

**ORAL HISTORY OF
SAMUEL DASH**

Fourth Interview - November 22, 2002

This is the fourth session of the oral history interview with Professor Samuel Dash, for the Historical Society of the D.C. Circuit's Oral History Project.

Ms. Hostetler: I think I mentioned in passing last time that you've been in great demand as an expert witness, as a consultant, as an adviser to both private organizations and public organizations, but probably the case for which you are most famous is the Watergate Investigation of President Nixon, now more than 25 years ago, in 1973. You were asked to become chief counsel for that investigation. Could you say how that came about?

Professor Dash: In a surprising way. I hadn't been active politically and I didn't know Senator Ervin. I had testified from time to time on my investigation of wiretapping before the Congress, and Senator Ervin was either chairman of the committee or a member of the committee, so he knew of me. But I didn't know him. The first time I became acquainted with him with regard to the Watergate matter is that he invited me over to his office to ask if I would consult with him on developing rules for the new Senate Watergate Committee. He thought that I could be helpful. I agreed to do that and he said, "I'm looking for a chief counsel. Do you have any recommendations?" And I gave him a few names. I was the last person, I thought, that would be asked by Senator Ervin to be chief counsel because I had no connections politically or with him. But his deputy chief counsel and the chief counsel on another committee, Rufus Edmonston, called me and said, "Sam, you know, you've given a lot of other names but the Senator really needs somebody who he can rely on and trust. Would you be interested?" And I

said, "I think it would be the job of a lifetime. What a challenge, but I can't believe that he would want to ask me." He said, "Well, just sit on it and don't say anything." And the next thing was that in about January of 1973, I got a call – I was home with a cold – and it was Senator Ervin. He said, "Professor Dash, this is Senator Ervin. You know I'm Chairman of the Senate Watergate Committee." He said, "I've been looking for a chief counsel and I've had hundreds of judges and lawyers all over the country ask me for the job. And some of them even offered to do it for nothing. And you know what you get for nothing." I'm really quoting him, "Nothing," he said. He said, "I didn't know what the motives of these people were. And I decided I'm not going to give it to anybody who asks for the job. And I've decided to look around and pick my own man. Your name was suggested to me. I checked you out at Harvard Law School and other places. You have the qualifications I need. I've checked your name out with the committee -- the Republicans and the Democrats -- they all agreed. Would you like to be chief counsel of the Senate Watergate Committee?" And my mouth's open, you know. How do I answer that question? I had just begun my spring semester here at Georgetown Law Center. I said, "Well, Senator, I'm quite flattered, but how can I accept? I've just begun my classes here." He said, "Well, this is more important than your teaching at Georgetown. I'll talk to the president of the University." I said, "Well, no. Let me talk to the Dean." Adrian Fisher was dean then, or "Butch" Fisher, who's well known in political circles. He was in the State Department. And I went to see him, and he said immediately, "You said yes to him?" I said, "How can I say yes, I've just begun my classes." He said, "Well, I can get any professor to teach your class." He said, "Call him back before he changes his mind." And that's how I became chief counsel of the Senate Watergate Committee. It was out of the blue. It was his own selection and we hit it off. I

found him to be a remarkably humane person, and someone so committed to our constitutional form of government and the Bill of Rights – I mean he carried a copy of the Constitution around in his back pocket. And he was a folksy person but brilliant. He had been a Justice of the Supreme Court of North Carolina. And he was a man of absolute integrity. One of the few – I could place Ervin back with the Founders. He was of the type of Franklin and all those Founders. That was his character. And there is nobody today in the Congress who is anything like him. But in any event, it became a very close working relationship. One of the things I said to him – and this is important. I had been in controversial investigations as a district attorney and I knew I was taking on something. And, by the way, I don't want to leave this out, when he offered it to me, I asked Sara, "What do you think?" And at that time, I did have some high blood pressure and I've had some heart problems. And she said, "Don't you think you ought to talk to your doctor?" I said, "I don't want to talk to my doctor, I don't want him to tell me no." She said, "Well, look, I'm worried about your doing this and getting into that kind of a political hassle, but if you didn't get it and if you didn't take it, wouldn't you be on the edge of your seat Monday morning quarterbacking whoever did do it and you'd be just as tense, so why don't you do it?" And so, with her blessing, I accepted it. But I accepted it with three conditions. I said to Senator Ervin that if I'm going to do this, I want to make sure that I am fully independent, that you let me have my head and I can follow the investigation wherever the leads lead me without being interfered with by the committee. Two, that I pick my own staff. I don't have to be dependent on the committee staff or anything like that because I need both the loyalty and integrity of my own staff. And three, I want to be assured that I get the resources I need in order to hire that staff and to carry out this investigation. I think I could have said this only to Senator Ervin because I've

had others who worked on the Hill tell me that if I had said that to any other chairman of a committee, they would have kicked me out of their offices because you don't tell a chairman about a staff. But Ervin immediately said you would not be good for me on this job if you didn't insist on those conditions. He asked, "Do you want it in writing?" I said, "I don't want to embarrass you, Senator, but yes, I would like that in writing." And he wrote it out. Every one of those conditions guaranteeing it and saying if I ever go back on any one of them come into my office and throw it in my face. And he never did.

Ms. Hostetler: Do you still have that?

Professor Dash: I'm not sure. I probably do. I remember that there was one close case because I had hired some really outstanding people and I got Terry Lenzner who had been very active in the Justice Department and –

Ms. Hostetler: Before you go to that, when Senator Ervin said that he wanted his own person and not someone who was seeking the job, and he acceded to your conditions, do you think he had in mind conducting a nonpartisan investigation?

Professor Dash: That's what he told me. He said that it was his view -- it was my view, too at the time. But you have to recall that the Senate Watergate Committee investigation was the first major congressional investigation for a number of years. The prior one was Kefauver I think or something like that. During the war years, there were major congressional investigations. And he realized that this was an investigation of a president and a presidential campaign and that in order for it to be accepted by the public --

Ms. Hostetler: He didn't know that at the outset, did he?

Professor Dash: No. He didn't know at the outset what it was. In fact, and this is

true, Senator Ervin said, "I hope the president is not involved. I don't agree with the president, but he's our president." And I believed him. But I think he realized that the only way that whatever we did would be acceptable to the people of the country is if they saw it as an objective, nonpartisan investigation. And he said he was going to bend over backwards to do that. He said the minority leader, the vice chairman of the committee, Senator Howard Baker – had pledged to him that they would work together and that they would pull together. As a matter of fact, the picking of the members of the committee by the Senate majority leader was on the basis that no person like a Senator Ted Kennedy or somebody like that who might be a presidential candidate, would be put on the committee. Kennedy, by the way, wanted to have this investigation done by his committee. I think he was then chair of the permanent investigations committee and it was thought that he was going to be using it to ride toward the Presidency. Senator Ervin wasn't interested in the Presidency, and none of the others who were picked were either at that point.

Ms. Hostetler: At this point, when you are first starting the investigation, was there in private conversations, or in private thoughts at least, any inkling that it would lead all the way to the Presidency.

Professor Dash: No. We started from scratch. And don't forget we also started at a time when there was great suspicion of the Department of Justice investigation and trial. I believe that was one of the things that led to the unanimous decision of the Senate to create the Senate Select Committee. It was called the Senate Select Committee on Presidential Campaign Affairs and shortened, the Senate Watergate Committee. It was Judge Sirica who kept complaining that the federal prosecutors were not doing their job.

Ms. Hostetler: When he was complaining, and this was picked up by the press,

there must have been some suspicion that it went above the burglaries of the Watergate offices.

Professor Dash: There was suspicion.

Ms. Hostetler: But was there any gossip at the time or talk among you private Watergate people that it went all the way to the Presidency?

Professor Dash: No. I tried to pick a staff that would not be political. And I'll tell you something about that – and Senator Ervin and I agreed on this, that we would start -- first of all, on the basis that we had no knowledge whatsoever. By the way, to show you how that's true, we had on our committee a Republican named Senator Lowell Weicher. Now Weicher was a liberal Republican and he, unlike Senator Baker who was very much interested in getting to the facts, jumped to the conclusion that not only was Nixon involved but that his chief staff person, Haldeman, was involved. And almost from the beginning (I hadn't even started the investigation or hired my staff), he was quoted in the *Washington Post* saying that Haldeman's involved in this Watergate conspiracy up to his nose. And when I read that, I got very angry because I said this is exactly what the McCarthy people did. I said how can he say that when we haven't even developed any evidence yet. That has to be a prejudicial statement. So I immediately went to Ervin and I said, "Senator, if we begin this investigation with one of the members of our committee accusing somebody without facts, then we are going to lose an objectivity and the confidence of the public." And he asked, "What do you want me to do?" I said, "Well, very frankly, I want you to make a public statement and it has to challenge Senator Weicher, and this may lead to some bad feelings, but you've got to say that the committee has just begun. We have no evidence and there is no basis for any statement from this committee that Mr. Haldeman is involved." And he did and Weicher really just had his nose out of joint for a while. He tried to

run his own investigation without us for a while. But as he went on and he saw that we were on the same track, he called me into his office and he said, "Sam, I may be Republican, but I like what Senator Ervin and you are doing and you can count on my vote on any vote needed." And we needed him for a two-thirds vote to give immunity to any person. The way the committee was split, four Democrats to three Republicans, we couldn't get a two-thirds vote without Weicher. And Weicher became really in effect a Democrat on the committee and joined the majority in everything. But I tell you that as an example of what I saw, and what Ervin saw, as absolutely essential in the Senate Watergate investigation: to make it clear that we would not make accusations. We would not talk about who might be involved. We wouldn't even think about it unless the evidence developed it. I developed a scheme of investigation which I called with my staff the vacuum cleaner. I said we're starting with scratch, zero. We know nothing. We're going to read everything that's out there that's been written, whether it's the newspapers or journals or anything. We are going to collect that. And then right around that same time (which was interesting), the Library of Congress called and they said "we've been trying to experiment with a Senate committee, and no Senate committee in the past has been willing to take us up on it, of doing investigations by computer. And since you're just starting out, you can really begin this.

