Interview with Walter M. Phillips, Jr.
1/9/77

(WMP: Wally, would you read the questions and respond to them?)

Ok. Would you please begin by describing the situation in Philadelphia which led in the early summer of 1974 to the establishment of the office of Special Prosecutor for Graft and Corruption? It was actually April 1, 1974 that the Special Prosecutor's office started its operation. And there were two things that were parallel to each other that caused the creation of the Special Prosecutor's Office. One was the Pennsylvania Crime Commission investigation of police corruption in Philadelphia, which commenced in July of 1972 and which terminated in March of 1974 with a 1400 page report. And one of the recommendations made by the Crime Commission was that there be established a Special Prosecutor's Office to investigate and prosecute police corruption in Philadelphia. And this was the same recommendation that was made by the Knapp Commission in New York. And the Knapp Commission's recommendations were followed by Governor Rockefeller there. And the reason that the Crime Commission made the recommendation was the same reason that the Knapp Commission made its recommendation and that is that they felt that the District Attorney had a basic conflict of interest in investigating the police department because it worked so closely with the police department in other matters of a criminal nature. At the same time the crime commission was investigating police corruption there was an investigative grand jury in Philadelphia, known as the June 1972 investigating grand jury. It was under the supervision of Judge Harry Takiff and staffed by the District Attorney's Office that was then under the direction of Arlen Specter. This grand jury was discharged at the same time that Arlen Specter went out of office, which was the beginning of January 1974. It issued a final report and in the final report it said there was a considerable amount of municipal corruption, particularly in the areas of the awarding of engineering and architectural contracts and other matters and it recommended that another grand jury be empaneled to carry on its work. Judge Takiff proceeded to empanel another grand jury and then asked the new district attorney, Emmett Fitzpatrick, to staff it. When Fitzpatrick refused to do so he directed Fitzpatrick to staff the grand jury. Again Fitzpatrick refused.
At which point, and this is now February 1974, Judge Takiff, pursuant to a particular statute asked Judge Jamison, who was the President Judge at the time, to have — to request the Attorney General of Pennsylvania to staff the grand jury. And Judge Jamison did make that request of the Attorney General, Israel Packel, sometime in the middle of February, 1974. That particular request by Judge Jamison is provided by a specific statute that allows the President Judge of any county to request the Attorney General to assign an attorney to staff a grand jury or prosecute particular cases in the county, in which case if the attorney general follows the request of the President Judge, whoever is still assigned supercedes automatically the district attorney in that county for the purpose for which he was assigned.

Now that is essentially the background leading up to the establishment of the Special Prosecutor's office.

(WMP: How did you become involved?)

At that time I was in the United States Attorney's office for the Southern District of New York and I was aware of the developments that were taking place that I just described and I also thought that it was time that I left the United States Attorney's office because it was close to five and half years that I had been there and I was considering coming back to Philadelphia and saw this as an opportunity to come back to Philadelphia.

(WMP: You'd better tell of the experience with Arlen Specter while you were here --)

I was for two years in the District Attorney's Office before I went to New York. When I graduated from law school in 1966 I spent two years in the DA's office and then went to the US Attorney's office in New York.

(WMP: So you were pretty well known here already.)

Yes. My name -- Israel Packel decided in the middle of March that he would appoint a Special Prosecutor and he asked the three deans -- the deans of the three major law schools in Philadelphia -- Villanova, Temple, and Penn -- to submit to him three names of individuals from which he would select one. His purpose in doing this was to make sure that the appointment of a Special Prosecutor was kept entirely out of politics and that it even appeared that it was kept entirely out of politics. And so a number of names -- I understand quite a few names -- were submitted to the deans. My name was submitted by a number of people. It was submitted by Larry Hoyle, who was the Executive Director of the Pennsylvania Crime Commission. It was submitted by Henry Reath, at the
request of Whitney North Seymour, Jr., my former boss in New York. It was submitted by Professor Lou Schwartz at Penn Law School, pursuant to the suggestion of an assistant that was working under me in New York and who had been a student of Professor Schwartz's. It was submitted by a judge in the Second Circuit Court of Appeals, by the name of Judge Mulligan, who had had as a student the Dean of Villanova Law School, when Judge Mulligan was a professor and dean at the Fordham Law School in New York. And in any event, the deans selected mine as one of the three names that they sent on to Israel Packel.

And Packel then interviewed those candidates and made his decision on me, the date being that he announced it was Tuesday, March 26, 1974. And then I started the following Monday, which was April 1.

(WMP: Do you know who the other two people who were interviewed were?)

