

**Oral History Project
The Historical Society of the
District of Columbia Circuit**

**United States Courts
District of Columbia Circuit**



PROFESSOR SAMUEL DASH

Interviews conducted by:
Zona F. Hostetler, Esquire

July 10, 1997, September 12, 2000, June 29, 2001,
November 22, 2002, June 11, 2003

TABLE OF CONTENTS

Preface	i
Oral History Agreements	
Sara G. Dash (Mrs. Samuel Dash).....	iii
Zona F. Hostetler	v
Oral History Transcript of Interviews on:	
July 10, 1997.	1
September 12, 2000.....	39
June 29, 2001.....	97
November 22, 2002.....	144
June 11, 2003.....	197
Index.	A-1
Table of Cases.	B-1
Biographical Sketches	
Professor Samuel Dash.....	C-1
Zona F. Hostetler, Esquire.....	C-3

NOTE

The following pages record interviews conducted on the dates indicated. The interviews were electronically recorded, and the transcription was subsequently reviewed and edited by the interviewee.

The contents hereof and all literary rights pertaining hereto are governed by, and are subject to, the Oral History Agreements included herewith.

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PREFACE

The goal of the Oral History Project of the Historical Society of the District of Columbia Circuit is to preserve the recollections of the judges who sat on the Courts of the District of Columbia Circuit and lawyers, court staff, and others who played important roles in the history of the Circuit. The Project began in 1991. Interviews are conducted by volunteers, trained by the Society, who are members of the Bar of the District of Columbia.

Indexed transcripts of these interviews and related documents are available in the Judges' Library in the E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C., the Library of Congress, and the library of the Historical Society of the District of Columbia. With the permission of the interviewer, oral histories are also available on the internet through the Society's web site, www.dcchs.org.

Such original audio tapes of the interviews as exist, as well as the original diskettes of the transcripts (in WordPerfect format) are in the custody of the Circuit Executive of the U.S. Courts for the District of Columbia Circuit.

Historical Society of the District of Columbia Circuit

Agreement Respecting Oral History of Samuel Dash

1. In consideration of the recording and preservation of the oral history memoir of my late husband Samuel Dash by the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter "the Society"), I, Mrs. Samuel Dash, as a representative of the estate, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the tape recordings, transcripts and computer disks of the five interviews of Samuel Dash, as described in Schedule A hereto, including literary rights and copyrights.

2. I reserve for myself and the members of the family of Samuel Dash the right to use the tapes, transcripts and disks and their content as a resource for any book, pamphlet, article or other writing of which I am, or any of them is, the author or co-author.

3. In behalf of the estate, I authorize the Society to duplicate, edit, publish, including publication on the internet or by other electronic means, and to permit the use of said tape recordings, transcripts and disks in any manner that the Society considers appropriate, and I waive any claims the estate or I may have or acquire to any royalties from such use.

Samuel G. Dash 5/25/07
Mrs. Samuel Dash Date
(Mrs. Samuel Dash)

SWORN TO AND SUBSCRIBED before me this
25th day of MAY, 2007.

Nancy J. MacMillan
Notary Public

My Commission expires _____

ACCEPTED this 29th day of May, 2007, by Stephen J. Pollak, Member of the Board of Directors of the Historical Society of the District of Columbia Circuit.

Nancy J. MacMillan
Notary Public, District of Columbia
My Commission Expires 6/14/2011

Stephen J. Pollak
Stephen J. Pollak

Schedule A

Tape recording(s) and transcript resulting from five (5) interviews of Samuel Dash on the following dates:

<u>Interview # and Date</u>	<u>Number of Tapes</u>	<u>Pages of Transcript</u>
Interview #1, July 10, 1997	1	49
Interview #2 September 12, 2000	1	61
Interview #3, June 29, 2001	1	56
Interview #4, November 22, 2002	1	63
Interview #5, June 11, 2003	1	27

The transcripts of the five interviews are contained on one computer disk.

INTERVIEWER ORAL HISTORY AGREEMENT

Historical Society of the District of Columbia Circuit

Oral History Agreement of _____

1. Having agreed to conduct an oral history interview with Samuel Dash for the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter "the Society"), I, Zona F. Hostetler, do hereby grant and convey to the Society and its successors and assigns, all of my right, title, and interest in the tape recordings, transcripts and computer diskette of interviews, as described in Schedule A hereto, including literary rights and copyrights.

2. I authorize the Society to duplicate, edit, publish, including publication on the internet, or permit the use of said tape recordings, transcripts and diskette in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

3. I agree that I will make no use of the interview or the information contained therein until it is concluded and edited, or until I receive permission from the Society.

Zona F. Hostetler - Nov. 21 '06
[Signature of Interviewer] Date

SWORN TO AND SUBSCRIBED before me this 21 day of November, 2006.

Olga Q. Blumenstock
Notary Public

My Commission expires _____
Olga Q. Blumenstock
Notary Public, District of Columbia
My Commission Expires 12-14-2007



ACCEPTED this 20th day of June, 2007, by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.

Stephen J. Pollak
Stephen J. Pollak

Schedule A

Tape recording(s) and transcript resulting from five (5) interviews of Samuel Dash on the following dates:

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Biography Resource Center -- Marquis Biography Display

Biography Resource Center

Samuel Dash

Birth: Feb. 27, 1925 in Camden, New Jersey, United States

Death: May 29, 2004

Occupation: Lawyer, Educator

Source: Marquis Who's Who®;TM. Marquis Who's Who, 2006.

Source Citation

Family: s. Joseph and Ida (Weinberg) D.; m. Sara Goldhirsh, July 14, 1946; children: Judy, Rachel. Education: BS, Temple U., 1947; JD, Harvard, 1950; LL.D., Fairfield U., Conn., 1974; LL.D., Georgetown U., 1983; PS.D., Temple U., 1978. Certification: Bar: Ill. 1950, Pa. 1952, U.S. Supreme Ct. 1955, D.C. 1978

Political/Religious Affiliations: . Avocations/Research/Interests: Civil/Military Service: Mem. Human Relations Commn. Phila., 1957-65; exec. com. Community Relations Council, Phila., 1960-65; bd. dirs. Hebrew U., Jerusalem, 1975, Fedn. Jewish Agys., Phila., 1960-65, Albert Einstein Med. Center, 1962-65, Internat. League Human Rights, 1972-2004; chmn. Trustees Pub. Defenders Service D.C., 1967-76. Served to 2d lt. USAAF, 1943-46, ETO. Memberships: ABA (standing com. on ethics and prof. responsibility 1984-89, chmn. criminal justice sect. 1971, chmn. spl. com. on criminal justice 1986-89, spl. com. on drug crisis), Am. Law Inst., Pa. Bar Endowment (dir. nationwide investigation wiretapping 1956-59), Nat. Assn. Criminal Lawyers (pres. 1958), B'nai B'rith (Phila. regional chmn. Anti-Defamation League 1960-63, nat. commr. 1960-63).

Addresses: Home, 110 Newlands St, Chevy Chase, MD, 20815-3333; Office, Georgetown U, Law Center, Washington, DC, 20001.

Recipient civic awards various civic orgns.; Annual award Nat. Assn. Criminal Def. Lawyers, 1959; Commendation certificate Am. Bar Assn., 1971; others.; Sr. Fulbright scholar U. Melbourne, Australia, 1977.

Positions Held: Ethics Counsel, Office of Ind. Coun. in Whitewater Matter, 1994-1998; chief counsel impeachment inquiry, Senate of Alaska, 1985; spl. cons. on Cerro Maravilla investigation, Senate of P.R., 1983-92; cons., Law Reform Com., Australia, 1977-81; cons., Nat. Assn. Attys. Gen., 1971-73; cons., Ford Found., 1958-63; chief counsel, U.S. Senate select com. presdl. campaign activities (Senate Watergate com.), 1973-74; prof. law, dir. Inst. Criminal Law and Procedure, Georgetown U. Law Sch., Washington, 1965-2004; dir., Phila. Council Community Advancement, 1963-65; partner firm, Dash & Levy, Phila., 1958-63; partner firm, Blank and Rudenko, Phila., 1956-58; dist. atty., 1955-56; 1st asst. dist. atty., Phila., 1954-55; asst. dist. atty., chief appeals div., Phila., 1952-54; trial atty., criminal div., U.S. Dept. Justice, Washington, 1951-52; Teaching fellow, Northwestern, 1950-51. Career-Related: exec. dir. D.C. Jud. Conf. on Mental Disorders and the Law, 1965-70; dir. Divi Hotels, Aruba, 1980-89. Type of Law Practiced: Criminal.

Author: *The Eavesdroppers*, 1959, Chief Counsel, 1976; Contbr. articles to prof. journs.

ZONA F. HOSTETLER

3011 Albemarle St. N.W.
Washington, D.C. 20008
Tel: (202) 363-9463

Education:

College of William & Mary, A.B., 1957.

Harvard Law School, J.D., 1960.

Employment Experience

Partner, O'Toole, Rothwell, Nassau & Steinbach and predecessor firms in Washington, D.C. 1982-2002. Other law firm experience: Associate, public interest law firm of Bruce J. Terris, 1973-1977; Part-time solo practitioner 1963-1973; Associate, Covington & Burling (and volunteer lawyer for the Legal Aid Society) 1960-1963.

Engaged primarily in the general practice of law in Washington, D.C. from 1960 to 2002 with a special emphasis on individual rights, legal ethics and federal court and administrative agency litigation. Cases briefed or argued included cases involving individual rights before the United States Supreme Court, the Federal District Court for the District of Columbia and U.S. Courts of Appeals. Also served as consultant to governmental and nonprofit organizations, including, among others, the Administrative Conference of the United States, the Legal Services Program of the Office of Economic Opportunity, the President's Commission on Law Enforcement and the Administration of Justice, President's Johnson's Joint Commission on Mental Health of Children, and the National Council of Senior Citizens.

Cases Handled

Mississippi University for Women v. Hogan - authored a friend of the court brief in the Supreme Court on behalf of several women's defense funds which advanced a new theory of the case and became the principal basis for the U.S. Supreme Court's decision upholding the right of a man to attend a State, all female, nursing school and announcing that categories of work should not be stereotyped as "men's work" or "women's work".

Reiss v. Finch and Tabor v. Cohen - cases briefed and argued before the United States Court of Appeals for the D.C. Circuit which established the free speech right of federal government employees to assemble for the purpose of petitioning government.

Nunes-Correia v. Kissinger - case brought against the State Department to establish that Department's regulation forbidding marriage by employees to aliens who do not become naturalized citizens was unconstitutional and that termination of employee who married alien was unlawful. Regulations were rescinded by State Department (and judgment awarding back pay eventually won after thirteen years of litigation by successor counsel.)

Bradley v. Kissinger - age discrimination case briefed and argued on behalf of government employees and government union before a three judge court (successfully) and before the U.S. Supreme Court (reversed) challenging the mandatory retirement of Foreign Service employees at the age of 60. (Retirement age then raised to age 65 by Act of Congress following the decision.)

Keller v. State Bar of California. Participated in writing portion of amicus brief for the American Bar Association in 1990 Supreme Court case which set the limits of mandatory bar dues usage. Also served on moot court team for lead counsel for the State Bar of California at the request of the National Association of State and Local Governments.

Other Professional Employment:

District of Columbia Bar Foundation - Co-founder, fundraiser, secretary and de facto executive director for D.C. Bar Foundation from its inception in 1978 to 2001. Foundation raised and distributed over six million dollars during this period to legal assistance organizations serving low income persons, including battered women, women prisoners, elderly and homeless persons, and persons infected with the AIDS virus. Worked with other community groups to help establish several of the funded organizations.

American University, Washington College of Law, Adjunct Professor of Law, Legal Ethics and Professional Responsibility, 1990-1994.

Office of Public Interest Activities for the District of Columbia Bar, Executive Director, 1977-1981. Developed and directed programs for newly established public interest office, including a lawyer referral service primarily for low-income persons, a pro bono panel of lawyers to handle cases of disadvantaged persons unable to hire lawyers; a continuing legal education program in poverty law subjects and a dues check-off procedure to raise funds to assist community legal aid programs.

Women's Legal Defense Fund, Acting Director, March-September 1982.

Professional Activities:

Administrative Conference of the United States - Member of Working Committee to recommend Model Rules of Practice and Procedure in Administrative Agency Proceedings; Consultant in 1985-1986 to analyze and recommend changes in federal policies affecting nonlawyer representation in federal mass justice agencies (Recommendations adopted by Conference in June 1986).

Member, American Bar Association Standing Committee on Legal Ethics, 1979-1985. Principal drafter and lobbyist for the 1984 amendment to the ABA Model Code of Judicial Conduct making it ethically impermissible for judges to belong to clubs that invidiously discriminate.

Member, American Bar Association Commission on Nonlawyer Practice, 1992 - 1995. A principal drafter of report encouraging the use of nonlawyers to provide general advice and assistance to the public.

Chair, American Bar Association Special Coordinating Committee on Professionalism, 1989 - 1992 (and member 1987-1989).

Board of Editors, ABA/BNA Manual on Professional Conduct, 1986-1987.

Member of Immigration Law Committee (and Chair, 1995-1996).

Chair, Fellows of the American Bar Foundation, 2001-2002.
Chair D.C. Fellows of the American Bar Foundation 1995 to 1997.

Member, ABA President's Working Group on Unmet Legal Needs of America's Children and Families.

Section of Individual Rights and Responsibilities, American Bar Association, Member of its governing Council, 1992 to 2003; Chair of the Section 2001-2002.

American Law Institute, member, and member of its consultative group on the Restatement of the Law Governing Lawyers, 1993 to 2004.

U.S. Court of Appeals for the District of Columbia Circuit. Committee on Admissions and Grievances, 1984 to 1990. Member of legal aid and pro se committees of the Circuit's Judicial Conference (Former Chair of Pro Bono Committee).

Harvard Law School Association - President, D.C. Chapter, 1978-1979; National Vice President, 1979-1980; National Council of the Law School Association 1981-1985; Class Secretary, Class of 1960.

American Civil Liberties Union - Board of Directors and Executive Committee of Washington, D.C. affiliate in the mid-

1960's and 1989-1992. Chair of nominating committee 1994 to present.

District of Columbia Bar. D.C. Bar Delegate to American Bar Association's House of Delegates 1991 to 1997. Member and Vice-chair of Ethics Committee 1976-1978; Member of committee to Recommend Proposed New Model Rules of Professional Conduct, 1985-90; Member of Committee to Evaluate the Reorganization of the D.C. Superior Court (a principal drafter of report proposing reforms in landlord-tenant court); Member of Committee to Study Procedures for the Appointment of Counsel in Criminal Cases; Member of Committee to study and enact an Interest on Lawyers' Trust Account Program and principal drafter of D.C. IOLTA program.

District of Columbia Citizens Complaint Center (dispute resolution center operated by D.C. Superior Court and United States Attorney's Office) - member of start-up advisory board, 1979-1982; a principal drafter of revised guidelines adopted by U.S. Attorney's Office for initiating prosecutions in battered women cases.

Honors:

2002 Lever Award, District of Columbia Law Students in Court.

2000 Three Guineas Visitor Alumna Fellowship, Harvard Law School

1999 Alan Barth Award, American Civil Liberties Union of the National Capital Area.

1993 Servant of Justice Award - The Legal Aid Society of Washington, D.C.

1986 Civil Rights Award - NAACP Legal Defense and Education Fund (Washington, D.C. chapter.)

Publications and Lectures:

"The Poor and the Law", chapter in Poverty as a Public Issue, ed. Seligman, Macmillan (Free Press) 1965; "Law and Poverty", chapter in Law and the Liberal Arts, ed. Broderick, Catholic University Press; 1967; "Nonlawyer Assistance to Individuals in Federal Mass Justice Agencies: The Need for Improved Guidelines", The Administrative Law Journal, Vol. II, No. 4, Spring 1988. Bi-monthly column in District Lawyer, bar journal of the D.C. Bar, 1977-1981; numerous articles and studies on delivery of legal services and other administration of justice topics, 1964 to present. Lecturer and panel participant in law school, bar association and other programs on legal ethics and professionalism topics 1980 to present.

**ORAL HISTORY OF
SAMUEL DASH**

First Interview - July 10, 1997

This is the first interview of a contemplated series of oral history interviews with Professor Samuel Dash. The interview took place at Professor Dash's office at Georgetown Law Center in Washington, D.C., on July 10, 1997. The interviewer is Zona F. Hostetler, an attorney in private practice.

Ms. Hostetler: Professor Dash, you've been a prominent and distinguished lawyer, not only as a law school professor but also as a private practitioner and, most notably, in public life. We want to talk about all of these careers, about your scholarship and leadership in the fields of criminal justice and legal ethics, your work as a prosecutor, as a law professor, as a bar leader, and, of course, we especially want to talk about your work for the government, including your famous work as Chief Counsel for the U.S. Senate investigation of President Richard Nixon, known as the Watergate investigation. But before we get to all of these illustrious careers, let's go back to the period before you even went to Harvard Law School. Were there any lawyers in your family?

Professor Dash: No, I was the first lawyer in the family. Actually, in our family I was the first person to get a post-graduate degree.

Ms. Hostetler: Had your parents gone to college?

Professor Dash: No, my mother and father came to this country fleeing from Russia during the Pogroms of the early 1900's, and both of them were about five years old when they came. They grew up as poor immigrants, in Philadelphia, and I don't think they even went to high school. But my mother read a lot, and she was very literate. My father ended up in wholesale dry goods with his brother who had a leading business in dry goods. But my father

was a failure in it, because he really was a dreamer without an education to realize his dreams. During World War II he found himself and worked in the Frankford Arsenal in Philadelphia as an electronic parts specialist.

Ms. Hostetler: What kind of books did your mother like to read?

Professor Dash: Everything. She read the newspapers, from front to back. She would pick up and read everything. She was a voracious reader. And a believer in education. And I think all of us – I had three brothers, and later two sisters – were urged to get as good an education as we could get, and told that that would be the only way in which we could succeed in life.

Ms. Hostetler: And did your father support her in that view?

Professor Dash: Yes, I think he supported her.

Ms. Hostetler: Did your mother read to you?

Professor Dash: No, her reading was personal. But she always was very interested in what we were doing in public school, what our grades were, and she constantly held up to us a very high standard of achievement.

Ms. Hostetler: Did you like to read yourself, or were you doing other activities?

Professor Dash: Oh yes. Well, even before I was a junior high school student, I was constantly going to the library and bringing home piles of books. Most of them were fiction -- the romantic fiction of the times, like the *Three Musketeers*, and I sort of lived out the things I read. As for activities, primarily I was forming aviation clubs. At that time, airplanes weren't what we have today, but the Richfield Company and its gas stations would give out silver wings to young people and admit them into the Richfield aviation club. So I formed a group of the

neighborhood kids, and we got orange boxes. And we sat on the orange boxes as planes. At that time, you flew planes with a stick and I was teaching them what positions the stick should be in in order to bank, or dive, the plane. We wore our wings, and we took it very seriously.

Ms. Hostetler: Did you get to go inside real planes?

Professor Dash: No, but every once in a while a couple of us would ride our bikes to the Philadelphia airport, which was then a very small airport, to watch the planes.

Ms. Hostetler: What years would this have been?

Professor Dash: Well I would have been then, about ten years old.

Ms. Hostetler: You were born when?

Professor Dash: 1925, so this would be in the mid 1930's.

Ms. Hostetler: Was Russian spoken in your family at all?

Professor Dash: No, my mother and father being five years old when they came to this country spoke a little bit of Yiddish, but they didn't know very much Yiddish. I do remember Yiddish curse words – that's how I grew up knowing what Yiddish meant. My parents had older sisters and brothers, who were older when they came here, and they were very traditional Jews. They spoke Yiddish fluently. Some of them kept Kosher...and they would criticize my mother for not keeping Kosher.

Ms. Hostetler: So your mother was the rebel in the family?

Professor Dash: Well, she was the American in the family.

Ms. Hostetler: Did you know your grandparents?

Professor Dash: No. I do remember my mother's mother living not that far away, and visiting her once or twice, but I have really almost no recollection of grandparents.

Ms. Hostetler: You said earlier you had brothers and sisters?

Professor Dash: Yes, I had an older brother Harold, who died during the Watergate hearings in 1973. He was an architect, and as a matter of fact offered his services gratuitously during Watergate. We didn't have any place to put the staff. I had a hundred investigators and lawyers and administrative people, and we took over the Senate auditorium. But it had a sloping floor and had all those seats. Harold redesigned it for us so it became a gigantic office space with cubicles and all that. And it remained that way for Senator Church's Select Committee on Intelligence. It's since gone back to being an auditorium. Harold was an avid follower of the Watergate hearings.

Ms. Hostetler: Where did he live?

Professor Dash: He lived in Philadelphia.

Ms. Hostetler: And that's where his architectural firm was?

Professor Dash: Yes. He belonged to a very good architectural firm.

Ms. Hostetler: And what about your other siblings?

Professor Dash: Harold was the older brother, I was second, then Abraham was the third brother. It's interesting about him because he was the competitor, coming after Harold and me. Harold and I had achieved much during our school years, so he was constantly attempting to outdo us--even to the point that he would pick a fight with us. And the two of us actually battered him down to the ground once, and I think blood was coming from his mouth, and he just grinned up at us and said, "You're getting tired, aren't you?" (laughter) He went to the Naval Academy, got hurt in boxing, and joined the Air Force, and became a bomber pilot. He stayed on in the reserves and he got finally to the rank of Lieutenant Colonel. But the interesting thing is

that he still wanted to beat me at everything. In the early sixties I represented the Teamsters in Philadelphia – that is, some of Hoffa's lieutenants. And Abe who had graduated from law school offered his services to Robert Kennedy, the Attorney General, to beat me. And that's when Bob Kennedy made a terrible mistake. He said, "How can I bring Dash's brother into this case, he's going to favor Dash." He didn't know that he would have had a great weapon – this guy would have torn me apart if he could. And so Abe instead became a deputy counsel to the Comptroller of the Currency, and investigated all kinds of banking frauds. Then he decided he would compete with me in the law school field. So he's now a professor of law at the University of Maryland Law School--where, I understand from the parents and students every time they meet me, that he's a great teacher.

Ms. Hostetler: And did you have another brother?

Professor Dash: Yes, Raymond, who was the last in the line of the boys. He was a math expert and went into computers. In fact, he was in the pioneering period of computers when they began to use computers to predict the outcome of presidential elections. He was working with RCA, and he would be on those television programs predicting the election results. He later taught computer technology at Northwestern University and he ended up advising a large insurance company in Chicago about its need to computerize. He was the only one who seemed to know anything about it and so they made him a vice-president of the corporation. He stayed with them for a while, and then finally retired. But he still teaches computer technology at Northwestern.

Ms. Hostetler: And you have a sister?

Professor Dash: I have two sisters. They came late. And when I left in 1943 to

become an aviation cadet they were somewhere around maybe seven and four. One was Jeannette and the other was Ruth. I never really was able to establish a good relationship because after I left to join the Air Corps, I really didn't come home much. This is because during my leave – and I'll talk to you about it – I met Sara who became my wife. I should say I met Sara again, because we had both been students at the same junior high school--Sulzberger Junior High School in Philadelphia. I was a year ahead of her and I was "big man on campus." I was the captain of the Safeties, and then president of the student government association. We were in the dramatic club together and we even played opposite each other, but we really didn't--well, as she tells it, she had dated every other boy in the club. And I was always a very serious young man – always had to get off to work as soon as possible. And she says she had looked me over but at that time, she says, I was emaciated, had an Adam's apple as large as an orange, and I looked like Lincoln after he was assassinated. And she says she felt pity for me--would I ever get married? Now, you know, there's a bit of poetic justice in this. Anyway, during my leave time, after I had returned from Italy, I went to Atlantic City, which was our vacation spot, and I saw this pretty girl walking on the boardwalk with her family. I was with a boyhood friend who remembered her and he said to me, "That's Sara Goldhirsh." And so we followed her on the boardwalk to see where she was staying so we'd know what beach she'd be using the next morning. So, the next morning I "accidentally" met her in the ocean. We went dancing that night. But I had to go back to my air field, and I asked her to wait for me.

Then I plied her with poetry. I'm a poet – I write sonnets – and I've been writing them since I was a teenager. And I sent her a poem almost every day, through special delivery. And that really disturbed the neighborhood because in those days during the war, a boy on a Western

Union bicycle coming with a message was a bad, bad omen, and she begged me, please, send it by regular mail, not by special delivery. I just wanted her to get it right away.

Ms. Hostetler: Was your poetry saved over the years?

Professor Dash: We have a book that I kept, and then added to it. Most of the poetry that's in that book is from the 1940s though there are some earlier ones. I thought I was going to be a writer because I had this romantic vision of life and I wanted to talk about it, and poetry came easy for me. I tried to experiment when I went to Central High School which is, if you don't know Philadelphia, the Boston Latin School of Philadelphia. It dates back to the 1820s. It's the only high school in the country that gives an AB degree when you graduate. There's no principal, he's the president of the school. And it had great professors – you called them professors, not teachers. My English professor in my senior year wanted us to write about Shakespeare – you know, the stage during Shakespeare's time, the costumes and so forth. But I decided, "Hell, I'm going to be much more original than that. I'm going to write a five-act tragedy, using Shakespeare's sources but picking a character he had not." So I went to his source material – I think it was Plutarch's Lives – and I found that he had never touched Alexander the Great. So I wrote a five-act tragedy in Elizabethan English, iambic pentameter, with all the Shakespearean kinds of rhymed couplets, ghost scenes in the tent, and so forth. It had all of what Shakespeare puts into his plays, like soliloquies of Alexander as he watches his troops coming back. But when I submitted this five-act tragedy to my English teacher it came back with a question mark over my name. Now wait, he said, you didn't write that. And so I showed him my sources and everything. Then he gave me an "A". I've had that play all these years but I had never seen it played until my 70th birthday when my daughters and Sara surprised me by

performing it in our house with each playing different roles, putting on different hats and things like that. It was fun.

Ms. Hostetler: Do you still write poetry?

Professor Dash: Yes, but I pretty much limit my poetry now for my two daughters and Sara, on occasions like birthdays and anniversaries.

Ms. Hostetler: Have you given any thought to publishing it?

Professor Dash: No, it's just there. Some of it I think is good. And some of it is descriptive. During the war, I wrote some kind of dramatic poems, about the roaring of bombers. I tried to write the poetry with a sound that would reproduce that kind of roaring and all. And I wrote a fairly long poem about a young Italian boy strumming a guitar, on an ancient wall, in a city that we were staying near...and it flowed, but I find now that you really have to be brief. You can't be too descriptive because the words and the way you put them together have to create the message and the image.

Ms. Hostetler: Do you write poetry at a certain time, or just when the muse strikes?

Professor Dash: Well, since I'm now limiting my poetry to communications to my daughters and my wife, it's about a week or so before their birthdays. I'm writing one now, for Sara, for our wedding anniversary, which is Bastille Day, July 14th.

Ms. Hostetler: When you were growing up did, did your family, your immediate brothers and sisters and you view yourselves as immigrants or were you so Americanized, that--

Professor Dash: We were born here, we were first generation Americans, and I never saw myself as an immigrant. I was very patriotic, very romantic, and I saw myself as an

American. I never believed that I would have any restrictions. I bought the American dream.

Ms. Hostetler: And you weren't treated with discrimination?

Professor Dash: No, I never met, until I graduated from law school, any restriction because of my religion, and it was then, in 1950, or 1949, that I began to experience the kinds of discrimination that occurred in law firms at that time.

Ms. Hostetler: Did you apply to some law firms that had restrictions--

Professor Dash: At Harvard Law School I had the highest grades of any student coming from Pennsylvania, and I think I was in the top bracket of my class, so I was invited to interviews by law firms. But when I got there, I found out that they didn't have a Jewish associate or partner. I remember asking one of the law firms, "Well what's your policy about Jewish lawyers?" and he said, "Well, we don't have a policy. We've never had one, but we don't discriminate, because we don't take Negroes or Catholics either." Isn't that a great, great, statement? So, I felt better of course.

Ms. Hostetler: When you were growing up did your family have sufficient income that you could travel?

Professor Dash: No, they were very poor. My father lost everything when he tried to compete with his brother in the dry goods business. He went bust. He never was successful until World War II. We had ups and downs where we bought a car and then lost the car, bought another car and lost the car. We rented nice houses and lost them – you know, we had to go down to a poorer house.

My older brother, Harold, and I, from the time I was seven, had to work. We weren't working for our allowances, for money for ourselves. We were working to bring income into the

family, and it was our work that produced food on the table. I worked at everything – I was a carpenter's helper. I even found out later which I was too young to know at the time that I was a runner for a gambling group. Harold and I were selling newspapers, and there was a big offer from a place down near Front Street in Philadelphia, where they were sending what is called score cards to the saloons. And our job would be to have a route in a certain section of the city and to distribute every day these score cards. What I didn't know was that it was the numbers. Harold then drove a car so we would attach my bicycle to the back of the car. He would drive me to my section and I then with my bicycle would go into all these saloons delivering the numbers cards. And Harold would do his on his own and then we would meet and go home together. Then one day we went down to get our score cards and it was closed. It had been raided. (laughter) This was an early phase for me. I think I was about nine or ten. I never understood at that time what had happened because, you know, it was a good job. It paid much better than delivering newspapers.

I ended up while I was in high school working for the free library of Philadelphia. I'd go there every night, and the exciting part of the job was that I was working in the newspaper stacks. In the newspaper stacks at that time, they had volumes of the original newspapers of Philadelphia back to the early 1700s. I mean these were not on microfilm or anything. This was when you turned the book open and you would be looking at 1760, and the cartoons of the time. I came to the conclusion that if you really want to know something about the diet of a period, the dress of a period, the jokes of a period, a newspaper tells it all. It's just amazing. You can read all about the culture of the day in the newspaper.

Most of the times I worked at night and when I didn't have anybody calling for anything I

read history. I followed Napoleon's successes and ultimate defeat through the newspapers printed at the time. And I remember the humor in this. Not having radio or telephone they would begin a story by saying, "A gentleman off the Frigate James has come to our offices and reported the latest news from Europe. Napoleon has defeated Wellington and is now victoriously going on his expeditions." About a month or so later the paper would report that a gentleman off the Frigate Smith had come into the offices and said that Wellington beat Napoleon and that is the end of Napoleon's career. And then from another gentleman about a month later there would be a contrary report. Finally, the newspaper printed a box. "Our readers are disturbed and frustrated at the contradictory reports from gentlemen coming into our harbor on boats. We don't care whether Wellington beats Napoleon or Napoleon beats Wellington. We want the truth." What history there was to learn from the newspapers that people were reading!

Ms. Hostetler: Any other jobs you can remember?

Professor Dash: My brother and I went into business for ourselves developing film. I had a cousin who knew something about developing film and printing and he taught us how to do it. And he built a printer for us. At that time, my father was in wholesale dry goods, and my mother opened up a little store, for retail, of the same stuff he was selling wholesale. And we put up a big sign "Film Developing - 24 Hours." (laughter) We had our printer and our developing tanks and everything in the basement. I remember it was during the New York World's Fair in the midthirties because a lot of the pictures I remember developing were photographs of the Fair's tower and globe.

Ms. Hostetler: Did you go to the Fair?

Professor Dash: No. You asked a question earlier about traveling. We really were

so poor that our horizons were as narrow as the street we lived on. The only travel we did was to go maybe once a summer to Atlantic City, which was the mecca seashore for Philadelphians. I remember how we went. We didn't have a car. First of all, we were carrying a lot of things. I remember we carried a lot of things--blankets, and stuff. And we would stay maybe for two days. My mother had already arranged something with a woman who had one of these four- or five-story houses on one of the streets leading up to the boardwalk. And we would carry all the stuff we were carrying to the streetcar, and then the streetcar would take us to the elevated which went down Market Street. Then the elevated would take us to Front Street where the ferry was. Then we would go on the ferry and cross the Delaware to Camden. At that point, there was the railroad station -- the Reading Railroad I think it was -- where we then got a train. These were the true choo-choo trains with billows of smoke coming out of the chimney, and if the windows are open, you would be getting black all over. And the train took us to Atlantic City.

But then we had a long walk from the train station to the house where we were going to stay and we were carrying all these bundles. And finally we got there. I remember an older lady -- you know, at that time she looked old, probably she was in her 50's or even 40's -- carrying extra bed springs on her back up all these steps to the rooms we were going to use. Of course, now that I think back about it, it was pretty dingy. The rooms were not air-conditioned and during the hot summers sweaty as hell. And there was a saloon below us with very loud music being played and flashy neon lights going off and on. We thought it was paradise, we were at the seashore! (laughter)

But that's as far as I ever went until I enlisted in the Corps when I became 18. I became 18 in February and I immediately applied.

Ms. Hostetler: So you enlisted even before you went to college?

Professor Dash: No, I had started at Temple University. I had applied to Penn, and I was admitted at Penn, but again, I had to work. Temple was the poor boy's school and it was cheaper. And so, as a poor boy, that's where I went.

Ms. Hostetler: Did your siblings go to Temple also?

Professor Dash: Raymond did, then went on to another University. Abe went to Temple. Harold, my older brother, went to Penn, and studied architecture at Penn. But he did that after he came back from the service. I had one year at Temple before I went into the service.

Ms. Hostetler: And you held jobs during that time also?

Professor Dash: During that time I think I was mostly working at the library. I had a long-time employment with the Philadelphia Free Library.

Ms. Hostetler: And what kinds of courses were you taking at Temple?

Professor Dash: Oh, I was then in what they call the pre-law/business school. And most of the courses I was taking were history and political science and social science. But in my English courses I was writing poetry. I was getting into a period where I was writing complex poems, sonnets and things, and my English professor was excited about it. He assigned some of my poetry to the class. I remember once I played a kind of trick on the class (and I think the English professor was aware of it). I wrote a poem in sonnet form. But every time the word should have been a simple word I took an obscure, complex word. And so it looked like a very complex, subtle poem, with in-depth meanings. But in fact it was a nonsense poem. There was no meaning in it. It was meant to be that. But I remember that the professor asked who do you think wrote it, and what does it mean? I'd hear all these poets' names suggested. And I learned at

that time that people don't want to admit that they can't decipher something, that they're unsophisticated. So everybody had a complex theory for what I was writing and in reality it was complete nonsense.

