

White House Interview Program

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INTERVIEWEE: LLOYD CUTLER

INTERVIEWER: Martha Kumar
With Nancy Kassop

MK: May we tape?

LC: Yes, but I'd like to have one understanding. I have been misquoted on more than one occasion. I'll be happy to talk to you about what I think about the transition but I don't want my name attached to any of it.

MK: Okay. So we'll come back to you for any quotes. We're going to look at both aspects: the transition itself and then the operations of the office. Working on the theory that one of the things that would be important for people is to understand how an effective operation works, what should they be aiming toward? For example, what is a smooth-running counsel's office? What are the kinds of relationships that should be established and that sort of thing? So, in addition to looking at the transition, we're just hoping they're looking toward effective governance. In your time in Washington, observing many administrations from various distances, you have a good sense of transitions, what works and what doesn't work. One of the things we want to do is isolate what are the elements of success—just take a number, six elements, five elements—that you think are common to successful transitions. What makes them work?

LC: Well, the most important thing to grasp first is how much a White House itself, especially as it starts off after a change in the party occupying the White House, resembles a city hall. It is very, very difficult to organize. It isn't as if General Electric bought a company and sent in a management team that had worked together for twenty years and then they came to reshape this company that they bought. A new president naturally relies on the people who helped him get elected and also then seeks ethnic balance, geographic balance, leading public figures, experts in various fields. None of them know one another very well. Even those who worked on the president's election team do not know one another very well. If you were a part of the half dozen who worked with the president every day, you knew him. But if you come in from the New York campaign team and you started working with the California campaign team, you don't know any of those people.

Everybody who comes in thinks he's chief of staff or deputy chief of staff and cannot bear to admit that he doesn't know what's going on, and will talk regularly to the press. You have this tiny little West Wing with maybe fifteen, twenty offices in it, some of them no bigger than this table, literally. Everybody who works for the President would rather be there than in the Executive Office Building or the OMB [Office of Management and Budget] Building across the street where you have huge fireplaces, beautiful furniture, fifteen-foot ceilings and a great view. You don't have any of those things in the White House. George Ball once put it very well when he said, "Nothing propinquous like propinquity"; everybody wants to be over on the other side. People who are not in the West Wing come over there all the time for meetings, and they tend to hang around and visit people. They're standing in little groups and clumps all through the corridors as you walk through. That's why I say it's like city hall in New York. If you've ever been in city hall, you know what I mean. So, by definition, it's extremely difficult to run.

There is book after book about how to organize the White House. We've all read these books. But they assume that you can assemble a smooth-working team, and it's almost impossible to do that,

especially within this short period of about sixty days, maybe eighty days, between the election and January 20.

- MK: I guess people do tend to come from the campaign, but a lot of them know one another.
- LC: Some do; some don't. They may have a passing acquaintance with one another, but they are not hierarchical among themselves. They all think they're the top dog. The General Electric analogy is the best. That's what they're not.
- MK: Do they make an effort to do balance in the White House or is it balancing elsewhere in the administration?
- LC: It's both.
- MK: They balance there as well. What are the advantages of having people from the campaign come in for governing? There are certain disadvantages, because there are differences in what you do in campaigning and governing.
- LC: There are some disadvantages, but mostly the advantage is: many of them are people the president knows, and has come to know intimately. It isn't just some name he gets out of a recruiting service. It isn't something that's been looked up in Lexis or Nexis. It's somebody he's worked with, he feels comfortable with, whose judgment he relies on. That's why he picks those people. But, also, he's incurred a lot of obligations during the campaign, and he has to pay off people. So even he will bring in people he doesn't know terribly well, or doesn't fully admire on the basis of experience.
- MK: Does that then make it difficult to govern, that you've picked people who are good at campaigning, and they may not be as effective at governing?
- LC: Yes. It just goes with the territory. To govern, you've got to get elected. To get elected, you've got to have the campaign team, and you have to incur certain promises and you have to reward the people that got you there.
- MK: How do you compensate for it?
- LC: Well, a longer transition period would be a good idea. If presidents started a trusted group transitioning before the election, that would be a good idea, but it looks as if you have a lot of hubris if you do that, you think you're going to win the election.
- MK: [Ronald] Reagan was able to do it. He put a team together starting in 1979. It worked to his advantage; there didn't seem to be any disadvantages from it. He didn't get the newspapers articles—
- LC: That's true.
- MK: —that said it was hubris.
- LC: He also made mistakes. In the 1976 election when he was running against [Gerald] Ford for the Republican nomination, he announced in advance that Senator Schweiker of Pennsylvania was going to be his vice presidential candidate. That turned out to be—it certainly didn't help him. It probably hurt him more than anything else did, because Schweiker was thought of as a zero by most people.
- MK: And somewhat liberal, too, to boot.

LC: Compared to Reagan.

MK: In putting together the Counsel's Office, what kinds of people need to be brought in there? What characteristics would you say are important in bringing in people, first the person as Counsel and then people who come in as Deputies?

LC: There are really two or three qualities. It's one of the best legal jobs in the country, maybe next to being Solicitor General. I think it's better than being Attorney General myself because you're always on the cutting edge of problems and you're giving this mixture of legal and policy advice all the time. You're not as busy as the Attorney General is, running a department with 93,000 people. You're just serving the president. But, clearly, you want somebody who has his own established reputation, especially now that presidents are put on the defensive so much about their personal past history and peccadilloes and whatever, and someone who is willing to stand up to the president, to say, "No, Mr. President, you shouldn't do that, for these reasons." There is a great tendency among all presidential staffs to be very sycophantic, very sycophantic. It's almost impossible to avoid: "This man is the President of the United States and you want to stay in his good graces...." Even when he's about to do something dumb; you don't tell him that. You find some way to put it in a very diplomatic manner. So that's very important.

NK: If I could jump in. It seems also that the Office of Legal Counsel at the Justice Department has been the place where the president tends to get no as an answer more so than from his White House Counsel.

LC: Well, it's a place that gives him legal opinions as to what he can do and what he can't do. There are times since the Attorney General has to give the appearance of independence on everything that's done, the OLC [Office of Legal Counsel] people will try to be very independent, as I said. They are where the president has to go or the president's counsel has to go to get an opinion on whether something may properly be done or not. For example, if you wish to invoke an executive privilege not to produce documents or something, the routine now is you go to the Office of Legal Counsel and you get their opinion: that there is a valid basis for asserting executive privilege in this case. Then, depending on whether the issue is a criminal issue or not—the criminal investigation by an Independent Counsel or grand jury usually trumps executive privilege—you are able to go to the judge who is going to examine these documents ex parte, to weigh one claim against another. You're able to say the Office of Legal Counsel says we have a valid basis historically for asserting executive privilege here. So that's the real function.

On the whole, I think, the existence of the White House Counsel - which is a relatively new concept - is helpful to the Department of Justice, including the Office of Legal Counsel, because the White House Counsel will learn by going to the staff meetings, et cetera, that something is about to be done that has buried within it a legal issue which the people who are advocating it either haven't recognized or pushed under the rug. He says, "Wait a minute. We've got to check this out," and goes to the Office of Legal Counsel and alerts them and gets their opinion. But for the existence of the White House Counsel, the Office of Legal Counsel would never have learned about the problem until it was too late.

MK: Can you think of some examples of areas in which that worked effectively, that you were able to—?

LC: Lots of them. The best analogy is the general counsel of a company who goes to all the board meetings and sees a problem, and goes to outside counsel for an opinion; says to the management, we need this opinion and the opinion of outside counsel with which I agree: we shouldn't do this; or here are the risks of doing it; or here are your legal obligations. But there are lots of examples of that. One was the agreement for the return of the hostages from our embassy in Iran. To do that,

we had to enter into a whole series of presidential orders and executive agreements with the government of Iran, made through the government of Algeria, the intermediaries. We needed advice on whether what we had agreed to put in the executive agreement was within the legitimate powers of the President, or required Congressional action. We got that advice from the Office of Legal Counsel. Some things we said we would do; other things we said, we can't do, because they're beyond our powers as President.

NK: So it would seem then that the White House Counsel's Office is really the mixture of politics and the legal aspects and the OLC is really just a legal—

LC: That's right. It's policy in the highest sense that has some legal aspect. Lawyers are not bashful about giving policy advice if they can find a legal basis to hang it on.

NK: Do you find that there's a difficulty, though, in reconciling the two; that sometimes advice that would be sound legal advice—

LC: Sure. And there are cases where you could argue that the White House Counsel is being too good a soldier for his prince. And there are other cases where the White House Counsel stopped something from happening that would have been a disaster.

