

# Robert T. Johnson



## Oral History Interview with Robert T. Johnson

*Interviewed by Jeffrey A. Kroessler & Larry E. Sullivan  
on June 28, 2006*

*July 6, 2006*

*November 14, 2006*

## 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

Robert T. Johnson  
Chronology

February 18, 1948	Born in the Bronx; raised in the Amsterdam Houses in Manhattan.
1964	Family moved to the Bronx.
1966	Graduated from James Monroe High School in the Bronx.
1966-1968	Attended City College downtown (now Baruch College).
1968-1970	Served in the United States Navy.
1972	Graduated from City College, majoring in Philosophy.
1975	Received degree from NYU School of Law.
1975-1978	Defense Attorney with the Legal Aid Society.
1978-1986	Assistant District Attorney in the Bronx; Homicide Bureau, Deputy Chief of Major Offense Bureau, Chief of Narcotics Bureau.
1984	The Crack epidemic began.
Aug. 1986-June 1988	Judge of the New York City Criminal Court
October 27, 1987	Bronx District Attorney Mario Merola died; he had held the office for 15 years. Chief assistant district attorney Paul T. Gentile took over, and was confirmed as interim D.A. in December.
1988	Acting Justice of the New York State Supreme Court
September 15, 1988	Won the four-way Democratic primary for nomination as Bronx County D.A. with 39% of the vote, defeating Philip Foglia, Salvador Collaza, and John C. Klotz.
November 8, 1988	Elected Bronx County District Attorney, becoming the first African-American district attorney in New York State.
1989	Local school board corruption cases.
March 25, 1990	A fire in the Happy Land social club killed 87; Cuban immigrant Julio Gonzalez was indicted on 87 counts of arson felony murder and 87 counts of murder by depraved indifference to human life. Johnson appeared personally in court to handle the arraignment. At

the time this was the largest mass murder case in United States history. The owners were prosecuted by the Corporation Counsel, not the D.A.'s office.

August 30, 1990	Drive-by murder of Assistant District Attorney Sean Healy at a deli a block from the courthouse; he was not the intended victim.
1991	Weed and Seed, a program of the United States Department of Justice to improve the quality of life in high crime urban neighborhoods, was implemented in the Bronx through the District Attorney's office.
1991	Police officer shot and killed Mary Mitchell while intervening in a domestic dispute after she grabbed his billy club.
November 1991	Re-elected Bronx D.A.
1992-1993	President of the New York State District Attorneys Association.
November 1992	Banned plea bargaining in felony cases; of 10,141 felony cases in 1991, 84% involved a plea bargain, and only 6.5% went to trial.
1993	Began a program to offer drug treatment as an alternative to incarceration for nonviolent felons convicted of drug offenses.
December 22, 1994	Police Officer Francis Livoti killed Anthony Baez with a chokehold.
1995	Sixteen officers from the 48 <sup>th</sup> Precinct arrested for brutality and corruption.
November 1995	Re-elected Bronx D.A.
1996	Police Officer Kevin Gillespie was murdered, and Governor Pataki shifted jurisdiction from the District Attorney's office to Attorney General Dennis Vacco because of Johnson's opposition to the death penalty.
1997	Received the David S. Michaels Memorial Award for Courageous Efforts in Promoting Integrity in the Criminal Justice System from the Criminal Justice Section of the New York State Bar Assn.
Feb. 4, 1999	Four police officers – Kenneth Boss, Sean Carroll, Edward McMellon, and Richard Murphy – fired forty shots at Amadou Diallo, an African immigrant, at the entry to his home. The officers

were indicted for murder, but the venue was changed from the Bronx to Albany; they were acquitted.

November 1999	Re-elected Bronx D.A.
November 2003	Running unopposed, won re-election as D.A.
May 13, 2004	A grand jury released a 70-count indictment against five members of the so-called "St. James Gang" pursuant to the state's anti-terrorism statute enacted after 9/11, which concerns criminal acts committed with "the intent to intimidate or coerce a civilian population." Charges against the Mexican gang members included murder, manslaughter, conspiracy, and gang assault; their victims were other Mexican immigrants. Edwin Morales was the first person charged under the statute and the first convicted; in 2007 he was sentenced to 40 years to life. In 2010, the Appellate Division of State Supreme Court ruled that the antiterrorism statute did not apply, because Morales's "conduct falls within the category of ordinary street crime, not terrorism."
2004	The Bronx recorded 125 murders, the fewest since 1966, and an 81% decline since 1990.
January 23, 2005	Three firefighters jumped 50-feet to their death from a burning tenement in the Tremont section. The owner of the building and two tenants were charged with reckless endangerment and criminally negligent homicide for erecting illegal partitions in an apartment. In February 2009, the corporate owner and former owner, Cesar Rios, were found guilty; the two tenants were acquitted.
June 30, 2006	Former police commissioner Bernard Kerik pleaded guilty to failing to disclose loans from a real estate developer and accepting over \$165,000 in gifts from Interstate Industrial Corporation, a New Jersey company linked to organized crime that was seeking contracts with the city. Kerik used the money to improve his Riverdale apartment. Soon after, his name was removed from the Tombs, the jail in lower Manhattan.
2007	Re-elected without opposition.
2011	Re-elected without opposition, running on the Democratic, Republican, and Conservative lines.

## Robert T. Johnson

June 28, 2006

JK I'm interviewing District Attorney Robert Johnson of the Bronx, if you'd like to introduce yourself.

Johnson Rob Johnson.

JK This is the oral history project for the John Jay College Oral History collection of criminal justice, and I would just like to spend time talking to you about your background today. What in your background led you to a career in criminal justice? It's not unusual necessarily, but there must have been influences in your education and your family and your childhood that made this a career choice.

Johnson Well, probably three things that I can think of. The first was my father's career, he was a civil servant, but he worked in a post office when I was young. Then, I was still young, probably somewhere between 8 and 11, he became a court officer in the unified court system. So as a child, I had some exposure to the courts. There was no formal "Take your Children to Work Day," but every once in a while my brother and I would go into court with him and chat with the other court officers, for the most part, but some with some of the judges, meet a couple lawyers. And it became of some interest to me. One of the summer jobs I had during high school, it wasn't the first summer, but one of the summers I did work at 100 Center Street just in the clerk's office of the scofflaw part, which was is a part they had in Manhattan for people who had failed to pay fines, mostly of traffic tickets. They had a special part for that, and I got to observe the judge and how he handled those cases. Then I guess the second, it finally came back, well, not finally came back but it started to come back. I got away from the law at some point in high school. I actually majored in, not majored, but I took an accounting class in, I think it was, my junior or senior year and did well at it and thought I'd try my hand at accounting in college. I started City College. Baruch was part of City College at the time, downtown campus. I started in Baruch as an accounting major, and after a year and a half of accounting, it wasn't working out the way I planned. It was a lot more difficult than I thought. So I went in the Navy for two years, came back. And while I was in the Navy, read some philosophy that my younger brother sent me. He sent me an excerpt from Plato's Republic, the dialogue with Thrasymachos, about justice. What is justice? And I was really fascinated by that. So I came back as a philosophy major, partially because I thought that, well, it interested me and I knew that it didn't require the precision in terms of balancing that accounting required. So I did that.

JK You went back to Baruch?

Johnson        No, I had a choice because they actually split while I was in the Navy. Baruch became a separate college. But they told me, since I began at Baruch, I could either go to Baruch or I could go to City uptown, and I chose to go uptown.

JK        You were from the Bronx?

Johnson        I was born in the Bronx, but I grew up in the Housing Authority development, which is right near John Jay, in the Amsterdam houses. I lived there till I was 16 and we moved to the Bronx. I lived in the Bronx essentially one month after I was born. My parents were living in my grandmother's house. And we moved back to the Bronx when I was 16 and I've lived here since then. So through the end of high school and through college and law school I lived in the Bronx.

JK        Did you change high schools when you moved in the Bronx?

Johnson        Yeah, partially because of the move and partially because of the dean of discipline in my earlier high school. It was a combination of the two. [laughter]

JK        Oh, so it was a mutually beneficial move?

Johnson        Yeah, I guess it benefited them some. I don't know. Maybe, I think it was their loss because my high school that I spent the last year and a half claims me as an alum. But I started at Power Memorial, which was down there also by John Jay, and then I transferred to James Monroe, near where I lived in the Soundview area.

JK        That was Lew Alcindor's school.

Johnson        Yeah, we were classmates.

JK        Really?

Johnson        Yeah, right down the street from John Jay. So, I went to uptown and majored in philosophy when I went back. And then when I was about to graduate I didn't know what I was going to do. Philosophy, basically, you either have to be a Ph.D. or you have to find something else as a career. And one of my teammates on the track team was talking about taking the LSATs; you know the law, had always been there in the back of my mind, I guess. So I said, "Let me do that." In actuality, I was probably interested more in government. I was fascinated by New York City government. I ended up choosing my law school based on that. I was accepted to Fordham and then later decided to go to NYU because it had a number of courses in city government. But while I was there, my first summer placement for an internship, I saw an on a bulletin board for the Law School Civil Rights Research Council. And I applied and they placed me in an internship and it was with Bronx Legal Aid. And from that moment, which was the summer of 1973, criminal justice has been what I've been involved in.

LS        Did you find philosophy a good preparation for law school?

Johnson        Law school, and probably more so than law school, for this, what I'm doing now. I mean, I think it helps you think critically. It helps you to analyze. I think the lawyer's skills and the philosopher skills are similar. I have a great deal of interest in being right and being just. So that's helpful to me. My executive staff will tell you we started out, I forget what the discussion was about, but it was some heady issue, I think it was a personnel issue, not a case issue, in the last couple years, and I started off by handing out copies of that dialog to staff as our starting point for the discussion and how we were going to try and find justice.

JK        I have to ask you. It's pretty unusual for your brother to send you a selection of Plato.

Johnson        Okay, that's a good question. Nobody's ever asked me.

JK        While you were you were in the Navy. It says either a lot about you or your brother. Or the Navy.

Johnson        Nobody's ever picked up on that before.

JK        So can you just tell me how that happened.

Johnson        You know, I don't know if I ever asked him his motivation for sending it.

JK        Where was he at the time?

Johnson        Let me see. I was in the Navy, 1973. He might have entered college. He was probably in college. He was born in '50, it was '69. So he was about 18. He was probably just graduating from Cardinal Spellman and getting ready to go to Fordham. It's a good question. But my brother is the studious, he's more of your type, he's one of you guys. He's professorial in his way. He taught, when he finished college he taught Catholic high school for awhile. He taught religion, but in Catholic high school you don't get paid well, so he went to law school in the early '80s and became a lawyer in 1985. He does labor law, works for New York State United Teachers. But he was probably one of the best students you ever want to see. When he graduated from Fordham he had, I think, one B, undergrad. So he graduated summa. And I guess that's just the way he thought. I don't know what made him read Plato and he shared with me and it really grabbed me.

JK        How did you decide to go into the Navy? Were you having grade trouble at Baruch and just said, "I've got to get out of here and clear my"—

Johnson        Right. Exactly. I thought I was going to fail out. It was before the military lottery, the draft. The draft was in effect but it was before the lottery. So if you didn't have a student deferment you were likely to get drafted. And I tried to think rationally. So I figured if I'm going to end up going in the service, I wanted to go where they had clean sheets and hot meals, rather than perhaps ending up with some mud hole.



JK This was during Vietnam?

Johnson Right. So I decided to enlist in the Navy.

JK You probably would have been drafted, yes.

Johnson I definitely would have been drafted, yeah.

JK Can you summarize your experience in the Navy?

Johnson In a word, fascinating.

JK That can be taken many ways.

Johnson It was educational. It gave me not what I went in for but what I needed, which was just a chance to grow and see what life was about in terms of, you know, evaluating people. One of my, it actually wasn't one of my professors, one of my teammate's professors tried to counsel me that I wasn't going to enjoy it, that I would probably be smarter than some of the people giving me orders, and you have to accept what they say and you have to do what they say. And I got to live that for a couple of years. I was not a college graduate so I was an enlisted man. But I think I had some good common sense and a pretty decent education, so that I was probably on a higher educational level than most of the enlisteds, and not far behind some of the junior officers. I got to see, the skill they taught me is almost useless. I learned to be a navigator. They let me pick. You had five choices, they were going to send you to schools and you could pick five. And they told me that if I was interested in intelligence I could have three extra choices. So I picked eight choices and they gave me the seventh out of my eight choices. I learned some navigational skills, but what it did, it took me to an admiral's staff, because I did well in that school. I was one of the top students in the navigation school. And after we came out of school they assigned us. So it was an admiral's staff, and I got to see some different things about how people interact. You know, officers with officers, officers with enlisteds, people from other states with New Yorkers, African Americans with whites. It was quite an education.

JK Was that the first time you really came into contact with people who were not New Yorkers?

Johnson I came into contact some but that was, of course, real substantial contact.

JK I mean, your whole life was in New York.

Johnson The only trip I recall outside of New York was an eighth-grade trip to D.C., now that I think about it. Oh, that and the Power Memorial basketball team. I was a student manager for the basketball team, and Power was number one in the country, and DeMatha Catholic in the D.C. suburbs was number two. And they finally, with these big

negotiations, they finally arranged to have the two teams play. And we went down to the University of Maryland campus. And that was an eye opener. I can remember the drawl on Morgan Wootten, who was the coach at DeMatha Catholic, because he came in to console us after our only loss of that year, which was a, which was hometown refs. You think some of the soccer calls this week were bad. They were literally standing on Kareem's feet and pulling his shorts and the refs were looking the other way. We lost by about three points, I think. But I remember that grating drawl as he came into our locker room to console us after they had beaten us. I mean, he may have been a decent man but the drawl, you know, just caught my attention.

JK Was that school white?

Johnson They had some African Americans. I think they had, I want to say Adrian Dantley. I'm not sure. But two of their biggest stars were African Americans. But it was similar to Power, I guess. It was a Catholic high school.

LS Dantley went to DePaul, I think, after that.

Johnson Yeah, I believe so. But I think I think he may have been the one that was on DeMatha at the time.

LS Where were you stationed? Where did they send you?

Johnson The Admiral staff was based out of Norfolk, Virginia. And we would go on various aircraft carriers. In 1969 we did a Mediterranean cruise from July to December. And I think it was then that my brother sent me some reading material.

LS So that's when Plato changed your life.

Johnson Yeah.

JK You had done track. You said you were on the track team at City College.

Johnson At Power Memorial and City College, right.

JK And you did that both before the Navy and after the Navy.

Johnson Correct. In fact, the Navy, I think going in the Navy kind of hurt my track career, because the year I went in was my very best year. And I only stayed in school till about March. So I was really, I mean, I was decent when I came back.

JK Where did you pick up track skills?

Johnson I don't know if I had track skills. [laughter] I had some speed. And I still have some speed. You know, we kids raced and but what happened was, this is somewhat embarrassing, but my favorite sport is basketball. And I had the misfortune of not being a

very good basketball player and going to the school that had the best high school team in the nation. So I tried out for the basketball team and I befriended one of the players on the team. And he was trying to get me on the team, he was passing me the ball and I was scoring points but nobody was fooled. And the track coach saw me running up and down the court and actually pulled me aside, you know, “I’ve got something for you to do.”

JK      Track was once such a premiere sport in New York City in high schools and colleges, the indoor season.

Johnson      I think it still is. The Armory’s been redone beautifully. The 168<sup>th</sup> Street Armory is really quite a facility. I’ve been to two meets there since it was redone, and it seems to me, among the people who run track, it seems like nothing’s changed. I don’t know.

JK      Well, it sounds like it was a fortuitous meeting. You didn’t have any track sessions at the Amsterdam houses or in junior high school. It was only—

Johnson      No, well, elementary school I went to public school only one year, well, kindergarten and first grade, and then I went to Catholic school, and they didn’t have those kind of teams. They had CYO basketball. We had races in the Amsterdam Houses, you know, I was one of the fastest but it wasn’t anything organized. You know, the way life is too, things all kind of hang together, because one of the influences was that, because I had academic difficulty when I left, there was some hesitation in taking me back when I was coming back. And the track coach was my advocate. So, he’s one of my mentors. He’s like a father figure to me also. He’s not doing well today. He’s living down in Florida, but he’s one of the people who kind of had an influence. And track, that led to him getting me back into school. Obviously, he wanted a good athlete. But we also had an affinity for each other and were friends. And I would think, of all the people he coached, I’m probably one of the ones who stayed in touch with him the most throughout the years.

JK      It’s really underestimated, the value of having athletics as an option for some students. It grounds you in the college, keeps you going in a lot of ways. And you’re right about the relationship with coaches.

Johnson      So that was important.

JK      Can you talk for a moment about your home life, growing up in the Amsterdam houses? Did your mother work, for example? Just a few thoughts about growing up there.

Johnson      While we were living there, she probably did. She first was at home when we were younger. Then, as we started to go to school, she took a part-time job as a crossing guard. She used to have that corner—you know PS 191? She was on the south end of PS 191 on that corner. So that enabled her to be home with us for most of the day. And then, as years went on, she took a job, also in the neighborhood, where Tower Records is now, right, just above Juilliard was Empire Mutual Insurance Company. So

she worked there in the insurance company for a while. And actually, when I first came back from the Navy I got to work in the insurance company for a short period before I went back to school. And I tried to do it after I went back to school, to keep that and the track team, but I ended up letting the job go.

JK And were your parents both educated?

Johnson Both high school graduates. You know, I think on the upper end of the IQ level of high school graduates, I would say, just judging by the common sense they showed and certain skills they showed. My father's always been interested in crossword puzzles and words. My mother's an avid Scrabble to this day.

