

John R. Dunne



Oral History Interview
with John R. Dunne

*Interviewed by Jeffrey A. Kroessler & Larry L. Sullivan
on May 19, 2008*

Justice in New York: An Oral History

Preface

President Jeremy Travis initiated Justice in New York: An Oral History in 2006. Based in the Lloyd Sealy Library, the project was made possible through a generous grant from Jules B. Kroll, President of the John Jay College of Criminal Justice Foundation. The goal was to interview criminal justice leaders – district attorneys, police commissioners and members of the department, elected officials, defense attorneys, and advocates, individuals concerned with the workings of the system.

Each interview is recorded on cassette tapes and/or a digital recorder. The original is deposited in Special Collections in the library. Each transcript is bound and the volume is cataloged and placed on the shelves. A digital copy is available through the library's web site, as are selected audio clips from the interviews (<http://www.lib.jjay.cuny.edu/>).

Oral history is a problematic endeavor. The interview is only as good as the questions asked and the willingness of the interview subject to be open and honest. Some remain guarded, others become expansive. Sometimes memory fails, and details, names and dates are confused. Some individuals have their own set story, and an oral history will add little that is new or especially insightful. Other individuals use the interview as an opportunity to sum up a career; on occasion that means gliding over unpleasant or difficult details. Our purpose was to allow each individual to tell his or her story. In each case, the final transcript has been approved by the interview subject.

Even with those caveats, what emerges from these interviews is more than a collection of personal reminiscences. The interviews shed light on controversies and policy decisions of a particular historical moment. At times, the interviews verge on the philosophical, as with discussion of capital punishment, race relations, or the decriminalization of controlled substances. Always, the interviews contribute to our understanding of the many facets of the criminal justice system – law enforcement, prosecution, incarceration, prisoner re-entry, and electoral politics – and reveal how New York has changed over the decades, as have social and cultural attitudes.

Justice in New York: An Oral History stretches across more than half a century, from the 1950s to the 2010s. Those years saw an unprecedented rise in social unrest and violent crime in the city, and then an equally dramatic drop in crime and disorder. If the interviews have an overarching theme, it is how the city – the police, courts, elected officials, and advocates – addressed and, yes, overcame those challenges. These men and women were actors in that drama, and their narratives stand on their own. The truth or mendacity of the story is for the reader to assess.

Chief Librarian Larry E. Sullivan guided this project from the start and participated in several interviews. Interim Chief Librarian Bonnie Nelson oversaw the creation of a new website for Criminal Justice in New York, a portal for the oral histories, trial transcripts, images and documents from Special Collections, and other resources. Special Collections librarian Ellen Belcher, cataloging librarian Marlene Kandel, and emerging technologies librarian Robin Davis contributed to the success of this project.

Jeffrey A. Kroessler
2013

John R. Dunne
Chronology

Jan. 28, 1930	Born in Mineola on Long Island
1951	Graduated from Georgetown University, A.B.
1954	Graduated from Yale Law School, LL.B.
1956-1965	Chief law assistant to Nassau County Court; later law secretary State Supreme Court Justice Thomas P. Farley.
1958	Married Denise Maher; raised four children
1966	Elected to the New York State Senate as a Republican
1967	President of the Nassau County Bar Association
1970	Voted against the bill to legalize abortion in New York.
1970-74	Member of the temporary commission to evaluate the state's drug laws, chair of subcommittee on marijuana.
September 1971	As Chairman of the Joint Legislative Committee on Crime and Corrections, one of the four civilian observers at Attica during the prisoner revolt; urged Governor Nelson Rockefeller to come personally on September 12, and objected to use of force; state troopers stormed the prison on September 13, killing 29 inmates and 10 hostages; in yard after saw naked prisoners running a gantlet of guards and said, "I see something I shouldn't be seeing, and it had better stop right away" (it did, but resumed after he left).
1971	Appointed by Gov. Rockefeller to be Vice-Chairman of the select Committee on Correctional Institutions and Programs
1973	Chairman of the Senate Committee on Insurance, and the New York State Select Committee on Insurance.
1973	Sponsor of the Rockefeller Drug Laws
1977	Challenged the Republican County Committee by running for Nassau County Executive; lost to Francis Purcell.
1979-81	Chaired Senate Special Committee on Moral Obligation Financing.

1979-1990	Partner in Rivkin, Leff, Sherman & Radler (later Rivkin, Radler, Dunne & Bayh).
1981	Co-Chairman of the Joint Legislative Task Force to Study Pari-Mutuel Racing and Breeding; Chair of Senate Subcommittee on Pari-Mutuel Racing and Breeding, 1983.
1982-84	Chaired Special Committee on Sports and the Economy
1985-87, 1989	Chairman of the State Senate Judiciary Committee
1987-1988	Deputy Majority Leader of State Senate
1989	Challenged Ralph Marino for Majority Leader and after losing resigned seat in September.
Jan. 1990	Nominated to be Assistant Attorney General and head of the Civil Rights Division by President George H.W. Bush (position had been vacant since the resignation of William Bradford Reynolds in Dec. 1988); confirmed by the Senate by voice vote in March (after selling stock in a South African company and resigning from two all-male clubs); took office in April.
1991	Responsible for overseeing redistricting plans of all states and localities following the 1990 census; rejected proposed New York City Council districts because plan split Hispanic vote.
1993	Left Justice Department after election of Bill Clinton
1994	Joined the firm of Whiteman Osterman & Hanna in Albany
1999	44% of the inmates in state prison were convicted of drug offenses, up from 11% in 1980.
2003	Established the John R. Dunne Fund, a restricted fund administered by the New York Bar Foundation, to provide legal services to families and children of indigent prisoners.
2006	Received the highest honor of the New York State Bar Association, the Gold Medal Award.
2006	Named Chair of the Task Force on the Future of Probation by Chief Judith Kaye; issued the final report in Feb. 2007.

John R. Dunne

May 19, 2008

Dunne I'm John Dunne, a former member of the New York State Senate for 24 years, and I was also the Assistant Attorney General for Civil Rights at the Department of Justice in Washington during the first Bush Administration. I continue to practice law, having been at it for 53 years, and I'm delighted to be here and talk to you.

JK As you can see, we've put together a chronology of your life, highlighting some of the criminal justice elements. You were thrust onto the national stage pretty dramatically when you went up to Attica in 1971, but was there anything in your background that prepared you for that moment? I mean, growing up in suburban Long Island, the kind of education you had, and suddenly being thrust into the national spotlight like that.

Dunne Well, I was never a shrinking violet so, being in the national spotlight, I didn't mind. I had my 15 minutes on, whatever they call it. Now, it's interesting. I'll start from the beginning. In 1939, as a nine-year-old kid, I had a tour of Sing Sing, sat in the electric chair, and it was an experience that remained with me through my life. When I graduated from law school, I became head of the law department in the county court in Nassau County, which is a felony court. I became deeply involved in criminal law issues. Among other assignments, I handled correspondence from prisoners, which further developed my interest, as well as advising judges on criminal law. In the meantime, I founded the criminal branch of the county Legal Aid Society in accordance with the provisions of 18B in 1965. So I had a longstanding interest in criminal justice. When I went to the Senate, I was given the chairmanship of the Committee on Penal Institutions.

JK I would be curious. Why they would give you that as a freshman senator?