MK: And also be able to persuade a president; know what kinds of ways you can persuade a president to do something that he otherwise would not like to do, that the Office of Legal Counsel would like for him to do.

LC: Yes.

MK: In telling a president "No," people have talked about the problem. One person that we spoke with said that his job was in a sense to be a facilitator between the president and other members of the staff, people who would come into the Oval Office saying beforehand, "I'm really going to tell the President what a bad idea this is;" go in, and say nothing. And then come out and say, "Gee, I hope the President isn't going to do that." So, such a facilitator said that he would then go in and say, "Mr. President, you may have thought X was in favor of your policy, but he said outside that he wasn't." Do you need people like that?

LC: I can't think of an example like that. But there are lots—I can give you one more example of the White House Counsel being able to help the Department of Justice. You remember the Equal Rights Amendment?

MK: Yes.

LC: In the seven years that's normally allowed for an amendment to be ratified, not enough states had ratified it, so Congress passed a law extending the time-to-ratify. The question that was attacked in the court was, is it constitutional or not, to give that additional period of time? All of women's lobby groups descended on the Justice Department. The case came before a Mormon judge named Judge Christiansen and the Mormon Church had come out against the Equal Rights Amendment. The women's groups wanted that judge to be challenged; he was asked to disqualify himself. He declined to do so. He said, "This is a pure legal issue. If I'm wrong, I can be reversed on appeal. Besides, I haven't made up my own mind. I don't have a position on it yet." Then the women's groups urged Mrs. [Rosalynn] Carter and the Solicitor General, who was then Wade McCree, the black professor from Michigan, to go to the Court of Appeals and get a ruling that Judge Christiansen had to be disqualified which would have been very pejorative, like saying you couldn't have a Jewish judge in the Skokie [Illinois] Nazi parade case; you couldn't have a Catholic judge in an abortion/right to life

case, et cetera. I talked to McCree—the President gave the problem to me and McCree quickly persuaded me he was absolutely right about this that they shouldn't do it. I went in and told the President that; he was persuaded. He said, "I've got all these women's rights people coming in to see me tomorrow, what do I tell them?" I said, "Tell them that your lawyers tell you, you can't do it." But [Jimmy] Carter in his typical way was so persuaded that he gave all the arguments as if they were his arguments, rather than his lawyers' arguments as to why it shouldn't be done. And I still remember—it was Eleanor Smeal who was the head of NOW [National Organization of Women] I think—she came out of the meeting and endorsed Teddy Kennedy right on the spot for the Democratic nomination. But it was another case where the White House counsel was helpful to the Department of Justice.

MK: In thinking about assembling a White House staff, what does an effective White House staff buy for a president? What does he gain from it? What use are they to him?

LC: Well, he has an immediate group of advisers available to him without having to go to the Cabinet departments, which have each grown to an enormous size and which are physically distant from the White House. He has people right there who see him six, eight, ten times a day—depending on what the day is like. In many ways there are great problems with this. As the government has grown the cabinet has really become outer moons, and the President is dealing with his own people who represent all these interests - with some exception - for State, Defense, Treasury and the attorney general. If you get yourself out a federal personnel manual and look at the first portion, which is the White House, the Executive Office of the President, you will see it mirrors every function in the government. And I'm not just speaking of budget management, et cetera. On the National Security Council; there are intelligence people who are experts. There are foreign policy experts divided area by area exactly like the State Department. You would think you were looking at a roster of the State and Defense departments and CIA all rolled up in to one. You have an Office of Domestic Policy that makes policy for all the other Cabinet departments. You have a Council of Economic Advisers in touch with the Treasury and Federal Reserve. So the President now has a group which he always calls 300 or less, but which is probably closer to 1000 who work for him all the time. Many of those people come from the departments or from congressional staffs and they come to the White House on a so-called detail basis so they don't cost—at least they don't appear to cost—any money to the White House budget. There are some limits placed on that now. Probably half, somewhere between one-third and half of all White House professionals over there are probably on "detail" from some other agency, being paid by that agency.

MK: And then you have the interns too—

LC: Many of the interns, too.

MK: —in Democratic White Houses.

LC: A lot of it is just the size of the government.

MK: Right.

LC: FDR first asked for six administrative assistants who would have a passion for anonymity. In Carter's day, when I came in, including myself, there were six lawyers. Twenty-five years later, under [Bill] Clinton, there are probably forty lawyers, fifty lawyers. Part of that is dealing with the attacks on the President, and these enormous vetting responsibilities that descend on the White House counsel.

MK: In fact, there are more lawyers in the Counsel's Office than there are in the Solicitor General's office.

LC: Yes. That's a very small, elite office. Justice has thousands of lawyers; the Defense Department has over five thousand lawyers.

NK: Do the lawyers from departments and agencies in any way report to the White House counsel as sort of a clearing house?

LC: Well, we meet. We used to have more or less monthly meetings of all the general counsels of the departments in the Executive Branch. It's a little more difficult to meet with the general counsels of the so-called independent agencies, as you know, but we do meet even with them on some matters.

MK: In the meetings, what kinds of things would take place? What sort of agenda would they have?

LC: Typically, a lot of it would be show-and-tell: what we're doing and what that general counsel thought was a problem that would go to the White House. A lot of it has to do with the ground rules for invoking executive privilege and turning documents over to Congress, which we don't think should be turned over to Congress but which the department under the thumb of Congress always wants to turn over, without ever consulting the president, whose privilege it is not to provide them.

MK: Can you think of some particular issues that came up? Comparing during the time you were in the Carter White House, and the time in Clinton White House: what were the differences that would come up in those sorts of meetings?

LC: You're talking about the meetings with the counsels?

MK: Yes.

LS: They're pretty much the same. We were doing executive privilege in the Carter days; we were doing it in the Clinton days. We had demands from Congressional committees for White House documents and agency documents; drafts of legal opinions, for example, were so much more pervasive. Mostly, it's the difference that, when I worked for Carter, while we did have the Billy Carter problem and a few others—Hamilton Jordan's alleged drug violations, which turned out to be entirely untrue—while we had a couple of those, most of what I did was substantive. All sorts of examples, steel import quotas, the seizure of the hostages, the invasion of Afghanistan, dozens of things that were all over the policy map. In Clinton's time I had the same understanding that I could be in on all these things but I had to put in so much of my own daily effort and my staff did, on the investigations of the President, Whitewater, et cetera, that I had no time.

NK: Could you give a comparative percentage of the time on substantive—

LC: I would say working for Carter - which was a year and a half - not more than 20 per cent was what I call playing defense. Under Clinton it was closer to 80 per cent.

MK: In going back to the substantive work you were doing under Carter, can you take a domestic issue and then a foreign policy one and talk about what institutions you dealt with outside of the White House and then what people and units you dealt with inside the White House? Where your advice fit in?

LC: One example—this is under Carter—was the proposed construction of a pipeline to carry natural gas and possibly even oil down from Prudhoe Bay in Alaska and from what were then underdeveloped gas and oil fields in northwestern Canada in the Yukon Province and carry them down to the United States. It was a pipeline that we had pretty much agreed to with the Canadian government that the U.S. would help finance. It was organized by a very politically-connected construction guy from Salt

Lake City, I think named [inaudible]. The issues were: if we did go forward with it, were there appearance problems with it that we had to correct, that [inaudible] was too close to the Democrats, et cetera? And if we did not go forward with it, were we in violation of our commitments to the Canadian government? There were a number of similar things involving Canada. In those days Canada was very self-conscious about American culture taking over in Canada, American magazines, American television broadcasts. They put on all kinds of restrictions. They were difficult to negotiate.

In the foreign policy field, I was involved in the negotiations for the return of the hostages from Iran from the very beginning. We had all sorts of issues to contend with, including whether we should go to the World Court to—we had a very legitimate claim which the World Court sustained that Iran was in breach of the treaty of amity, so-called, with us which had a dispute clause saying it could be taken to the World Court. And we did that. The World Court agreed with us and enjoined Iran from what it was doing although they paid no attention, and ordered us not to disturb the status quo, not to take military action of some kind or another. We went ahead and we did take military action, a rescue mission. And I had to write the opinion that we were authorized to do that, the President had that authority.

MK: Who did you talk to? Within the White House, who did you deal with there—

LC: In the Canadian case—

MK: —in both of those issues?

LC: —I dealt primarily with Stu Eizenstat, who was the domestic policy adviser to the President. I dealt with the Interior Department and I dealt with the Canadian government, a number of different people.