Ms. Hostetler: You say you were in the pre-law program so were you even at that early age, intending to go on to law school?

Professor Dash: Yes, law attracted me way back. First of all in every public school I went to, I was very active in the so-called politics of the school. As I said earlier, in Sulzberger Junior High School I moved up from captain of the Safeties, the law enforcement people, to becoming president of the student association, I read the Bible, every morning in the auditorium. And when I went to Central High School, I became the president of the student association by election, but then, some new organization was formed which was called the interscholastic league of student associations – all the high schools in the city had an upper student association league made up of the presidents of their own student associations – and I became president of that.

And you know this whole process of democratic politics and getting involved in that, led me to believe that there ought to be a city college in Philadelphia. There was no free college in Philadelphia. And I formed a committee and we went to see the president of the board of education, and petitioned and all those things. We were doing all kinds of reform things. So that whole political area vibrated with me, and I had this other romantic feeling. Coming from a poor family, and seeing them struggle, and being a romantic from the books I read, I had this kind of dream, as a teenager, of coming back to this poor neighborhood as a champion. Of course at that time my dream included armor and a white horse (laughing). To right wrongs, you know. It was a

romantic concept that I had. I haven't lost much of it yet.

Ms. Hostetler: Did you think of coming back to that same community to right the wrongs, or of going off somewhere else?

Professor Dash: Well, no, I saw it as coming back there. Growing up, I was struggling along with the family, and I didn't stand out until I got these particular positions at junior high school and high school. Then, at that point, I felt it would be great gratification if I could come back with power, you know, and right wrongs. But, again, it was localized because I didn't know anything about the outside world.

Ms. Hostetler: You were growing up in the 1930s, when Hitler was on the rise in Europe. How aware were you and your friends, and the people around you in Philadelphia, of Hitler's rise?

Professor Dash: We were very much so. First of all in high school, we participated in a series of programs to help the servicemen. I remember we were collecting tin cans, and stamping them to flatten them out, so they could be carried better, and I was very active in that. And, as Jews, we were very much angered by the stories we were hearing about the Nazis and what was happening to Jews. And I guess everybody I knew at the time of my age wanted to get into the war. This was not an ambiguous war. You could tell the black hats from the white hats. And I remember that I'd had this yearning to do two things: I wanted to fly (all my earlier years as an orange crate pilot (laughing)). In our family Harold and myself and Abe were visionary air-people. And I wanted to get into the Air Force. But I also wanted to go in to fight. I wanted to fight the Nazis.

And so as soon as I turned 18 in 1943, I applied for aviation cadet training. I was turned

down by the Navy – I liked the Navy uniforms better than the Army uniforms – but they turned me down because they said my eye conversions weren't right and also my blood pressure was a little high. But the Air Force wanted me. In fact, the Navy just turned me down but the Air Force said, "Son, why don't you just lie on the couch for a little while and we'll take that blood pressure again." (laughter) And it was at just the right level. And so I became an aviation student, and then an aviation cadet.

Ms. Hostetler: How long was the training?

Professor Dash: I think I graduated from bombardier training somewhere in the fall of 1944. At that time, you came in as an aviation cadet and got basic training where you learned all about drill and things of that nature. When you graduated, you were still pre-flight. In my area, everybody went to Nashville, Tennessee, for classification of whether you were going to train to be a pilot, a bombardier, or a navigator. I wanted to be a navigator. Somehow that always intrigued me as a nice romantic thing, to navigate a plane. And so when I got to my classification officer, and he said, "Well you've passed, you can be a pilot, a navigator, or a bombardier. You have qualifications for all three, what would you want to be?" I said, "I want to be a navigator." He said, "Well we've got plenty of navigators, we've been losing bombardiers over in Europe." He said, "We need replacement bombardiers, how about being a bombardier?" And I said, "No no, I want to be a navigator." He said, "We really do need bombardiers." I said, "No, I want to be a navigator." He said, "How about the infantry?" I said, "No, I'll be a bombardier." (laughing) And he told me that it was a new program and that the bombardier would get some navigation training so that he could take over if the navigator was killed or got sick. They called them "bombagators."

And so I went through bombardier school, and I became a very accurate bombardier. We were using then the famous Norden bomb sight. It's in the Smithsonian now. It was at a time when human beings could use weaponry. Today the planes fly so fast it's done by computers. The Norden bomb sight is now an ancient weapon. But it was a really good computer. You had to put in the Norden bomb sight all the details of the altitude, the temperature, and a lot of other things. And then you had moving cross hairs which you had to stop on the target. And the way it worked is that when you were playing the game, and it is like a game, you stopped the horizontal crosshair and the vertical crosshair, so it wouldn't move once it was on the target. Internally what was going on is that the bomb sight was flying the plane, directing it over the target, and determining, at what point in the air the bomb should drop so its trajectory would hit the target. It was a mathematical determination. And you know it worked automatically, because the bomb dropped when it should have dropped. And I was accurate enough with that bomb sight that at 20,000 feet, in training, I could hit the center light at the center of the bull's eye. But in combat bombardiers couldn't take the time. You had to take evasive action and go over and quickly set it up, and often you missed the target. But it really was a great bomb sight.

Ms. Hostetler: Where did this training take place?

Professor Dash: Ellington Field, in Houston. I did my pre-flight training at Ellington Army Air Force base just outside of Houston, Texas, and what I really came to learn at that time was how wonderful American families were during that war. Everybody had somebody who was in the war. It was a war with a mission and everybody loved the military Americans who were doing this mission. And we received such home hospitality from the families. I mean, we would be invited every weekend to dinners and we actually got to know a number of the

families. In fact, only recently I got a letter from somebody who's now in her seventies, who was a young woman at the time, who invited us to her parents' home. We'd met her at the USO or something and she invited us to her parents' for dinner and then she took us to see some of the historical things like the Alamo. And I remember I gave her a record of some classical music, I think. And she recently wrote me, I guess because of some of the notoriety I've gotten. She said, "I bet you don't remember me. I'm white-haired and seventy-ish now, but I remember that summer when you were a young aviation cadet." You know, it was kind of nice, that recollection. I can say nothing negative about my service. I was 18. You had to be 18 to enjoy that.

But then I had to go through gunnery school and I remember it was in Laredo, Texas. The bombardier is the gunnery officer on the plane. Then it was on B-24's. I never thought of myself as mechanical. I never thought I could do anything with my hands. But the training program of the Air Corps at that time was so excellent. They used all kinds of simulation, and all kinds of-- well, it was something like television where they took you through it. As a gunnery student I had to learn how to detail strip a caliber 50 machine gun, which has hundreds of parts, wearing heavy gloves and using only a nail for a tool. And the reason was that when you're up at 20,000 feet, and the temperature outside the plane is minus 40, if you touch metal, you'll leave your fingers with it. And so that's how we had to do it. And I did it very successfully. I tore it apart, and put it back together again. Then we went to a malfunction range. And there were ten guns, each with a different malfunction built in. And we had to shoot them and as they stopped, we had to identify by what was sticking up, or why it stopped at that point, what the specific malfunction was. And I passed that test. We had to learn how to shoot from all the different turrets on the

plane, and they began by saying you're very lucky young men. You're going to be playing a millionaire's sport. And what it was is that they put us on the back of a moving truck, and we were shooting skeet. (laughter) And then they put two skeet shotguns on the turret, and we were on the back of the truck, and we were moving quickly to shoot the skeet. It was fun! You know, I had a great time.

Ms. Hostetler: Did the war end before you actually had to go overseas?

Professor Dash: No, I graduated, became a second lieutenant, and then had to go to bombardier crew training. My crew got our B-24. That was in Lincoln, Nebraska. And I remember when I got my first bombardier crew training we were using a real B-24 now, and maneuvering around and learning how to work together. But before I was to go over, they gave us a 30-day leave. And so I went home, then to Atlantic City with my family, and I got a terrible sunburn on my foot with a big blister. So I went to the local Air Corps headquarters and a flight sergeant looked at it and said, "Son you can't go back to the base. I'm going to put you on sick call at your home." And the blister stayed there for a few weeks! By the time I got back, my first crew had gone over. In fact, they went over to the 8th Air Force in England, and were in the Battle of the Bulge and a number of them were killed. So I had to go through re-training again, with a new crew. And then we flew our B-24 over to Italy.

Ms. Hostetler: Where in Italy?

Professor Dash: Actually, we landed in Gioia del Colle. I'd never heard of it before. It's a little ancient walled town. And then we went up above Foggia to do some training missions. We would fly over areas and pick out our targets. It turned out that a lot of the training missions were over actual battles on the ground. And the Air Force had a policy that if you flew over a

battle, you get the battle ribbon – even though you didn't fight. So I collected a number of battle ribbons with Bronze Stars because of this. I was still waiting to go over and bomb the Germans when I was brought into the commanding headquarters and told that the 376 Bomb Group, the famous bomb group that bombed Ploesti, had lost a lot of bombardiers. What the Germans were doing was going after the bombardiers. The whole bombing flight depended on the Norden bomb sight and the bombardier. You would have one bombardier in the entire squadron, and his was the lead plane. When his bomb door opened, and the bombs went, gunners in the following planes would hit their toggle switches to hit the same target. They're following the bombardier. And so if the Germans could come in and shoot head-on, there would be no gun facing them. B-17's had a forward gun, but the B-24's didn't. And so the Germans would come in and shoot the bombardier out of the B-24 plane, and that would ruin the bombing mission.

So they needed new bombardiers and they said I was being shipped down to them, the 376 Bomb Group. I said, "Well great, it's a great group." When I joined them, this was already a famous group. They later received the Presidential Citation and two oak leaf clusters, and I got them too. So I have the European service ribbons, with five bronze stars, I have the Presidential Citation with oak-leaf clusters, having done nothing (laughing) except, you know, be there at the time. In fact, I'd hardly unpacked at the 376th Bomb Group when one of the commanding officers said, "Don't unpack, you're going home." I said, "What do you mean I'm going home, I just got here." (I had been in Italy about two weeks.) "Oh," he said, "this unit has been here for four years, and we're going to go back to the States to re-train for the new B-29's."

So I joined this very victorious veteran group of airmen on the *U.S.S. West Point*, which was a luxury ship. I think it had been used before as a cruise ship, and it had wonderful quarters,

and ice cream all the time, and steak dinners. And when we got to Newport News, there were bands out there, welcoming these victorious veterans. Of course they asked me, "Well, how long were you over?" I would start out saying, "Well, two weeks," and they said, "Well, come on now, don't be so modest," So, you know, then I just didn't talk about it. And we got big steak dinners at Norfolk, and then they gave us a 30-day rehabilitation leave, I hadn't even been in Europe 30 days.

Then I was supposed to go to Nebraska to be reassigned to B-29 training but by that time the war in Japan was improving, and they soon decided they didn't need us. I had spent maybe a month or two at this base in Nebraska. I had a bombardier friend who lived in Chicago, which wasn't that far away. We took the train to Chicago, and I stayed with his family. We left word with the rest of the guys to call us as soon as we got orders. And we got orders, but the orders were they didn't need us in B-29's, and my particular assignment now was to go to Kirkland Army Air Corps base in New Mexico to be a bombardier trainer. New Mexico is such a gorgeous place--the Rockies rimmed our field. And I stayed there until they decided we were too expensive. Air Force people got extra flight pay. And so I was one of the first ones ushered out of the service.

Ms. Hostetler: But now you'd seen the world certainly.

Professor Dash: Oh yeah. I remember when we were first flying to Europe we landed at Marrakesh, Morocco, I think it was. And I saw my first camel, and my first palm tree. What a scene it was. And I saw Tunisia, I saw Italy. I was writing poems about it, and I was also writing home about this great adventure, what the world is like. Always very enthusiastic I was. Everything was new and fresh and exciting.

Ms. Hostetler: You never published those poems?

Professor Dash: No, no, but I've got them all. I still have them in a book.

Ms. Hostetler: And you probably lost friends in the war?

Professor Dash: Not really. Sara lost a boyfriend who went over to the Pacific and was one of those that MacArthur didn't get back to save, but I didn't know anybody who was killed in the war. Also in the Air Corps, you're above it all. I think when you served in the infantry you would know a number of people, but we were above it all. And I never got a chance to get into actual combat. I was told that some of the people in the first crew I trained with died, but I didn't know them that well because I hadn't spend that much time with them. And only recently – it's because they read my name in the newspapers – my former co-pilot, of the second group that I went over to Europe with, and a couple of others, have written to me, and I've written back.

Ms. Hostetler: Were you immediately dismissed from the Army when the war was over?

Professor Dash: Well, even before the war was finally over. The first people who were sent discharge papers were the Air Corps pilots and bombardiers because they were the most expensive people there. And so I was discharged when they knew it was all coming to an end. I got out in 1944.

Ms. Hostetler: So you were about 20 then?

Professor Dash: I was 19, I think, when I got out, close to 20.

There's two things that happened when I came back from Italy. First, there was this grand veteran's group, and I was welcomed as a hero. Then I was given a 30-day rehabilitation leave.

That's when I went to Atlantic City, and met Sara, or re-met Sara, and I asked her to wait for me. There are a couple things that I recall. Not only did I fall in love with her right away – it was a Saturday that we went out dancing – but also the following day, which was a Sunday, we went to a very famous delicatessen near the boardwalk in Atlantic City, for Sunday brunch. I'm a deli addict--my favorite food is lox, and smoked whitefish, and Greek olives and all that – that's heaven. And so I ordered it for both of us. And Sara ate this food with such relish, even humming as she was eating, that I thought I could sit across the table from this lady for the rest of my life. (laughing) I mean, there was a real spark there, over the lox. And that's when I asked her to wait for me. Then I left and was assigned to the bombardier training for the B-29 in Nebraska. I wrote to her regularly, and asked her to wait for me. She was actually semi-engaged to a captain in the infantry – uh, but I wooed her away from the captain.

Ms. Hostetler: With the poetry?

Professor Dash: I guess. I was only a second lieutenant. (laughing)

Ms. Hostetler: Well now, how soon after you were discharged did you get married?

Professor Dash: We were engaged in '45, and not having any money I gave her my Central High School ring as our engagement ring. She knew about my love for Central High School and what it meant to me – if you ever meet Central graduates anywhere in the world, there is that kind of special connection. I was just honored by the alumni of Central High School, and given this Central High School Alumni watch. I spoke about Watergate to a group of them – they're now judges, and ministers and chemists, and they come from all over to reminisce and support the school. Sara kept that Central High ring for years, until it was stolen during a

burglary at our house. And you know, other valuables were stolen, but this was the most valuable thing taken, although it was worth nothing, really.

So, we were engaged. We decided to wait a year. And on July 14th, 1946, a year after we first met, or re-met, we got married in Philadelphia. It was right at the time when I was finishing up at Temple and applying to law schools. It's an interesting story. I, again with a poor boy's mentality and attitude, wanted to go to law school, but I never thought I would have the luxury to go to day law school. As a matter of fact, the tradition at that time for somebody like me was that you became a teacher in the public schools, to earn some sort of a living, and you went to law school at night. When you got your law degree, then you could be a lawyer.

Ms. Hostetler: Were you eligible for the GI Bill?

Professor Dash: Yes, I used it at Temple, and I also used it at Harvard, but I did not have enough to pay for all three years at Harvard.

Ms. Hostetler: So that must have made a big difference to you, to have that help?

Professor Dash: Oh, yes. But Sara had to continue to work. She was in training as a social worker in a Jewish organization that brought over refugees from the Holocaust. They were coming out of concentration camps, and her job was to find relatives here who could serve as sponsors to bring them over here. Then she would do an investigative job to find the relatives and you know, of course, names were changed and everything. When she found relatives she helped them become affiants assuring that the refugees would not become charges on the country. Then she would go to the boat coming over with the refugees so that she could meet them and take them to their relatives. And some of the times I would go to the boat with her. She was a very busy young woman, wearing a beanie cap, and carrying a briefcase. She was also

very active in Israeli culture at that time, including Zionist dancing and music, and she had groups she trained. I would go to the groups with her and watch her. So I got very much indoctrinated on Zionism, on Israel at that time because none of that had been....

Ms. Hostetler: A part of your family?

Professor Dash: No, Sara comes from a very traditional Jewish family. Her mother was fifth generation from Jerusalem. She has lots of family in Jerusalem, and many of them are Rabbis and great teachers. And the story behind that is, her father's father lived in Philadelphia when he immigrated to the United States with his wife. He had six children, including Sara's father. And when the grandfather's children were coming of marriage age, her grandfather came to the conclusion that none of his children should marry American Jewish gentiles. I mean American Jews were gentiles, as he saw it. So he and his wife took everybody, lock stock and barrel over to Jerusalem. And with a marriage broker, connected them to the most religious and famous families -- famous not for money, but for their integrity, their education, their being Rabbis, and so forth. And so all their children were married off that way. And Sara's mother in Jerusalem was married to Sara's father from Philadelphia that way. And it's a famous family -- her mother's mother was a Charlop -- which was a famous Jewish family in Palestine. There is a "Rachov Charlop" Street in Jerusalem, just next to Hebrew University, which is named after her family.

So they were a traditional family, and Sara very early on was active in Jewish activities and Jewish schools. But I just grew up knowing I was a Jew, knowing the culture, some history, and loving Jewish foods. I mean to me, Judaism was eating lox, and things of that nature. That to me was my identity with Judaism.

Ms. Hostetler: You celebrated the holy days?

Professor Dash: Well, yes, the holy days, the main days, but we didn't belong to a synagogue, although I did go to Hebrew school and learned to read Hebrew. So it was really through Sara that I developed a greater identity with Judaism. And later in Philadelphia, after Sara and I were married, I was on the board of trustees of the Germantown Jewish Community Center. I became the regional chairman of the Anti-Defamation League of Philadelphia. And then I went on the national board. I was very active in B'nai Brith. I would do a lot of speaking when I was district attorney in Philadelphia, and even before that, to Jewish audiences. And much of that was to tell Jewish audiences that it was important for the Jewish community to be very supportive of the American constitutional system because it was that constitutional system that permitted them to live as Jews freely. And I said it also was important to support civil rights for Black people, who we then called Negroes. I had early on gotten involved in a number of reform activities involving civil rights around the time of the marches down in the South. While I was the regional chairman of the Anti-Defamation League, most of our programs were directed at non-discrimination on the basis of race. And the Jewish community in Philadelphia at that time was angry at us. They were paying their dues as members of the B'nai Brith or Anti-Defamation League and they were saying, "Why are we spending all this money on the Negroes? Why don't we spend it on the Jews?" And I would make these speeches all over in which I would say, "Thank God the Jews are pretty well-off right now. But the lesson in history is that that doesn't always have to be. And so long as there is any group that's being discriminated against and persecuted, we're next. And therefore even if you don't want to do it out of the tender humaneness of your heart, which basically is what we should be doing, self-protection should direct you to protecting them." I tried to make a practical argument that

would appeal to them.

Ms. Hostetler: Why don't we return to when you were going to law school?

Professor Dash: Oh yes, we were talking about my going to law school. I was saying that my idea of going to law school was that I'd work daytime as a teacher and go to a local law school at night. And Sara said, "Well that's silly. Look at all the time you'd be wasting. I have a good job. I think it would be wasteful for you to go to night law school. What's the best law school in the country?" I said, "Harvard." "You'll go to Harvard," she said. "Me, go to Harvard?", I asked. Well, I applied. And that's an interesting story. I was an all-A student and had first honors in the pre-law curriculum at Temple. Professor Ernest Brown, during that summer of 1947, was Acting Admissions Dean of Harvard, and after I applied I got a letter back from him saying, "We have your application and all your grades, and they're outstanding. But we've never had a Temple graduate at Harvard Law School. So we don't know what your A's mean and, therefore, you'll have to take the Graduate Record Examination." At that time law schools didn't have the LSAT's, so it was on the basis of the records students made at Columbia or other schools that Harvard had had some experience with that Harvard decided whether or not they would make it through Harvard Law School. But the next graduate record examination I could take would be too late, and I'd lose a year at Harvard Law School. So Sara and I sat down together and we wrote a letter to Harvard. First of all I went back to Temple, to the dean of the business school and to the president of the university, and showed them Professor Brown's letter and said, "You've got to back me up."

Ms. Hostetler: Did you know the president of the university?

Professor Dash: No, I just made an appointment to see him. And I got a kind of

response saying, "Well, you know, maybe they don't want people like you." I don't know whether he was talking about non-wealthy persons or Jews, or what, but they had no confidence in themselves at Temple even to want to back me and show that Temple is worthy of being treated well by Harvard. So that's why Sara and I sat down and we wrote a letter. I had done a little research on some of the achievements of Temple graduates to show that my 'A's' do mean 'A's', and I pointed out how unfair it would be to make me wait to take the graduate record exam and lose a year, and especially since I'm a veteran, and a married man and all that. So, about two weeks later comes Brown's letter back saying that they didn't mean to demean Temple, my grades are excellent, they're really thinking of me; there were 100 applicants for every seat at Harvard Law School - all from recognized universities. He said that if I didn't make it at Harvard, no other law school would accept me since no school wants to say that it has a lower standard than Harvard's. But, he went on, that since I had persuaded them that I shouldn't lose a year they had now found a place for me in the entering class. Boom! (laughing). And so we went to Harvard. And I enjoyed every minute of it.

Ms. Hostetler: Did you ever see Professor Brown after that?

Professor Dash: Oh yes. Sara likes to tell this story. In my first year, I was writing for the Harvard Law School *Record*, the student newspaper, and there was a little cocktail party that the Record gave. Ernie Brown was there and somebody introduced me to Ernie Brown, saying, "Do you know Sam Dash?" and Brown said, according to Sara's recollection, "Sam Dash? How could I ever forget that name? That was the summer I was teaching, acting dean, and a million other things, and here comes this litigating letter, from Philadelphia." He said, turning to me, "You know why you were admitted to Harvard Law School? Because it was easier to

admit you than explain why we shouldn't!" (laughing) But the interesting thing is I received honors in the first, second and third years, I was awarded partial scholarships because of my achievements in my second and third years. But because they and my GI bill were not sufficient, Sara had to work while still going to school herself, to make ends meet. The next Temple graduate who came in with good grades got in. It was, you know, the priming of the pump.

Ms. Hostetler: I assume there were a number of veterans in your class?

Professor Dash: Oh we were practically all veterans. Dean Griswold called us the "unusually mature" class. We were, by the way, the first full-time class after the war. During the war, law school was expedited because there were summer courses and students finished in two years--or a year and a half. But we were the first full three-year program graduates since the war. And a lot of us were married. Many of us had been in battles in the war. We were much more serious about what we were doing.

Ms. Hostetler: Who were some of the members of your class that you can recall?

Professor Dash: Well, Richard Kleindienst, for one. I disqualified myself during the Watergate investigation from questioning him on that ground. Also, Ted Stevens, who's now a Senator from Alaska, was in my class and Senator Chaffee from Rhode Island. And Judge Hoeverler of Miami who tried the Noriega case. There was also McKusick, Chief Justice of the Supreme Court of Maine. It was a remarkable class, in which practically everybody in that class carved a niche for themselves and excelled in it. The earlier class reunions, as you probably know, are very difficult for some, if they haven't made it yet. It's hard to be around others who are boasting about what they have done, but there came a time – I think at our 25th reunion – where most of us had done pretty well and so we were relaxed and no one was trying to best the

other person.

Ms. Hostetler: Was there a spirit of competition when you were at Harvard Law School?

Professor Dash: Very much so. It wasn't the days when you were told, as I read about it, "Look to your left, and look to your right, one of you won't be here at graduation," where they were flunking out a third of the class. They had improved their acceptance selection process, even without the LSAT. So it was pretty much that if you were admitted to Harvard Law School, you would graduate. And the only people who fell out were self-selected--that is, they left voluntarily. They didn't fail. Nevertheless, it was highly competitive with everyone trying to push up to the highest echelon and to be on the Law Review. We had a particularly large group from New York, out of the New York City schools, who were as competitive as they could possibly be. And so much so, that if a professor put a reading assignment on the board, one of these competitors would remove it from the board so only he would have the assignment, and nobody else would see it. I mean, it was that dog-eat-dog type of thing. And you know, I came from a school, Temple, where I got A's. But, in those days, you got A's by memorizing your notes, and giving the professor back what the professor said. You didn't have to analyze, you didn't have to think, and I had never really had to tax my brain to analyze and think. Harvard Law School was the very first time I had to do that. It was exciting – it just opened my mind.

Ms. Hostetler: Who were some of the professors you remember?

Professor Dash: Oh, Archibald Cox, who was my labor professor, and Paul Freund, who taught constitutional law, and the dean, Erwin Griswold, who was my tax professor. I had James Casner for property and Leach. I even had Prosser who came in as a visiting professor and

taught us torts. (We were very excited to get the horse's mouth on torts, but it was boring as hell. He read from his book – didn't even look up at us.) (laughing) Also Soia Mentchikoff was a visiting professor. At that time she had just finished doing the ALI Uniform Commercial Code and we were the first class she taught the new code to. It was an exciting time for me. First of all, as an educational experience, it was an awakening and I was challenged. But everything just so opened things to me, and I saw so many different possibilities, that every day was exciting. Each law school class was frightening at times, but exciting. And while a lot of my fellow classmates hated it, I was having a ball.

Ms. Hostetler: Do you think you were in the minority in really enjoying Harvard Law School?

Professor Dash: I don't know if I was in the minority. The class was probably divided 50/50. But I just thought law school was the best thing in the world in terms of the issues, the subject matter, the promise, and, again I had retained idealism, I had retained the concept of being the champion of the poor, and it was all of this that brought me into the area of criminal law.

Ms. Hostetler: Which we'll get to in our next session. What professors if, any, did you maintain contact with after law school?

Professor Dash: Well Dean Griswold, mostly through Sara. Griswold at the time I was there was at the height of his deanship. He was the dean in America. And he had a very brusque manner, even insulting at times. He had no time for small talk. And nobody talked back to him. In fact, everybody was in fear of him. I was at a party once of one of the student groups, the Harvard Law *Record* which I was writing for, and he said in Sara's presence, the Law School

Record was a waste of a law student's time. And Sara said to him, "How can you say that--these guys work hard – it's been so interesting to Sam, and he's able to write about things that the student body and the faculty likes to read about. That's not a nice thing you said." He became a loyal friend of hers – probably because nobody ever talked back to him. So after I graduated and we'd go to American Law Institute meetings, he would leave a group of prestigious lawyers and professors to come up to talk to Sara and ask if he could dance with her. (laughing) But he would still be very gruff to me, and say insulting things like, "Well, what are you failing at now?" But...his birthday was the same day as our wedding anniversary, Bastille Day, so we would exchange greetings – and he and his wife Harriet and we ended up being very good friends. And Griswold had become very interested in the work I was doing as D.A. in Philadelphia. He once sent me a beautiful letter when I was criticized in an editorial for being too fair. I had written the paper back after the editorial reporting on our good conviction record and how being fair hadn't prevented me from being tough. I had sent the letter up to Professor Cavers at the law school – Cavers was a close friend, and a wonderful professor. And Cavers gave it to the dean. Then Griswold wrote me and said, "You really answered that paper well. I'm proud of you." And the other thing that put me close to him was that I had co-founded the Harvard Law School Voluntary Defenders program.

Ms. Hostetler: How did you happen to found the Defender program?

Professor Dash: Well after I received my first year grades, I was invited to join the law school's Legal Aid Bureau. I didn't make Law Review but it was the next rung down. That is, Legal Aid was an honor group and admission was based on grades.

Ms. Hostetler: Didn't it actually provide some legal aid help though?

Professor Dash: Oh yes, it was an official legal aid program. The Massachusetts legislature, and the Supreme Judicial Court of Massachusetts had enacted a student practice rule for, and only for, the Legal Aid program of Harvard Law School. And so, when you joined the Legal Aid you were actually representing clients assigned to the program who were too poor to afford a lawyer. So I was working on domestic relations cases and landlord-tenant cases. And I was in court, I was presenting evidence, I was arguing. And I was winning many of the cases. And I remember I won a domestic relations case, and the lawyer begged me and the judge to not let it be known publicly that I was a law student because his client would never understand his paying a nice fee and losing to a law student. But while I was doing that civil legal aid work, I had developed a tremendous interest in criminal justice. Professor Sheldon Glueck was my criminal law professor, and then I became his research assistant. He was more a criminologist than a criminal law professor, and he and his wife, Eleanor, did great research in juvenile delinquency. It was the criminal law that I was always most interested in but I was in the wrong place at that time because Harvard Law School provided very little criminal law teaching. There was no criminal procedure course. It had Sheldon Glueck's course but that was essentially a criminology course.

Ms. Hostetler: Do you think it was working for the Gluecks that really stimulated your interest?

Professor Dash: No, I think I went to work for the Gluecks because I already had the interest in advance. I remember that even in my first year I was raising questions asking how the teaching would apply in a criminal case or something like that. In fact, the professors every once in a while would say, "Now let's here from our criminal lawyer Sam Dash."

When I joined the legal aid program I learned that legal aid provided representation only in civil cases. I spoke to my classmate Don Paradis, who was the president of Legal Aid and we went to see Wilbur Hollingsworth, who was then the voluntary defender for the city of Boston. And we found out that he was overloaded – his case load was huge, and he had a very small staff and few resources in terms of financing. And because of this, he couldn't be a real lawyer to a defendant by investigating and researching the defendant's case with the result that in eighty to ninety percent of his cases he pleaded them guilty on a plea bargain deal. You know he plea bargained for a lesser sentence. So we asked him if he would be willing to accept some Harvard Law students, if we could find them, who would be willing to do the investigating – to go out and question witnesses – and also to do research and write trial memos which would give his staff lawyers the option to try some of these cases and really represent the defendants. Well, of course, he was just delighted to have Harvard law students working for his office so he said, "Yes, if you can get the dean to do it." So we went to see Griswold.

Griswold had been my tax professor, and I had gotten an A from him. But at that point I had never had any real personal contact with him. But Paradis and I went to him and said, "We're on Legal Aid, but the school is deficient in providing legal services to the poor in criminal cases. We're not suggesting a student practice rule at this time, or that we would do the same things we do for Legal Aid, but the voluntary defender, Wilbur Hollingsworth, is so strapped that all he's doing is pleading people guilty, and we're not sure they all are. There may be some people in that group who are innocent, and who are being filed away into prisons." We went on, "We think it would be good for Harvard to supply interested students to him, so that they can do the leg work and research work." Griswold said, "Well, it's a great idea." And we said another

thing. We said, "But we don't want this to be an honor group. The only students who ought to do this are those really interested in criminal law, because if it's an honor group, they may agree to accept the invitation just so they can have it on their résumé, but they won't really have a heart and soul in it." Griswold said, "Well, I'd go along with that...but since it's not to be an honor group, I want the Legal Aid program to supervise it at first because you legal aid students are bright students and you should supervise it."

Paradis appointed me president of the new Harvard student defender program. Griswold gave me ten dollars with which I bought a bulletin board and some stationary. I put the bulletin board up in the hall with an invitation to students to sign on, and I got something like ten students. And so we began the Harvard volunteer defenders. We'd meet in empty classrooms. What would happen is that Wilbur Hollingsworth would send us the names of his new clients, and we would send Harvard Law students to the jail to interview them and get their stories and the names of witnesses. Then we went out and interviewed the witnesses, and then knowing what the case was about, and what the evidence might be, we prepared research memos and trial memos.

One case got a nice headline and has become a Harvard Law School legend. This was a murder case. We found the gun that had allegedly been used to kill the victim but we found that it couldn't be traced to the person who was accused – in fact the ballistics were all wrong. And the accused was serving life in prison at the time. As a result of our findings, the governor of Massachusetts commuted the sentence, and he was freed from jail. And this was just our tenacity as law students, finding the gun, establishing something that the voluntary defenders of Boston would never have had the time to do. It proved also that this was a good program to have at the

law school. It taught students some of the practical workings of the practice of law, which Harvard at that time was not much interested in. And this is one of my biggest complaints about the law school. We were building this program, and by the time I graduated it was an ongoing program with a number of students wanting to be a part of it, but I couldn't get the law school to treat it as part of the curriculum so that students working in the program would get any credit hours. It was considered like an after school club.

Ms. Hostetler: Did students get credit for legal aid work?

Professor Dash: We didn't get credit for legal aid work either. But legal aid had faculty supervision. There was no faculty supervision for the defender program. I think we students did the work energetically and enthusiastically, but as ignorant as hell as to what a lawyer does. And you know they were doing some good work, but nobody was really giving them professional supervision. Since that time, the defenders did get a student practice rule and today they not only have offices, with computers and everything, but they also go to court.

Ms. Hostetler: And do they now have faculty supervision?

Professor Dash: Some. Professor Ogletree, a very fine professor, gives them some faculty supervision but it still has not become a clinic, as we have at Georgetown Law School. We have a criminal justice clinic where they do the same things that they do at Harvard, but they get nine hours' credit. It's part of our legal curriculum, it's part of our legal education. And they still haven't done that at Harvard.

Ms. Hostetler: How atypical is the Georgetown experience in law school today?

Professor Dash: It's not so atypical. More and more law schools – NYU for instance – have great clinical programs. The Georgetown Law Center is number one in clinical

programs – we've been doing it the longest – and clinical education has become the third-year alternative for more textbooks and more classes. And it transforms the students because in every law school, by the third year students are bored, and they just want to get out, but most of our third-year students join clinics. And we have a smorgasbord of clinics in addition to our criminal law clinic that cover many areas such as domestic relations, juvenile court, tax law, and securities law. And we have an appellate litigation clinic where students argue before the appeals courts here. The students suddenly come alive again, and they put in more time than the credit hours they get, but they're thrilled that they're working with clients, they're working with real courts, they're working with real opposing lawyers. And a lot of ethical considerations are woven into this as they pertain to the real practice of law. I don't think there's another law school in the country that has anything like it. And Harvard is trailing, quite behind. When I went to Harvard Law School, the premise was that they were educators who teach theory, conceptual matters, but that the practice of law is for the practice bar. They told students, "You'll learn that when you leave--we're not a trade school." That was the attitude. But I think not to integrate into law school course work some practice skills was a mistake on Harvard's part.