Ms. Hostetler: Had you ever used a computer?

Professor Dash: I had not used a computer, but one of my research assistants at the law school was a computer buff.

Ms. Hostetler: At that time, most professors did not have a computer?

Professor Dash: No, we did not have computers. The computers at that time were

almost as large as half this room. The computer tapes, mainframes, were that big. So I was intrigued and I went to Ervin and he agreed. I hired Georgetown Law School students, headed up by my research assistant, Bob McNamara. They all were at the beginning of using computer technology, and they were all trained by the Library of Congress. Every document, everything that came in, whether it was an informal interview, a newspaper story, a document, all had to go first to the computer staff where they summarized it and put it on tape in a summary form under a program of the Library of Congress that was a very early word search program. It was called BIBSYS (Bibliographic system) program.

Ms. Hostetler: How do you spell it?

Professor Dash: B-I-B-S-Y-S. And we used the Library of Congress system so that if we wanted to find a book or subject matter, all we needed was a name or a subject and it immediately gave us a number of choices. And so we followed that program and the Library of Congress would pick up the tapes every day from us (they had the mainframe computer) and put them on the computer and then give them back to us. We had a vault where we kept the computer under lock and key in the vault.

Ms. Hostetler: What happened to those tapes?

Professor Dash: They are over at the Library of Congress and today (ever since the committee investigation was over), researchers, political scientists, reporters who want to go back and find something out, all they have to do now is go to the Library. It's available to any researcher. We sent them to the Library of Congress at first but now they are in the Archives, in the Federal Archives, and they are available to anybody who wants to use them. You can look at any issue you want to and get all the full facts and background. For instance, I'm jumping ahead

a little, but to show you how we used this – as I say, everything went into the computer. Everything. If I had been dependent on manual files – you know you forget what you have in manual files, and unless you have an unusually good method of getting back what is in those manual files, you lose information. So, I remember I was cross-examining former Attorney General Mitchell and I was asking him about a very important event that I knew he was involved in and I asked him about it. And Mitchell's constant technique of responding to us unless we could catch him was to sort of smoke his pipe and say, "Well, I don't remember. I don't remember." And I immediately would call down to our computer staff because I recalled there was a newspaper story of his having been at that meeting and that issue in the *Washington Post* had been put into the computer. And by the way, we not only had the computer data, but we had an automatic microfilm system by which every piece of evidence had a number, and if you put a number into the microfilm, it would spit out the story. It was automatic. And so I would have him still on the stand, and I would call down and ask if they could find me this story about Mitchell such-and-such, and within ten minutes, they would be running up with a printout of a picture of Mitchell involved in the meeting. I would say "show it to the witness," and he would look at it and say, "Oh, well, yes, yes. I do remember." We looked like geniuses. Imagine, a lawyer asking something and then suddenly coming up with a document! Without the computer, we never could have done that. In fact, every time I was going to question a witness, I asked my staff to give me from the computer chronological abstracts of all the evidence we had with regard to the witness and I would get back something easy to read through.

Ms. Hostetler: Wouldn't it be several hundred pages?

Professor Dash: Well, maybe about 50-60 pages, because it would be abstracts, not

the full documents. If I wanted the document, the abstract would give me a number and I could get the document out of the microfiche or out of the original file. So it was easy to skim the abstracts. We knew things, but the computer pulled it all out and gave it to me, so I was a much better questioner. I was able to cross-examine and catch somebody who refused to answer. I had all of the documents that I needed. And then, when we wrote our final report, the computer actually wrote the report for me because we had the computer organize and analyze all of the evidence by subject matter and chronologically so that we could easily write the report. At that time, law firms were not using computers for these big document cases, antitrust cases and things like that. I ran around the country for the ABA right after Watergate, to talk about our computer system, not as just a file but as an investigative device. How to keep your investigative material, how you can easily get it again, and use it in the courtroom. And law firms' first use of the computer was a result of our experiment with it in Watergate. So I think that is kind of significant.

But in any event, to go back, we developed what we called the vacuum cleaner method, which meant we know nothing; let's learn everything. Don't omit anything. We swept up all of the evidence that we could find and then we began on a series of not subpoenaing people. We decided not to go initially to any of the key people and subpoena them and be bogged down by court fights over the Fifth Amendment, right of counsel, and all that sort of thing. We decided to send our investigators out. By the way, the investigators we picked were all young lawyers. I had FBI agents, former FBI agents, and detectives and police apply. The former FBI agents – when I met them, I told them, I said, "Look, we're investigating the FBI and the Justice Department. You're a former FBI agent. From what I know, that's quite a club." Most of these

former FBI agents were in private investigation. I said, "I understand because you're a member of that club, you get all kinds of cooperation from the FBI when you need information. I want you to go home and think overnight whether you want to take on this job which will make you an enemy of the FBI and may lose you all those contacts." And almost every one of them called back and said, "I don't want to take the job." And most of the police and detectives I turned down on the ground that they generally learned lazy habits and things like that. I figured the best investigators will be young law school graduates, lawyers who are eager and know something about the relevance of facts, and all my investigators were young lawyers. They were kids, but boy they were hound dogs.

I picked three top deputies. I broke up the investigation into three areas. The break-in and the cover-up was one, and I gave that to Jim Hamilton. The campaign illegal financing was another, and I gave that to Dave Dorsen, who was my deputy. And Terry Lenzner got the dirty tricks, the political dirty tricks. And then under each of them I let them build their own staff and it was to be competitive. In other words, I purposely set up a situation by which three very egotistical guys wanting to succeed became deputies and had a staff under them and they were to compete with each other and it got to the point where sometimes that competition would be bloody. Jim Hamilton will never talk to Terry Lenzner anymore. They hated each other. Dave Dorsen was probably the only calm guy in the group. Terry was a hound dog. He wasn't doing the investigation, he was supervising the investigation. Bob Muse, for instance, who was then my former young research assistant, and Bob Lacritz and some others who have become very fine lawyers in the Washington area today. But they were all young investigators and they were told, we set certain targets. And one of the things we felt was that if you go directly to the

Haldemans and the Erlichmans and the Mitchells, you're not going to get anything at this stage and you'll just get lawyers. Instead we developed what we called "satellite charts," and we took each one of the main figures – Nixon, Haldeman, Erlichman, Mitchell and others, and then we began to draw a chart of who are the people who work around them every day. And we made the decision that if you can get to one person, you'd get maybe 100 people, because they included the gofers, the secretaries, the administrators who see them every day. And we were operating on an assumption that these little people – excuse me for calling them little people, because they were very important people, but they were lower level employees who were working in the White House or the Justice Department. They were proud of their jobs and they saw things that the bosses didn't expect them to see and they were constantly telling their children and their grandchildren what happened. They keep diaries; they keep notes; they keep even copies of certain things because it's so important to them. And so, for these gofers and secretaries, we decided that we would have informal interviews. We wouldn't subpoena them because if we subpoenaed them, they'd go to the bosses and they'd get a lawyer, and that would be it. Somebody would go to their homes and knock on the door, or invite them to have lunch or take them to a bar, and start talking to them in a very quiet way. Out of that came the most remarkable pieces of information. People who had their guard down. For instance, Liddy's secretary. Very loyal to Liddy, but --

Ms. Hostetler: Why did she agree to talk to someone?

Professor Dash: Well, someone came over and said, "Look, I'd like to talk to you." He didn't say it's off the cuff or anything like that, but he said it's not formal. And he said that "I just want to have an informal talk with you."

Ms. Hostetler: But did he say he was from the Watergate investigation?

Professor Dash: Yes. They were not supposed to lie or deceive anybody. And they didn't have to answer questions or tell them anything. He asked, "Did you keep a diary?" Liddy's secretary said, "Oh, yes, I always keep a diary." "Can I see it?" "Oh, here it is." And on the diary was the date Liddy met in Mitchell's office with Dean where he had his show-and-tell. And then she tells him about it. Most of the little details came from these very informal meetings with low-level people who were not under subpoena, and my guys were very interesting young men and women. We had young women, too, who were very easy to talk to, and they didn't threaten anybody or anything. We never called anybody in until we were ready to take a statement, after they already had made enough statements, then they were hooked. And so we used the subpoenas very rarely at first. We didn't want to start creating confrontations and legal cases and things like that. And the whole idea was to get the information.

Ms. Hostetler: So, at the time you were getting all of this information, was this being done in a nonpartisan way, that is, including Republican members of the committee.