No. I don't. You want to know the reaction of the District attorney to the creation of the Special Prosecutor's office. Well, his initial reaction -- let me put it this way -- when Packel told me that he was setting up the Special Prosecutor's office and appointing a Special Prosecutor to start April 1, he was doing this at that point solely on the recommendation of the Pennsylvania Crime Commission. He had before him Judge Jamison's request to assign somebody to staff Judge Takiff's Grand Jury. But he had some doubts as to whether that grand jury had been legally empanelled because Judge Takiff had done it on his own without the request of the District Attorney. He had therefore submitted a petition with the Supreme Court of Pennsylvania asking for them to rule on the validity of Judge Takiff's action. But he said that if the Supreme Court should decide favorably, or at least should decide that Judge Takiff acted properly in empaneling the grand jury that the Special Prosecutor would be appointed to investigate police corruption. He would also undertake the duties of staffing that grand jury. But that was still in the future. When he appointed me to be the Special Prosecutor to investigate police corruption Emmett Fitzpatrick was at that time -- at that time had filed a petition before Judge Marrerkey asking for a grand jury to be empaneled to investigate police corruption. I think what prompted him to do that was that he saw that a special prosecutor might either embarrass him or at the very least erode his authority as the top law enforcement officer in Philadelphia. So that we went running into court to get his own grand jury and beat the special prosecutor to it so that he could be in charge of investigating police corruption in Philadelphia.
So what happened was that my urging Israel Packel, and this was between the time I was appointed -- in fact it was the day after I was appointed -- and before I even left New York -- he went to court and he handed Fitzpatrick a letter saying he was being superceded by virtue of his, the Attorney General's common law power to supercede a district attorney. And then he withdrew the petition for a grand jury before Marrorkey. Fitzpatrick objected to all this and Marrorkey went along with Fitzpatrick and overruled Packel's superceding him and also granted the District Attorney's petition to empanel an investigating grand jury. Immediately Packel went to the Pennsylvania Supreme Court and had Marrorkey's actions enjoined and so the whole thing was in limbo when I arrived the following week, although it was in the Supreme Court and was to be argued several weeks after that. And it was in fact argued at the end of April. What was being argued at the end of April was the authority of Packel to supercede the district attorney and the propriety of Marrorkey in empaneling the grand jury. And when the oral argument occurred at the end of April Fitzpatrick stood up before the Supreme Court and he said, with respect to the Takiff grand jury, I have no objection to somebody being appointed to staff a Takiff grand jury -- no, let me take that back -- he stood up and he said I think that Judge Takiff's grand jury is legal. I have no objection to Judge Takiff's grand jury. And then when Packel heard that, the following day he said that in light of the District Attorney's non-opposition to Judge Takiff's grand jury, I'm going to appoint or assign Phillips' office, the Special Prosecutor's office, to staff that grand jury. Which we did.

The Supreme Court about a month later said well, since we got the Takiff grand jury which is supposed to be investigating police corruption anyway and since the District Attorney hasn't any opposition to Phillips staffing that grand jury we will rule on the Marrorkey issue -- we'll simply allow Phillips to investigate police corruption and we will allow the Takiff grand jury to be the vehicle with which he can conduct that investigation and we will dismiss as moot the various matters involving Marrorkey's grand jury.

In your questions here you ask whether the legitimacy of the Special Prosecutor's office was challenged by Fitzpatrick. Well that specific question was not challenged by Fitzpatrick but it was about a year later raised by one of the defendants that had been indicted through the actions of our office and the grand jury. And it was taken into Commonwealth Court. The argument being that there is no such animal under Pennsylvania law as a Special Prosecutor and therefore the
Special Prosecutor's office is illegal. The Commonwealth Court resolved that matter in our favor by a six to one decision and that was immediately appealed to the Pennsylvania Supreme Court and they resolved it in our favor as well by affirming the Commonwealth Court's decision by a five to two margin. And that was in July of 1975 that the Pennsylvania Supreme Court rendered its decision.

(WMP: What were you doing during that period?)

I assembled a staff of investigators and attorneys. I hired a chief investigator. He hired investigators and I was responsible for hiring attorneys.

(WMP: Wasn't it difficult to hire people with the uncertainties of your position?)

Yes it was. It was very difficult to attract people to the office. At least people who had experience in this area. I had hoped to get a couple of people from New York that I had worked with in New York to come but I was unsuccessful and I think one of the main reasons was that they saw with all this litigation that I was just describing that there was a certain risk involved in coming with this office. And this risk became even greater in the summer of 1974 when it appeared as though the funding that we had obtained, which wasn't very great, was not going to last very long. And on top of that a special bill was introduced before the state legislature in July 1974 that would have given us $500,000 funding and that was defeated by a very narrow margin in the House of Representatives. So right almost from the outset we had problems in terms of permanence, which is something that is fatal to any prosecutor's office if they are going to be successful.