On the hostages, it was a joint operation, essentially with the State Department and the Defense Department, and the Attorney General.

NK: So would you talk to the counsels of those departments as well as the principals?

LC: This was top level.

NK: I've also noticed there's a War Powers working group.

LC: I got called in four days before the rescue mission, to give an opinion as to whether the rescue mission was covered by the War Powers Resolution, and obliged us to consult Congress. Those are the words of the statute. We knew if [we] went and told [House Speaker] Tip O'Neill, he would have told somebody else before the day was out, and we needed the advantage of surprise. I was told I couldn't even talk to the Attorney General about it; I had to do it by myself. But I persuaded President Carter that I needed to talk to the Attorney General. He couldn't do it without involving the Attorney General. And we gave the opinion and the rescue mission was launched. Of course, it crashed, for a number of reasons. In Congress, while there was great moaning and groaning about why had it failed, nobody challenged the point that we did not have to consult Congress. We did tell Senator [Robert] Byrd; he never told anybody.

MK: Was the President involved—obviously the President was involved there. Was he involved in the Canadian issue?

LC: Just marginally.

MK: Would that be at the end?

LC: I can't actually recall discussing it with him but he must have known about it.

MK: What kinds of meetings did you have, in both cases, with the President? Both in Carter and in Clinton's case.

LC: In the negotiations about the return of the hostages that went on virtually from the time I arrived - which was October of 1979 until the end of the administration. This was our all-consuming issue. I'm sure I did discuss it with him if not every day, several times a day, at least four or five times a week.

On the first one, I told you, the people I talked to were at a lower level.

MK: On a weekly basis, did you have a meeting with the President?

LC: We had a morning meeting. We met every morning at 7:30 or 8:00, about six of us, the Vice President—[Walter] Mondale at that point—Eizenstat, some of the congressional relations people, Jody Powell and Hamilton Jordan, who was the chief of staff. On Friday mornings we would have a foreign policy breakfast, so-called, which would go on two or three hours which included Cy Vance, Harold Brown, Brzezinski, and then-head of the CIA Turner.

MK: What kinds of input would you have besides legal? Did you also give them some sense of what had happened in the past, in Washington, on particular issues?

LC: Some. When I was asked by the President to take this job, it was a mid-life crisis of his administration, the so-called "malaise" period. I said, "What kind of a role do you want me to play?" I knew him, but I didn't know him that well. He said, "I want you to play sort of a Clark Clifford role." I got that in writing and, of course, Clifford was so venerable and such a great storyteller, everybody thought that Harry Truman never made a move without consulting Clark Clifford. And every time I got left out of a meeting I would go to Jordan or I would go to the President, and I would say, "I think that Harry Truman would have wanted Clark Clifford in this meeting." I was older than all the rest of them, so nobody could gainsay me.

NK: I've read that that was called the Clifford Principle. That you would say: If Clark would do it, you should.

LC: In theory, I had the same deal with President Clinton, but I didn't have the time to really capitalize on it.

NK: I also read that, when you came in to government, particularly in the Carter administration, that you were uncertain as to which issues you should jump into. So you were following the lead of what a private attorney would do, and wait to be consulted, until it finally dawned on you that you should jump in on those issues where the White House Counsel's Office—

LC: I don't know where you found that. That's not a quote from me.

NK: It's not a quote, but it was an interpretation.

LC: I've never been bashful about giving legal policy advice.

NK: So would you identify those issues that you felt that the Counsel's Office should be involved in?

LC: If I felt I had something to contribute, I stepped right in.

MK: When you talked to Carter, what kind of arrangement did you make in addition to what—?

LC: Regular meetings. I'd ask his secretary, I'd say, "I want to go see him," or I'd tell Hamilton. It was a much looser chief-of-staff-arrangement than either Leon Panetta's arrangements or his successor. It was more like Clinton under [Thomas F. "Mack"] McLarty.

MK: Did you say that you wanted to be able to bring certain people with you when you came in?

LC: Well, it would depend on what it was. If it were judgeships, for example, usually that was a meeting with the Attorney General, the White House Personnel people, and me. Something would be agreed as our recommendation but then we'd go clear it all with the President. And we continued with it; in the Clinton administration it was essentially the same.

MK: Did you feel when you came in that there were people that needed to be cleared out of the office? Say, when Leon Panetta came in, he indicated there were certain people he wanted to bring in or people that he wanted to remove. In either of the times that you came in, did you make any requests as far as staff people were concerned, that if you were coming in you would like to do certain things and make it clear with the President?

LC: Well, there were the regular meetings, [inaudible] obviously. President Clinton's Supreme Court appointment—he had one while I was there; he'd earlier appointed Ruth Ginsburg. But when we would meet to discuss that, usually [George] Stephanopoulos would be in the room; my deputy, Joel Klein, would be in the room. Either McLarty or Panetta would be in the room.

MK: Did you bring in certain people as lawyers coming in with you? Did you hire them?

LC: It depended. Well, under Carter, I took what I had. I knew the two deputies very, very well, Mike Cardozo and Joe Onek. Then I recruited Zoe Baird, actually from the Office of Legal Counsel, because we got into an issue about whether you could hire people to do the Census on a political basis or not—the way it had always been done—and she persuaded me that, under a new law, you couldn't do that anymore. And we practically caused a riot in the Democratic Party and Congress.

MK: The census has been a real thorn.

LC: I was impressed enough by Zoe to ask her to come over.

MK: What about when you came in the Clinton White House?

LC: Then I brought in two of my younger litigation partners here. One was Jane Sherburne, and the other was Sheila Cheston. They were there only as long as I was and then went off. Sheila became general counsel of the Air Force. She's just come back to us.

NK: Was there much of a transition going from a private law firm to government, in terms of your expectations?

LC: I'd done it before.

NK: The first time.

LC: Yes. I've written about this. It's this terrible dilemma. If you're a lawyer, you want to have all the facts. And, usually, you want to have all the facts before you give advice to someone about what to do about it. In the White House, you have to act on the basis of what information you can get some time before the six o'clock news because, if you don't have a White House position and the news is the White House is divided and can't make up its mind and some opposition senator will go on the air and use up the space and tell you what was done wrong. So you have to adjust to that; you have to operate on the basis of hunch and experience.

You asked me earlier, and I didn't finish my answer: What are the qualities a counsel should have? I think one of the qualities the Counsel would need is to have been in the White House before, not necessarily as counsel, but to have been through the mill before.

MK: What does that provide you? What does previous experience provide you?

LC: Well, I'll go through a famous Bernard Baruch story. Actually it's Jim Forrestal's story. When [Forrestal] was a young man trying to make a go of it on Wall Street and Baruch was this famous adviser to the President on Wall Street. He was at some cocktail party and Baruch was there, the center of attention. Forrestal finally got to ask him a question which was, "Mr. Baruch, how do you succeed on Wall Street?" And Baruch's answer was, "By making the right decisions," and he turned to somebody else. Forrestal got back in a bit later and said, "How do you learn to make the right decisions?" Baruch's answer was, "By experience," and he turned away again. And finally Forrestal went back to ask the third question which was, "How do you get experience?" And of course the answer was, "By making the wrong decisions." That's what experience really means.

MK: Can most White House positions, staff positions, provide the kind of experience that one needs?

LC: I think so.

NK: What are the qualities from being on the staff that would be helpful to being in the Counsel's Office?

LC: Having a sense of what the public reaction will be. A good example is executive privilege. For the sake of the office, it is very important that executive privilege be maintained and that the president can talk frankly, write memos, receive memos with his top advisers, without worrying that it will all have to be produced some day. But if he invokes it over and over again, the response from the public and the journalists and Congress is you're covering up; there must be something you have to hide. The short-term costs of doing that have to be weighed against the long-term costs of protecting the confidentiality of discussions with the president. And it's a difficult choice to make. Usually, the lawyers say think of the long-term results; don't be in the position of waiving executive privilege. The president has to think of the short-term impact.

NK: That's one of those legal/political contradictions that you talked about earlier.

LC: That's right.

MK: What other kinds of qualities? Somebody needs to have a good political sense of how something is going to play. What about how something is going to play in the press?

LC: The same thing.

NK: I've also read that other counsels have found it difficult, that sometimes staff members are not able to interpret or translate what the White House counsel has done. In other words, the legal technicalities sometimes are not well understood by other staff, and also by the press.