Professor Dash: I skipped a very important step. One of the important things for an investigating committee is for the chief counsel to at least define the scope and structure of the investigation and ultimately to come up with a witness list. And so right around the time I was appointed, Senator Baker appointed Fred Thompson, who had been an Assistant U.S. Attorney in Nashville and was a very fine trial lawyer and I liked his background. And he came to town, and the first thing I did was take him to lunch. I said you're minority counsel, I'm chief counsel. I said we ought to work together. Well, Fred was a very candid guy and very honest. He said, "Sam, so long as what you're doing is what is good for my Senator, Baker, I'm with you. If it's

not, I'm not with you." I mean, it was right on the table. And I said Baker's told Ervin that he's going to let the chips fall as they may. He says there's no Republicans or Democrats on this committee. We are all Americans and all that sort of thing. That's what he said to Ervin. So I said, "I see no problem." Well, soon I started to change my view. The first time I knew I had some trouble is that at that lunch I said, "Did you get an apartment, is your wife joining you?" He was married at the time. He said, "Oh, no. Senator Baker said that this is only going to take a few weeks; and I'm just going to commute." I said, "A few weeks?" I said, "I've already been mapping out the nature of this investigation and it's going to take us months if not years." He said, "Are you kidding? You must be wrong." Well, my perception of it was that you had to tell an entire story – most Senate investigations do not go every day. They are episodic. There's a day's hearing and then they continue to another day. Or two days of hearing and then recess until a month later. And the thread gets lost, and the communication gets lost. The only way to keep the public interested is if you make the hearing titillating, you know, but then the public gets amused but they don't learn anything. I was coming up – this is my own show you know – I started very early. I started to say, "Now I'm chief counsel. I'm going to run an investigation. I'm going to put on certain hearings. That's my role." So, I started doing research, and I read all the Supreme Court decisions, and it said that the Constitutional role of a congressional committee is, most important, the public informing function. The legislative function of recommending reform legislation is a secondary. The most important thing is their oversight of the executive and the public informing function so democracy can work. The public learns how their government's working, and if they are outraged or they don't like what's happening, they can talk back. So, having that in mind, I thought, "Well, how do I communicate to the public?" And I thought first,

we have to do a thorough investigation. It has to be everything, everything that happened. Then I have to put those facts in a form that will grab the public. I don't mean to exaggerate or anything like that, but we had to make it a story and then tell it chronologically as detective stories are told. If this had been a prosecution, what would I do? I would put on all the facts, the officers, what happened and all that sort of thing and ultimately end up with the accused. And so I decided once we were beginning to mold what happened that we would lay it out that way and it would take a long time. First of all, I wanted to put on information on how the Senate campaign got started. I started out by asking myself, if we're going to get the public knowledgeable about what happened, before we go to the story, we can't make an assumption that they know all about how you organize political campaigns and how certain people get into certain positions, and how the Committee to Re-elect the President got set up. So I started to plan a series of hearings in the beginning in which we would get a guy from the White House, someone actually who had been one of the clerks, with an easel and show the organization of the Nixon Administration for the re-election of President Nixon and then the forming of CREEP and how the people went over from the White House to CREEP and all that. I remember the reporters, when they first came and said that TV decided to cover the hearings. They said but if we're going to cover it, we have to sell commercials. It has to be interesting. Who's your first witness? You're going to call Mitchell, aren't you? You're going to call Erlichman? I said, "No, no, no. They are the accused. They come at the end. "Well, who's your first witness?" they asked. I said a man named Odle. And they said, "Who's Odle?" I said he's a White House clerk who is going to have an easel and he's going to explain with a chart how the campaign got started and how CREEP got started. "Oh my God, boring, we're going to lose millions", they said. They

rushed to Ervin. They said it's not going to be an interesting hearing and Ervin backed me up, you know.

So, as I developed this evolving story that would ultimately lead to the police and the break-in and then the burglars and then finally Dean – I didn't know I was going to have Dean, but we were working towards him – we had to have a meeting of the committee to accept my plan, and I developed a witness list. Well, Baker – some of my staff leaked it to Thompson, and Thompson worked on Baker separately – came up with a separate plan and a separate witness list, a very short witness list. It would take only a few weeks. And so Baker jumped the gun on me.

Ms. Hostetler: What kinds of people were on Baker's list?

Professor Dash: The first one he was calling was John Dean, as an accused. And he then was going to call on Haldeman and Erlichman to deny what Dean said. In other words, he was going to get their testimony without any evidence that would confront them or that could challenge them. They were just going to bring them on to give their denials. He sent me a copy, and when I saw that, I said, "outrageous." And I went into see Senator Ervin. I said, "Senator Ervin, "you and I have been talking about how to do this." I said, "Senator Baker has told you that he wants to cooperate with the committee. He's a good lawyer, and I haven't got the slightest idea why he wants to do it his way because this is a powder puff. He wants to give the Nixon Administration a break. You can't go that way." And Ervin says, "I'm going to back you up." And we had a major committee fight.

We had a committee meeting and Baker put his plan in and Ervin said, "Well I want us all to hear from Sam Dash and what his plan is." I put my plan in, and Baker gets angry as hell. He

says we can't afford the time or the money to allow you to take up all of that time of the public. They will be bored. It will backlash on us. It will hurt us all politically. He said, "You're a theorist, you have no practical knowledge of anything like this," and you know, he really was attacking me. And he said, "Who the hell do you think you are – better than I am? I'm just as good a lawyer as you." And Ervin said, "Well," – he used to have these little jokes, he just knew how to crack the ice – he said, "My daddy told me that when you have to hire a lawyer, you have to take his advice or fire him. We're not going to fire Sam Dash so let's take his advice," and everybody broke out laughing, and my plan was adopted to Thompson's dismay because he didn't expect to stay that long.

Now, in answer to your question whether the investigation was bipartisan, I don't believe Baker ever accepted my plan. And unfortunately we learned that Senator Baker was not being honest with Ervin when he said that he was going to work with him. And I'm jumping ahead a little, but when I first was able to talk to Dean, Dean told me about Baker. I was after Dean, and I was seeking to find some way in which I could talk to him informally and I finally got to talk to Dean privately. (These were private meetings in his home, and I would go there about midnight or two in the morning after we finished our work at the Senate and nobody knew where I was going except Ervin.) Dean told me that at the very beginning of our committee, some time in February of 1973 when we had just gotten started, Baker asked Nixon for a private off-the-record meeting. Dean was asked by the president to give him an agenda item. Apparently the way the president works is that his counsel, in preparation for a meeting, gives him an agenda item of things to be covered in the meeting. Dean gave me a copy of that. When Dean left the White House, he took all his papers, and he had the official or copy of the agenda items that were to be

used in February in an off-the-record meeting between Baker and Nixon. The agenda items included such things as "get rid of the hearings as soon as possible, no more than a few weeks; have Haldeman and Erlichman called up so they can deny everything; focus on Dean." I mean it was the whole schmear and it goes on and on. I was confused in the beginning because I couldn't understand when Baker was telling everybody that he was going to work along with Ervin and let him call the shots and all that while he was pulling the rug from under him. So all during this time when I was beginning to develop a plan and starting to have informal interviews, Thompson and his minority staff had their own budget and were moving in another direction. They started out under a hypothesis that Nixon really didn't do any of this, that it was the CIA, and that the CIA had trapped Nixon and he's now the fall guy. And so they had a parallel investigation going. I began to realize that some of the things I was doing – the people we were approaching, secretaries of important people and gofers and all that – that it alerted Thompson on all the witnesses we were interviewing. I had invited him and his staff initially to sit in with my staff in planning the hearings.

Ms. Hostetler: And did they?

Professor Dash: Yes. And when we called people to interview, I always gave them an opportunity to have a representative sit in so that they could also do questioning and things like that. But I began to see that they were moving in another direction, and that everything was being fed back to Baker.

Ms. Hostetler: And did they see the significance of, say, Liddy's secretary having talked to you?

Professor Dash: Yes. They certainly saw the significance. They knew all that.

They had that information. But I began to worry that with their effort to try to support the president that they might feed back to the White House some of this information, and some of these witnesses might be reached and things like that. And so I began – again, with Ervin's permission, I did nothing without Ervin – not to talk to any others, not even any of the other Democrats on the committee. It was a one and one relationship between me and Ervin. And I began to keep the names of witnesses or times we were going to have hearings away from Thompson. I encouraged him to go ahead on his own. But I kept things from him. And that became very important at the time when we were honing in on Magruder and Dean.

Ms. Hostetler: At the end, by the time Watergate was over, how did Thompson treat you? Was he upset with you?

Professor Dash: Very friendly. He was one of the first who would come around and say clearly Nixon was guilty as hell. Where I needed his help is that both Ervin and I wanted to have a unanimous final report. There hasn't been a unanimous final report in any congressional investigation since Watergate, and mostly not before, because there's almost always a dissenting report, you know. Ervin and I said again, if we have a unanimous report, it will be a much more striking report. And once again, realizing that Thompson wasn't with me, I concluded, first of all, that Baker didn't want us to write a report at all. As the evidence came in, Baker couldn't contradict it anymore. And so he said, "Let's not file a final report because after all, the new Special Prosecutor, Archibald Cox, is going to try these cases and we don't want to prejudice the trials. So let's hold back our final report until after all the trials." And I said to Ervin, "How can you do that?" I said, "We don't know how long the trials are going to be and we will go out of business. The Senate committee goes out of business at a certain time. We can't re-form

ourselves to file a final report years from now." I said, "That's a dodge." I said, "The only way to do this is to file the report, but say in the beginning that we are not coming to any conclusions, we are not making any accusations." "These are the facts and let the reader draw his own conclusions." I said we have to do it, and so Ervin agreed and Baker finally agreed that we had to do it. He tried to stop it.

But I realized that if I try to sit down with Thompson and his people and jointly try to write a final report, we would be there forever because he would disagree with everything. So it was around Memorial Day of 1974 and a report was due in June. And I said to Thompson, "Look it's a holiday. Everyone has been working so hard. Why don't you and your staff take off. Go to the beach, you know". And he was really grateful. They left and I kept my staff in and that Memorial Day weekend we worked around the clock and finished the final report. When he came back I gave it to him. Of course, he blew up at first. And then I said, "It's not final. Let's sit down. Let's go line by line, page by page." But you know as a lawyer, if you get a chance to do the writing, you have a better chance that the final version will come out close to what you wrote than to what another might write." And he made little changes here and little changes there, but basically the final report came out and it was unanimous.

