firm which became very successful and continued to be very successful, and I would have gone back to the firm, as I did go back to the firm. In that sense, the only impact it had on my life is that I would have been proud that I participated

in part of an important part of history, and that I did something in my life which is very significant in addition to my law practice, which I value highly, and I would have just gone on. On the other hand, it played an enormous role, because I met Hilary Rodham who introduced me to Bill Clinton. And for a period of time, I stepped into history again into a uniquely important role, as it turned out, to become counsel to the President of the United States, something I would never had an opportunity to do. It's a fluky thing. If I hadn't met Hilary and I hadn't met Bill Clinton through Hilary, and then if I hadn't supported him all those years because I was afraid that Hilary would scream at me again if I didn't do it. And then of course, when he was elected, I played a role in the campaign in 1992 – a small role, because I was busy on a huge case at that time, I was representing a law firm case at that time. Then I became Counsel to the President.

Or if I hadn't become Counsel to the President, I probably would have gotten some other position in government. In fact, I was offered other positions in government, but I became Counsel, and then I became a very controversial Counsel, and I was involved in certain key decisions, which as I indicated earlier, the President accepted and that had a major impact on history in and of itself, so for a short time, I became another figure in history. And I look back at that with pride because I was there with the President, and I gave the right advice, which wasn't accepted at the time because of who he is and who the other staff members were, and the consequences that that led to, which is sad, but he survived it, and he's doing very well now, former President, as is our former First Lady who's doing even better in many ways. But I got to know them, but that's all because I accepted that job when Bob Morgenthau told me to really think about it when John Doar called me again. So it had an enormous impact on my life. I became a much more prominent figure in the country which I wouldn't have been.

And because of that, I was able and fortunate enough to recommend some good people to become judges. I was involved in the appointment of a hundred federal judges, one of whom is Robert Sack who I met on the impeachment who probably would not be – who met Hilary on the impeachment as well. So between Hilary and I, I mean, I think we had some role in seeing to it that the President appointment Robert Sack to the Second Circuit Court of Appeals, and I think it changed his life in that way. And he's a wonderful judge, he's a great judge, and it's a great appointment. So you can see the impact it basically had on all of us. It was a good impact, but just looking at the event itself, as I indicated earlier, it's something to be proud of. To be a part of something that was done in the right way and worked and has been accepted by the country at the time, the country later on, and by history as the right thing to do.

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- Naftali: Did Hilary at the inauguration remind you of the story in the car? She must have at some point.
- Nussbaum: No.
- Naftali: It's delicious.
- Nussbaum: Okay, I'll tell you that story. This I don't know if I told. When I went down to be interviewed to meet Bill Clinton after he was elected President, I went to Arkansas to discuss what role I might play in the administration, and I went down to see him in the Governor's mansion in Arkansas and I got there early – not early, I got there, and I waited for him. He was visiting the President of Mexico at the time - he was President Elect, he hadn't been sworn in yet – and he came back and I met him, and we started talking about I congratulated him – I guess I had seen him before, but then Hilary walked into the room – Hilary was there too – so I'm with the President and Hilary – this President Elect and Hilary at this point, and we're discussing whether I should be on as counsel and discussed what that counsel would do and my role. My role was to protect him, to keep him out of trouble. Well, I tried.
- In any case, I say to Hilary and to the President, I say, "Hilary, I can't believe we're here. I remember you told me this in the car when I dropped you off and you got mad at me when I drove you home and you told me you had this boyfriend that was going to be President of the United States. And here we are." And Bill Clinton says, "What? I never heard that. She said that to you?" And Hilary says, "I never said that." She says, "I don't remember that." She says something like that. I said, "Hilary, you don't remember I drove you home that night in the car? You told me this and I started screaming at you. You don't remember that? You said your boyfriend is going to be President of the United States."
- And she grinned, and Clinton is laughing, staring at her. "You said that?" And she said something like, "Yeah, well, maybe it happened." She was reluctant to admit it to him that she told me in the car. I said, "You told me that." I said, "Hilary, you told me that." "Yeah," she says, "Maybe I did. Maybe I did." And we both started laughing. He really got a kick out of that. He started laughing. So I did remind her about it. She first tried to back away, but that's when I accepted the job. The next day actually I got a call to be Counsel to the President. So it all sort of tied together. Then I remember Doar coming down actually at one point. We take him into the Oval Office and he met with Bill Clinton and Hilary. They liked John Doar a lot. Both of them. Clinton himself knew John Doar, I gathered, but he had played no role in the '74 impeachment.
- Naftali: Were you in the White House when President Nixon died?
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Nussbaum: I was in the White House when President Nixon came to visit the White House and met with Hilary and Bill Clinton, which I thought was – I was amused by that. I understood. I mean, I wasn't – “Oh, really, Hilary, you're really going to go meet President Nixon? Nice. I mean, 18 years before I don't think we could have met him. Certainly not in the White House.” “Oh, Bernie.” They didn't invite me over to see him. They figured they better keep me away. I mean, he was the President, she was the First Lady. They can see him. But I didn't meet President Nixon in the White House, although he said this bad thing about me in his book.

Naftali: Well Bernie, thank you for your time. This has been wonderful.

Nussbaum: It was very nice. I hope it was useful. We'll see.

Naftali: Thanks.

Nussbaum: Thank you. So long.