Dunne Well, I didn't get it till my second year. There were so many freshmen in my class that virtually all of the committee chairmanships were taken. And being low man on the totem pole from Nassau County, I didn't get one the first year. But second year, I got it. And to give you an idea of how important that committee is or was, I was in my office one night working away, and a fellow walked in, sort of a senior guy. And he introduced himself and he said, "You've got the best committee in the Senate." And I was kind of deeply involved in the work and I kind of beamed, and I said, "Well, thank you." He said, "Yeah, I was clerk to that committee for 17 years and we never had a meeting."

JK Different standards, I think.

Dunne I mean, that pretty much tells you the whole story about prison conditions and the amount of interest that elected officials had in the area.

However, I initiated tours of the state prisons. Every Monday morning, coming out from Long Island, we'd stop at Greenhaven or Sing Sing or Great Meadow or one of the facilities to develop some sense of what these institutions are like that we were supposed to be governing.

JK This was, I take it, a radical departure from legislative practice.

Dunne Oh, yeah. No question about it. And that led me into involvement with the old Commission of Corrections, which was chaired by the Commissioner of Corrections. So you had the fox monitoring the henhouse. And that led me into looking at local jails and penitentiaries, leading up to Attica.

JK I don't mean to rush you to get into that because I'm really interested in the way your background prepared you for that rather unexpected moment.

Dunne Well, I went to Yale Law School, had a terrific teacher in criminal law. I was very much interested in it, so that really developed my, if you will, academic or intellectual interest in the whole area.

JK Was that unusual at Yale, an interest in criminal law?

Dunne Oh, goodness, no. No. George Deschin was one of the leading experts on criminal law, our most popular one. The one I took it from was a wonderful, wonderful professor who later committed suicide. Oh, no, they were very interested in that area. So working with the Commission of Corrections, which was supposedly inspecting local jails and penitentiaries, I toured and visited them, including the Tombs. I visited the Tombs two or three times and saw horrendous conditions. I sat one day in March of 1970 with John Lindsay and outlined the whole problem there. And I warned him that conditions, they had 1,800 people in a facility rated for 600, they had three people in one cell, three people in one cell. And, well, anyway.

JK And most of these people had not been convicted.

Dunne That's right. They were just awaiting trial. There was a riot in the Tombs in August of 1970, and the prisoners got the chaplain's office, got hold of the chaplain's office with a telephone, and they used to call me during the course of this three- or four-day riot, because they recognized me from having been there, and I'd been involved in correctional reform matters of some visibility. So fast forward, and I'll just put this footnote in. In the fall of 1970, there was a minor riot, disturbance at Auburn State Prison. And I can remember going there in November and talking with inmates, as well as officials. We made a report to the governor in February, saying watch out. This unrest is throughout the system and this could be small compared to what could happen. I didn't know. I had no particular in mind. Anyway, when the outbreak occurred in Attica in September of '71, curiously, three or four of the leaders of that riot, once they developed a

leadership, were guys I had known from the Tombs in 1970. And that's really why they asked me to come and to be part of the mediating team, to be there. A footnote, my wife and I left our home to go to a convention up in Vermont, a Second Circuit Judicial Conference Convention, on a Wednesday. On Thursday, a letter arrived at my home from the leader of what was to become the Attica riot asking me to come to Attica and try to work with the inmates and the officials there, because trouble was brewing. You know, they were just waiting for an incident to ignite. So, excuse me, I don't want to give you a sense that I'm important, but I wanted you to get an idea of why some white guy from a middle class, suburban district is messing around with these folks. And I had, as Tom Wicker pointed out in his book, had some credibility with them. So that's how I got to be there.

JK That speaks volumes. You mentioned your background, and it is a background about as far removed from the lives of the inmates and the background of the inmates as you can possibly imagine.

Dunne Oh, you know where I grew up [Garden City].

JK I know. It's that world I'm trying to picture. And yet, to my mind, it's an extraordinary bridge to be able to not only communicate with the inmates, but also to build a bond of trust in just a few instances of meetings.

Dunne Well, the folks at the prison are no different than my constituents. You know, there's no great mystery or formula to governing or to being a legislative representative. Most people just want to be heard. Give them an audience and they get it off their chest. They know that nine times out of ten you're not going to be able to help them, but they want someone to speak to. And I'd say the population of prisons are probably quintessential in that fashion, because there's nobody to see or talk with or communicate with. I think maybe that's why I was able to find a rapport.

LS I worked in the Maryland Penitentiary and I found the same thing. They're very, very bright guys, but I also know the crimes they've committed. So, what kind of experience did you have talking to them? You went to the Tombs, and you knew some of these guys. And Attica, was that the next time you actually were in the prison and talked to them?

Dunne Oh, goodness, no.

LS I mean, talking that way with the convicts, like in the Attica riot. I'm interested in your impressions of, say, talking with them. I know we're kind of jumping a little bit back and forth.

Dunne Well, there's a lot of anger. I don't think they, they were too smart to try to say that they didn't deserve to be there. You know, I recognized what

they had done. But I tried to get inside the head of the prisoners. What is it that government should be doing or could be doing in order to, while punishing, at the same time, trying to turn the folks around? And, gee, some were telling experiences. I'd walk down a tier and I'd just stop and talk to a guy, and within 60 seconds you'd know when he's meeting the Parole Board next. That's really on their mind. And they told about the techniques of what they did. For example, the guy in the laundry who did his shirt, he'd slip him an extra pack of cigarettes to make sure that he'd iron the shirt right so that he'd look decent. And they would, that was just, you know, I tried to get to understand who they were and what their attitudes were.

JK You've already described that the Corrections Department and the thinking on corrections was "out of sight, out of mind" for the public and also for government. You are beginning to take your committee seriously. You are beginning to investigate on your own. What kind of response were you getting from your fellow legislators in Albany? The good news is that you had a governor and an assembly and a senate that were all Republican at the time, so you didn't have party factionalism. But what kind of response did you get from the other Republicans in Albany? And Democrats, if you care to speak of them too.

Dunne Well, first of all, for example, Basil Paterson was probably the most active member of the committee among the Democrats. He was terrific. Earl Brydges, who was the majority leader the first seven years I was there, really the period in which I chaired the committee, was very encouraging, very supportive. And he saw to it that many of the things I was trying to do were accomplished. Small matters, but I didn't get any overwhelming ground support for what I was doing. But in fairness to my colleagues, nobody was really saying, "No, don't go there." I think, because there was merit to what small steps I was trying to achieve, there was no real resistance. For example, opening up visiting, initiated family visits. You might think this is, it's taken for granted now, but it just wasn't happening there, the conditions under which.

JK What was it before?

Dunne Well, they would allow a spouse in there but they didn't allow any kids to come and visit. In fact, some of the places, they had an absolute barrier between the parties and they couldn't touch or embrace or anything of that sort. We initiated work release; that was a David Dinkins idea, when David was an assemblyman. He left before I got to the Legislature but it was still on some dusty shelf. He was very helpful doing that, so that was the sort of thing that I was doing. It wasn't intruding or really being soft on crime.

JK Well, that's the question, because it doesn't sound as though the whole law and order, soft on crime approach seems to come after Attica. I'm not saying that there's a cause and effect there at all. It's just before that time you're

suggesting that Albany was open to prison reform and that you were encouraged to pursue this.

Dunne Yes. Now, once again, I'm just telling you what I tried to do. There really wasn't any interest in doing anything of this nature before I got the committee. And there were a lot of good ideas out there, which nobody took a look at, and it was maybe the first time that these were given a look. And there was no real heavy lifting. All it required was somebody to be interested enough to bring them to the fore. So, you know, if I get any credit, it's for having opened up the discussion. It wasn't a really heavy lift until you got after Attica. That's when it really got tough.

