

**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.