By that time, Baker and Gurney realized that it would be against them politically to file a dissenting report when the evidence was so obvious. Fred Thompson to this day is a friend. Right after Watergate, he and I went on speaking engagements together and we've stayed friends and he's called on me to testify on other matters. It's been a good relationship and I've always respected Fred because I don't think Fred did anything underhanded. He told me up front what his mission was, that he was a political guy. I was not political. I was not to be political and

therefore I could be objective. But he was hired by Baker for political reasons. He was hired to protect the minority, hired to protect the White House, and he went as far as he could. He didn't do anything really outrageous, and all he tried to do was set up another theory that didn't hold water and we let him work at it. But it never came to fruition.

Ervin saw all of this, of course, as good politics. For instance, even when the evidence came out that Baker had behind our backs made a deal with Nixon to try to destroy the investigation, Ervin's reaction was "poor Howard, what pressure they must have put on him." He was sympathetic, you know, because he liked Howard Baker, and he thought here's a guy who's under terrific pressure and he buckled. But Ervin knowing this nevertheless realized, and I agreed with him, that instead of having the committee publicly fight each other and lose the public's confidence, we had to create the appearance of bipartisanship. Now let me show you how this happened. And the Dean immunity was an excellent example, but I could multiply it in so many other cases.

I had my many, many secret private meetings with Dean and his lawyer at first asked how can he talk to you and not waive his Fifth Amendment privilege? At that point, we didn't have in the U.S. federal system what is now called "Queen for a Day." That developed after Watergate. I had to figure out how can I get Dean to talk to me and him not waive the Fifth Amendment. So I went to his lawyer, Shaffer, and said to him, "Look, let's do it this way. These are non-meetings. I'm not there. It never happened. And if I don't accept what he says and there's no immunity offered, it never happened, no one knows that I know and I will never say anything. You have to trust me. What happens if I'm subpoenaed somewhere? I think I had a Constitutional immunity for the Senate, you know the speech and debate clause – but

nevertheless I'll try to promise you that I'll go to jail first." And so he trusted me enough that we had these meetings, these "non-meetings," day after day, night after night in Dean's home in Alexandria. The crazy thing was that Mo Dean, his wife, a very striking blond, completely misunderstood my trips and visits. She thought they were social visits, and half the time she would offer me sandwiches and coffee and then say things like "your wife and we ought to get together sometime and go to dinner." It was a very kind of cute, kind of nice thing, but these were long meetings in which Dean was giving me his statements. But the interesting thing about Dean is he was subject to being doubted – little guy against the president – and if he hadn't had all the documents to support him – that he had taken to back him up – I wouldn't have been able to use him.

But in any event, it got to the time when I decided that he was an indictable witness, an absolute witness. He was the only person that was present in the Oval Office who could testify to the president's involvement in the cover-up. And so I went to Ervin and I said we've got to have Dean as a witness – I always let Ervin know what I learned – and I said we've got to get an immunity vote for him. And so he called a meeting, and Baker said, "Why should we give him immunity? He's the worse culprit of all. He's the one to go to prison, not the president, not." He was really angry as hell. And he said, "What does he have, what is he saying?" And the interesting thing is that I had gotten Ervin to agree that until we granted him immunity, we wouldn't let the committee know what his evidence was. Now that's unheard of. You can't ask Senators to vote for immunity and not know what the evidence is, but Ervin said, "I agree with Sam Dash that this is so delicate and so dangerous for Mr. Dean that I'm going to ask you to give me your vote for immunity without knowing what his testimony will be." Baker just blew his

top, and the vote was five to two – we had four Democrats, and Weicher joined us, so it was 5 to 2, two-thirds. Gurney and Baker voted against granting immunity to Dean.

Now that's not what the public heard. Immediately upon the vote being 5 to 2, Baker turned to Gurney and said "look, we can't look like we're not agreeing. It's not good for us publicly and everything. Let's change our vote," and he moved that the vote be unanimous to give Dean immunity. Every time we had meetings, waiting outside the meeting room were literally 50 to 100 reporters, with their mikes and cameras. And Baker made sure he was the first one to go out and stand before the cameras, saying the committee unanimously voted to give John Dean immunity. But that was the public appearance we gave at all times. We were fighting in the committee. They always voted against us and then always changed their vote.

Ms. Hostetler: But Ervin was willing for Baker to do that?

Professor Dash: Yes. Ervin felt that in the long run, even though we weren't in agreement and there was this internal fighting, it was so important for the American people to see a unanimous committee. To that extent Ervin and I conspired to mislead the people, but felt it was important because the message was so important that if we allowed it to break down into a political fight, then that message would be distorted, and so we both agreed to go along with that. In my book, *Chief Counsel*, I reveal Baker's role and one of the things I said to myself when I wrote that book is that I will tell the truth and I'll do it as candidly as I can, but I have such respect for Senator Ervin that I would let him look at the manuscript first. And I did. Ervin spent a lot of time on that manuscript. So much so that he was correcting the spellings and typos. We had a wonderful give-and-take on it. When he got to the matter involving Baker, he sent me a letter which had a little poem on it that said something like, "If you're going to say something

that will hurt the reputation of a person, make it pass through three golden gates -- the first gate 'Is it true?', the second gate 'Is it fair?', and the third gate, 'Is it kind?'" So I called him on the phone, I said "Senator, it is true, it is fair, but I can't say it's kind." He says, "Well, Sam," he says, "you know what the facts are, and I know you're right, you write it as you want." But he was very unhappy that I did because he had a relationship with Baker, and Baker was very hurt with the book and all, and so was Thompson for a while, but we sort of made up.

Ms. Hostetler: Baker too?

Professor Dash: Yes. When Baker became Chief of Staff for Bush I sent him a nice letter congratulating him and telling him I thought it was well deserved and all that. And he sent me a thank-you note. I don't know if there is still any residual bad feelings. Well, there's this much: different congressional committees thought of me as coming in on different things, and then they would call me, the Democrats particularly, and say that Baker said he would veto anything that would bring me in. And in the Iran-Contra investigations, Senator Inouye was Chairman of the Senate committee – it was a joint committee – he called me and wanted to know would I like to be chief counsel, and I said I'm not sure I really want to take that on again. And then he called me back and he said, "You're not going to be chief counsel anyhow. Let me tell you what happened." He said when he put it up to the Joint Committee, a lot of the Republicans thought that "Oh my God, he's going to get Reagan; since he got Nixon, he'll get Reagan too, and we can't have anybody out to get Reagan." I said, well I didn't go out to get Nixon. The facts fell that way. Yes if the facts had fallen against Reagan I would have done that, too. But I was too dangerous for them.

Ms. Hostetler: Well, let me change the subject a minute. In your book, *Chief*

Counsel, you talked about the role that Judge Sirica played which you mentioned briefly at the outset of this conversation and the role that he played in using the leverage of sentencing to extract information from the initial Watergate burglars, particularly James McCord. What did you think of his doing that at the time?

Professor Dash: At the time I guess it was in my interests that he do that. We very much wanted any one of the burglars to break their silence because what we were facing at that stage of the investigation was a wall of silence. And they were all being paid. Large amounts of money were given to Hunt and Liddy and McCord and to all the others and to their families.

Ms. Hostetler: To keep them from talking?

Professor Dash: To keep them from talking. Oh, yeah, as a matter of fact, there's a tape, an Oval Office tape discussion between Dean and the president in which Dean says, "It's going to unravel unless we can keep their mouths shut and it's going to cost a lot of money," and Nixon says, "How much?" and Dean says, "Well at least a million dollars," and Nixon says, "Oh, we can do that but it can't be traced to here. Find out how the Mafia launders their money so we can follow the same way." This is right on the tape.

The way this developed was that I went to see Sirica and I said that I'm very much interested in the sentencing procedure and I'd like to be present when you sentence. He said, "Sit up front. I'd like you to be there." He said, "I'm going to do something that I think you'll be pleased with." I had some information that he was going to put some pressure on them to cooperate with the Senate investigation. And that's what he did.

Ms. Hostetler: Do you think that that was a proper use of judicial power?

Professor Dash: I would have to say no, because my own view is that sentencing of

any individual, whether they plead guilty or are convicted, ought to go solely to the crime committed and shouldn't have an element of coercion that they should do something else. I don't think that's proper, and I think Sirica was wrong in doing that. At the same time I was the beneficiary. See, McCord, when he was at the sentencing stage, wanted to give Judge Sirica a letter (and actually Sirica read aloud the letter), and the letter said something to the effect that the Nixon Administration might blame Watergate on the CIA. McCord was in the CIA, he was loyal to the CIA. What turned McCord against the Nixon administration was number one, he never thought of himself as a burglar; he was a government officer doing the government job under the president's orders. He was proud of it and suddenly he realized that the White House was calling this a cheap second grade burglary and that he was a burglar. This put him down in his own estimation and with his children and his wife. Then add that to the fact that they wanted to blame the CIA to which he was such a loyalist, that in his letter he said that if they do anything to try to lay this on the CIA, "all the trees in the forest will burn." That was his term. And so he wanted to meet with Sirica and give Sirica the letter. He said to Sirica that there's "been a lot of perjury at this trial and I want to talk to you about it." And Sirica says, "I can't hear that." He said, "But in the room is the Chief Counsel of the Senate Watergate Committee and they are just beginning their investigation. I suggest that you go to him and give him that information."

Ms. Hostetler: This is in open court?

Professor Dash: Open court. Open court. And that afternoon I got a call from his lawyer and we started meetings and that was how ultimately McCord came to me and gave his evidence.