(WMP: Let's go back to the questions here, if they are relevant.)

The character of our investigations consisted of, in these two areas of police corruption and other types of official corruption, including the awarding of contracts by the city. Our scope went so far as to involve corruption on the state level as long as it occurred by a state agency within the city of Philadelphia. What were our most important indictments and convictions? I suppose one of our most important investigations was the investigation of corruption within the Pennsylvania Department of Transportation that resulted in the indictment and conviction of the superintendent of Penndot, along with a number of his employees. This particular person, whose name was Brock, was a committeeman and close to state senator Henry Cianfrani, who was from
the outset an adament opponent of the special prosecutor's office. Brocko received a five to ten year sentence, which is very unusual in white collar crime or corruption matters to receive such a stiff sentence. Essentially what he was charged with doing was submitting false overtime vouchers to the Pennsylvania Department of Transportation's main office in Harrisburg in receiving payment in exchange for those vouchers and then keeping the money himself, the total amount being about $45,000. Other important indictments and convictions -- one important police corruption matter involved the conviction of two detectives for masterminding a hijacking ring that was responsible for the theft of about $400,000 worth of metal.

Other important indictments of high officials included the indictment of Edward Lee, the Clerk of Quarter Sessions, Hillel Levinson, the Managing Director, and Augustine Salvitti, the Director of the Redevelopment Authority. Each of these cases is still pending before the Appellate Courts of the State of Pennsylvania because of a technicality wherein two of them were thrown out and the other was sustained, but is being litigated -- and that is the propriety of adding six grand jurors to the grand jury by Judge Takiff when there had been an attrition of a number of grand jurors -- one had died and five had undergone such circumstances that they could no longer serve on the grand jury. My own opinion is that this matter could drag out interminably before the courts to the point where these cases may never get to trial, particularly now that the Special Prosecutor's office is no longer in existence. I know, for example, this was probably the most discouraging part aside from all the funding problems and everything -- was the quality of the judiciary that we had to deal with, particularly in the Appellate Court stage. At the trial level we were fortunate to have very able judges supervising the grand juries -- specifically Judges Takiff, Fleck, and Merna Marshall -- and we were also fortunate in having Judge Jamison appoint a very independent honest judge to try the majority of our cases, and that was Judge Kubaski (?), but when we reached the Superior Court and Supreme Court in appeals that were permitted by these courts in grand jury investigation matters, we were delayed for months and months when they shouldn't have permitted the appeal in the first place.

Let me go back here to describe other cases that we prosecuted. We also prosecuted the former majority leader of City Council, Isadore Bellis, who was found guilty in municipal court in our matter of taking a $9,000 bribe. He was also found guilty in a separate case that we were not involved with where he was prosecuted by the District Attorney--originally indicted by Arlen Specter in connection with a similar corruption matter. I say we were not involved with it -- actually we did have some involvement with that because we provided the District Attorney's Office with a very
crucial witness that may have turned the tide in terms of the jury finding Beilis guilty. The District Attorney prosecuted a case involving food services at the airport. We prosecuted a case involving a contract to design a building at the airport, where he extorted some money from a Norristown architect. We also prosecuted a case involving a lawyer and former member of the Board of Education, Gerald Gleason, for setting up a political slush fund and then embezzling money from it in connection with the farmer's cooperative — Lehigh Valley Farmer's Cooperative. He pleaded no-contendre after I left the office to the conspiracy charge. What happened there was that money was given by the Lehigh people to Gleason to create a slush fund to pay political parties and the purpose was to pay both the Nixon reelection fund and the Special Prosecutor's office in Washington was investigating it from that angle, and also to pay off politicians in Philadelphia in order to get Lehigh milk contracts.

My relationship with the former Attorney General, Israel Packel, was very good. He at the outset said that this office — the Special Prosecutor's office — would act and be entirely independent of the attorney general's office and that he would not try to interfere or intrude in any of our matters of investigation. And that's the way it was during the time that Packel was the Attorney General. Unfortunately, Packel resigned the end of December, only about eight months into the Special Prosecutor's term and his successor was Robert Kane, who was previously the Secretary of Revenue and then had left that post in 1973 to be in charge of Governor Shapp's reelection campaign in 1974. And Kane's background and my background were completely different. He had been a politician for many years. He and I came from completely different backgrounds and his position was that he wanted to have greater control over the Special Prosecutor's office and wanted to be informed as to matters that we were getting involved in. And I didn't object to that and from that time I would keep him apprised whenever a major indictment was about to come down or anything of that sort. But aside from that he never asked thereafter for any details of any cases that we were investigating. In fact, he occasionally would say to me that he didn't want to know about any particular investigations that we would start to discuss.