Ms. Hostetler: You mentioned that there was only one course in criminal law at Harvard when you were there?

Professor Dash: That's all--it was taught by Livingston Hall but his course was not a thorough course like others were. And there was also Sheldon Glueck's course which was basically a criminology course.

Ms. Hostetler: So there wasn't much thought that Harvard law graduates would become criminal lawyers?

Professor Dash: It wasn't even on the horizon. Harvard Law School trained you for commercial, corporate careers, not for criminal law.

**ORAL HISTORY OF
SAMUEL DASH**

Second Interview - September 12, 2000

This is the second 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: We talked last time about your evolving and expanding interest in criminal justice while you were at Harvard Law School, notwithstanding the Law School's...

Professor Dash: Notwithstanding that Harvard Law School had very little to offer in the criminal justice area.

Ms. Hostetler: That's right. And a paucity of interest in offering it--

Professor Dash: Yes, that's right. Even with my helping to establish the Voluntary Defenders organization, no faculty member showed an interest in sponsoring it, or giving us a seminar or anything like that. So I had to run it pretty much by myself.

Ms. Hostetler: Right.

Professor Dash: Dean Griswold ended up being grateful, however. He was a little hesitant when I first suggested establishing the Voluntary Defenders at the law school and that we help the Voluntary Defender in Boston. But, when I graduated, I received a letter from him, in which he thanked me for starting the Defenders which he predicted would be a very important institution at the law center.

Ms. Hostetler: Did you save that letter?

Professor Dash: I have it somewhere, in a scrapbook perhaps.

Ms. Hostetler: We also touched briefly on a couple of your experiences in interviewing law firms. How then, did you decide on your first job? What was it and how did you

come to do it?

Professor Dash: Well, initially I was going to go the traditional route of applying to law firms. I was invited by a number of law firms to apply, particularly in Pennsylvania because I had the highest grades of any Pennsylvania student at Harvard Law School. But in the midst of some disappointments with the interviewing process at big law firms, I had an invitation from Professor Fred Imbau at Northwestern to join the faculty as a teaching associate and, primarily, to do some research for him. He probably was the leading criminal law professor in the country at the time and rather pro-police. He had invented the lie detector, and he invented much of the tricks and strategy for interrogation of accused persons that Justice Warren later threw out. He was quite well-known in the criminal law field, and beloved by law enforcement. Actually it was David Cavers, who was my professor at Harvard Law and who I had come to know well, who asked me if I would like that position. And having no other offer yet, it looked interesting.

Professor Dash: In any event, I received a long letter from Imbau, and from the then Dean of Northwestern as well. Sara and I talked about it and we said, "Gee, it's a nice way to get started." And so I accepted the offer. We moved to Chicago and found that it was the coldest city in the winter that we had ever been to. Sara worked for a couple law firms, and then an advertising firm. And she used to have to put on layers and layers of clothing because we lived right near the lake and the wind came off the lake. I taught a course in criminal procedure but a lot of my research work was for Imbau and for the Chicago Crime Commission because Imbau was very active with the Commission. It was a private citizens' crime commission. Its principal role was to watch public officials in the criminal justice system to determine if there was any corruption, and if so, to propose steps to remedy it. They asked me what I would like to

do, and after I knew enough about the criminal justice system in Chicago, I said that I would like to do an undercover investigation of the municipal court of Chicago. The criminal branch of the Municipal Court of Chicago was way out in the suburbs--it took about an hour to get there from where we lived, on the bus.

Ms. Hostetler: Still in the city?

Professor Dash: It was in the city limits, but way out towards the west. And I had to develop a strategy. I said to myself, how am I going to learn what honestly goes on in this court? The court was the court of first instance where after persons are arrested they appear there for a preliminary hearing. And I said to myself, if I go in saying I'm from the Chicago Crime Commission, then they're going to be alerted, and nothing's going to happen in front of me that they wouldn't want ordinary people to know about. So, I told the chief judge of the court, that I was a law teacher, and that I was going to be teaching a course in criminal procedure but that I didn't know anything about it so could I come and observe? And, you know, he said something like, "Sonny, come on in and I'll sit you up front" (laughing). And so I sat there, and in front of me, such things would happen as a defendant would be brought forward and the municipal court judge would say, "Oh yes, your ward leader called me this morning, you can go." I saw money pass.

Ms. Hostetler: You actually saw money pass?

Professor Dash: Yes, Now, how was I recording this? I realized that if I were seen taking a lot of notes, that could have a deterrent effect. And so the Chicago Crime Commission taught me how to write in my pocket--with a small stub pencil and some loose paper. Obviously I couldn't write full words and full sentences, so I was writing abbreviated words to record

everything I heard and saw. But I had to translate that into English as soon as I got out or I wouldn't remember my abbreviations. And so I had a full record of everything. And one of the things I saw that was really eye-opening, was that for nearly a whole day, a number of people who had been charged with illegal gambling, who had been the targets of a raid, were brought in. There were groups of ten or so brought in, and there was one defense lawyer who stood up for all of them. And the way the proceedings went was that the police officer would testify as to the search, and what gambling paraphernalia they had seized, and the defense lawyer would say, "Just a minute officer, did you have a warrant?" And the police officer would say, "A warrant? No, we didn't have a warrant." The judge would then turn to the defense lawyer and say, "Do you have a motion?" And the defense lawyer said, "Yes, your honor, I move the case be dismissed because of illegal search and seizure without a warrant." The Judge would say, "Dismissed, step out quietly gentlemen," and the group went out. Then another group, same lawyer, same judge, same question, no warrant, "Do you have a motion, counsel?" "Yes, I move it be dismissed." And it was so consistent, that it was obvious that each of the gambling units were taking their turn to be raided. The raids were purposely made without warrants so as to produce this charade in the municipal court, and the judge, the defense lawyer, everyone was in on the scheme.

So, I wrote that up and I had of all kinds of incidents like this to put in the report. When I was finished, I wrote a report, exposing all of these things, and turned it in to Virgil Peterson, who was then the director of the Chicago Crime Commission. And he was delighted to have it. I asked him, "Well, are you going to publish it? I mean don't you think the people ought to know about this?" He said, "No that's not our tactic. We don't expose corrupt judges. What we do is, we meet with them, we tell them what we have, and tell them that if they don't reform, we'll

expose them."

Ms. Hostetler: Oh--

Professor Dash: So you know, it was a very subtle behind-the-scenes act, and I said, "Well to me that's completely unsatisfactory." I said I'm going to write a law review article. And in the law review article, of course, I couldn't make it an expose as I would in a report, because in an expose, I'd name names. So I wrote a law review article that was published in the Illinois Law Review, which was Northwestern's law review at the time. I called the article "Cracks in the Foundation of Criminal Justice" because I saw the municipal court as the foundation--that's where everything starts. And I found cracks in the foundation of criminal justice. And in the article, I told all that I did, and how I did it, and what I found. And then I dropped a footnote which said a full report, naming names and places and incidents, are in the files of the Chicago Crime Commission. (laughing) Now the interesting thing was that the article got a lot of press. Law review articles don't usually get newspaper headlines. But this got the *Chicago Tribune's* attention which wrote an article with a big headline on it, and, more interesting, they had a big editorial. Their editorial went down the whole page. And it went something like, "This young man, from Harvard Law School, comes into our city and tells us that we have a corrupt municipal court. So what else is new?" Instead of saying this is terrible, it's wrong, we ought to do something--thank God he found it -- it said what's he telling us that we don't know? (laughing) It was the most remarkable editorial that I've ever read.

Professor Dash: So, I'm sort of treated as this naive young kid, who doesn't understand how life really is. But nevertheless it made quite a mark, and that article, which really isn't that scholarly -- it's a reportorial piece -- has been cited over and over again by people who

are studying lower criminal courts. I think in that article I had a kind of a righteous viewpoint – it was the beginning of my effort to define the role of the criminal defense lawyer. I was arguing to give the criminal defense lawyer an equal role in the system of justice along with prosecutors and judges but noting that that role can't be played by the defense lawyer in Chicago because corruption is rampant. So that was sort of a stepping stone for my beginning to think how do we develop the role of the defense lawyer so that he can be just as aggressive, just as loyal to his client, and at the same time, respected by all that he's doing it within the law rather than outside the law.

Ms. Hostetler: And what did you do after this?

Professor Dash: As my fellowship was coming to an end, I started to look around for where I was going to go next. I'd clearly made up my mind that I wanted to stay within the criminal justice system. Toward the end of my serving at Northwestern, Harvard's Associate Dean, Dave Cavers wrote to me inviting me to come up and join the faculty at Harvard Law School for a particular area of work that he wanted to get started on that involved empirical research in the criminal justice area. I also received an offer from the Wolf Block firm in Philadelphia, which was the city's premiere law firm, certainly for a Jewish lawyer. And I received an offer from the criminal division of the Justice Department here in Washington. I remember being in Washington for the interview and being given the offer. I'm trying to remember what my classification would have been. It was something like a grade 13. And I asked, "What does a 13 pay?" And they said, "\$5,000 a year." Now, you have to understand this is 1952. And \$5,000 a year! Well, Wolf Block was offering me \$2,700 a year as that was the salary for incoming young lawyers. Cavers at the law school was offering something like \$3,000

a year. So I remember calling Cavers and saying that I had this offer from the Justice Department for \$5,000 a year. So Cavers said, "We'll match it." So then I had this tension, what to do? Do I go to Harvard, or do I go to the Justice Department? And I concluded that if I'm going to be interested in criminal justice, then I ought to get my hands and feet wet, in the system. And Justice at that time was one of the finest government agencies. It had a terrific reputation for training lawyers and really being the Justice department.

Ms. Hostetler: Do you think that's changed?

Professor Dash: Yes, I think it's changed.

Ms. Hostetler: Well, how--in what ways?

Professor Dash: I think the role of the prosecutor has become much more adversarial. You know, one of the things I helped define was the prosecutor's role when I was Warren Burger's special consultant on his ABA committee that was drafting the standards for prosecution and defense functions. We put in that report first off: The duty of a prosecutor is to seek justice, not merely to convict. And that was the attitude when I was working in the Justice Department's criminal division. It is not today. I mean, they're hard-ball players today. And they're strong adversaries. It doesn't matter that they're adversaries as such because the people have a right to have a representative. But it's their perception of justice.

Ms. Hostetler: Are you speaking particularly of the criminal section of Justice or other parts of Justice as well?

Professor Dash: Mostly the criminal division and as it goes down to the U.S. Attorneys. I mean, most of the operative work is done by the U.S. Attorneys throughout the country. But I think the criminal division at Justice, and the Attorney General herself, really set

the model. And the model now is this iron-fisted approach to enforcement of the criminal law.

But, in any event, I chose to go with the the criminal division. And Cavers was a little upset. Oh, the law firm of Wolf Block wouldn't go up any in its pay offer. A senior partner called me and I told him I was going to go to the criminal justice department for \$5,000 a year. He said, "Young man, you have the wrong attitude about the practice of law. It's a service. It's not a business that makes profit." Well this guy had gold chains all over him. I don't know how much money he was making. But he wanted to teach me the lesson that it didn't matter what I get paid and that I was using a wrong standard in choosing my job.

Professor Dash: So I went to work for the appellate section of the criminal division at the U.S. Justice Department, which, together with the appellate section of the civil division, I think were the creme of the creme of law jobs. I was out of law school only one year but I was assigned to some of the most complex criminal cases that were there. All of them had been tried below and the court of appeals had ruled, usually against the accused, and somebody had filed a petition for certiorari. My job as a member of the appellate section was to respond to their petition, and write the government's brief. With great pride I would write some briefs which I thought were almost God-inspired. And I'd take them up to the chief of our section, Bob Erdahl, and to Bea Rosenberg. And after an hour or two, half of my brief was on the floor, torn up. So, scolded and humbled I went back to tighten it up. And the next trip I had to make was to the Solicitor General's office where I would meet with an assistant solicitor general and the other half of my brief would get torn up and thrown on the floor (laughing). Over time I really began to learn how to write a brief. Concise, to the point, and all of that. And then, in cases where I wrote the brief, I would be invited to sit with the lawyers from the Solicitor General's office, when they

were argued, and help hand them cases if they were needed.

So I had that wonderful experience at the top of the criminal justice system, in the Justice Department, in the appellate section and addressing matters in the Supreme Court of the United States.

Ms. Hostetler: How long did you stay there?

Professor Dash: Oh, about a year, because something else interrupted. But I remember there's a story to tell about this job.

Ms. Hostetler: Who was Solicitor General then?

Professor Dash: Perlman. And my story is about him. At that time, in 1951, Roy Cohn was an assistant U.S. Attorney in the Southern District of New York. He prosecuted Remington. Remington was the first main prosecution of a sort of middle-level Communist. This was the period of McCarthy and the period where the Communist threat, the Red Scare, was everywhere. By way of illustration, when Sara and I were living in Washington while I was with the criminal division, we would be invited out to dinner with a lot of Harvard alumni. And when we were invited, Sara and I never held back. We tried to be candid. And we talked about some of the issues of the day. And our host would take me aside and say, "You know you're endangering the careers of everybody in the house right now. Please, don't talk about those things." And I got a chill. I said, "My God, why--the terror, the fear?" But that's the atmosphere that was existing at that time.

Well Cohn got a conviction of Remington. The issue was whether he was a Communist. And Remington said he wasn't. Cohn tried him for perjury and he was convicted. The case went up to the Second Circuit, and Judge Learned Hand reversed the conviction – that is, he wrote the

opinion for the panel – on the ground that Cohn's office had not produced the quality of evidence necessary to prove perjury. So Cohn then had to seek certiorari. And the way cert. petitions were handled in the Justice Department is that the U.S. Attorney's office would request the Appellate Section of the Criminal Division to seek cert. through the Solicitor General. And, on my desk, that file was placed. So I'm reading it. First of all, recall I graduated from Harvard Law School where Learned Hand was considered infallible you know. And so I'm reading and reading, and everything I'm reading that Judge Hand says, I'm nodding, yeah, yeah, yeah, yeah. And so I said, "We can't ask for cert., the government's wrong." And so I go up to see Bob Erdahl, the chief of our section. He said, "Well put it down." But he said, you know, "I want to warn you, that you're making a decision out of the Justice Department that is supportive of an alleged Communist. So you know there's going to be a lot of feedback here on this one." But he said, "If you honestly believe this, write a memo to the solicitor general, and state why you don't believe the request ought to be granted, and the government shouldn't seek cert." So I wrote that memo. And I think it was the proudest day of my life, when everyone was telling me that no one's going to back me on that, and I'm going to be called before the McCarthy committee, and accused of being one of the "Communists inside the government."

When Perlman wrote back saying, "I have reviewed the matter, I think you are right, and the government will not seek cert." I just thought, that's a justice department. A young kid just out of law school can make a decision with integrity, and it's backed all the way up to the top by the solicitor general. Well!

Roy Cohn was infuriated. And he came down and wanted to find out who these pinkos were who were interfering with his case. And he said, "Well, okay for this case, but I'm going to

get that bastard anyhow." And there was a second trial. In the first trial, which Hand reversed, Remington had been asked whether he had used a certain mailbox, as a drop. And he had said no. But Cohn had a number of corroborative witnesses and other evidence that Remington did use the mailbox. So then he had a sound perjury case and convicted him a second time. Sent him to prison. Remington was later murdered in prison by a fellow prisoner who hated communism. He hit him over the head with a lead pipe.

I don't know if Roy Cohn ever remembered me and my involvement in the first Remington case because years later when I came to Georgetown, and I was doing appellate defense work, Roy Cohn was my best feeder – mostly organized crime cases. He would call me, and he would say, "I've got-a French connection case," or something like that. And he would refer these cases to me. I don't think he ever made the connection. He and FBI Director J. Edgar Hoover were very supportive of organized crime. They didn't touch organized crime because organized crime had promised to help fight communism for them. So there was an alliance. And so although in the end Remington was convicted and killed in prison, I still think that the opportunity I had to work on the case and to be supported by the solicitor general, reinforced my concept of what the role of the prosecutor is: that the role of the prosecutor is to seek justice, and not merely to convict. If there's a strong case, yes, but if there isn't any, to be candid, and to admit error. And, I think that that breeds respect for the criminal justice system.

Ms. Hostetler: At some point though you left the Justice Department didn't you?

Professor Dash: Well, while I was in the appellate section, in November, 1952, it was an election year for Philadelphia. Philadelphia had had a Republican administration for 68 years. And in the election of November, 1952, the Democrats made a clean sweep. Their

candidates were Joe Clark for Mayor, and Richardson Dilworth for District Attorney, two remarkable models of good government. That period for Philadelphia is Philadelphia's "Camelot." Shortly after the election, I'm in my office in the Appellate Section of the Criminal Division of the Justice Department, and I get a call forwarded to me. And the person on the other line says, "This is Richard Dilworth." And I think it's a phony call. Of course I had meant to get in touch with him and to congratulate him.

Ms. Hostetler: Did you know him?

Professor Dash: No. Only by reputation, but I had never met him. He said, "Mr. Dash, I have decided that I want to have a law department in the District Attorney's office as good as the Solicitor General's office in the United States Department of Justice. And I've been looking around for the person to head up that office. I called Harvard Law School and talked to Dean Griswold, and Griswold said to me that we have a young man from Philadelphia who's now working in the Appellate Section of the Criminal Division in the Justice Department." Dilworth said to me, "If you're interested in the job, be in my office tomorrow at 10:00 and we'll discuss it." And you know, I said to Sara, "Is it a crank call?" She said, "Call him back and see. We're not going anywhere during the Thanksgiving Day weekend, so we might be able to go then." And Dilworth's office said, "No, this is the only opportunity – it's tomorrow or never."

Professor Dash: So I went to Philadelphia, I meet Dilworth, and we talk about setting up an appellate section in the D.A.'s office. And when we finished he said, "I'm going to hire you. Oh, by the way, are you a Republican or a Democrat?" None of our discussion had had anything to do with politics! And I said, "Well to tell you the truth, Sara and I haven't had a chance to become either." I said, "I was in law school, then I was in Chicago, and I've not had a

chance to register." He said, "Well, will you do me a favor? Will it pain you too much to register as a Democrat?" I said, "No, I'll be delighted." "And," he said, "this is the date we're going to be swearing all the people in. Say nothing to anybody. Just show up to be sworn in. Because if this gets out the ward leader is going to kill me." This was because I was just grabbed out of Justice, without any political connections, or dues having been paid in the Philadelphia political structure. He offered me the chief of the appeals division position at a pay of \$7,500. I was moving from \$5,000 to \$7,500. At that time, \$7,500 was close to what I thought would be the most that I'd ever make. I don't know whether I said this to you earlier, but when I was graduating from Harvard Law School, and a number of us were sitting on the steps of Langdell Hall, I remember saying if someday I could ever make \$10,000 a year, I would have made it. Well, \$10,000 a year in 1950, you know, was a hell of a lot of money. And here I'm getting close to it, in a government office, at \$7,500. And the interesting thing is that I had not yet been admitted to the Pennsylvania Bar. I'd passed the Bar exam. But at that time, Pennsylvania had what they called a clerkship requirement. You had to serve in the office of a lawyer who would sponsor you and ostensibly teach you about the ethics of the professional role, but in essence you had to carry a briefcase for the lawyer for six months. And when the lawyer certified that you had served that period of time then the Bar would admit you. So Dilworth became my sponsor.

So I became chief of the appeals division of the Philadelphia District Attorney's office and wrote all the briefs, but initially I couldn't put my name on the briefs because I was still on a clerkship and not yet admitted to the Bar. (laughing) As a matter of fact, when I joined the Philadelphia Bar, there was a junior bar association, and a senior bar association, and I would ordinarily be in the junior one, but since I was chief of the appeals section of the D.A.'s office,

the Association made a decision that I should be in the senior one. They just couldn't denigrate that role. So I was not yet a Bar member, but I was in the senior Bar.

Shortly after six months, I began to sign briefs and I argued all the cases. I argued something like 2,000 cases. There are two levels of appeal in Pennsylvania. You have the Superior Court, which is the middle level, and then you have the Supreme Court. All cases go to the Superior Court at first, unless it's a murder case with capital punishment which goes directly to the Supreme Court. Other cases can go to the Supreme Court by a certiorari-type procedure, which is discretionary. I would show up whenever the superior court was in session in Philadelphia (they sat in Pittsburgh, Harrisburg and Philadelphia). Whenever they were in Philadelphia there would be an appeal list of criminal cases, of something like ten or fifteen cases. I sat and argued for the Commonwealth in all cases. And so I would sit in front of the court as different lawyers, representing different defendants, came in, argued their cases and left. I continued to keep my seat. And it got to the point where I really was playing, I think, an S.G.'s role. Because constantly being before the court, and constantly taking positions, and trying to be as objective as I could be on those positions, there were times when either the court would say, "Mr. Dash, you don't have to get up and make an argument. We believe that your brief compels us to affirm the conviction." Or, they would say, "What do you think we should do?", using me as a sounding board, because my interest was not adversarial necessarily. And I had to confess error at times. I learned this from the Justice Department. We had confessed error in the *Remington* case, for example. And I felt that if the law is against you, if it's early in the case, a prosecutor is required to exercise his discretion not to prosecute, and if the case is already submitted to the court, the prosecutor should be candid enough to admit to the court that he or

she erred and the case should be reversed. But that's not done today, I'm told. And probably, the most striking case, in which I did this was when I was First Assistant.

Professor Dash: What happened was that while I was chief of the appeals division, the First Assistant D.A. left to go into private practice, and Dilworth, over very vigorous efforts by some of the senior trial attorneys to become First Assistant, jumped over their heads and asked me to be his First Assistant. And I think that was mainly because I was nonpolitical. And he could trust me. A lot of the other lawyers had had prominent roles in the Democratic Party and had their own political connections, so he couldn't be sure what their agendas would be. The First Assistant position was very important, because Dilworth delegated to him the real running of the office. So I became the First Assistant.

And then Dilworth resigned to run for mayor, when Joe Clark was elected senator. And then there became the issue of who gets to be D.A., to fill out his term. Under Pennsylvania law, a vacancy in the D.A.'s office is filled by the board of trial judges. Dilworth recommended me. And even though it was mostly a Republican board of judges I received a unanimous appointment to become the District Attorney. And I've always thought that that's the best way to become a D.A. because you're not holding an elected position in which you're beholden to the political leaders. You have the judges' respect, and it just gives you a role in which you can really be an objective D.A.

But when I was still First Assistant D.A. one of the biggest cases that I was involved in was a case that was lingering from the past administration. It was a murder case. And it was a case that involved the felony murder rule. This was a famous case, in which the police came upon a robbery of a grocery store, at the time it was being committed, and an exchange of fire

took place between the robbers and the police. And a police officer was killed. At the first trial, the D.A.'s office tried to prove that that police officer was killed from a bullet from one of the robbers. And in that first trial all of the defendants received First Degree Murder convictions. And, the first one to be tried was given the death penalty. When I joined the office, this case was still pending. Later, when I was First Assistant, I reviewed the record. And I found the following: 1) the bullet that killed the police officer came from another police officer, and not from any of the accused; 2) the person who was first tried and given the death penalty, had a long history of mental illness. But at trial, when that was raised by a defense counsel, the state's psychiatrist, testified that he was competent to stand trial and that he was competent at the time of the shooting.

Ms. Hostetler: And the defense did not have counter witnesses?

Professor Dash: There were other psychiatrists who treated this person and who said that he was mentally ill, but the jury accepted the judgment of the state psychiatrist, and he was given the death penalty. Another thing I found in my investigation was that the psychiatrist for the state who had testified that he was competent, was insane himself at the time of his testimony.

Ms. Hostetler: What do you mean the psychiatrist himself was insane?

Professor Dash: He was judged insane shortly afterwards - he was suffering from all the symptoms of schizophrenia.

Ms. Hostetler: And was committed?

Professor Dash: I don't know if he was committed, I never followed that up, but there was no doubt that he was unqualified at the time of trial to pass judgment. I also found that

the District Attorney's office before the Dillworth administration knew that the bullet had come from another police officer. Yet the prosecution misled the jury as to where it had come from. The impact of these facts was that at that time under Pennsylvania law, it would still be felony murder under the facts of the case, but if none of the accused directly caused the death of the police officer, then the penalty would have been life in prison rather than the death penalty. And so with these kinds of errors I joined the defense in seeking commutation to life. As the First Assistant I was given the opportunity to oppose the commutation but instead of opposing it, I laid out all the things that I had found. Oh, and one other thing had happened: the other two guys who were involved in the shooting were tried after this case, and they got life.

Ms. Hostetler: And, how were they convicted?

Professor Dash: They postponed the execution of the first guy, who had received the death penalty, so that he could be a witness for the state against these other two guys. So here is the guy waiting for death, who actually testifies against the other two, and they get life. Now, I thought, weighing all that, how could I insist on the death penalty.

I brought with me to show you a copy of the *Philadelphia Inquirer* newspaper about this case which I show to my law school classes when discussing the discretionary role of the prosecutor. First, there is the *Philadelphia Inquirer* editorial, and on the next page is my answer, which they were good enough to print. In my response I talk about what a tough D.A. I am--but within the rule of law...

Ms. Hostetler: The editorial starts out: "There is something strange afoot when an assistant D.A. turns up in what amounts to a role of counsel for the defense, to beg clemency for a condemned murderer of Philadelphia policemen."

Professor Dash: I responded to that too. I said, "I didn't beg for clemency, I joined in the defense." And then I explained why – I mean I think once you read my explanation as to why, which is all the things I told you, any fair-minded person would have to agree.

Professor Dash: And then they say, later on in the editorial, "And this isn't the first time that Samuel Dash did this, you know." And so, I feel they've already tried to portray me as a soft prosecutor. I replied, "We're the toughest prosecutor that you've ever had, we have 98 percent convictions, and hardly anybody ever takes an appeal, because our convictions stand." If you do it right the first time, you can save a lot of money and a lot of appellate time. And I say in my response that a prosecutor's duty is to adhere to the law. And if the law is not on his side, he has no duty to prosecute.

Ms. Hostetler: Was there much drug-related crime then?

Professor Dash: Yes. That's been forgotten. I've seen some records which show that heroin was the drug of choice in the 1950s. I've seen some reports that drug problems in the big cities didn't begin 'til the 1960s. Well that really isn't true.

When I became District Attorney, through the appointment of the judges, I was approached by a vice squad sergeant, from the Philadelphia Police Department. The District Attorney's office then primarily relied on the metropolitan police of Philadelphia for their cases. At the same time, I had a squad of what were called county detectives, who I appointed and we would use them for internal matters and supplemental matters, getting ready with a trial and things like that. But the initial arrests were done by the police.

So this vice sergeant, Tom McDermott, came to me and said, "We have a major heroin drug problem in Philadelphia. And we've only been able to bite at it. But there are big dealers and

the addiction percentage is tremendous in the Black community, and in the major poverty areas." He went on, "I would like your support in setting up an undercover program in which we will send vice squad detectives out dressed as bums who will look for drugs in this area. Sooner or later they're going to be met by a supplier. We'll fund the purchases, but we won't make an arrest right away because we want to get as many as we can. We don't want to blow our cover, and so we'll take the sample that he buys to the laboratory, test it to see if it's heroin, or some other prohibited drug, open up a file, and in the file identify the person who sold it, his address, his phone number, and the report, and move on to somebody else until we get more of them." Well it turned out they got some 500 sellers. That took about a month.

I met with the vice squad group, and my other assistants, and we developed a strategy of how we were going to get these sellers. They were moving around too much during the day. So we got warrants, arrest warrants, and search warrants, and we assembled at Convention Hall in Philadelphia at two in the morning, when we knew everybody was asleep. And we made our raids then. Entering into the houses, and arresting and searching. We developed excellent cases against these 500. I was able to work with the courts to expedite the cases so that the preliminary hearing, the indictment, and the trial date, were almost within 20 days. And I got twenty-year sentences on almost all of them. And while we were doing all this, another corps of undercover agents went out, and picked up 500 more. So we kept following up but soon it got around in the streets that if you don't know the man, he may be a cop. So we decided to vary our strategy by using undercover policewomen. And they began to pull in about 500 sellers. It was so successful that it was reported in the newspapers as a new method of undercover sting which basically I think we originated. I don't know anybody else who was doing it at the time. It was vice

Sergeant McDermott's idea, and it was working like magic. Of course now stings have become the main method of catching drug sellers. But at the time it was a new approach. Joe Clark was in the U.S. Senate at this time and he brought the Senate Judiciary Committee, of which he was chair, to Philadelphia. He called me as his prime witness to tell the Senate Committee how Philadelphia had destroyed the drug trade.

Professor Dash: Of course as District Attorney I had some interest in good public relations. I had instituted something new which was a weekly radio report to the people on crime in Philadelphia and some of the efforts we were making. So Clark's inquiry fit into that. You know, we got a lot of credit, but the truth is, as I tell my students today, we didn't make a single dent in the drug trade. At the time everybody was calling these people the big sellers, but, we didn't find any big sellers. These were pushers. These were addicts themselves, who, in order to get drugs, were pushing drugs. So yes there were great numbers we convicted but they were still the lower echelons of the drug business. And the business was so profitable, that even though you could arrest as many as you wanted to, more would move in.

And so, you know, it was a nice strategy, and it had visibility, but it was not successful in terms of its main goal: to stop the drug business.

Ms. Hostetler: Was there any effort to go after the drug kingpins?

Professor Dash: I don't think that our police knew who or where they were. The drug kingpins, like the gambling kingpins, were part of organized crime. And Dilworth, who was an honorable person with integrity, made a decision when he was District Attorney, that the office would not go after organized crime. You have to understand that at the time the Justice Department's U.S. Attorneys never went after organized crime. Hoover's FBI, went after bank

robbers. He wanted sure cases so that his record would show that the FBI got their man. But he didn't want to go after organized crime because, first, organized crime is awfully difficult to fight. And, second, they were working with him on anti-communism efforts. Dilworth's position was that organized crime is so powerful, and has so many resources and wealth, that even an honest prosecutor can be seduced and corrupted. It's like going after a power greater than the government's power. And so to preserve the honesty and integrity of his young assistant D.A's, he didn't want to expose them to the temptation of what might be available to them.

When I became D.A. I did two things. One is that I set a policy for the office with regard to wiretaps. I had experimented with it, and wanted to see just how good wiretapping would be in going after organized crime. I had concluded that it was a very effective weapon. I coined the phrase, "earwitness to crime" – as good if not better than an eyewitness to crime. I used that term when I testified in Congress, when it was considering wiretapping issues. I was considered one of the leading prosecutors supporting electronic surveillance, as a law-enforcement tool. This was before I did my study on wiretapping and wrote *The Eavesdroppers*.

Ms. Hostetler: Okay.

Professor Dash: Section 605 of the Federal Communications Act barred all federal wiretapping. But it didn't apply to the states. At least our Supreme Court of Pennsylvania said that. So I had a Supreme Court decision of Pennsylvania saying that I would not be violating any law if we wiretapped. As a result of that I decided that we were now going to take on organized crime in Philadelphia. And, through wiretapping, I caught the so-called "Godfather" of organized crime in Philadelphia. It was a big, big story. And how did we catch him? We had a tap on the telephone of a bank, a gambler's bank, where they tallied sheets, and determined who

won what. And we found this guy, the Godfather, reading on the phone from the tally sheet. But by the time we got a warrant and made a raid, he had gone. Still, we found the tally sheet, found a lot of other people, and we found other paraphernalia. So we charged him. Tom McBride, who was the leading criminal defense lawyer in Philadelphia, and later sat on the state's Supreme Court for a while, represented him. "Sam," he says, "You're not going to get anywhere with this charge--he wasn't there! How are you going to place him in the room?" I said, "Tom what would you say if I told you I had a wiretap of his reading the tally sheet from a phone in that room? And it's line-for-line, word-for-word the tally sheet we found in the room." "You wouldn't use that!", said McBride. I said, "Of course I'll use that." He pleaded guilty. I got a guilty plea from the Godfather. But it was his first conviction and he didn't get very much of a penalty from the judges. I tried to make a big case out of the fact that this was not an ordinary gambling raid, this was the Godfather, this was organized crime leadership! They brought in a judge from middle Pennsylvania to try this case--everybody else disqualified themselves. I made a long statement to the judge about organized crime, saying we've got to teach them a lesson, this is where they get their money to feed other organized crime activities, etcetera. "\$500.00 fine," said the judge. So, you know.

But in any event, it was the first time the D.A.'s office in Philadelphia, using wiretapping, went after organized crime. It was around this time that the issue came up of who was going to succeed me as District Attorney. I had come in as an appointed District Attorney in 1955 to fill Dilworth's unexpired term that expired in 1956. Sometime prior to 1956 the issue came up of who would be the candidate for the position after 1956. I get a call from Bill Green, the father of Congressman Green. He had been a congressman too. But at that point, like Tammany Hall in

New York, the political leader was the city boss--he really controlled everything. And he called me and said, "Sam? You've got good press. You've been a good D.A. How would you like to be my candidate?" And I said, "Well, you know, it's a rewarding thing, I think I can make a major contribution to Philadelphia. I like being D.A." He said, "Well, the rules have to change, though. In the past whenever I called you to ask for something you've always said no. You've got to say yes if you want to be my candidate." Now let me give you the example he's referring to: while I was D.A., prior to the expiration of the Dillworth term, Bill Green called me. And he said, "Sam I'm sending a young man over, I want you to make him an assistant D.A." I said, "Well it's a democratic office. If he has the qualifications of the people that we hire, no problem." But I always had my county detectives do a backup check. Now the report comes that he is a child molester.

Ms. Hostetler: Whoa.