LS You say it wasn't a heavy lift. I mean, did you have much opposition to the types of reforms you just talked about? Work release and family visits.

Dunne No. Well, anything that changes the routine within a prison has significant resistance by the guards. And it was at a time, do you mind if I digress for second?

LS Oh, no. This is your interview.

Dunne Because it was a time when the relationship between guards and inmates was changing. For example, assignments of guards within the facility were based upon seniority, so they bid on jobs. The least desirable job back in the '30s and '40s and '50s was in the tower, because you'd be in the tower, isolated, in the old days when they were 12-hour stints. You know, I can't wait to get into the population. Direct opposite now. Senior guys want out of there. They don't understand these prisoners. They don't know what motivates them. They're disrespectful. So the old guys are now happy to go up in the tower with their radio and their lunch, and that was it. So it was illustrative of the breakdown of the relationship between the guards and the prisoners, and they were really the only contact with the outside world that the prisoner had. And that was lost and so that leveling effect was lost.

LS Do you think that some of this has to do with bringing the culture of the streets into the prisons?

Dunne Oh, sure.

LS The convicts, because you had a prison community before, in the '60s, before the Civil Rights movement, before Vietnam. And then people got, they assimilated in the prison culture, the famous 1940 book called *Prison Community*. And then all of a sudden it started changing, some Supreme Court decisions and certain aspects of the culture of the street came in and changed the whole relationship with the guards. I remember seeing still somewhat older men in the old culture. But you could see, like, the Black Panthers; they were called the

Alley Killers; they would call 9-1-1 and shoot the police. And they would be there forever. But you could see that type of culture coming in and changing some of the relationships between the administration and the convicts. They never liked each other but they got along. They accommodated each other. And then once you see, like later on, it got worse with the gang culture coming on. I mean, you got prison gangs but we're talking about street gangs from the outside.

Dunne You're absolutely right.

JK Larry's put his finger on the question of the historical moment. And that is, I'm sure there were prison revolts or prison riots or prison violence throughout the history of incarceration. But somehow, that moment of the late 1960s, ironically, in the wake of the civil rights movement, you had not only the Tombs but you had the Brooklyn House of Detention and Long Island City. You had several prison revolts or riots within New York City and then, as you mentioned, Auburn and then finally, Attica. I know you had been in the prisons and you had seen that the conditions were a tinderbox, but was it still a surprise that there seemed to be this epidemic of prison uprisings that was taking place in '69, '70, '71?

Dunne Oh, I have to tell you, from what I saw, no. No. I can remember going into the Brooklyn House of Detention after they had their problem. And the warden took me around, brought me into this magnificent gym. I mean, the floor, you could almost, it's like a mirror. I remember saying, "Gee, this is beautiful. How do you keep it so clean?" He said, "Well, we don't use it very much." Well, what do you say? But that was the situation. So once again, I don't want to seem like a know-it-all, but it didn't surprise me.

JK But what is surprising, in retrospect, is the response of the city and the state to these uprisings, at least until that fateful morning in Attica, which was to send in negotiators like you, Herman Badillo, who at that time is to the left of everyone else in city government, and Louis Farrakhan. They're even inviting him in to negotiate.

Dunne Bill Kunstler.

JK And William Kunstler.

Dunne Herman Schwartz. I mean, what a band of, they're not my pals, but they brought us together.

JK I could not imagine if there was a prison problem today, bringing in the kind of outside negotiators, a Herman Badillo today. It would be the equivalent of bringing in Al Sharpton, I think, to negotiate a prison uprising.

Dunne Yes.

JK I cannot imagine the city or state reacting like that today.

Dunne Well, they weren't prepared for it. They weren't prepared. And poor, the Commissioner of Corrections, lovely, lovely man. Russ Oswald. He was just, he didn't have any understanding. And the warden at Attica, he was so out to lunch. He didn't understand anything. It was the old tradition. The warden is in the front office and the P.K, the deputy warden, takes care of the inside. "Warden, don't worry. We got things under control." And I can remember the warden sitting in his office in the corner. "Oh, what are they doing to my prison? Oh, what are they doing to my prison?" He was a guy who finished number one on the civil service list for warden, and he was just a disaster. So the whole system just wasn't prepared for any deviation from what the routine was. And just getting back to civil rights, look, these guys, they found themselves empowered. They thought they were empowered. They were a lot different than the blacks and Hispanics 10 years prior to that. And you had to feel that they would feel—

LS You had the usual, like, the Jackson, Michigan, riot in '56 was one of the biggest before Attica. And you know, it's the usual thing, the food's bad or somebody threw something and then, you know, there was property destroyed but they put it down. But I don't think the bureaucratic administration they had were ready for the political type of nature in Chicago and places like Attica in the '60s.

Dunne No.

LS Which culminated, and of course, moving ahead, like the New Mexico one which was to me, it was almost worse because they went after each other. That's how the culture changed in prisons, which was what, '80, '81, I think. It shocked everybody, the political culture of the prisoners.

Dunne Oh. But today, the gangs' control in the prisons is horrendous.

JK Which is a different situation.

Dunne Yes.

JK It's not an overtly political situation.

Dunne Oh, no.

JK I mean, reading about those times, the grievances are expressed in overtly political terms and philosophical terms. And now it's just gangs, is the impression I have.

Dunne Yeah, yeah.

LS In the California prisons, where a lot of this grew in the '60s, they had broadsides saying their demands. I always think of this one because they wanted conjugal visits. They wanted indeterminate sentences. And they wanted to have a library book policy, a collection development policy.

Dunne Well, okay. I digress. We're at Attica.

JK If you want to go through the story. I know you've gone through the story many times. I looked at Tom Wicker's book over the weekend, and it was a very scary situation, the way he described it.

Dunne Well, speaking of Tom, it's interesting. He and I developed a bond. I don't know why, but he and I became very close during that. And when we left on, oh, gosh, early Sunday morning, we were there in the yard. We were walking out and he said, "I'm not going back again." I said, "I'm not either." And we just sort of had an agreement; we were not going to go back.

JK This was while you were still negotiating with the inmates?

Dunne Oh, yeah, yeah. And then things got so tense on late Sunday afternoon. They thought, make one last try and Kunstler and Badillo and, I guess, Herman Schwartz and the guy who was editor of the *Amsterdam News*, Clarence Jones. They felt they needed some more white establishment kind of person to go. And they looked at Tom and me, but he said, "Yeah, I'll go. I'll go." And when he wrote his book, he said that his marriage, I guess, was pretty much over. His kids were educated and he'd take that risk. But I had a wife and four little children and I just wasn't going to do it.

JK But you had gone in several times.

Dunne Oh, yeah. Oh, sure.

JK What had changed?

Dunne Oh, the intensity. You could feel the electricity and frustration and the anger among the prisoners. And that was it. But I was kind of a go-between. The Observer's Committee was in one room and, because I was an elected official, a Republican, I had access to the warden's office where Bob Douglas and all the other heavies from Albany were meeting. So I was kind of a go-between there.

JK Was Bob Douglas actually Rockefeller's eyes and ears, his representative on the spot?

Dunne Oh, yeah. Well, he and, oh, gosh, the fellow who had been budget director, wonderful person, I'll think of his name, but they were the two main

guys. Yeah, Bobby Douglas was as close to Rockefeller as anybody was. But, yeah, he was calling the shots.

JK Because the impression is that Rockefeller is keeping hands off and you guys are doing all the work. But it's interesting to know that he had personal representatives on the scene.