JK You were the first member of your family to go to college?

Johnson Yeah, among my first cousins even, I think I was the first. My father, his education level, he was accepted, he attended Townsend Harris and Stuyvesant, at different times when he was in high school. It was the Townsend Harris, not the one in Queens, but the original Townsend Harris, which were both of the elite high schools in the city. He dropped out to work. When my grandparents divorced, my grandfather raised him and his sister and brother. So he needed his assistance working. He was the oldest of the three. They were both home and both hard working. And it seemed probably like almost a middle class life, a two-parent home, both working. We'd get to go to the circus and the rodeo and the Knick games and Ranger games, the Giants, the Dodgers and the Yankees, we saw it all.

JK I'm just trying to get a flavor for your childhood.

Johnson It was a very communal; that development itself was very communal. Everybody knew each other. I think a lot of the families were young parents. They opened in 1947, and I was born in '48. We moved in a month after I was born. And a lot of the families were similar so that people actually just grew up together for the first 10, 12, 15 or more years.

LS You mentioned your first cousins. Were they all there too, your parents' brothers and sisters, et cetera?

Johnson Well, I had one first cousin that lived in that same development for awhile. I think they moved in, actually, before we did. But my mother's side of the family more so than my father's. I mean, we had contact with my father's side of the family. They lived in Queens. My mother's side of the family mostly lived here in the Bronx. My grandmother was still here, and we used to all come back, almost every Saturday. My mother had five sisters and a brother. I never get the count exactly right off the top of my head, but it was in the neighborhood of 15 of us. And we used to come back just about every Saturday.

JK Why did your family finally move to the Bronx?

Johnson        Okay. Wow, you're good. These are questions that I've never been asked before, some of these. I was a teenager, and I think one of the things, my father didn't like the crowd that I was hanging out with. And I guess also economically we could afford to live somewhere different. So they made arrangements to move to a place called Nagle House, Nagle Avenue, in the Inwood section of Manhattan. Nagle House is built on this large rock that they had to blast over and over again. The construction got delayed and I got more and more involved with the people my father didn't want me involved with. And we used to come to my grandmother's house. My grandmother had moved from 163<sup>rd</sup> Street over here, Jackson Avenue and 163<sup>rd</sup> Street, to Fteley Avenue, which was in the Soundview section. And we used to pass there almost every Saturday, and there were houses being constructed all over Bruckner Boulevard when we passed. There was a big sign, I remember, that said, "If you lived here you'd be home now." And it became home in 1964. They decided to switch there. And it was close to where my grandmother lived.

JK        So your parents bought the house?

Johnson        No, it wasn't a house. It was an apartment, a rental. Mitchell-Lama apartment building. Nagle House was the same thing, both apartment buildings. My grandparents had a private house. We lived in apartments.

JK        So what exactly were you doing that your father was so nervous about?

Johnson        It wasn't so much what I was doing.

JK        And would you have prosecuted yourself?

Johnson        Well, it came close. I remember, I think one of the catalysts was that some of the guys had come up to a development in the Bronx and spoken to the young ladies from that development, and a fight occurred. I wasn't with them. But it was going back and forth and, you know, guys from two housing developments. And I remember actually being told to stay away from these guys and was away from them. And I saw where they were and one day I saw the cops going where they were. And I just went down and let them know the cops were on their way to where they were. And we all got pulled in, everybody that was there. We all got pulled into the precinct. They were questioning us about this fight. Some of them, I mean, one of the guys, I remember reading about him years later doing a stick-up in the neighborhood after we moved out of the neighborhood. I remember seeing it in the papers. And the thing that shocked me most was that he got caught, because he was one of the guys who was faster than I was. You know, things like that. I don't recall seeing a lot of drugs. I recall seeing one guy who said he was high on marijuana one time. Things like that. In fact, I don't even recall seeing drugs at all.

JK        It sounds like the classic story of, "I could have gone either way." But it doesn't sound like you were ever really in danger of going over to the dark side like that. It's just that those influences were around.

Johnson        Right, right. My father made the moves when he had to. I hope I have that skill.

JK        So you graduated from college and majored in philosophy up at City College. How was going to college after going into the Navy different than your first time around? Did you detect a real change in yourself about the way you approached it or what you wanted out of it?

Johnson        Yeah, it was different, I guess, in three ways. One was, I wanted to be there more. Two was, I was really into the subject matter, philosophy and political science. And three was, the results of that. The grades were much better.

JK        Were you living at home at the time?

Johnson        Right, yeah.

JK        This was a time when it was still free tuition?

Johnson        Virtually. I think at the peak I paid \$43 a semester, student activities fee.

JK        But still, you had to support yourself somehow while you were in college to buy books and Cokes and coffee and the like.

Johnson        Well, I had the GI Bill also, which carried me, I think, all the way through two and a half years of law school also.

JK        I was wondering how you paid for law school, because Dan Donovan says he's still paying his loans.

Johnson        Well, Dan's a little bit younger than I am. Law school was not quite as expensive when I went. But I think I only borrowed, if I recall correctly, I only borrowed, like around \$5,000 for law school. I got married after the first semester, my first marriage and my ex was working, she was working. We were living at first in an apartment building that her parents owned. And then we got our own apartment. But between that and the GI Bill, the last semester was, I do recall, the last semester of law school I was on a 50 cents a day lunch budget, so that I had either French fries or yogurt. I think that was about the extent of my lunches for that semester.

JK        So you just barely got to the finish line. So your grades were better at the end. Getting back to going into the law, you're coming up in your senior year. What are your options as you're a senior? You're going to graduate with a degree in philosophy, what are your options? And you said a member of the track team said, "Let's take the LSAT"

RJ     He told me he was taking it. He told me he was taking it and he just felt that was probably something that I should do because I didn't know what I going to do with the philosophy degree otherwise.

JK     But you hadn't had a goal, "I'm going to be a lawyer. I'm going to be a lawyer."

Johnson     You know, every once in awhile I'd talk about it a little it, but I don't know that I had a real goal at that point, like I did when I was majoring in accounting, to be an accountant.

JK     Is there anything about NYU Law School, the experience there? Did you feel that you were now running with a really fast pack of students, or did you find that it wasn't difficult to keep up? I know that when I got to graduate school the first time, I was like, "Whoa! I got a lot to do."

Johnson     Yeah, I had that reaction. I still look back at it that way. I think I was there mostly on the basis of my LSAT scores, as opposed to my college grades. And, NYU was one of two schools, NYU and Michigan, who I think in terms of affirmative action were looking for African Americans. So they picked up on my LSAT scores. I didn't even apply there originally. I'd already been accepted to Fordham. And then they asked me to apply and I was accepted. So in that sense, they really opened the doors for me. The other sense, it was overwhelming in a couple ways. I don't know that after we got there it was really that warm for the African Americans. And even the other African Americans that I can recall, I think they were on a level above me. I felt like most of the class was operating at a level above where I was.

JK     Did you get a sense that, was there any resentment that, "Oh, they let him in," and the whole argument today of reverse discrimination.

Johnson     Yeah. I don't know if it was so much by the students. It was still, I think, a debate on the university committee about whether it should be done. I remember distinctly a term "special admittees," almost like a stigmatic term. I don't know if they knew who was who, but I guess people felt that a lot of the African Americans wouldn't have been there but for that program. I'm sure some of them would have, what I could see of the, But I don't know that I would have been.

JK     It seems to have worked out.

Johnson     So far, so good.

JK     You mentioned that you got interested in civil rights law.

Johnson     Well, it wasn't civil rights law so much as just that the name of the group was the Law School Civil Rights Research Council. I didn't have a summer job, and there was an ad for summer jobs.

JK And you got paid for that?

Johnson It was a small stipend. But it wasn't really civil rights law that they assigned me to. They assigned me to Legal Aid, criminal defense here in the Bronx is where I ultimately was assigned. And that's where I ended up working both summers.

JK Was there anything about that experience, going into Legal Aid, that made you think twice about what you were getting into?

Johnson Absolutely not.

JK No?

Johnson Absolutely not.

JK It actually confirmed your?

Johnson It confirmed what I love about the law, that you're advocating on behalf of people, that you can actually see the people and see the issues and try to do something for them. That's one of things that caught me, even as a 9- or 10-year-old, when I went to court with my father. I remember sitting there wondering, 'Why are these people here? What happened that allowed this guy to beat his wife? What happened in his life that brought him here? And why is she permitting that? Why are they living this kind of existence?' And I was asking those questions as a child, wondering why was that happening. So actually being somewhere where the lawyers, sitting down and interviewing the people and saying, "Look, this is what you're up against, but this is what I'm going to try and do for you." And not so much as, yeah, people say, "Well, most of them are guilty. Most people who are charged are guilty." But even then there's something you can do for them in making sure that that the punishment is appropriate and not too severe and their life is not destroyed forever, especially if they're youthful offenders. You can work with them. So it was just fascinating.

LS Let's go back to law school just for a second. When you were in NYU Law, were there any courses or professors or even books like Plato when you were in the Navy that maybe created a lasting impression on you and set you in a direction, inspired you to go in a certain direction in law?

Johnson I wouldn't say that it was inspirational. I found it all interesting and relevant, even the civil courses. I thought the questions that were being asked were appropriate questions. You know, this case says, "This is the law and these facts are these." It doesn't exactly fit into that case so how do you deal with it? I thought all those questions, they really drew me in. I remember my evidence professor just being one of the more entertaining human beings I've ever seen in my life, Professor Irving Younger, who's deceased now. He was so good, I commuted from Soundview, take the train down to the Village, Washington Square. And there were a few days in law school where I did not attend every class. But I would take the train down and go to Evidence and then go



back home on the days that I wasn't up to it. But, I don't know of, I'm trying to think. I also took the clinic in my third year. I took a criminal defense clinic where we got to represent defendants.

JK That's a regular course or is that an extracurricular?

Johnson No, it's for credit. It's for credit. It was one of the earlier law school clinics. Now, most of the law schools have clinical programs. But that was one of the earlier ones. And that was just wonderful to be able to do that.

JK You graduated law school when?

Johnson '75.

JK So you are in New York during some kind of difficult times. The city's fiscal issue is going down, crime is going up. Racial antagonisms are a little raw in a lot of ways. And you're going into Legal Aid and the clinic at a time when it seems as though the social fabric of the city is unraveling a little bit. Did you get a sense of how difficult this was going to be, going into criminal defense at a time of rising crime and the city seems to be cracking?

Johnson Well, the counterbalance to that though was it was also a time of high idealism among young people. And everybody wanted to do something. People in universities and law schools, I mean that's what they wanted to do. In fact, the tide has shifted because of all of the crime problems in the '70s and the '80, I think, everybody sees, not everybody, but a lot of people see district attorneys offices as the side of right. And at that time a lot of the young people saw defense as being the side of right. You know, the government was being questioned, the Vietnam War and the government was being questioned about so many different things. So that's where a young person wanted to be, to be there going into court and advocating for the downtrodden.

JK That's interesting, because it never occurred to you to go either become an assistant district attorney or to go into corporate law and make a bundle?

Johnson Actually, no. I actually applied for district attorneys' offices when I graduated also. I had an connection to Legal Aid because I got placed there for my first job, the first agency that I went to trying to get a summer job. But when I graduated I applied to both. And I always felt that each side has a place in the system and then that there is good ethical work done on both sides, and that you can't have justice without a defense lawyer and an assistant district attorney. I've never felt differently about that. I could do defense work tomorrow. Obviously, everybody talks about the discretion that DA's have. At the end of the day, I obviously think the position I have now is the perfect position, and the best position you could have in criminal justice, even beyond the judiciary, I believe. But, it all is necessary and I always felt that. Because I was labeled with the Legal Aid Society, having done the two summers there and having done a defense clinic, I think I was not looked at objectively by district attorney's offices. In

fact, I was going through my files a couple weeks ago. I still have in my desk one of the rejection letters I got. I think I was rejected by Manhattan without an interview and I was rejected by this office, the Bronx District Attorney's Office, after the first interview. So the process is a little hit and miss.

JK Because of your background with Legal Aid, specifically?

Johnson Well, I can't say. I surmise that that's what it was. That's what it was. And I didn't get to work here as an assistant DA until I was a known quantity, having been a Legal Aid lawyer for two years.

JK Legal Aid doesn't pay very well.

Johnson Neither does the District Attorney's Office.

LS It's an interesting point there. Give us a couple of your thoughts on this. The district attorney's offices feel, at least in that time, that you were somewhat tainted because you worked on the defense side, like Legal Aid. So they wouldn't take him. Others might say, you could see both sides of the case, other than the fact that it's a scoreboard, with the prosecution, et cetera. But if you worked at Legal Aid, you could see the defendant's side.

Johnson Which is a benefit. It's a benefit.

LS Yeah, that's what I'm thinking.

Johnson And I tell young lawyers now that if you can get a defense clinic, it doesn't matter. If you want to be a criminal attorney, whether it be defense or prosecution, either clinic is just as good. In fact, it may be even better to do the opposite one of the one you ultimately want to do so you have some perspective on what that is. But then you still have to have an employer who's willing to buy that argument, willing to be receptive to that. I mean, we're receptive to that. But I don't know that everyone was then. I don't know that everyone is now, even.

JK Were there any cases when you were at Legal Aid that you thought, "Gee, I wish I didn't have to win this one," where some of the people you were defending, you felt, "Do I really want to defend this person?" Coming from those times of the 1970s, which were increasingly violent and increasingly, all the drug issues and so forth.

Johnson Well, I remember only one. I remember doing a preliminary hearing, which they don't even do anymore, in a case involving a sexual assault. And I forget, it may have been a child that was assaulted. And I remember wanting to go under the table as the hearing was going on. I did what I had to do, I questioned, asked the questions, but it was, that was the only time I really remember feeling terribly uncomfortable.

JK I mean, you are defending them and everyone deserves the defense. But you're also a human being listening to the facts or the stories, and you have gut reactions yourself.

Johnson Yeah, but you have to put it in the best light. Number one, most people don't go on trial, and if they do, it should be proved by the prosecution that they committed the crime beyond reasonable doubt. Somebody's got to put that to the test.

JK As a lawyer, you have the sense that, "It's my job to win the case. I want to win every case."

Johnson Oh, yeah. And the other part's what I mentioned before, is that because most people don't go to trial, it's about what the punishment is going to be. And you can have an impact on that. You can show something positive about the person that the other side doesn't know. There are things that you can do. You can show something, some weakness in the case that shows that maybe they really can't prove what they think they can prove. You concentrate on those things. The other thing is, ultimately, if it does go to trial, the jury or the judge is the finder of fact. That's not your job, so I try to, you know, just stay within my role and present to the finder of fact what needs to be heard.

JK What prompted your decision to reapply to the District Attorney's Office, as opposed to applying to private law firms, for example? Because it seems as though you're heading into a public service career as opposed to the private sector.

Johnson The only time I applied to a private law firm, and I felt totally out of place, probably more out of place going to a Park Avenue law firm than I did representing that guy, the child abuser, was during the fiscal crisis of 1975. When I graduated from law school, Legal Aid had offered me a job. I was to start in August, but because of the fiscal crisis and budget problems, they rescinded their offer. So here I was without a job. And I started to look around at other things, so that was one of the things that I did. I also got a Class E driver's license that I still renew as a Class E that permits me to drive a taxicab. I didn't end up driving a cab, but I want to keep my options open.

LS There's always the next election, right.

Johnson So I started in October with Legal Aid but that two months can seem like a lifetime, when all of a sudden you're supposed to have a job and then it's like, "We'll let you know." So that was the only time I applied privately. After I worked at Legal Aid for awhile my interests became the bench, becoming a member of the judiciary, which, you know, you have to be 10 years to become a criminal court judge. And I felt that if I could show a balance of five years on each side, that that would perhaps make me more marketable in terms of a career on the bench. But after three years of Legal Aid, the DA's office actually approached me and said that Mario Merola was looking for more African Americans who could try cases and try to diversify the office. So at that point, with them approaching me, I decided, and my commitment with Legal Aid was just about up. In fact, the DA's office had a class that started in August or September of '78. But because

my class had deferred at Legal Aid, my three-year commitment wasn't up till October, I asked Mr. Merola, could I complete my commitment to Legal Aid? So I started by myself in October of '78.

JK What were your responsibilities here? And were you surprised when you got into the other side? Was the DA's office operating the way you thought it was? Was there anything that surprised you when you got in on the other side?

Johnson They were operating better than I thought they were. I mean that honestly. I mean that honestly. The emphasis that was put on getting it right. I think people who don't take the time and examine the DA's office don't see that emphasis on screening cases and charging decisions, and all the cases that may be declined to prosecute or prosecution deferred for more evidence and those kind of decisions. When you're doing defense, you only see the ones that they brought.

Side 2

Johnson If there's not enough evidence, you have to tell the police officer that this is not enough. And the next nine months I went to the next level where we were doing felonies for grand jury presentation and the same thing. I mean, the chief – my chief then is one of the judges across the street, Supreme Court now –and he taught me so much about just trying to get to the just result and not necessarily prosecuting everybody that comes in the door. And it really was not what I expected, to that extent. You hear people talk about discretion, but until you see it, and I mean, like I saw it. I was a Legal Aid lawyer in that building, the criminal court building there, on Friday afternoon, and Monday morning I came in, I was an assistant DA, over the weekend.

JK It's kind of like getting traded from ballpark to ballpark.

Johnson I had assistant DA's slapping my hands when I went to pick up folders. "Why are you picking up our folders?"

JK That's a funny experience. And was it a different experience when you got in? Did you try cases as an assistant DA?