Professor Dash: And that he is an alcoholic, and that he's a gambler in debt to the leading organized crime groups. So I called Bill Green back, and I say, "Bill, what do you want to do? Blow up this office?" He says, "Why?" And I read out this litany of things we had found out. There's a pause on the phone, and Green then says, "Well, what I'm interested in is what is he in the eyes of the Lord today?" And I said, "My county detectives didn't check the Lord." I went on, "This guy can't possibly come to our office." So it's those kinds that he would call me up about. He would call and say, "I see you have a defendant that's been indicted who's a very good party leader, brings in lots of money. Can't you somehow or other drop the charge?" Well, of course, I said no to all these things, and now he's telling me if I want to be his candidate things have to change.

I realized that you can't preach morals and honesty to the party boss. So I said, "Bill, I really believe that a strong D.A. doing his job well and within the law, is going to really help the Democratic Party, the public will be satisfied and they'll want to vote democratic." And he said, "Bullshit, I want to own that job." "Then I'm sorry." I said, "Then I don't want to be your candidate. And I will not run for the office."

Sara wanted me to run independently, the Americans for Democratic Action (the ADA) wanted to support me. But at that time, you understand, if you didn't have the backing of the political boss and the political party, there was no way you could win. You couldn't find the money, you couldn't beat the influence that they had, and you know, it would be a lot of waste of time to try to run for it. So, instead they selected Victor Blank who was a member of the City Council and later became a judge of the Common Pleas Court. And he was known as a corrupt judge. But they selected him to be the candidate. And he was elected. Blank called me, and he said, "Sam I'd like to come over and meet the staff." So I invited him over, sat him in the D.A.'s chair, and all my staff was standing around. These were all democrats, and he sat there not even talking to them, twidling his thumbs, and then finally said, "I understand some of you may have some questions." And one courageous assistant said, "We have only one question, Mr. Blank. Are we going to stay as assistant D.A.'s?" And he looks down at his fingers, and he said, "Well my advice to you young man is to get to know your ward leader. I'm only going to follow the advice and recommendations of ward leaders."

You have to understand that what Dilworth and I did in that office was to throw out the ward leaders who tried to get influence, to wean away all these young lawyers from political influence. Now they were being asked to go on their hands and knees to these ward leaders in

order to get appointed--I thought it was a foulest thing I ever heard and saw. But Blank did become District Attorney. Interestingly enough, he was so hesitant and uncertain of himself as the D.A., that he asked me if I would like to stay on as his First Assistant. And he even said that I would run the office, I would make all the decisions, and I'd become D.A. again by appointment of judges, because he expected to be appointed a judge before his term expired. And I said, "Absolutely not." I had no doubt that this guy was going to be a terrible D.A., and make deals and things like that. So I left the D.A.'s office in 1956.

Ms. Hostetler: Let me interrupt you a minute, had you written the book, *The Eavesdroppers*, at this point?

Professor Dash: No. That came later. Because of my role in the District Attorney's office and the knowledge I had of law enforcement practices and individuals throughout the country, the Ford Foundation came to me and said that there had been no study of wiretapping in the United States. Nobody knew what was going on. It was sort of a big mystery. And Ford asked whether I would be willing to direct a study of the practice and write a report. But that came after I left the D.A.'s office and started my law practice in 1958.

Professor Dash: A law firm, Blank & Rudenko, offered me a full partnership out of the D.A.'s office. I told Sara at the time though that I really wanted to be a criminal lawyer, either a prosecutor or defense lawyer.

Before I left the D.A.'s office, however, there was a big scandal involving the Silver family who were the owners of the Food Fair chain. You know the Food Fair? At that time it was in Philadelphia, Florida, all over the country. Well, the daughter of one of the owners was found dead in a rowhouse alley, in north Philadelphia. And her mother was there also, and a

husband and wife who owned the rowhouse. And the question was why did she die? The story given by the owners of the rowhouse was that they were friends of the Silvers, who were the part-owners of the Food Fair chain, and that their friends had come by to give them some books that they thought they ought to read. And they said that in the midst of their visit, Doris Jean Silver, the daughter, had developed cramps. They said they took her to the bedroom so she could lie down, and she died.

Ms. Hostetler: hmmm.

Professor Dash: Well all the women in Philadelphia were speculating – and Sara speculated – it's an abortion!

This Silver event happened while I was on vacation. Sara and I had not had any vacation – and by the way she was pregnant at this time, and the doctor had said that she could lose the baby unless we could go away and she could get a lot of rest. So we had chosen a little bungalow on Cape May, and had gone out there with our older daughter Judi-Ellen who was then three years old. And while we were there this case broke and the county detectives came to pick me up. They said, "We need you back in Philadelphia, because all hell's breaking loose." A very aggressive investigative reporter for the *Bulletin* started looking at all the records and was the first one to make the connection between the prominent Food Fair Silver family and these people down on Franklin Street, which is a North Philadelphia alleyway. And the reporter suggests that maybe this was an abortion. And so I immediately have to get into the case. At that time we didn't have an office of medical examiner. We had only a fellow who did the autopsy and his report said that she had a lot of pus in the uterus. Now that fact was said to support the theory that whatever injury she had didn't happen while they were in the house, that if

she had an abortion, she had it on her own somewhere else, then came to the rowhouse, and developed an infection and died of the infection. This theory would exonerate everybody in the house. I couldn't believe it personally, so I had all the samples of what they called the pus brought in. And I called lead pathologists all over Philadelphia from the medical schools and places like that but none of them would get into the matter because of the power and wealth of the Food Fair people. They were afraid of being sued and they didn't want to get involved. So our next-door neighbor in northwest Philadelphia, Aaron Bannet, was a young resident in surgery at Albert Einstein Medical Center. So I asked him, "What am I supposed to do?" He said, "You call New York, to the medical center in New York, and ask for a guy named Milton Halperin. He's written the leading treatise for medical examiners. And he's great, he's actually a magician." So I called him, and I told him I had this matter but that I couldn't get any pathologists. Halperin said he'd be willing to come down and take a look.

Well, he examined what the Philadelphia coroner had said was pus, and he said, "That's not pus. That's the abortifacient. It's a mixture of olive oil, mustard and other types of irritants." And then he took tissue slides – no one had previously done a tissue examination of the uterus – and he showed them to me, and it was as dramatic evidence as you're ever going to have. Halperin explained that the abortifacient was under pressure and said that somebody must have been using some sort of pump with such pressure that it broke through the blood vessels, and entered the blood vessels, and that the young woman had died of an embolism of the brain and heart. And he also said, "I know exactly how soon she died. Because when I look at the tissues I don't find a single leukocyte--meaning a white blood cell. It takes eight minutes after injury for the first leukocytes to appear. If there are none, that means she had to die before eight minutes

after the introduction of the abortifacient.” Now, recall that all of the people, the mother, the husband and wife who owned the row house, had all admitted that they were there! So it was an iron-tight case, scientifically arrived at by the leading pathologist in the country.

Who were these people that botched the abortion? The husband was a bartender, and the wife was a beautician, the two trades that lead women to lay abortions. And this was a lay abortion. Of course you have to understand this was at a time when abortion was a felony, with 20 years in prison. Doctors wouldn't perform abortions, and there were a tremendous number of deaths in these cases of lay abortions.

Well, the husband and wife abortionists got the dean of criminal law, who was Bill Gray, to represent them. The leading criminal defense lawyer was Tom McBride. Mrs. Silver went to the Wolf Block law firm and they brought in Tom McBride to handle the case. And I'm the young D.A., just a few years out of law school, and the *Bulletin* portrayed it in a cartoon on their editorial page as David and Goliath. Goliath in the cartoon is these two leading criminal defense lawyers, and I am shown as aiming at them with my little slingshot.

But I had all the evidence on my side. I wanted to interview Mrs Silver, the mother. And my first reaction was that this was a tragedy for her, the loss of her daughter, and I'm going to add a criminal charge? But I wanted to find out enough facts so that I could move against the abortionists, who I thought were the more dangerous defendants. And Tom McBride, representing Mrs. Silver at first said, "She's sick. She can't talk to you." I said, "Well you know, I understand that she ought to be sick. But, as D.A. of Philadelphia, I can't take your word for it, I would like to have her examined by a doctor." McBride said, "No doctor. Only you can come and talk to her." I said, "Well what am I, a lawyer, going to see? I'll see a woman in shock. But I

can't make a diagnosis that I can report to the court or anybody else that she's ill." He said, "Well that's it, take it or leave it." I said, "Tom you're going to force me to arrest her, because under our Lunacy Commission Act, I can take her to the judge, and ask the judge to appoint a psychiatrist to examine her." He said, "Issue your warrant." Now his strategy was that he was going to make me out to be a young persecutor going after this mother who's sick. Well he completely misread the emotions in Philadelphia at that time because the story was like Romeo and Juliet.

It turned out that the deceased was a beautiful young girl who had always been under the domination of her mother. One witness testified that if the mother said, "Stand here," she stood here, "Stand there," she stood there. She was really like a puppet. But on one occasion she was allowed to go to Miami, to visit an uncle who was one of the vice presidents of Food Fair. And while she was in Miami she fell in love with a motorcycle cop. And she eloped and got married. And the pregnancy comes from that. And, by the way, it turns out to be a Jewish cop. She calls her mother from Miami to say, "Mom, I'm married, to this guy, and I'm pregnant." Now her mother has her own ideas of who in the social structure her daughter should marry and the mother says, "You get up here right away."

So she does, hoping she's going to dissuade her mother, and persuade her mother to accept her new husband. The first thing the mother does – we traced this through calls to all the various relatives-- is ask everyone who they should go to for an abortion, and they name this person on Franklin Street. And so the mother forces the daughter to go to him for an abortion. I say forces her because once she's up in Philadelphia she's under the control of her mother again, and so she goes! And she dies.

So the case had this Romeo & Juliet aspect: love, elopement, the wicked mother and the

ultimate death. It was a story that was appealing. So appealing that all over the world, France, Germany, everywhere, newspapers were sending reporters to cover it because it was a universal story. And that's why I say it was the closest thing to my Watergate experience because I was being called by reporters all the time - at home and at the D.A.'s office, and there were stories about the case all over the world.

So, finally I did arrest the mother and brought her in a police car down to city hall. There were crowds of women, holding their babies, and holding them up at her, and spitting at her. I mean it was the most dramatic, violent, emotional scene. McBride had it all wrong as to who would be faulted by the public because the story that had so affected the public in Philadelphia was that the wicked witch mother would rather kill her daughter than have her continue her marriage – after all, she was married and this wasn't a baby born out of wedlock.

Tom McBride not only had misread everything, but he had also made it difficult for his client because all I was asking was to talk to her and maybe make a discretionary decision not to prosecute but only use her as a witness.

Well, they did find that she was in shock, and not able to proceed, so we waited three months until she was well. In the meantime, I got a warrant, and we did a search of the Franklin Street house. We had already arrested the husband and wife owners of the house. I was looking for the ingredients so that I could really pin the case down. They must have not anticipated that there would be a search, because in a drawer by the bed was the oil, the mustard, and all the ingredients of the abortifacient used in a lay abortion. My detectives wrapped it all up in a blanket and took it out. Well, you know the reporters had followed them. And so I got a call from the *Bulletin* first. They asked, "What did you find?" I said, "I can't tell you that now, this is

going to be trial evidence, and at this point I'm not willing to publicly reveal what evidence we found." They accepted that at that time, but then the *Inquirer* called. And they asked, "What did you find?" I said the same thing I had to the *Bulletin*. The next day the *Inquirer* morning edition had a headline: "D.A. Searchers Find Medical Book and Medical Instruments" – as though a doctor or somebody with medical training had performed the abortion rather than a lay person. So I called the *Inquirer* and said, "You're all wrong. None of that was found." They said, "Well then tell us what you found." And I said, "No, I won't." "Well until you tell us, we're relying on that story we got from an informer, a good source," they said. And so when the *Bulletin* reads the *Inquirer* story they call me up and say, "You bastard. You wouldn't tell us, but you told the *Inquirer*." I said, "I didn't tell the *Inquirer* that! And they're wrong!" And what the *Bulletin* then writes up and plays up is that the managing editor of the *Inquirer* happens to live in the same apartment complex that Sara and I were living in so obviously it's a conspiracy that I have with the *Inquirer*. Well, this is the tightrope you walk when you get involved with the press.

But, in any event, I brought the charges, and they hired pathologists from all over the world. I invited them in. At that time I was running the office with an open file, and if the defense lawyer wanted to come in and see all my evidence, I wanted to show it to him. If it was a weak case, I wanted to know that, and I would not press it. If it was a strong case, by showing the defense lawyer how strong it was, I'd probably get a plea of guilty. And it usually worked that way. So when they got these leading pathologists from all over the world, I invited them in to meet with Halperin and me, look at the slides, and everything else. And everyone of them had to go back and tell the defense lawyers, "There's no way we can beat this case." This is because it was exactly as the slides showed: an abortifacient entered under pressure and broke into the

blood vessels. And at the time everybody was admittedly there!

So the husband and wife pleaded guilty and they were sentenced to a couple of years. They could have gotten much more. Tom McBride asked me if I would take a nolo contendere plea from the mother and I said, "Sure." I then get a call from the trial judge, who says he's been told it will be a nolo contendere plea, and he said, "Sam," how much time do you want me to give her?" I said, "Nothing. She still is the mother. She still lost her daughter. It's outrageous what she did. But it seems to me that that will stay with her for the rest of her life. Let her plead nolo contendere, and let her go!" He said, "Well then I have to fine her." I said, "Fine her? This is a multi-millionaire." I said, "The image to the public will be that the poor people go to jail, and the rich woman pays a fine." I said, "Don't even put a penny down against her." And that's the way we finished it. The mother pleaded nolo contendere, was given a suspended sentence, and the two abortionists went to prison. Interestingly enough – I don't know how to explain it, but each of them got out of prison around the same time and they both died of heart attacks within weeks of getting out. Well you know, these were people who had never been in prison, and never been charged in their lives. Perhaps they didn't perceive of themselves as evil people. Basically he was the abortionist for most of the prostitutes in that area and obviously they wouldn't reveal him, or want him to get caught. Perhaps they were just sensitive enough, and their lives were good enough – made a lot of money, that spending two years in prison just destroyed them. And then coming out, they didn't see how they could re-enter the world around them. That's my explanation, but I don't know. Still, it was a remarkable coincidence.

Ms. Hostetler: Were abortionists generally prosecuted in Philadelphia at that time?

Professor Dash: Oh yes, particularly by the D.A. that followed Blank who was a Catholic, a guy named Crumlish who made it a policy to prosecute all abortions. But I didn't prosecute abortions unless they were abortions resulting in death, and that was a separate felony, with a 20-year maximum penalty. But actually there were no complaints that would even come to the D.A.'s office or the police unless there was a death that brought it to the police attention, and to the D.A.'s. But there was no doubt that the criminal law at the time considered abortions evil, abortions were crimes, and so women who wanted abortions had to go to back alleys. Or do it themselves. My own view at that time, in addition to the question of integrity or dignity of the women over her own body, is that the consequence of criminalizing abortions for human beings who really weren't criminals was devastating. And young Silver was just such a tragic case.

Ms. Hostetler: But finally you left the D.A.'s office when you didn't want to be Green's candidate--

Professor Dash: I didn't want to be Green's candidate.

Ms. Hostetler: What did you do then?

Professor Dash: Well, then I joined and became a partner in the law firm of Blank & Rudenko. At that time there were sixteen lawyers in the firm. Now, there's like 400.

Ms. Hostetler: And what kind of work were you doing?

Professor Dash: Primarily commercial law. It was a very aggressive civil firm, business firm. It was probably one of the first business law firms that moved away from the so-called "professional representation" model. The big law firms in Philadelphia at that time would only give advice, on taxes, say, or review a contract, or help draft a contract. But they

wouldn't get involved in a client's business. But Blank & Rudenko sat on boards of banks that were their clients. Small businesses would come to them, who needed money from the banks, and one of the introductory statements that Sam Blank, who was then the head of the firm, would say to a new business client was, "Now that we're your lawyers, you don't go to the toilet without talking to us first. We are going to run your business. And we're going to make you bigger. And we're going to show you how you can." So they got intimately involved in expanding clients' businesses, and then sat on their boards. I mean the internal conflicts were just tremendous.

I learned a little bankruptcy law because there was a big glass factory in New Jersey that went bankrupt, and I had to deal with the creditors that we represented. We represented a major container company that sold containers for the bottles to come in and I handled the whole bankruptcy matter. I tell my students that I never took a course in bankruptcy law at Harvard Law School but once you learn a proper legal approach, it doesn't take you long to read the statutes, read the cases, and become an expert in the field you're working in. You don't have to take a course in it. I also represented Sylvan Pool, which is a big pool manufacturer. This was the firm's client.

Most of my work was working on agreements, small, tiny phrases, and loopholes, and I was bored silly. I saw that my job was to make rich people richer. And there was no kind of public policy involved at all. I didn't feel I was contributing anything to the good of society necessarily. I was doing well, and it was a good position, I was a partner. But I was telling Sara at that time that I'm not excited about what I'm doing. And then, about a year after I started with Blank & Rudenko, the Fund For the Republic, which was an offshoot of the Ford Foundation, came to me and said that they wanted to fund a study on wiretapping, and since I was the first

D.A. to use it in Philadelphia, and I had a lot of contacts with D.A.s and police all over the country, they felt I'd be a good person to run the study. They said they would give me a \$50,000 grant to run it, which in 1956-57, was a lot of money, but we would need some sort of a nonprofit vehicle to receive the money. The Pennsylvania Bar Association at that time had a Pennsylvania Bar Endowment which mainly was set up to do research on the law, but had not engaged in a single research project, and the IRS was beginning to question whether it was a bonafide nonprofit. So I took the wiretapping study idea to the Pennsylvania Bar Endowment. And they grabbed it, because it was something they could show the IRS that justified their being a non-profit. They set up an advisory committee, and I was the director of the study. I took a leave of absence from the law firm because I was traveling all over the country. But I'd come back from time to time to visit the law firm. Every Friday there was a partnership lunch. And one time when I came back for one of the lunches Sam Blank said, "Sam, why don't you give us a little insight on what you're doing in your wiretap study?" So I let them all know what was happening, and after the lunch, Blank came over to me and said, "How come we don't see the gleam in your eye when you're working on our cases that we see when you talk about your study?" I said, "Maybe that tells us something." And that was the beginning of my decision to not come back to the law firm after the study but to go into private practice for myself.

Ms. Hostetler: And what were you doing on the wiretapping study?

Professor Dash: Initially I did not see myself as the investigator for the wiretapping study but rather as the director of the study. And it initially occurred to me that the people who ought to be doing the investigating were former FBI agents, people who knew about investigations of this kind, and people who might have had experience in wiretapping. Well a

former FBI agent I hired, who was now a private detective or something in the security field, never got me any information, but instead was always reporting back to FBI director, J. Edgar Hoover. And I found out later that the detectives from the police departments that I was using were doing all their research in the library. They were going through old newspaper stories rather than going out and getting me real information. So I decided that I had to go out and get the information myself. Somewhat undercover - except that I knew whom to talk to in each of my chosen cities that I was going to go to, and they knew me, and I was coming with good ex-D.A. credentials. I had been on the board of governors of the National Association of District Attorneys before I left the D.A.'s office. I had appeared before the International Police Chief's Association as a D.A., and so they all knew me as a law enforcement person. But I told everybody I spoke to, that although that's true, and that although I approved of wiretapping, I'm doing an objective study, so I was going to report both the bad and the good. And I said, "But it's to your advantage to talk to me candidly. Because if you don't talk to me, and don't give me the police side, then all I'm going to get is the ACLU side, and the report will be devastating against law enforcement. So, you know, I need a balanced presentation." I was persuasive enough that everybody wanted to talk to me. And I went and talked to private detectives, to manufacturers of devices, and finally wrote the book, *The Eavesdroppers*, which demonstrated that electronic surveillance was pervasive in the United States, both in law enforcement, and in private business. For example, in the cosmetic industry, all the companies were wiretapping and bugging each other, to find out who was going to come out with a new design of a lipstick container.

Ms. Hostetler: And were you surprised by this? To find how everybody was wiretapping?

Professor Dash: Yes. I started out from scratch, only knowing that it was technically possible to do wiretapping, but I had no idea how pervasive it was to the point that I concluded that if somebody wanted information enough to spend money for it, they would do it, and do it through wiretapping. I traced the origins of wiretapping. Part of the book is called, "The Roots," because it was like going back, and pulling something all the way up. And sure enough I found, that wiretapping began not in this century, but that the first telegraph pole that went up when telegraphy was invented in 1850 was climbed by the first wiretapper. And at that time they were either getting business news or newspaper scoops. And the first telephone wiretap was in 1892, when the *San Francisco Chronicle*, which was a good investigative paper, found that the *San Francisco Examiner* was beating it in some of its exclusives. And they hired a Pinkerton detective to investigate and see what happened. And he found that they had hired a wiretapper who was tapping the phones of the *Chronicle*. The telephone was first exhibited in 1876, at the big fair in Philadelphia. In 1892, there were very few phones being used commercially, but the newspapers had phones. And, on the front page of the *Chronicle* in 1892 is the headline: "Your Closest Secrets Available to Your Enemies." On one side of the paper is a picture of a lady dressed in the costume of the times with a big round hairdo, and she's using a wall telephone. The wire from the phone goes to the other side of the paper, where a man wearing his bowler hat, is also on a wall telephone. And then balloons show their conversation. He says, "I'm going to have to work late tonight honey." And she says, "Don't work too much, come home as soon as you can." And, there's a dotted line that comes down the middle to the bottom of the page where there is this evil looking mustachioed man, with a rolltop desk and a spittoon, and he's using earphones listening to a husband and a wife's conversation. They picked

the image that would affect most people. And the text could be written today – in these modern times – that your enemies can intervene in your private telephone conversations and this needs legislation. And I also found that the police in the United States began wiretapping to solve criminal cases in 1895.

Ms. Hostetler: Now you had used wiretaps yourself as a D.A., and had found it a useful tool, so when you started the study, were you inclined to think that it was a useful tool?

Professor Dash: Yes, and because of that, I was determined to make it an objective study. My own perception of what I was going to do was that I was going to keep my eyes and ears open, and report all of the down side, as well as the good side. But it occurred to me that because of my testimony in Congress, and my coining that phrase "ear witness to crime" and having been successful in using wiretapping, that there would be some question of credibility. And so I invited a professor at Rutgers, who had written lots of articles against wiretapping, to join me to develop a model law, and I would shoot off to him, many of the things that I was finding. And a third person I invited to join the study was a professor at the Moore School of Engineering at the University of Pennsylvania, who knew all about technology, particularly electronics. I knew that I was going to have to be informed by an expert on some of the devices that I was going to be exposing. I included both of them in the book. The biggest part of the book is my findings. And then there's a section on the technology, from the Moore School professor, and then there's a section on the law.

Now, I had to go around and basically get the people to show me their equipment even in states where it was illegal to wiretap. I found that no matter how many states prohibited wiretapping, when I talked to the police officers in those states, they were widely doing it. Many

of them that couldn't get appropriations to buy equipment were using private detectives. And the quid pro quo was that since the private people were also breaking the law when they were doing it, they would be given immunity. That's exactly what happened in the famous Brinks robbery case in Boston.

I went up and talked to the state police in Boston who were looking for the robbers. And they showed me their files, and the contact they made with a New York private wiretapper who put a ring of taps on phones in a fifty-mile radius of Boston. And it was just a dragnet to listen to hear any clue. And it led ultimately to a clue, which led them to somebody which led to breaking the case. And they told me how much they paid him and everything. I had the whole record of that particular use of private wiretappers. In some places, the police did it themselves, and they were climbing up poles and posing as telephone people.

Ms. Hostetler: Were your sources later upset that you used the information they gave you?

Professor Dash: I didn't reveal my precise sources. My agreement with them was that I would not name the city, or the name of the person who talked to me, and the book honors that agreement.

Ms. Hostetler: And what was your conclusion then?

Professor Dash: My conclusion in the book? Well, I had asked myself is this a book that ought to come to conclusions and recommendations? Or is it a book that ought to present as graphically as possible, and as accurately as possible, the facts. I decided that it would be a resource book that others would use to debate the issue. I decided that if I began to draw my own conclusions, it could discredit the book. Well the book actually got credibility from the fact

that when it came out, the prosecutors denounced the book on the ground that I was now going to be a defense lawyer, and the defense bar denounced the book on the ground that it was too favorable to law enforcement. So somehow or other it had gone down the center.

By the way, in order to make sure that my strategy and my method of getting evidence would be "acceptable" since I was using undercover people and telling them, "I'm just making this study for the Ford Foundation," I decided to appoint an advisory board. On that board I put people like Frank Hogan, who was New York's District Attorney, Judge Learned Hand, and Police Chief Bill Parker from Los Angeles. I remember that I held one meeting in New York in which I laid out how I was going to get my evidence. And I got unanimous approval. Except Parker kept saying, "I don't know why you're making this study! Why don't you go out and find out about about the communists that are infiltrating America? Why are you looking at a tool that is absolutely essential to the police?" And he said, "You know the community wants us to fight crime--to dig a pit. But they give us a teaspoon!" He was a very dramatic character.

California was a state that was giving me a lot of feedback from newsclips and other sources and it largely involved Mickey Cohen. Mickey Cohen was the West Coast racketeer who was probably the most wiretapped person in the country. And the chief of police in Los Angeles was Parker, chief Parker, who had developed a tremendous name as the most aggressive law enforcement police chief in the nation – a person who was honest, had integrity and all that, but also a crime busting police chief. So I remember going out there to meet with him, to get his cooperation with his L.A. Police Department, and he said, "No, I'm not going to cooperate with your study, and I've told all my police not to cooperate with you either." Well, it wasn't difficult for me to get to his lieutenants and captains, who were so proud of the work they did. The way I

did it, I would invite a captain to lunch, pick as a restaurant one of those nice ones that you might pick for romantic reasons with low lights. So, it was dark, and we'd sit in a corner booth. Nobody would see who he was, or who I was. And then I wouldn't ask any questions. I'd start talking about the study, and then I would start to boast about what I had been able to do as District Attorney, the equipment I used and so forth. I was boasting ad nauseam. He never knew when I stopped and he began, but he was compelled to meet me, and to tell me how much better he was, and what his department did. And that he had much better equipment than we had had. And so, in no time, he's sitting there, talking to me about his equipment, offering to show me the equipment, telling me how many cases he's using it in, but because it's illegal, they use it only to get leads, they can't use it as evidence. I was getting all this stuff under Parker's nose, but I wanted to get it from the side of the racketeers, too, the people who were the victims of the wiretapping.

And so I decided I had to meet with Mickey Cohen. And about that time a former wiretapping L.A. police officer had been wooed away by Mickey Cohen. Mickey Cohen had built a new home. Dressed as carpenters on a rainy Saturday, when the regular builders weren't going to be there, the wiretap group from the LAPD went there and worked bugs into the framework of the house so that every room was a recording room. Mickey Cohen knew it because the corruption in the police department was such that the transcript of what the police were getting out of his house, was being sold to Mickey Cohen. And Cohen was getting angry that all of his conversations were being picked up. I even have a quote in the book of one of the wiretaps in which Cohen is describing what you do when you gamble and things like that, and how you fix it. And so Cohen decided he had to get some protection. So he went to this

wiretapper at the Los Angeles Police Department and offered him \$50,000 a year to become his defensive guy. And of course this guy having put the bugs in the house in the first place knew how to find them, and get them out. Then he followed Mickey around to protect him from taps. One day, however, Billy Graham came to Los Angeles, and this former policeman who is now the wiretap expert for Mickey Cohen, goes to hear the Graham sermon. And he's so impressed he ends up being one of the first to walk down the sawdust trail to pledge for Jesus. And he comes home and tells his wife, "I want to work for Billy Graham." You know, loudspeaker systems, things like that. "I can't work for organized crime anymore. I'm going to be for Jesus." And she said, "But you can't do that. You can't quit the mob, they'll kill you." He said, "Let's try." And he calls up Mickey Cohen and says, "I'd like to meet you, I'd like to talk to you because I'm going to have to leave." There's a book he wrote later called *Why I Quit Syndicated Crime*. It's a Damon Runyan type thing. In it he talks about the black limousine that pulls up outside his apartment, how Mickey Cohen and two big gorillas come up. And he's waiting for the worst. Instead, Mickey Cohen hugs him, saying "God Bless You, I think you're doing the right thing." And later Cohen writes the introduction to his book, about this is my boy who went to serve Jesus. So I wanted to meet with Mickey Cohen to get all of the documentation I could get on his side of the eavesdropping issue.

Ms. Hostetler: How did you arrange a meeting?

Professor Dash: Well, I thought the best person to go through was this converted former cop who had worked for Mickey Cohen. And so I called him, identified myself, and told him what I was doing. I asked, "Could you set up a meeting with Mickey Cohen?" He said "Sure, and I'm sure he'll see you." So, when I get to Mickey Cohen's house, and knock on the

door, Mickey Cohen answers it himself – he's expecting me. He knows I'm a former D.A. and wonders what I want to talk to him about. He's doing his former employee a favor by meeting me. So, again, it was a question of how I should approach this as a strategy of investigation. The first thing I said was that I knew that Mickey Cohen and Bill Parker were mortal enemies. Once on Mike Wallace's show, Cohen had accused Parker of some sort of a sexual offense, and Parker sued the network and Wallace. Parker got a large judgment; not against Mickey who didn't have to pay anything. But he got a judgment against the network and against Mike Wallace. And so there was this hostility that was there. In fact, wherever Mickey went there was a police car following him. Mickey would tell the story that he would come out of the movies with 200 people and the light would be red. He would cross against the red light as would the 200 other people. But he and nobody else would get arrested for crossing against the red light. (laughing) He was constantly being arrested, and the police were constantly tallying their score card about how many times they got Mickey Cohen. So I realized with that kind of a background, I had to get his confidence. So the first thing I said to Mickey Cohen, when he answered the door, was "What kind of a police chief do you have in this city?" He says, "You mean that bastard Parker?" I said, "Yeah. Here I am, a former D.A. and he won't cooperate with me at all." And Mickey says, "How much time have you got?" And he brings me in, and when I tell him what I want to find out, he makes a couple of phone calls. More than that, he's reaching out to his sources. It's now nighttime. We get in his black limousine, and he's taking me to bars. Of course the LAPD is behind us all the time. We go to a bar. We sit at a table in a dark area. Two guys suddenly appear and sit at the table with me, and without my asking a question start reporting about wiretapping and bugging of what they're doing. And we went from one place to another, and I

was getting all this information, and Mickey was my guide, so much so that he decided he wanted to be an unofficial member of my staff. After I left Los Angeles and went back to Philadelphia, he was clipping news clips for me and sending me all kinds of things. And he also would give me leads to people like him in different cities. So he gave me the lead to a mid-level racketeer in Boston, and he told me what phone number to use, and whom to ask for.

So I went, got a hotel in Boston, and I called. And on the other side of the phone line I heard, "We don't know anybody like that." So I called Mickey Cohen in Los Angeles and said, "You gave me a bum steer. I called this guy and they said they don't know anyone like that." He said, "He's there. Where are you?" And I gave him the hotel and the telephone number. "You'll get a call in a few minutes." And in a few minutes, maybe ten, fifteen minutes, I get a call and a deep voice says, "For God sakes, Mr. Dash, tell Mickey Cohen to never make any phone calls to us; we're being wiretapped. What do you want?" I said, "Well, I just want to talk to you about what it's like, being on the other side of a wiretap?" He owned a gravel company, which I since have learned are fronts for all kinds of organized crime. And he met with me. And I tell the story in the book that he had a sense of fairness. He said, "Yeah, I have no bitch about law enforcement to catch criminals. But when they listen in on what you're saying to your girlfriend, that's wrong!" There was a standard to be followed.

Ms. Hostetler: So you didn't draw conclusions in the book.

Professor Dash: No. I decided not to after talking to a number of people, and also recognizing, by the way, that sitting on the sideline was the Senate Subcommittee on Constitutional Rights that I had been informed was going to hold hearings on wiretapping.

One of the people I talked to in the course of the study was Supreme Court Justice Felix

Frankfurter because I knew that he was very much interested in the subject. There had been a scandal in 1940 that suggested that the Supreme Court of the United States was tapped. Congress had investigated, and had subpoenaed leading wiretappers from all over the country. Most of them either took the Fifth Amendment or denied wiretapping. The matter was never resolved. Frankfurter said to me, "I think this is one of the most important studies you can make." And Sara tells the story that at an American Law Institute meeting he took Sara aside, and asked, "How much interested are you in jewels and furs?" She said, "I don't have any interest." And Frankfurter said, "Well good. Because all kinds of pressures are going to be brought on Sam, to tone down what he finds." He said, "Don't let him. "Frankfurter was really somebody I constantly talked to.

Ms. Hostetler: Now how did it happen that you knew Frankfurter?

Professor Dash: I didn't other than when I was in the Appellate Section of the Criminal Division in the Justice Department, I would meet him from time to time when the solicitor general took me up to the Supreme Court to argue a case. But I wanted to touch base with somebody on the Supreme Court and since he was interested in the wiretapping subject I contacted him.

By the way, I was the first one in the investigation into possible wiretapping of the Supreme Court to find the president of a private telephone company in the midwest. When I started questioning him about wiretapping, I found that he was on the FCC squad that got the tip that in the basement of the office building of one of the oil companies--Texaco, I think – the company's telephone lines used to be close to where the lines from the Supreme Court phones came into a box in the basement of the building. The FCC sent a raiding squad, and he was a

member of the raiding squad. They found a recorder connected to the Supreme Court Justices' lines in the basement, a cup of coffee still warm and a cigarette still lit, but nobody there. So the tip may have gone both ways; it may have gone to the FCC, but then somebody else tipped off the wiretappers, so no one was there. In any event, the head of the FCC squad, at that time told everybody on the squad, "Forget this for the rest of your lives. If it ever gets out that a Supreme Court Justice's phone can be tapped, the future of telephone communication is going to be hurt terribly."