There's another interesting episode which demonstrates how a committee can almost

destroy an investigation if it interferes unprepared with the investigation itself. The understanding I had with Ervin is that I and my staff would do the investigation, and the committee would come in either in executive session when we wanted to get sworn testimony or in public hearings. They were to be like judges rather than fact investigators. But as soon as I told Ervin and Baker that McCord was talking to me, Baker insisted that we call McCord before an executive session with the full committee to get his testimony. Why should just the staff be getting it? We set up that executive committee hearing, and it became the most hostile, confrontational session. Here we were trying to get McCord to tell us what happened, and if we had interviewed McCord informally, it would have been in a more sympathetic way of saying tell us the whole story. McCord wanted to get his story out. But instead the committee – particularly the Republican members of the committee – started pestering him and yelling at him as though he was worse than everybody you know, and he clammed up and refused to talk. I remember seeing Ervin afterwards and I said, “Senator, this is not going to work, if the Senate committee is going to come in and be the interviewers at so early a stage when they don't even have the preparation and the background.” I said, "This investigation is going nowhere. You've got to tell the committee that they stay out of the investigation until we're ready for the hearings, and let me do it." And that's what he ruled. And from then on we had McCord to ourselves, and McCord came back and I apologized to him for what happened, and he was the one who gave us the full discussion of Liddy's involvement, of the break-in, how they got caught, the tape, all that sort of thing, and it was through his testimony that began to open up the case. Of course, once you can break the wall of stone, then there are others who will talk. The so-called burglars, who had actually broken into the Watergate, were not the only people involved in the burglary and he told

us that there were higher-ups. He said that publicly. He was quoted in the newspapers at the time.

Ms. Hostetler: Why do you think he was suspicious?

Professor Dash: Well, you know Judge Sirica at the time was not known as one of the best judges we've had. In fact, they used to call him "long-sentence John" or something like that. He was a tough judge. He was a law-and-order judge. He'd come up the hard way, he'd been a boxer. He wasn't the wisest judge on the bench, but the one thing I got to learn at that time was that he was very honest. He had a high degree of integrity, and he was smart enough. He had street sense. And when he was hearing this case, I think he was smart enough to know that you couldn't run this kind of a burglary during a presidential campaign and not have the people who are running the campaign and the top people involved. And he was completely unbelieving that the Justice Department was doing as thorough an investigation as it could. He was constantly challenging the prosecutors and saying things like, "Are you letting it stop here? Don't you think it goes further into the White House?" And he was being assured by the prosecutors that it stopped there, that it didn't go beyond the burglars, with Liddy and Hunt, at the highest, and that there was no evidence to pursue it into the Justice Department or the White House. And so it was Sirica who made a public statement, saying that "I don't believe this, and I hope the Congress of the United States sets up an objective independent investigation to get to the truth of this." And that was published. And I think that led the congressional leadership to say that they had to do something and ultimately to the creation of the Senate committee. So Sirica was ringing the bell, the alarm.

Ms. Hostetler: Do you think in hindsight he was correct as a judge, given the

evidence that was being presented in his court, that the Justice Department was being lax? Or the U.S. Attorney's Office?

Professor Dash: Well, it's hard to tell because I know some of the prosecutors who were involved. I've known them for some time. I knew them then. My own personal opinion of them is that they were honest people with integrity. They were good professionals. I even knew Mr. Petersen who was Chief of the Criminal Division and I thought highly of him. Unfortunately, as the evidence came out, Mr. Petersen was in some sense seduced by the Nixon Administration to help them. He gave testimony to the effect that Nixon actually invited him to the Oval Office and told him how good he was and everything else and then got him to give him information that the grand jury was learning. And Petersen himself knew that that was wrong, but I think he's human enough to say what John Dean said, that when you're in the Oval Office and you're with the President of the United States, it is awfully hard to say no to the president. Dean likened it to a candle that attracts moths and then burns their wings. And it was unfortunate for Petersen because I think Petersen was an honest person. And I think that's true with the prosecutors as well. At the same time I began my investigation of the Senate Watergate Committee with no greater information than they had, and from the very early scratching of the information, we began to see that it was higher up than Liddy and Hunt. And that's where we went. And it's hard to believe that professional prosecutors and investigators wouldn't have gone on the same trail. I think they were misled.

Ms. Hostetler: Well, as the investigation went along in the Ervin committee, the Justice Department did then become more active in investigating as well. So do you think that as that investigation went along, the Justice Department became more nonpartisan?

Professor Dash: Well, that again is hard to say. At the time we were reaching for Dean, I already had Magruder's evidence and McCord's evidence, and everything was sort of pointing to the fact that the person behind the scenes, under Haldeman and Erlichman and the president, was Dean and that Dean knew much. I began to try to get Charles Shaffer, who was Dean's lawyer, to come in and give a proffer so that we could deal with immunity. The prosecutors were also trying to get Dean. But although Dean was a target, they were trying to get him to come to the Grand jury and tell everything he knew, but they were not making him any promises. They were not holding out immunity for him.

Ms. Hostetler: At that point, though, was the Justice Department now really trying to find the facts out?

Professor Dash: I don't know because if they were and they had communicated with Dean, Dean would have preferred to go to them with his story rather than have us because as a Senate investigating committee, we could grant immunity but that immunity at that time wouldn't give him real immunity. It would be "use immunity." He still could be prosecuted on the testimony of others like Magruder and therefore we couldn't keep him out of jail, whereas the U.S. Attorney's Office and the Justice Department could keep him out of jail. And, therefore, if they had given him any indication that he was an important witness to them and they were willing to deal with him, he would have gone to them and not to us. He would have never told them what he told us. He did go to the grand jury. And he did give them general information, but he never told about the president's involvement. Charlie Schaeffer is a very good lawyer, and he and John Dean were playing the U.S. Attorney's Office against the committee, and when I was first trying to get to Dean, they were ducking me. Of course, they hadn't yet concluded whether

they were better off going to the U.S. Attorney's Office. And, finally, they decided that I was their best bet because the U.S. Attorney's Office was not going to give them protection. And even, by the way, when Special Prosecutor Archibald Cox was appointed, they refused to grant him immunity. Cox wanted to prosecute him, and he did prosecute him. And Dean ultimately pled guilty, but he got a light sentence because Senator Ervin and I wrote a letter to the judge in which we asked for leniency on the ground of all his cooperation with the Senate Watergate Committee. But his ultimate decision to come to us refutes any suggestion that the Justice Department at that time really wanted to get at the truth about the president. Because I think Dean clearly would have done better with them than with us. He chose us as the best thing he could do to get his story out to protect himself.

Ms. Hostetler: Do you think it's possible to have a Department of Justice investigation concurrent with a congressional investigation in a way that promotes the public good?

Professor Dash: That's a good question, and it's always bothered me. I teach today one of the only seminars on congressional investigations, and in it a very crucial part of the seminar deals with the tension between the federal prosecutor and the congressional committee because in almost every major congressional committee, particularly when it involves oversight of the executive office of the president, there is a concurrent federal prosecution. In the old days, it would be with an independent counsel and more recently with a special prosecutor or the Justice Department. And the tension is great because it's obvious that from the prosecutor's point of view, he wants to keep his evidence secret and he uses a secret grand jury. If the same witnesses that testified before the secret grand jury are subpoenaed by the congressional

committees and are forced to testify under contempt sanction, then the case can be blown off. Now, that issue, by the way, has come before the Supreme Court. And in a number of cases, the Supreme Court had to decide whether there was a due process violation, and the Supreme Court said that if a witness who is going to be called before a grand jury is also subpoenaed before a congressional committee, the only protection he has is the Fifth Amendment. But congressional committees, because they are concurrent under the Constitution's separation of powers, have just as important a Constitutional responsibility to investigate and tell the public the facts as a prosecutor has in a courtroom or in a grand jury, and therefore the Supreme Court, two or three or four times at least, has held that this is so even if you have the blatant situation of a defendant who's indicted before a grand jury, being subpoenaed before a congressional committee and has to either plead the Fifth Amendment or testify. There are a lot of such cases in which the defendant didn't want to assert the Fifth because he was a labor leader or something like that and so defendants asserted unfairness or denial of due process because it's against a defendant's rights in a criminal case. But the Supreme Court has turned them down on that.

Ms. Hostetler: Do you think that Congress should defer having congressional investigations when there's a prosecution pending?

Professor Dash: Perfectly good question and that is exactly the question we had to face when Professor Cox was appointed Special Prosecutor. I was delighted because he had been my labor law professor at Harvard. The day he came to Washington with Mr. Vorenberg who was going to help him set up the office, as a matter of fact, I ran over to the Justice Department. I was Chief Counsel of the Senate Watergate Committee. The boxes were still in his office. He hadn't unpacked everything yet. And I welcomed him and offered him all kinds of cooperation. I

recognized that as a prosecutor running a grand jury he couldn't give me information, but I could help him. And the very first thing that my former labor law professor said to me, somewhat arrogantly, was, "Of course, Sam, you're going to tell Senator Ervin that you've got to close down your investigation." I asked, "Why?" He said, "Well, I can agree that you needed a Senate investigation until I got here, but now that I'm here and I'm going to be prosecuting it and investigating, there is no need for you." I said, "For God's sakes, Archie, we have separation of powers. Our function is quite different than yours. We're supposed to inform the public and ultimately to reform legislation. You're a prosecutor. You're going to be trying to send people to jail." And I said, "When are you going to get to trial?" He said, "Well, it might take me a couple of years before I'm ready for trial." I said, "This is such an emergency that the public should know now what happened that we can't wait that long and I'm going to recommend to Ervin to say 'no' to you." And Cox sent a very strong letter to Ervin saying that "your continued investigation of this matter will prejudice our criminal trials. I urge you to close up your investigation and defer to the federal prosecution." Ervin sent back a letter saying, "I appreciate your concern, but we are the Senate of the United States and under Constitutional separation of powers, we investigate. We think it's more important (this is the language that I gave him) that the public know what happened in Watergate than that a few people go to jail. If our hearings prevent prosecution, so be it." So it's a balancing issue. And I have written on this and I have lectured on it. I think the Congress has a very serious responsibility to defer to the prosecutor where the congressional investigation is marginal in terms of its importance to the national knowledge.

