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Ed Johnson

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BOB SHORT: I'm Bob Short, and this is Reflections on Georgia Politics, sponsored by Young Harris College, the Richard B. Russell Library at the University of Georgia and the

University of Georgia. Our guest is Judge Ed Johnson of the Georgia Court of Appeals, who also served as a Georgia State senator. Welcome, Judge. We're delighted to have you.

EDWARD H. JOHNSON: Well, thank you very much. I'm glad to be here.

SHORT: Well, we're anxious to talk to you about your role as an appellate court judge. But before we do, let's talk about your early life and how you decided to become a lawyer and a judge.

JOHNSON: Well, I was born in a mill village in Coweta County Georgia in a little town called Grantville to very young parents. My mother was from Reed Creek, a little community outside of Hartwell in Hart County, and my father was from Grantville. He and my mom got married during their sophomore year of college. They were both students at West Georgia. And I was born 10 months later. And they were still just children themselves. They took jobs back in Coweta County as teachers. And Mom, of course, didn't keep hers very long, because she had to raise me and a brother that came along right after me. But Dad continued to teach and coach, and my early years were in Grantville. It was a great adventure down there, a lot of wide-open spaces. I can remember living in the little shotgun houses that we lived in. We moved probably three times before I was in 1st grade from usually right across the street from where we'd been before.

My grandparents on my father's side were there. Both of them worked for textile mills. My

grandfather was a mechanic, and he kept all the sewing machines running. And my grandmother actually operated one of the machines in the hosiery mill. I went through there just a few weeks ago, and that mill is no longer there. It's just a pile of rubble. And the other big mill that was there in Grantville has long since been closed. And so all of those mill village houses have either become privately-owned or are no longer there at all. It's still a real sleepy little community.

On my father's mother's side of the family, there were two very distinguished lawyers: her brothers. We called the older one Alton, but everyone else that knew him outside of the family called him Tom. And he ended up going to Florida to practice law in Tampa. Had a very successful career. But the other one was Stonewall Dyer. And Uncle Stonewall, my great-uncle, was a lawyer in Newnan. He was a partner of Ellis Arnall. They were both in the legislature together for years. And he was a mentor to a great many of us in our family, on the Dyer side.

Henry Peyton was one of my cousins, and Henry followed Stoney into the legislature, served there for a good many years. He and another fellow in Newnan, whose name I can't recall, swapped that seat back and forth for a number of years. Donald Peyton, who was Henry's brother, was Jim Mackie's law partner when Mackie was a congressman in Dekalb County. And he had been appointed to the state school board by Carl Sanders and had been a speechwriter for Sanders. Stayed with Governor Sanders even when he ran unsuccessfully against Carter.

And Uncle Stonewall was an inspiration to both Henry and Donald. And he was a direct inspiration to me. Started talking to me about being a lawyer when I was only about eight or nine years old. And he would advise me about where to go to school and the things that I should do in high school and college. And he died in 1967 when I was a sophomore in college. It was a

great loss to me personally. He, at that time, had moved to Atlanta and had become a superior court judge. He was appointed by Ernest Vandiver to that position, and he served there for seven years before he died very unexpectedly. It was a great privilege for me later on in my professional life to actually be the third judge to hold that seat after him. The first one died after about 10 months in office. After Uncle Stonewall died, I guess it was Lester Maddox who appointed a successor who himself died 10 months later. And then Osgood Williams was appointed to that position. And Osgood stayed in it for 24 years, and then I took Judge Williams' place when he retired. And so I was sitting in the very seat as my Uncle Stonewall and had his portrait hanging over my jury box. And I swear, every time I looked at that portrait, if I had just done something wrong, it frowned at me. But one of my regrets is that he didn't live to see me follow in his footsteps. And I hope he would have been proud.

SHORT: I'm sure he would have been.

JOHNSON: But at that point, I guess I tell people now that I'd made up my mind that I wanted to be a lawyer at a very early age. And the only deviation that I ever had from that was that I fell in love with airplanes when I was a senior in high school. And it was right in the middle of the Vietnam War, and flight schools for veterans were opening up everywhere. And there was a man named Cecil Gillam out at Fulton County Airport, now Charlie Brown Airport. And he hired me during my senior year in high school. I had already earned more credits than I needed to graduate, so I would leave school every day under some special program that they had if you

wanted to go work. I would leave at lunchtime and I would go out to the Fulton County Airport and work the 2:00 to 10:00 shift, refueling and parking airplanes for him. And I did that. And he let me take flying lessons in exchange for the work, and I learned how to fly. So briefly, I flirted with the idea of flying airplanes for a living. But I quickly returned to the law and ended up pursuing that.

