

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

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

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

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

Professor Dashr: Yes, we did.

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

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

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

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

Ms. Hostetler: Did they give equal prominence?

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

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

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

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

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

Ms. Hostetler: Being a potted plant.

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

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

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

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

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

Ms. Hostetler: This is not the Silver case?

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

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

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

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

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

Ms. Hostetler: Who exposed it?

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

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

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

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

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

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

Ms. Hostetler: It wasn't permanent.

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

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

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

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

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

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

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

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

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

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

Ms. Hostetler: Do you remember his name?

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

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

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

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

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

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

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

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

disappointed mostly.

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

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

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

Ms. Hostetler: Georgetown had the Prettyman Fellows program?

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

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

Professor Dash: Yes. Fellowships.

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

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

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

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

brick building.

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

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

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

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

Ms. Hostetler: Judge Bazelon?

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

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

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

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

Ms. Hostetler: Talk about that.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

chairman of the board.

Ms. Hostetler: You founded that Association?

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

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

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

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

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

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

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

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

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

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

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

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

Ms. Hostetler: Dean Bellow?

Professor Dash: No, the guy who chaired --

Ms. Hostetler: Thornburgh?

Professor Dash: Thornburgh. Thornburgh chaired their institute.

Ms. Hostetler: It's still going?

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

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

Ms. Hostetler: So how much goes on today?

Professor Dash: Very little.

Ms. Hostetler: At Georgetown?

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

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

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

Ms. Hostetler: Harvard's is larger?

Professor Dash: Harvard's is larger.

Ms. Hostetler: Better endowed?

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

Ms. Hostetler: Bail work.

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

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

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

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

Ms. Hostetler: How did Imbau spell his name?

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

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

Ms. Hostetler: Did they join?

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

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

(laughter)

Ms. Hostetler: He knew the real story?

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

Ms. Hostetler: Did you have Judge Bazelon?

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

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

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

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

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

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

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

Ms. Hostetler: Was it required?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ms. Hostetler: Why do you think that was?

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

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

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

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

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

Ms. Hostetler: And, maybe you published articles?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ms. Hostetler: Is that just unique to Washington?

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

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

Professor Dash: Oh, yes.