Johnson Yeah, I tried cases on both sides, not as many. One of the reasons I left Legal Aid also is I didn't get as many trials as I would like to have. I think I tried maybe six jury trials in my three years at Legal Aid.

JK Really?

Johnson Yeah. And when I got here, after those two bureaus that I mentioned, I went in the Supreme Court Bureau, which is our General Felony Bureau for two years. And I probably tried 25 jury trials there. And then I went in the Homicide Bureau for two years and tried another 25 homicides.

JK Did you win more than you lost?

Johnson Eventually. I mean, for me, a lot of it was about getting experience. I wanted to get the experience. We had a senior lawyer who, as senior lawyers would do sometimes, the worst cases moved to the back of their file cabinet. I pulled a couple of those out. Those were my first trials. In my first year I think I tried nine felonies and won two. But the next year it was the other way around. Maybe it was nine and seven or something like that. And then I went to homicide.

JK Do you think that, as opposed to a reflection on your skills in front of a judge and a jury, I'm wondering was there something about the courts that were unsympathetic to prosecution that made your life especially difficult?

Johnson No. It's that, first of all, the cases that get tried are the ones that are the most difficult for the District Attorney's Office. You know, defendants plead guilty. When you got the evidence, they plead guilty. And second of all, these were at the extreme end. These are the one where somebody else was saying, "You know, yeah, I have this one but I'll get to that one later." And I was young and I was ready to go. I said, "I'll take it." There's no losing in putting the evidence forward.

LS How'd you feel your first trial when you went before a judge and jury the first time and made your closing arguments, et cetera?

Johnson I don't remember nervousness. I remember nervousness my first arraignment as a defense lawyer. And I think that's when I was a summer intern. Yeah, I think it's when I was a summer intern during my second summer of law school. I got to stand up and I was representing a teenage girl, I think she came from Pennsylvania to New York and for some reason jumped out of a taxicab without paying. And here she is, locked up and far from home. And here I am standing between her and going home. I remember being nervous about trying to advocate for her. But the trials, by that time, I had been on my feet doing bail applications, doing preliminary hearings, and I realized that the focus is what you're trying to do for the client. You can't worry about the people in the audience. Are they laughing at you because you stumbled over a word or because of threads hanging from your jacket? You really have to focus on what you're trying to do. So by the time I tried cases, I think my focus was where it needed to be. And I feel that I perform better than anything if I stay relaxed. So I never try to take it home with me. I work hard, I work as hard as I can. But then if it comes time to have dinner or have a glass of wine and unwind in the evening, then that's what I'm going to do. And I generally go into court that way, or wherever I'm going, that's the way I go in.

JK It seems as though you came to know the criminal justice system in the Bronx in each one of its nooks and crannies from bail to parole. It sounds like you encountered every kind of issue that was coming up on both sides of the table.

Johnson And the bench. I sat in that building as a judge also.

JK How did that move come about?

Johnson That's what my goal was. That's what my goal was. Well, I'm one of life's more fortunate people, I admit.

JK That is remarkable, that you, as a member of Legal Aid, decided that you wanted to go on the bench and a decade later you managed to do that. How did that transpire?

Johnson I think a lot of it's the right place and the right time. I mean, I think I have a certain amount of talent and a certain amount of ability to assess things. But also, as you can see, in each one of these steps, it was just when African Americans were breaking into that role. So that law school opened up for me that way. The DA's office, they wanted to diversify. Mayor Koch, I think, wanted to diversify the bench. They had a full-page ad in the "Law Journal." I think it was a couple of months before I was admitted 10 years, saying, "We want judges." You know, "We want the best and the brightest judges." So I put my papers in then, even though my 10 years, I think I was admitted in January and the ad was probably in the paper in November or December, and then I was appointed to the bench that August.

JK This is completely outside of politics.

Johnson I don't know if it was completely outside of politics. I'm sure, you know, I worked for the district attorney. And by that time I was a bureau chief in his office. I was the chief in the Narcotics Bureau. At that time I had been the deputy chief of the Major Defense Bureau before that. So I had a resume and I had a DA who was supportive and I believe he whispered in the mayor's ear a little bit.

JK And you let it know to Mr. Merola that that's what you were interested in also?

Johnson You wouldn't make a move like that without letting Mr. Merola know. That would be death. That would be death. Burt Roberts, the former district attorney and former administrative judge, he is a good friend of mine, but we had a run-in when I was chief of Narcotics. And it was while my papers were in to be a judge, Merola's backing me for the judgeship. And Burt Roberts one day got so pissed at me. He's screaming at me to come over to his part immediately. And I kind of got the sense that that's not what Merola would want me to do. I called him up and I said, "Look, if you want me to evaluate the case, send it back over." But Burt was Burt, and he wanted what he wanted now. And I just had to decide between being held in contempt by Judge Roberts or having Mario pissed at me and definitely seeing the judgeship go down the tubes. So I decided to hold my ground and somehow it went away. I don't know how it went away but it went away and, you know—

JK What about Mr. Merola? You worked for him for—

Johnson Eight years.

JK Could you characterize him as a district attorney, as a boss, as someone who you are either emulating or going 180 from his example?

Johnson I'm doing both, I think. I'm emulating him in the sense that he was extremely fair and he had a really good heart. But I don't think he wanted anybody to know this, so he would put on this gruff exterior. And I think a lot of the way he got bureau chiefs to do things was they were deathly afraid of him, which is another place my experience on the admiral staff in the Navy helped me, because I knew the admiral put on his pants one leg at a time. So, when Mario got crazy I just knew he was being Mario, and to the extent that he would. He called me up one day, I was in the courtroom and he asked me did I like working here. I thought it was just conversation at first.

JK I've had those conversations.

Johnson And I said, "Yeah." I said, "Yeah, as a matter of fact, I do." And then he said, "Well, why the fuck then" and he started screaming at me. You know, he would hang up the phone on people and stuff like that. I would call him back and I would say, "I wasn't finished telling you what I have to tell you." I just didn't let it get to me. And one of the compliments he gave me was, said, "You know, I like you. You're, you know, you fight back, you know what I mean? But he had a soft heart and he really cared about people. But to the extent that he motivated a lot of fear, I don't like to do that. I think people know who makes the phone call. I don't feel like I need to do that. But in terms of the judgment and way he trained people to screen cases and make decisions and will back you up if you made the right decision, yeah.

LS I have to ask. How did you feel about the Tom Wolfe depiction of the Bronx, the courthouse and the criminal justice system in *Bonfire of the Vanities*?

Johnson Well, I guess the good thing about it was that it was equally irreverent to everybody. But I think the Bronx probably got the worst of it. I didn't enjoy it for that reason and also because I started it the day that I finished *Presumed Innocent*, which I thought was just a better novel, with due respect to Tom Wolfe.

JK But those were the years when the Bronx had hit its nadir. And it's been bouncing back visibly ever since.

Johnson Yeah, mm-hmm.

JK Going on the bench, were you surprised, I mean, you were surprised when you got to the DA's office about the way that worked and how you had certain preconceptions and how that was changed. What happens when you get onto the bench?

Johnson This is one of my pet peeves, actually. It wasn't so bad for me but, I think my personality allowed me to deal with that. I don't think every judge can deal with this. But it's a lot less power than it seems.

JK Really?

Johnson A lot less power than it seems, especially in the criminal courts where there's certain things that you want that require reductions in charges. And you can't do that without the consent of the District Attorney's Office. And very often, the voice of the District Attorney's Office, it may not be the person making the decision, but the voice of the District Attorney's Office is somebody who just got out of law school. And I really think there needs to be an emphasis placed on this when new judges take the bench, because a lot of judges don't have patience for that. You know, you have somebody who you know doesn't know nearly half of what you know telling you can't do something. It can be difficult to deal with. And sometimes, even like a simple thing like a bail decision—well, it may not be so simple. It's an important thing, but if you've been doing this for a long time you can read the facts. You look at the complaint. I mean, you look at the criminal history of the defendant and you maybe hear a minute or two from each side. You know what you're going to do. But sometimes, you've just got to sit there and listen and listen and listen. Every once in a while a lawyer will change your mind. But most of the time you read the complaint and look at the, you look at the sheet and you know what you're going to do. It takes patience to sit there and let the lawyers make their case. So I think it's a job that requires a lot of patience and the judge, I mean, the judge has the ultimate say on bail, on sentencing at the trial or when there's on open sentence. But open sentences are a rare thing in New York City. I understand some other counties, they may give the judges that. But when DAs in New York City reduce charges they want to get what they expect to get. They don't want to just say, "I'm going to reduce and you do what you want." It's an either/or proposition. So the judge only has that ultimate say if a case goes on trial, the evidentiary laws, things of that nature, the judge has the final say. But there are a lot of times when the DA has the final say and it makes it difficult.

LS Now, you're on the bench in late '80s, right?

Johnson '86 to '88.

LS So right around exact time, in fact, '86 is when they started the sentencing guidelines for the feds in the federal government. It was '86. How did you feel about that, where you talked about discretion and lack of power of the judges? That took away a lot of power from judges in discretionary sentencing.

JK You know, having never practiced in the federal courts, I'm not exact on how narrow the guidelines are. I know of these all-point system. My wife was a federal defender at one point in her career. I know the whole point system, but I don't know well enough to say. I mean, I know people talk about, for instance, the Rockefeller Drug Laws. But it's the same as anything else in state law. There's a range. The legislature set a range. So to say that the Rockefeller Drug Laws don't give judges discretion is not accurate. It doesn't give them the discretion that the defense bar and people convicted of selling narcotics want. But it gives them discretion. So I think, obviously, the federal is a lot more narrow than what we have.



LS      Very much so.

Johnson      Yeah. For instance, one of the examples that I have is the gun law. I always felt that the judges have been using the gun law inappropriately, and they use the exceptions more often than they should. The undue harshness and the exigent circumstances. They use that more often than they should. But in arguing for them to do what I think they should do, I've never taken a position that the discretion should be taken away from them, because I think there are cases where they need that discretion. So I just advocate that they use it more wisely, which is a tough thing. Well, I won't say more wisely; I guess would be more in tune with my philosophy. They think what they're doing is wiser. I don't think it's serving the community.

JK      Was it odd suddenly having your former colleagues standing before you from the District Attorney's Office?

Johnson      Well, they try and sanitize you. That's one of the things that they do do is that the first eight months that I sat as a judge was in Queens, so that that wouldn't happen immediately. It wasn't like that weekend thing. They sent me to Queens for eight months before they brought me back. So it was a little better. And, you know, the people I was dealing with, because that was criminal court, are the misdemeanor people, and I had been trying felonies. I knew some of the defense bar, I guess, more than I knew the assistant DAs, actually. Which is another problem with being a judge, is the lawyers sometimes they very often don't know the background and qualifications of the judges who sit there. And they think if somebody goes against them and somebody knows nothing about what they're doing. And it could be somebody, my chambers mate when I sat over here was a guy I was talking about who was my chief in the grand jury and taught me how to screen cases and things. He came up one day and one of the assistants had told him that he didn't know anything about the discovery policy in the Bronx DA's office and, when, in fact, he had written the policy. So, he was coming up, you know, muttering to himself. "What happened? What happened?" So it's kind of an odd experience. You actually see lawyers who don't know you and they think that you just dropped in out of the sky, you've never been near a criminal court before in your life.

JK      I guess young doctors and lawyers are about the same – that same kind of arrogance, know-it-all approach to it all.

Johnson      Well, it's a good thing. It just has to be harnessed.

JK      So what else can you tell about your experience on the bench? You were only there for a couple of years.

Johnson      Yeah, less than two years.

JK      Was it what you had expected?

Johnson I liked it when it was fast paced. I liked calendar parts. I liked to be able to get in and make decisions about a number of cases in a day. You try and get each side to work with each other. I really enjoyed that. At the end I had been assigned to a part that would only get cases after the two sides agreed on what the plea was going to be. And that was a little bit slow for me. At that time, that's the way they did the SCI pleas. Are you familiar with SCIs?

JK No.

Johnson That's Superior Court Information. You can plead guilty to a felony before indictment. And so if they agreed, they would bring it to me. I was an acting Supreme Court justice for that purpose. But ultimately, I decided that I would rather go back in the misdemeanor calendar part and give up the few extra dollars I was getting. So I had just decided to do that just before I decided to run for district attorney. But I enjoyed every one of these positions. I enjoyed it.

JK It does seem as though each step of your life, from the Amsterdam Houses and being on the cusp of running with the wrong crowd up through being a judge in the Bronx has prepared you to sit where you are now.

Johnson Hopefully. The people in the Bronx believe that.

JK Several times now.

Johnson Yeah, yeah.

JK Well, I think we should end with you on the bench before we talk about you deciding to make the run for district attorney, before we get into the office itself, because I think this is a natural break for the day. And we can come back another time. Do you have something I forget to ask?

LS No, I think that we can move on from this point on a number of issues. And, I mean, I was thinking when you talked about your first defense case, well, not the first defense case but the one that Jeff asked you when you were a legal defender about the pedophile. And that immediately made me think of *Kansas v. Hendricks* case, the Supreme Court decision on civil commitment, which is before New York State now. And I'd love to know your ideas on that because it's the type of thing that I bring up in my classes all the time, even though, I mean, the Supreme Court did say it was constitutional, even though you've done your time, for pedophiles and sex offenders, et cetera.

Johnson Yeah, my feeling about that is, without having really read that case and really delved into it, is that you really have to rely on the medical people. I mean, I wouldn't want to substitute my judgment for a psychiatrist as to whether somebody's dangerous or not. So if psychiatrists tell me that that's a clinical diagnosis and the person remains dangerous, then. I also look for psychiatrists who I respect. I don't want just a

yes person. I mean, we have to do it. We deal with that. We just had a lecture yesterday on insanity defenses. And one of the things we do is we want to know, we want a doctor who will tell us, if the guy's insane, why are we going to go through all of this, trying to prove otherwise? But I want to be able to trust the doctor.

LS     So these are some issues that I hope we can discuss, because when you start leaving things to the so-called professionals.

Johnson       Professionals, being us?

LS     No, not you. I'm talking about the doctors, and the social workers and sometimes the parole officers and probation officers. Like, I was the librarian in the Maryland Penitentiary back in the '70s and I used to see some of these counselors. And their reports, of course, were the ones that determined how you moved through the system. Some of these counselors, boy, they should have been behind bars.

Johnson       Some of them have a bias, right.

LS     And the same with some of the psychiatrists, et cetera, that you're depending upon, these types of reports. So when you have like a one year to life indeterminate sentence and everything depends on certain professionals, I think it gets sort of problematic, which is why, I think, you have these sentencing guidelines after a while, because you can go in so many different ways, depending on the personalities, et cetera of the professionals and the bureaucracy.

Johnson       But things like that are a response to societal needs. I mean, society is very much concerned about pedophilia, and about sex offenders being repetitive offenders. It's been shown a number of sex offenders are repeat offenders.

LS     I think most of them.

Johnson       Yeah. So it's a real legitimate concern.

LS     The question we always discuss is basically the philosophical basis for this. When you are convicted of a criminal act and you do your sentence, and then it's finished. After all, then you're handed over to another arm.

Johnson       I don't have a problem with that because to me, that's a separate civil proceeding. And you could just as easily walk out of jail and somebody allege that you're insane and they file for civil commitment and you have to go through the proceedings, separate proceedings.

LS     I think one of the problems is that you're right, and I think we all kind of agree that most sexual offenders are recidivists. They will, so why don't you just.

Johnson But that's where the laws like that come from. Why don't you just hold them for life when you have them.

LS Well, when they're convicted you give them the sentence then, rather than hand them over.

Johnson That's a possibility. That's a possibility.

LS It's not that it's wrong to keep them in an institution for life. But how do you handle the parole aspect?

Johnson Well, what's happening in New York though is you have the legislature on the two parties and some toughening of the laws is not that easy to do. So the civil response is.

LS To compromise, a political compromise.

Johnson I don't know if it's a compromise or an end around.

LS I think these are the type of issues I hope we can discuss some more too later on.

Johnson The only other thing I want to mention before I forget is whoever listens to this is going to think that I am the ultimate affirmative action hire, because even when we get to why I became district attorney, there's an affirmative action, almost an affirmative action element there but not quite.

LS Well, let me ask. Did you feel the opposite, that one little period when you were going for a private job in a private firm?

Johnson What do you mean?

LS Encounter any affirmative action or racism? The hiring process, regards your private law firm?

Johnson I didn't feel either one. I just remember not wanting to be. I didn't feel like my heart was in it. And it probably came through. I don't know.

JK That's the virtue of this kind of conversation, that we cannot only talk about the facts of your life but also your ideas, your positions, your thoughts on aspects of the law and the rest. So that's what we can get into as well next time.

Johnson Okay.

JK Thank you very much.

End

## Robert Johnson

July 6, 2006

JK            This is the second oral history interview with Rob Johnson, the District Attorney of the Bronx. And I wanted to pick up the story more or less where we left off, which was your decision to run for district attorney. And if I could back up a little bit, one of the things you said about leaving the district attorney's office as an assistant DA to go onto the bench, and I wondered if you could describe again the process by which you became a judge.

Johnson        I think I mentioned that there was—that Mayor Koch had an ad in the Law Journal looking for qualified candidates. So you submit your name to the mayor's committee, and there's an application that you fill out. And then there's an interview process that begins. I'm trying to remember, I'm not sure, but I think it was, first, the Mayor's Committee, subcommittee and then full committee, and then the Association of the Bar subcommittee and full committee. And then an interview with the mayor, probably his corporation counsel. I'm not sure who else was there, two or three of his advisors. It's like a series of five interviews, basically.

JK            And did you know any of the people interviewing you or was this the first time you were meeting them?