Ms. Hostetler: Was it ever learned who was tapping?

Professor Dash: Yes. I finally traced it to the case of *Ashcraft v. Tennessee*, which was a major commercial law case pending before the Supreme Court. What we learned was that the two parties were getting close to settlement, but that a petition for certiorari had been granted and one of the parties before settling wanted to sample any discussions that might be happening in the Supreme Court to see whether they were going its way or not. I don't know that they would have learned anything of interest. In any event, my book was the first time that the Supreme Court was informed that yes, in fact, wiretapping of the Court had happened.

Ms. Hostetler: Had the Senate subcommittee determined to hold hearings even before your book came out?

Professor Dash: Yes. As a matter of fact, they did me a favor. The chair of the subcommittee called me even before the book was published. And he said, "We want to hold hearings on your findings." I said, "Senator, give me some time. If I go and testify and give all my findings before the book is published, who's going to buy the book? It'll be in the newspapers." I said, "Let me get my book out, and then I'll come." He said, "Fine, we can wait."

Ms. Hostetler: Was this a Ford Foundation publication?

Professor Dash: No, it was a published book. Rutgers University Press published it.

Ms. Hostetler: Was there a separate report? Apart from the book?

Professor Dash: No, the report is the book.

Ms. Hostetler: Okay.

Professor Dash: When I was talking to the Fund for the Republic people they thought there should be a published book, so it would be available to everybody. As a matter of fact, when the book was published, the *University of Michigan Law Review* decided, on the basis of my book, to publish as a symposium a whole volume of the *Review* on wiretapping. And they had articles by Senator Hennings, the chair of the Senate subcommittee, by Edward Bennett Williams, by a judge, by people from all over the country, to comment on my findings. They had Ed Silver, who was District Attorney of Brooklyn and with whom I had been friendly when I was a D.A., now really, really tried to destroy me in his piece in the Michigan symposium and also in the testimony he gave to the Senate.

Ms. Hostetler: And was the book discussed in the popular press?

Professor Dash: Oh yes, it was in a lot of the bookstores. Some publicized the book by having tape all around the bookstore windows with recorders.

Ms. Hostetler: How many copies were sold, if you know?

Professor Dash: I think it went through three editions and I was told it sold something like 40,000 copies, which, for a book of this kind, is a lot. Interestingly about ten or fifteen years ago, a press in New York selected what they believed to be historically important

publications that are out of print and reprinted them. And they picked my book, reprinted it, and it's available, or was available until very recent times. I was a little upset. Because by the time they were re-printing the book, the law on wiretapping had changed tremendously. And the practices had changed. But Rutgers approved this re-printing, and I wasn't even told. Not that I would have done anything to stop it, but what I would have wanted to do is write a new introduction, indicating the changes that had taken place.

Well, in any event, as I told you the Senate delayed its hearings to let me publish the book, but it turned out I couldn't publish the book. My advisors from the Pennsylvania Bar Endowment began to raise objections to publishing the book, principally a lawyer named Arthur Littleton, who was with a very prominent law firm. I found out that he represented the telephone company and the telephone company feared that any exposure of wiretapping would cost them billions of dollars because, at least for a period of time, people would make less calls. So they didn't want this book out. I didn't know when he was put on the advisory committee that he represented the telephone company. So after it became clear to me that the book was being blocked, I called Senator Hennings. And I said, "Senator, my advisory committee won't let me publish this book because they're afraid it's going to hurt the telephone company." He said, "Sam? You tell your advisory committee if that book isn't published by," and he gives a date, "we will open televised hearings on wiretapping, and all your material will come forward publicly, and that there will be a greater, more dramatic showing of wiretapping through that process than through a Rutgers University publication." And so as soon as I did report that, all obstacles ended, and the book was published under the title, *The Eavesdroppers*.

Ms. Hostetler: So then did the Senate subcommittee have hearings?

Professor Dash: Oh yes, afterwards he had hearings.

Ms. Hostetler: And you testified?

Professor Dash: I testified. My testimony was that I continued to support electronic surveillance for law-enforcement purposes because I thought it was one of the best tools in cases of organized crime, conspiracy, or white-collar crime, but that the pervasive nature of it required regulation. I said that the unregulated practice not only interferes with private conversations that have nothing to do with law enforcement but that even in law enforcement, the police usually use a dragnet to see whether any crimes are being committed, and therefore literally thousands of innocent people's phones may be tapped. I concluded that they ought to treat electronic surveillance like the Fourth Amendment and require probable cause and a warrant before the police can use it, and that they ought to prohibit it altogether with tough penalties for private people and companies who are not law enforcement.

Ms. Hostetler: And what did the Senate subcommittee then propose?

Professor Dash: They came out with recommendations at that time, which was about 1960, but they didn't pass any legislation. That was not done until 1968. In 1960, they wrote a report, spelling out a lot of my findings, and saying that more study had to be done on how best to regulate wiretapping. But I think their position was there had to be more regulation. Around that time the Supreme Court came into the picture. You may remember that the *Olmstead* case in the late 1920s held that wiretapping was not a violation of the Fourth Amendment, that it came on lines outside the house, and therefore you don't need a warrant to tap a phone. Then section 605 of the Federal Communications Act was adopted in 1934, which began to prohibit eavesdropping. Up until publication of my book, a lot of courts were unwilling

to set aside *Olmstead*, unwilling to prevent the police from bugging a house from the outside. The case was a case in which the FBI took a room in a hotel next to the suspect's room, put a detective phone on the wall, but in their own room, where they had a right to be. It was powerful enough to pick up the voice vibrations on the inner wall of the other room, and the Court said, "No trespass." The Court said as long as there's no trespass on a constitutionally protected place there is no violation. My book came out around 1960-61 and it was being discussed quite a bit in '60 and '61. And in the famous *Silverman* case, Edward Bennett Williams attached my book as an appendix to his brief.

Ms. Hostetler: Hmm. The whole book?

Professor Dash: The whole book. And, interestingly enough, the facts in *Silverman* were that the FBI had again taken a room adjacent to a suspect but this time used a spike microphone instead of a detective phone. If you're only listening to the outer wall where you have a right to be, and there's a space between the walls, the inner wall won't be giving you the vibrations. So you get some sort of buzz--you don't get a good recording. So they invented a spike microphone that had a little spike that went through the wall and it made a much better contact. It was only supposed to touch the back of the inner wall. Well, unfortunately for them, their spike was too long, and it protruded into the room where Silverman was by one inch. By this time my book was out, and the Supreme Court reversed the conviction on the grounds that this was a trespass.

Professor Dash: In other cases, *Lopez*, for instance, the Supreme Court even cites my book. I'm cited by one or another of the members of the Court up until the *Katz* decision in which the Court finally overrules the *Olmstead* case. Then, in 1968, Congress enacted Title III of

the Safe Streets Act and in it Congress incorporated the safeguards I had earlier recommended.

Another thing I talked about in the technical section of my book was an experiment that I conducted that showed how unreliable a tape recording of a conversation is. I wanted to show that you actually can construct words in the voice of the person speaking. I went to a New York radio station which had all the advanced editing and I gave a speech to the editor in which I said something like, I love my mother and I'm a good American citizen. Then I gave him the script I wanted to change it to, where I confess murdering FBI agents, working to overthrow the government by force and violence, hating my mother, and so forth. And he produces that, within a two-hour period, in which he actually constructs words from my syllables. I never said the word "kill" but rather the word "fill." And he took the "k" sound out of "kindled" and the "ill" sound out of "fill," put it together, and then we retaped it on so you couldn't see the splices, but it had me saying "kill." In my voice! And there is a very good section in the book showing how none of this involved breakthrough devices. They were devices that any person in electronics knows about.

Ms. Hostetler: So have you kept up with the subject of wiretapping?

Professor Dash: Oh, part of my criminal procedure course that I teach at Georgetown includes the wiretapping subject. Since I've been teaching at Georgetown, there is one day I set aside as an introductory lecture on wiretapping, where I recite pretty much the summary of my book. And I tell them this context and background, and bring them up to date on the latest cases. So I keep up on the law, but I haven't tried to learn what some of the latest devices are. Now, of course, there is this whole business of the FBI wanting to have the right to monitor electronic mail.

Ms. Hostetler: What do you think of that?

Professor Dash: Strangely enough I'm in favor of it. I told FBI Director Freeh that I'm in favor of it. Since the Safe Streets Act was adopted, authorizing wiretapping with probable cause and with a warrant, upon court order, it seems to me there is no difference between the FBI having the right to put their lines into the pole boxes and having the right to monitor electronic communications. It seems to me that if the policy of the country is to allow electronic surveillance on the same basis as a Fourth Amendment search and seizure on probable cause with a warrant, the fact that there's a new innovative technology shouldn't prevent law enforcement from executing the warrant.

Ms. Hostetler: Do you have a sense that law enforcement now generally does get a warrant ahead of time?

Professor Dash: Well, no. From what I saw when I did my book, and that I conclude is still true today, in order to get a warrant you need probable cause but lots of times the probable cause isn't that good. Today I think with most police, state police, and I believe this is true with the FBI also, their practice is to not seek a warrant until there is a good basis for doing that. But that doesn't mean they don't wiretap. You know, they have a ring of targets who might produce something. And I think many wiretaps are put on suspect places, and listened to without a warrant, and only if they hit payday do they go in and ask for a warrant on the basis of a reliable informant.

Ms. Hostetler: Do you think that's very good practice?

Professor Dash: No. I think that balance is important in the law, that it is important to say to the law enforcement people, yes, wiretapping and bugging are good investigative tools

when used properly, but "properly" means under the Fourth Amendment. "Properly" means when you have probable cause and get a warrant, and the probable cause and warrant has to precede the tapping. And to engage in a dragnet just because it's easier is not proper. You know it's unlikely that you would see police officers breaking into the homes of a hundred people until they found something because that wouldn't work. But electronic surveillance is so surreptitious that nobody will ever know about it. The people who are innocently listened into will never know. And, of course, once a warrant is issued, they do have to give notice to the person afterwards. But if they're not operating under the warrant, they don't give anybody notice. That's something that I bring up in class a lot. Something else I tell my class is that to make an analogy to search and seizure is somewhat imperfect. In a search and seizure case, there is something very specific that the officers believe is in the place that establishes probable cause, and when they go in, it doesn't take them very long to find whether it's there or not. But in a wiretap case, there is suspicion that a certain conversation will take place but it hasn't taken place yet. Still, by the way, the courts now uphold this. In the earlier *Berger* case, Justice Clark and the Court threw out a state wiretap because under the Fourth Amendment you must particularly describe the thing that is to be seized and since the conversation hasn't occurred yet, [the court asked] how can you describe it?

Well, now the appellate courts say that so long as you give some sort of a general description, that's good enough. But nevertheless, imagine a warrant to search a house for drugs, giving you 24 hours a day for 30 days to do it. I mean, imagine police officers staying in a house, tearing apart the house for 24 hours every day for 30 days, which is the limit of the warrant. Unbelievable. But that's exactly what the police are doing in wiretapping. It's very intrusive, very

pervasive. That's the reason there's a mechanism in the statute, but which is almost never used. The district court judge who issues the warrant, or court order, is supposed to put in the court order that even though they have thirty days, they have to report back to the judge what they're getting in a week. But that takes a judge willing to supervise. And if in a week, say, after they said we have probable cause that they're going to talk about drugs, and there are no conversations about drugs in a week, then the judge can withdraw the warrant. But almost no judge does that. Judges don't want to sit on top of FBI agents. They don't want to interfere, and so they let them sit out there. And the FBI always asks for an extension of the initial thirty days, with purported new evidence. That is, they get another informer who gives them what is said to be reliable information. That's all you need to establish probable cause.

Professor Dash: In any event, I wanted to cover federal wiretapping when I did my study. I hired an ex-FBI agent to start looking into federal wiretapping, and the next thing I got was an invitation from Mr. Hoover to visit him at FBI headquarters in Washington. So I went (laughter) And Hoover, sitting with ten other people in the room, says to me, "We understand that you're investigating the FBI. You know the FBI investigates, we don't get investigated. And for argument's sake, suppose we do wiretap? You realize that we would only use wiretapping to save lives and protect national security. Do you want to do anything to interfere with that?" "No sir, no, sir," I said. Hoover continues, "We don't think you should continue in your study to have anything to do with the Federal Government. What we will give you in return is if we have information and you need it about state illegal activities, we'll cooperate." In other words, I was offered a quid pro quo: Leave us alone and we'll talk about our fellow colleagues at the state level.

Ms. Hostetler: What did you say--

Professor Dash: Well, at the time I said, "I'll think about it." And right from there I went to see Frankfurter.

Ms. Hostetler: At that time he was on the Supreme Court bench?

Professor Dash: Yes, he's on the bench. I'd already told him about the study, and he had been very supportive. So I thought that, who but Frankfurter can give me some advice, I'm a kid. And when Frankfurter heard my report, he said to me, "Sam, you can't beat the FBI, you don't have enough money in your grant, you don't have the resources. They can run you into the ground, they can taint your reputation by saying that you're being backed by communists. It'll ruin your book. So, don't include the FBI, but don't give them a clean bill of health either. In the introduction to your book, specifically say that your study did not include federal law-enforcement activities because you didn't have the time or resources. Period. Someday, maybe, you'll be able to do it, or somebody will do it." And so I, with white flag, went to Hoover and said, "Okay." It turned out, by the way, they had reasons to worry about me because at the time that I was making the study in '57, '58, they were wiretapping Martin Luther King. They had a tremendous network of wiretaps which weren't against criminals but were against leftists, and communists, and also people they didn't like. And it was very important to them that I didn't stumble upon that stuff.

Ms. Hostetler: Were they tapping organized crime?

Professor Dash: No, no, no! They weren't doing any organized crime. They were doing "un-American activities" as they called it.

Ms. Hostetler: How common is it, do you think, that courts refuse to give a

warrant?

Professor Dash: Almost never.

Ms. Hostetler: Does that mean that there's not a significant change since the *Olmstead* days as a practical matter?

Professor Dash: Well no, the argument by the courts would be that the fact that a law enforcement official has to come to court is prophylactic. That is, a judge would argue that he may grant the warrant because they've got good probable cause, but the reason they have it is because they have to come to the judge.

Ms. Hostetler: Do you agree with that?

Professor Dash: To an extent. An issue came up during the Nixon administration when it got out that Attorney General Mitchell was tapping and bugging the antiwar dissenters without getting court orders, even though that was after the Safe Streets Act of 1968. Mitchell was asked by the press on what authority he was doing this, and he said, "presidential prerogative." I was at that time chairman of the Criminal Justice Section of the American Bar Association and I was making a speech in New England. I was asked about the Mitchell statement and I said the last time I heard anything like that was Royal prerogative, and I thought we fought and won at a Revolutionary War to get rid of that. I said, "There is no presidential prerogative. And any Attorney General that says that is a lawless Attorney General." Well, that got a headline. And an officer of the ABA called me and said, "Mitchell just called our offices, and he wants an apology. He thinks you defamed him." I said, "I said the truth. I didn't say anything that's worth an apology." The ABA officer said, "But we need the Justice Department because of its grants, the ABA needs to have a good relationship, and you're souring it for us."

Ms. Hostetler: Who called you from the ABA?

Professor Dash: It was probably either the president-elect, or one of the directors or someone like that. And I said, "Look, I'll tell you how to handle that. Why don't you issue a statement that I'm a sour apple, you don't agree with me, and let it go. I'm not going to apologize. So remove yourself from me, and you play around with the Attorney General." At that point, things happened. Georgetown University told me they got a call from the Justice Department that grants that were going to go to Georgetown would only go if I had no role in them. Also, the National Association of Attorneys General, who I was a consultant for, got called and told that their grant from the Justice Department would not be renewed if I continued to be their consultant. They said to me, "We're gonna tell them to go to hell," but I said, "No, you need the money. Drop me as a paid consultant, and I'll give you free advice." But I got a chill up my back that the Justice Department would do this just because I said what I said. At that time who knew about the enemies list?

The issue finally did go to the Supreme Court, and the Court held that the president has no presidential prerogative, that, if government is going to bug or wiretap citizens, it must be under the terms of the Safe Streets Act, and it must be with probable cause and a warrant. The issue came up because the government was taking its position on the basis of protecting national security. But the court said, there's nothing that authorizes illegal wiretapping even on national security grounds. But the Court did suggest that maybe there should be separate legislation for national security wiretaps. And Congress then did pass legislation to allow wiretapping on national security grounds but it also set up a separate court to rule on the warrants because they had to be secret. Interestingly, the guy they chose to be the liaison between the Justice

Department and the secret court was Bob Ehrdahl, who had been my chief in the appellate section. And I asked him once, "Bob, without revealing any information that you can't reveal, have you ever lost any motions for warrants?" He said, "Nope. I get a warrant every time I ask for it."

Ms. Hostetler: Okay, I think we'll stop now for this session. Thank you Professor Dash.

**ORAL HISTORY OF
SAMUEL DASH**
Third Interview - June 29, 2001

This is the third 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: Professor Dash, the last time we talked we discussed your famous book, *The Eavesdroppers*, and how you weren't able to rely on the FBI to do the investigating, that you had to rely on your experience as a D.A. and as a voluntary defender and to do the investigating yourself. Before we finish this oral history, we want to talk about another very famous investigation in which you played a principal role, and that is the so-called Watergate investigation by the U.S. Senate into the activities of President Nixon and his appointees that led eventually to Nixon's resigning from office. And we also want to touch on your most recent work, not so much as an investigator, but as a legal ethics adviser to the Independent Counsel, who investigated former President Bill Clinton. But, before we turn to those investigations, we have some loose threads in your oral history to pick up.

Ms. Hostetler: When we left off, I think that we were talking about *The Eavesdroppers* and your nationwide investigation of wiretapping, and about the impact that book had on the law of wiretapping in this country.

Professor Dash: Yes, we did.

Ms. Hostetler: So, now I think we need to know what happened to you after *The Eavesdroppers*. Did you go back to Philadelphia?

Professor Dash: Well, actually, my home base was Philadelphia. At the time I began the investigation of wiretapping throughout the country, I was a partner in the law firm of Blank & Rudenko, and I took a leave of absence in order to conduct that study. Blank & Rudenko was a very aggressive commercial law firm, and it wasn't necessarily my cup of tea. I knew this even more so during the course of my wiretap investigation when I would come back and give reports to the partners. So I decided to form my own law firm with J. Brem Levy. We became Dash & Levy. We basically specialized in trial work cases. I think it is important to recall that this was 1958 and in 1958 in Philadelphia – and I imagine it was also true in big cities all over the country – large law firms did not practice criminal law, and they also did not practice domestic relations or personal injury law. These were the areas of law that the big commercial law firms, corporate law firms, stayed away from, and so whenever one of their clients was involved in a criminal matter, they looked around for a criminal lawyer to handle it, and this was the role of our law firm. We received quite a bit of the referrals from the big law firms that didn't want to dirty their hands with criminal defense work. So we opened our own office, and we were immediately busy with handling some of the major criminal cases in Philadelphia at that time. I ended up representing the Teamsters, Local 107, which was one of the largest locals of the Teamsters Union, and a very close and supportive organization to the national teamsters which was under Jimmy Hoffa at that time. My client was one of Jimmy Hoffa's lieutenants under investigation by the McClellan Committee. At that time Bobby Kennedy was the chief counsel of the McClellan Committee. I was brought in to represent the Teamsters in criminal matters, congressional investigations, and an indictment. There's an interesting story I think that I ought to record because it goes to my interest in electronic surveillance and the recording of

conversations. What I learned when you represent such an infamous group as the Teamsters and Jimmy Hoffa's lieutenants is that you really are not only in a controversial case, but also that there are people who believe that you're ready to do anything to help a client. And I remember that Bobby Kennedy was very much opposed to lawyers at that time representing such clients. So we were always under the watchful eye of the Justice Department and other federal investigators. There came a time when one of the dissenters to the union, who had been working with the Justice Department, called me and said that he had lost his job because he was opposing my client, who was the head of the Local 107, and his wife wanted him to get back in his good graces, so he had some good information for me in the pending criminal case in the federal district court. Well, of course, I was sophisticated enough, as a former district attorney and in the intrigues that go on in entrapping people, and my little red flag went up. I worried about meeting this person under those circumstances because he had, in a sense, been an opponent. During the course of my earlier wiretapping study, I came across a private wiretapper that I may have mentioned to you earlier. Lipset was his name, and he was one of the leading detectives in that field in the world. And so I called him and asked him on behalf of my client, the Teamsters, to come to Philadelphia from San Francisco and to meet with this so-called renegade Teamster, who lived in Camden, New Jersey, just across the river from Philadelphia, and to wear a recording device. The next thing I learned was that my investigator had been arrested. He was in prison, in the local Camden jail. He called me, and I was able to get him out on bail. The story he told me was that he went over, and on my instructions told this Teamster witness that he was coming from my office, that he had invited us, and that if he wanted to talk with us, we'd be willing to talk to him, but if he didn't want to talk to us, we would walk away. And the witness

said to him, "Well," (he was right at the doorstep of his house), and he said, "Could you wait a minute," and he went back into his house. He came out again in about ten minutes. Right at the time a Camden police patrol car pulled up, and when the police came out of the car, the witness said, "Lock him up," pointing to my detective. My detective asked, "What for?" And, the witness said, "Never mind what for, we'll think of something later." And he did think of something. When they got him down at the police station, he accused my detective of offering him \$10,000 not to testify as a witness and threatening that he would be killed and dropped in the Atlantic Ocean attached to a concrete block if he didn't accept the offer. Well, that hit the headlines. The *Philadelphia Bulletin* had a big headline: "Teamsters' Lawyer Dash Threatens Teamster Witness," and the chief judge of the federal district court sent the FBI to interview me. Fortunately, not only did my private detective have a complete recording of the whole meeting, but the Camden police never searched him. So he had the tape. And when the FBI came to my office, I said I want you to hear something. And I played the entire tape, which showed my investigator saying that he came from my office, that if he didn't want to talk to him, he'd walk away, and then the witness saying to the police "Lock him up." "We'll think of something later." And the accusations against my detective were never on the tape at all. So, the FBI ended up arresting the witness for false swearing, and the *Bulletin*, thank God, thought it was a good enough story to print the transcript of the tape countermanding the *Bulletin's* original story that I had tried to influence a witness.

Ms. Hostetler: Did they give equal prominence?

Professor Dash: Equal prominence. It was on the front page. That event made it very clear to me that on certain occasions, just as prosecutors use recorders to record

conversations in so-called sting operations and things like that, it's equally important for a defense lawyer in a controversial investigation to use them to protect himself. He shouldn't lie or mislead a person. If a person asks, "Do you have a recorder?" my position has always been you say, "Yes," and then probably, you can't use it. But I thought there was nothing unethical in doing this. There happens to be an ethics opinion by the ABA that goes way back that thinks of lawyers as gentlemen (not even gentle ladies because there weren't so many ladies at the time) that says of course it's unethical, it's not good etiquette to record people without their knowledge. But that just doesn't take into account the real world of the criminal justice system and the role defense lawyers play. That particular recording saved my professional reputation. By the way, in the Safe Streets Act, one-party consent recording is perfectly permissible, both in civil as well as criminal cases, and in state law too, except in a few states. Some states require consent by both sides, and that came up recently in Maryland. But, in any event, these were the kinds of cases I was getting involved in. There's one other story but it seems to me the heart of what we should be talking about is what practice was like in those days and particularly the role of the criminal defense lawyer. I was trying to be a criminal defense lawyer operating under the same rules of ethics with the same candor, the same integrity, as any good commercial lawyer, and show that you can represent the worst citizen in the country and have the best lawyer do that without doing anything to taint the representation. I believe that very much. I lectured on it. I was one of the first to go around and talk about the ethics of defense practice.

Well, the same Teamster client (his name was Ray Cohen), this very close official with Jimmy Hoffa, was subpoenaed by the Senate McClellan Committee to appear to testify about how he misused (at least they accused him of misusing) the Union Welfare Fund, and my client

called me on the phone from his home in Absecon, New Jersey, near Atlantic City. His voice was hoarse, and he said, "Counsel," he said, "I have the flu and I'm very sick. Could you get a continuance on my appearance before the committee?" So, I called Robert Kennedy, who was chief counsel, and I told him, I said, "My client is sick with the flu in bed. Can we have a continuance of his appearance?" "Sure," he says, "Let's let it go for two weeks." The very next day Bob Kennedy called me. He says, "What would you say if I told you that your sick client was out catching tuna on the Atlantic Ocean today?" And, I said, "I would be very surprised." He said, "Well, I have an FBI photograph of him standing on the wharf next to the champion tuna catch." So, I said, "I'm going to look into this." And, I called and I get my client at home again. He says he's in bed, his voice is hoarse. I said, "How did the FBI get a picture of you on the wharf, standing next by a tuna catch." "Oh that," he said, "I didn't go fishing, I was home sick, as I've told you. But," he says, "my wife went out. She caught the biggest tuna, she called me ship to shore radio, and said she wanted me to stand with her as they took the picture. What would you do if your wife called you. Wouldn't you go?" So I looked at the picture (Kennedy had shown me the picture and had given me a copy). It was in the middle of July, everybody was in bathing suits except my client who was wearing a turtleneck sweater. Right after the picture, he went back to his bed. And Kennedy's last remark was – (excuse me for the statement, but I'm quoting him) – "You get his ass into Washington tomorrow." He didn't believe me at all. And so, I decided that I'm representing a labor leader, he's being looked upon as a criminal, I want him to be seen before the committee as a labor leader, and I want to be able to completely destroy this impression that he lied to the committee and that he wasn't sick, and so I got a doctor's certificate, I got the pharmacist's affidavit of the medicines, how he had been in bed all this time.

And, my position was that I was going to try to introduce that, knowing that you almost never get a chance to do that in a congressional committee hearing. The lawyer doesn't present evidence, he just sits by the witness.

Ms. Hostetler: Being a potted plant.

Professor Dash: Being a potted plant. And, so the interesting thing about this case – and it's well known and even in some of the case law (the very famous Hoffa case in which Hoffa ultimately went to jail), about how Hoffa handled preparations for trial and for congressional hearings. He usually rented a hotel suite and all the lawyers and all the witnesses came in and he dictated how everybody was going to respond. And, the way he did it is he held up five fingers and said, "You gonna take the Fifth, all of ya take the Fifth." Now, he never took the Fifth Amendment privilege himself. He always used successfully the tactic of saying I don't remember, but he didn't trust the intelligence of his other subordinates, and he insisted that they all take the Fifth. Well, from a corner of the room my client in a very weak voice says, "But, Jimmy, my lawyer says he wants me to testify as to that I was sick and that I didn't lie to the committee." And, he says, "What?" And Hoffa looked at me, he says, "What are you, a hero or something?" (There's a word he puts in between every other word). I got forty constitutional lawyers that say you're wrong." I said, "Well, Mr. Hoffa," I said, "I know my constitutional law. I know that he won't waive the Fifth Amendment if he talks only about the issue of his illness, and that I know when the correct time would be for him to assert the Fifth." And he turns to my client and says, "What are you gonna do, listen to him or me?" And he says, "I ought to listen to my lawyer, Jimmy." He says, "Well, it's your funeral." And that's the way we left it. Well, then we went before the committee, and Bobby Kennedy was courteous to me and allowed me to put

in the affidavit of the pharmacist, the affidavit of the doctor, and then he turned to my client and he said, "Mr. Cohen, I want to apologize to you. I now believe that you were telling the truth and you did not try to mislead this committee. Now, Mr. Cohen, did you or did you not steal \$300,000 from the Union Welfare Fund?" I gave him a little kick and he said, "I refuse to answer the question on the grounds of the Fifth Amendment." And that was the story. But a criminal defense lawyer with those kinds of clients, and particularly with a Jimmy Hoffa trying to supervise everything, illustrates a defense lawyer's life at that time and maybe life even today. These were the kinds of cases that I had, and I was usually very successful. I tried very few cases because I was able as a former district attorney to be able to see through some cases which I thought the DA shouldn't pursue. And because I had an open door to go in and talk to my former assistants, I was able to persuade some of them legally and properly.

Ms. Hostetler: How many years did you continue in this private practice?

Professor Dash: From 1958 to 1963, for five years, but the problem was that the more successful I became, the more evident the corruption in the criminal justice system in Philadelphia appeared to me. I had been filing all kinds of motions. I even filed a writ of prohibition, the ancient writ of prohibition, the first time filed in Pennsylvania history, to get rid of a grand jury, and the Supreme Court of Pennsylvania backed me up and said that I had filed correctly. So, now I was doing all of these legal maneuvers, and my client comes to me and says to me that he got a message from the judge, who was presiding over his case asking, "Why is Sam Dash making such a federal case of this? Why doesn't he bring in the judge's former law partner, pay him \$40,000, which will go to the judge and he'll blow the case out." And, of course, my client wants to do this. He thinks that's a much better way to have justice than to go

to trial, and he's urging me. He says, "I'll get you the 40 grand." And I said, "That's not what I became a lawyer to do. I don't do things like that. And, if you want to do that, you'll have to go to another lawyer," I said, "But think about it. It may be a sucker thing because let's say you give the judge \$40,000. How do you know he's going to dismiss the charges? It will be your word as the Teamster leader against a judge." I said, "Think about it. Now, if you want to stay with me, we do it according to the rule of law. But, otherwise, you'll have to get another lawyer." Well, he stayed with me, and he didn't pay. Shortly afterwards I represented a very prominent doctor, who was charged with running an abortion ring. Abortion at that time was a very serious offense in Pennsylvania. It was a felony and many years of imprisonment. And, a young girl whose mother had gotten her to go to the abortionist – this is a different case than the one we talked about before.

Ms. Hostetler: This is not the Silver case?

Professor Dash: This is not the Silver case. This is a different case. She wanted to marry a young man and she got herself pregnant. And the mother said that she's too young, if she got an abortion, she would let her continue to date the young man and they would be able to become engaged and she would approve the marriage. And, so, she went to this particular prominent doctor for the abortion. As soon as she had the abortion, the mother reneged on her promise and said, "No, I don't want you to see this boy again. I will never approve of you marrying him." And the girl was a minor. The girl, being very angry, went to the police and informed the police on the doctor and her mother. And they both were arrested. The doctor came to me. Apparently, in addition to the doctor, there were a lot of subordinate people who referred people to him. In all there was quite a ring. And so, I had the client who could pay the

biggest fee. A lot of the others had other lawyers. So, I was getting ready to handle the case, and one of the lawyers for one of the other defendants came to me and he said, "Sam, the police lieutenant hasn't heard from you, and the magistrate hasn't heard from you." (We hadn't had a preliminary hearing yet.) I said, "What do they want to hear?" "\$200 for the police lieutenant and \$500 for the magistrate, and they'll throw the case out." And once again I said, "I don't do these sort of things." He says, "Well, who are you, an angel? Why are you different than the rest of us?" And he ticked off the names of some of the leading trial lawyers in the city. "That's the way we handle it. What are you trying to do, hurt your clients?" And my client came in and implored me. He said, "I understand for \$700 I can get this thing off my back. That's cheap. I got it here. Here's the \$700." I said, "No, I won't handle it that way." Well, he, too, stayed with me, and it turned out that the Assistant DA, who argued the case for the government in the magistrate's court, had been one of my assistants, and the girl who had originally turned in her mother and the doctor suddenly realized that she was harming her mother, and she called me and said that she wanted to back out of the case. I said, "Well, you can't talk to me. I represent the doctor. You'd better get a lawyer to advise you on what to do." And she got a lawyer and she withdrew her complaint. And I was able to get the doctor discharged. Of course, the outrageous consequence is that when my client was discharged, and I was about to leave the magistrate's court, some slimy individual came up to me and said, "You still owe the magistrate \$500. He discharged your client." I said, "Not one penny. He discharged him because the Assistant DA asked him to discharge it and it was not on the basis of any graft." But, the fact that they were so tenacious and that the system was sufficiently corrupt in Philadelphia at that time, that I remember going home to Sara and saying to Sara, "Maybe I'm in the wrong profession as a

criminal defense lawyer here in Philadelphia because I'm trying to do it by the rules, by the book, and I may be harming my clients because in Philadelphia at this time from what I see, clients can be represented in such a way that they don't have to go through the uncertainties of trial. I don't know whether I ought to hold myself out anymore to represent people who have another way of doing it, and I won't do it that way."

Ms. Hostetler: Do you think that this was limited to the city of Philadelphia?

Professor Dash: No. I may have mentioned to you that I did that investigation in Chicago the first year and found the corruption in the criminal court in Chicago, and during my wiretap investigation I found corruption in the New York Police Department, somebody on the take and the lawyers who paid off. During the 1950s I think in most of the eastern cities certainly, the large urban centers, and particularly in situations where judges were elected (and in Philadelphia and Pennsylvania judges were elected), the election of those judges put them in such a political situation that it almost became a concession. And from what I learned at the time is that if you wanted to be a judge, you almost had to make a contribution of thousands of dollars to the political party with the understanding that you'll get it back later in the position that you are holding. In fact, after I left Philadelphia, there were about 30 judges who suddenly were thrown out of their judicial positions because of taking even as much as \$200 from a roofer's union --

Ms. Hostetler: Who exposed it?

Professor Dash: It was exposed by somebody. It was not exposed by police or by a prosecutor. It was exposed by somebody giving a leak to the papers and bringing about a newspaper story. And so, I know there's a tendency (in the way I am telling this story) to think I am trying to taint the whole bench, but it's not true. There were a number of very good judges,

but unfortunately in the criminal justice part of the court, things were fixed, particularly in how judges got assigned to criminal cases, particularly organized crime cases. When I was trying to fight organized crime as a DA, in some of the big cases certain judges were assigned from out of state. They were fixed, and so, that really began to worry me.

