

STATEMENT OF BERNARD W. NUSSBAUM

BEFORE THE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
HOUSE OF REPRESENTATIVES

104TH CONGRESS, 2D SESSION
June 26, 1996

Mr. Chairman, Ms. Collins, members of this Committee:

As you all know, I was Counsel to the President of the United States, from January 20, 1993 to April 5, 1994.

Let me begin by telling you something, that goes to the core of who I am, and what I believe -- that is at the heart of the values by which I live.

The very idea of obtaining FBI files for the purpose of digging up dirt on political opponents -- the very thought of creating an enemies list and using secret and private government information against those individuals -- is abhorrent to me.

It is contrary to every bone in my body.

It is contrary to every ideal I have.

It is contrary to the way I have lived my entire life.

So let me be clear. In the Clinton White House I knew, there was no enemies list -- there was no deliberate misuse of private government information -- there was no digging up of dirt from government files to use against political opponents.

If anyone had committed such a reprehensible act in this White House, and it had come to my attention, or to the attention of the President, or the First Lady, the individual responsible would have been thrown out on his ear, and worse.

Now, I realize full well, that, in recent weeks, you and I learned -- and we both learned this at the same time -- that during my tenure as Counsel, a serious mistake -- a very serious mistake -- was made in the White House Personnel Security Office, which reports to the Counsel's Office.

Apparently, because an inaccurate White House access list was provided to an employee of that Security Office, FBI summary background files, which should never have been requested, were obtained by that employee.

That employee has sworn that the error was an innocent one; that the information he obtained was not disseminated to anyone outside of his office; that it was not used for any improper purpose.

At the time this error was being made, in 1993 and 1994, I did not know it was happening. Nor, did anyone in the Counsel's Office know it was happening.

I know the quality of my Counsel staff. Bill Kennedy is an individual of the highest integrity, ability and judgment. I have the greatest respect and regard for him. If anyone in the Counsel's office -- particularly Mr. Kennedy -- had discovered that this error was being made, it would have been halted immediately.

But saying that does not excuse us. It does not excuse any of us in the Counsel's Office. It especially does not excuse me. This happened on my watch, as Counsel to the President. I was the responsible senior official. I bear full responsibility and I accept that responsibility.

When I testified before the Senate on other matters, I spoke about certain principles I tried to live by when I held public office. Those principles are:

- do the right thing;
- realize that, at times, your actions will be misunderstood; that you will be involved in conflict; that you will get bad press;
- acknowledge your mistakes when they occur, but if you acted correctly, defend yourself, defend yourself publicly, and defend those around you, in an open, honest and forthright manner;
- be principled, consistent and strong;
- and, most important, worry less about tomorrow's headlines, than about the judgment of history.

We made a bad mistake here and that mistake must be acknowledged.

Those whose files were wrongly obtained, have every right to be agitated, to be angry, knowing that even one person reviewed their private FBI files, when he should not have done so.

I know I would be agitated if that happened to my file. I know I would be angry. It was a serious breach of privacy.

And, so, each of those individuals, whose file was examined, deserves an apology. And, while I know it will not eliminate the hurt they feel, I do apologize -- to each and every one of them.

* * *

Mr. Chairman, since we are talking about errors, I know of another error that was made -- in connection with this matter.

On June 5, 1996, three weeks ago, you held a press conference, at which you handed out a printed form with my name on it -- a form I had never seen. You called it "a truly startling document from President Clinton's former White House Counsel, Bernard Nussbaum."

Minutes after your press conference ended, a story went out over the Associated Press wire. That story was on national TV all day, and in newspapers all over the country, the next day. This was the way that story began:

WASHINGTON (AP) Then-White House counsel Bernard Nussbaum asked for and received FBI background material on fired travel office chief Billy Dale six months after Dale was kicked out of his post, a congressman disclosed today.

Nussbaum's written request, turned over last week to a House committee, incorrectly states that the presidential lawyer was asking for the material so that Dale could gain "access" to the White House.

U.S. Rep. William Clinger, R-Pa., suggested the written request might be a false statement that could be prosecuted as a felony.

At your press conference, which was widely reported, you were quite direct in your remarks about me. In your opening statement, you said:

White House counsels are expected to be paragons of propriety. At the very least, there is a strong implication President Clinton's counsel acted unethically in requesting confidential background checks of a former employee. At the very worst, the request may have violated the Privacy Act, which protects against improper disclosure of confidential records and information about current and former federal employees.

So, on the basis of a printed form, you told the country, Mr. Chairman, that, at best, I was unethical as White House Counsel; at worst, I was a felon.

The form you relied on, Mr. Chairman, has been in use for over 30 years. As the FBI's recent report on this matter says: "FBI staff have long understood the name on the form was typically not the actual requestor of the information."

You could have called the FBI before your press conference to find out that easily ascertainable fact.

You could have called me.

I do not know if you called the FBI before your press conference, Mr. Chairman.

But you did not call me.

You did call Billy Dale. You called to ask him whether he ever requested access to the White House after he was let go.

And, then, you had him stand in the hall outside your press conference -- so Mr. Dale could immediately tell the press that he never requested such access.

And Mr. Dale's attorney could say -- and I quote from the AP story that emerged from your press conference -- that "Nussbaum's written request 'very easily could be' added to the Whitewater criminal investigation of Prosecutor Kenneth Starr."

We know each other, Mr. Chairman. We had cordial dealings when I was White House Counsel. And you have a reputation for decency and propriety.

But you had no member of your staff call me, to ask me a simple question -- did I ever request Billy Dale's FBI files six months after he was fired?

Was I really trying to dig up dirt on Billy Dale when he was being investigated by the Justice Department?

Those notions are absurd on their face. They are false. But no one called to ask.

Nonetheless, you stood before the TV cameras to suggest to the country that I was using the FBI to dig up dirt on Billy Dale -- that I was making false statements to the FBI -- that I could probably be prosecuted for a felony -- that I was not the paragon of propriety that a White House Counsel should be.

Everything you suggested about me, Mr. Chairman, in your press conference, was a reckless falsehood.

I know, believe me I know all too well, that we live in an age where the politics of personal destruction reigns supreme.

I know we live in an age where, as my late, dear friend, Vincent Foster said so poignantly in his last note, "ruining people is considered sport."

Well, Vince is gone, so he does not have to bear it any more.

I think, I certainly hope, the American people are becoming tired of vicious, unwarranted, baseless personal attacks -- that they are becoming tired of the politics of personal destruction.

But whether they are or not -- I am.

Enough is enough.

So, on this day, Mr. Chairman, when errors should be acknowledged and apologies are in order -- will I hear you acknowledge your error, Mr. Chairman?

Will I hear your apology?

Thank you.