Johnson        For the most part, the first time I met them. There may have been one or two people on some of the committees. I think, like, the city bar would do some things jointly with the Bronx County Bar. But there weren't a whole lot of people I knew, you know. Mario Merola was certainly, the people involved in the process. And, like I told you before, I had his blessings. I know that he was inputting his opinion somewhat.

JK            What's interesting is that the Koch administration had a reputation for a degree of racial insensitivity. And I'm just wondering if this is an outreach on the part of the administration or if you had any thoughts on that.

Johnson        I don't know. I mean, he always seemed to me open. I don't know if I would characterize it as racial insensitivity. I mean, certain of Ed Koch's responses can be somewhat strident. And I think people of color obviously did not take them, at least at the end, and I don't remember if it was all throughout his entire administration. But there were some difficulties. No, I don't know what his motivation was. I guess part of it, you know, like I said, there were people who were making efforts to diversify the profession. You know, I benefited from it at the law school level. I benefited when it was time to switch from Legal Aid to the DA's office. I expect that it was a factor with the judgeship. In fact, you know, when I was thinking about it, you know, one of the things I was thinking is, how many African Americans could there be who have experience both as a defense lawyer and as an assistant DA. And that's one of the reasons I wanted to be an

assistant DA. I guess African American or not, not everybody has experience on each side. But, you know, I wanted to be somewhat unique, and I think I was able to accomplish that.

JK It was an interesting time to step onto the criminal court bench because that's roughly the time that the crack epidemic began.

Johnson Well, it was just after me. In fact, I was chief of the Narcotics Bureau in the DA's office at the time. I worked from '84 to '85, well, '86 when I left the office, I was Chief of the Narcotics Bureau so that really was the height of the crack epidemic.

JK So you were beginning to see some of this when you were still in the DA's office?

Johnson Right, right. No question about it. Yeah.

JK How was it different than the kind of drug, the heroin, marijuana, or even powdered cocaine that you had seen before this? What made the crack situation different for you?

Johnson Well, two things. And actually, I wasn't involved in the Narcotics Bureau before that. So, really, you know, I had tried one narcotics case while I was in the Trial Bureau, the Supreme Court Bureau. So I really didn't have a whole lot of connection to narcotics cases. But from what I could see, the two differences would be the potency of the drug itself and how it would really draw people in. You know, the fact that the impurities were burned off and also that it made some of the users a little bit more violent. But in addition to that, I think it just, the prevalence of the dealers. I don't know why at that point so many people took to selling. I don't know if that's unique to crack, but it happened, it seemed, all at the same time and it just was that much more prevalent in the streets.

JK It was an upsurge in drug arrests, drug violence, drugs in the news. For the first time, well, you've always got stories of how drugs had an adverse impact on families, but for the first time you really got a sense of absolute devastation of families by crack and how it wasn't just your, different people seemed to be using crack.

Johnson Yeah, maybe that was it. Some of the users were different, and I guess that opened up the market so there were more sellers getting involved. And, well, I guess in answer to my own question of why there were more sellers, the fact that there were more users, because people sell to feed their habit a lot of them.

JK And did you encounter on the bench predominantly drug cases?

Johnson No, because I was in the criminal court for, I guess, the majority of the time I was on the bench, which wasn't a long time anyway. And criminal court was the misdemeanor crime. So I would see, you know, the drug cases, that were arraignments. But other than that, we were dealing with misdemeanor cases. And then when I became

an Acting Supreme Court, I was actually doing non-narcotic felonies where defendants were pleading guilty to felonies prior to indictment. So it was non-narcotic cases, which was not many, which is why I wanted to go back to just handling the calendar with the misdemeanors.

LS When you were with the narcotics and the crack epidemic came about, since there was such a prevalence of street crime because of the money involved, et cetera, were you involved, or any kind of strategic planning about how you were going to attack this type of, you know, like, new phenomena coming up? Because, since it was basically a street drug, not like some of the others, like powder cocaine, which led to more violence, I mean, were there any types of strategic planning sessions and stuff like that on how to attack this?

Johnson I mean, there were discussions but I think more of the planning was policing and, you know, they had the tactical narcotics teams and those kind of things. I mean, some of, well, I wouldn't consider it planning so much as just linking and informing the community of what we were doing and trying to be supportive of the community. It was the first real community contact, I guess, I had, beyond the individual victim. So we'd go to community meetings and things of that nature. I don't remember really strategizing with the police department.

LS What was the response or the types of conversations that the community was having about this? Once again, this was a new phenomenon, was tearing up neighborhoods, especially with the violence that came with it because there was so much money involved.

Johnson I think the response was similar to what it is now, which is there are more good people in the communities than bad and they were concerned, what they were confronting on their corners. They were very concerned about it.

JK Do you consider the crack epidemic to have ended? Was it something that hit New York and peaked and now it's crashed?

Johnson Well, it's still, crack is still there. And narcotics sales are still there. It doesn't seem to be as open and notorious as it was. So I think it has taken off somewhat. I think part of it at this point though, in terms of what we're seeing, is that the police department doesn't have the resources to do everything they were doing at that time, you know. And I think, terrorism is draining some and, you know, what they're doing with Compstat, focusing on the minor crimes and violent crimes. I'm not sure they have the same resources for either street narcotics teams or narcotics investigations that they had five or ten years ago.

JK That's an interesting point, the shift in police resources reflecting how they see the crime—

Johnson So that impacts on the arrests, but the streets don't look nearly as bad so—

LS But they're not on the streets as much. A number of researchers have said that the crack epidemic abated not just because of the police presence but because people were seeing how much it just did to their lives. It's more than a usual narcotic, crack, because of the extreme, high and lows. Much more so that either heroin or powdered cocaine, et cetera and how it ripped apart lives, that people just can't live like this. This happened at the turn of the 20<sup>th</sup> century too with laudanum and things like that. Laudanum, which was the drug of choice of women in the late 19<sup>th</sup>, early 20<sup>th</sup> century. It was a mixture of opium and alcohol. And it was got through pharmacies and they'd have to get up every morning and take a couple swigs because they didn't feel well. What they didn't realize was they weren't feeling well because they didn't have—

Johnson Kind of like me and caffeine.

LS Let me just ask one more question on something like the street crime. And maybe this will come up later but you mentioned the terrorist, the use of the Terrorist Act against street gangs in the Bronx, which I find extremely interesting. The 1996 Terrorist Act, I think.

Johnson No, wasn't it post-9/11? The State Terrorist Act is after 2001.

LS But the use of this against street gangs in the Bronx.

Johnson It was the idea of one of our assistants, who is counsel to our Gang Prosecution Bureau right now, and it was a very good idea. I mean, it—you know, when you first hear it, it's like, what? What?

LS I thought it was a good idea.

Johnson And then you sit down and you read the statute and the statute happened to really, really outline what this gang was doing in a Bronx neighborhood. And it was written for international terrorists, but the words applied and, we've fought off at least the motion to dismiss at this point. We haven't finalized the major defendant yet. But if we are able to convict them, I'm sure it's going to be appealed. But I think we're on very solid ground. You know, he brought it to me and my counsel reviewed it. And I don't see that we're wrong. I think we're very right.

LS I thought it was a very creative use of the law.

JK Imagine the shock of the poor guy. "Well, you're being charged with this, this and terrorism." "What?"

Johnson His lawyer is still jumping up and down.



JK Well, while you were on the bench the district attorney passed away, Mario Merola. And his assistant, Paul Gentile was appointed. At what point did you start thinking of running for the office?

Johnson Pretty close to the beginning. Not immediately. I knew there were a lot of people. I had heard there were judges who got off the bench that day to call the Democratic County Leader. You know, there were a lot of people interested in it. And I didn't—I had been a bureau chief but I didn't consider myself as being on that level. But then very early on Governor Cuomo commented that, if there was a qualified African American, he thought this would be a good time to diversify the district attorney ranks, because there'd never been a person of color as a district attorney in this state. Which may reflect, as we were talking the other day, I mean, my whole career seems to have been somewhat, not somewhat, more than somewhat benefited by people's desire to diversify and do affirmative action. And hopefully, I think it speaks well for affirmative action, because I certainly believe I've been qualified for every one of the positions that I've held. But that's what got me thinking about it. And so I submitted my name to him because they were making the appointment.

JK For the interim.

Johnson For that year, till the next election could be held, because Merola was actually reelected a week after he died.

JK So the interim DA after Mr. Merola's death was an appointment by Governor Cuomo.

Johnson Right.

JK And you immediately submitted your?

Johnson Well, when I read that, I thought about it and I felt, having been, I guess I was the highest ranking, there had been an African American Bureau Chief before me, maybe one or two, but I was the only one at that point. I wasn't still the chief, I was on the bench, but I was the most recent one. I felt that I should give it a shot.

JK And what happened once the governor made his appointment?

Johnson I went through the interview process. He had a committee. Lawrence Kurlandor was on it, John Porlemba. I think there was a third person but I'm not sure who it was. And they did interviews of a number of people. I only heard through the grapevine that I was one of two finalists. But in the end, they went with Paul Gentile, who was the chief assistant to Merola, so he knew the office extremely well.

JK So there was no sense of griping that this was an unfair process at all because.

Johnson        Right. And I guess also, I guess it would have been helpful to have the support of certain Democratic leaders also, you know, because it would have to be an election a year later. So I do remember having conversations with Democratic county leader. I'm not sure if that was before, it must have been before Paul's appointment. And I had met, actually, the month before Merola died, in the months just leading up to his death, I had met pretty much all the Democratic players in the county, because my name was in play for an elected Supreme Court position in the judicial convention of September of '87. And turned out to be the one convention where the Democratic county leaders did not control the convention. And two other people, two other elected officials got control of the convention and with two seats available, they ran two other candidates, and their candidates got the nomination. But it put me into, my name was placed in nomination at the convention. I made a speech of my qualifications and withdrew my name. And I think I made a lot of friends in both talking about my qualifications and publicly withdrawing and not bucking the eventual winners and most of people in the county. So everybody was looking at me relatively favorably. So that was the beginning of just, you know, being able to be considered.

JK        But was it in your mind to run for the office when the election came up in a year? After Gentile was appointed.

Johnson        No. I mean, yes, with the right support. I used to joke with my friends about, you know, "If I can get four party endorsement, I'm going to consider running for office." And in fact, the people who had won the convention, they were, I guess you would say, at odds with the county leader. So the county leader considered me but he also decided to back Paul Gentile. The others wanted me to run in a primary and I didn't want to do that. You know, I would have to resign my position as a judge to run so I thought about it and I said no. So at various times, the discussions were going on pretty much throughout the whole year. Merola died in October of '87. Paul was appointed in December of '87. The election was to take place. The Democratic primary would have been September of '88 with petitions going out in June of '88. So it was pretty much in flux from that whole time into June. There were other candidates besides Paul who were going to run. There was negative press going back and forth. The county organization at one point was going to back away from Paul. So my name was back in play again and I still didn't feel like it was enough support. They did back away from Paul and they went to somebody else.

JK        What happened with him? He had the position. He had the backing of the

Johnson        County, right.

JK        —Democratic Party in the Bronx. And they backed away and he never ran for the office.

Johnson        Well, this is a really hard thing to describe. There were, I think, some missteps with the way the office was run during that year. He made a couple of things that turned to be mistakes. There was some things about his personal life that came to

light. So the party, they withdrew their support for him. They offered it to another judge. They put her name on the petitions, his petitions had already been in circulation, so they were stopped. They were going to her. They put her name on the petitions. Before they could circulate them, she changed her mind and decided she didn't want to go for it. So they went back to Paul and were circulating the petitions again. And more and more negative things kept coming out. So one day in June, which was about two weeks into the petition process, the Democratic county leader called me and said that he and the Bronx Republican leader, the Bronx Conservative leader and the Bronx Liberal leader would like me to run.

JK That's your condition.

LS For the record for future researchers, could you name the four leaders?

Johnson Okay. George Freedman was the Democratic county leader. Guy Vellela was the Republican county leader. Bill Mewmark was the Conservative county leader. And actually, the Liberal county leader, Ray Harding was the vice chair of the state Liberal party. But he was the one who was really, he was vice chair. I don't know why he carried that title but he was really state chair, de facto state chair. So he was the fourth one who was involved in the decision. And by five o'clock that day I had typed a resignation letter, called my mother and told her I quit my job as a judge. And the next day I announced my candidacy.

JK It's really quite an unusual moment to have such a major, prominent position in the county to be so up for grabs. I mean, you had the backing of the parties, but it was a four-way race.

Johnson In the primary. Yeah, that was still a primary.

JK And you had no guarantees that, just because you're putting yourself in there—

Johnson Right.

JK It's not like 10 years before where, if they say yes, you're in. I mean, this was an unusual situation.

Johnson Well, with that backing comes the ability to raise money and troops, not that there ever is a whole lot of money, but troops and union support came with it. And I kind of felt that it wasn't a sure thing, but it certainly wasn't going to get any better than that, not unless they went out and shot the other candidates. So that, coupled with the fact that I thought my record was good enough that if I had to go through the process again to try and get reappointed to the bench, that it was worth a shot.

JK Okay. Now, the question is, why did you want the job? As a judge, you are in a secure, solid, respected, you can rise on the bench in your career. And you are tossing

that aside for this office. I know that you had been an assistant DA, but why did you want this office?

Johnson        Because the discretion that we have here, and I'm not sure if we talked about this the last time, but even young assistant DA's have some discretion and can stymie judges in what judges want to do in terms of sentencing and disposition of cases. The discretion here, if you have 40 judges, and now we have the Supreme and criminal court merge, if you have 40, 45 judges, each one is only getting a percentage of the cases. And even then, they're still being told, "No, I won't reduce this," by a young assistant DA. It's just, the discretion is so, so great. The opportunity to have an impact on the county is much greater here than I think any individual judge can possibly have. So that, coupled with the fact that it was a chance to make history and to show young people of color that positions can open up for you if you're qualified. I thought it was an important step to make.

JK        So this was not merely personal ambition that was in the why you should do it column. It sounds as though you have public service, role model, the criminal justice process itself. You had several reasons why you took this on rather than simply, "It's my personal ambition."

Johnson        No, I never dreamed that I would be DA.

JK        No?

Johnson        I maybe thought when I entered law school that I'd be interested in government and politics, and be interested in being mayor or something like that. But actually, the closer I get to seeing these kind of positions, the more you realize how difficult they are and how difficult it is to bring people together and get people to agree on issues and get legislation passed and do budgets. So, yeah, that kind of thing, I think, the appeal has lessened for me. But this is a political office, but it's an office that's bound by a set of rules and gets to do good for the community. So to me, it's ideal for me. And my ambition, really, was an ambition as much as it was just being prepared for whatever the next step was. My career has been like, just one step at a time. I really never looked, the only time I really looked ahead, I guess, was when I moved from Legal Aid to the DA's office because I did want to become a judge. That was my ambition. That's what I wanted to do. And then something came that I thought was even better than that.

JK        This was a very, by some accounts, a nasty primary.

Johnson        I didn't think so.

JK        No? You thought everything—

Johnson        Not after I got in it. I don't know. But once—

JK I just mean that people spent a lot of money on it, and you had three other candidates.

Johnson Well, it was, people wanted to win. You're in it; you want to win. And I don't think it was nasty at all. I mean, two of the candidates were my former colleagues here in the office. And I thought both of them were gentlemen throughout. And the third candidate, who I didn't meet before then, he, likewise. I mean, and I would hope they all thought that of me. I certainly, I didn't even want to speak ill of what they did or what their position, people would ask me, "Isn't that a bad idea that so and so proposed?" I want to tell you about my ideas and so I'm not going to characterize his idea.

LS Could you name the other candidates?

Johnson John Klotz was a gentlemen who was a lawyer here in the county who had been involved in politics. I had never met him before then. Sal Collazo, Salvador Collazo, had been an assistant DA with me and Phil Foglia. And actually, when I first got in, Pete Rivera, Assemblyman Pete Rivera was also in. He withdrew at some point.

JK This was your first taste of electoral politics. Was it what you had expected? The way you had to go out and?

Johnson The good thing was I didn't have expectations. It was like I just dove in and then, to me, I think that was about the best way for it to happen. If you really could see it up close, I don't know, it's an interesting once-in-a-lifetime experience. I've had some minor contests since then but nothing, nothing akin to that. But it's not what I live for. You know, there's a lot of people that have politics in their blood. I mean, I enjoyed being out in the community. I still do a lot of that. But the raising money and, you have to spend time to try and get this person of influence to back you and that one. I call it a good spectator sport. It's interesting to watch from the outside but you don't want to be in the middle of it all the time. A lot of people who love it, they thrive in it.

JK You've been fortunate that your reelections since have not been at all contentious. Have the Republicans even put someone up against you or have they given you the nomination?

Johnson In 1995, let me see, that was '88, right? Then the next one was '91; I had no opposition. In '95, I lost the Conservative line over the death penalty issue. In '99, I regained the Conservative line but lost the Republican line over the death penalty issue, because '96 was the year that the governor superseded me. In 2003, was that the next one? 2003, I had a Democratic primary. Just some, another former assistant. For some reason or another, I don't know why, he decided to put himself out there. But I, again, had the other lines.

JK Election night itself? The primary was tantamount to the election.

Johnson Right.

JK      Were there any surprises on the campaign trail?