SHORT: Did you go to high school in Grantville?

JOHNSON: No. We had already moved to Atlanta. Dad had determined, and I think there were a lot of people in Georgia that had this experience, that we didn't pay teachers anything. He was a coach, your brother Jack was a coach, and probably at about the same time. I think Daddy was making 45 dollars, and that included a coaching supplement. And my brother, as I mentioned earlier, right after I was born, he was born 15 months later, and then a year or so later we had a sister. And Dad said that he could no longer afford to teach and coach for a living. Uncle Stonewall had moved to Atlanta and let Daddy know that there were some appointments available in the Postal Service. And he came up and took a job with the U.S. government, and he stayed there until he retired. So we moved to Atlanta. And I was enrolled in Ragsdale Elementary School, now closed, and Sylvan High School.

SHORT: Where my brother coached.

JOHNSON: Exactly. And your brother is another one of the interesting ties, because another major influence in my life was my maternal grandfather, Roy Hodson from Tiger, Georgia. And my grandfather was a teacher and coach his entire career, and he loved Jack Short. When Jack was at Headland, I would hear about him from my grandfather all the time. And if we had a track meet at Headland, he would call Jack and tell him, "You look after" – he called me "motorboat" – but, "Eddie." And I would go over there for a track meet and your brother would be there. And they were good friends. But that grandfather was a very altruistic gentleman. Everything in his life he did because he thought it would help other people. And he could have made a lot more money. He was a pharmacist in addition to being a teacher and coach, and he could have done a lot of things to make more money. But he chose to stay with the teaching and coaching, and he was a great influence in my life.

But I went to college. Again, like so many people even today, when Uncle Stonewall was pushing me toward Emory, and my father was saying we couldn't afford to send me to a private school, I started at Georgia State because I could live at home and work and go to school there. My father was expecting my brother to do the same thing and my sister to do the same thing. As luck would have it, my brother ended up going in the service. And he went in the Coast Guard. And I don't know that he went into the Coast Guard with the idea that that might be a better service to be in during the Vietnam War, but he was soon disabused of that notion, because the next thing he knew he was on a little river boat that's running up and down the Mekong Delta. But he had chosen at the time to do that instead of going on to college. And my sister then started to college, but got married. And basically that freed my dad up. So when it came time

for me to go to law school, I was able to go to Vanderbilt. I just decided I wanted to go to the best school that I could get admitted to. And I got admitted to several fine schools and visited all of them, and that one was the best fit for me, and I've always been grateful for that education.

SHORT: Do you remember what you did during the summer of 1974?

JOHNSON: I do. I came out of law school. I had been talking to Donald Peyton over and over again about my interest in politics and public service. And I met with him during my last year in law school, '73, and he said, "Well, the best way to get involved in that is to get involved in one of the upcoming political races in Georgia." And he said, "You might want to meet the candidates for governor." Of course, everybody at the time were Democrats. All my family were Democrats. And he said, "You may want to find an opportunity to get to know some of the people who are running for governor better and decide which one you'd like to support." And an interesting thing happened. I went out to the Dekalb County Jefferson-Jackson dinner. And Bert Lance was there, and George Busbee was there and several others. But there was a young fellow, 42 years old, from Young Harris, Georgia, named Zell Miller. And we had Scoop Jackson as the speaker that night, and I wanted to hear Senator Jackson. But I sat down and started talking to Zell. I had met him earlier when my grandfather introduced me to him at some point when he was running for Congress. But I had lost touch with him. He had no reason to even remember that. And everything he told me that night about his race for lieutenant governor interested me. And I went back to my cousin Donald and I said, "You know what? I think that

I'm going to help Zell Miller in the lieutenant governor's race instead of one of these governor's candidates." And he said, "Well, tell me what you're thinking." And I said, "Well, we have a one-term rule in Georgia," which existed at the time. "I could go help Bert Lance, or I could help George Busbee, and four years from now they're gone and I'm still a young guy green behind the ears with no experience. But I think this Miller guy is going to go a long way, and he's going to be around a long time. And I think I'd learn more from him and have more experience when I'm ready to do whatever I'm going to do if I hitch my wagon to that star." And so I did, and the rest is sort of history.