Dunne Oh, very much so. Very much so. And of course, the toughest part, aside from going into the prison, was telephoning Rockefeller on that Sunday afternoon, urging him to come to Attica. Curiously, a guy who was chief of my staff, came to Attica with me. And he was in the warden's office, and there was Kunstler calling to Rockefeller in Pocantico Hills. My guy was really very smart. And they had dial phones at that time and so he made note of Rockefeller's number. And he gave it to me. I'm sure if Rocky ever knew how we got his number, he really would have been ticked. But anyway, that's how we got it.

JK So you didn't have it just because you and he were buddies and you were a regular up there in Pocantico Hills.

Dunne No, no. Well, I'd like to be but, and there weren't too many invitations after it was all over. And I'm a great admirer. I'm a Rockefeller Republican. But, let's see, it was Wicker, Badillo, the editor of the *Amsterdam News*, and me, the four people who spoke to him that afternoon. I was the last one to speak with him. And he just wouldn't do it. He wouldn't come. See, my thought was this, "Come and be there. Not meet with them, I don't want you going in D Yard. Come, be there. So you're symbolically involved." For example, what's going on in China now, they send a premier in China to go to the earthquake site so that you're showing you're involved, in your commitment, your interest. That's what we were trying to achieve because we had agreed on, I think, 29 of the 32 or 33 demands. And what those guys inside were worried about was, "Hey, you know, once we lay down our arms, you know, they're not going to honor any of these conditions." So we wanted to get him to put his imprimatur on it. And now, people say to me, "Gosh, do you think it would have made a difference?" I don't know if it would have made a difference. But when you consider the stakes that we were facing, and I knew, I had a very good idea of what was going to happen. Should have tried it.

JK Did you really think there was a chance he would come?

Dunne Oh, sure.

JK Really?

Dunne Oh! Rocky, he's my hero. I mean, God, he was, yes. Yeah, I'd certainly—oh, no. This was no charade. Oh, goodness, no.

JK Because I'm thinking, in retrospect, how could he have possibly gone? I mean, from his perspective, would this have compromised his authority? Would this have brought him down to their level? I'm just thinking, would it have been conceivable for him to take that step?

Dunne It was his responsibility. I mean, it was very clear that they were going to use lethal force to retake the facility. You had guards who were in there who were targets, the likelihood, as it turned out, was correct, were going to meet their death. He was the man; he was in charge. The Sunday after the Attica riot I was on one of those Sunday morning programs; they asked me straight out, "Do you think he should have come?" And I said, "Yes." You know, two years later I was stripped of my chairmanship. I don't mean to be any kind of a martyr. But, yeah, I really, to this day, I think it could have made a difference. Could have.

JK If he's on the spot, he would be identified with whatever action takes place. I mean, he was identified with it but his fingerprints would really be on it if he were on the spot.

Dunne Yeah, well, the sad thing about it is that, when they write his general biography, one of the things that will be highlighted will be his failure to go to Attica, like it or not. I don't like it, but he's this great man and I know some things I don't want to talk about. I think it would have made a difference.

JK Because that's the question we have as historians looking back with the benefit of the inventing years and our own perceptions at this time. At the moment in 1971, yes, it is possible for the governor to go. If that had happened now, I couldn't have imagined either George Pataki or Elliot Spitzer going, in these times. But I could have imagined that at least it was possible for Rockefeller to have gone.

Dunne Well, I can't comment on that. I don't know.

JK I'm just thinking of the way our society has become, rather more unforgiving; in some ways, less understanding of situations like Attica or the Tombs or of the people who are involved in it.

Dunne I can't comment anymore.

LS Did the governor have any, afterwards, misgivings, or talk about not going because of all the deaths that happened?

Dunne I'm not aware of any.

LS So he just stood his ground on his decision?

Dunne Check the transcript of his confirmation for vice president. I think you might, excuse me, I'm not handing out assignments. I don't know.

JK How did your relationship with Governor Rockefeller change as a result of your involvement in Attica?

Dunne Well, first, I never had a, you know, close working relationship with him. I mean, he was such a fine person. For example, I sponsored the Correction on Canvas, which was an exhibit of prison art at the capitol every year. That was my idea, and I invited Mrs. Rockefeller to be the honorary chairman the first year. And she was, as long as Rocky was around. And both she and the governor would come every year to the opening, meet with people, photograph. When he'd have an event for members of the legislature, I was always on the list and would go there. But Nelson was not, you know, Nelson came from a different world. And he was wonderful. He was great, outgoing, warm fellow, but I can't claim that there was any perceivable change in my relationship with him. It was an occasional, polite, respectful relationship I had with him, and I respected him. And you know, I was told that he was the one, well, who I thought was the one, he had Warren Anderson relieve me from being chairman of that committee when Warren became majority leader in '73.

JK Were you relieved at all to be no longer in the hot spot from that committee?

Dunne No, I was very much emotionally, as well as intellectually, involved. We made some progress, particularly in response to Attica. I was on the Jones Commission, which was appointed to look into what lessons could be learned from that. I testified before the McKay Commission on it [New York State Special Commission on Attica]. So, I was very much involved in a whole agenda of reform items in '72. I had no intention of leaving. But it all worked out fine.

JK Did any reforms, any positive reforms come out of what happened at Attica?

Dunne Oh, goodness, yes. For example, the Commission on Corrections used to be a five-member commission chaired by the state commissioner of corrections, and their responsibility was to inspect and evaluate and criticize prison conditions. I can remember one of the members on the commission, James Beha, who was Malcolm Wilson's nominee for that commission. I can remember his sitting there before the Jones Committee and I said, "Tell me. Why is it that the commission never really looked at any of these issues and, you know, criticized?" He hesitated and said, "When's the last time anybody ever told the boss he was doing a lousy job?" End of story. I mean, there it was. You know, this whole business about criminal justice reform, prison reform, it's not rocket

science. It's just common sense. And there were so many things that, you know, can and could be done if anybody was interested. That may be a digression.

JK In your estimation, did what happened in Attica speed prison reform or did it impede?

Dunne Oh, no. No, it by all means improved. Oh, yeah. It got behind prison reform. There was an awareness of really what was at stake here. Oh, yeah. And there were a couple of good commissions, the Goldman Commission, the McKay Commission, the Jones Commission. There are enough responsible people involved in looking at it and making affirmative recommendations. No, I think it improved it to a great extent.

JK I guess what's a little ironic is that you're involved with prison reform and improving the conditions in state correctional facilities, and at the same time, you voted for the Rockefeller Drug Laws, which filled the prisons beyond anything that had been the case when Attica was taking place. And we've had this prison explosion ever since. So if you want to shift gears and talk about the Rockefeller Drug Laws for a time.

Dunne Sure. Absolutely. The heroin problem was just a terrible, terrible thing in our society. It was the reason for escalating number of crimes, crimes of violence, of burglaries, robberies. And to his credit, Rockefeller, look, we had the most ambitious program for the synthetic drug, methadone. Methadone clinics, they were all over the city. They were trying to get people to come into those and use that, rather than resorting to heroin. He started the drug commission. You know, where he set up facilities where people could be imprisoned for the use or possession of drugs? Where they had, for being a drug addict, they could have compulsory incarceration. That was an enormously expensive program where they converted abandoned prisons into facilities. Drug Control Commission. They did a study, a cost study of that, and they found out it was costing \$223,000 a resident or inmate to run these things, as opposed to, at that time, \$22,000 or \$23,000 per person in a prison. So he had tried two very imaginative, forward-looking expensive programs that didn't work. So what do you do? You fall back on this idea that punishment is a deterrent. So those laws didn't just happen; they're introduced one day and they were passed the next. It was an awful lot of debate. But I admit quite readily. Doug Barclay, who was chairman of the Codes Committee and sponsor of that legislation, who is a good friend of mine, asked me to be a co-sponsor and so I did. But 30 years later, I was leading the drive to change things, of course.