Johnson      No, I had a good feeling. I really felt like, you know, I had worked very hard, that the people supported me worked very hard on grass roots and unions. You know, we had at least two televised debates, if not three. We had, I think, two televised and one at Fordham. I felt that I did very well at those. So I had a good feeling. I heard that there was an early report that I lost. I don't think I heard it at that time. Maybe somebody did report when I was home changing my clothes after the polls closed. But I was, like, we're going to a celebration, because I was pretty confident. It was really interesting. And Ray Harding, he's unbelievable. Oh, he's such a focused individual. I arrived at the Eastwood Manor for the celebration, it's really a big thing, especially in the African American community. We were all excited and he pulled me aside and he said, "You are the district attorney of Bronx County. You're going live on the 11 o'clock news, be the district attorney," which put it right in focus. You know, it's not about jumping up and down and showing how happy you are.

JK      That's a smart man. That's smart advice at the right time.

Johnson      Yeah, yeah, yeah.

JK      So you arrive in the office January 1?

Johnson      Yeah, actually, Paul let me come in. I probably took a week or so off but Paul actually let me come in almost immediately, gave me space. The old chief assistant's office was vacant, so he let me sit in there and I began to interview bureau chiefs, deputy chiefs, just getting this sense of what they felt their role was, what they were doing. I knew them all.

JK      Yeah, these were the men and women currently in those positions.

Johnson      Right, right.

JK      And this was with an eye as to whether you would keep them there or?

Johnson      And just what changes may be made in the office, whether I would keep them there. I also appointed a group of people to interview prospective people from the outside for certain positions.

JK      So you were your own transition team.

Johnson      Yeah, I mean, they the transition team. There were some pretty respected people.

JK      Were you approached by individuals who, now that you became district attorney, wanted to be part of what you were going to do here?

Johnson        Sure. I mean, some of the people, the political people, had either their own resume or friends and relatives resumes. Sure. It was somewhat of an awakening because I thought everybody was doing it because I was the right candidate. And maybe they were, but they also had other things that they wanted a lot. Not all of them, but some of them. And, I made decisions. The number one decision to me is that all the people could do the best job possible. And one of the things I wanted to do at that time was, everybody always talks about ethnicity, and I was hoping to find a Latino that could be the chief assistant. Efrain Alvarado, who was a judge, he had been chief assistant under Paul, but he got a judgeship. I was hoping there was a qualified Latino, but when it was all said and done, I didn't feel any of the people I saw were the best people for the office. And over time we were able to accomplish, not a chief assistant, but now one of my executive assistants and one of my administrative assistants are Latinos. So, we did it at the right time and the right people.

JK        It sounds like it's a delicate issue that you have. One is that you have to make a conscious effort at having your office reflect the diversity of the borough. And at the same time, bringing in people who you, personally, are comfortable working with and who are the best person for the job.

Johnson        But there are so many talented people out there that you are able to accomplish both. You have to look and you have to make decisions for the right reasons. And my thing is, whether you're an elected official who's pushing someone for a job, or whether you're a community member who wants to see somebody who looks like you in a certain position, I'm able to tell you what you're getting out of my putting, and if it enables us to make the streets in the Bronx safer, then everybody benefits. One of the things that I've always been concerned about is my personal reputation, so I don't want anybody who's going to make me look bad making the wrong decisions or not being qualified. We've been able to do both. We have over a hundred lawyers of color. We've been pretty much 33 percent in the profession that's more like 10 percent for a long time.

JK        Do you feel that they want to come and work in the Bronx?

Johnson        Yeah, people of all ethnic groups, I think, get a good feeling about this office. I don't like to promote ourselves in the press. I like to answer questions. I believe the public is entitled to know what we're doing and why. But I don't think promotion is, you know, I don't relish it and I don't think it's really that necessary. I think we do enough community work that the community knows who we are anyway. But I think, within law enforcement and among DA's offices and police departments and agencies like that, I think people realize what a talented job the people here are doing. And that's not just from my tenure. It goes back to Merola and [Burton] Roberts. People do a good job here and it's known within the law enforcement community, and I think, within the law schools, it's known that we do a good job and the atmosphere is good. The people get along with each other. I think, without speaking ill of any other offices, I will say, I think, Manhattan is perhaps more sought after by some because of their reputation. But

after that I think we're the place where most students want to be, and even some would prefer us to even Manhattan.

JK When you came into the office in January, you are now Mr. District Attorney, what changes did you see as your priorities? Or what issues, what did you put as your top three or four agenda items?

Johnson Two of the things that I campaigned on we changed immediately. One of them was drug sales around schools. And a statute that we now have that makes that an elevated penalty was not in effect. But my feeling was that we really were coming off the B felony for a lot of drug sales anyway. So that, without that statute we can have some of that effect by just using the B felony, which had the one- to three-year minimum, using that, at the very least, for sales near schools. So we started doing that day one.

JK You mean, as your prerogative as the district attorney's office as to what to charge individuals with.

Johnson Sure, because the state legislature had said that selling any amount of a narcotic drug, the minimum was one to three, and still is, and people were getting less than that, but they were getting less than that because the DA consented to it. So I said we're not going to consent if someone sells near a school unless there's a fairly good reason for it. The second thing that we tried to emphasize was the one-year penalty for possession of an illegal loaded handgun, which was something that still is not enforced in the way I believe it should. We've gotten better. Two things happened. One, before I was DA, the DA's office went along with a lot of pleas to less than a year. Since I've been DA, we very rarely do that. And then secondly, Mayor Bloomberg has recently created a gun part where there's one judge who hears it. He's not totally in sync with the DA's office by any stretch of the imagination, but he's a lot closer than where we were, so that a lot more people are being punished that way for that. But that's something I started day one attacking that.

JK Hearing this for the first time, it's odd to hear that they're going easy on individuals who have an illegal loaded handgun in their possession, that they're not getting the max that the law allows.

Johnson They're not even getting what is alleged to be the minimum.

JK Okay. Now, what was going on with that?

Johnson Well, the law, you know, there was big publicity about the law, saying "Mandatory one-year minimum." But what it said was, mandatory except if a judge finds it's unduly harsh or a judge finds mitigation in terms of proof or something like that, which I don't think is wrong. I think the judge should have that authority. But the exceptions became the rule. And a lot of that was because, during the '80s, the crack epidemic, the calendars went up. And a lot of what went on in these courts was calendar driven. You know, we need to get cases off the calendar. If we have any discretion to get



cases off the calendar, well, he didn't shoot anybody with it. He was walking down the street with it. But my question was well, what did he have it for? In fact, when I sat in the part where they were getting the felony pleas when I was a judge, they would come in with these agreed-upon gun sentences, and the assistant DA and the defense attorney would come in and say, "We've agreed on a plea to probation." And I would ask the defense lawyer, "Well, why did he have the gun?" And he wouldn't have an answer. The culture was, if both sides agree, the judge would take the plea. And I told them, "Look. My name's going on there. I'm not giving him less than a year unless I find that it's unduly harsh, and I don't find it." There were maybe four cases that I accepted in the time I was there.

JK      So you had several of these gun cases coming before you?

Johnson      And I would reject them. I rejected 90 percent of them, would not take the plea. And they probably got indicted and went across the street to the Supreme Court and somebody else took the plea.

JK      What was the rationale? You had to discuss this when you took office as this is the policy I want to have in place. What was the rationale of the district attorney's office before you got here?

Johnson      I don't know. I don't know how they lost sight of that one. I just don't know. I mean, there was pressure to get rid of cases. The courts wanted to get rid of cases. I guess I'm a little bit more obstinate than my predecessors. I think I'm somewhat more of a strict constructionist and I really believe the law says what it says. There's a way to enforce it. If the legislature changes it, then I'll have to deal with that. But I don't think that what we were doing was what they intended.

JK      On the drugs at the schools, how did the discussion evolve? It was something that you wanted to have in place, but the law made no mention of schools as a category.

Johnson      I'm not sure if it was something that was debated, whether that statute was being debated at the time. I do know that it's the kind of thing I heard in community groups. You know, they're selling in the school yard, they're selling here, they're selling there. And, you know, I found that offensive.

JK      And so you found a creative way, you're running for office and saying, this is a bad thing, selling drugs in the school yard.

Johnson      Right.

JK      And now you're here and you have to find a way to make that happen.

Johnson      Oh, I knew the way to make it happen. I knew that when I was running for office. I knew what could be done.

JK That's what I was wondering. How this solution came about.

Johnson No, because I knew. I was Chief of the Narcotics Bureau. I knew that, you know, we're going down. If we're going down to a D felony, we don't have to do that. And I could understand we want to do that sometimes. We still do that pretty frequently when we find that somebody is in need of a treatment program. But we have to have a reason for going down, and I really think people were starting to come in expecting that they were going to get a break. It's like, no, the legislature says this is a B felony, you're not entitled to plead guilty to a D felony. So it's an easy one.

JK Apparently, it was more difficult than that because it hadn't happened before. Taken in sum, the bargaining down of drug sales near schools and bargaining down weapons possession, seems to suggest that the District Attorney's Office was overwhelmed by the crime in the Bronx. I don't mean overwhelmed, that it wasn't coping. It's just that it was struggling as hard as it could to stay in the same place.

Johnson It's probably a fair statement. Like I said, I don't know what discussions were had. Although I was a bureau chief, I don't remember being involved in that kind of policy decision.

JK But those were difficult years.

Johnson Perhaps I should have. Perhaps I should have argued that while I was Chief of Narcotics. I don't know.

JK Well, certain answers only emerge through experience. One other question. In doing research for this, I found one of the first cases to land on your desk was school board corruption. And that was both, it's unpleasant and it's also fairly political because the people on the school boards are elected and I'm wondering.

RJ In fact, some of the indicted people were among the first, if not the very first, to pick up my petition after I declared my candidacy.

Side 2

JK That's a difficult thing to confront early on. It's one thing if you've got some distance between you and the election, but you weren't in a position to give a break to your political supporters. What were the issues in this school board corruption?

Johnson Well, the case that was brought wasn't the most major case in the world, but the probable cause was there. And essentially, I don't remember, there were some other issues. I remember one of them was, the most written-about one was the piano that was taken into the home. I'm trying to remember what some of the other things were. But there weren't multi-million-dollar corruption by any stretch of the imagination, but it was wrong, although the people were acquitted of it. The jury heard the evidence. They were

acquitted of that. Some of the others took pleas on other matters. But the piano case was included.

JK In a way, it's almost garden-variety theft from the school board, in terms of what's being taken, funds or pianos or whatever else, but in this case it's something more serious because it's a break of the public trust.

Johnson Right, right. And that's why you bring the cases. If it makes a criminal case, then you bring it.

JK And you were, no doubt, surprised at the jury's verdict?

Johnson No, I've only been surprised by one, two jury verdicts, and none of them were the Bronx. I think juries have to find proof beyond a reasonable doubt. It's not an easy job. The only verdict I've ever criticized is Rodney King, because I saw the crime on videotape. I didn't need anybody to tell me that that jury was wrong. I saw the cops commit a crime. But other than that, I don't criticize juries. And I don't expect any certain results.

LS Can we go back slightly to the school board corruption case. You know, when researchers are going to listen to this or read the transcripts, they might not know many of the details. So perhaps, could you elaborate a little bit about how this came about, the school board corruption case?

Johnson Well, actually, the investigation began under Paul Gentile.

JK Right. This was something you found on your desk when you arrived.

Johnson Right. I think the indictment was voted though after I became district attorney.

LS Somebody's going to listen to this or read it and say, "A piano was taken"—

Johnson There was a piano. It was the property of the local school district, ended up in the home of one of school board members. But there were allegations about other things being taken and just, I can't remember what were the other, all the other factual issues. That's the only one that jumps out at me.

LS How did all of this come to light though?

Johnson I don't recall, don't recall.

JK Have you had course to investigate school boards since, or was this a wake-up call to the school boards?

Johnson        We've investigated individuals in the school system. I don't know that we've had any major school board investigations since then. That doesn't mean they're not people that are doing wrong. It means that we need whistleblowers bringing the information, generally, that's how those cases begin. Somebody gives you some information and points you in the direction.

JK        Was there ever a case of influence peddling, of donating to campaigns in order to become an assistant principal or a principal? Was that part of the corruption?

Johnson        There was one case that, for some reason, Manhattan took and got jurisdiction. And they prosecuted the person who paid and not the person who was supposedly taking a bribe. But I'm trying to think if there was any of our cases, I don't think so.

JK        I guess one last thing I'll ask for today is we were discussing juries, and in some quarters there's a phrase, "Bronx juries," where there's an expectation that a jury in the Bronx will not necessarily believe the police, will let people off more leniently than in other venues. Do you think this is fair, or do you think this is a valid term?

Johnson        Do I think, I'm trying to think fair. Well, I mean, a Bronx jury is a Bronx jury. But the differences are perhaps in the jury pool. Obviously, we have a diverse community economically, ethnically. It's an interesting county. I think that there are factors, one of them being that, yeah, they put us to the test in terms of proof beyond a reasonable doubt. I don't think that's wrong. I don't think that Bronxites are necessarily anti-police. In fact, I know that in every area, every corner of this county they're asking for more police protection. I think that part of it is the way I deal with cases, in that sometimes I'd rather try a tough case. And I think in general, most places you're trying the cases that are tougher for a district attorney, or the cases where the defendant has the most to lose. And most of the cases in the middle, the defendant's taking a plea. And nobody's trying a large percentage of their crimes. We're trying maybe six percent of our indicted felonies. So to me, it's not something to, it's something you want to do your best. If you have cases and you think you should be winning, you want to do better at it. And we've done some different things in training. I think our training has been upgraded a lot. We're trying to understand community views better. But those small segment of cases are the ones where, for the most part, I think they have the best shot. And so I don't know if there's anything to be really up in arms about.

JK        It was just in doing the research this phrase cropped up.

Johnson        No, I know. I hear it all the time. I've heard the question before. And, yeah, our conviction rate, jury trial conviction rate is different than other counties. Well, I was beginning to say my philosophy is, sometimes I'd rather try a case than walk a guy out. To say, "We're alleging that this guy shot somebody and, gee, the case is not that strong, so why don't we take probation?" You know, sometimes we'll try that case.

JK      Oh, I think it would be good idea to stop here. And the next time I come I think I would like to talk about specific cases, specific issues. For example, when the governor took the death penalty case away, the Happyland fire and several other of the high profile cases that pop up regularly. Okay, well, thank you very much.

Johnson      Okay, thank you.

End

## Robert T. Johnson

November 14, 2006

JK Through the newspaper record. It just seemed like such a mess, the school corruption cases, such petty theft here, petty theft there. Election fraud here. It's just all small things and I got the impression it just seemed like business as usual. That's the way they had been operating for so long.

Johnson Well, I think, perhaps, people don't pay enough attention to the small things, though. Yeah. It's good from time to time to do something like that, so people always know where the line is.

JK Where the line is, yes. I noticed, throughout your career there have been several examples of you going after kind of corruption of officials, or corruptions of social service agencies, or people who've just been taking off the top of their professional position.

Johnson Yeah, there's a lot of that. Needless to say, I don't think it's just me. I think it's all DAs, and, you know, you just encounter people who are either looking to enhance themselves financially or, under such financial pressures that they do things, or all kinds of silly things people do.

JK One of the things that struck me was that you'd barely been in office for a year, and one of your assistants was murdered, not far from the courthouse here. That must have been an enormous shock to you, because you feel that you guys are, I don't know if invulnerable is the word, but protected in some way. And it must have been a shock to have that happen so close to home.

Johnson Well, I don't know that I've ever felt invulnerable or protected. I don't have that sense. I think I'm more realistic about that. We are part of the community and crime can strike us. I had some family members who were victims of violent crimes in the past.

JK In the Bronx?

Johnson No, neither one in the Bronx. So that wasn't really what I felt, so much as a familial loss. I mean, I think we really feel like a family. And I still would say that was the absolute worst day and it's almost 18 years now.

JK The worst day during your tenure occurred a year and a half into your tenure. Even controlling for those being the most difficult years, the late '80s into the '90s were, certainly, times when you could expect that kind of random violence at any time. But you don't expect it to hit a member of your own team.

Johnson        You never do. You never expect, nobody expected it to be close to home. And to me, there was a lot to be concerned about. We had to be concerned about our role as potential prosecutors in putting a case together. I had to be concerned about notifying his family and making sure they were okay. I had to be concerned about the mood of his colleagues. It was really, it felt like a lot at the moment. It hurt, yeah.

JK        Were the assailants caught?

Johnson        There was a person prosecuted, yeah.

JK        Were you satisfied at the end? Was your office satisfied that justice had been done in this case?

Johnson        Yeah, we did the job well. I think his family was comfortable with how we handled everything. We did what we could.

JK        Were there any changes? Changes either in you, personally, the way you approached the job, or changes in the office as a result of the murder of Sean Healy, your assistant?

Johnson        Not really apparent to me. I mean, I'm sure something like that, negative publicity, may discourage some people from coming here or maybe make some others leave sooner than they would have, but nothing that I could say was very apparent.

JK        You've been in office for 18 years. And in that time, I would guess the greatest miracle is that murders in the Bronx have plummeted. I wonder if you have any, aside from the obvious skill and attention of your office, to what do you attribute the change that's taken over the Bronx, having become a much safer, less random violence kind of place, based on the really extraordinary drop in the murder rate?