LC: That's a fair comment. That's one of the jobs of lawyers, to explain in simple enough terms so people understand it. What happens is that virtually everyone on the White House staff as a practical matter is available to the press and it takes you a long time to learn that there are those you can trust, and those you can't trust, that we're on background in different ways. As I indicated earlier, especially in the early part of an administration, before it's shaken down, you don't want even the press to think you're out of things, that you don't know what's going on. So you tend to talk to anybody from the press who calls you and you say things that you've heard second- or third-hand, but that you don't really know.

MK: Do you think that Democratic White Houses have more of a problem of that than Republican ones, that Republicans tend to run something of a tighter ship at the beginning?

LC: It's hard to say. I don't think so, but just as much in Republican administrations as in Democratic administrations, people want to be important, be thought of as important. Very often the leak is delivered to get something out in the open that you're against for policy reasons so you can knock it down.

MK: Did you find that you had to fight that, that there were people in the White House that would be looking at something politically, rather than legally?

LC: Sure.

MK: So you had your counter-strategies.

LC: When you say look at politically, everything is political in the sense that what are you going to be for; but beyond what are you going to be for, how do you get it through. I used to say that anything the President can do by himself is a 10; anything that requires either money from Congress or a law from Congress is a 1 or a 2. It's that much harder to accomplish.

MK: Was there a person who dealt with the press on a regular basis when you were in the Carter White House?

LC: Jody Powell.

MK: I mean within the counsel's office.

LC: No. We didn't have a press spokesman as such.

Mk: When you came back it did.

LC: No, it didn't. I was back before that. We did have DeeDee Myers as the Press Secretary, at least when I came in. I don't want to go into personalities. She's a wonderful person, but there were some times when she didn't get it, and of course she wasn't in on everything the way Jody was in on everything with President Carter. It got much better when McCurry came along.

MK: For example, the travel office and the firing of people in the travel office. When she came out and made a statement, she indicated that they were guilty of criminal misconduct. That certainly caused a great deal of difficulty.

LC: The travel office, thank goodness, was before I got there.

MK: Well, there were enough things that probably occurred to keep you busy.

NK: Could you talk perhaps a little bit about your relations as White House counsel with members of Congress?

LC: With Congress?

NK: Yes. And compare both the Carter and Clinton years.

LC: Well, you had a lot of dealings with Congress because both the members and their staffs would call you up about things they were particularly interested in that they wanted you to take up with the President or get a decision favorable to their constituent or whatever. I was used to a considerable extent to do what you might call lobbying Congress, although I'm not a lobbyist myself in the normal sense of the word. And then you were under great pressure from congressional staffs who sometimes wanted to go much further than the member would go. And you had the constant dilemma, which you have all through dealing with the government: if you run into problems at the staff level do you try to go over their heads and, if so, how do you do it? Sometimes it's productive; sometimes it's counterproductive.

MK: Can you think of some cases of that, any particular issues that you can think of?

LC: Yes. I used to get calls all the time from [Senator] Jesse Helms' staff about exchanges. I remember one case—it was under Carter—involving the exchange of a Soviet agent who had been in the Soviet embassy for an American agent. We were returning the Soviet agent to the Russians to fly out of Dulles on Aeroflot against Jesse Helms' objections. His staff would call up and say, "You have to reverse this within two hours. They're on their way to Dulles; you have to stop the plane from taking off," which I wasn't about to do.

MK: Did they call you?

LC: They called me.

NK: What determines whether they have access to you versus one of your staff?

LC: Congressional staff, congressmen—you take calls from congressmen if you're in the White House or from important staffers.

MK: Say on appointments, on nominations that were going through for confirmation, did you deal with the committees on those?

LC: Yes. With Orrin Hatch in particular on judges under Clinton. In the Carter days we had Democratic chairmen of the committees, as you know, so it was much less of a problem. There were confirmation difficulties in those days. I should have mentioned that I was the one that presented the SALT II Treaty to the Senate for advice and consent. It was really something I had agreed to do while I was still in the law firm before I got drafted in to the White House. But I worked with the Senate Foreign Relations Committee for three months on that. There again, there were delicate problems dealing with the staff and the members.

NK: You dealt with quite a few foreign policy issues—

LC: Yes.

NK: —in the Carter administration.

LC: And also, before I went into the Counsel's Office I negotiated a maritime boundary and fishery agreement with the Canadians.

MK: How did you get involved in that?

LC: At Cy Vance's request.

MK: Through your career, have you done that kind of thing, come in on occasion?

LC: Well, the only times I worked full-time in the government, after World War II, are my two times in the White House. I've served on a number of these ad hoc commissions that have been created: the Commissions on Legislative, Executive and Judicial Salaries, the Eisenhower Commission on Violence after the assassinations of Martin Luther King and Bobby Kennedy, the negotiations of those treaties. I've done a number of those things.

MK: What do you think the impact is of the decisions that have taken place, the legal issues and decisions, during the Clinton Administration, that perhaps affect the presidency as an institution? Do you think they do? Things like the FBI [Federal Bureau of Investigation] having to testify, documents that have to be produced, and that sort of thing. Both what the courts have decided and then the ways in which Congress has asked for and gotten information. Do you think it will have any permanent impact?

LC: I think it's going to have a permanent, adverse effect on the ability of the president to run his office and to be the chief executive.

MK: Can you explain it a bit, why you think so, where you think it's going to have an impact in particular?

LC: Yes. There are many things that have changed, of course, as a result of Watergate; the independent counsel law that I originally supported and advocated, although I've totally relapsed now. I'm glad it's dying; that's changed. Of course, investigative reporting has changed. Whereas you can make a pretty strong case for balancing the President's privileges and the need to get independent advice from his staff against the needs of the criminal justice system, where you do need a balance of some kind - vis-à-vis Congress - the President's case should be stronger. It's worth remembering that although Judge Sirica decided that the grand jury was entitled to Watergate tapes, when the Senate Watergate Committee tried to get the same tapes, the court said they were not entitled to it. They had not as a mere Senate committee made out an adequate reason for trumping the President's privilege; they had not made a sufficient showing of need. Now every congressional committee asks for every scrap of paper under the sun. Independent counsels ask for every piece of paper under the sun. In this administration, I would guess ten, fifteen lawyers are kept busy all the time digging up documents by the thousands, literally by the thousands. Boxes full were sent over by Ken Starr that originated in response to White House subpoenas. It's a stack at least this high [indicates], maybe higher.

NK: Do you think that the—I'm sorry.

LC: All I was going to say is that presidents may have to respond to those subpoenas, certainly those that come from the criminal justice system. They have to respond. But it stops people from writing memos. Many people came to me and said, "Can they really look in my diary?" I said, "I hope you don't keep a diary. Sure, they can look at your diary." Outside of the foreign policy field, the national security field, I would say many fewer memos are being written today, particularly relating to the various personal attacks on the president and investigations of the president. And that's too bad.

NK: Would you say there's a difference between the legal decisions dealing with executive privilege versus those dealing with government attorney/client privilege?

LC: Between the legal decisions of what?

NK: On executive privilege, vis-à-vis the President, versus those with the government attorney/client privilege, the DC circuit courts?

LC: We filed a brief, several of us who had been in the counsel's office—one was Attorney General Katzenbach; Bill Cohen was on this, a Cabinet member—all saying we thought there was and we'd always advised the officials we worked with if there was an attorney/client privilege between a government lawyer and the official he worked for, or the President. There have been a couple of decisions that have put that in question. It isn't totally gone but it's parting—

NK: But particularly as you said in the criminal context.

LC: Right. And there should be. There really should be such a privilege.

MK: What are some other areas you see affected in how a president conducts business?

LC: Well, I think we have witnessed a serious abuse of the impeachment process by the Republican majority, or the radical silent Republican majority for the intended purpose of weakening the president. If you didn't drive him from office at least you weakened his ability to carry out his programs. And that's a tendency we're going to see more and more. There's a speech by Tom DeLay you ought to look at, which my secretary can give you and he actually testified to this. This had to do with the impeachment of judges and he said we have to do something to stop these activist judges from reinterpreting the laws we have written and giving them some different meaning than we intended. And the best weapon we had is to bring articles of impeachment against them." That has pretty much been carried over now to the President.

MK: Do you think it has weakened Clinton?

LC: Sure. I think it's remarkable how much he's bounced back and he's been able to function on Kosovo and all sorts of domestic issues as well as he has. But that's one of the remarkable things about this president.

NK: Even though to weaken the presidency as an institution can certainly have just as much impact on a Republican president.

LC: Yes. And the Democrats will do it to some future Republican president. But impeachment has now—because of this, the first impeachment in 100 years, it's now become a weapon with which to attack the incumbent president of the other party.