I think Zell is probably the single most influential person in my life, both my public and my private life, since that time. And I went to work for his campaign. And you ask about the summer of '74. My primary job was to put miles on his car and my car. And I think we added it up, and before that summer was over, I had driven about 30,000 miles all over the state. The law firm that I had started with was happy to have me doing that. And there were two people in that campaign. Now, I don't know if this is true or not, but Zell says it's true, that he didn't trust anybody to speak for him except Walter Gordon and me. And so I made a lot of speeches that summer for him. And apparently he got some good feedback from that, because he let me continue to do it.

And then we were successful in that race. And it was a great race. We had a runoff with a woman from down at Jessup, Georgia, named Mary Hitt [ph]. There were some interesting things that I saw as a result of that runoff. But Zell got elected.

SHORT: And you were bitten by the political bug.

JOHNSON: I was bitten, big-time.

SHORT: And so then you go over to assist the Lieutenant Governor.

JOHNSON: Right. The first thing that he arranged for me to do was to be counsel to the Senate Judiciary Committee, which at the time was chaired by Howard Overby from just south of Gainesville, in Oakwood, Georgia, I guess, is where Howard lived. And that was an interesting time, because there were some what he used to call his “young Turks” that came along about that time. We had a huge turnover in the Senate two years later, and I was part of that. But in that class that came in in the session of 1975, you had Roy Barnes and Lee Robinson, several new people. And then two years later, when I ran, we ended up having 19 new senators, mostly people who were under 35 years old. Tom Allgood was one of the exceptions. But Overby used to call us his “young Turks.” So I was the lawyer for that committee in 1975.

And then Lieutenant Governor Miller asked me to be his lawyer the next year, and I moved in.

And you remember that staff. We had Louise Summers there and Francis Holland. That’s another one. I always knew him as Francis Holland, but everybody I’d see around the state said, “How’s Tommy doing?” But he gave me some of the best advice. When I asked him about whether I should take the plunge and run for the Senate, I was still only 27 or 28 years old, I guess. And his advice was, he said, “Ed, you only get to live once in this life. And if things are

not exactly the way you want them to be, then you change it. And if you want to do that, then you need to do it and not be so indecisive. Just decide you either want it or you don't want it. If you want it, go for it with all you've got."

SHORT: And so you did.

JOHNSON: And so I did.

SHORT: Yes.

JOHNSON: And those were great years. We had a lot of interesting things going on during those two years. Jimmy Carter got elected president, and so we had a Georgian in the White House. In fact, Hank Huckabee, who later became the director of the Office of Planning and Budget and a key advisor to Miller, and was the head of the Senate Research Office, Hank and I rode the train to Washington for Carter's inauguration. And we stood there together with a woman who later became, I believe, the Speaker of the House in Florida, in the snow. And we watched Carter's inaugural, which was an exciting, heady time. And one of the things that made it exciting was that, as we were standing there watching the people come down the steps of the Capitol to the platform, arm in arm down the center aisle walked Hubert Humphrey and Nelson Rockefeller. And Hank and I looked at each other and we said, "There are two men who since the year of our birth, 1948, had spent their entire adult lives trying to become president of the

United States.” And we were there for a peanut farmer from Georgia, a most unlikely president at the time. So it was interesting.

SHORT: Tell us about your first race. Tell us about your district first.

JOHNSON: All right. My district was the 34th District. And at the time that I ran, it consisted of almost all of Fayette County, except for two little communities, Brooks and Woolsey, that were down on the Spalding County line. There were two voting precincts in the county that were not part of my district. But it had Fayetteville and Peachtree City, which was beginning to emerge as a major center. And then it had parts of southwest Atlanta, most of South Fulton County. I didn't have any of Hapeville. Shared East Point and College Park with Perry Hudson. But then I had all of Union City, Fairburn, Palmetto in Fulton County, and all of Fayette County. There was an airline pilot named James R. “Duck” Hamilton. And he was a nice guy, very, very big guy. And he was sort of, I guess, a close political ally of some of the Fulton County commissioners, particularly a commissioner named Shag Cates. And this was a time of change in Fulton County, and Cates and some of his cohorts were getting a lot of bad publicity. Hamilton was getting a lot of bad publicity, because he was seen as their errand boy. And it became apparent to me pretty early on that he was vulnerable. And we decided that that was a good time to make the race. He had only been there one term. And so I qualified to run against him. It was an interesting day.