Johnson        I think it began in the Dinkins years. I don't know. If you follow publicity, it always talks about Compstat numbers beginning in the Giuliani years. But the declines in the Bronx began in the Dinkins years. And I think the additional police officers under Safe Streets, Safe Children, I think was name of the program. Safe Streets, Safe City. The additional police officers that were put on were a benefit. I think the major benefit was the strategizing in the Giuliani years, the Compstat, which continues. I think that it's utilizing data to strategize to place police officers in the appropriate places. I think it helps a lot. I think the economy was a major factor. I think our unwillingness to tolerate, one of my first things, the first day in office I changed the policy for possession of illegal guns. I changed our policy on sale of drugs around the schools. I didn't want to play games with people. People who would carry a weapon, they could kill somebody. I wanted it treated like that. People who had been given opportunities, either to do programs or probation in the past, I didn't feel they should get a second opportunity. The people who sell drugs around schools, I take that seriously. People who assault police officers and generally thumb their nose at the system, I take that seriously. So I think we

sent a message that we were serious, in addition to what the police department was doing, what the economy was doing. I think we and other people in the private sector decided that we couldn't ignore our responsibility to the young people who needed help, who needed to be in the schools and to mentor and do programs. A whole host of things like that. I mean, at one point in the early years, one of my former colleagues was a parole commissioner, and she reported that one of the guys who was interviewed said, "I'm not going to go back and do anything wrong because that guy, Johnson's in the Bronx." It was a message that we really got out. We changed our plea policy, a few years into it. There were a lot of things we did that showed we were taking very seriously.

JK When you came in, it was common practice that people would get probation or dismissed charges for carrying a loaded gun. And not just on one occasion, but they could be rearrested for having a loaded gun and still get no punishment.

Johnson Well, I'm not sure they would twice but—

JK Well, but the idea is that you made that a top priority, going after gun possession.

Johnson Well, to me, it was simple logic. And we had all this publicity about a mandatory one-year—possessing a gun. And anybody who stops to think about it knows what kind of damage a gun can do. So it started before I became DA when I sat on the bench, and I was actually in the part where they would come for SCI pleas. Supreme Court Information before indictment to take felony pleas, and the DA and defense lawyer would agree on a plea. And they come to me, saying we've agreed on this probation plea in the gun cases." And I would say, "Well, why did he have the gun?" And the defense lawyer would look like, you know, 'I would never expect anybody to ask that question.' And as it turned out, they generally didn't have any rationale. I mean, on occasion, there were cases that I felt fit within the exception. But in the time I sat on that part, I think there were only four. And the rest of them, like I said, "I'm not taking a plea." And maybe they went off and another judge later took the plea, but I couldn't see putting my name on something where the statute clearly says there have to be mitigating circumstances or undue harshness, I take that seriously. I'm somewhat of a strict constructionist and I read the language and I take it to heart. I just wouldn't do it. And obviously, then, when I was running for district attorney, it's now something that would be in my control. So it was something I campaigned on and made a lot of sense to me. Now, we've reached a point where this month the Legislature's taken away the exceptions and the minimum is three years.

JK For carrying a loaded handgun?

Johnson Right.

JK Did you find it difficult to implement this policy?

Johnson Well, it's a good question because I'm not sure if it was implemented. What was implemented is, we didn't go along with it. And we did boost the numbers up



somewhat on people who got the year. But the judges still, I believe, were too often case-load-driven and saw this as a way to get it off the calendar. So they did still give probation in the majority of the cases. We appealed some of them because of the language of the statute. And we won one. I think we had one reversed and we lost a series of cases. And then the one we reversed, I forget what grounds, maybe the judge didn't even mouth the words that, but then we began to lose a series of cases and the appeals chief recommended to me that the only way we even had a shot was if I argued before the Appellate Division myself, which I did, which is the only case, only appeal I've ever argued outside of moot court.

JK The judges are giving probation for gun possession and your office is—

Johnson Not consenting to it. Recommending the year, saying that there's no finding of undue harshness, you know, there's nothing unduly harsh about this.

JK And then it goes to the Appellate Court.

Johnson Well, we appeal to the Appellate Court as it being an illegal sentence. And we continue to lose. I mean, even the one I argued, we lost.

JK Why?

Johnson Because the statute didn't say what undue harshness, what it had to be to find it unduly harsh.

JK Going to jail was, is harsh.

Johnson But unduly, I guess, is the word. And the Appellate Court didn't want to impose any confinement on judges and said it was strictly a matter of discretion. And they didn't want to reverse.

JK Has that shifted?

Johnson Well, the Legislature is now, it shifted a little bit before that. Mayor Bloomberg was able to convince the courts to implement gun parts. And we got a gun part here in the Bronx. And while that judge didn't rubber-stamp every sentence that we put before him, he certainly had a much-closer understanding of the law than what had been the case previously. And we began to get more one-year sentences. But now, the new statute took effect November 1, 2006. The exceptions are gone and the minimum is higher. It's either three or three and a half. I'm not sure which.

JK Oh. Does this apply to the owner of the bodega who keeps a loaded gun?

Johnson Well, a gun in a place of business has been a misdemeanor. So it's not, it was never in that. That was one of the exceptions, when I said there were four exceptions. One of them was, we had a bodega owner who came out on the sidewalk and was

arrested. And they said it wasn't his place of business so they charged him with a felony. That was one of the cases that went on probation. Now, I'm not sure if that exception somehow disappeared when they rewrote the law. There was some problem with that. I don't recall exactly what it was so I don't want to mislead you on that.

JK     You and Joe Hynes, both, were going after the gun possession. It seemed to be a dual-front campaign in the city, rather than just going along with the way the judges had been interpreting it.

Johnson     Well, I think it makes sense. There were people dying. And then there is a process for licensing. If you have certain specific peril to yourself or your family or your business, then you're supposed to comply with the licensing requirements. And most of the people who walk around with guns, it was just them writing their own law.

JK     I have the feeling that the city is a lot calmer and a lot safer than it was even twenty, ten years ago. It just seems that that edge of random violence and menace that was everywhere in the city seems to have dissipated.

Johnson     It has dissipated greatly. We've been going down since 1990. I think this year will be only the second year since 1990, maybe the third, that our homicide rate went up. And one of years was just very slight. This year is a little bit more concerned, although shooting incidents are down this year. So it's interesting that our homicide rate has gone up from last year but our shootings are going down. I don't know what that means. I'm not concerned about that. I'm concerned about young people getting involved in gangs. So we can't really totally relax, but we have come a long way.

JK     One of the things that you said earlier was that the Dinkins Administration doesn't get as much credit for the drop in crime that took place during the Giuliani years. I interviewed Milton Mollen a week or so ago and he was instrumental in trying to get these policies adopted. Can you describe your interaction with the Dinkins Administration and perhaps Judge Mollen on these issues?

Johnson     We had some conversations, Judge Mollen and Judge Alexander. I think, to a certain extent, they got it and they did begin having the city turn the corner. But to some extent, I personally feel that they didn't get it because they didn't tout it. And I think if Mayor Dinkins had spoken about that a little bit more when he was running for reelection, it might have made some difference.

JK     Yes, Rudy Giuliani took the law and order ground right out from under him.

Johnson     Right, and crime was already, and crime had begun to go down. And Dinkins is the one who put more cops on the street. And I really felt strongly that, I don't know if I personally said this to them, maybe I said it to Judge Alexander at least once, but I was just amazed that they didn't beat that drum more than they did.

JK It really is funny, seeing the accepted story being that Rudolph Giuliani turned the city around.

Johnson To this day, the Compstat numbers only go back to the first Giuliani year. And when people talk about declining crime, I mean, people use numbers anyway they want. And Governor Pataki, when he signed the death penalty into law in 1995, a couple years later talked about the decline in homicide since '95, it was accurate. But it was going down since '90.

JK Yeah, the death penalty was not the variable in that. But you're right. That's an accurate statement. Gangs have always been a difficult problem in the Bronx. And during your early years in office, you had the crack epidemic. And crack gangs to deal with. First, is the crack epidemic over? And, second, how would you say the gang problem now, in 2006, is different? Or is it different than the gang problem you faced when you came in?

Johnson Well, first of all, I'm not sure how to define epidemic. Certainly, it doesn't appear that crack usage is anything like what it was in the '80s. And just from the sense, people are not getting arrested as much, and it seems to be that there has been a change in people's behavior. In terms of gang activity, I guess the worst times of gang activity would be the '50s and the '70s. The '80s, it was more, I don't know if you would call it gangs in the sense there were socially-named gangs. But it was more turf wars over narcotics. So I think, in terms of violence, the '80s were certainly worse than we are now. But in terms of gang activity, I think now may be the nearest thing we have to the '50s and the '70s. I don't know if you can understand what I'm saying, in terms of people breaking down into, you know, Bloods and Crips, and Dominicans Don't Play, and organized gangs of that nature. And I think it's something that bears a lot of watching. I mean, in the last, I don't know how many years it's been, at least five, I guess, no, maybe it's not quite that many, we've had a Gang Prosecution Bureau and we're trying to monitor information.

JK There's always been an ethnic dimension to gangs.

Johnson Usually, yeah.

JK But is that more pronounced now? Is this a problem in the new immigrant community? Or is this a problem that transcends ethnicity and class?

Johnson I don't know that it transcends class. I think gangs tend to be not traditionally an upper class or a middle class problem. Well, maybe part of the middle class. I shouldn't say that. But in terms of ethnicity, I think the factor is more neighborhood. Where do you find yourself? Who do you find yourself associating with? I guess you could find in a neighborhood with two ethnic groups that, you know, associations divide. But I think you could also just as easily find that people from both groups are members of the same gang.

JK With the arrival of Mexicans in the Bronx and the influx of Mexicans throughout the city, actually, is there a particular attention of immigrant-on-immigrant crime? Mexican-on-Mexican crime, for example? Is that a particular issue that you're facing? I'm just using Mexican as an example.

Johnson I don't know that we would break it down that way because, I mean, crime is crime. If somebody takes somebody's pocketbook or somebody shoots somebody because they don't want them selling drugs on their corner, it's pretty much all the same to us in terms of, you know, it's a threat to everybody.

JK It's fairly typical for immigrants who don't speak English, who come from places where the police are certainly not to be trusted, immigrants who are illegal don't tend to report crimes. How do you deal with this situation, that you know that these people are being victimized by crimes but they're not coming in?

Johnson Well, I guess if they're not reporting them, we don't know which ones are occurring. There may be some that occur where there's not cooperation or the cooperation's slow in coming, because of these concerns. I think it's up to the police department and us to just make people feel comfortable. That's not our issue. How you enter the country is not our issue. Our issue is trying to protect you, that you're here and you need to be protected. So, it's not an easy proposition, and there are people who are reluctant to cooperate for a whole host of reasons. And that's just another one that gets laid on top. But, certainly, no one can say that because somebody came forward as a victim, they ended up being turned over to the Immigration authorities.

JK No, no. It's not that your office or the police would act as—

Johnson It's their fear.

JK It's their fear that that could happen, or it's their fear that they're, "I'm illegal and these are the authorities. How do I get justice?"

Johnson But unless they're actually known to us as a victim, there's nothing we can do about it. If they are known, what we can try and do is make them feel comfortable that we're not going to approach him that way. We're going to approach him in terms of the other person who harmed him is the person who we're after and that's all we're doing.

Steven Reed (Director of Public Information) There's some outreach also through Community Affairs. I know, you know, with the elderly, encouraging them to come forward. Domestic violence, in particular. Getting people to come forward.

Johnson But are you saying that that's particularly targeted to immigrants?

Reed Yeah, part of our outreach.

JK Do you work with any of the organizations in the immigrant community to advertise yourselves, so to speak, giving them a sense that you're out there and receptive? Or are you waiting?

Johnson I don't know if there's a full-blown campaign. But, like Steven says, our Crime Victims Assistance Unit does do things like that. And our Community Affairs Unit, maybe to a lesser extent. I don't know.

Reed To a lesser extent. But there are brochures that are handed out at the fair, National Night Out Against Crime, the one that we have in the summertime. There are lots of brochures that go out and there's an entire network of organizations that participate in that.

JK One of the things I'm thinking of, probably the most notorious incident that took place in the Bronx since you've been in office was the Happy Land Social Club fire and the fact that almost everyone who died in that inferno was an immigrant. Ecuadorian, weren't they?

Johnson Honduran.

JK Honduran. And so you were involved personally in that case, rather than just leaving it to your assistants. I'm just wondering if you could relay the story of how you approached the Happy Land fire and the prosecution.

Johnson Well, initially, we approached it the way we respond to most homicides. We have people on call to go out, there's an assistant on call for homicides. There's an assistant on call for arsons.

JK On call 24 hours a day?

Johnson Yes, every day. They both went out. There was a Spanish language interpreter who went out to help assist interview witnesses. Video technicians went out to video the crime scene. I and one of my executives went to the crime scene. And from there, it's just a matter of cooperating with the police, gathering the information. Sometime that day, it happened like from a late Saturday night into early Sunday morning, sometime that day, probably pretty early on Sunday morning, I was at the scene, like, six a.m. I'm not sure what time they arrived but our Crime Victims Assistant Unit also was there. It was a Red Cross center set up in a school. Our Crime Victims Assistance Unit was one of the agencies that was there dealing with the families. There had to be body identifications and so we tried to deal with that. An arrest was made the same day, so our assistants, with the Spanish interpreter and the video technician, were at the precinct and took a statement from the defendant. There was a meeting at City Hall that same day. The mayor, through coordinated efforts between the response agencies, among the response agencies. That night, I don't know if the defendant, the defendant may have been arraigned the same night. I'm not sure he made the court Sunday night or Monday morning.

Reed I think it was probably Monday.

Johnson But I know after the meeting with City Hall, some of my executive staff and I came back here and we had a meeting, discussing the prosecution, and it was probably the one case that I actually considered trying myself, but ultimately did not decide to do that, which was a good decision because it really took two people, two very senior people with other assistants helping them, like a year to prepare the case for trial. A lot of exhibits, a lot of information.

JK A full year?

Johnson Yeah. Well, it came to trial a year later, but there was a lot of information that had to be amassed. And so the only personal involvement I had was the initial criminal court arraignment. I stood up and recommended remand for the defendant. That's the personal court involvement.

JK Why did you decide to do that?

Johnson Like I said, I initially thought about trying the case myself. It was the largest mass murder in this country's history at the time. On occasion, I feel it's important to show that the message is coming directly from me. That was one of those cases.

JK It was a resounding success in that you received the convictions you were seeking in this case.

Johnson And as I sometimes tell classes that I speak to, the case was really put together in that 24-hour period in spite of the fact that the defense was insanity, not responsible by reason of mental disease or defect. Really, the whole fire marshal's examination and their proof that it was an arson, and the apprehension of the defendant and his video statement was the crux of the case. In fact, I think, as good as our psychiatric testimony evidence was, the defendant telling the story was the major thing to knock down the psychiatric defense. He's the man telling his thought process step by step of what he did and why. So to me, it's an example of how a case can be put together if you do everything right there in the beginning. The arson was not an issue. But we still had to prove it. And the fire marshal did the examination and our video technicians were able to show what the fire marshal was talking about. The burn patterns that they described were right there for the jury to see as you can walk through the club.

JK You did not prosecute the owners in the Bronx.

Johnson No, we looked at that. I don't remember the detail right now but, essentially, what it had to do with was knowledge of what defects there were and ownerships, leases, and who had knowledge of the defects. And we ultimately found that, we did not find who was, that anyone else could be held criminally responsible for it.

Similar type of case, we just indicted, I guess, this year we indicted? The fires where the firefighters fell through the floor or went out the window. We indicted the apartment owners who reconstructed the apartments in such a way that we believe it clearly was a hazard. And we felt in that instance we could attribute the construction and the obvious dangers to individuals.

JK Did the arsonist give his statement in Spanish or in English?

Johnson He spoke in Spanish with our interpreter sitting there translating to English, and translating the English questions to Spanish. He was a Cuban immigrant who came from, I think during Mariel boatlift.

JK It ranks with the Triangle Shirtwaist fire and the General Slocum disaster. The owners don't have the same responsibility that, I mean, in Triangle, they never prosecuted the owners for locking the doors and having the conditions that these women burned to death. The General Slocum, they didn't prosecute the ship owners for not having life jackets and so forth.

Johnson Although, in the club in Rhode Island? I think that case the owners were prosecuted. So it's just a question of proving their responsibility and knowledge of conditions.

JK You mentioned briefly domestic violence and battered women and so forth. I noticed several high profile cases where women killed their spouse or their companion and used the battered spouse defense or some variation. How has your office been involved with the whole issue of battered women and domestic abuse, domestic violence?

Johnson We've been very involved, even before I became DA, this office had a Domestic Violence Bureau. Or it was at times either a stand-alone bureau or part of another bureau. It's been in different formations but there's always been somebody who focuses on domestic violence. We have a Domestic Violence Bureau now, and we had domestic violence parts. We were the first county in the state to have an integrated domestic violence part.

JK What does that mean?

Johnson That means that, before the merger of Supreme Court and Criminal Court in the Bronx, Criminal Division, if a family had, and even now, it still has some relevance too when we still have it, but a family could have custody matters in family court, or even an assault in family court. They could have an assault in criminal court. They could have a divorce in Supreme Court civil term. One judge was given jurisdiction over all those so that when a judge decided how to help this family's condition, the judge could see the whole problem and see everything that was going on. It's being done in other courts around the state now. But this was the first place it was done.

JK And this is where you have one assistant district attorney working on all of the cases involved with the family?

Johnson No, no. The judge is working on all the cases. But the Corporation Counsel may be working on the family court aspect. There may be private attorneys working on the divorce aspect. And we work on the criminal prosecution. But everybody's sharing information and everybody's pushing it together. Also in these cases, our Crime Victims Assistance Unit is a major player, because this is an area where the victims do need certain assistance and sheltering. So we work with other agencies, Safe Horizon and Sanctuary for Families, Jewish Children and Family Services, different agencies that counsel women. We have recently opened a satellite office in one of the precincts of our Crime Victims Assistance Unit. They'll be more available, not only for domestic violence, but that's one of the areas where they get more people coming in. The police department is trained. Certain officers deal with domestic violence situations and are really getting involved with victims at the precinct level even before they get here. So there's a lot. The borough president has been a partner in helping us get grant money, doing public awareness, a TV show, a diva spa where women come in and get pampered with massages and things, but also getting pamphlets and information about domestic violence.