MK: But it didn't seem to work very well for the Republicans. But I guess that story will come out in the next election.

LC: We'll see. It could have hurt them. It is certainly true that they lost seats in the 1998 election in the middle of the process. But many of them today feel that they're glad they did it and they did weaken the president. And they're just dying to get George W. Bush elected, and weakening the President is a way of weakening Gore. I'm not talking—there's a certain amount of conspiracy theory to what I'm saying but there's some basis for it. I'm not going to name them to you, but I can tell you some middle-of-the-road, Republican Senators and congressmen who say that's how these guys feel.

MK: If we can go to the way in which the office was organized. Looking at both times you were in the White House, what were the basic responsibilities of the Office of Legal Counsel? Were they the same? I know your time was spent somewhat differently.

LC: Well, there were some ongoing responsibilities. One is the vetting of nominees who require confirmation, people who are going to work in the White House, et cetera. Another is the drafting of executive orders. A third is dealing, as I've said earlier, with the Department of Justice, being the sole channel of communication between the White House and the Justice Department. Part of a great deal of the disorganization of the White House, all of the operating people at the White House, the non-legal staff people, all felt they could call the Department of Justice, anybody over there and say we want you to do this, we want you to do that. That creates a lot of trouble. The only appropriate channel is really the attorney general or the deputy attorney general to the counsel or the deputy counsel. We put out memos to that effect.

So those are—and then there's just all the other stuff that comes out, legislation, welfare programs, campaign finance reform, RIFRA, which is the law about religious freedom.

NK: You were also involved in the legislative veto matter.

LC: Legislative vetoes. Well, my involvement on legislative vetoes was on the other side---line-item vetoes. Now on legislative vetoes we were involved, yes.

MK: Were you also involved in ethics, putting out—

LC: Yes.

MK: —ethics pointers.

LC: My first job, which occupied the bulk of my time really, was to look into the so-called White House-Treasury relationship having to do with the RFC in reference to the Justice Department of the whole Whitewater matter. They had to interview people—the two lawyers I mentioned earlier—with Lloyd Bentsen, write a report, testifying before the two banking committees about that. Then I had to look into the Espy case; I had to look into the Cisneros case, et cetera.

MK: Did you also, for the White House itself, develop ethics regulations, rules that you provided people, that were important for them to observe in their time in the White House?

LC: Yes. A lot of that was done in collaboration with the so-called Office of Legal Ethics, which is an independent, quasi-Executive Branch agency, and which has the responsibility under the various ethics statutes to write regulations, give opinions as to what you can and cannot do. Now every department has an ethics officer, so there is frequent consultation with the ethics officers. But a lot of that came up in this Whitewater, Treasury, White House contact investigation.

MK: Was there a difference between the two administrations as far as the ethics rules you might have sent around to people? For example, the current staff manual has some ethics rules in it for people to observe. Was that true also in the Carter years?

LC: It used to be the presidential executive order on ethics within the Executive Branch. There were some pre-Carter statutes that got amended from time to time. They were changed again in 1989. I was on the Bush Commission on Ethics in Government and we made a lot of recommendations. By that time the authority to write the regulations had devolved on this Office of Government Ethics [OGE].

MK: During any point did you sense that there was a time you should send around a memo on a particular issue? For example, when he was there, Abner Mikva sent one around before the election in 1996, telling people they should be very careful about doing things such as fund-raising, what all of the regulations were. Not that they seemed to—

LC: I was involved in those issues in the 1980 campaign under Carter. Under Carter there was also this census issue, hiring political people to do the census, the additional employees. Under Clinton, "Ab" and I put out a couple of memos on limiting the relationships between people in the White House and people in the Justice Department - always going through the deputy counsel or the counsel and the attorney general or the deputy attorney general.

MK: Do you know if these kinds of rules go from one administration to another?

LC: In large part, yes.

MK: So when a new administration comes in—like I said, John Podesta said when he came into his office there was a desk that was empty, a monitor and a [computer] central processing unit that had the hard drive pulled out. That was it. There was nothing there.

LC: That's right.

MK: It seems in the Counsel's Office it's a bit different. There are some things that go from one administration to another.

LC: That's correct.

MK: What are some of them?

LC: Well, some of them are historical, important on-going matters, and the files relating to those matters. While the president's library is entitled to those files, copies of a certain number of them are left from one administration to the other or from one counsel to the other. But it's an inadequate system. As I've said earlier, the tendency to not write memos now is so strong. It certainly could be improved.

MK: What kinds of things are left?

LC: General memoranda of law. Research on a particular problem. When can executive privilege be asserted? What rules have been issued to the various Executive Branch departments and those from the counsel? Et cetera.

MK: One of the people that I talked to, that was in the Counsel's Office at the time when Reagan was shot, said that—at that time—they were trying to figure out what provisions there were if the President was incapacitated, what would happen? He said that there was really nothing there. One of the things they did was write some letters that would indicate what would happen in each of those circumstances. These were letters that I guess were to travel with the President. I wondered if those documents have been handed [on?] since the Reagan Administration? Were there such documents in the Clinton White House?

LC: Well, I was only there six months, and I was not there at a time of transition. I don't know the answer.

MK: Are there provisions, are there documents that do make provision for different types of presidential disability?

LC: Well, there is now a constitutional amendment dealing with this, the 25th Amendment, which preceded the Reagan assassination attempt.

MK: Yes.

LC: Now, there is a movement afoot in the medical profession and in the medical schools to have doctors involved in determining whether the president is incapacitated. In effect it would allow a medical committee to remove a president for incapacity. Most of us think that's a ridiculous idea. So what if FDR was at death's door or unable to function completely in the last three months of the war? Would you remove him? The answer to me is clearly you don't remove him in those circumstances.

NK: I would think also that because the Counsel's Office deals with legal decisions based on precedent, that there really is even more of a need in that type of an office to have these files.

LC: I agree.

NK: Are they there? Do they exist?

LC: This is an area where there could be a very substantial improvement. Certainly almost everything that was created exists in one of the presidential libraries and copies of much of it exist in the White House. The national security staff, for example, has a continuing archive on every pending problem.

NK: When you say they exist in the White House, you're saying they're not necessarily easily accessible to the counsel in your office?

LC: Well, it would depend on what it was. The National Security Council, for example, has its own lawyers. Although the liaison between those lawyers and the White House counsel is very good. Actually they ought to be part of the White House Counsel's Office, and they're not.

NK: Did you advocate that at the time?

LC: Yes. Twice. But, in each case, the actual relationship was an excellent relationship and there was never any trouble getting information.

MK: In looking at the individual responsibilities in the office, in vetting, what was the nature of the vetting process when you were there under Carter and now under Clinton? One of the big changes would be the financial disclosures that are required by the 1978 act that then went in to effect which evolved in the second administration.

LC: There have been a lot of changes in the laws and regulations. We're much more invasive now than we were then. While I was there I got some improvements made in the process but the most fundamental [has] never been adopted. That was the simplest improvement, namely, that single form that you talked about that would be used not only by the White House but by the confirming committees, et cetera. And even though I've been on commissions which actually drafted that single form—the Miller Commission, for example—[inaudible] tried their hand at drafting a common form, it's never been adopted. That's a turf issue. It means you have to answer the same question several times, each asked in a different way. The chance of making mistakes is very high and the burden is very high. On some of these forms you have to list every trip you've taken and you have to list three or four people who knew you at every address you've ever lived at during your life. By now, I've gotten to the point of writing across it they're all dead. If you now give ten references, it used to be

that the poor FBI guy would check one or two. Now they've hired former FBI people on a per diem basis to check them all. These people go off and they make trips; they're on a cost-plus basis. They talk to everybody. So it's much more complex than it used to be. It takes many more people. It's one of the dog jobs of the world. It's a very low-level kind of person who works with it. If you're in the FBI and all you do is vet people it's like a policeman assigned to a beat in Canarsie or some such thing. Like becoming ambassador to Mali. And it's done largely by unpaid interns.

MK: The lowest level part of it at the White House?

LC: Yes.

MK: What kinds of things do they do?

LC: They check the forms. They check against the regulations. They ask questions that haven't been asked. If they run into something, they notify the Justice Department to look into it. Or if it's a Cabinet appointment, the inspector general of the department.

MK: One person was talking about how he would like to put together the White House personal data statement and the FBI report and see how the two work together. If, say, the person on the personal data statement said there was nothing in their background that would be a problem for the President or his family or whatever.

LC: The FBI gives the White House not the raw data but a little summary report.

MK: Is it just a summary?