For instance, Whitewater. My view was that the D'Amato committee, the Senate

Whitewater Committee, should have deferred to the Independent Counsel because it wasn't that important for the Congress to get into it and that it wasn't such a great moment that it was more important for the people to know now than for some people go to jail. And I think Watergate was kind of unique. There aren't that many like Watergate. I think in Iran-Contra that same issue came up. Walsh, who was then Independent Counsel, urged the Iran-Contra Committee not to hold hearings, and they deferred to the extent that they gave him time to collect all his information and get indictments, but they refused to not hold their hearings.

Ms. Hostetler: And you think properly so?

Professor Dash: And I think properly so in Iran-Contra. There aren't that many situations, however, from the point of view of democracy and the public's right to know, that it's more important that they know now than that some people go to jail. But I would say in the run-of-the-mill investigations, that's not true. And I really do believe that it's up to the chairman of the committee and the committee to weigh those issues. Now at one point, Congress got so scared when the Senate Whitewater Committee resolution was adopted by the Senate, they did something that I thought was wrong. That is, they believed that Watergate and Iran-Contra had so adversely affected the prosecutions that in order to prevent the Senate Whitewater investigation from giving immunity (ordinarily in the congressional resolution you give the committee power to apply for immunity) that it said that the committee had the power to apply for immunity only if it first got the approval of the Independent Counsel. They delegated a congressional right to the prosecutor, and I've spoken against that. I think Congress ought to make a decision to either use these powers or not, but don't give them to the prosecutor. They are the ones who ought to make the decision.

Now actually in, Iran-Contra, which held hearings, the conviction of Oliver North was set aside because of the congressional immunity. But that wasn't true in Watergate. In Watergate the issue was raised by every one of the defendants, but courts all the way up held that the trials were sufficiently apart from the hearings that the defendants weren't prejudiced. I did something with the committee's approval to sort of level the playing field because as I've told you, our investigation was based on the computer data, and I turned over all of my computer data bank to Professor Cox and the Independent Counsel. I also turned it over to John Dorr during the impeachment. So each of them began their investigation with an entire investigative file. They didn't have to do much. They just built on what we did. I got a call from lawyers for Haldeman and Erlichman saying that they're confronting a prosecutor who has all of the computerized information of the Senate Watergate Committee which they don't have and that put them at a disadvantage. So I asked Ervin to ask the committee for approval to offer to all the defendants in the criminal cases access to the computer bank. Unanimously the committee voted for it, and so they had it, and I thought that was appropriate.

Ms. Hostetler: Now what about the Independent Counsel law that came into being after Watergate? Did you think that that was a good idea?

Professor Dash: I take blame for it to some extent. I guess I use the word "blame" only because of the aftermath of Watergate, though of course I was proud of it. When we learned about the Watergate tapes that Nixon kept during that period, we had no knowledge that the taping system was as pervasive as it was. In my interviewing John Dean during that period, I got a clue from his statement that while he was in the Oval Office with the president and they were talking about paying off the burglars, Nixon got up and walked over to a bookcase and whispered

into the bookcase, "I guess I shouldn't have promised Hunt that I would make those payments." And Dean said to me, "I was wondering, why is the president whispering into the bookcase?" and then it occurred to him, maybe he's recording this and didn't want that part to get on the record. That's when I said, "Recording it?" Because you know I was coming to the conclusion that with all of the good information Dean was giving me, even documented by some documents, it's his word against the President of the United States and even myself – if I had to make a choice between Dean's word and the president's – I would choose the president. I said, "If there's a tape, if there was an ear witness to those discussions, boom." So we set about trying to find the tape, and that's when we used the satellite charts again. We called in hundreds of people from all over who sat around the various key people and we asked lots of questions, but among them were "did you ever buy tapes? Did you ever transcribe a tape?" You know, these questions were intermixed with others. Most people didn't know anything about it. They weren't involved in it. But then when we got to Butterfield (he was on Haldeman's satellite chart), we didn't know he knew anything. But he knew about it of course – he put in the taping system. He knew we had called Haldeman and Higby – Higby was Haldeman's assistant – and so he couldn't assume we didn't know, and he didn't want to get caught in perjury. And so he said, "Well you probably know this, but you are asking about one tape. There wasn't one tape. I put in a taping system that recorded all the conversations in the Oval Office from the spring." Boom!

Ms. Hostetler: I was asking about the Independent Counsel that came into being afterwards and whether you thought that that was a good law and . . .

Professor Dash: Oh, yes. That's what led to it. Thank you. When we learned about the tapes, the first thing I did was to immediately call Cox's office and let them know, and he and

I together filed a subpoena on the president to surrender the tapes, both to the grand jury and the Senate Watergate Committee. And the president sent a letter refusing.

Ms. Hostetler: He claimed executive privilege, did he not?

Professor Dash: He claimed executive privilege. We could initially try to hold him in contempt in the Senate, but the committee met and said, look, he's the president, let's sue him rather than hold him in contempt. And so we brought a lawsuit in Judge Sirica's court, to enforce the subpoena. We were thrown out at first because Judge Sirica didn't think that there was any law giving jurisdiction to the United States Senate to issue that subpoena. And so that's what's nice about being the Senate. Ervin introduces a law that authorizes us to subpoena. And it ended up that Nixon signed it. And we reissued the subpoena, and during the course of pursuing it, Nixon was getting very upset. He couldn't do anything with us but he kept talking to Elliot Richardson, who was Attorney General of the Justice Department. He asked, "Doesn't Cox work for you? Well, fire him." He said, "I can't fire him. I promised the Senate in my confirmation that I would appoint a special prosecutor and I would make him independent." And so that's when Richardson resigned and then Ruckelshaus, his deputy, resigned and finally Mr. Bork, who had come from the Solicitor General's office and was Acting Attorney General, fired Cox. And I was shocked at the time that in an investigation of this kind, the president could fire his investigator. And so at that point I met with Ervin. I said our very first recommendation has to be the creation of another institution independent of the president that allows for a prosecutor to investigate the president because of the conflict of interest that exists. And let the court make the appointment. That's the genesis of the Independent Counsel legislation.

Ms. Hostetler: How do you think it has worked out?

Professor Dash: I think if you look at the early history of the Independent Counsel, the first twelve, thirteen years or so, it worked out very well. Many independent counsel who were appointed by the court wrote at the end that they didn't find any evidence to justify a prosecution. And some of these cases were controversial. Attorney General Meese was charged or alleged to have committed wrongdoing, and two independent counsel had an investigation of him. And Meese was not a popular attorney general. There were a lot of people and newspapers who would have welcomed an indictment against Meese. And when the Independent Counsel, and one of them was Jacob Stein – one of the finest respected lawyers in the city – came to the conclusion that there were no indictable offenses – it's amazing how the public accepted this. There was no editorial, nobody challenged it. Everybody had confidence in the conclusion. Some independent lawyer looked into it and said there's not an indictable offense. Imagine if it had been the Justice Department clearing Meese? They would have all said "whitewash." And so I was testifying at that time before Congress on the reenactment of the Independent Counsel. I kept pointing to these things and saying how important it is to have an independent lawyer with good reputation investigate these things and the public will accept it. It started to unravel when you had Iran-Contra and Walsh, who was a very aggressive Independent Counsel and really meant business. And what it did is it triggered the political backlash with the White House and the tremendous emotional attacks back and forth which were political in nature, and that's unfortunate because the concept of the Independent Counsel legislation was to take politics out of prosecution. But in these highly visible investigations of a political office like the president as in Iran-Contra, where Reagan was involved and Bush also, it brought about a very partisan attack. The Republicans were attacking Walsh like mad. The Democrats were supporting him.

And it had a bad flavor to the point where Walsh was being depicted – people forget now, but he was depicted as a monster. Just like Ken Starr later. And by the way, as a result of Walsh's Independent Counsel work and Iran-Contra, Congress did not reenact the Independent Counsel law and there was a gap until 1994 when the Whitewater thing came up and then there was a turnaround. This time it was Republicans leading the Congress and they wanted to investigate the president, who was a Democrat, and so they reenacted the Independent Counsel law and Ken Starr was appointed. And in that investigation, unfortunately because it was not dealing with the kinds of subject matter that Watergate and Iran-Contra had, the public wasn't excited about it. The White House was very adept at attacking the Independent Counsel, and ultimately the media did too. And so Ken Starr became the monster and people were saying that this is an office that is unaccountable, has unlimited funds, unlimited time, and anybody can be the victim, which really is nonsense. In an article that I wrote called *The Independent Counsel: A Federal Prosecutor, No More No Less*, I pointed out there's nothing in the statute that gives him unlimited power. There's a lot of budget restrictions. There's a lot of accountability with the General Accounting Office and with Congress, and the special court division after two years can reopen it and dismiss him if he's not doing his work. And beyond that he was subject to all the ethical rules, all the criminal procedural rules, supervision by the court, and the Constitutional rules. He really had no greater power than any U.S. Attorney had, but the targets were able to spell it out in such a way that it made it look like this was inconsistent with democracy and a system of American justice – that how did this animal ever get created? And so after this particular case, Congress decided not to reenact it in 1999.

Ms. Hostetler: And how do you feel about that?