JK It was by no means certain in the early '70s, that increasing the penalties for drugs, drug possession, drug sale was going to be the way we were going. I did research for the Nassau County Bar Association for their centennial, and one of the things I found was, I think in '71, '72, the Bar Association voted by a very narrow margin not to endorse the legalization of marijuana or decriminalization. It

struck me that in the early '70s, if the Bar Association is thinking that decriminalizing this might be the way to go, and then a year later Albany re-criminalized it in a very dramatic fashion. I'm struck by the fact that there wasn't anything inevitable about the Rockefeller Drug Laws, but it was the response that the state chose, and I would guess with enthusiasm.

Dunne Ah, I wouldn't say enthusiasm. But obviously, the vote was fairly significant. There was well-reasoned resistance to it. A curious aside, if you're not already aware of this, that the chairman of the Codes Committee in the Assembly, Dominick DiCarlo, gave a very impassioned debate against those laws, a very conservative Republican from Brooklyn, voted against them. But he's the very one who sponsored and convinced Rockefeller to pass the Second Felony Offender Law, which has been more damaging than the Rockefeller Drug Laws.

JK What is the Second Felony Offender law?

Dunne Mandatory imprisonment if you had a prior felony. And that was very harsh medicine. That's really contributed substantially to the prison population. So there were a lot of ironies and inconsistencies. But when DiCarlo finished debating against the drug laws there was a standing ovation, a standing ovation, both sides of the aisle for him, for his passion, very intelligent argument.

JK Did you have any doubts in your mind as this was coming up as to whether this was the way we should be going? You were a co-sponsor?

Dunne Yes. Oh, I certainly was. You know, I'd say it's probably a case of how the Legislature works. Personal relationships. My personal relationship with Doug Barclay. I'm certainly not blaming him because he really had a heavy load to carry with that legislation. I have a lot of respect for Rockefeller. Drugs were, obviously, creeping into suburbs in a major way and programs which we had experimented with weren't working. And so I won't say reluctantly. I had some reservations but they didn't drag me into it kicking and screaming.

JK That's the impression I have from talking with other members of the Legislature at that time, Republicans, I mean, that it was agreed that this was the solution to the problem. When did you realize this was causing as many problems as it was solving?

Dunne It wasn't really until I got to the Justice Department, when part of my responsibility as directing civil rights was to respond to conditions in prisons under the CRIPA, Civil Rights of Institutionalized Persons Act, and I became aware of the effect it had, first, in federal prisons. I know that's not the Rockefeller Drug Laws, but when the Civil Rights Division was asked to investigate conditions at the Los Angeles, California, county jail we found drug law related inmates living under severely crowded conditions.

Side 2

Dunne A county penitentiary, which was about five times rated capacity. They had them sleeping in the halls and the chapel and the gym, every place they could put a bunk, or double bunks. And think of that, five times the rated capacity. And of course, that bred conditions which brought claims of civil rights violations. That's how I became involved and aware of the tremendous extent of, then when I came back to New York, I came to Albany and started practicing law. Some of my best friends were involved in trying to change the laws. And that's how I got involved.

JK Where did this idea of changing the laws come from? I know that even Warren Anderson and many others who had voted for the laws had changed their position over the next 20 years.

Dunne Every explanation I've heard is that it was some doctor friend of Governor Rockefeller's who, I guess, was familiar with a similar law. I don't know whether it was in Australia or someplace else, but he convinced Rocky that this was the direction to go.

JK We're talking about the Rockefeller Drug Laws. Just by the way, when you left the Justice Department, why did you go up to Albany instead of returning to Long Island where you'd grown up?

Dunne Well, first, we had a summer weekend home up in Columbia County. My wife and I loved it there. I was invited by my firm to come back; it was a very flourishing, successful law firm. But we just loved it Upstate. And a couple of my friends from my time in Albany, Mike Whiteman, who had been Rockefeller's counsel, and John Hanna, who was Rockefeller's environmental commissioner, invited me to come join them. And it sounded like a good thing and I've never had a moment's regret. It's a first class law firm; it's the biggest in Albany, about 80 lawyers.

JK I didn't question the decision. It was just, seeing your entire history up to that point, it was just something I wanted to ask.

Dunne Yeah, we just wanted to do something different.

JK How did you come to be appointed in the first Bush Administration? It was a contentious position, I suppose, for any Republican in those years. But how did you get nominated?

Dunne Quite simple. The president's first nominee was rejected by the Senate. The Attorney General was an old friend of mine, Dick Thornburgh, a friendship that went back almost 20 years, make it 15. And his wife and my wife really liked one another. I kept up relations with him. In fact, the day before I

announced my resignation from the Senate, I called Dick and I just wanted him to know. And he said, "Well, would you consider coming down here to Washington?" And I said, "Well, no, Dick. I really can't. Because the reason I'm leaving is to go back and become the managing partner at a law firm, which has offices around the country." And he said, "Well." He said, "If I form some committees or something, would you be interested?" And I said, "Sure. Why not?" About five weeks later, he called me, said, "Would you consider coming down and talking with the folks in the White House about taking on this job, the head of the Civil Rights Division?" Simple as that. And I think my ace in the hole, well, I had two aces in the hole. One, my partner, Birch Bayh, who had been in the Senate and very popular, he introduced me to all the members, Democratic members of the Judiciary Committee, took me around and was very warmly received, as opposed to my compatriots from the Republican Party who, they barely gave me the time of day when I'd go to meet them. So I met all the members in advance.

LS He was the Indiana senator.

Dunne Yeah. And his son is the Senator from Indiana now. So that was that one. And then Tom Wicker wrote a column all about me as soon as the president announced that he was going to put my name up. And it all rose out of the Attica experience. And so, with that glowing endorsement, what were the liberal Democrats going to do? And Charlie Rangel was very supportive. So my confirmation just went through. And also, you know, I'm sure the Democratic leaders thought, "Hey, we've had one fight. Let this guy go through." And that's how it happened.

JK But why did you want the job? After an intense experience in Albany, you've just gotten yourself out of the political arena. You're going back to be the managing partner of a flourishing law firm. And then you go back into the arena, so to speak.

Dunne Well, as I said, Dick Thornburgh, a number of times, "Dick, you saved my life." And I can't be any more honest than that. You know, when you're in government and fairly high visibility, engaged in activities, I've always had a, obviously, a small "c," small "r," civil rights interest in the various activities I've been involved in and had the opportunity to work with a fellow like Dick Thornburgh. So that's what I did. And our children were all grown and out of the house, so it was just a matter of Denise and I deciding to go to Washington. Doesn't get any better than that for a lawyer.

JK Were you glad that you only had one term in Washington with President Bush?

Dunne No, I was very disappointed. Because we were making real progress and we enjoyed being there. But in retrospect, I'm glad that we didn't

have any more time because you can get seduced by the Beltway mentality and removed. And I did what I thought needed to be done. I could talk to you about that but that may not be of interest to you.

LS Well, we're interested in your accomplishments and your office when you were under Thornburgh, if you want to talk about more about that.

JK It is a very important criminal justice issue. Because most of the issues that we have are very local, but these are about how these questions are being interpreted and implemented on a national scale.