It was around that time that I had the opportunity to take a leave from my law practice. This was now 1963. And in 1963 there was a beginning recognition throughout the country of the plight, not only of poverty, but of black people and the discrimination against them and the terrible life that they led in urban ghettos. It was before President Johnson's poverty program. The Ford Foundation, together with the President's Committee on Juvenile Delinquency, which I think Bobby Kennedy played a major role in, were looking for a number of cities to demonstrate how to do something about the worst part of the cities that had the worst schooling, the worst housing, the worst crime, the worst of everything, and mostly these were African-American places or black communities. That was North Philadelphia, for example, and they formed an organization in Philadelphia called the Philadelphia Council for Community Advancement. And it was a marriage between Temple University, the City Hall, and the health and welfare agencies of the city. It almost formed a structure like a second city and they were working with a young psychologist professor at Temple, who was an active director of the program, to get several million dollars from Ford and several million dollars from the President's committee, and they were going to set up an experimental program to concentrate in North Philadelphia, and they called it at that time the Gray Areas Program.

Ms. Hostetler: Weren't there four cities in that program?

Professor Dash: There were four cities. Philadelphia, New Haven, New York and

Boston were the four demonstration cities that the Ford Foundation invested in. And I had nothing to do with it at that time. But, it came to a point where the Philadelphia government came under Mayor Tate (who had succeeded Mayor Dillworth), and he was basically a partisan Democratic politician of the old school. A dispute between Mayor Tate, Temple University and the health and welfare agencies developed about who really should direct this. And Mayor Tate disapproved of the young psychology professor on the ground that he had criticized the city, he had criticized Mayor Tate, and so he wanted somebody else. As a result of this dispute, they were holding up the money in both the Ford Foundation and the President's committee. Out of the blue, I got a call from Judge Abraham Friedman, who was a federal district judge and chairman of the group, asking me if I would be willing to become the director. And I was a little taken aback and I said, "Judge Friedman, I'm a lawyer, I'm not a social worker. This is not in my field. I don't know how I could help." "Hell," he said, "We can get hundreds of social workers to work for you. We need a generalist who can sit on top of this and administer it, and I know, because of your having been DA, that the Mayor likes you, the health and welfare people like you, you graduated from Temple University, the Temple people like you. You're the only guy that everybody will agree on." And so it was an interesting opportunity to suddenly leave the law practice and go into an effort to do something for the city in a much broader way and with great influence and great power, with a big staff and big offices and everything.

Ms. Hostetler: It wasn't permanent.

Professor Dash: Well, they were going to be doing this for a number of years, and I was to be director. They hadn't started yet because they couldn't get started without a director.

Ms. Hostetler: It was a multi-year grant?

Professor Dash: It was a large initial grant with a commitment to continue it as long as there was progress in doing it. And so I talked it over with Sara. I had already discussed with her my disillusionment with the criminal trial practice, and this seemed to be almost a heaven-sent opportunity to leave that and do something else. My partner, Brem Levy, couldn't understand because frankly I was the one who brought the fees in. I was the guy who got everything, and he worked on it, and this was quite a shock to him that I would be leaving. But, I decided to make a clean break, and I didn't discuss division of assets. I left the law firm. I left all the furniture. I left the library. I just left. Although he resented it for awhile, we still remained good friends. And I then took on what seemed to me to be a great challenge and it turned out to be one of the most frustrating, hair-raising experiences that I've ever had. Because at the time I agreed to be the director, the Board was all white, the officers were all white, I was white, and most of my staff was white. The staff had already been pretty much hired. This was in 1963. Prior to 1963, there was very little black leadership in the so-called civil rights movement. Right at that time it began to explode. Many black church leaders, like Cecil Moore, who was the head of the NAACP in Philadelphia at that time, emerged, and there were the beginnings of the marches in the South. Here we were exposed as an all-white missionary group going to do things for the blacks at a time when the blacks were suddenly rising and saying, "That's our responsibility." And we got hit hard. And I got hit hard. Cecil Moore, who was a criminal defense lawyer and a good friend of mine and head of the NAACP, issued a statement that was widely publicized. He said, "Sam Dash is a good lawyer, a competent lawyer, but he's incompetent in his present job. He wasn't born in the South. He doesn't live in North Philadelphia, and he's not black." And, of course, I'm guilty on all three counts. But there was a

large group of sort of middle-class people, and particularly the Baptist ministers, who wanted to go forward, who befriended me and criticized Cecil Moore for trying to destroy it. Of course, overnight we changed the Board to be almost half black, and my staff to almost half black. We suddenly realized how could we possibly have any credibility without including the community. And, so we started. And I hoped – I guess I was very naive at that time – that we were all in it to do good for the people of North Philadelphia. And I was getting constant reports from the psychology professor, who was now my deputy director, which was proposing all kinds of theoretical programs and conceptual programs. And as I began to question him about it, they were to take place years later and have no impact on the people of North Philadelphia for the foreseeable future. And I would say to him, I said, "I didn't think that's what we were here for."

Ms. Hostetler: He was mainly interested in academic study?

Professor Dash: He was interested in academic research and study, and I said, "I didn't think that's what we're here for. I think the Ford Foundation and the President's committee wanted us to do something pragmatic, to get the people of North Philadelphia involved in their own community. And, yes, if you want to, while we're doing that, do some studies that will advance the community in the future, fine, but you don't have any programs that seem to be working with the people. There are no legal services, no health services, all of the things that I thought we would do." And you know, he thought I was an ignoramus, I didn't understand. We were just almost at a standstill. While I was making speeches in North Philadelphia, working with people, saying we're going do this and that, the staff under my deputy were not even moving in that direction. Well, I came across a memo that I was not supposed to see, which he had developed with one of the Board members and including the chairman, Judge

Friedman, that they saw this entire program and the money coming from Ford as a basis to build a graduate program at Temple University in urban affairs – not to help the people in North Philadelphia – and they would become the heads of this department and Judge Friedman would teach in it. And when I saw that and realized that this was an undercover conspiracy to take the Ford money to do that, I realized then (because these are the kinds of things that I had to live through as district attorney) that if you don't take immediate action on things like this, you're all alone and unsupported. So, I went out to the Ford Foundation, and I met with their leadership and I showed them the memos, and I spelled it all out, and I got their support to fire the deputy director and to stop the conspiracy and to restart the program the way I thought it ought to be done. Well, the president of Temple University called me in and he threatened me. He said, "You know you're taking on a major university and we're going to fight you. We're not going to let you do this." And I said, "Well, I think I ought to tell you that I have already spoken to the Ford Foundation. They're not only supporting me, but they have asked me to tell you that if you interfere in any way, Temple will lose many of its Ford grants." So, he backed away. And, I remembered the judge had once said something (because we had been social friends) when the new president came in. He said, "Sam, you don't kill your opponent. You somehow or other get rid of him." It was very quiet. I was able to do it, but the problem was that it was very frustrating; it stopped all work. We really weren't doing anything, and so there were those who rightly criticized us for doing nothing. It was all political.

Ms. Hostetler: Well, the judge was the person who had asked you to head the program. So did this rupture your relationship with him?

Professor Dash: To some extent because he had to step down. Then a very fine

head of a foundation, the William Penn Foundation of Philadelphia, (they're a Quaker group) became the president. We became very good friends. He was very supportive, and he was my kind of guy, and we were on the same wave length.

Ms. Hostetler: Do you remember his name?

Professor Dash: Bennett, his name was Bennett. But, in any event, from that moment on, even though I was constantly being criticized, I decided that we had to do two things: Number One, you may have heard of Reverend Leon Sullivan and the Sullivan Principles. At the time (I'm now talking about 1963-64), he was a Baptist minister in Philadelphia who was running a program attempting to get the corporations in the Philadelphia area – Bond Bread and other corporations -- to hire black secretaries and other black staff people. He and his fellow Baptist ministers would go to the various corporate heads and say, "We look around and we don't see any black people working for you. By next week we want to see them." And the corporations would tell them to go to hell. And Sullivan would say, "Okay. That's your business, but our business is buying your product. And we will in our pulpits every Sunday now tell our people not to buy Bond bread or not to buy that, until you do." And, apparently they were so successful that there were almost zero sales. Bond Bread was going out of business. They finally came to him, and said, "Okay, give us your black secretaries." Well, he didn't have any because there were none trained. So, he set up a training program called "Opportunities Industrialization," but he had no money, he had no skilled trainers, and when I heard this, and I was just starting out in this program, I thought what a way to have an impact on this community. So, I called him, and he agreed to see me in the basement of his church on Sunday evening. Remember, this is the point now where the black leadership is just coming forward, and so my

visit almost had to be hidden. "Reverend Sullivan," I said, "I'm ready to give you \$400,000 to set up this school. I have a couple of people who are black educators, who are willing now to come and to really give you a good training program." He said, "Mr. Dash, I need this, I want this, but I can't take your money if the credit goes to you or the Ford Foundation. My people need to have the pride of doing this on their own. I'll take your \$400,000, but you cannot take credit, and I will announce that I raised this money among my own people. Now, there will come a time, I promise you, when we will give the Ford Foundation and your organization credit, but if I do that now I destroy my opportunity to be a leader." I recognized that to be true. I really thought he was right at this point. So, imagine having to go back to my Board and the Ford Foundation. The Ford Foundation likes to be able to cut a ribbon every time to get credit for all they're doing, and tell them we're going to give away your money but you'll get no credit for it. Oh, they yelled. But, thank God, Bennett agreed with me, and we all sort of agreed, "Look, if we're going to get off the ground here, we've got to play it their way, and we've got to give them that opportunity to be their own leaders. So, while I'm being cut up in the papers and criticized, I'm giving all this money to Reverend Sullivan, and he's getting all this credit in getting it started, and I can't get any credit from it.

Also, there was a little organization called the North City Congress of Blacks, who were trying to become a political organization, trying to get the City Council to get them things, and they would picket, they would go and try to picket City Hall and all, but they were very ineffective. And so I said to my Board, "Let's give them a few hundred thousand dollars so they can organize, get a staff and really be a black political action committee that can get things going for North Philadelphia." And they really started to work. And then they really started to hammer

City Hall, and the Mayor, who was on our Board, called me. He said, "Is that the group that we're giving money to?" I said, "Yes." He said, "Call it off then." "Call it off?" I asked. "No," I said, "That's why we gave them the money." He said, "Don't they realize I've been good to them, I've been building basketball courts in their neighborhood?" His idea was basketball courts. Actually, two years later, before I left Philadelphia, I got a call from Reverend Sullivan, and he said, "Mr. Dash, we've now accomplished what we wanted so now we can give you the credit that you deserve. We're having a big block party. Would you and your wife come so I can introduce you to my community?" And I remember these thousands of people in the neighborhood, and Reverend Sullivan saying, "This is the man who helped us when we needed it." He did it as a personal thing to me, not to Ford, and not to anybody else. And, then, of course, I watched Sullivan's career afterwards, which made him internationally famous in South Africa and other places.

Ms. Hostetler: He died, didn't he?

Professor Dash: He died very recently. I talked to him on the phone some time about a year ago, just reminiscing and all that.

Ms. Hostetler: Did he ever give public recognition to your organization?

Professor Dash: Never more than that one time. There was recently an hour-long documentary on television about Leon Sullivan, and it had the photographs, it was sort of a biographical documentary, and it showed him as the Baptist minister, it showed him with the corporations at the very time we were helping him. It showed him building his "Opportunity Industrialization," and not once does he make any reference to us or the program, PCCA. Well, it's human. If you do things in your life expecting to get gratitude for it, you'll be very

disappointed mostly.

Ms. Hostetler: So, how long did you stay?

Professor Dash: I stayed from 1963 until 1965, two years. In two years, I believed that we had succeeded through the North City Congress and through Sullivan's program and through Head Start. We started the very first preschool program in Philadelphia, which later became Head Start. But we never got the credit. As a matter of fact, right around that time in 1965 is when the Johnson Poverty War began, and they were looking for local community groups to take on responsibilities under major granting from the federal program. We thought PCCA would do that in Philadelphia. Well Mayor Tate now saw the potential for a lot of money coming from the federal government but that he didn't have control with me there, and Bennett there (remember, we didn't comply with his decision to tell the North City Congress to get off his back). He wanted to get control of this money politically, and so he refused to agree that PCCA (Philadelphia Council for Community Advancement), should become the federal recipient. And, the Ford Foundation was getting very upset about that because the success of the Ford's seed money in getting this going was to have all these groups become the big poverty recipients. And if their Philadelphia project wasn't going to be successful in that, we were failures. And, so, you know, the relationships were strained. I had very good friends up at the Ford Foundation. They were sort of telling me that the leadership of the Ford Foundation was cooling towards our Philadelphia group because we weren't able to control the Mayor. And right about that time, I got a call from Paul Dean, Dean of the law school at Georgetown, saying, "Sam, Ford Foundation wants to give us a million dollars to set up an institute on criminal law and procedure, and we need a director, and it will come with a full professorship. Will you accept

that? The Ford people have recommended you." Well, the history behind that is that before I took on PCCA, I was a consultant to the Ford Foundation. I was sent around the country to law schools because they decided they wanted to give a lot of money to law schools as one of their new projects. And, they used me as the consultant (I was still in practice) to find out what would be the best way to give money to law schools and to what kinds of programs. And when I went around, all the deans would ask for extensions to their buildings, increased salaries, but nobody had any programmatic ideas.

Ms. Hostetler: Georgetown had the Prettyman Fellows program?

Professor Dash: We had the Prettyman Fellows at that time and that was a Ford-supported program.

Ms. Hostetler: The Prettyman program trained graduate lawyers? Gave them graduate degrees?

Professor Dash: Yes. Fellowships.

Professor Dash: So, one of the things I noted when I went around the country in most law schools is that nobody was really challenging the assumptions that the Supreme Court cases were based on in criminal law, on police practices, on procedures, on bail, on all of these things, and there were even some footnotes by some of the justices, Blackmun, for one, who would say such things as, "I wish we had empirical evidence that would help us, guide us, on what the rule of law had been." So, I came back and I said, "You know, law schools are looking inward, they're doing their research in the library, citing cases, nobody's looking outside the window to see how the system really works empirically. Now, it would seem to me that you'd spend your money best by giving it to those law schools willing to set up interdisciplinary

empirical research centers, who'd begin to look and challenge the assumptions that are behind some of the legal decisions." And, they liked that idea. And so they wanted to have one in Washington, and Georgetown agreed to do it, and they both hit on my name. And they said, "Since it was your idea, why don't you go and direct it." And, so, that was my easy escape from what was becoming a very unfortunate situation in Philadelphia where we couldn't get the Mayor to make us the poverty program. And while I was in Philadelphia, I was teaching at Rutgers in the Camden Division. I used to go across the bridge and teach criminal procedure as an adjunct. I loved teaching.

Ms. Hostetler: So you didn't find teaching boring? Private practice was boring?

Professor Dash: No, no. Private practice wasn't boring. It was never boring. I enjoyed it. It was frustrating because the system at that point didn't allow me to be the kind of lawyer I wanted to be as a criminal lawyer, and that was my principal frustration. And I remember going to Sara and saying to Sara, "Look, isn't this great, they want to pay me a salary for my hobby to teach. Our whole lifestyle is going to change. I won't have to be working weekends. I'll be home at five o'clock." Sara says that was the biggest lie I ever told her. It was on that basis she agreed to pick up with the kids, who didn't want to move (they were teenagers and they didn't want to leave their friends), and move to Washington, and she says, "What a misrepresentation." She says, "It's not the job, it's the person. You work just as hard as you ever worked." And, of course, I remember when Paul Dean sent me the bulletin of the Law Center (this was when it was at Sixth and E and all the photographs in it were the Mall, the Capitol, the Lincoln Memorial, there wasn't a single picture of the law school), and I'm thinking what a beautiful setting I'm going to be teaching in. Then I get to Sixth and E and there's this plain red

brick building.

Ms. Hostetler: How many students did Georgetown have in its law school?

Professor Dash: Well, it was still about the same as it has now. It was very large. It was about 1,500 students. It's always been a large school. I don't know if you remember those buildings, but there was the law school building and then next to it were townhouses that had been residential units for students, but they were no longer residential units. They gave me a whole townhouse, three stories, for my institute, and we had offices and a big staff and we started doing empirical research and so many different things.

Ms. Hostetler: So, what was the first project?

Professor Dash: Well, actually the first project was when Bazelon grabbed me.

Ms. Hostetler: Judge Bazelon?

Professor Dash: Judge David Bazelon of the D.C. Circuit. As soon as I come down, I remember, he said to me, "Why do you want to sit in that little law office there?"

Ms. Hostetler: Now, how did he find you, or did you know him already?

Professor Dash: He was working with the Ford Foundation people on some things, and they told him I was coming, and I think they built me up to him. So, here he thought he had another fly for his web. He was a great user of people, and so he called me and he said, "Why do you want to sit in that little office, I got a judicial chamber right next to mine that you can use to start off with." It had a bathroom, it had everything. I had just come in from Philadelphia. I'm going to be teaching. And he puts me there and every once in awhile he's bringing in Justice Brennan to meet me. "God, what a world," I thought, and then he would come in and say, "Sam, I got to make this speech" and he would throw the papers at me. I was caught.

So, that's when he decided he wanted me to be Director of the Judicial Conference for Mental Health Law.

Ms. Hostetler: Talk about that.

Professor Dash: Well, I had just come down and we hadn't yet set up everything with the law school, and Judge Bazelon thought that since I was coming to do empirical research, why shouldn't I now also direct this judicial conference project on laws pertaining to mental disorders. There was Mrs. Gladys Harrison who was leaving as director. I remember agreeing to do that. There were some wonderful people I was working with, like Zona Hostetler and Alice Popkin and others. And the concept was a very forward-looking concept. Of course, everybody who remembers Judge David Bazelon knows that he was a pioneer in the area of mental health, so much so that he actually spent quite a bit of time with the behavioral sciences people and got on their boards, and they considered him a friend of the behavioral sciences. He read everything, but I think there were areas in which Judge Bazelon was naive, too, in which he bought everything that he read in terms of what behavioral science could do.

Ms. Hostetler: Did he try to put that into his opinions?

Professor Dash: Yes. He once wrote an opinion in which he said that no judge should sentence a person in a criminal case until he first determined the cause of that crime, why he committed the crime, and the rehabilitative program that would correct him, and he said in the opinion that behavioral sciences are available to the courts to assist them on both problems. Well, behavioral sciences when they heard about that came to him and they said, "For God sakes, Judge, we can't tell you what the individual cause is in a particular criminal's act, and we can't tell you what the rehabilitative program might be." And he thought they were traitors, that they

betrayed him because that's what they had led him to believe. I remember I visited him in his chambers once and he had just read an article about genes and stuff, and he said, "Sam, do you realize that we have inside our bodies all kinds of things that are pushing us here and pushing us there. How can you have fault?" I said, "Oh my God, Judge, don't go too far with that." I mean there goes the criminal justice system, and, you know, he really began to believe in those things. But the Judicial Conference laws pertaining to mental disorders was something different because he correctly realized that there were great flaws, particularly with the St. Elizabeth mental institution, and how we were treating people. He recognized that the criminal justice system was somewhat antiquated in dealing with mentally ill people at the sentencing stage. And one of our first projects -- we called it the offender rehabilitation project -- involved a demonstration project (using our Ford Foundation money and money that we received from the Justice Department), to demonstrate a lawyer's role in sentencing procedure of a guilty client, either a client who pleaded guilty or was found guilty, which is most of the cases. And we realized when we looked at that sentencing proceeding that the average lawyer has very little training or know-how. What does the lawyer do with that proceeding? Does he ask for mercy? Say he's got a family? That input is one of the most important things for the client that the lawyer can put in. Whereas on the government side, there is always a probation officer's report which informs the judge. I was able to look into this because at the same time that I was beginning to run the Institute of Criminal Procedure, Judge Bazelon had maneuvered me onto the Board of the Public Defender Association which was then called the Voluntary Defenders. At that point he was very disappointed that the leadership of the public defenders was too cozy with the judges. If any of the defenders caused any of the judges problems, they would go and say the defenders were

raising too many motions and things like that. Bazelon's idea was that a public defender ought to give the kind of defense to an individual as a good private lawyer would and raise all the legal issues that he should. He ought to investigate, and so he put me on and he put on a number of others.

Ms. Hostetler: Do you remember who was heading the Voluntary Defenders?

Professor Dash: I think at one point it was a judge. A former judge.

Ms. Hostetler: This was before Gary Bellow came and changed it to the current public defender office?

Professor Dash: Yes. It was around 1968, 1969 that I came on the board. And I became chairman of the Public Defender board. Bazelon maneuvered that pretty much all by himself and we were able to get rid of the old board and then we took a stand. As a board, we took a stand that we were going to give quality service. We were going to limit the number of cases we took. The average defender's office used to have hundreds of case loads. We would take only a few. And I remember if one of our lawyers was in trouble because he was raising an issue, we would go to bat for him. We would go to see the judge. But in any event, since I had such an integral role with the public defender, I was able (it was kind of incest in a sense – with Bazelon and with the law school and with the Institute), to get the Public Defender Service to agree to set up this demonstration program, where we would build in what would be called a rehabilitation project in the defender program in which we would hire social workers and investigators so that in every case prior to the sentencing procedure they would prepare a report. If the defendant didn't have a job, they would get him job. If it was medical treatment he needed, they would get him a doctor. They'd fill in all the holes in this person's life so that when he

appeared before the court, those weaknesses already had crutches to them and a report would have been written which turned out after time better than the probation report. So much so that the probation officer began to ask the defender rehabilitation project "what are you saying so I can include it in my report?" It was a great showing of how a demonstration project can become implemented into a line budget item. As a result of the project's success, when the public defender movement came in, the project's work became part of it, and Congress now appropriates money for this particular work in the defender offices. Philadelphia tried it, too.

Ms. Hostetler: Was it a public defender program when you became chair of the board or was it still voluntary?

Professor Dash: After the Supreme Court ruled in the *Gideon* case, the defender offices came into being. The *Gideon* case was the line between voluntary defender and public defender because the *Gideon* case said every defendant had a constitutional right to counsel. Once it's a constitutional right, it's not a charity matter anymore, it is a taxpayer matter. You have to provide counsel. And the public defender system came in as a result.

Ms. Hostetler: Did you work with Gary Bellow at all?

Professor Dash: Oh, yes. I knew Gary very well. But I was the one who hired Barbara Babcock. She was the first woman defender and I hired her to be the public defender. Norman Lefstein was the Public Defender while I was there and then when he left, I hired Barbara. She's terrific.

Ms. Hostetler: She is now a professor at Stanford Law School?

Professor Dash: Yes. She is now a professor at Stanford. Judge Harold Green was a great supporter of the defender program. We met together often. There was a time when we

were trying to solve the problem that if the Public Defender Service is only going to handle a few cases to give quality service, what about the rest of the cases and how do you appoint lawyers. And there was a so-called "Fifth Street" problem of many lawyers who weren't qualified who would take these cases and dump them. And so we came up with a project in which all the law firms would participate and every private lawyer would take at least one case a year. If you spread the cases around, we thought, they wouldn't come back that often but the law firms bellyached. "We're not competent." Some of them were the best trial lawyers in the city, but they weren't competent to handle a criminal case. We offered the services of the defenders to train them, to give them investigators and all, but they refused.

Ms. Hostetler: Did they go to court over that issue?

Professor Dash: No. Harold Greene backed away. The court backed away from it.

It was a shame because I think that it would have been a good solution.

Ms. Hostetler: My sense is this public defender program in Washington has become the national model.

Professor Dash: It has. Our public defender program received so many awards and it became the model for defenders all over the country. It still is. In fact, there is a waiting list for staff. There usually were three to four hundred or so young people trying to get in who couldn't get jobs there. It was so good. The salaries were good. We set salaries commensurate to the Assistant U.S. attorneys.

Ms. Hostetler: How many of the directors have gone on to teaching?

Professor Dash: Many have gone on to law school teaching. I had founded in 1958 – I think I told you – the National Association of Criminal Defense Lawyers and then became

chairman of the board.

Ms. Hostetler: You founded that Association?

Professor Dash: Yes, I founded the National Association of Criminal Defense Lawyers in 1958, when I was a defense lawyer as a loner, knowing that we were all by ourselves, that it was important that we all get together and re-educate ourselves and we increased the professional standards and the ethics of the defense bar. That association is one of the strongest lawyers associations in the country today. It has its own magazine called *The Champion*. They gave me a year ago the life achievement award. It's remarkable about the Defenders. Now the Justice Department deals with them and negotiates with them on issues involving defense practice and things like that. They have some of the best defense lawyers in the country. I was also at the Institute. I had a big staff of about 30. It was at the law school. When we moved there, I had such a large staff that the First and F Street lobby area of the law school and all the offices there were mine. I had three secretaries and we had a receptionist with the Ford money. And then I raised about \$7 million in other money through the National Institute of Mental Health, projects from the Justice Department, other grants, government grants. We were quite a going organization.

Ms. Hostetler: So this was one of the better funded parts of the law school.

Professor Dash: It was. And for ten years I paid my own salary. I was not a charge on the budget of the law school. But when Dave McCarthy became Dean of the Law School, he said, "That's not fair, Sam. You're a tenured full professor and we're forcing you to use grant money to pay your salary. You are going to be on the faculty budget." For ten years, of course it was essentially what have you done for me lately? The Ford money and the other money ended –

as soon as President Reagan came in, the Reagan Administration ended all governmental interest in this kind of reform grant operation. And so I was without much money. I lost all my secretaries and now I have a pool secretary. You know, I kept reminding them how many millions I had brought in. But of course, that was years ago. In any event, at the time we did some wonderful projects. Wendy Weinberg worked for me. And she did a wonderful project on preliminary hearings on magistrates courts and the way they work in different places. Burt Miller, who's now doing appointed criminal work, was one of my deputies. He did remarkable work for the Labor Department. And I just saw an article that is restating those issues. It was called "The Closed Door." It notes that as soon as a prisoner comes out of prison to so-call rejoin our community, the door closes in front of him on employment and every other opportunity. So we act surprised when he gets back in trouble again. There are no opportunities for him. The whole empirical study that we did shows the need both in prison and out of prison to get these people ready -- and the community ready -- to accept him back into the work force. It was a very good program. So we had a number of these things going. We were continued by Ford another five years after the first grant. We got the first grant for 1965 to 1970. Then we got another grant for another five years. But in that time, I had to leave to do the Watergate investigation. I think it's important to talk briefly about my perception of empirical research and the criminal law and how I saw the goal and the role of the Institute of Criminal Procedure here at Georgetown. I had dissatisfaction when I was directing the poverty program in Philadelphia with pure abstract research that didn't have an impact on the community. I understand that that's important, particularly in scientific areas and in medicine. Some of the greatest advances we've made have come from scientists who are only engaged in pure research and it's only from that

that application comes later. But, I convinced myself that social research and social/legal research is not a science, that we don't work in test tubes, we don't work in laboratories. It's hard to replicate the kinds of things that we do. And I think that the most successful empirical research is demonstration projects which work in the midst of an actual community and first tries to determine how that particular program works today, why it doesn't succeed as it should, and what might help it succeed. And there's lots of that in the criminal justice system, whether we're talking about the Public Defender Service and the role of the defense lawyer, or we're talking about the court procedures, or we're talking about criminal procedures generally. A law school, with a good staff, and an interdisciplinary staff doing empirical research, can work in the milieu of that community and come up with demonstration programs and evaluate them to see whether or not they did create change. For instance, one of the first projects we got into after the *Miranda* decision came out -- the *Miranda* decision by Chief Justice Warren was quite a breakthrough. It was a recognition that actually the Fifth Amendment (which in the past only dealt with that kind of compulsion that can lead to legal sanctions, such as failure to testify at a grand jury), might apply even in a police station, where there aren't sanctions. I mean, if a police officer asks a question and a person doesn't answer the question, there isn't a legal sanction. But, nevertheless, Warren came to the conclusion that because of the nature of custodial interrogation, and its inherent coercion, that he would borrow from the concepts of the Fifth Amendment and require the warnings to alert a poor person who doesn't have a lawyer of his right to keep silent, of his right to a lawyer and if he can't afford a lawyer, the right to have one appointed. I think he really believed that that was what is needed to make the indigent defendant equal to a Jimmy Hoffa. Jimmy Hoffa knows how to call the lawyer. So you let him know how to pull the switch. And

there was little naivete there, but we didn't know. And so the first thing we did at the Institute of Criminal Law and Procedure when the decision came down is we created a Miranda project. You may remember that when *Miranda* came down, the system wasn't ready for it because, in D.C. especially, lawyers wouldn't be appointed to represent indigents except at trial. There was no system of appointing lawyers -- it was always when somebody was charged and indicted that a lawyer got into the picture. And so there was no way to implement *Miranda* at the police station when a person was arrested. So, we worked with the bar and the junior bar in the District of Columbia agreed to volunteer on a 24-hour basis to have a young lawyer on duty for so many hours for a call so that if a person was arrested in the District of Columbia and taken down to a police station in District of Columbia, and they gave him *Miranda* warnings and he said, "I want a lawyer and I can't afford a lawyer," they had a number to call which was the junior bar office and the lawyer on duty would be sent down. We looked into that by having a staff member of my institute get the call at the same time and go down and observe the function of the lawyer when he came, but we also decided to check -- because we found out that very few lawyers were being called.

Ms. Hostetler: Who made the call? Who was to make the calls?

Professor Dash: The police department. They agreed to work with us on this project. And so, not too many defendants who were being arrested were calling for lawyers. So somehow that switch wasn't working. So we did an interview, an in-depth interview of all the defendants who had gone through the system and had been given the warnings. I said, "why didn't you ask for a lawyer." They would say, "Why do I need a lawyer?" The defender would say he had a right to counsel. They would say they didn't need a counselor or a marriage

counselor or anything like that. So the language was a gap. And then the defendant might say, "Even if I understood it was a lawyer, the only lawyers I've ever known in my life have either evicted me, prosecuted me, or hurt me. I didn't see that as giving me any friends at all. In fact my street sense told me that the guy I had to deal with was the policeman in front of me and if I agreed with him on everything and gave him what he wanted, life would be easier for me. Not go get somebody to fight." The mentality of the indigent, oppressed, accused was not taken into consideration in the *Miranda* opinion because there hadn't been imposed an educational system of what it means to have a lawyer. (laughter) We found that only seven percent asked for a lawyer. A great number never asked for lawyers. Yale found that out, too. He wrote it up, too. It was quite an article in the Michigan Law Review and Yale did another similar study and came down with the same conclusions. This was part of what I saw or dealt with -- to come to a decision and then try to deal with its assumptions and then show how did things work really. And over time, and even until this day, it never really works well. In fact, I remember when I was chairman fairly recently of the ABA Special Committee on Criminal Justice (and Janet Reno was on my committee), we went around asking what's wrong with the criminal justice system? Is it the *Miranda* decision? And most prosecutors would say, "Oh, no, no. Don't take *Miranda* away from us. We get more confessions after *Miranda* than before." Because what happens is, they use the "good boy, bad boy" ploy and the average defendant who is having a cop now telling him his rights and all these other things and things, thinks, "Oh, he's a nice guy. I'd like to talk to him." And the FBI knew that all along, even Justice Warren mentioned that the FBI used to do this. They always gave warnings like *Miranda* and got on the right side of the person. It's these kinds of studies that attempt to look at the real life criminal cases and how they operate. It's

missed today because when our money was used up, after the Reagan Administration, there were no more federal grants in this area, and the Ford Foundation soured on it too because their whole idea was that they would give all these millions as seed money, which would then get the federal government to move in. Then when the federal government refused to go in, Ford withdrew and moved into other areas like education and has done very little in the criminal justice system since that period. And it's missed because the Institute of Criminal Law at Georgetown is a name only. I do have a deputy who is a sociologist over at the college and he does a lot of studies, but it's not organized and one of the things I think that is still very important in law schools today is an interdisciplinary empirical institute that begins to challenge the assumptions of a lot of decisions.

Ms. Hostetler: How many law schools other than Georgetown are engaged in this kind of study?

Professor Dash: Chicago had one. Harvard developed one under --

Ms. Hostetler: Dean Bellow?

Professor Dash: No, the guy who chaired --

Ms. Hostetler: Thornburgh?

Professor Dash: Thornburgh. Thornburgh chaired their institute.

Ms. Hostetler: It's still going?

Professor Dash: I think it's still going. Of course they have their individual endowment money and things like that. But, in any event, most law schools don't have anything like it. And what I found, and this is unfortunate, is that even when I had a lot of money, and I could have a big staff, I would try to invite my colleagues on the faculty to do some work with

us. First, they'd earn some extra money and, two, they would get involved for their teaching in the area of empirical study. And I found that most law professors -- most lawyers in fact -- aren't trained for this. And it's not the kind of thing they are attracted to, and so they didn't want to do it.

Ms. Hostetler: So how much goes on today?

Professor Dash: Very little.

Ms. Hostetler: At Georgetown?

Professor Dash: Very little. Almost none at all at Georgetown, except for what my deputy does over at the main school and he does it more on smuggling, immigration and things of that nature. That's the new area in criminal law he's been doing empirical studies in.

Ms. Hostetler: So there's only one staff person now?

Professor Dash: One staff person and he gets his own grants. He has to get it through the institute and I approve it and the school approves but he works on his own.

Ms. Hostetler: Harvard's is larger?

Professor Dash: Harvard's is larger.

Ms. Hostetler: Better endowed?

Professor Dash: Better endowed, yes. And I don't know if Chicago still has its institute. It did at one point. New York didn't have it at the law school. It had the Vera Institute which was funded by the Ford Foundation. And they did a lot of very practical things.

Ms. Hostetler: Bail work.

Professor Dash: Bail work, yes, but a lot of other things too. They became a major city organization. Well funded. Herb Sturz was the director of that. But there is very little going

on today because it declined without the backing of Ford and financing. My concentration in teaching has been in the criminal justice field and in the ethics field. And the ethics came very natural to me because of my experience in Philadelphia and the fact that when I organized the National Association of Criminal Defense Lawyers, I organized it not as a union, but as an effort to raise the standards of the trial lawyer in criminal cases to the highest standard it could be. I believed that we ought to be very conscious of the ethical standards and what our role is. And rules of ethics became important to me. Not rules as such, but to define who are we. And to define the role of the lawyer for the client from the point of loyalty but also honesty. And from the point of view, "Yes, I will give you the best benefits of my legal research and facts but I will not do anything for you that's outside the law."