The first thing that happened was in April of 1975, just one year after the office had started, almost to the day, when the legislature, specifically, the House Appropriations Committee, chaired by Wojack, was having hearings regarding the Governor's budget. And on that day they had
hearings regarding the Attorney General's budget and although it was not in response to any question, the Attorney General stood up and made the statement that he would look to the day when the District Attorney could take over the functions of the Special Prosecutor's office and felt that when the District Attorney had changed his attitude, and he thought the District Attorney probably had regarding corruption investigations in Philadelphia, that then the Special Prosecutor's office could be taken over by the DA's office. This created a tremendous amount of resistance, particularly by the press, because at that point the District Attorney was under quite a bit of fire for his being involved with taking money from defense lawyers, taking money from a cocktail party that was set up just prior to his taking office, firing his first assistant, Dick Sprague, and the whole thing with respect to the Nardello case. So that --

(WMP: What was the Nardello case?)

Fitzpatrick, when he was in private practice, represented a person named Weisberg in a federal case. And there was a co-defendant in that case by the name of Nardello, who was being represented by Chuck Peruto. And the indictment was thrown out by the judge in the federal court and the government appealed to the United States Supreme Court and where they got the indictment reinstated. But in the United States Supreme Court Nardello -- excuse me, in the United States Supreme Court Fitzpatrick argued orally the case on behalf of both Nardello and Weisberg, even though his name was only on the brief of Weisberg and also his formal appearance was only for Weisberg. Then Nardello, after Fitzpatrick took office, came up for sentencing several months later in a state case, where the DA's office under Arlen Specter prosecuted him and even though Fitzpatrick had nothing to do with that case .... (interruption in interview) .... Nardello had to come up for sentencing several months after Fitzpatrick took office and Fitzpatrick himself personally handled it and Dick Sprague had told newspaper reporters several months after that he thought it was outrageous with Fitzpatrick on the one hand representing Nardello when he was in private practice and then representing the Commonwealth and recommending probation for somebody who had been convicted of extortion several times and had a bad criminal record in a matter when Fitzpatrick was the District Attorney.
The reason the Disciplinary Board did not take any action was because technically Fitzpatrick had not represented Nardello. He had only represented the co-defendant. But a lot of people think that is just a distinction without a difference because in fact when he went down to the United States Supreme Court in Washington he was really arguing on behalf of both Nardello and Weisberg.

This obviously, and when I say this I mean Kane's publicly stating that he thought that the District Attorney could take over the functions of the Special Prosecutor's office, obviously created a tremendous amount of friction between Kane and myself and Kane and the office. But this really didn't come to any real fruition until the Fall of 1975 when we submitted several immunity petitions to Kane that involved investigations of high-level state legislators. And Kane, who at that point had signed twelve immunity petitions without any hesitancy or problem whatsoever decided that he was not going to at that point in any event sign them right away. He wanted to take a closer look at them. He said he had a problem with regard to the immunity statute in Pennsylvania which provides that immunity can be granted or conferred only in matters involving organized crime. And he wanted to do some research as to whether he felt that corruption involved organized crime. He sat on these immunity petitions for several months, which added to the friction between our office because my assistants were getting very anxious about moving on these investigations and the Attorney General was blocking them because he would not sign the immunity petitions.

(WMP: For the benefit of the layman who might be hearing this tape, would you tell what the immunity petition is?)

Immunity petition is a petition submitted to the court by the prosecutor where he is asking the court to confer immunity upon a particular witness who has indicated that he will not testify on the ground that any testimony he would give would tend to incriminate him and therefore violate his rights under the 5th amendment of the United States Constitution.

(WMP: So immunity is to protect him against something he might have done that might come out that he is involved in.)

It is protection from incriminating himself because by giving somebody immunity it means that whatever he testifies about he cannot be prosecuted for. In any event, what occurred thereafter was that in February of 1976 the Philadelphia Inquirer ran an article on the front page which showed that Kane was sitting on these immunity petitions, refusing to sign them, and thereby was obstructing justice, in effect.
They got that information — according to the reporter — from an individual in Kane's own office. In the Attorney General's office in Harrisburg. The reporter was Tony Lane — called me up about it before he ran the story and, realizing that he was going to run the story, I wanted to make sure that he got the Attorney General's viewpoint because even though I was having my problems with the Attorney General I felt that nevertheless incumbent on myself to at least stand up for him because I was his subordinate. So I informed him that the Attorney General had some problems with whether or not immunity — whether or not corruption was organized crime and that's the reason he had not signed the immunity petition. The Attorney General, of course, later on accused me of leaking the information to the Inquirer, even though I told him, and it was actually even reported in a subsequent story by Lane about another immunity petition involving another state legislator, that the information did come from Harrisburg. The first story that Lane broke involved an investigation, or alleged investigation, of Rep. Herbert Fineman. And the second one involved investigation of Henry Cianfrani.