Dunne Okay. This may seem overly political. I felt that my job there was to keep the president off the front pages, because the only thing the media would really be interested in from a Republican administration would be a negative. And so I felt I wanted to be very careful about picking my spots as to what was done. Second, an awful lot of people thought I was just going to be another version of Brad Reynolds, who was the head of that division for eight years under Reagan. When I got to the division the morale was just as low, well, I was going to say as low as it could be. It's a lot lower today than it was when I came there. And I was impressed by the dedication by the men and women who were career there. You don't go to the Civil Rights Division to shine up your resume so you can go out and make big bucks. There were people who really believed there and that was really inspiring to me, and they were smart as hell. So my feeling was that what I should try to do is to restore that morale, work with them, listen to them. I had political experience and, boy, I wouldn't have wanted to take on that job without having had significant political experience in handling people and issues. So what I tried to do was to resurrect a lot of initiatives that had been kind of on the back burner for a long time. I never really had any interference from the front office, from either Thornburgh or Barr with regard to what I was doing. But what I was doing had to be a little bit cautious. But I think, there was never any credible criticism that I was not doing what was intended in the spirit of the civil rights laws, in terms of enforcing them. I mean, I was very tough on voting rights case and redistricting. That Rodney King case, those guys were acquitted in the state court. And I had to decide whether or not to seek an indictment on the federal. I mean, there are all kinds of issues that we were involved in. Once again, it was like prison reform. You know, if somebody stood back and said, "Well, yeah. What's wrong with doing, I mean, yeah, we ought to do that." So that I don't want, I'm not entitled to any accolades, but there were legitimate items which were the responsibility of that office, and that was my job.

JK Reapportionment. You were in that seat right after the census.

Dunne That's right.

JK And so you had the entire country redistricting.

Dunne Well, it was only the states which were covered by the Voting Rights Act. And those were the states where less than 50 percent of the minority population had voted, actually voted, in prior elections, Mississippi, Alabama, Virginia and North Carolina and South Carolina. Florida was not one, and Georgia was one, and so it was those states that were really tough. There were counties in California. There were four congressional districts in New York, two in the Bronx, one in Manhattan, one in Brooklyn. But it was a very heavy responsibility. Alaska, Texas.

JK You were one of the first individuals to really put reapportionment on the hot seat for New York City.

Dunne Redistricting.

JK Redistricting, that's what I meant. In 1965, there was a redistricting due to civil rights. But in this, New York City seemed to get a pass.

Dunne Well, let me back up. All right. Because you said Senator Schumer was here today. My dear friend, Congressman [Norman] Lent, who is from Nassau County, one of the things he did to enhance my chances for being confirmed, he got all the members of the congressional delegation from New York, Republican and Democrat, to sign a letter to Joe Biden, who then was chairman of the Judiciary Committee, urging my confirmation. The last one to sign on was Chuck Schumer, who was a congressman then. He said, "I'll sign it if Dunne agrees to recuse himself from the redistricting decisions in New York." And that—that was an easy one for me. So the career deputy assistant attorney general took that on. He handled it very well. However, before that, Rudy Giuliani had come and spoken to me about those two congressional districts in the Bronx and some other places. He had just been defeated for his first run for mayor. So I was familiar with it, but I was totally out of the districting in New York. In fact, one time, I said to the guy who was doing it, I said, "Jim, how's it going?" "You're not supposed to know anything about it. Forget you asked the question." So that was, if I may, that's what the tradition of the Justice Department was, particularly the Civil Rights Division. I mean, if you had an understanding, that was it; you lived by it, unlike what's going on there today. That's why it hurts so to see what happened under the current administration in the Justice Department. It might have been a little elitist or snobbish, but we always saw ourselves as a little different, a little apart from the other executive offices.

JK What was the most difficult issue that you had to deal with in the Civil Rights Division? Or alternatively, what were you proudest of that you could look behind at?

Dunne Well, the most difficult was the politics from the legislative standpoint. For example, when I got there, there was all this brouhaha over four or

five decisions by the Supreme Court with regard to employment rights. There had been a whole series of them and there was, Kennedy had a bill in to right those wrongs, and it was pretty harsh stuff. The White House was taking a very hard line that I didn't agree with, but I was part of it, the administration. I was on it. I had to go out making speeches, writing op-ed pieces for newspapers. In fact, my dear friend, Birch Bayh, was quoted in the paper, saying, "I think my friend John Dunne held his nose when he signed that op-ed piece." But that probably was the toughest part. But I can't complain about that, because in the carrying out and enforcement of the laws, I didn't have really any opposition or interference. So I came from politics. I got appointed by a politician. I'm part of an administration, carrying out some, you know, you got to do some of the things that you might not absolutely want to do. But if you're on a team, you do it. As it turned out, the position they took backfired on them, because they had misled the Congress with regard to what they said the Kennedy Bill would do. And so, actually, the six or seven Republicans who wouldn't sign on to the president's program came to the White House one time. And Sununu gave them a brief as to what was wrong with Kennedy's bill. Well, the guys took the bill back, showed it to their staff and they said, "That's totally boloney." And as a result, the next day they called the White House and said, "Don't count on us. We're not going to oppose this legislation." So I think the ultimate result was a good one. But, hey, I'm a team player.

JK And what are you most proud of from the Justice Department stint?

Dunne I think restoring the morale, and the morale of the Civil Rights Division.

JK That's not a small thing.

Dunne Well, you worked on it. You walked the halls. Again, it's not rocket science. No, you listen to people. All right. But every week, I met with every section chief, to listen to them, find out what they had in mind. I had daily meetings with my three deputies to make sure I knew what was going on. So it was interesting, going from being a legislator to being an executive manager. But it worked out. And I mixed it up with the staff. For example, now, in the Civil Rights Division, if you're a career person and you have a position on something, I wouldn't meet with you. I'd insist that you put it in writing. Just let me know what your position is. Oh, God, I would sit for hours arguing over these redistrictings, I mean, going into it, election district by election district. I don't want to cover myself with glory but what I didn't want to get into the big political picture, White House and such. Hey, let me do what I think I can do, and that is get this organization up and running and doing what was intended to be done by those who enacted those laws.

LS You get more done that way with corridor communications and face to face and then you eventually put it in writing. But getting it in writing first, it

seems to me, sometimes is counterproductive because you've got to keep going back and forth with memos. And now, it's e-mails of course.

Dunne Yeah. Oh, it's terrible. It's just awful. Political people just aren't interested in talking, respecting the career people. They had a lot of resignations and retirements. Extraordinary privilege. God! Anybody that gets a chance to be a, I don't know whether you call it a second- or third-level job, particularly in such a hot seat. In fact, I'll just share this with you. Bob Mueller, who's now the director of the FBI, he was the assistant attorney general in charge of the Criminal Division. And I can remember the day we left, he came over to my office and said, "You know, you had the toughest job in the house." And I thought to myself, that was nice of him to say that but I'm a lousy politician. But I'm glad I was in politics. I had some sense how to handle, when you go up to testify, you know how far you can go. You know, I was one of those bozos sitting on the other side of the table. I know what they're thinking. You know, I got away with my skin pretty well. But it just, you had to know how far you could go.

JK In retirement from public office, from public positions, I know you're not at all anything resembling retired, but did you have an agenda when you went back into private practice? Did you have anything, issues you wanted to deal with? Did you have any idea that you would stay as involved in the Rockefeller Drug Laws, prisoner rights and all the other issues that you have maintained an interest in?