Ms. Hostetler: Did you found the National Association of Criminal Defense Lawyers as a national organization from the start?

Professor Dash: National. Yes. There was a short course on criminal defense work given by The University of Chicago Law School. Fred Imbau gave it. He gave it to sell the magazine.

Ms. Hostetler: How did Imbau spell his name?

Professor Dash: I-M-B-A-U. He had a criminal law journal and he invited district attorneys to come to a short course on prosecuting and then he invited defense lawyers to come to a short course on defense. This is in the 1950s. And then he decided he would get them organized and he'd sell his book through them. It was in one of those meetings that I suggested to him, why don't we use the group that came (they came from all over the country) to come up with the idea of a national association. We then called it -- to show you the difference and the

sensitivity of the time -- the National Association of Lawyers in Criminal Cases. Because the phrase "criminal defense lawyers" had an adjective, we thought that tainted the lawyer. But today it's the National Association of Criminal Defense Lawyers. You see, times moved so that we are now proud of it. But at that time, everybody was so sensitive to it that the name itself showed the sensitivity. And we had about 100 people from all over the country join. I became the vice chairman because I was young then. In 1958 I was still very young and we turned to a man named Charlie Bellows, a white-haired Chicago lawyer who was a very experienced lawyer. He became the president. I was the vice president. The next year I became the president. I invited Edward Bennett Williams to join us. In the initial phase, I wanted to get all the leading trial lawyers like Harris Steinberg from New York.

Ms. Hostetler: Did they join?

Professor Dash: They all joined. Edward Bennett Williams was a prima donna and didn't stay long. (laughter) He came. But I wanted to give the association some prominence. We would have at our conventions, our annual meetings, someone like Justice Brennan. And Brennan would give us one of these rip-roaring speeches of how important you are. "You are the champions of the individual," and all that. Get the morale built up and all that. I remember a wonderful story, though, that on our meeting when Brennan spoke, Sara is very allergic to smoke, cigar smoke and cigarette smoke, and because I'm up on the platform as the president, Sara is sitting in the front row and the room is kind of dense with smoke. Everybody was smoking in those times. And Brennan gets up to speak. And just as soon as Brennan gets up to speak, I see Sara get up in front of him and walk out of the room. She just about made it. She fainted when she got out. So the next time she saw Justice Brennan, she started to introduce

herself. He said, " I know who you are. You're the lady who can't stand to hear me speak."

(laughter)

Ms. Hostetler: He knew the real story?

Professor Dash: Of course he knew the real story. (laughter) But in any event, we had Justice Burger also.

Ms. Hostetler: Did you have Judge Bazelon?

Professor Dash: Bazelon came. Our meetings at that time were educational. They are all changed now. Now they're all business meetings on issues like, let's take on the Congress, but at that time they were educational meetings. We'd have seminars about who we were and what ethics we ought to espouse. They were really remarkable meetings and we grew and grew and grew. And it became quite an organization.

Ms. Hostetler: Now when you came to Washington you were brought here to start the Institute. Did you start teaching right away?

Professor Dash: No. The first year I didn't teach because they knew I had to organize the Institute and I was working with the judicial conference. But the second year I began and I started to teach criminal law and criminal procedure. At that time criminal law was a required course in the first semester and criminal procedure was in the second semester of the first year. And I taught legal ethics.

Ms. Hostetler: So you taught ethics right from the beginning?

Professor Dash: Right from the beginning I was teaching that course.

Ms. Hostetler: Because law schools generally did not teach legal ethics very much.

Professor Dash: No, but Georgetown, because of its Jesuit background, always wanted to have something like that. But it was only a one-hour course.

Ms. Hostetler: Was it required?

Professor Dash: No. It was not required then. The only time legal ethics became required is after Watergate, when I demonstrated in the Watergate hearings the unethical conduct of so many lawyers. John Dean was my principal witness. One of his exhibits was a yellow lawyer's pad on which he had the names of all the people who worked in the White House who were involved in the Watergate conspiracy and the asterisks by the names of some of the numbers. I knew what the answer would be, but I asked him the question, "What do the asterisks stand for?" He said, "The asterisks are before everyone who is a lawyer and who was violating the law." Then the bar associations of all the different jurisdictions wanted to have the transcripts and they disbarred all the lawyers. And as a result of that, the ABA insisted that ethics should be a required course in law schools. It is again a very simplistic approach. It's the law school's premise that if we teach ethics, we're going to have ethical lawyers. I insisted that it go up from one hour to two hours and now I teach a three-hour course in ethics.

Ms. Hostetler: Had there been any course in ethics before you came to Georgetown?

Professor Dash: I think so. But I think it was taught more as jurisprudence or as a general course in the law. In a sense, I played an inventing role in the concept of the criminal defense ethical area. I was one of the first, I think, to go around the country because of my role as president of the National Association of Criminal Defense Lawyers to talk about the ethics of the criminal defense lawyer and the role of the criminal defense lawyer.

Ms. Hostetler: This was even before you came to Washington?

Professor Dash: Before I came to Washington. Because I was doing that so often, the JAGs of the Army, the Navy, the Air Force and the Marine Corps invited me to give lectures to their lawyers in JAG on the ethics of criminal and prosecution work. And so I was constantly giving those lectures. In 1969 when the ABA was going to move away from the old canons of ethics that were written in 1903 and come up with a new code of professional responsibility, they appointed a special advisory committee and reporters. At the same time they decided that there had been no standards in the criminal justice system for the prosecutor and defense lawyer that defined the role of both and what their ethical standards should be. So, they separated the project. The Code of Professional Responsibility would deal with the role of the civil lawyer, and the ABA standards on prosecution and defense would deal with the role of the criminal lawyer. Judge Burger of the D.C. Circuit was appointed chairman of the advisory group for the criminal justice standards, and the Ford Foundation introduced me to him as somebody who could advise him on that. Of course, Judge Burger had never handled criminal cases.

Ms. Hostetler: You didn't know him before?

Professor Dash: I didn't know him before. He was in the Lands Division in Justice; he always thought criminal defense lawyers had horns.

Ms. Hostetler: Was he on the court at that time?

Professor Dash: He was on the Court of Appeals, not the Supreme Court. He was the enemy of Bazelon. I was a consultant to Bazelon. Now I was also a consultant to Burger. And each would say, "How can you stand the bastard?"

Ms. Hostetler: That was an interesting choice the ABA made then to choose

Warren Burger, wasn't it? I mean he certainly issued opinions in criminal cases.

Professor Dash: Of course. I don't know why he was chosen, but he came to me and said that he was asking around about who could instruct him, and he said the Ford Foundation suggested me. And he and I went to Warrenton, Virginia, on a weekend. We stayed the weekend and, he with a pad and pencil and I lecturing, I gave him an entire course over two days about the defense lawyer and all the steps, you know, from the time a client comes into the office to all the things that defense lawyers do all the way up to an appeal, and the role of the prosecutor from the time of the charge and investigation, and the indictment, all the way up and the issues of ethics and standards that were raised. And he took copious notes. Those notes became the ABA Standards on defense function and prosecution function that have been adopted everywhere, because I became a special consultant and they became the outline. We had a great committee. We had Hogan who was District Attorney of New York. We had a number of good defense lawyers, and federal judges – Walter Rogosheske who was on the Supreme Court of Minnesota. In any event, we not only drafted the rules, but then I arranged for Burger and the committee to have various defense lawyers. The idea was that we would have Edward Bennett Williams or we would have somebody from California and he'd come in and we would talk about the particular problem we were then working on, a draft rule, and we would ask him, "in your experience in the cases you handle, how do you handle this, how do you think it should be handled." And, we got the most candid statements from these lawyers. Good strong defense lawyers really came because they were so impressed that they were being asked. Edward Bennett Williams said the moment somebody comes into my office I say to them, "If you want a defense lawyer, you get a defense lawyer that's going to stick to the law and the rules. I'll give you my

best, but I'm not going to lie for you, I'm not going to let you commit any crimes, and the moment you want me to do something that I don't think is right, out the door you go. I'm in control. He's in control of many decisions, but I'm in control of the standards." He so impressed Burger.

Burger got such an education. In fact he wrote an introduction to the standards.

Ms. Hostetler: Wasn't it Edward Bennett Williams that said...

Professor Dash: "Make sure it's your client who goes to jail and not you." Okay, I think he said that then, too. But, in any event, the introduction to the standards starts, "The criminal justice system requires the participation of three equal participants, the judge, the prosecutor and the defense lawyer." It was the very first time in the history of the law that any set of standards ever said the defense lawyer is equal to the prosecutor and the judge. And it says, "It is like a three-legged stool -- the weakness of any one will topple the system." I remember taking that statement to Judge Bazelon. And I said, "Who do think wrote it?" He said, "Oh, Brennan." I said, "Burger." He said, "Bullshit. He wouldn't know how to say that." I really had an impact. Burger was beginning to suddenly learn, and I have a photograph when he went on the Court in which he signs it "to Sam Dash, remembering the time we worked in the vineyards together." He considered working on that project the proudest thing he's ever done. And it's a very good set of standards.

Ms. Hostetler: Interesting because my recollection is that he did have a very strong mind set about criminal law.

Professor Dash: They speak of Burger, BD and AD, before Dash and after Dash. When he went to the Court of Appeals, Burger interacted with people who were around him and I was able to influence him during that period. When he went to the Supreme Court, and I had

nothing to do with him, he went back to a lot of his conservative feelings about the exclusionary rule, about defense lawyers, and things of that nature.

Ms. Hostetler: Why do you think that was?

Professor Dash: Because he was surrounded now by people who were influencing him the other way. So I played this very remarkable role of being a very close consultant to both Bazelon and to Burger, and each not understanding how I could stand the other. When Nixon nominated Burger as Chief Justice, Burger came to me and he said, "Sam, I'm terribly afraid that what's going to happen to me is what happened to Carswell. Remember Carswell's circuit adopted a resolution condemning his nomination. Bazelon was chief judge and Burger's enemy, and Burger said, "I think Bazelon is going to try to undercut my nomination and get the Court to adopt a similar resolution." I said I don't think Bazelon will, that's not Bazelon's character, but I'll talk to him. He said, "Would you?" So, I went to Bazelon and Bazelon said, "That bastard, he doesn't belong on the Court." But, he says, "I wouldn't do anything like that." I said, "Well, then, why don't you do the opposite? Why don't you get a resolution of the court commending the nomination for your colleague?" "Well," he says, "I'd be the wrong person to do that. Go to Judge Leventhal." So I went to Harold Leventhal, who was sort of a swing person. And Leventhal introduced it and got a unanimous resolution commending the nomination of Burger. They gave it to me and I took it to Eastland who was Chairman of the Judiciary Committee, and he read it out at the time of the first hearing, and Burger sailed through.

Ms. Hostetler: So, Bazelon didn't oppose Burger's nomination?

Professor Dash: No, he just grumbled privately. That's a little known history of Burger, and his fear that Bazelon was going to destroy his appointment.

Ms. Hostetler: Did you see Burger much after he got on the Supreme Court?

Professor Dash: Not much. Not much afterwards. He cooled. I'd see him from time to time, but not much. We did not have the same relationship afterwards. I was quite critical of him, you know, in my teaching. I use a lot of my experience in my teaching. For instance, when we are studying undercover activities and recordings and we get to the Hoffa case, the Hoffa case lesson is all built around this hotel situation where Hoffa's giving instructions and Parton, the undercover agent, is listening in. So I tell that story I just told you of my experience with Ray Cohen in the hotel suite, because it fleshes out the case, and many of my students in their evaluations say they enjoyed the course so much because my experiences help them understand the law much better. But there are a number of decisions of Burger's where I disagree, and I'm very strong in my disagreement in my class, and this got back to him.

Ms. Hostetler: And, maybe you published articles?

Professor Dash: I never published an article where I directly criticized him, but I did do it orally. Towards the end we were friendly again.

Ms. Hostetler: How do you think he performed as a justice?

Professor Dash: As an administrator he was, I guess, okay. He had this sense of history so he pushed the concept of the history of the court. I think as justice he was a lightweight in many ways, and I think that he was one of the leaders of the group that began to undo an awful lot of the Warren reform of the Bill of Rights, particularly the Fourth Amendment. I was disappointed, very disappointed.

Ms. Hostetler: So, you were critical of those decisions in your teaching.

Professor Dash: Yes, I'd tell my class in the beginning that I've been part of the

criminal justice system too long and I've played too many roles to come before them and teach in sort of an objective, hide the ball, kind of way. I said to the students to me this is a matter of passion. The law is more than just law as such, and I'm going to let you know my feelings. I said that doesn't mean I'm right. Frankly, from the point of view of the Supreme Court I'm wrong, and more of them disagree with me than agree. So, you know, if you disagree with me, what a wonderful class this is going to be. Let's have a discussion. Of course, I'm told that telling a first-year student he can disagree with his professor isn't much of an invitation. But, in any event, I try to give both sides, but I do emphasize my own feelings pretty much in class, and if I think a case is fraudulent or, you know, runs against really good precedent, I talk about it. But, in any event, because of my role in the bar, as president of the National Association of Criminal Defense Lawyers, and chairman of the Criminal Justice Section of the ABA, my role in the Public Defender Service, my role in empirical research and my role as a teacher, all these things combined in the field that I teach which deals with ethics and criminal justice. I was able to bring my experiences into my classes and attempt to, at least I hoped to, inspire my students that this was a very important subject matter in the law, even though most of them would not do criminal work. I would tell my students, first of all, criminal defense doesn't pay very well unless you get into a big law firm and you get these big white-collar crime cases, and you're not going to always get those. The average criminal case doesn't pay at all. And you could work in a public defender's office, but it's not a big salary either. I said, but as lawyers, as judges, and as some of you will become, as legislators, as political people that some of you may become, or as ordinary citizens, the issues of criminal law are front-page material. They will be discussed, the question of whether or not the police illegally arrested somebody, the question of whether the court was

too soft on crime, and your neighbors are going to ask you because you're a lawyer, and I want you to be able to reply not as a layperson but as a good, informed lawyer. That's why I think you ought to know this subject matter, because it goes to the heart of our democratic system of justice.

Ms. Hostetler: One last question. Do you find that your students are as receptive to that speech as they used to be? Are they interested in public issues and public policy?

Professor Dash: Very much so. I find that's been so across the board over the years that I've taught, but it's even more so now. Somehow or other, my students now are much more sensitive to those issues and are much more interested in the broader areas of what lawyers can do. I have a feeling that when they go out and they have to make a living and all the other things that blunt that sensitivity, that that's going to be pretty frustrating to them. But I think in law school, and particularly in my classes, I get the feeling from them that that's what they like and want to talk about. There are a few (and there's always been a constant few) who believe that the needs of society and the danger of crime is such that a lot of what I'm talking about is frill, that we live in an imperfect society, and there's no room for the Bill of Rights. There are a number of those student, but I don't think a great number. I think the greater number are very sensitive to individual rights issues, and what I try to do is get them to want to work on those issues even if they can't do it as a lawyer representing their client.

Ms. Hostetler: Do you find an increasing number of students interested in criminal justice?

Professor Dash: Yes, I do. Today I find so many of my students tell me that they never thought they would want to, but as a result of taking my courses, now they do want to. I

have introduced them to DA's offices that they can start out in or public defender's offices or other similar offices.

Ms. Hostetler: I don't know how it is around the country, but I have heard that it's very, very difficult to be hired in the criminal justice section of the U.S. Attorney's Office here.

Professor Dash: Can't do it out of law school. You have to get a year's experience somewhere, and so I tell them to get a good year's experience in a local DA's office or even in a good defender's office like D.C. (but it's hard to get into that), or a judicial clerkship.

Ms. Hostetler: Is that just unique to Washington?

Professor Dash: No, it's harder in Washington, DC, but it's true across the country. The U.S. Attorney's Office is prime prosecution.

Ms. Hostetler: So, it's quite a change from when you graduated from law school?

Professor Dash: Oh, yes.

**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.

**ORAL HISTORY OF
SAMUEL DASH**
Fifth Interview - June 11, 2003

This is the fifth and final session of the interview with Professor Samuel Dash for the Historical Society of the D.C. Circuit's Oral History Project.

Ms. Hostetler: Professor Dash, in our previous interviews, we have been talking about your life as a prominent lawyer, law teacher and public servant, but we have failed thus far to discuss your very worthy, very interesting pro bono efforts in the field of international human rights. This session is for the purpose of filling in that very important gap. Let me start by asking where and how you first became involved in the International League for Human Rights.

Professor Dash: It was in February of 1972. The event that occurred was that, on January 30 in 1972, there was a civil rights march in the bogside of Northern Ireland. There were thousands of Catholic families – it was a Sunday. It was a beautiful day, and thousands of Catholic families, and women who carried their babies, marched in protest against the British seizing so many Catholic men and holding them incommunicado under special Irish statutes. The Army and the police were usually brought in on such demonstrations to put a ring around the bogside and to see to it that there was no violence. It was reported to me later that the officials who were running the march communicated with the local police and let them know that this was going to be a peaceful march; that these were women and children marching and that there were to be no acts of violence. But what they couldn't guarantee was that there would be no gangs. There is always a group of kids – "hooligans" they call them – who throw stones at soldiers. But the soldiers were heavily armed with shields and everything. At that time, the British Army decided to teach a lesson to the Catholics on the Bogside and they brought in a special group of soldiers

called a "One Paratroop Unit." They are like our Green Berets in America. They are trained to fight in the jungle against a dangerous enemy, quick on the trigger. It was absolutely the worst possible group of people to bring in to a civilian march. Well, they were at the ring around the bogside and apparently some young hooligans were throwing stones and someone gave an order that they should invade into the bogside. The British paratroopers then jumped out of trucks, and with high velocity rifles, started shooting, and they killed 13 young men and wounded 13 young men. It was a great tragedy. It was called "Bloody Sunday." The British government appointed the Lord Chief Justice Widgery to conduct a tribunal of inquiry. The families of the dead and wounded got in touch with the International League for Human Rights. They said they didn't trust an English tribunal inquiry, and they wanted to have an international hearing. They asked the International League for Human Rights to assist them. The president of the League, John Carey, called me. When I had been District Attorney for Philadelphia, he had been one of my assistants, and he was now a lawyer in New York. Carey said, "I'd like you to fly with me to Northern Ireland to be with the families. We have to let them know that so long as the English are willing to set up a tribunal, they have to exhaust their local options first before they can go into an international body, and I'd like us to go over and talk to them and give an assessment of how Lord Widgery is going to conduct that inquiry." So, I flew with him to Northern Ireland. We met with the families and their lawyers. They were adamant. What had happened was that Lord Widgery was not going to hold his inquiry in Londonderry where the Catholics were, but he had instead chosen a small Protestant town about 30 miles away called Coleraine. The families said that they are not going to go to this town. They were not going to be touched by British hands; they were going to be searched; and they didn't trust the inquiry. So I said to them, "Look, I know Lord Widgery. I was

Chairman of the Criminal Law Section of the American Bar Association, and we put on a program in London, and I worked with him." The next day was to be the opening of the inquiry. I said, "Let me go and meet with him and see what the ground rules are, and let me make a judgment as to whether or not I think you should proceed." So I went to Coleraine, and Lord Widgery met with me and said, that it was good to see the both of us in Northern Ireland and that he urged us to ask the families to participate because he was going to have an open hearing. He said, "The press of the world will be here. I will allow their counsel to cross-examine Army witnesses. We are going to follow rules of evidence. If they don't come, I'm going to hear only one side of the case, and the one side will be the military saying that these were terrorists throwing nail bombs and shooting rifles at the soldiers and they shot back in self defense." So, after that discussion, I decided that it really was in their best interests to attend the inquiry. We had to build a record. So I went back and we spent almost four hours talking and debating until 2:00 in the morning. These were wonderful people by the way, dignified people, people who certainly were not part of the IRA or any terrorist unit. I finally persuaded them that since they were going to have an opportunity to cross-examine the witnesses and put their own witnesses on, and the press would be there since it was to be an open hearing, they shouldn't allow only one side to be heard by the inquiry. I argued that their side ought to be represented so that we could build a record. I argued that if Widgery disagrees with their side, at least we would have a record we could build on; otherwise we wouldn't have anything. So they finally voted to go and to go in with their lawyers. I left Northern Ireland with a request for a copy of every transcript and all the evidence. So all through the inquiry and the hearing, I was getting the transcripts of the testimony and I was getting all the witnesses' testimony. Then Lord Widgery came down with his report fairly quickly. He

sort of white-washed the soldiers. He had to admit candidly from the evidence that finally came out under cross-examination by the families' counsel that there were no nail bombs thrown on that day, that no one who was killed or wounded carried a weapon, and that there had been no shooting from the kids; that all the shooting had come from the paratroopers. Nevertheless, he said, they had been throwing bricks and a paratrooper could have reasonably believed that a brick was a nail bomb. Well, that was inconsistent with the evidence because the soldiers said that a nail bomb was about the size of a baseball, that it has shrapnel and powder inside, and it has a wick. And they testified that they saw the young boy light the wicks and they smoked. And I realized that bricks don't have wicks or smoke. So, the basis on which he cleared the soldiers was absolutely against the evidence. Then I was asked by the families and their counsel and by a civil rights group in England that is similar to the National Council for Civil Liberties Union in England, to write my own report. I wrote it, and it was published by the International League. "Justice Denied; A Challenge To Lord Widgery's Report on Bloody Sunday," and that created a furor when it was submitted to Parliament. The Parliament, on the basis of it, voted compensation to the dead and wounded, but the British government wouldn't change anything. And over all these years from 1972 to about 1998, it has been seething. By the way, more recruits went to IRA as a result of this than ever before because of the bitterness of the families in the Bogside. As you know, around that time in the 90s, there was an effort to engage in a peace process in Northern Ireland. And our own Senator Mitchell went over there and was negotiating, and what they found is they couldn't really get very far unless England did something about Bloody Sunday. It was still out there. So, the Irish Prime Minister, Gerald Ahern, created a White Paper which incorporated my report and sent it to Tony Blair, then and now Prime Minister of England. On the basis of the

White Paper, in 1998, Tony Blair ordered a reopening of the matter. He appointed three new commissioners, three judges instead of one, and they have been sitting since 1998. They correctly went first to Londonderry to hold the hearings there, but now the British soldiers claimed that they might be killed in Londonderry. So the testimony is being taken in London and all the families and lawyers are there. One of the first documents introduced by the advocate for the inquiry was my report. The testimony so far has backed it up. As a matter of fact, in my report I showed that many of these kids were shot in the back so they had to be running away. One was shot in such a way that the bullet entered the rear butt of the kid, traveled up and exited his shoulder which meant he was crawling away, and was shot. The forensic evidence has come out now that backs that up. The case goes on because, in my opinion, if the present tribunal – it's called the Saville tribunal – went by the evidence, they would find that the soldiers committed cold-blooded murder as I reported, but because the peace process isn't settled in this whole fight about the IRA not giving up its weapons and all that, politically it's almost impossible for them to come to that decision. So they are just treading water. In any event, it is ongoing. As a result of this case, I was put on the board of the International League of Human Rights and did a number of things for them. In 1980, I was sent to Chile, or actually, before 1980.

Ms. Hostetler: Chile was during the Pinochet regime?

Professor Dash: It was during the Augusto Pinochet regime and eight human rights workers had been arrested. Chilean laws were very tight then, and it was a very serious violation of law for two or more people to get together because they were worried about conspiracies. And these human rights people were meeting together and planning dissent. They were arrested and charged with violating the law. The judgment was to exile them from Chile. The human rights

people in Chile called the International League, so I was sent down together with another person from Amnesty International America and he spoke Spanish and I didn't, so we went down together. There had been an appeal to the Supreme Court of Chile.

During that time, I was meeting with officials and others, and I was making a statement that from what I saw of the history and record, that this would be a violation of human rights. The U.S. Congress has this watch over Chile, and they had to clear the State Department in order to get appropriations from Congress. So I said to these Chilean officials and others that if they went forward and their Supreme Court really did affirm the exile, when I returned to the United States, I would have to report that to our Congress and that they might want to stop appropriations to Chile based on its human rights violations. I think my message was getting clear.

Ms. Hostetler: Were you bluffing or did you really think you could get Congress to stop appropriations?

Professor Dash: No, no. I in fact thought that exiling these people just for expressing human rights positions and not engaging in any violence or acts against the country, was a violation of human rights, but I would not necessarily be able to tell Congress. Congress didn't even know I was there. How would I get to Congress to tell them this? But they didn't know that, and I was invited to attend the Court, and the Justices asked me to sit up front with them. They were very congenial and they knew I was there and that I was watching. They came down with a decision reversing the finding below and allowing the human rights people to stay in the country.

Also in 1972, the same year that I went to Northern Ireland, I went to the Soviet Union. This is not well known, but I can tell it now, how I got to the Soviet Union. I was teaching at the

University of Puerto Rico Law School in the summer of 1972, and also consulting with the Attorney General of Puerto Rico, when an emissary from Israel came to Puerto Rico to meet with me.

Ms. Hostetler: What kind of an emissary?

Professor Dash: He represented the government. I don't know whether he was Intelligence or what he was, but he was fairly high up and came under the authority of the Israeli government. He told me that things were going very badly for the Jews in the Soviet Union and that a lot of people were being denied visas to go to Israel or anywhere else, and they were called the Refusniks. There were two important goals that Israel had. One was to have communication to the Refusniks by somebody of prominence from America that knows their plight and is working for them, a morale support-type thing that told them that they are not alone. The second goal was to put pressure on the Soviet government, their Justice Department and others, to have fair trials and to be fair to the people that they were charging. There were a couple of human rights people under arrest by the Soviet government who were disciples of Sakharov.

So, an emissary from the State of Israel was asking me to do an errand on behalf of Israel and the Refusniks. So Sara and I accepted. His message sort of was (because he knew about my trip to Northern Ireland), if you can do it for the Catholics in the Bogside, you can do it for your own people. (laughter) Sara speaks Yiddish. Most of the Jews in the Soviet Union speak German. So she and I went over as tourists. But just before going over, the International League did some propaganda work. They knew Sakharov was wiretapped at all times. So the staff of the International League from New York telephoned Sakharov a number of times saying that a very prominent jurist and lawyer, Sam Dash, is coming over to look into the problems of the Jews.

They really padded it on so that the Soviets would hear. They were really talking to the Soviets, building me up to be much more important than I was. I mean, I was not a representative of anything. (laughter) Anyway, we went over as tourists, and we were in the hands of Intourist, and our strategy was to use Intourist agents to translate our talks with various people. I was going to speak to the attorneys, the Attorney General of the Soviet Union, and even to the Jews. And I had all kinds of appointments set up with the president of the Bar Association in Moscow. At first, there were very lovely young women Intourist agents who went with me, but then when it became clear what I was doing, all of a sudden a disease affected all of them. They all got sick and didn't show up. For instance, I know I had a meeting with the president of the Bar Association of Moscow. The Intourist agent doesn't show. She's ill. So, we go ahead and there we were, he speaks Russian, I speak English; he offers me wine and gives me a little medal from the Bar Association. We smile and that's it. (laughter) We had no communication whatsoever. Also, we knew that in order to meet Refusniks or young Jews on Saturday, you go to the Synagogue. But the young Jews were outside. They were not allowed in. Only the old Jews were allowed in.

Ms. Hostetler: By the KGB?

Professor Dash: KGB. KGB was all over. And the theory was that the young Jews weren't religious. They didn't usually ask to go to Synagogue. The old Jews could go because they believed in it. So, all these young Jews were sitting outside and we could meet with them and talk to them. But we were being followed at all times. At one point, Sara tested it. It was a very interesting episode. We had asked for deluxe accommodations, everything was supposed to be the highest quality living conditions, but they first gave us, in the Intourist hotel, a very small closet-like room. It was a hot summer, and there was no air conditioning. You could hardly turn

around in the room. So we made a complaint, and we said look, here's our coupon and it says we get a deluxe room. So they said we'll change your room. It took a long time because that meant they also had to change the wiretaps. So they gave us a suite, and Sara, testing it, said to me in a loud voice, "you know, everyone has been so nice to us, and it's so good that they gave us this suite, but you know, if we only could have an extra chair in the room that would be nice." We came back from our trip out, and there was an extra chair in the room. (laughter)

And this was strange. On one occasion, it was evening, and we were just ready to go to bed, and two or three KGB agents break into the room, open our drawers, empty our drawers and run out. It was not to do anything but to scare us. Obviously they wanted to let us know that they didn't like what we were doing and that they were watching us. But we still went ahead. We would make a telephone call, and you could only make a telephone call from a phone booth. To make a telephone call from a phone booth, you needed certain tokens. Tourists could not get these tokens in Russia, but we had been provided a bunch of them by the Israeli people. The two of us would squeeze into the booth. I had a list of the people that we were told to call and their telephone numbers, but I had them all mixed up in sort of a code in a little book that I was carrying. We squeezed in. I would dial. Somebody would get on the line, and Sara would start speaking in Yiddish, and we would arrange an appointment. We knew that there was a KGB car sitting right outside. These KGB guys wore white shirts, black ties, and black pants.

At one point, we met with a whole group of Refusniks out in a suburb area and they picked us up. But they couldn't take us back. They said there was a bus that would take us back. By the way, they gave us petitions to the President of the United States, a lot of things to take with us to express their plight. Sara carried a little bright red straw handbag, a woman's handbag. She put

those things in that. We were standing out on the corner for the bus and there was no bus. But we saw the KGB car. So we waved to it to pick us up and take us to our hotel, and they zoomed right by us. (laughter)

Ms. Hostetler: They didn't stop to pick you up?

Professor Dash: They didn't stop to pick us up. We finally got the bus. We decided, why not? Why not ask for a ride since they are there? (laughter) The most scary thing to them was that what I was doing throughout this whole trip was asking to go to court. There were a number of trials going on at that point, and I wanted to go to court, and I wanted to be present at the trials.

Ms. Hostetler: What were the trials about?

Professor Dash: They were about dissidents who were sending newsletters. They had secret little newsletters that they were sending out talking about the oppression in the Soviet Union. Some were regarding the Jewish problem, but some were regarding general human rights problems. So I would always ask the Soviet attorney general, everybody, if I could see the trials, but they always said, "No court, no court."

They kept telling me everybody can't go to court. I said, "Well I don't understand; your Constitution says your courts are open." They said yeah, yeah, we know, but we don't have a procedure to allow others to come into the court. So I was trying to shame them. I said, "Now if you came to my country, to Washington, I would take you over to the Supreme Court of the United States, and I would introduce you to the Chief Justice. I would take you to the courts. When I come home, all the judges and lawyers are going to say to me, 'oh you went to the Soviet Union. How were the courts?', and I'm going to have to say 'I don't know, they wouldn't let me

look at them'. Now you want me to say that about you in the United States?" They said, "No, we're ashamed." So I kept saying I want to go to court.

We go to the City of Kharkov, because that is another city where we were to speak to Refusniks. We were met at the airport by an Intourist station agent who said they had a wonderful surprise for me. She said, "The government wants you to see our new subway that we're building here. It's not built. It's still underground, it's a building site, but they want to show it to you. They are so proud of it." I said, "Well I'm not an engineer, I'm a lawyer. I'll tell you what. I'll trade the subway site for a court. Take me to a court." She said, "No court, no court. You have to come to the subway site because this was very specially arranged." They drive us to this site, and it's nothing but a construction site with lots of mud and dirt and all that. And there's a construction tower. So they take Sara and me up the construction tower. The construction engineer claims that he can't speak English and he needs a translator. The Intourist agent is the translator and she says to us, "We're going to take you down many feet into the underground so you can see how we are building this, but you can't wear what you are wearing. You have to take your clothes off and put on these overalls and these hard hats." See, they were trying to get to my book because they had been following me and watching me make these phone calls, and they figured out that this was a way to get me undressed. So I don't react and finally I take my shirt off, but I don't take anything else off. I had taken my little book and put it in the elastic in my shorts. And this guy who supposedly couldn't speak English suddenly yells, "Take pants off!" (laughter) So I did and I put on the overalls and hard hat.

Ms. Hostetler: But you still had the book.

Professor Dash: I still had the book in my shorts. And Sara is still carrying this little

red straw bag. They don't think much of women. In that bag, if they had opened it, were all these messages to the president. But they never bothered her. They bothered me and they had my wallet which was in the pants. They then take us down the shaft, and when we get to the bottom of the shaft, there's nothing there but mud and water. They said, "Here is what we are going to be building." So I turn to the Intourist agent that went down with us, and I asked, "How often have you taken the tours down here?" She said never before. (laughter) We honestly thought we were never going to come up. Who would know what happened to us? But we did come up, and when we did, I saw that my wallet was taken completely apart, and my camera was open and all the film was taken. They were looking everywhere for everything, but they didn't find anything. That was one scary day that we went through.

Sakharov at that point wasn't being touched by the government. They let him alone, even though they knew he was a human rights worker. He was left alone because of his reputation and everything. There was another nuclear physicist, a scientist, who was a disciple of Sakharov, a younger man who was also engaged in all this activity. They had warned him that he was about to be arrested and tried. Part of my instructions, not from Israel but from others since I was going over, was to meet with him and make my meeting visible and then see if I could invite him to come to the United States to lecture at Georgetown. The Young Presidents Association was going over, and they were given the same instruction, but they were too frightened to go see him. But I did. I went over and saw him. I had my stationery with me from Georgetown, and I wrote out in handwriting an invitation to come and lecture at Georgetown. When we left the Soviet Union, the State Department got in touch with me and said, "We understand that you were over there and you were doing all these things, would you be willing to let us debrief you?" I said certainly. They

said, "By the way, we know about the invitation that you gave to Valery Chalidze, to come to Georgetown to lecture. It was a good try. It might keep him out of prison, but they are not going to let him come because they have very strict rules on invitations. An invitation would have had to have the seal of Georgetown. There would have to be verification, an affidavit and all that sort of thing. And so the State Department said, "This was just a handwritten letter, so don't expect him to come." About a week later, I got a call from the State Department, "Miracles of miracles – they've accepted your invitation and they are letting him come to this country." Now, they did it for the purpose of getting him out of the country. He did give some lectures here. But as soon as he got here, the KGB here met him and took his passport away. They did the same thing to Solzhenitsyn, you know. When he got here, they exiled him. They took his passport. He was a troublemaker and they used my invitation to get him out of the country and then take his passport away.