At the time that that broke, however, our problems with Kane were increasing because Kane was starting to get involved with an investigation of a state — two state legislators that we were conducting involving extortion and bribery. And what he did in one specific instance was there was a critical witness who had initially come to us and given us a lot of information about these two state legislators. And then he backed off and decided not to cooperate. One of the reasons I think was he started seeing the publicity in the papers about our funding problems and so forth, which was a problem we had from the outset of getting witnesses to continue their cooperation — was they picked up the newspaper about every week and they would see we were being strangled again by denial of our funding by the legislature or else being taken into court. One litigant took us into federal court to try to get an injunction to enjoin our federal money and so it went. But in any event, this particular witness did back off and thereafter somebody started a rumor, or somebody complained to the Attorney General, that we had paid a witness for information and for whatever reason the Attorney General decided there was something wrong with that.
First of all we hadn't paid him anything and secondly, even if we had paid him there was nothing wrong with that. But the Attorney General decided there was something wrong with it and he sent or authorized an agent from the state Department of Justice to go out and interview this witness. This took a period of time and during this period of time we were trying to win back the confidence of this witness through his attorney. And we had just about accomplished that when this thing happened with the agent wanting to interview the witness and when that occurred he immediately said it looks like I'm not going to cooperate with you people -- you are being investigated by your own department. So things went from bad to worse in that respect. And as a matter of fact there were a number of instances, we found out later, where people would call up the Attorney General and complain about this, that or the other thing. Particularly lawyers representing witnesses before the grand jury or lawyers representing defendants who had been indicted -- would call up the Attorney General and complain about conduct on the part of my assistants and the Attorney General would take all of these calls and then initiate investigations of it without even informing us.

As far as our funding was concerned, we were funded almost entirely by LEAA, the Law Enforcement Assistance Administration. They considered us a model that they thought should be copied in other parts of the country and they wanted to see this office succeed because they felt that there would be other applications being made to them in places such as Ohio and Illinois and some places for a Special Prosecutor's office and this was the first one of this kind that LEAA were in on from the ground floor. So they were very supportive of us and made sure that we got money even to the point of giving us complete federal funding the following year, even though that was done through the Governor's Justice Commission it was done at the urging of LEAA in Washington.

LEAA was set up by the Nixon administration through the Organized Crime Control Act in 1968 for the purpose of providing federal funds to state law enforcement agencies to help them in their fight on crime. And what happened was over the years they spent a lot of money and gave a lot of money to police departments only to see the crime rate rising instead of decreasing. And they were beginning to come under a certain amount of criticism because of all the millions of dollars that they spent which was not seeming to have any impact on the crime rate. So now they felt that this area of state and local corruption was something they could offset this criticism with and they also thought it was a genuinely good thing.
There has not been any other special prosecutor's office created for the purpose of investigating corruption that I am aware of on a local level, except for the one in New York. And LEAA did have input there but as they described it to me they didn't get on it at the beginning the way they did in our office.

(BF: Was there a particular time period you were supposed to investigate?)

No. There was no time period, no administration, no individual, or no specific agency. Investigations generally if you are a prosecutor and you want them to be as up-to-date as possible, although the Statute of Limitations in Pennsylvania at least when it comes to public officials is six years. When it comes to non-public officials it is two years. Even five years or four years -- when facts are that old it is very difficult to prove and make a successful prosecution. So the question of whether we were pursuing corruption in the administration of Mayor Tate, I would say that we weren't specifically pursuing corruption in any specific administration and that the administration of Mayor Tate was several years old at that point so that we would not try to go on a fishing expedition unless we had something specific and thought there was sufficient evidence to support it.

(WMP: Did you have some specific things under his administration?)

We had the general allegation that the grand jury investigation came up with which was that milk contracts, architectural contracts, and engineering contracts and other city contracts were awarded on the basis of 5% kickbacks or political contributions made to the party and so forth.

(WMP: Was it not thought that there was a good deal of corruption in connection with the expansion of the Philadelphia International Airport?)