Professor Dash: I think they are wrong. I testified before Congress. I pointed all this out. I said what you're blaming on the Independent Counsel are the misjudgment and mistakes of individuals who were appointed Independent Counsel. I said any institution, whether it's the Justice Department, the Presidency or the Independent Counsel, is dependent on the quality and character of the people who serve in that office. But if you look at the statute and all of the powers that it gives, nothing allows it to be misused that way. Although I felt that Mr. Starr was a man of integrity, he was completely unsuited for that role. He had never been a prosecutor; he didn't have the background or discretion or judgment that a person should have in that role. I thought Congress ought to put in a requirement that you have somebody who has those qualifications, and try to limit the time for the investigation and to have the Congress hold hearings if they want to if the investigation is going too far afield or too long, and have the court take an important role in monitoring. Again, I said there's nothing wrong with the statute. And I said the big mistake, too, that led to Starr's downfall, was one weasel provision in the Independent Counsel statute that is really not a mandatory – well it's mandatory, but it should never have belonged there. It said if in its investigation he comes across any evidence of a substantial nature that may be grounds for impeachment of the president or of another officer, he must refer it over to the House of Representatives. I said that was just put in there because that is what U.S. Attorneys did all the time. I mean it was not there as something new. But the fact that it was there suddenly puts a burden on an Independent Counsel. I said I would recommend you strike that from the statute. It's unnecessary, and it could lead to all kinds of troublesome problems of a prosecutor intermeddling with the political role of the Congress and impeachment. So I strongly feel that way. I feel today, and I said to the Congress, you may not reenact it today,

but my prediction is that not many years from now there's going to be a scandal involving the White House that you will reenact it with all kinds of restrictions, but you will reenact it. I see it coming again.

Ms. Hostetler: Well, you did get involved in the Whitewater investigation of President Clinton, Bill Clinton, known as the Whitewater investigation. How did that happen and what was your role?

Professor Dash: Well it started with Independent Counsel Ken Starr who I didn't know well, though I knew him professionally, inviting me to come to Little Rock, Arkansas. He was just putting his staff together, and he wanted me to come and give a lecture to the staff on the role of the Independent Counsel and his assistants and the ethical and prosecutorial issues. And so I went to Little Rock. I gave a two-hour lecture to all of his staff, including the FBI agents, in which I emphasized that not only must any prosecutor bend over backwards to be fair, and to appear to be fair, and to live within the limitations of the Bill of Rights and the Constitution, but even more so the Independent Counsel, because the Independent Counsel has as a particular target: very high officers. I said, "You will be projected into the public limelight more so than the usual criminal case, and therefore you have the responsibility to really be as fair as you can. Aggressive, thorough, but fair." And my lecture was very well received. And Ken, after the lecture while I was still in Little Rock, and Sara was with me, asked me if I would like to take on the role of ethics counsel to sort of sit on top of him like a hair shirt. Sara negotiated the fee. She said I couldn't; I shouldn't be a government employee. I would have done it for nothing.

Ms. Hostetler: She was with you while he was asking you?

Professor Dash: She was with me. Well, Sara's been not only my wife and love, but

she's been my administrator. She handles most of my business arrangements, my speeches. And I think she came into it by necessity because I think she knows that I'll give away my time, and she feels that if I'm going to take time away from her, I ought to get paid for it so she gets something out of it. She negotiated my usual rate and everything, and they accepted it.

Ms. Hostetler: And what did he say your role was to be?

Professor Dash: We both said that I was not to be a member of the staff; I would be an outside independent adviser; that I had no duty to assist his mission; that I was not his lawyer, and that I was an independent consultant as I would have been to any law firm who brings me in to be an expert witness and to consult on an ethical issue, only this would be on an ongoing basis. And that on matters of principle I would insist that he follow my recommendation. But there would be many things that I may have a judgment on, that he being the Independent Counsel has the ultimate judgment on, and that I would understand that if he disagreed with me he could go ahead. I didn't have an office in his office. I worked out of the law school. I'd go down maybe twice a week. He forgot me many times because I wasn't there and went off on things that I learned about by reading in the newspapers and I would rush down and say, "How did this happen?" And he would apologize. And so I played catch up. For instance, even in the matter involving his sending those investigators over to the hotel with Monica Lewinsky and the question of them getting the tape on her and everything. I read about it in the newspaper and got angry and went down and ultimately investigated that whole area myself. There were numerous situations in which I disagreed with early decisions, and some of the early decisions were being made by the Independent Counsel, not so much on his own, because one of the things that Ken Starr recognized from the beginning was the fact that he had no federal prosecution experience.

And the people he had hired as his assistant Independent Counsel he had borrowed from U.S. Attorneys' Offices all over the country. Most of them were Republicans and most of them were aggressive young people. And he delegated to them many of the decisions to be made. I would sometimes say to Ken Starr I don't think that's proper to do that. And he said, "Sam, this is what my professional federal prosecutors say they do all the time. How can I say not to to them?" I said well I think they are wrong. There are a number of cases where it was a judgment issue and I would back away if he disagreed with me, and the staff did. There were a number of issues, however, that I thought were either strong ethical issues or legally appropriate issues in terms of calling certain witnesses to the grand jury who may be targets and things like that. I took strong positions on those. And when he opposed me, I usually took the position that if you want to oppose me on that and go ahead anyhow, then I would not be able to support you, which means that I might have to quit. And in every one of those cases, he backed down and he followed my way. Not always happily, but he did to the point where among a lot of the assistants I was being grumbled against. I was throwing all kinds of monkey wrenches into the gears, I was an old man, things of that nature. But I made it a point to always appear when they had the big staff meetings, every time before they got an indictment there always was a prosecution memo which was very full, very thick, which had all the allegations and then had all the supporting evidence from the grand jury and everything. I was sworn as an officer of the United States and ought to be able to see grand jury material. It was very full. And I would read it and in a number of cases I thought it was just completely inappropriate. There wasn't supporting evidence for it (some of them involving the top people like either the President or the First Lady). I'd go to the meeting and I would really lay out an analysis saying that you can't go forward on this. You don't have

the evidence. You just have to get more evidence.

Ms. Hostetler: So you were actually being not only a legal ethics adviser, but you were also drawing on your prosecutorial experience weren't you?

Professor Dash: I still defined it as not being a lawyer for the government and not making tactical decisions and not making decisions on prosecutorial judgments that you could make which I might disagree with, but on issues where I thought that if there really isn't a probable cause basis for an indictment then it is unethical for a lawyer, a prosecutor, to bring such an indictment. And there is such a rule in the prosecution function standards. And so I felt I still was acting within my ethical role rather than as a prosecutor.

Ms. Hostetler: You didn't feel you got drawn into the tactics?

Professor Dash: I stayed away from that. I wasn't involved in all of it. When we got to the question of whether or not it was what I considered to be proper and ethical to bring a prosecution, then I was very strong on it. And in a number of cases, there were quite strong emotional disagreements, but finally at one point I remember my even going to the point of writing a letter saying that if you go forward with this I can't stay in the office, and they didn't go forward with it. And so I believe that in the role I played, which was outside, and more like a hair shirt, that I did steer to some extent the decision-making on an ethical basis, and that the only time it came to a head is when the report was referred to the House (and by the way I spent time looking at that report) and again I was looking on an ethical basis whether there was evidence supporting certain things, and you could ethically claim certain things. I did some editing, but generally I thought that the report as finally submitted, bad as it was from the point of view of sexual detail, necessarily had to, under the statute, be referred to the House.

Ms. Hostetler: In other words, you agreed that the statute required referral.

Professor Dash: I did agree.

Ms. Hostetler: Even though you hadn't intended that statute to do that.

Professor Dash: Well, my point is that without that statutory provision, I would probably have indicated to him (if he had asked me) that he should refer it, because it was very clear that the president committed perjury before a grand jury. I thought that was an impeachable offense. In fact, I had handled as chief counsel in the Alaska Senate, an impeachment matter involving perjury committed in the grand jury by the governor. So, in any event, I thought that it was a referable report. Then, he got a request from the Chairman of the House Judiciary Committee to come and argue that report before the Judiciary Committee, and I didn't know about the request at first, but he sent me a draft of what he was going to say, and when I read it, I saw that it went beyond the report. The original report was written like an indictment that charged, and I said the Act doesn't call for charges. It calls for referring information, and so information you can refer, and you can refer all the information, but you can't say Count 1, Indictment 1, so the report didn't have that. But in his appearance before the House Judiciary Committee, he was going to make all those advocate positions—it's clearly an impeachable offense, perjury is, and all sort of things like that. And I said (first I called him on the phone), "You can't do this." Number One, the Constitution says the sole power of impeachment is in the House. The Executive Branch has no role in it. I said even in the Nixon impeachment, John Dorr was the one who made the argument; he was the House Judiciary Committee counsel. Nobody from the Independent Counsel's Office went. I said even the referral that went over that Sirica approved was just the grand jury information. Nobody made an argument. I said, first of all, the statute doesn't permit

that. The statute merely says you refer the information to the House; it doesn't say you go over and argue it as an advocate. And, two, I said, I think that violates the Constitutional separation of powers, and I can't approve that. And Starr said, "But the Republican leadership invited me." I said, "So, what!" I said, "They want you to be the heavy." I said, "Tell them they've got good counsel, they've got a lawyer who is their counsel, so let him make the argument. You've sent him the report." I said, "You have to stay out of it." Now, I said, "I would not object if you chose the invitation as a basis to go to the committee merely to explain how you ran your office, because you have not had an opportunity to respond to many of the attacks on you, on your being unaccountable and your being unfair and all that. It might be a good opportunity for you to tell them that you can't argue impeachment, you're not going to do anything other than look at your report, but you welcome any questions concerning how you operated as an Independent Counsel." I said, "That might be good because I think you handle yourself well and you can explain those things." He said, "I'll call you back." I had some of his assistants, the top guys, call me and say, "We agree with you." "He shouldn't do it." I said, "Tell him." "Tell him." And, finally, I got a call back that he was going to go ahead anyhow, so I told him that -- well, I will have to quit, because I think this is so fundamental involving the separation of powers and a violation of ethics. I said, "Number one, you have frequently, when your ethical conduct has been questioned both by the Attorney General or by a congressional committee, or somebody, or the lawyers for Clinton, you've in your letters said that you have consulted me, Sam Dash, and that you've announced publicly as well in your letters that you've consulted your ethics counsel, Sam Dash, and that I've approved what you're doing. Now, I don't disagree with that. I don't mind you referring to me when I have in fact have approved, but since the public has heard you say that if I don't say

anything then they may also conclude that I approve of this, and I can't allow that, and therefore," I said, "I will have to publicly quit with a statement about this."