LC: It's a summary. You can go beyond it if you're in the White House, and you need it. But then the arrangements as to how much of the raw data or even the summary reports get to the committee is way up in the air. The White House has a series of ad hoc arrangements with each of the confirming committees and they are all different. Some get to see them; some don't get to see them.

NK: But you, as White House counsel, could see them if you requested to see them.

LC: Yes.

MK: But you would see all of them before a person were sent forward?

LC: If I needed to. If it reached me, I would have access at least to the FBI summary report.

MK: Were there cases where the FBI summary report or the IRS report absolutely knocked a person out?

LC: Sure.

MK: Do you have any particular kinds of stories? I think one of the things that could be of service when we're doing the walk-through is to point out that there are cases where people thought they could slide something by. For example, one person was saying—the one that was comparing the two—that the FBI report on one person had two charges twenty years earlier of child molestation and that, on the personal data statement there was nothing that was there. In another case someone had been living abroad and they hadn't paid their taxes for seven years. These were things that were obviously just killers but people must have thought that somehow it wasn't going to come up. People should recognize that these are very intrusive and that things are going to come up.

LC: They ought to have a lawyer help them fill out the forms.

MK: Can you think of any kind of cases of general sorts of things that came up?

LC: Smoking, excessive drinking—copying George W. Bush—violating your marriage vows, consulting a psychiatrist, which is a very intrusive question. We've gotten that repaired to some extent; it's now limited in time and no longer includes marriage counseling which it used to.

MK: What kinds of positions would that make a difference in?

LC: If you are to get a security clearance for access to classified information, it could be decisive. It used to be decisive. The worst part of it was if the security people or the vetters saw it and thought it needed further investigation, they made you sign a form allowing them to go to the psychiatrist and have the psychiatrist tell you what he or she thought which is really a violation of privacy.

MK: Are there differences in what kind of conduct can be tolerated depending on a position? For example, for somebody in the Cabinet, that there is a higher threshold, because they're going to get more publicity? Something you might be able to slide by for an ambassador that wouldn't be true—for example, there was a case that somebody talked about of a person who they thought would have been a fine Cabinet officer but he had a woman problem and so he was not appointed as a Cabinet secretary but he was appointed as an ambassador. So I wonder if there are different thresholds of what can be tolerated?

LC: That's probably right. And some of what the FBI finds, that was not reported, turns out to be right; sometimes it's wrong; sometimes it's right, but you decide it's not disqualifying.

MK: How do you know when something's wrong?

LC: You go talk to the people. Usually you confront them.

MK: Who did the interviews with the people, the appointees, from your office?

LC: Well, in the Clinton days—it was much less than this in the Carter days—we had two ethics experts who did this kind of vetting assisted by various interns. One was Beth Nolan who is now acting head of the Office of Legal Counsel; she's being blocked by some senator. The other is—I'll think of it before we finish.

MK: Now Mark Childress, he does the judicial nominations. Is he the person who handles—?

LC: He wasn't there in my day. That role has passed from one person to another. Now on the judicial nominations there's a lot of interviewing that goes on in addition to what the government does. The bar association is consulted; knowledgeable lawyers are consulted, et cetera.

MK: For the vetting on judges, does everything start and really mostly take place in the Counsel's Office and very little in personnel for judges?

LC: Personnel is at least equally involved not so much on quality but on political considerations. As you know, the problem is not just the president making up his mind who he wants; a lot of it is the senator saying I want so and so, especially for the district judgeships or U.S. attorney or, I don't want you to fill that position now because if you do I have to make a choice between three or four contenders and I'm not ready to make that choice for my own political reasons.

MK: Would you honor the request of a senator of the President's party, more than the opposition?

LC: Well, there are all kinds of deals. If it's a Democratic senator from a state, and there's a Democratic president, usually the Democratic senator has the say on two out of three appointments, or three out of four. If they're both of the opposition party to the White House, then they really have what amounts to a senator's veto at the district court level. The court of appeals is a bit different. The President has more scope there.

MK: What kind of deals can you work out when both senators are from the opposing party?

LC: It depends on the senators. Some of them, to avoid having to make the decisions themselves -say, between two big contributors - they appoint nominating commissions who are supposedly non-partisan, or representative of the state. They come up with two, three, four names and the senator says I want you to pick one of these people.

NK: Now, that was done in the Carter days. Is that still being done?

LC: Certainly so. And all of this was written up in the Miller Commission reports, and 20th Century Appointments Process.

MK: In looking at the deals that are worked with the committees on the FBI report, how are those deals worked, and who does them? Who makes them?

LC: Today, it is Eldie Acheson's office at the Justice Department, and whoever is head of White House personnel at the time. Now it's Bob Nash. In the Carter days, depending on who it was, it would be the attorney general, the deputy attorney general, Arnie Miller who was Carter's personnel person, and the White House counsel.

MK: It seems that, with a Republican Senate and a Democratic President, that one of the things that has happened is that in nominations—it may not be true for judgeships but other kinds of positions—often they are trying to get people to be very specific about their ideas on policy, so that they have added a layer of questionnaires. For example, in the Governmental Affairs Committee, after a person fills out one questionnaire, then they have to fill out a second, that's basically been developed by the General Accounting Office, by people who are familiar with the agency the person is being appointed to. They will develop questions. For example, when Kenneth Prewitt came up to be census director he had to respond to questions in writing that dealt with the census—that issue coming up again—as well as the roles and responsibilities of the census director. You have much more of that now with divided government.

LC: Yes.

MK: Do you think that that is—?

LC: Under Clinton at least. At least under Clinton you don't have these so-called litmus paper tests. This was a big problem in the Reagan Administration. There were many nominees or candidates for nomination in those days, who felt they were being asked how they would decide particular cases.

NK: So do you think it's a Republican versus Democratic matter?

LC: No, I've heard President Carter say that, "Before I pick somebody for the Supreme Court, I will certainly ask him or her where do you stand on right to life, freedom of choice," et cetera.

NK: In the Reagan Administration it was an actual form that they had to fill out, wasn't it, with their policy views?

LC: Yes. But the question wasn't would you vote to reverse Roe against Wade; it wasn't that bad. But it was a way of smoking out what you thought about the duties of judges, how you felt about right-to-life issues, et cetera.

MK: Well, Chase Untermeyer, who did personnel for Bush, said he thought that one of the ways of making the appointment process a shorter one would be to provide the forms, just the individual forms for everything, on line. And then during the campaign, the campaign office, tell people if you're interested or to tell particular people—to tell everybody I guess would be to invite just being deluged with requests for appointment. But you could do that.

LC: Early on, they put together a book of people that should be considered for an appointment, and they did a lot of the vetting through Untermeyer in advance. That's certainly a help but it's a monumental task. In the so-called plum book, there are somewhere between 3,000 and 6,000 jobs that change hands. If you count all the commissions that the President has to appoint, it's closer to 6,000. I once made a calculation that you couldn't possibly vet that many people within a single four-year term.

MK: If people had the forms and then began working on them, or recognizing that maybe they weren't going to be appropriate as nominees, would it really make a difference as far as cutting down time that it would take to get them through initially?

LC: I don't know what you mean by send it to everybody.

MK: No. Not sending it but having it available so that people who are working in a campaign, for example, people who are working for Gore during the campaign—somebody thinks they would like to work in a particular position. So they could look at the forms, get them on line, take a look at what the FBI form requests, what the Office of Government Ethics—their form is available. But some of these other forms are not really broadly available, the White House Personal Data Statement.

LC: I don't imagine it would do much good; I don't see it—

MK: Doing much good, either.

LC: It would probably scare them to death.

NK: They'd decide not to go.

MK: In a way, it's the most important thing to provide for that early planning. If you have the early planning, you have a sense of who you want and can go to those people right after the election.

LC: I think that's true. Also you should cut back on the number of details you want to know.

MK: How can that be brought about?

LC: Well, you have to persuade Congress. A lot of it is dictated by existing statutes. I'll give you one example. That is on the financial forms, the FS-86 or whatever it's called, you not only have to list the securities that you and your wife own and your debts and everything else, but you have to show within rather loose brackets how much the income is, whether it's in the form of dividends or interest or whatever. If you're serving for less than sixty days the rule is all you have to do is list the

names of the securities. I don't see why it's necessary to know how many shares—it's necessary to know whether you own shares of such and such a company, but why does everybody need to know exactly how many shares, or whether it's dividends or interest, whether it's between \$100.00 or \$250.00 or between \$50,000.00 and \$100,000.00 or \$1,000,000.00 or higher, whatever the bracket is. It's just excessive detail, and very laborious to fill out.