Yes. We were working on that by our investigation of the Meridian Engineers who were the company that handled the engineering contracts with the airport. However, when we came upon the case we were distressed to learn that the President of Meridian, a man named Thomas Graham, had been given immunity by both Arlen Specter and by the federal prosecutor, U.S. Attorney Robert Reef, where they had not made any determination as to what Graham would give them before giving him immunity. And Graham was a
Meridian was a very critical company, not just in Philadelphia but up and down the East Coast. They had paid off in Newark and Boston and New York. In fact, Graham was a crucial witness in a corruption case up in Massachusetts and they convicted some officials up there. But I know that the U.S. Attorney up there was very upset with the situation as we were because they had no control over Graham since blind immunity had been given to Graham by the U.S. Attorney in Philadelphia and by the District Attorney here. Now this is a very complicated thing to try to describe, but a prosecutor should not be giving somebody, at least as crucial as Graham is, immunity until he has made a pretty good determination of what he is going to get in return for that immunity and that was not done in this case. So we were put at a disadvantage because we were trying to get Graham to cooperate with us and of course he claimed that no pay-offs were involved in connection with the airport and we subpoenaed the records of Meridian, which were voluminous to say the least. And we were never able to really get a handle on that investigation because of what had gone on before like we wanted to have.

You ask what has been the sentiment that I have seen outside in Philadelphia regarding the efforts of the Special Prosecutor's office -- and I must say that I feel that my reaction is that there has been an awful lot of apathy in Philadelphia regarding any investigation of corruption. And there is also I think an awful lot of frustration on the part of a lot of people in Philadelphia that they can't do anything about it -- that it is out of their hands. I think the leaders of Philadelphia in the legal profession and in other areas, while they certainly did nothing to support our office -- in fact, if anything in some ways the bar association obstructed it by supporting an anti-eavesdropping law that took away a very valuable investigative tool and that is the ability to tape record conversations of people participating in a crime. I think one of the problems is that there has been no real -- the people of Philadelphia are not convinced that corruption -- or have not been shown that corruption exists to the extent that some people say it does. And I think this is the difference between the hue and cry that developed when Archibald Cox was fired and the lack of such a hue and cry when I was fired. And that is that when -- with respect to the Special Prosecutor's office in Washington, the public throughout America had seen the televised hearings of the Senate Watergate Committee showing that there was a tremendous amount of wrong-doing going on in Washington through Nixon and his top aides and his attorney general and others.
So they knew it -- they were aware of it -- they heard John Dean testify for four days on the television that was piped right into their living room. And they were convinced beyond any doubt whatsoever that Nixon was a crook and so were his top aides. So that when the person who was investigating them vigorously was fired they really were outraged by it and I think the lack of outrage here is a result of the public not being convinced yet beyond any doubt that there exists a lot of corruption in the police department. That there exists a lot of corruption in high levels of city government.

(WMP: You had no top official like Nixon that you were pointed at.)

We had a broader mandate than the Special Prosecutor's office in Washington and for that matter the Special Prosecutor's office in New York. But I think that that can sort of cut two ways, because if you have a very narrow mandate, and this is one of the problems I think with the Special Prosecutor's office in New York -- that mandate was just to investigate and prosecute corruption in the criminal justice system. That you feel much more pressure to make cases and therefore you are willing to make cases that aren't perhaps as strong as you would like them to be. You are willing to take more chances. And what happened to Napolitano (?) was he got on this thing about judges -- he was going to go after judges come hell or high water and he put his foot in his mouth with a number of statements that he made and the number of cases that he brought that really wouldn't stand up. If you have a broader mandate you have a wider field to investigate. You are able to make more cases and therefore you don't have that pressure. On the other hand, if you do have a much broader mandate people accuse you perhaps more of going on fishing expeditions -- investigating state legislators and so forth. The fact of the matter was that based on the report of the previous grand jury that there was corruption in the awarding of contracts by the city we subpoenaed certain records of the city to go over them. That was our initial step. And immediately the Rizzo administration, through the city solicitor's office, opposed the subpoena and took us into court to contest the validity of the grand jury. Now whether they were doing that in good faith -- to determine whether or not Judge Takiff's action in empaneling the grand jury on his own was proper and they thought there ought to be a ruling by the Pennsylvania Supreme Court on that score, which I welcomed, or whether they were doing that because they wanted to conceal wrong-doing in the Rizzo administration, I think is open to debate. But in any event the press immediately grabbed upon it and editorials were written accusing Rizzo of stone-walling and so forth and so on in comparing him with Nixon in that respect. So that
it came to be that we were perceived as being anti-Rizzo in investigating solely or in large part the Rizzo administration.

(WMP: You didn't really get very far in going after the Rizzo administration, did you?)

I don't know what you consider very far. We indicted the Managing Director and we indicted the Executive Director of the Redevelopment Authority, which are two very high officials in the administration. We would from time to time get allegations but it is very difficult to build cases on allegations anyway, but particularly difficult to get people to do more than just meet in a restaurant and give confidential information and refuse at the same time to come forward and testify before a grand jury or in a public courtroom because they felt why should we put our necks out on the line when we pick up the paper and see that the Special Prosecutor's office might not be around for a while and Fitzpatrick is going to be taking over these investigations.