Dunne I did not. I did not. I was very fortunate, I suppose, because I had worked with a lot of people and had something of a profile. I was given a number of opportunities. Judith Kaye, for example, appointed me to three or four different commissions. A prominent judge recommended me to the Soros Foundation to head up what became the Campaign for Effective Criminal Justice, which was the main group fighting for change in the drug laws. I had a number of offers from different organizations to be involved. So that's really what has consumed my time. But I didn't come back with any set agenda. I just had a lot of interests that worked out, that people were interested in working with me.

JK A couple of years ago Judith Kaye appointed you chair of a task force on probation. I wonder if you could describe your experience, what you set out to do and what you found.

Dunne Judith appointed a really a terrific group of experts with regard to criminal justice and all the aspects of criminal justice that probation is involved with. We decided that, first, we would look at the criminal justice operation, felonies, misdemeanors. And then we recognized also that an equally important role of probation is with regard to the family court and children. So the first year's study related to the criminal courts. Just last week, we sent to Judge Kaye our report on the family court with a whole series of recommendations for change there. Basically, probation is a good buy. It's a tough sell because, you know, "I

want these little bastards off the street.” But to spend \$15,000 on probation for a youngster, as opposed to the average of about \$130-140,000 a year to put them in a secure facility, taking them away from families in the community, makes absolutely no sense at all. In fact, the recidivism rate among youngsters who were placed in these facilities is horrendous. More than three-quarters of them within three years wind up back in the system. I’ll tell you what the problem is. Probation and probation officers have no lobby. The cops have a lobby. The prison guards have a lobby. The sheriffs have a lobby. Everybody in law enforcement has lobbies. But nobody is either lobbying for or making public the case for probation. And probation has been starved financially. I was the one in the early ‘70s who recreated probation. No. I was the one, I sponsored it. It was legislation that was drawn up by the Rockefeller Administration, which created the Office of Probation and had the state become a dominant figure in local probation operations and funded them to the extent of about 48, 49 percent of the local budget. Today, it’s down to 17 percent. And yet, they’re looking to them to do more and more things, such as collection of DNA, sex offender programs. So they’ve just been taken for granted, but the bottom line is there’s nobody out there fighting for them. Now, what we did on our first report was to propose that the Probation Commission and the office of the department of the Division of Probation and Correctional Alternatives be moved from the Executive Branch under the Judiciary, so it would become part of the judicial budget. And probation, really, is intended to be an arm of the courts. People get involved in probation because of the courts so it was perfectly sensible to do that. And since the judicial budget is relatively inviolate, at least from the standpoint the governor can’t change it, the governor has to send the judicial budget in the form in which the chief judge submits it. The Legislature can mess around with it, obviously, but he or she, whoever she is going to be after the end of this year could put in a lot more money for probation. We felt that that was very important. As well as administratively, since it’s an arm of the courts, it belongs in the judiciary. That was a major recommendation that we had there. In our family court report, I made a number of recommendations, increasing the age of criminality for 16- and 17-year-olds. Now, a 16-year-old is the age, raise it so under 18 would be the age. In place of what are known as persons in need of supervision, the kids who are just a pain in the ass. You know, they’re truants, they’re incorrigible, ungovernable, not criminal activity. Changing that to FINS, Families in Need of Services, because that’s what it’s really all about, because most of these kids come from settings where there’s a breakdown in the family. So, basically, what we’re trying to do is keep kids from being placed in facilities away from their families, their communities, their schools, and getting the family, which had the preliminary responsibility for how a kid behaves, involved; get them under the aegis of the court, get them involved in community programs. So hopefully, that will be well received and endorsed by Judith and others.

LS One of my favorite subjects is how policy affects your type of work within the commission. Back in 1960, Ohlin and Cloward wrote that book *Delinquency and Opportunity*, which was only a few criminology books, monographs, that

affected the laws on a national level. Kennedy may have got through the Delinquency Act, I think it was in '61 or something, and basically, he brought those two criminologists in. Now, we train criminologists, public policy people, et cetera. My question is, you know, they do all these quantitative studies, like they're talking about how much it costs for probation as opposed to keeping them in prison. You have the famous '60s example, Joe Miller in Massachusetts where he just closed out all the juvenile delinquent institutions. They found out there was no difference in recidivism there. It's true. How much does this affect, like the articles that we generate in criminal justice policy, criminology, this type of a subject, saying, "Look. It doesn't do you any good to put them in prison. It's put them under supervision or probation." How many of you, meaning people on a commission, whether you personally read these things and are affected by them?

Dunne Well, I don't know if they read them but the John Jay material was very key in our family court deliberations. I read them all and found them invaluable and they provided a basis for putting forth proposals and getting them approved and adopted by the task force on probation.

LS It's good to know.

Dunne Oh. Oh, boy. Yeah.

LS So much of it, the political pressure, Three Strikes, et cetera, as opposed to what really works, how effective they're going to be.

Dunne Well, you see, that's the advantage of Judith's commissions. We spent two very intense sessions making sure that we got people on the commission who really knew what they were talking about. Same thing when I was on the Commission for Indigent Defense, the Commission on Developing the Reliability and Respect for the Election of Judges, Commission on Judicial Compensation. Just a footnote on that. I, with Milt Mollen, he and I co-chaired the commission on that nine years ago. We made a recommendation and it passed. The problem with today is that it's too much inside baseball. This isn't anything that, you know, I don't know why Judith didn't do this, why she didn't appoint another commission. Not that we were endowed with any great wisdom but we served up a document that you can peddle around and say, hey, look, here's this group, it's for real. It isn't just a bunch of hungry judges trying to get more pay. But anyway, she has been terrific on these commissions. And being kind of removed from, from, you know, there would be three assembly, three senators, three from the governor. They're her people who were respected when they come up with a proposal, which has been effective.

LS Well, we can tell our students this. Their work counts. I mean, seriously, because there's so much, you think in politics, because moral outrage about several crimes, like one crime in California led to three-strikes and we send them all off. And then it takes 25 years to kind of get it back into an even keel with the

types of sentences that are coming out. Whereas the policy reports show this, these are the quantitative studies, that it really isn't going to help some of these. I mean, the nonviolent offenders are, but it's the lesser offenders, or burglaries, which will always usually recidivate, I guess. Some of our studies on burglary, because they're pros.

Dunne A second story man, that's a profession.

LS That's what I mean.

Dunne Well, just on your publications. These reports are valuable in a number of ways, one of which is they steer us toward other jurisdictions, particularly on the West Coast, when we were looking at probation. My God, they're light years ahead of us. And so, that gave us entree to those individuals, which was enormously helpful. So, yeah, those reports are good.

JK It is interesting because you read the criminal justice literature produced by academics, and then you look at the way the criminal justice system is progressing, and you wonder, how could there be this disconnect sometimes. When you were still in the State Senate, there was a renewed push to re-institute the death penalty. You were in the Republican Senate. I wonder if you could explain your feelings about re-instituting capital punishment and the debates in Albany. Were you still there when it was finally passed?

Dunne Oh, no. No.

JK You were gone. That was in '95.