JK Granted, this has always been a problem. It's just a question of awareness and how the state addresses it. From the moment you came in to today, has your office changed the way it handles prosecutions for domestic violence and for spousal abuse? Have you encountered the battered women defense?

Johnson We have, yeah. And sometimes it's real and sometimes it isn't. I mean, it's just like any other case. You have to assess it and make your own judgment about whether you're going to prosecute. We've had cases where it may, I can think of at least one case where it came in, I'm sure there's been more than one where it came in that the woman was the initial defendant and we turned it around and then ended up prosecuting the husband for battering her.

JK So in her case, it was self-defense, as opposed to assault.

Johnson Right, right. Sometimes, we were able to make that judgment. Sometimes, we can't see can't see it that clearly and it has to be tried and a judge or a jury will make that judgment. But it's something that we're always mindful of.

JK Do you still have women who refuse to prosecute?

Johnson Oh, yeah. That's a significant problem. And one of the responses to that has been more evidence-based prosecutions. You know, looking for ways.

JK What does that mean, evidence-based prosecution?



Johnson        That means trying to find something else to bring the prosecution, a police officer looking through the window and seeing the abuse, some way of bringing the case, even if the victim does not want to. And there are a number of reasons. I mean, each case is unique. Sometimes, perhaps the women falsely accused the defendant and she wants to back off. Other times, you have to be mindful of the fact that the victim has concerns for her family and how her family's going to be raised. It's really a difficult balance. The person who's being accused sometimes is the sole breadwinner. So there are a lot of issues that have to be sifted through by assistants who are working with these kind of victims all the time and by crime victims' advocates.

JK        It sounds funny to ask this, but are your assistant district attorneys engaged in the Domestic Violence Bureau, are they primarily women?

Johnson        Well, let me first say that our office is now 57 percent women assistant DAs.

JK        So they will be everywhere. We're outnumbered, fellows.

Johnson        Well, I think the law school population is now also over 50 percent women, and my experience has been that more women enter government service. I think, clearly, more women are interested, not to say there aren't men. We have men in these bureaus, in Domestic Violence and our Child Abuse Bureau. But I see large numbers of women who come here wanting to be involved in prosecuting this kind of crimes. And there again, we have to be somewhat cautious. We don't want people who are vindictive and only see things one way. We want people who are open minded and can be fair and make, but there is a compassion that a lot of people bring to these victims that we want. And it tends to be more women in those two bureaus. Well, it tends to be more women in all of our bureaus. But I think those more so than others.

JK        And did you also change the way your office handles child abuse? Child abuse and sex crimes are sometimes linked together. But they're really sometimes separate.

Johnson        They're in the same bureau, but, well, our Child Abuse Sex Crimes Bureau deals really with three kinds of crime. They deal with sex crimes against adults and they deal with sex crimes and physical abuse against children. In terms of changing, everything is evolved. I don't know if there have been drastic changes. I think the bureaus have been committed to the needs all along. We're doing more multi-disciplinary things where we have a team of hospital workers, doctors and nurses, ACS, Administration for Children's Services, police department, Department of Education, all involved in this multi-disciplinary team that they review cases and they work with each other on finding ways to improve services. They discuss with each other, what each needs to know. We do joint interviews so that one person does the interview and that person has been trained to know what the other people need to know, so the interview is not repetitive. So a lot of that thing is new and evolving but it comes from the same basis that always existed, a real concern not to do further damage to the victim and to prosecute the wrongdoer.

JK Where do you find the child sex crimes occurring? What kind of issues come before your office? Is this an endemic situation that you're always going to have to deal with? Or is it possible that there is a way to lessen it through prosecution eventually?

Johnson Well, I would hope deterrence would lessen it. I don't know whether there's a way to identify potential abusers. I don't know of any at this point. There's so many people who would feel, who would appear innocent on the face of it. You know, we just had a congressman resign. It's just very difficult to know who's an abuser and who's not. So I would think one of the things is deterrence. I think far too many of these cases come from what you would call stepfathers, or mothers' boyfriends. There's a great deal of that, which is, it still amazes me that, just because it's not your son or daughter, why—I don't know. It's difficult for me to understand why somebody would take advantage of a child in any circumstance.

JK It does seem to be that kind of arrangement which leads to a good deal of it. Have you been pushing for more stiff sentences for people you've convicted? Have the courts been responsive?

Johnson I think the courts are responsive. I think these cases, unfortunately, also are subject to a lot of evidentiary problems. You know, whether there's corroboration, although corroboration's not required anymore, unless it's un-sworn testimony. But then there's an issue of whether or not certain children are swearable. There are a number of issues involved in these cases. They're very, very difficult. So, we get the most we can out of each case. I wouldn't say, as I did in the gun cases, that I felt judges were far too often going in the wrong direction. I wouldn't say that's true in these kind of cases. I think people get it, if we can prove the case, people understand what an egregious harm it is and the sentences are meted out.

JK These are probably the ugliest kind of cases that you have to deal with.

Johnson Well, I don't know whether I would say the ugliest. There are so many ugly cases.

JK I was just thinking crimes against children.

Johnson I think they're among the most difficult to—

Side 2

Johnson —grueling kind of work to listen to those stories day in and day out.

JK Do you have district attorneys who burn out on the basis of this?

Johnson Probably a few, but most of them don't seem to. They really want to stick it out. They want to want to continue in those bureaus, generally. I don't know. Maybe if

they're burning out, we don't know, because then they go up and leave the office. But I don't think we find people asking out to go to other bureaus that often.

JK      What about recruitment since you've been here? You mentioned that your office is 57 percent women. I'm just wondering what kind of recruitment outreach you have engaged in. I mean, I can't imagine that the Bronx DA's Office needed diversifying, but are you working to have the office reflect the population of the Bronx?

Johnson      To the extent it can. I mean, that's not the ultimate goal. I think the number one goal is to get the best lawyers in here who can represent the community of the Bronx. And I believe that there are people of all different make-ups who meet that description who are qualified to work here. So to that extent, I do want it to reflect all the different people who live in this county. We've always done a pretty wide recruiting. When I say "we," I mean before I became DA. On-campus interviews at law schools and sending out to other schools that we don't. We go, usually, to Philadelphia. We go to DC and we interview a group of law schools at a time. I think Boston. We do, generally, the northeast coast. We have done minority job fairs, Black Law Students Association, maybe the northeast, sometimes the southeast. We've gone to Atlanta.

JK      Do you have people who want to come to the Bronx, say, "I want the kind of experience that you've got."

Johnson      I think they want to come here for a number of reasons. Some of them are in law schools away but are originally from New York. Some of them are from other places. They just want to come to New York. They want to be a prosecutor and they want to come to New York. Some of them feel that the counties like the Bronx, big counties with a lot of crime, is where you get the most experience. A lot of them know, especially now, in the days of websites, of the kind of work we do, how multi-faceted our approach to crime fighting is and of the positions that I've taken. And they either want to work for me or they want to work in this office because of the positions we've taken. So that there's a host of reasons why people want to come here, I think. I think they know about our volunteerism, our people going out into the community and working. A lot of people want to be a part of that. I think people generally go to law school for one of two reasons. One, because they want to make money and the other, because they want to do something for somebody else. And some people get to do both. We're kind of in the middle. We don't make a lot of money but we're making a decent living and we really get to help our community.

JK      What's interesting is there seems to, as I've been talking to people in this exercise, there seems to be a great divide where some people, such as yourself, Joe Hynes, immediately go into public service and have just very brief forays outside of public service.

Johnson      I don't even have a brief foray.

JK But there seems to be, Joe Hynes said that he went to the private sector and, like, fled. Dan Donovan said the same thing. He wanted to get back to where the action was.

Johnson Well, it's not been a great interest to me. I just don't, it doesn't feel like a fit, for the most part. The only time I ever even walked into an interview for a private firm was when the '75 budget, my offer from Legal Aid was rescinded. You know, I had to do something. I think I told you about the taxi license. Well, if I was going to drive a cab, then I would take a job in a private law firm too, I guess. I think part of it is, to me, I find the law fascinating. It's all fascinating. So I think I can do it from that angle. And you are helping people. One of the things that bothers me is this whole thing of going to individuals and saying, "Look, you have to pay me." I guess you have to do that more if you're a single practitioner. And if you're in a firm, it's pretty clear that they come and the firm has the rates, and you're going to be billing them at this rate. But I just can't imagine myself chasing people down to get them to pay me.

JK It's just that it never occurred to me that there is this divide among lawyers, that some lawyers go straight into private practice and never look at the public realm. And others choose the public realm and can't imagine the other.

Johnson Well, I don't know. There are a lot of people who have started here who have gone off and done very well in major law firms and all kinds of, even non-legal businesses and things of that nature. There are a few people who have come here that started out in the private sector. Some of them, because that's the way to pay off the tremendous debt you amass in law school, and really wanted to do public service. I've interviewed people who were making more than I was at the time I interviewed them and they were willing to take tremendous pay cuts to come into this kind of work. So what happens, and maybe it's not the most common occurrence, but there were people here who came from the private sector.

JK Your jurisdiction in the Bronx includes Rikers Island and you've had several prosecutions or attempted prosecutions involving Rikers Island, Corrections. I wonder if you could speak to the difficulty of prosecuting. I remember one case where the guards slammed an inmate into a metal door and left him a quadriplegic. What are the particular difficulties in approaching cases that come out of Riker's Island?

Johnson Well, you know, it's a relatively closed environment.

JK You mean among the guards?

Johnson Both. I mean, it's just, it's like it's an island. It's an island.

JK It is an island.

Johnson And even among the inmates who generally tend to be the victims we have in Rikers Island cases, whether it be inmate on inmate or guard on inmate. On

occasion, we have inmate assaulting an officer. But sometimes, we have victims who have their own baggage. They're in jail.

JK They're not exactly sympathetic characters.

Johnson They have criminal histories. I mean, when I was trying cases, I tried one Rikers Island homicide, and the witnesses I put on the stand had lengthy records. Fortunately, one of them was able to sum up the case in a way that most people can't. And he did it in the street vernacular, but he just boiled the case down to this one nut, and the lawyer was going after him, asking him all his convictions, did you do this, and did you do that, did you do that? At one point he says, "Man, you can— all I know is those two motherfuckers killed Scoobee-Doo and you're asking me all this bullshit." And it doesn't get more real than that. It just doesn't get more real than that. I got him before the jury, says, "There it is. Summation." But, you know, it's difficult. It's difficult.

JK This was inmate on inmate crime, in that case.

Johnson Right, two inmates killed another inmate and I had two inmate witnesses and the defense was challenging my credibility. "You're a criminal. You did this. You did that. You did that."

JK And the general public is, essentially, thinking, "Why should we care that they're killing each other in Rikers Island?" But we do.

Johnson Maybe some members. I don't know.

JK I'm exaggerating, obviously.

Johnson Yeah, yeah. But I think people get it, that you still need to control that kind of behavior. It's a threat to everybody. But, yeah, getting information is difficult. We have an assistant who's a full-time liaison to Rikers Island so that he's on a beat for 24 hours a day also. He needs to establish a rapport with the inspector general and with the administration there, so we do get information from there.

JK You have a separate Rikers bureau?

Johnson Not a bureau. It's part of our Investigations Bureau. One assistant carries the Rikers beeper. It presents its own issues but we've been doing it. It's been part of the Bronx forever, as far as that. I don't know when it became part of the Bronx.

JK I lived in Astoria and drove by the bridge to Rikers all the time. It had never been part of Queens until the bridge went in.

Johnson Well, it's still not. It's part of the precinct in Queens but it's in Bronx County. And the bridge is the only reason they got connected to Queens. I think the history was that the ferry left from Hunt's Point. So it was more connected to the Bronx;

even though it's farther away from the Bronx, it's connected to the Bronx because of the ferry before the bridge.

JK It's not in the Queens congressional and councilmanic districts either. It's attached to, I think it's in Charlie Rangel's.

Johnson Well, which is a whole 'nother issue because this whole issue of where inmates are counted in the census is a little interesting anyway.

JK That is one of the upcoming challenges to the Republican majority in Senate, I would bet, as a political observer.

Johnson In the State Senate.

JK But what are the particular problems in prosecuting guards, for example? There have been instances of guards smuggling and bringing contraband into the facility and instances of guards committing acts of violence against the inmates. And the public, again, thinks these are difficult people, they have very difficult jobs. How can we second-guess the guards on the spot?

Johnson Well, first of all, you're not supposed to argue about those kind of issues. But if you could, I would respond that they're putting their colleagues in jeopardy. If you're smuggling things into inmates, you're putting your colleagues in jeopardy also.

JK That is a serious issue.

Johnson And in smuggling and corruption cases, we generally have the assistance of other members of the Department of Correction, whether it be the IG and Internal Affairs people, or just another officer, because that's generally how you get caught doing those kind of things. So we would have other people from the agency to testify. With respect to inmates, generally, in the case of prosecutors, it's usually some serious injury. There's some corroboration that something was done pretty serious. One of the difficulties is that the officers may not get a justification defense. But we try to interview as many people as possible right from the beginning and lock down the stories. When something like that happens, if an officer, whether it be a Rikers Island or a police officer, does something, excessive force, it's criminal conduct, the officers who may want to turn their heads to it and let them get away with it, could find themselves jeopardizing their own careers, because they don't know who else around them is going to tell the truth. So if person A tells the truth and person B is telling some bogus story, Person B is going to find himself in trouble also. We have a case, an indictment pending now, where an inmate assaulted a correction officer. And during the attempt to apprehend that inmate, another correction officer is alleged to have punched another inmate, who was standing watching the fight. There's videotape evidence of that, and another corrections officer is accused of taking the tape out, and there's videotaped evidence of him running to where the tape was and then the tape cutting off. Another corrections officer is accused of filing a false report, saying that she didn't see the punch. There's videotaped evidence of her

standing right there. This one's videotaped but it could just as easily be some of the other officers saying, "Well, no. This one was standing there and that one ran to get the tape." Yes, it's problematic for us but, if they lie, there could be consequences for them also.

JK When you take that to trial, assuming you get a conviction, do you ask for jail time? Is that likely in these cases?

Johnson We haven't reviewed it but I would think—

JK I'm not asking you to make a determination.

Johnson But I would think assaultive behavior by someone who's sworn to enforce the law, to me, I think that's an extra factor, that if you're sworn to enforce the law, I think you do have a higher burden. The statute doesn't impose it but I would argue to a court that it is a more serious offense.

JK How did you prosecute the officers who left the inmate a quadriplegic?

Johnson I recall the incident but I don't recall the prosecution. I don't recall. I remember there were a number of people standing, there were stairs but I don't remember.

JK The difficulty is that when I do research in this, I can research the stories in the paper when the incidents occur. You can research the stories when people are arrested. But nine times out of ten, you never find out how it's resolved.

Johnson Really? There may have been acquittal. I don't recall. I don't recall.

JK Yeah, it's just that it leaves you unsatisfied.

Johnson You probably have a folder with them.

Reed Rikers Island?

Johnson No, on that particular case.

Reed I think I do. That may have been an acquittal.

Johnson I don't remember. I honestly don't remember. I remember reviewing the case a number of times, but I couldn't tell you the facts or the result.

Reed But there was also one case. I think the inmate was assaulted so bad, I think that there was a very severe injury to his testicles or something as well.

Johnson This is not the same one. That one, I don't remember.

JK I know it was early on in your career.

Johnson We once calculated, I think a year or two ago we calculated the police department's made over a million arrests in Bronx County since I've been DA.

JK You're not shutting down any time soon.

Johnson So there's a lot to consider.

JK In your description of that case on Rikers, the phrase, 'the blue wall of silence' comes up. I'm wondering whether that's a particular problem with incidents in Rikers Island, where it's hard to get corroboration and it's hard to get correction officers to testify against other correction officers.

Johnson It's a problem with any group of people who are bonded together. I mean, if you have a member of the Crips who shoots somebody in the street and the other Crips are standing around and the witnesses, not to equate police officers with a street gang but, there is a certain bond that people who work together form. Our hope is that the good ones among them understand that the bad ones bring the whole organization down. But it is something we have to deal with, and you have to try and find a way to show them that you know something that they could jeopardize them sometimes.

JK It's such a ticklish situation, where you have officers with 18 years of a spotless record and suddenly they're brought in for, they lose their temper or whatever else.

Johnson This officer alleged to have thrown the punch, was, I think, within weeks of retirement.

JK That's what I mean. It's such a tragic situation in some ways. But it's, as you said, unforgivable to violate that. The last major topic is your relationship with the police and police brutality cases and the death penalty. And that is an enormous subject.

Johnson It would seem so but it's not. I don't know if there's much to that.

JK I'm wondering whether I could come back and just focus on that for a last interview. To focus just on the death penalty and the—

Johnson Why don't you take 10 minutes on it now? Because you triggered my thoughts and I hate to stop. On prosecution of police, excessive force, corruption, essentially, I start out with the premise that I'm not looking to prosecute police, to show the community I can prosecute police. I will prosecute police if they commit a crime, just like anybody else. And I campaigned on telling that to the community and telling that to the PBA. To me, it's just very straightforward. If you commit a crime, you will be prosecuted. They have an Internal Affairs Bureau who don't work alongside the other officers day to day. And they prosecute those crimes. We have, as part of our Rackets Bureau, people who do those prosecutions. And I don't know how many of them have



really caused bad blood. Every once in a while there's one that gets brought that the police department, the members of the force in the precinct think it shouldn't have been brought. Every once in a while there's one that doesn't get brought that the community thinks should have been brought. Amadou Diallo is one, where it's clear that, no matter what you do, somebody's going to criticize you for doing it. So you do it down the middle. I would think the police department thought those officers shouldn't be indicted. But those officers never told anybody the facts of the case before trial. So you really didn't have anything but officers shooting a person that many times. So I think that's something I can explain to people. Look, we did an investigation. Your officers, as their right, chose not to make statements. And the grand jury made a decision to charge them with a crime. They went to trial and then they were acquitted.