(WMP: Did you have enough investigators or was your budget too tight?)

We really were in many ways understaffed. We had I think the greatest amount we were 13 lawyers and 16 investigators.

(WMP: What do you think you should have been?)

Twice that number of investigators, I think. We probably didn't need that number of lawyers. One of the problems, as I say, the reason we probably didn't need more lawyers at that time was that we were delayed so much by appeals to the Appellate Court so that the whole investigation would be stopped. The lawyer could just forget about it until the appeal was resolved.

(WMP: Tell us how you got fired?)

I think I touched on that subject. The Attorney General when he fired me said that he gave three reasons to the press. That I was incompetent, insubordinate, and leaked information to the press. I covered the leak of information to the press. His allegation that I was insubordinate -- he pointed to a letter of December 5 that I wrote him where I made one reference to lack of support from the Shapp administration -- this was at a time when I was getting nowhere as far as getting what I felt were overly deserved raises for a couple of lawyers and several investigators and I was getting nothing but a run-around up in Harrisburg about this and I finally got mad and wrote this letter which he at first laughed at over the phone with me about
and then several months later used it to say that I was insubordinate. And I'm not sure what he was pointing to with respect to his allegation that I was incompetent. I don't know what the real reason was. I don't think those were the real reasons, but I don't know what the real reason was that I was fired. A lot of people have suggested and the press has suggested that it was because I was getting too close to state legislators and -- which was becoming a thorn in Shapp's side -- but on the other hand certainly if that were true Kane had other ways to obstruct our investigations and keep them under wraps and to fire the Special Prosecutor. I don't know the real answers to why I was fired.

I think perhaps one speculation might be that I was -- see, I received reports subsequent to the time I was fired that Kane was really looking to get rid of me at least three or four months before that. And I was fired on March 31 and I understand he was interviewing people in January to take over the position. I think that what he was looking for -- he wanted to get rid of me because we were getting such favorable press that it was making us almost a force unto ourselves in politics of Pennsylvania and that we were completely independent and didn't do things the way things were generally done in Pennsylvania and this was becoming a problem for Shapp and Kane himself. The District Attorney's race was coming up in 1977 and if I continued to get this type of press support that it would be very easy for me to run for District Attorney and become elected District Attorney and then become a political force unto myself. I think this may have been -- have a lot to do with the thinking of Shapp and Kane.

(WMP: Had you indicated to anybody that you might want to do that?)

No.

(BF: What sort of transition did you have with Segal? Did you have communication with him when he took over?)

Yes. Segal actually took over not until the week after I left and he had me into his office one time and I spent about an hour with him and discussed with him certain matters and I have since on occasion had occasion to talk with him. He found the same problems that I found and he really had, as I understand it, some words with Kane regarding these immunity petitions that Kane continued to receive at the time. And of course his funding problems became even more acute than mine were because the legislature
went so far in the summer of 1976 to pass a law that gave
them control over all federal money coming into Pennsylvania
and then the next day passed a bill which cut out the
Special Prosecutor's Office from any federal money. So that
is what doomed the Special Prosecutor's Office finally even
though they took it into court and delayed it for several
months.

I would say that the media was very supportive of us during
the time that I was Special Prosecutor. I think but for
the media support we might well have been terminated some
time ago but I think that every time Shapp seemed to be
dragging his heels or when Kane, for example, told the
world that he would like to see the DA's office take over
the media came crashing down upon their heads and they
retreated and reversed their position.

(WMP: did you get a feeling that there was a wide public
support? )

To some extent. It was very hard to gauge. The more we
were in the paper the more we became known and the more
they basically supported us. But again I think a lot of
people thought that we were doomed and it was just a matter
of time before the political forces would see that we
were terminated. People read in the paper that Shapp's
aides are getting convicted by federal courts out in Pittsburgh
and they see that Shapp has appointed people to sensitive
positions who have criminal records and they see that Shapp
makes a political arrangement with Rizzo and they think
"forget it." Shapp has no interest in investigating corruption
in Philadelphia. He is only doing this because he has to.
Because the media comes down on him when he doesn't do it."

(WMP: Did you do anything about the Rizzo administration?
People close to Rizzo?)

Well, we indicted Hillel Levinson, the Managing Director.
And Augustine Salvitti, the Executive Director of the Redevelopment
Authority.

(WMP: Levinson was very definitely close to Rizzo. But
that's as close as you got, I guess.)

I guess he was closer than Salvitti.