MK: And, usually I guess, requires both an accountant and a lawyer.

LC: An accountant and a lawyer, both. And, probably, an investment adviser.

MK: How many people were in your office altogether during both times that you were there and how did they divide up in terms of their responsibilities?

LC: In Carter there were just six, as I said.

MK: That's six lawyers?

LC: Six lawyers.

NK: How many staff supports?

LC: Well, I suppose we had five or six secretaries, maybe seven secretaries, and the usual mix of interns—not too many. In the Clinton days when I was there it was probably twenty. But today it's probably forty, forty-five, fifty. A lot of them are leaving now, as the impeachment and all that stuff is over.

NK: What did you do to prepare to become White House counsel in the Carter days?

LC: What do you mean prepare?

MK: What did you read?

NK: Did you talk to people?

LC: Well, I'd been living here since 1942. I had had all of these other experiences in the government.

NK: Maybe I should rephrase it. What would you advise or suggest a person being named to the White House Counsel's Office to do, either based on your experience or not?

LC: I'd read the Clifford book; I'd read the Linowitz book. There's a very good book written by Ben Heineman and somebody else called "Memorandum for the President" about how to organize the White House which is as good as anything I've seen. There were some very good organization studies made for the Clinton Administration under Vernon Jordan and Warren Christopher during the transition. Most of it, I think, didn't happen. But they're very good analyses, at least in my judgment, on how to organize the White House.

NK: What about the Counsel's Office in particular?

LC: Well it's almost too small to discuss how you're going to organize it.

NK: Did you talk to other people before coming in or would you advise someone else—?

LC: I talked to other people who had been counsel, yes. I certainly talked to [Robert] Lipshutz; I talked to Phil—

NK: Buchen?

LC: Yes. [Joseph] Califano. Sorensen. Not to John Dean.

NK: I was going to say, not to Dean.

MK: Were there themes that ran through their discussion that helped you, either provided you with a caution of some sort or something that maybe was a positive, or just a surprise of some sort?

LC: I don't think there were too many surprises. It's natural that everybody thinks it was better in his or her day than it is today. A lot of them say don't get too big; limit what you do. Make sure it's clear what your relationship to the President is and that you're going to have access to him.

MK: Did you, in both cases, make certain you had access, or did they tell you that right off—that you were going to have it?

LC: Well, I told you about Clifford. I think it's fair to say, in both cases, I wasn't looking for the job. In effect, I was drafted. I could have said no. I thought I'd made President Clinton an offer he couldn't accept, which was just six months.

MK: What was the difference in the operation of that office, and also of Clinton's standing before you came, and afterwards, as far as legal considerations were concerned? It was very important for him to have you come in? What did it buy him? [What?] did he feel?

LC: Well, it's awfully hard for me to answer that question. It went very well until the day Ken Starr got appointed. This whole thing would have been over in 1995 if they had allowed Bob Fiske to remain. We tried to have the statute written in that way. It was a Clinton commitment to renew the IC [Independent Counsel] statute, which the Republicans had allowed to lapse. But Senator Levin and others felt that while they were willing to make Fiske eligible for appointment that they should leave the decision to the judges. And now I'm sure President Clinton must feel that the independent counsel law was the worst thing that ever happened.

MK: The White House service seems to take its toll on people.

LC: Physically it does.

MK: Physically it does. Can you tell us why? What kind of rhythms are there to a White House job, a White House day? Certainly, in a legal office you work very long hours. Are the hours different when you go from here to there? What's the difference?

LC: The hours are really much longer. You're there for a 7:30 a.m. staff meeting, which means you have to get up pretty early. You're there at 7:00 or 8:00 o'clock at night. People like Stu Eizenstat were there until 10:00, 11:00, 12:00 almost every night. David Rubenstein the same thing. But most of all it is the fact that you are constantly on call and you're constantly making snap judgments. You're fencing with the press. You're acting on the basis of not enough information and there's always this gnawing fear that you've gotten something wrong or you've said something you shouldn't have said.

MK: It's all day, in a sense, that you're vulnerable.

LC: Yes.

MK: What do you think the indicators should be to somebody that they should leave, that you know that the time has come, when you've just burned out? It's hard to know that.

LC: Well, people's temperaments vary. There are people who thrive on this sort of stuff. I think Chuck Ruff gets along very, very well, and he's really very good, but he's an entirely different temperament from what I was. There are A types. I'm an A type.

NK: He just refused to talk to the press, so he really in a sense excluded that element from his job.

LC: Yes and no. He's very good at the job. He had been a Watergate prosecutor; he was the last one. But he came to the White House from the DC Corporation Counsel's Office. So as he puts it, "I'm the only lawyer that came in to be White House counsel at a raise in pay."

MK: Some people have been recommending that a White House job is about a two-year stint, and that it's hard to go beyond that.

LC: It ought to be more but it is certainly true that even people who are very, very good at it and very, very relaxed temperaments, like a Bob Rubin or Jim Baker, were glad to get out of the White House and take on a major Cabinet position instead.

MK: What benefits are there from White House service then going out to a department at the highest level, going in to a Secretary position or just going in to a deputy's position?

LC: Access, experience, working relationships. You're someone the president trusts and you know the President like a book, you've been in the White House for two years, or four years and then you go on to a Cabinet position.

MK: Do you think there's a good route, of going from Cabinet jobs in to a White House?

LC: Sure.

MK: What about if you take a person who has been Cabinet secretary going in to a chief of staff's job, does that work?

LC: Most of them don't like it. There are so many perks to being a major Cabinet secretary—your own security, your own car, these beautiful offices, the fact that you control your agenda—whereas the White House is these little cubbyholes; and it's so touch-and-go.

MK: I'm thinking of the trade between Baker and [Donald] Regan, that it worked for Baker but it didn't work with Regan, and that part of that perhaps is it's difficult to go from a position where you have been totally in charge and it's your operation going into a White House where it's the President's operation.

LC: Well, Jim Baker had been there in the White House more than four years, or just about four years, before he became Secretary of State, and then he was drafted to come back by Bush and he didn't want to do it. That's clear enough. If you're Secretary of State to be White House chief of staff in the last few days of an administration isn't a great thrill.

MK: I was also thinking that one of the problems can become that you have very strong policy interests if you have held a position where you have been making policy decisions. For example, John Sununu

coming in as chief of staff had been a governor and had very strong policy preferences and because of that was willing to use them. He could not work on the basis of his policy preferences which caused him to present some arguments and not others to the President. Are there certain kinds of positions that it just isn't very useful to have had in going into a White House?

LC: I think it's more there are certain kinds of people. John Sununu is a very different kind of person than a Mack McLarty, say, or a Howard Baker.

MK: What is an appropriate and very effective temperament for somebody come into a White House? What are the qualities? Chief of staff or perhaps in other positions as well.

LC: Well, experience is one. Lack of turf consciousness, lack of self-importance, ability to get on with a lot of diverse people, and knowing your President extremely well. Really, corporate chief executives are probably a bad stereotype for that job.

MK: Do you think that they just have too much of a sense of how they're going to run things?

LC: Yes. And they tend to lack government experience. Regan is a good example of that. He came out of business. This is Donald Regan. He came out of business, went to the Treasury. I guess he wasn't too bad but he wasn't very good there. Then he became White House chief of staff and he tried to run it as if he were the admiral of the fleet. And various people like Baker and Deaver and Nancy Reagan just killed him.

NK: The counsel's office also does legal work for the First Lady, is that correct?

LC: Well, certainly not in the Carter Administration. In fact, there hasn't been anyone like Mrs. [Hillary] Clinton, who really played a policy role in the department. She organized programs; she went and lobbied before Congress. She did all of those things. The White House counsel got involved in some of what she did; that's entirely right. And there is now a decision which grows out of this 1994 health care reform program that says for purposes of various statutes that the First lady can be considered to be a government employee since there is an appropriation for her office and she has all these official functions to attend. Just how that's going to work when she runs for the Senate is another question.

MK: Are there certain rhythms of a year? That you could predict that certain things were going to happen as far as your office was concerned?

LC: The most important was in the summer there would be scandals. There's no other news. A lot of the bad things happen in July and August.

MK: Starting with Bert Lance; it's true. What you have is an empty press hole and if you can fill it—one of the things that the Clinton White House has been so effective at doing is filling that empty news hole and using the time when Congress is out of session, to put forward their case. For example, in their preparations for the State of the Union, they have been masterful at it.