Ms. Hostetler: Did he have family back home?

Professor Dash: Yes, he had family back home but he's lived here ever since, and he's become a writer. And he now speaks English, but he spoke only Russian at the time. He was married when he came.

Ms. Hostetler: And his wife was left back in Russia?

Professor Dash: No. His wife was with him when he came. She was the daughter of a former Soviet Ambassador to the United States. Later, he divorced her and remarried an American. He is a remarkable guy. But in any event, that was one of the successes that I had.

The other event of importance involved South Africa. I had been invited in 1985 by an organization called NICRO – National Institute for Rehabilitation of Criminal Offenders. It was a

penal reform organization that was concerned with the reform of prisons and prisoners. They were having a major convention in Blumfontine, South Africa. I was invited to be a keynote speaker. The only other foreigner was a German, but I was the only American that was going to be there and it was attended by all of the superintendents of prisons, police officials, civil rights groups. It was quite a remarkable group. One of the leaders was Judge Goldstone, Richard Goldstone who later became prosecutor in South Africa. He was a trial judge at the time, and he was one of the leading officials of this organization. He invited us, and he also was our host. When I talked to my colleagues and others before I left, they said, "What do you want to go to South Africa for? South Africa has apartheid. They've imprisoned Nelson Mandela. Why go there?" I said well number one, the group that is inviting me, I've checked them out. They are a reform group. Number two, I think it's better that I go and see for myself and be an objective observer. So we went and I made my speech. In my speech, I talked about the philosophy of punishment. I said as far back as Greek civilization no civilized society ever condoned punishment of a person based on his race alone, and such punishment is tragic and unacceptable. There was sort of no reaction or anything from the audience. In the audience to introduce me was the Secretary of Justice who was in charge of apartheid you know. He had come only to introduce me and to leave, but he listened. I had an appointment to see him two days later. I thought he would cancel, but he didn't. And when we were meeting, he said, "I enjoyed your speech. I agree with you completely that apartheid is unacceptable and we have to end it, but we need time. What can I do for you while you are here?" I said, "Well, I'd like to meet with Nelson Mandela (who is in prison)". He said, "How is that possible? Your Senator, Senator Ted Kennedy, is here now, and he has asked to see Mandela too" (Senator Ted Kennedy was in South Africa at the time with

his staff and he was making a big fuss. He had gone down to Pollsmoor prison and posed for pictures demanding to see Mandela).

Ms. Hostetler: And he had been refused?

Professor Dash: He had been refused. So he said, "They refused your Senator. How can we let you see him?" And I said, "Well, you have to make a distinction. Senator Kennedy is a politician. I'm a professional. You ought to make a distinction on that basis. I'm an objective observer." He said, "Well let me present that to the Cabinet." It had to get Cabinet approval.

Ms. Hostetler: What was this man's position?

Professor Dash: He was the Justice Minister, like our Attorney General. Well, he called the next morning and he said, "The cabinet has approved your meeting with Mandela." And so I was the first American ever to be allowed to see Mandela. They somewhat concealed the purpose of the visit because what the Justice Minister said is, "I told the Cabinet that you're here to study the conditions of prisons and that while you are here looking at Pollsmoor that you'll meet Mandela. But in order for us to do what I got cabinet approval to do, the superintendent of prisons is going to come to pick you up and he's going to take you to a lot of prisons." (laughter) Then I said, "I don't want to meet with Mandela unless Mandela wants to meet with me." And Mandela said yes, very much so. He was dressed in khakis, a tall, handsome guy.

Ms. Hostetler: Was this a private interview, or were there others?

Professor Dash: No. They insisted it be in the office of the warden of the prison but he just sat there behind the desk. And Mandela said, "Don't worry about him." I started to try to give some background on me so that he would be free to talk. And he said, "You don't have to tell me who you are, Mr. Dash. I know all about your work in Watergate." I mean, he had a pipeline

in. He knew about my speeches and had received a report on my speech before the prison group. He said, "I've been waiting for somebody like you because I want to tell you what my mission is, what I want to do for South Africa, because I want you to be able to get it out." And he starts telling me. He said, "I don't want violence. The whites in South Africa, unlike the whites in any other African country, belong here. They have no homeland. This is their country as it is my country. I want to work and live with them. I want to incorporate them into my government." He said it would all be peaceful.

Ms. Hostetler: He was not able to get this message out before?

Professor Dash: No, he was not allowed to talk to anybody. Not even any member of the government would go talk to him. He was incommunicado in a real sense. Here's a guy who has been in prison for about 25 or 26 years. Far from being bitter, he was thinking about the future. He had a constructive plan for South Africa. It was most amazing his attitude and morale! I told him that I was going to repeat all of this to the Minister of Justice, and he said he hoped I would. And so I went back to the Minister of Justice after that meeting.

Oh, and by the way, when I met with him, he then had the warden act as our guide, and he told him where to take us. "Take us up to the top floor", he said.

Ms. Hostetler: So he had some clout within the prison system?

Professor Dash: Yes. They respected him. He had all these poems that had been written about him. He was a legend.

Ms. Hostetler: Was the guard white or black?

Professor Dash: White. He took me up to the top floor where Mandela's cell was. It was a big cell that he shared with about five other people convicted at the same time of treason

and acts against the government. The other men in the cell who later came out became major figures. And then he took me to the rooftop. Both he and the others refused to do prison work. They refused to wear prison uniforms. He was wearing a khaki suit. They tolerated that in his case. Robben Island prison, where he had first been, had been a much more rigid prison and conditions. He now was in Pollsmoor prison which was more lenient. The authorities gave them the rooftop of the prison for recreation. Mandela was raising a garden there. He had had donated to him all these big oil cans that were filled with dirt. He was growing cabbages and tomatoes. Then I went to the Foreign Minister and said, "I think you are very foolish. You are keeping the one man in prison who could unite all those South Africans, he doesn't want violence, he wants to work with you. He is supported by all the blacks of South Africa. A lot of the whites will support him. Instead of making him a martyr, why don't you release him." I said, "For God's sake, this man wants to work with you." What I didn't know at the time was that the Foreign Minister had already planned to visit Mandela. He had never seen Mandela, and none of the government had. He had made a decision, based on my report, to go visit Mandela and talk to him, and they became very good friends. He got Botha, the president, to go and see him.

Then I went home, and the State Department called and said, "You are the only American who has seen Mandela in all these years, can we debrief you?" And I told them about Mandela and what his mission was. The *New York Times' Sunday Magazine* wanted me to write an article for them. So I wrote an article about my visit with him and all that he said. I noted one episode. I had said to Mandela that the South African government was now opening up its pools to integration and they were allowing white women to date black men. His response to me was, "Those are pin pricks. My ambition is not to swim in a white pool or marry a white woman. It's

freedom." It was a very strong statement, you know. I wrote about that and the article went all over the world. It was reprinted in South Africa. As a matter of fact, on the 100th anniversary of the *New York Times' Sunday Magazine*, they printed 100 anniversary gold edition of the most important articles written in the past 100 years that have had an impact in the world. And the authors are the great authors. My article is included on the list because of the impact it had. The Ambassador from South Africa called me and said, "We are all impressed with your meeting and what you have to say about Mandela, but there are a number of people in government, particularly military people, who have very strong attitudes that if he comes out that he's going to start a revolution and there's going to be blood and all that."

Ms. Hostetler: This is the South African Ambassador to the United States?

Professor Dash: The United States. He said, "Would you be willing, when some of these people visit the United States, if I arrange a meeting with them to tell them what you think about Mandela and what his mission is?" So I was doing that regularly. Finally, the news came out that they were going to release Mandela, and the Ambassador called me and said, "You had a lot to do with that. You helped us. We all wanted him out, but we had to convince an awful lot of people that he was going to come out and be constructive rather than start a revolution." His wife, Winnie Mandela, by the way, was not helping him. While he was in prison, she had a lot of power, and when it got out that he might be released, she made a statement that said, "Oh, when my husband comes out, blood will run in the streets." She knew by making that statement that it would prevent him from getting out. She didn't want him out. She had her own boyfriend and she had power. Once he was out, she'd lose the power that she had. She was not a very nice lady. But in any event, he did get out, and on his first trip to the United States, I got the president of

Georgetown, O'Donovan, to authorize me to offer him an honorary degree at the Law School. I called him on the phone and he accepted and said, "can I bring Winnie?" I said of course. Sara got very upset because I said to him, "Look, when you come, I know that there will be a lot of publicity and you will want privacy, so you can stay at our house." Sara says to me, "Are you crazy? When a guy like Mandela comes, do you think he comes alone? He comes with an entourage. He is going to stay at our house?" (laughter) In any event, he called back and said that his Council – he was an obedient member of the Congress – had said, "You cannot go for your first honorary degree to a white college, only to a black college." And he did get an honorary degree at a black college. His first trip to America was also when he was given the Medal of Freedom by the president. He was here at the Madison Hotel and he called me and asked if we would come over and see him. Sara thought it would be a large group. It was just the three of us plus John DeGioia, who is now president of Georgetown University, but who also had worked with him in the past. And we hugged.

So I said to him, "Mr. Mandela, when are you going to accept our honorary degree and come to Georgetown?" He said, "I already accepted it, didn't I tell you that?" I said "yes, but we want to present it." He said, "I consider that I have the degree. Sometime when it's convenient, I'll come and you can have a ceremony." He insists that he has the degree. But in any event, there was a big reception for him at the South African Embassy. Thousands came. They crowded the place. He came in and Sara and I were there. And he came over directly to just to the two of us and he hugged me and said, "You came to me while I was in prison. Thank you."

Ms. Hostetler: Was this before or after the Madison Hotel?

Professor Dash: After the Madison. Then he became president. Oh, what I wanted

to say is that in my article that I wrote for the *New York Times' Sunday Magazine*, my last line is, "I left Nelson Mandela tending to his garden on the rooftop of Pollsmoor prison, awaiting to lead the country that now imprisons him." And he did. I mean it was a miracle of our times. When was there ever such a person like Mandela, who was imprisoned by his government, and the government gives up and releases him, and then he becomes the president of the country. I mean, it is one of those miracles of history. He was a great president. The problem with South Africa today is that there are no more Nelson Mandelas. And the current president doesn't inspire the same respect, and what's going to happen in the future nobody knows. But this was one great golden period in history. And this man is remarkable. He's just remarkable. I have a handwritten letter from him. While he was in prison and I was communicating with him. He was a good father and had a couple of daughters that he wanted to help. One daughter he wanted to go to Harvard. She was at the University of Massachusetts. I called her. She was married and enjoying the University of Massachusetts. She didn't want to go to Harvard. So I wrote back and I said, don't push her, she's having a good time in Massachusetts. The other daughter was just graduating from the University of Wasserstam, and he wanted her to go to law school here in Georgetown, could I get her in? So I talked to Dean Judith Areen, and we had a program where she could come in for a master's program as a foreigner, and we'd be delighted to have Nelson Mandela's daughter here. I wrote back saying let me get all the papers from her and I'll see that she gets in. There was silence. Then I received another letter from him in which he said, "I finally have received some of your letters." He said, "They have been holding them up. And I'm going to be very careful in what I say to you in this letter because if I say anything that they think is political, you won't get the letter. Suffice it to say that I owe you a lot." That's in his own handwriting.

And then he wrote, "Oh, about my daughter, I'm embarrassed to say that she didn't pass and graduate.

Ms. Hostetler: So you had a regular exchange of letters while he was in prison?

Professor Dash: I had a number of letters. When I came back from South Africa, I was writing to him regularly. I was telling him about the article, and I even sent him a copy of the article.

Ms. Hostetler: But you just received the one letter back from him?

Professor Dash: I received just the one letter back from him in his own handwriting. He had a lawyer in South Africa who was his sort of liaison, mostly for property, business affairs, things like that. And it was that lawyer who wrote to me or called me about Mandela. He would be able to see Mandela, and he communicated the message about his daughters to me.

Ms. Hostetler: I hope you have that handwritten letter framed. Are you still on the Board of the International League?

Professor Dash: No. What happens usually is that they try to bring new blood in. But I'm sort of on the International Advisory Council of the International League, and they have been republishing my reports. They republished my report on Bloody Sunday. A movie has been made of it in England, and it was at the Paris Film Festival and all. It was pretty much based on what I wrote in my report.

Ms. Hostetler: Were you a consultant on the movie?

Professor Dash: No. A young man who was one of the kids throwing stones, who was not killed or wounded, grew up to have his whole life consumed with this and he became a journalist. He wrote a book, too, called *Witness to Bloody Sunday*, and he was a consultant. The

publishers and Paramount Pictures that did the movie wanted to introduce it to Congress, so there was a big ceremony at Congress where they showed the movie and a lot of the congressmen showed up. I introduced the movie. I introduced the background to the investigation and one of the fathers of one of the victims had flown over from Northern Ireland to speak also, and he said some very nice things about me. He said that the thing that kept him going was my support. The Irish Ambassador invites us to all Irish affairs. We're sort of honorary members of Ireland.

Ms. Hostetler: Thank you for having this last session, because these are very interesting and very important stories.

Professor Dash: As I look at it myself – although during our interviews we've talked about various facets of my professional life, I think they are integrated in a real sense. I tell my students that one of the wonderful things about studying law and becoming a lawyer is that there are so many ways that a lawyer can contribute, and be involved, beyond just representing a client. There are so many causes, so many other instances that call for the role of the lawyer. I have been very fortunate to be around at the right time to at least get some reputation of competence in these areas and then be called upon to do these other things. And I said, to me this has been the most rewarding part of my professional life.

Oral History of Samuel Dash

INDEX

- Ahern, Gerald, 200
American Bar Association, 94–95, 101, 135
 Criminal Justice Section, 94, 141, 199
 Special Committee on Criminal Justice, 129
 Standards on Prosecution Function and Defense Function, 45, 136–38
Americans for Democratic Action (ADA), 62
Amnesty International America, 202
apartheid, 210
Areen, Judith, 216
Atlantic City, New Jersey, 12, 19, 23
- Babcock, Barbara, 123
Baker, Howard, 148, 149, 156, 157, 159–60, 162–63, 166–67, 170
 and Dean, 165–66
 and Nixon, 160–61, 164
Bannet, Aaron, 65
Bar Association of Moscow, 204
Bazelon, David, 119–21, 134, 136, 138, 139
behavioral sciences, 120–22
Bellow, Gary, 122, 123
Bellows, Charles, 133
Bennett, Richard K., 113, 114, 116
BIBSYS (Bibliographic System), 151–53
Blackmun, Harry, 117
Blair, Tony, 200–201
Blank, Sam, 72, 73
Blank, Victor, 62–63, 71
Blank & Rudenko, 63, 71–72, 98
Bloody Sunday, 198, 200, 217
Bork, Robert, 180
Botha, Pieter Willem, 213
Brennan, William J., 119, 133–34, 138
Brown, Ernest, 27, 28–29
Burger, Warren, 45, 134, 136–37, 138–40
Bush, George H. W., 181
Butterfield, Alexander P., 179
- Cacharis, Plato, 193

Carey, John, 198
Carswell, G. Harrold, 139
Carville, James, 190–91
Casner, James, 30
Cavers, David F., 32, 40, 44–45, 46
Central Intelligence Agency (CIA), 161, 169
Chaffee, John H., 29
Chalidze, Valery, 208–209
Chicago Crime Commission, 41–43
Chicago Tribune, 43
Chief Counsel (Dash), 166–68
Chile
 human rights violations, 201–202
 Supreme Court of, 202
Church, Frank, 4
Clark, Joseph, 50, 53, 58
Clark, Tom C., 91
Clinton, William J., 184, 188, 191, 192, 195
Cohen, Mickey, 78–82
Cohen, Ray, 98–99, 101–104, 140
Cohn, Roy, 47–49
Committee to Re-elect the President (CREEP), 158
Communist threats, 47–48
Congress, U. S., 174–75, 176–77, 218
 and Chile, 202
 and Independent Counsel law, 182–83
Cox, Archibald, 30, 162, 174, 175–76, 178, 179–80
crime, organized, 58–59, 108
 wiretapping and, 59–60
Crumlish, James C., 71

D’Amato, Alfonse M., 176
Dash, Abraham, 4–5, 13, 15
Dash, Harold, 4, 9–10, 11, 13, 15
Dash, Jeannette, 6
Dash, Judi, 64
Dash, Raymond, 5, 13
Dash, Ruth, 6
Dash, Samuel – Personal
 Anti-Defamation League of Philadelphia regional chairman, 26
 Army Air Force, 6, 12, 15–16, 19–21
 B-29 training, 21, 23
 battle ribbons, 20
 bombardier training, 16–18, 19

- discharge, 22–23
 - gunnery school, 18–19
- aviation interests, 2–3
- birth, 3
- B’nai Brith activities, 26
- Central High School, 7, 14, 15, 23
- criminal law interest, 31, 33, 39
- daughters, 7–8
- engagement, 23–24
- family travel, 9, 11–12
- father, 1–2, 3, 9, 11
- GI bill, 24
- grandparents, 3
- Harvard Law School, 9, 24
 - admission to, 27–29
 - class members, 29–30
 - criminal law, 33, 37–38, 39
 - Legal Aid Bureau, 32–33, 34–35
 - professors, 30–31
 - Record*, 28, 31–32
 - Voluntary Defenders program, 32, 34–36, 39
- jobs, 9–11, 13
- law school interest, 14
- mother, 1, 2, 3, 11
- Philadelphia Free Library, 10–11, 13
- poetry of, 6–8, 13, 21–22
- reading interests, 2
- reform activities, 14–15, 26
- religion, 9, 25–26
- romanticism of, 7, 8, 14–15
- Safeties captain, 6, 14
- siblings, 2, 3, 4–6, 8
 - See also individual names.*
- Sulzberger Junior High School, 6, 14
- Temple University, 13, 24, 27–28, 29, 30
- wife. *See* Dash, Sara Goldhirsch
- Dash, Samuel – Professional
 - at Appellate Section of Criminal Division of Justice Department, 44–45, 46–50, 83
 - and bankruptcy law, 72
 - on Board of Governors of the National Association of District Attorneys, 74
 - Carville debate, 190–91
 - Chairman of Board of the Public Defender Association, 121–24, 141
 - Chairman of the Criminal Justice Section of the American Bar Association, 94, 141, 199
 - Chicago Crime Commission research, 40–43, 107

Chief Counsel, 166–68
 Chief Counsel for Senate Watergate Committee, 135, 172, 175–76
 and computer use, 150–53, 178
 and Dean, 135, 164–66, 173–74, 178–79
 defining role of committee, 156–58
 and Ervin, 144, 145, 146–48, 149, 151, 159, 162–63, 165, 166–67, 170, 178, 180
 information gathering, 154–56
 procedure, 159–60
 selection for, 144–48
 staff selection, 149–50, 154
 chief of Appeals Division of Philadelphia District Attorney, 50–53
 on congressional committees, 174–77
 consultant on ABA standards, 45, 136–38
 “Cracks in the Foundation of Criminal Justice” article, 43–44
 Dash & Levy law firm, 98, 104–108, 110
 Teamsters representation, 5, 98–104
 Director of Georgetown Law Center’s Institute of Criminal Law and Procedure, 116–17,
 118–19, 121, 125–26, 128–30
 Director of the Judicial Conference for Mental Health Law, 120–21
The Eavesdroppers, 59, 74, 75, 76–78, 84–86, 87–89, 92–93, 97
 on empirical research, 117–18, 126–27, 129–31, 141
 First Assistant Philadelphia District Attorney, 53–56
 Ford Foundation consultant, 117–18
 founder of National Association of Criminal Defense Lawyers, 124–25, 132–34, 135–36, 141
 independent advisor to Whitewater investigation, 184–90
 and Lewinsky case, 192–96
 on Independent Counsel law, 178–84, 191
 International League for Human Rights involvement
 In Chile, 201–202
 in Northern Ireland, 198–201, 217–18
 “Justice Denied: A Challenge to Lord Widgery’s Report on Bloody Sunday,” 200, 217–18
 and Mandela, 210–17
 article on, 213–14, 216
 partner with Blank & Rudenko, 71–73, 98
 PCCA Director, 109–16
 and Philadelphia Bar, 51–52
 Philadelphia District Attorney, 53, 56–59
 and ethics, 62–63
 and organized crime, 59–60
 and the press, 68–69
 and Silver family scandal, 63–71
 private practice, 73, 98, 104–108, 110
 abortion ring case, 105–106
 professor at Georgetown Law School, 89, 134–35, 140–43, 145

and legal ethics, 132, 134–35, 141
students, 142–43
professor at Rutgers University, 118
professor at University of Puerto Rico Law School, 202–203
on prosecutor’s role, 45

and Roy Cohn, 48–49
salaries, 44–45, 51
in South Africa, 209–213
in Soviet Union, 202–209
teaching fellowship at Northwestern University, 40–44
and wiretapping, 59–60, 63, 72–77, 99
book on, 59, 74, 75, 76–78, 84–86, 87–89, 92–93, 97
and Mickey Cohen, 78–82
testimony on, 87

Dash, Sara Goldhirsh, 6–7, 8, 22, 23, 27, 28, 47, 50, 118, 133, 146, 193, 215
activities of, 24–25, 29, 40, 184–85
family of, 25
and Frankfurter, 83
and Griswold, 31–32
religion of, 25–26
in Soviet Union, 203, 204–205

Dash & Levy law firm, 98, 104–108, 110

Dean, John, 135, 156, 159, 160–61, 162, 168, 172, 178–79
immunity for, 164–66, 173–74

Dean, Maureen (“Mo”), 165

Dean, Paul, 116–17, 118

DeGioia, John J., 215

Dilworth, Richard, 50–51, 53, 58, 59, 60, 62

discrimination, 9, 26

Dorr, John, 178, 188

Dorsen, David, 154

Eastland, James, 139

The Eavesdroppers (Dash), 59, 74, 75, 76–78, 84–86, 87–89, 92–93, 97

Edmonston, Rufus, 144–45

electronic surveillance. *See* wiretapping

Ellington Army Air Force Base, 17

Erdahl, Robert, 46, 48, 96

Erlichman, John, 155, 159, 161, 173, 178

Ervin, Sam, 150, 157, 160, 161, 164, 174, 176
and Dash, 144, 145, 146–48, 149, 151, 159, 162–63, 165, 166–67, 170, 178, 180

Federal Bureau of Investigation (FBI), 58–59, 74, 88, 102

and electronic surveillance, 89–90, 92
and *Miranda*, 129
and Watergate investigation, 153–54
Federal Communications Act, 87
Federal Communications Commission (FCC), 83–84
Fifth Amendment, 103, 105, 127, 153, 164, 175, 194
Fisher, Adrian “Butch,” 145
Food Fair Stores, Inc., 63, 64, 67
Ford Foundation, 114, 116–17, 119, 130, 131, 132, 136, 137
 Gray Areas Program, 108–109, 111, 112, 116
Fourth Amendment, 87, 90, 91, 140
Frankfurter, Felix, 82–83, 93
Freeh, Louis, 90
Freund, Paul, 30
Friedman, Abraham, 109, 112
Fund for the Republic
 and wiretapping study, 63, 72–73, 85

Georgetown Law Center, 131, 215, 216
 clinical education, 36–37
 Institute of Criminal Law and Procedure, 116–17, 118–19, 121, 125–26, 128–30
Ginsburg, William H., 192
Gleuck, Eleanor, 33
Glueck, Sheldon, 33, 37
Goldstone, Richard, 210
Graham, Billy, 80
Gray, William, 66
Green, Harold, 123–24
Green, William J., Jr., 60–62, 71
Griswold, Erwin, 29, 30, 31–32, 34–35, 39, 50
Griswold, Harriet, 32
Gurney, Edward J., 163, 166

Haldeman, H. R. “Bob,” 149, 155, 159, 161, 173, 178, 179
Hall, Livingston, 37
Halperin, Milton, 65, 69
Hamilton, James, 154
Hand, Learned, 47–48, 49, 78
Harmony, Sally, 155–56
Harrison, Gladys, 120
Harvard Law School, 130, 131
 criminal law, 33, 37–38, 39
 Legal Aid Bureau, 32–33, 34–35
 Voluntary Defenders program, 32, 34–36, 39

Head Start, 116
Hennings, Thomas C., 85, 86
Higby, Lawrence M., 179
Hitler, Adolf, 15
Hoeveler, William, 29
Hoffa, Jimmy, 98, 101, 103, 127, 140
Hogan, Frank, 78, 137
Hollingsworth, Wilbur, 34, 35
Hoover, J. Edgar, 49, 58, 74, 92, 93
Hostetler, Zona F., 120
House Judiciary Committee, 188, 195
Hunt, E. Howard, 168, 171, 172, 179
Hyde, Henry, 195–96

Imbau, Fred E., 40, 132
Independent Counsel statute
 genesis of, 178–80
 history of, 181–84
 and Whitewater investigation, 187–89
Inouye, Daniel K., 167
International League for Human Rights, 217
 Chile, 201–202
 Northern Ireland, 198–201
 Soviet Union, 203
Intourist, 204, 207, 208
Iran/Contra Matters, 177, 181–82
Israel, 203

Judaism, 25–26
 in Soviet Union, 203–205
Justice Department, U.S., 94–96, 99, 125
 Criminal Division, 44–47, 50, 83
 and Watergate investigation, 171, 172–75

Kamisar, Yale, 129
Keating Five Case, 191
Kennedy, Edward, 148, 210–11
Kennedy, Robert, 5, 98, 99, 102, 103, 108
KGB, 204–206, 209
King, Martin Luther, 93
Kleindienst, Richard, 29
Knowlton, Robert E., 76
Koornhof, Piet, 214

Lacritz, Robert, 154
 Leach, W. Barton, 30
 Lefstein, Norman, 123
 Lenzner, Terry, 147, 154
 Levant, Harold, 139
 Levy, J. Brem, 98, 110
 Lewinsky, Monica, 185, 192–94
 Library of Congress, 150, 151
 Liddy, G. Gordon, 155, 156, 168, 170, 171, 172
 Lipset, Hal, 99–100
 Littleton, Arthur, 86
 Los Angeles Police Department, 78–80, 81

Magruder, Jeb, 162, 173
 Mandela, Nelson
 and Dash, 211–17
 daughters, 216–17
 Georgetown honorary degree, 215
 imprisonment, 210–11
 as president, 215–16
 release of, 214
 Mandela, Winnie, 214–15
 McBride, Thomas D., 60, 66–67, 68, 70
 McCarthy, David J., 125
 McCarthy, Joseph, 47
 McClellan Committee, 98, 101, 103
 McCord, James, 168, 169–71, 173
 McDermott, Tom, 56–57, 58
 McKusick, Vincent L., 29
 McNamara, Robert, 151
 Meese, Edwin, III, 181
 Mentschikoff, Soia, 31
 Miller, Burt, 126
Miranda decision, 127–29
 Mitchell, George, 200
 Mitchell, John N., 94–95, 152, 155
 Moore, Cecil, 110–11
 Muse, Robert, 154, 193

National Association for the Advancement of Colored People (NAACP), 110
 National Association of Criminal Defense Lawyers, 124–25, 132–33
 National Association of Lawyers in Criminal Cases. *See* National Association of Criminal
 Defense Lawyers
 National Institute for Rehabilitation of Criminal Offenders, 209–10

National Institute of Mental Health, 125
Nazis, 15
New York Times' Sunday Magazine, 213, 214, 216
Nixon, Richard M., 139, 149, 155, 158, 162, 167, 168, 172
 and Baker, 160–61, 164
 impeachment, 188
 subpoenaed, 180
 Watergate tapes, 178–80
Norden bomb sight, 17, 20
North, Oliver, 178
North City Congress of Blacks, 114–15, 116
Northern Ireland
 Bloody Sunday, 198, 200
 civil rights march, 197–98
 IRA, 200, 201
 Saville tribunal, 201
 Widgery tribunal, 198–200

Odle, Robert, 158
O'Donovan, Leo J., 215
Ogletree, Charles, 36
Omnibus Crime Control and Safe Streets Act of 1968, Title III of, 88–89, 90, 94, 95, 101
Opportunities Industrialization Centers of America (OICA), 113, 115

Paradis, Donald E., 34, 35
Parker, William H., 78, 79, 81
Parton, Edward Grady, 140
Pennsylvania Bar Endowment, 73, 86
Pennsylvania court system, 52, 59, 104
Perlman, Philip B., 47, 48
Petersen, Henry, 172
Peterson, Virgil, 42
Philadelphia, Pennsylvania
 abortions in, 64–67, 70–71, 105–106
 corruption in criminal justice system, 104–108
 drug-related crimes, 56–57
 organized crime, 58–60
 undercover stings, 57–58
Philadelphia Bulletin, 64, 66, 68–69, 100
Philadelphia Council for Community Advancement (PCCA), 108, 109, 111–12, 115–16
Philadelphia Inquirer, 55, 69
Pinochet, Augusto, 201
Pollsmoor Prison, 211, 213, 216
Popkin, Alice, 120

President's Committee on Juvenile Delinquency and Youth Crime, 108
Prettyman Fellows Program, 117
Prosser, William L., 30–31
Public Defender Service, 121–24, 127

“Queen for a Day” immunity, 164, 193

Reagan, Ronald, 126, 167, 181
Refusniks, 203, 204, 205, 207
Remington, William, 47–49
Reno, Janet, 129
Richardson, Elliot L., 180
Rogosheske, Walter F., 137
Rosenberg, Bea, 46
Ruckelshaus, William D., 180

Safe Streets Act. *See* Omnibus Crime Control and Safe Streets Act of 1968
Sakharov, Andrei, 203, 208
San Francisco Chronicle, 75
San Francisco Examiner, 75
Saville tribunal, 201
Shaffer, Charles, 164–65, 173
Schwartz, Richard F., 76
Senate Select Committee on Presidential Campaign Affairs. *See* Senate Watergate Committee
Senate Subcommittee on Constitutional Rights, 82, 84, 86–87
Senate Whitewater Committee, 176–77, 184–90
 and Lewinsky case, 192–96
Senate Watergate Committee
 bipartisanship of investigation, 160–62, 166, 169–71
 burglary as impetus for committee creation, 170–71
 computer use, 150–53, 178
 and Dean, 164–66, 173–74
 final report, 162–63
 media and, 158
 public information function, 157–58, 166, 176–77
 selection of chief counsel, 144–47
 selection of committee members, 148
 sentencing phase of, 168–69
 and tapes, 178–80
Silver, Doris Jean, 64–65, 67
Silver, Edward, 85
Silver family, 63–71
Sirica, John, J., 148, 168–69, 171, 180, 188
Solzhenitsyn, Aleksandr, 209

South Africa, 209–14, 216
Soviet Union, 202–209
 courts, 206–207
 human rights issues, 206
 Jews in, 203–205
 KGB, 204–206
 Refusniks, 203, 204, 205, 207
Starr, Kenneth W., 182, 183, 184, 185–86, 188, 189–90, 191–92, 193, 194, 195
State Department, U.S., 208–209, 213
Stein, Jacob, 181, 193, 194
Steinberg, Harris, 133
Stevens, Ted, 29
Sturz, Herb, 131
Sullivan, Leon H., 113–14, 115, 116
Supreme Court, 87–88, 95, 117, 175
 wiretapping of, 83–84
Sylvan Pool, 72

Tate, James, 109, 116
Teamsters, Local 107, 98–99
Temple University, 13, 24, 27–28, 29, 30, 108, 109, 112
Thompson, Fred, 156–57, 159, 160, 161, 162, 163–64
Thornburgh, Dick, 130

Union Welfare Fund, 101, 104
United States Attorney's Office, 173–74
University of Michigan Law Review, 85

Vaus, James A., 79–80
Vera Institute of Justice, 131–32
Voluntary Defenders. *See* Public Defender Service
Vorenberg, James, 175

Wallace, Mike, 81
Walsh, Lawrence E., 177, 181–82
Warren, Earl, 40, 127, 129
Watergate investigation. *See* Senate Watergate Committee
Weicher, Lowell, 149–50, 166
Weinberg, Wendy, 126
Whitewater investigation. *See* Senate Whitewater Committee
Why I Quit Syndicated Crime, 79–80
Widgery, John Passmore, 198–200
Williams, Edward Bennett, 85, 88, 133, 137–38

wiretapping, 59–60, 74
 federal, 92–93
 Fund for the Republic study on, 63, 72–73, 85
 hearings on, 82, 84
 history of, 75–76
 and law enforcement, 87
 law on, 86
 with probable cause and warrant, 90–92, 94, 95–96
 and recordings, 100–101
 of Supreme Court, 83–84
 symposium on, 85
 telephone company and, 86
 unreliability of, 89
 victims of, 79–82
Witness to Bloody Sunday, 217
Wolf Block law firm, 44, 46, 66
writ of prohibition, 104

Young Presidents Association, 208

Oral History of Samuel Dash

CASES CITED

- Ashcraft v. Tennessee*, 322 U.S. 143 (1944), 84
- Berger v. New York*, 388 U.S. 41, 52 (1967), 91
- Gideon v. Wainwright*, 372 U.S. 335 (1963), 123
- Katz v. United States*, 389 U.S. 347 (1967), 88
- Lopez v. United States*, 373 U.S. 427 (1963), 88
- Miranda v. Arizona*, 384 U.S. 436 (1966), 127–29
- Olmstead v. United States*, 277 U.S. 438 (1928), 87, 88, 94
- Silverman v. United States*, 365 U.S. 505 (1961), 88
- United States v. Remington*, 191 F.2d 246 (2d Cir. 1951), 47–48, 52
- United States v. Remington*, 208 F.2d 567 (2d Cir. 1953), 49
- United States v. United States District Court*, 407 U.S. 297 (1972), 95