My time of being a prosecutor, both federally and state,
I've come to the conclusion that it is going to be the United
States Attorney's in this country that are going to have to
take up the role of investigating and prosecuting state
and local corruption, for several reasons. One, they have
the investigative tools which are not available in many
many states, and particularly not available in Pennsylvania,
and those tools are essentially three -- electronic surveillance,
a federal prosecutor can engage not only in one party consentual monitoring but in actual court-authorized wire-tapping. Secondly, immunity — use of immunity as opposed to transactional immunity, which means that a person gets immunized not for — well, this is a little complicated and I'll try to explain it. Use immunity means that you will not be prosecuted — none of the testimony that you give can be used against you, but you still can be prosecuted for the very crimes that you are testifying about if the prosecution can come up with independent evidence. That is available on the federal level. In Pennsylvania its only transactional immunity, which means you can't be prosecuted period. All you've got to do is open your mouth and say something and you can't be prosecuted for that crime. But also, as I indicated earlier, in Pennsylvania it's gotta be an organized crime matter before you can get immunity.

(WMP: It must be a vague definition of what is organized crime.)

Exactly. In fact, you talk about litigation holding up investigations — there is a case now in the Pennsylvania Supreme Court that has been there for two years. Has been in the Appellate Courts for three years all told, that arises out of a prosecution initiated by the Bucks County DA, wherein the issue of whether or not corruption is organized crime is being litigated and the Supreme Court has sat on that case now for two years without deciding it. Supreme Court of Pennsylvania. The third one is grand juries. There are, to be sure, investigative grand juries available to a prosecutor in Pennsylvania but the law involving investigative grand juries is so anachronistic — goes back to when conditions were the way they were 75 or 100 years ago, so that the Pennsylvania Supreme Court has followed the rule that was set down at that time that investigative grand juries can be empaneled only when there is a pattern of criminal activity that affects the community as a whole and you are to investigate conditions and not people. Whereas the federal standard to get investigative grand juries isn't nearly so stringent. The prosecutor can go in and ask for a grand jury — in fact, there are probably three or four grand juries going on at the same time on the federal level in Philadelphia. I know when I was in New York we used to have three or four grand juries going on at the same time. But in Pennsylvania there are stringent legal requirements which gives rise to a lot of litigation. I mention some of our litigation to determine whether or not those standards were met by Judge Takiff when he empaneled the grand jury and we had to go to the Supreme Court, which held up our investigation for several months while that got litigated. So these are the problems that the state prosecutor faces in Pennsylvania.
Another thing he faces of course is the problem of politics in the judiciary, which does not exist in the federal level, where judges are appointed for lifetime and they leave politics behind them and it makes it a lot more advantageous for a prosecutor who is going to investigate corruption, which invariably involves political figures. Also, there is less of a case load in federal courts than there is in the state courts so both the prosecutor and the judges can devote more time to cases that come before them and this is important in corruption investigations. You've got to have swift and certain indictments, investigations, and punishment if you are going to get people to cooperate with you. And in the state courts, you know, they get put on the back burner with all the other matters that come before the court and the Appellate courts regard them as just another -- even at the pre-trial stage and the grand jury stage, they put these -- see, the Superior Court only sits maybe four times a year in Philadelphia so somebody would come before them, for example, litigating a subpoena, whether a person should appear before the grand jury -- they come before them in September, and they set it down for argument in December and decide it in March -- six months after you want to get this person's testimony, whereas in the federal courts it would be decided in a day or two. And in most cases the judges would give it the back of their hands -- they will say you go in and testify -- and allowing all these appeals by the Superior Court, which was wrong, keeps the judge supervising the grand jury to constantly be looking over his shoulders to make sure he is given the proper amount of time and consideration to these motions that are brought to quash the subpoenas. So Judge Takiff and Judge Bullack (?) would take under advisement these motions for several weeks and finally they would decide them and then they would take an appeal and just dragged on and dragged on interminably. That's why I say I think that United States Attorneys all across the country and in Philadelphia as well are going to have to be looked to as far as any impact to be seen from a law enforcement standpoint for corruption.

(WMP: Do you ever think of writing an article for the law review or something like that about your experiences here and your observations of criminal law in Pennsylvania?)

No. I haven't. But that's not a bad idea. I wrote a letter this summer to the Bulletin about post-trial delay and I wrote a thing that appeared about a year and a half ago in the Inquirer on the Op-Ed page about these things that I just mentioned -- federal prosecutors vs. state prosecutors. The editor of the Villanova Law Review called me in response to the letter I wrote this summer and wanted to know if I
wanted to expand on that and I said sure. I don't know whether he's going to do that or not.

(end of interview)