JK      The venue was shifted to Albany.

Johnson      Right, which I think was a major tragedy in that. I really think the Appellate Division panicked and perhaps didn't have enough experienced judges on the panel, but, clearly, didn't even give the trial judge an opportunity to empanel a fair jury here in the Bronx. And I'm sure it could have been done. The defense lawyers and the judge and our assistants were working on questionnaires to try and weed out bias and prejudices and were not given the opportunity. As I say, shortly after that verdict, another unarmed individual was shot and killed. I mean, was it a week? It wasn't long.

Reed      It wasn't even a week.

Johnson      Right after the Diallo verdict. And the community, obviously, now, having those officers acquitted, the community was concerned. We did an investigation, found corroboration even among community members for the police story, and rather than put it in the grand jury and have it be secret, we wrote a report and put it on the web site so that people could see, this is what we found. And the community accepted that. I'm trying to think of any others that the police department really felt we shouldn't have brought. I don't know. The death penalty is a whole nother issue. There actually are mixed feelings among more groups than you would think on the death penalty. We have a chapter of Parents of Murdered Children here in Bronx and Westchester, who I meet with and speak to often. I spoke to them shortly after these death penalty issues came up. They were split on the issue. People, all of whom had lost a loved one to homicide, they were split on the issue. I've had a police officer who was a member of, was he a member or a president? I can't remember now. Might have been a president of the PBA in another county, come up to me and tell me that I was doing the right thing. But he would never be quoted on it. When I went to Officer Gillespie's funeral, I parked a few blocks away. So I had to walk past, like, the whole line that was beginning to assemble. And one of the bagpipers broke ranks and started walking over to me. And I was, like, 'Oh, gosh!' He walked up to me and he said, "Fuck 'em, keep on doing what you've been doing."

JK      You must have been surprised.

Johnson I would have been less surprised if he had punched me in the jaw. And I've always gone, I think we had a new class of recruits that have come, who came in immediately after that. I went and I spoke to them and told them, you ask me any question you want about this issue. I'll tell you why I do what I do. And that's the way I've always dealt with them.

JK Where did it come from, your opposition to the death penalty? Some people embrace the death penalty. Other people oppose it. I spent a lot of time interviewing Senator John Marchi, Republican, Staten Island, voted against the death penalty his whole career on moral, philosophical grounds.

Johnson Yeah. It's just, it's a whole makeup of who you are. I mean, everybody's got a strong feeling about it, I guess. I don't oppose it to the extent that I would get in somebody else's way. We've sent assistants down to Florida to testify in the penalty phase of a death case. We returned a defendant to California because they said, "Look, we're going to seek the death penalty. You have a case. We have a case. We want to try him first." We returned him to California. But pragmatically, I don't see it. I mean, obviously, I was raised in the Catholic Church and had their values drummed into me, all of which I don't accept. But it has some impact on you. And I am a philosophy major also, and a lawyer now for 30 years. I guess at the time that passed I had been a lawyer for 20 years. Just, when you add it all it up, it's just, to me, not necessary. It just doesn't make sense, just an appeal to emotion. Is there a case or might there be a case that will reach me? Maybe, but I doubt it.

JK The case, I don't know whether it's irony or justice, but that the first challenge to your reluctance to use the death penalty was the murder of a police officer in the Bronx, the Kevin Gillespie case.

Johnson Well, that was actually the second one. The second time that the governor challenged.

JK And he took this one away very quickly.

Johnson Right, the first time, he didn't do anything. He backed off. But this time, yeah, it was the murder of a police officer, which is, you know, and that's one of the reasons, that, and the other one, the Little Chester Shoes store shooting. All of them are the reason why I spoke out the day the bill was signed, because I understand the emotion behind these cases. I've seen this before. I've been to crime scenes. I've been to homicide scenes. I've sat down with families. So I know what kind of emotion swirls around in these cases. And I felt that, if I'm going to say it, I shouldn't wait till there was one of these horrible occurrences, that I should let people know up front. And I think people still end up disagreeing with me. But I think that took some of the sting out of it, because people knew that I didn't feel this was necessary. When you used the word irony, I thought you were going to say, the irony was that the defendant in the Gillespie case, when they apprehended him said, "Shoot me now because I don't want to go back to prison." So it wasn't the death penalty that was his deterrent. And in fact, he ended up

taking his life before going to trial. He took his own life. So his case never was tried. That's the real irony in that case, that jail was the deterrent, was the greater deterrent for that particular person.

JK How did you respond when Governor Pataki took the case out of your jurisdiction and gave it to Attorney General Dennis Vacco?

Johnson Well, first of all, we had some discussions before he took it. He kind of threatened to take it and we spoke to his counsel and explained to him, explained to them that that really was their issue because they signed a law that gave me discretion, and I was going to exercise my best discretion. They would have to do what they had to do. Then he gave me the ultimatum that I had to answer him by noon, whether or not we were going to do it. We drafted a letter. I get up around, usually, between six and six-thirty in the morning. I think that morning I probably got up at five-thirty. There was an outline in my head of certain thoughts that needed to be said to the governor, and I gave that to one of our executive assistants who writes beautifully. He drafted a response to the governor for me that was exactly what I wanted to say to the governor. And then after he did it, the next day he and I went on the "Today" show and debated the issues. The first time I ever met the man. I explained to him that I thought that we could agree or disagree about this issue and we should talk about other things that we could do together too. And we did and we ended up having a pretty decent relationship, Governor Pataki. The governor himself was on the "Today" show with me. Then we also appealed and took it to the Court of Appeals, all the way to the Court of Appeals on whether or not he had the authority to do that. The Court of Appeals had written about superseding, about a governor superseding DAs, and the language they had previously written indicated to us that his authority was not to be unchecked and there would come a point where they would check it. We felt that this clearly was within what they were talking about, because prior to this people had been superseded if they had some kind of personal relationship with one of the parties or some kind of personal thing that would make them ineligible to prosecute the case. Here was a law that said I had the discretion and he superseded me. We lost four to three in the Court of Appeals.

JK Has there been any fallout from that episode in your career since? Has this episode resurfaced?

Johnson No. I mean, the issue never came up. We had other cases before the death penalty was ruled unconstitutional. We had other cases, never came up again. I mean, I think he felt he made his point. He knew, I guess, that I was no pushover and wasn't going to just change because he felt that I should change. We agreed to disagree on that. And like I said, we've gotten along on other issues. Out here on the wall is a bill. I think it was victim's bill. I forget which bill it was, that wasn't that long after, he invited me to a bill signing and he gave me one of the pens that he signed the bill with.

JK Well, the death penalty law was the position he ran for governor against Mario Cuomo on. It was his bill. It was his political position.

Johnson But he gave the discretion to 62 DAs and felt that they all should then use his way of thinking.

JK You can all think independently, as long as you—

Johnson Right.

JK —conclude the same thing I want you to.

JK Yeah. Not a good scenario. You've also had an entire police precinct to go after. The brutality and the corruption in the 48<sup>th</sup> Precinct.

Johnson Was it 48<sup>th</sup> or 46<sup>th</sup>?

Reed Four eight.

Johnson That was a long time ago too.

JK When I looked at that and saw they're mugging drug dealers? What are they thinking? But this was right after the Mollen Commission.

Johnson Was it right after?

JK It was '95.

Johnson Because I think one of witnesses is one of the people who testified.

JK The Mollen Commission was '92, '93, something like that.

Johnson I vaguely remember that. One of our cases, I think, the witness came out and spoke in the Mollen Commission.

JK Well, there had been corruption cases before this, also.

Johnson Yeah, that's part of what we're here for. I mean, the police department is usually very good about those too. Like I said, they have Internal Affairs. And we work with them. I think in that one we probably did a sting apartment.

JK Was that your office that set up the sting apartment?

Johnson We did it with Internal Affairs. I think our bureau had the apartment and set it up.

JK And this was where police would come in to rob the drug dealers because they thought it was a.

Johnson        A drug den, yeah.

JK        There are always going to be individuals who are personally corrupt. But what seemed to generate the corruption in that, I mean, these guys were also brutal to your average Bronx citizens. But it seems that the war on drugs, the factor—

Johnson        Are these the guys who were on steroids too? There was one case, I don't know if it was ours. Some of the cops were taking steroids or something like that.

JK        That's just over the top. A cop on steroids. But a lot of this has to do with the fact that the drugs are an underground economy.

Johnson        And the drug dealers might not report it.

JK        And, let alone the tax advantages of having it legal. I'm talking about the amount of, this is the question Larry Sullivan would ask if Larry were here, which is—

Johnson        Legalization?

JK        Legalization. I mean, the fact that the drugs are illegal, that this activity is criminalized, that causes the brutality and corruption among the police force and the resources of your office and so forth. Is this something that you think about, whether drugs ought to be decriminalized?

Johnson        I don't think a lot of that. I mean, I understand the arguments, but for me, I think it sends the wrong message. It just.

JK        What is the wrong message?

Johnson        These substances distort people's judgment. We have enough problems with alcohol and tobacco. To add that into, and then you have to, you're still going to end up with a black market because you're going to have youngsters, you used to have people, kids buying alcohol now. I don't know. I just think it's not the message we need to send, this is something that you want people using. And I guess, alcohol and tobacco are things that, and I guess narcotics also, are things that evolved before we had civilization the way we have now. These are things, substances that people used in the native state of the land. But I don't know that you want to add any more to what we have.

JK        Dutch Schultz, the beer baron of the Bronx during Prohibition was pulling in \$80,000 a week. And if you multiply that by 10, he's bringing in a million dollars a week in illegal beer during Prohibition. You're not concerned that it's the drugs that lead to the corruption in police? That if you had no drug, marijuana, for example, if marijuana was legalized, how much smaller would your bureau be?

Johnson        Well, marijuana's a good example in a problem, because a lot of the people who used to sell cocaine and heroin have turned to marijuana, selling marijuana

because the penalties are so much less now. And the violence that goes along with it is similar. So that's a real, that's something that's really been hard for us to get control of in the areas where marijuana sales are rampant. Because we have no teeth.

JK But again, it's the fact that this is an illegal activity that has two groups of illegal thugs going after each other, whereas if it were legal, you wouldn't have that situation at all. This is, as I said, Dr. Sullivan's point.

Johnson But that's almost like surrender though, because you're not really making a positive argument for the use of marijuana, saying this is a wonderful thing and it's going to make people be nice to each other, and civil to each other.

JK Not at all.

Johnson It's a surrender argument. And I'm not ready to surrender.

JK Does that go for the Rockefeller Drug Laws also?

Johnson The Rockefeller Drug Laws. You've got to watch out with those terms, because the Rockefeller Drug Laws had some good and they had some harshness to it. The good part, and this is most important to me, this is where I disagree with a lot of the elected officials in my county, because I think people are short sighted, is that the district attorney still has some authority to make decisions about whether to reduce charges. If we don't, people have to go to jail. And if we do, we've been making wise decisions. We've been sending people to treatment. We've been doing things to try and help people.

JK You did institute treatment as an alternative to incarceration.

Johnson We've had it for, and do it quite a bit. What was reformed was the sentences for the larger amounts. I think maybe the reform went, I agree there needed to be some reform. I'm not sure if it went too far because people who generally possess large amounts are involved. Some of them, most of them will tell you that they're a mule. But drug dealers don't trust that kind of product in the hands of somebody who is not involved with them. You don't just give that to somebody and let them walk around with it. So, I buy the argument that maybe the sentences don't have to be, everybody has to get a life sentence and all of that. I buy that argument and I welcome that reform. But the street sales, it's a real tool. What we still have is a tool for us to keep the dealers and the violent people away from the children and the working people in the neighborhoods. And it gives us the opportunity to assess it and say, wait a minute. Which one are you? Are you a profiteer on my corner for no good? Are you an addict who's selling because you need to feed your own habit? And we get to make that decision. What the reformers now want to do is put that decision in the hands of the judges, who are the same people who wouldn't give a year for a loaded gun, and most of whom in Bronx County don't live in Bronx County and most of whom have never been to a community meeting and heard the complaints of the citizens. And some of whom, when we tried to get to hear from a citizen about a prostitution problem in a neighborhood, walked out on her because they

didn't think it's appropriate that the community could speak to the judges, that, somehow, that's an ex parte application or something. Those people would be making the decision and I don't think that's in the best interest of the county. The way it is now, the county has a person who most of the voters know, who stands for election every four years. And if they don't feel it's being done properly, they can change it. And if it's given to the judges, which is what the reform advocated are asking for, there are people you don't know who stand for reappointment every 9 years or 10 years, or election every 14 years, that you're not even going to know who they are when they come before you. That's why I'm not really totally for reform.

JK      You enjoy having the prosecutorial discretion in these cases.

Johnson      It's not so much enjoy, but I think I am the best person to use it. And then I want to say, I mean the elected district attorney in any county is the best person to weigh all the factors and use it to the best interest of the community and respond to what the community wants. Do you want people to go to jail? Do you want people to be rehabbed? We can do both with this law, but the DA is making a decision.

JK      Would you testify, if they had hearings on the law, would you be up in Albany?

Johnson      I have written letters to people. I have gone up to speak to the Black and Latino Legislative Caucus about it. I've spoken to people about it.

JK      You're on opposite sides from them.

Johnson      They know my position. They ignore me. Yeah. In fact, when one of our assembly people, who heard my position, said, "You should come up and talk to us about it." She invited me up and I went up. And the people who came in the room were the ones who agreed with me.

JK      Not exactly a dialogue.

Johnson      When one of our late leaders from one of our heavily African American communities, which is generally a community that is pro-reform, really understood my position, he asked me to write an op-ed in his local weekly that he put out for free in the neighborhood. So, people have heard. I've written to the *Times* about it, more I don't know how many times I've written to the *Times* about it. But people get entrenched in their position and don't really think logically. It's easy for them to say, you know, "I like power." So that's why I don't want the judges to do it. But my community doesn't know these people.

JK      And vice versa? The judges don't know?

Johnson      Some of them do, but a lot of them don't.

JK      Well, we are just about out of tape. Can we call it a day?

Johnson        Okay.

JK        You were awfully shy about some of those opinions there towards the end.

Johnson        That one I've written about before. No, I just want to add that the threat of jail is one of mechanisms for us to get people into treatment. We find that when the threat doesn't exist, it's very difficult. An example of that is youthful offenders, who are not in the DA's discretion. The judge can give probation without the DA reducing. And when you see one that needs a program, sometimes it's very difficult to get them into a program, because they know they're going to just walk out on probation. And the problem is not really addressed.

JK        And you also have the problem that there aren't always enough beds.

Johnson        We haven't had that problem. Some of the Upstate counties, in fact, that's what a lot of the Upstate DA's have said, "Don't take away our discretion. Give us the beds so we can put people in treatment."

JK        Does it work?

Johnson        It's not perfect, but, it's a lengthy process. I mean, of trial and failure, two steps forward, a step back. It's a lengthy process. You've got to be patient. You've got to really work with people. You've got to hug them sometimes. You've got to yell at them sometimes. And the judges in our drug court are very good at it.

End



Robert T. Johnson  
Index

Affirmative action, 15, 22, 28-30, 33  
 Alcinder, Lew, 7, 9  
 Amsterdam Houses, 7, 11-12  
*Bonfire of the Vanities*, 23  
 Bronx, 7, 12-13, 23, 44, 46  
 Bronx County District Attorney's Office, 18-21, 24, 30, 33, 36, 38-42, 46-48, 52-59, 71;  
     Child Abuse Sex Crimes Unit, 57-58; Crime Victims Assistance Unit, 53, 56;  
     Domestic Violence Unit, 55-57  
 "Bronx Jury," 44  
 Capital Punishment, 66-68  
 Civil commitment, 26-28  
 Crack, 30-32, 40, 51  
 Crime, 17-19, 32, 47-51  
 Democratic Party, 34-35  
 Diallo, Amadou, 65  
 Dinkins, David, 47, 50  
 Education, 6, 7, 9-10, 14  
 Elections, 34-38  
 Family, 6, 8, 11-12  
 Gangs, 32, 51, 64  
 Gentile, Paul, 33-34, 38  
 Giuliani, Rudy, 47, 50  
 Gun laws, 25, 40-41, 47-50  
 Happy Land Social Club fire, 53-55  
 Harding, Ray, 35, 38  
 Healy, Sean, 46-47  
 Immigrants, 51  
 Judgeship, 22-26, 29  
 Koch, Edward, 22, 29  
 Merola, Mario, 19-23, 29, 33-34, 39  
 Mollen Commission, 68  
 Narcotics, 24, 30-32, 40-42, 51, 69-71  
 Navy, 6, 8-10, 23  
 N.Y.U. Law School, 7, 14-17  
 Pataki, George, 66-67  
 Police corruption, 64-69  
 Power Memorial High School, 7, 9  
 Rikers Island, 60-64  
 Roberts, Burton, 22, 39  
 Rockefeller Drug Laws, 24, 70  
 Safe Streets, Safe City, 47  
 School Board corruption, 42-44, 46  
 Terrorism, 32-33