Ms. Hostetler: So, you told him this beforehand?

Professor Dash: Beforehand, and then he said, "Sam, will you do me a favor. Don't do it until after I give my testimony, because if you do it before I give my testimony, the attention will be on that and I'll lose the attention of my testimony." And, I said, "Well, as a matter of courtesy I will, I'll wait until you give your testimony." Then, I got hit for hitting him in the back.

Ms. Hostetler: Not by him.

Professor Dash: Not by him, but by others. When it came out, he said that he loved me and I'm a man of principle, but in any event I gave him advance notice and as a courtesy deferred doing it until the day after, which was a Saturday. And, to this day I haven't regretted it. I haven't regretted the role I played during the time I served or the fact that I chose to quit.

Ms. Hostetler: How did you feel about the Whitewater investigation *in toto*?

Professor Dash: I was unhappy with it. You know I would tell Ken Starr that. Let me say this, Ken frequently urged me to answer reporters' statements on my job and what my job was. There was a Tonight Show once in which – what's the bald-headed guy from the White House --

Ms. Hostetler: Carville?

Professor Dash: Carville. Carville was going on the Tonight Show, and I was invited to debate him, and I didn't want to do it, but Ken said, "Please do, because, you know, you can speak objectively. You're not a member of the staff, you know, people respect you." So, I did. And, really I think at one point where Carville was snarling and all that, I said, "Mr. Carville,

I voted for Mr. Clinton as president. I want him to succeed as president. What you're doing looks like the president is getting you to do this, and you make the president look bad. Please stop."

(laughter) He asked for a re-meet.

So, because Ken wanted me to, I would also give my public views which sometimes were negative, and I was asked that question publicly, "What do you think of the comparison between Whitewater and Watergate?" And I said the only thing in common is the word "water." On a scale of one to ten, Whitewater is less than one. And Ken and the rest of the staff were very angry with me, they thought that I was answering that way because I had a vested interest in Watergate and therefore I wanted to demean other investigations, but I told him, and I've told others, that I'm not sure that I think that the Attorney General should have referred this to an Independent Counsel. It wasn't a matter of great national importance, that it was bank fraud, but we've lots of U.S. Attorneys, in the Keating case and others, and that there wasn't that necessary connection. It was a very loose connection. Just because the Clintons had some sort of a land deal in which no one came up with any wrongdoing. And, besides, I said, "So, what. You don't need an Independent Counsel that often. You're overusing it." So, I never – although I gave my opinions on the ethics and things like that – I never thought I was involved in any major investigation that the country needed, and I let them know that it wasn't a big deal. They were driven, and I think the staff were beleaguered. The fact that the White House very successfully fought a campaign of attack – and really, I mean, they were calling these things everything under the sun, and they were questioning the character and everything of these people. And, I say successfully that if you were inside, you saw that all of these were bright young people, men and women who had high thoughts of themselves, who were seeing themselves being called outrageous, unfair, and, you

know, seething and reacting emotionally, which, unfortunately, a prosecutor shouldn't be doing. And the White House was goading them on like that. And, particularly, when the Monica Lewinsky case came, and they concluded that the president was a liar, I think they, particularly Ken, were almost on a mission of fighting evil. And, I think it distracted them from their objectivity. And to some extent I played the role of cooling them off and pulling them back because I was outside. I don't know how I would have felt if I was inside working every day there and whether I, too, would get some personal feeling, but since I was so separate from it and only came in from time to time, I could at least be much more objective and call it for what it was.

Ms. Hostetler: Somehow you got involved in Monica Lewinsky being interviewed. How did that happen?

Professor Dash: It all started this way. In a precipitous way, the staff and the Independent Counsel were ready to make their reference to the House of Representatives for impeachment on the facts that they didn't have without Monica Lewinsky. They were not, as I read the statute, sufficiently substantial and credible. They were all circumstantial, and even the proffer – they had a written proffer from Ginsberg, who represented Lewinsky – was internally contradictory. I was called to a meeting which was to approve the referral as early as, I think, June. It was deferred until about August or so, and I said, "You don't have it. You do not meet the statutory requirement, you have no right whatsoever to refer. You don't make a reference to the House on an impeachment matter against a President of the United States unless you have such strong evidence that even the most prejudicial person on the other side has to agree. I said, "That's your standard. You really must use that standard. And you don't have it. You have nothing without Lewinsky." "Well, we have the proffer." I said, "That's not good enough." I

said, "You've got to get her in and she's got to give you a statement that directly establishes the perjury." And I knew at that time Lewinsky had changed counsel and gone to Jake Stein. And Bob Muse who works for Jake Stein was my former research assistant, who worked for me on Watergate, and I go to lunch with him regularly.

So, during that time I went to lunch with him. And, I just threw it open. "Bob," I said, "I think Jake would do a good thing if he brought her in, because I think they need her testimony so much that they'll give her absolute immunity, not just use immunity, absolute immunity, and I think that will sort of cut the cord and will help her. The next thing I know is that Jake Stein's calling me and saying how do we do this. I said, "Well, I'll talk to Ken Starr." And, I said, "Ken, I don't want to play. I'm not the one who's going to negotiate this, but you can do it. They're ready." And, he says, "I'm afraid for them to come here or for me to go there. The press are watching us." He said, "I want to do it." So, I said, "Why don't you meet at my house? I have a porch. We'll sit out, just Jake, you, Plato Cacharis, and myself. I'll just sit there. I won't meet, I'll just sit there and be there. They know I'm here." And so they all came over. Sara, of course, when I told her they were coming, she had some sort of appointment out of the house, but being a good Jewish mother, said, "How can I have the Independent Counsel, Jake Stein and Plato Cacharis come to my house and not feed them?" And she called the secretary over there, "What would he like to have for lunch?" He said, "Just have a coffee." Or something like that. So, she had bagels and coffee and she left and we met. And Jake made the offer. Ken accepted it. It was a very short meeting, time to just eat a couple bagels and coffee and the next step was, "Okay, part of the deal was that they were going to go forward with this, we need an actual oral proffer, not a written proffer on a "Queen for a Day." Have her come in, answer all our questions; she doesn't

waive the Fifth Amendment. If we don't give her the immunity, it's not usable. If we give her the immunity, fine." And they agreed on absolute immunity. In fact, part of the deal was not only absolute immunity for her but for her mother and one or two others.

Ms. Hostetler: She had no idea that all the sexual details would be put in a report and sent to Congress?

Professor Dash: She knew that later, not at that time. And then the question, "Where do we meet?" Well, again, they were worried about her giving an oral proffer in the Independent Counsel's office with the reporters watching her. So, we agreed to go to New York to Ken Starr's grandmother's apartment in New York. And, with a sense of humor, I said, "We ought to call this 'Project Little Red Riding Hood' because we're going to grandmother's house." And it became "Project Little Red Riding Hood." But we all went to New York with the condition, Jake Stein insisted, that I be there. I don't ask any questions, but that to assure that she won't be abused or anything like that, I'd be present. So, I agreed, and I went. Sara didn't want me to ever fly alone because of my health, but one of the Independent Counsel's assistants flew with me, and we went to the apartment and she came with Jake Stein and another lawyer from his office, and they put her through a very thorough questioning in which she told the whole story. She was very credible, very clear. Ken Starr did not participate. In fact, he walked out of the apartment for a while. And it was after her testimony, when they left, that the staff met and concluded that she was so credible and so complete that they ought to then go ahead and consummate the absolute immunity, and now start a series of her coming in to the Independent Counsel and ultimately to the grand jury. And, it was that series in which she was giving all the details and they were informing her that all this would be part of the report that they referred.

Ms. Hostetler: And, were you consulted about whether all the sexual details should be in the final report?

Professor Dash: I wasn't consulted that way. I read it and the only issue I thought I had to pass upon was whether this was ethically unfair, or whether from an ethical point of view this was proper prosecution to include them. And I made my judgment on the basis --

Ms. Hostetler: Made what judgment?

Professor Dash: The judgment that it was to be included, that the statute says "substantial and credible." The president had denied that there was any of this sexual relationship and that the evidence, in order to overcome the president's denial on any kind of a perjury issue, should be overwhelming in establishing that he lied, and I thought that the sexual detail, as bad as it was, was necessary in this kind of a case because it was confronting his lying, his denial, but there was this also that went into the formula that I was satisfied with. Ken negotiated with Hyde, the Chairman of the House Judiciary Committee, that when the report went over, it would not be publicly released. He said there is, one, grand jury information here, and quite a bit of sexual information.

Ms. Hostetler: Oh, he negotiated --

Professor Dash: Yes. Hyde promised that it would go into a room that would have a vault in it, that only members of the committee could go into that room but they couldn't take notes and they couldn't take it out, and that was the deal that I was informed about just as they sent it over. I must admit that I held it up for an hour because of a particular charge in it. They wanted to charge the president with an impeachable offense for asserting executive privilege, and my position is that it is the right of a president to assert executive privilege and that can't be treated as

an impeachable offense, you know. That's a legal issue, and I had them change that. But the truck was waiting, and they also assured me that it was not going to be publicly released. Hyde had promised, and the moment that they got it, they released it. They broke the promise.

Ms. Hostetler: So much for believing Congress.