Dunne I was back in Albany but I wasn't in the Senate. I started out this discussion with you talking about sitting in the electric chair when I was nine years of age. I was never a real strong advocate for capital punishment. I felt that if you accept the basic proposition that criminal penalties are a deterrent, I never heard a convincing argument that capital punishment did not deter people from committing homicides. My enthusiasm for the Volker Bill, time and again and again it came up for a vote, I supported it with less and less enthusiasm. Two personal observations. One, the weekend before I knew it was coming up, I thought, 'Gee, I'm not hot on this subject, but I really ought to say something.' So I picked up Lewis Lawes's book, *Twenty Thousand Years in Sing Sing*. In fact, I had met him when I was nine. And I thought, 'Gee, I'll get some real good stuff here.' Well, he was the biggest anti-death penalty you could possibly imagine. I read it and I read it again and it really was very compelling. So once again, part of the Republican majority, I guess, maybe because I had kind of a middle class constituency, I was still voting for it. But fast forward, when I came back and Pataki got the Legislature to pass the bill in '95, Joe Bruno had the opportunity to appoint one person to the Capital Defender Office. That was the office that was set up to provide representation to indigent dependents charged with a capital

crime. So he asked me if I would be on it because of my record of having been in favor of capital punishment. Well, I didn't tell him about my changing view. But because of that record, I was able to be on that three-member committee, which set up an office which was totally effective. Nobody ever was put to death. In fact, it was the work of that office that convinced the Court of Appeals to hold it to be unconstitutional. So when I look back on my career, I think that was probably the best thing I ever did, being a member of that committee. Because you had Arthur Liman, there was no better lawyer in New York. Chris Stone, who was head of the Vera Institute of Justice. And from the first meeting, in fact, before the first meeting, I met Chris Stone in the lobby of Arthur Liman's office building. We're going up in the elevator, and I said, "Chris, there's one thing we agree on right now. Arthur's going to be the chairman." He said, "You bet he is!" And he was a phenomenal chairman. He died too young. What a joy to work with a lawyer like that. But I can say to you without any hesitation, there was not a bit of politics involved in anything that we did, partisan politics. And, you know, there weren't decisions two to one. There wasn't even a hint of that. We were all committed and we only had three months to set up the office, because the bill went into effect on September first. Couldn't have done it if the three of us hadn't worked just like that and agreed upon the director, Kevin Doyle, who was an absolute prince. Do you know him at all?

JK No.

Dunne You ever heard of him? If you ever meet him, God made some special people and he is one of them.

JK What changed your view? Was there anything in specific? It sounds as though it was a gradual shift in your position.

Dunne Yeah. Ah, it's maybe my civil rights experience. It just evolved. It just evolved. And I think maybe, as I became more aware of the disproportionate representation of minorities among those who were on death row.

JK That is the definition of a civil rights issue, I would think.

Dunne Yes.

JK Did you have any issues with the death penalty while you were in Washington? Did that fall under your office?

Dunne I can't remember any.

JK We are about five minutes, seven minutes away from the end of the tape. We can always add another tape. I just wonder if there's something I haven't asked you about that you think we should discuss. I did see that you set up your foundation, the John Dunne Fund.

Dunne Well, I didn't set it up. A good friend of mine did it and I'm very pleased with that. It's set up for the purpose of helping families of incarcerated prisoners. And basically, it goes to families to pay for their transportation to visit family members in prison. I don't think that's high on anybody's priority list but I felt it was very, very important. Perhaps an outgrowth of my interest in allowing for family visitation in prisons. A tough problem I had with regard to that was conjugal visits. I wasn't very big on that. You could argue both ways. Look, it's wonderful for the guys who are married. You know, back when I was running the committee, there wasn't quite the same view as to extramarital intercourse, we'll put it. But by the same token, if you did have conjugal visits and you limited them to married people, it'd cause a hell of a lot of tension with regard to those who didn't have that. And so my original legislation didn't provide for that. That was a tough problem. I wanted to mention something else to you.

JK Just on the issue of prison visits, if you have a family in Brooklyn and the inmate is up in the Adirondacks, that's a tough visit in the best of circumstances, that commute. And if you're visiting the prison, it makes it such a burden.

Dunne Yeah, yeah. Just an aside, Tim Healy, he was the president at Georgetown and he came here and was president of the New York Public Library. He was a lobbyist for CUNY.

LS He used to work here as the vice chancellor.

Dunne Well, he and I became pals, Jesuit educated. And at that time, the second facility up at Bedford Hills for Women was vacant. In fact, Albion was also vacant. There was such a low population. He came up with the idea, "We ought to have a two-year college, set it up in that facility for inmates." Oh, Jeez. We got all excited about it and I took it to the Republican Senate Conference one day. I was laughed out of the room.

LS Ooh. I was going to say.

JK I had to keep a straight face.

Dunne Well, wait a minute. They've got it in other states and, I mean, they've done it. But I mean, that was Tim. He was a visionary and I thought it made great sense. But my pals didn't. I'll be honest with you. My colleagues thought, 'Well, you know, let Dunne do his thing. You know, he's with us when it comes to education aid. He's with us when it comes to environmental matters. He'll support us. He'll be a part of the team.' Although at times, I was somewhat resistant to some of those. But I think they said, "Well, you know, Prison Committee, it's no big deal. You know, let him have his way." I mean, that's plain and simple.

LS I always tell my students when we talk about this, the college education that I mentioned, we have these programs about Jeremy Bentham's "less eligibility" principle, where he said, "You don't give the convicts more than the least eligible of member of free society." And so when we, who have children who pay 40 grand a year to put them in, and you see that the murderers are getting free education, it's a natural kind of impulse or emotion and say, "Wait a minute." And that's what happens in state politics, why I think why they withdrew the Pell Grant for prisoners. Because that's really shut down most of the prison programs, when they withdrew Pell Grants from the prisoners, because that's who was funding them.

JK My dissertation advisor was Richard C. Wade, who was appointed by Mario Cuomo to be head of the Commission on Libraries. The one thing he discovered was adult illiteracy. And as one of his former students, he sicced me on it to do some research for him, and I discovered an appalling illiteracy rate among inmates.

Dunne Yeah. Well, you talk about disappointments. If I had stayed on the committee, I was going to try to zero in on education, because the education program, even today, is a joke.

JK It is. Seventy-five percent of them go in illiterate and they all come out illiterate. You talk about prisoner re-entry, they've already got two hands tied behind their back.

Dunne Now, that's going to be the theme of Paterson's Administration, re-entry. That's where he really wants to focus resources and attention. I haven't seen any evidence of it yet, but that is the word; that's from Denise O'Donnell. That's the key word.

LS But, you know, it's what Jeffrey says, sure. He said 75 percent; 70 percent have not graduated from high school who are put in prison. Seventy percent. Now, they do have mandatory GEDs up to a certain age. They don't have the college prep, but they have to get the GED and go to some kind of classes. But I think it has to be pushed more. That's one thing they kept. The college program was a little bit different. And, yeah, lifers, they had something to do and actually, they just jumped in. I was just amazed that they wanted to read everything, learning philosophy and history, et cetera. But literally, where I was, 50 years was a light term. Nobody ever got paroled. Except one person got a B.A. and everybody went to college. And then they withdrew the program. But literacy, you can't get a job if you're illiterate, and that's one of the big problems. Like I said, 70, 75 percent have not finished high school. You can finish high school and still be illiterate.

Dunne I'm surprised it's that low. I would have thought it was higher than 70, 75 percent.

LS No, I think that's what the latest, countrywide.

Dunne Oh, countrywide. Oh, oh, oh. I was thinking of New York.

JK We've reached the end of a discussion, I think. If there's something you want to comment upon on the chronology or anything else, what we will do is, as I said, make a transcript of this, send it along to you and you can make whatever changes or additions you would like. And I will try and get in touch with Dick Bartlett. That sounds like a terrific idea.

Dunne Oh, boy. That's the mother lode. Where'd you get this?

JK I made it up. I hope I didn't make up too much but I wanted to give you an illustrious career here, so I did research. We have the New York Times Historical database going back, so every article in the *Times* is available, and I just gleaned it from other sources.

Dunne Can I take this? It'll impress my wife.

End

John R. Dunne
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