LC: There's that famous story about Leslie Stahl and Mike Deaver, as you know. When Reagan spoke—I think it was during the 1984 campaign; I don't remember—at the old opera house in Nashville. The flags were out and all the country singers and everything else. Leslie Stahl covered it for CBS and panned the hell out of it as just a show of Reagan and the country singers; it didn't amount to anything. It was just meant to give him a little stage platform; it was frivolous. The next day she got a call from Mike Deaver who said, "I want to thank you for that program." Leslie said, "What do you

mean thank you? We panned the hell out of it." And his answer was, "But you showed all those beautiful pictures."

MK: The difference from then to today is the amount of time that a president would get was much longer. So, in her pieces she would start out by presenting the President, what the President had to say that day. Now the President gets less of that. He gets much shorter space, altogether and less of his own words.

LC: Look at all the attention he's getting on this Poverty Tour. He's gotten a lot of attention.

MK: Yes, he has.

NK: It's summer.

LC: Part of that is there's nothing else going on. Part of it was Kosovo, when everybody was preoccupied with it.

MK: In looking at the year, the calendar of Congress is important in a lot of White House offices. Was it important in yours?

LC: Always.

MK: In what ways was it important.

LC: Well, to begin with there's hardly anything the president can do without the cooperation of the Congress. Most of his programs require congressional approval. The budget requires congressional action. Congress is always slow and we go through these continued crises of shutting down the government and continuing resolutions, et cetera. Getting Congress to move is very, very important. In fact, there's a statute on the books saying that Congress is supposed to adjourn by the end of June. That's been on the books since 1950-something. But it never happens. People say the biggest mistake that was ever made was air-conditioning the Capitol.

MK: Did the appointment process, the consideration of nominees, have a certain rhythm to it? Are there certain times when nominations are considered?

LC: They'll go through very quickly, for the most part, right after an election, and a new Inauguration, and they almost never move in the last six months of an administration if the party out of the White House thinks it's about to get it back.

MK: That may have been lengthened.

LC: A year and a half, it could be.

MK: Were there other times during a year? Like during the summer they didn't do nominations. They did them in Spring. Are there any other tendencies?

LC: In the summer very often they're not here. But usually there are the problems of holds, filibusters, and it's usually a Senate function. There are lots of hurdles to run.

MK: Were there any other issues that you dealt with or general subject areas that you dealt with that were subject to the calendars of others?

LC: Well, there's always the UN, the World Bank, IMF meetings. There are a lot of calendar events; the Economic Summit, which is usually in June or July.

MK: Did they impact the counsel's office?

LC: With Carter I went to an economic summit.

NK: Would you say though in large respect your office is really dictated by external events so you never really know what you're going to be hit with?

LC: It's certainly true today.

NK: It was not as true in Carter, would you say?

LC: Certainly it was true in the sense that the seizure of the hostages was totally preoccupying. The invasion of Afghanistan was the same.

MK: How would you judge success in your operation? What constitutes success?

LC: A minimum level is the Abbé Seyez— his comment about what did you do in the French Revolution, "I survived." I suppose success is getting out of it alive, without any damage to your reputation and without any damage to the president's reputation, and to feel you played a part in the making of policy. You're always on the frontier of events.

MK: Would you say that success could be judged pretty much the same way in the counsel's office or in any other job within the White House?

LC: Yes. If you're in charge of some particular program, maybe it's easier to judge success. You've got through the legislative program. You carried out all the President's promises or whatever.

MK: Is there a process in either White House that you worked in for looking backwards, for looking at how well things worked, what could have been done better?

LC: No. There ought to be, but there isn't. And it's better done, I think, by outside people than anyone doing it officially for the President, especially these days, when papers get subpoenaed. I know, for example, in the Carter - after the seizure of the hostages - the State Department tried to write a so-called "white paper" or green book or some such thing of all of our relationships with Iran, what had happened, why they thought the way they did about us, et cetera. And it was never published because the events were ongoing and people thought publishing it would do some damage. Today, some Congressional committee would quickly get hold of it.

MK: Were there ever times when a group of you all went to Camp David and just spent a couple of days talking about the way things were working?

LC: Yes. And in Carter's day he loved Camp David, as you know, and he'd just invite you for the weekend. He'd say come use one of the cottages. And the only time you'd see him was at meals; you'd see him on the tennis court and you had to go to Sunday morning chapel service. But I went up there with my family a number of times. I was only up there once with President Clinton for a small weekend stay and that's after I left the White House.

MK: Were there any times when groups of staff were brought together there?

LC: Yes. We prepared the whole Billy Carter testimony and defense and the President's speech up at Camp David.

MK: Were you part of his meetings when he was preparing his malaise—

LC: No, I wasn't in the government then.

MK: —the speech in which he never said malaise. That would be afterwards.

LC: That was Pat Caddell.

MK: And I think, actually, Mondale used the term malaise. It was not ever used in his speech.

LC: Someone you should interview if you want to know more about the Carter Administration is Gerry Rafshoon who lives here. He was Carter's communications adviser and one of the original two or three that dared to conceive he could be president.

MK: Were there any meetings where people got together to just talk about—looking forward, if not looking backward—what opportunities would be presented in the year ahead that they might take advantage of?

LC: Sure. In drafting the legislative program; writing the State of the Union message.

MK: When would that be done?

LC: It would be done in the month before the State of Union message.

MK: What kinds of meetings were there and where would they take place?

LC: Well, by the time I got into it, it usually took the form of early drafts of the State of the Union message, adding things, suggesting additions, suggesting deletions, editing, et cetera. And in Clinton's day—there was no State of the Union message while I was there, but he did talk to Congress several times and he would edit right up to one minute before he went on the air.

MK: Were there discussions of what would come up in the full year, other than just the State of the Union? The State of the Union has certainly become the plan for them for their whole year. Were there discussions of when these opportunities would exist?

LC: There was the budget. Under the Gramm-Rudman law there has to be a budget presentation and a budget amendment by a particular date. So you had that. Carter had people write a promises book, a list of all his promises and what he'd done, which was edited every year. Then there were all the preparations for press conferences.

MK: Were you involved in any of those?

LC: Yes.

MK: Were you involved in Clinton's preparation?

LC: Some.

MK: How do those sessions compare with Carter's sessions, the kinds of ways in which they prepared?

LC: Well, the Clinton ones were almost always late and more frantic. And he would edit right up to the last minute. Both of them, even though they worked from speechwriter's drafts, both of them did an enormous amount of editing. By the time it was finished it was really their thoughts whereas Reagan just took what he was given, I think.

NK: Now what would be the counsel's role in those meetings, preparing for press conferences?

LC: You're just one of a group of advisers. You edit. If he says we have to deal with criminals, you tell him you can't say someone's a criminal until he's convicted, that sort of thing. And I was very much involved in trying to push campaign finance reform and trying to get things in which, sometimes, got in and sometimes didn't get in.

MK: Were you involved in the sessions that they held—I think Mike McCurry indicated—I guess he wasn't there. Did DeeDee Myers have sessions where Clinton would sit down for a number of hours and be prepared? Under McCurry, the preparation for a stand-alone press conference was five hours, one break. And the people would come in and discuss their particular issues and give some ideas of what might come up.

LC: It was less well-organized under DeeDee.

MK: I'm working on a book on presidential communications; I'm taking an incident that occurred in 1996 in the Rose Garden where the President blew up over a question he had gotten from [TV reporter] Bill Plante, about paying the legal expenses of Billy Dale. It was a question he hadn't expected. In my discussions with people, a lot of people have talked about the way in which they have to deal with Clinton, that Clinton has this volcanic temper. In this particular case, he has to be walked through a question; he has to be allowed to explode, because he's going to do it one place or another. You want to get him to do it in private, so you can sand down a response when he goes public. I guess one of the things that I wonder about is, what is that like? What kind of environment is that like, when you have to deal with a person who has such an enormous temper?

LC: Well, in my six months I never saw him lose his temper, either with me or anyone else he was dealing with. Every now or then, he'd get going on the Republican right or his enemies in Arkansas or something like that. But I certainly heard a lot of stories about his temper; I just never witnessed it personally.

MK: I wonder if that makes it a more difficult environment to work in. People have said that you don't want to deal with him in the morning; that he's a night person, so you want to wait until later in the day and that kind of advice.

What suggestions would you have for somebody coming in as counsel of how to make the most of that position?

LC: I believe I've been over that.

MK: Anything additional?

LC: No.

MK: Do you have anything else?

NK: I think that's about it.

MK: Thank you very much.

LC: You're welcome.

[End of Disc 1 of 1 and Interview I]