I went to the Lieutenant Governor and I told him I wanted to do this, and he was very excited

about it. But I told him, I said, “If I’m going to tar Hamilton with Shag Cates, then they’re going to try to tar you with me. And so we’d better kind of keep our distance.” And he stayed out of the race at my request. He gave me some advice that I ignored, and I’m glad that I did, and I’ve told him about it several times. But he told me that if I’m going to run against an incumbent senator, then I need to really do my research and be able to attack him. And he told me – and this is probably as a general rule probably true. It’s unfortunate – but that you have to give people a reason to vote out somebody that’s there. But I told him, and I’ve stuck to it my entire career, I said, “If that’s what politics has got to be like, then I don’t want to do that. I want to try it a different way, and I want to be positive. I want to tell people why I want to be in the state senate and why I think I can do a good job,” and basically ignored the incumbent. It worked for me. But it worked not because that was necessarily the right political strategy. It worked for me because my opponent underestimated me, and he didn’t really campaign or do anything until he was already so far behind that he couldn’t make it up. He realized that I was a serious threat to him about a week before the election. And there was a third candidate in that race. I almost won without a runoff. I was within a percentage point or two of winning without a runoff against an incumbent. He actually then went to work, but I beat him handily. I think I ended up with 61 or 62 percent of the vote.

SHORT: You certainly were no stranger when you took your seat in the Senate.

JOHNSON: Well, the good news was that I had worked with almost all of those senators.

Particularly as Lieutenant Governor Miller's lawyer, I would go and talk to them and sort of tell them the lay of the land. And I remember finding out how to do that job the hard way. I was sitting with Francis Holland in the office one day when we got called on by Bill Harper, who was Governor Busbee's executive counsel. And I don't remember that we had ever been talked to so bluntly as we were that day, but Harper came in and basically told us that something that was high on the Lieutenant Governor's agenda was not high on the Governor's agenda and that we were to drop that as soon as we could possibly do it without losing face, or words to that effect.

[laughter]

JOHNSON: And I remember that when he left that office – this was one of my valuable lessons in politics – when he left the office that day, I was red-faced, being Irish – I was red-faced and a little bit angry and prepared to go to war. And I even made a disparaging remark about Mr. Harper's maternal lineage. Whereupon Tommy Holland, who was older and wiser put his arms around me and he said, "Well, Ed, he may be an SOB, as you suggest. But you remember, he's the Governor's SOB. And so we're going to try to cooperate and do what they say." And I learned a very valuable lesson.

But those couple of years with the committee and with the Lieutenant Governor made it possible for me to really get to know the Senate. And I knew who was effective and who wasn't and why. And I knew who you could trust. And you could trust most all of them. But I knew the ones you couldn't trust, and I knew the ones you had to keep an eye on. And so when I came

there, it was possible for me to do some things that a regular freshman senator wasn't able to do. And one of the first things that I did was I arranged for some meetings with all of the freshman senators to come up and get to know Zell before the session started and get to know some of the other leadership in the Senate, and basically give them an orientation that most, up to that time, we weren't getting from anybody. Now the Vinson Institute of Government puts on a program, but that didn't exist at the time. And so I think that helped. It certainly helped me get some good committee assignments for a freshman. It didn't hurt that I was Miller's protégé. And we had a lot of fun.

SHORT: Let me ask this question, if I may. Was that before or after the Lieutenant Governor decided that he wanted to have a committee on committees to appoint committees?

JOHNSON: Well, he made that decision when he first became Lieutenant Governor, and implemented that first in the Democratic caucus and then in the full Senate in January of '75. I've got to tell you, you may have even been one of the ones that told him that was a damn fool idea. But he really wanted to do that. He came in sort of as a reformer. He thought that would democratize the Senate. And what he really realized pretty soon is that it didn't really democratize the Senate so much as it made it a place of anarchy and that he had made a bad mistake with that. And so we started working on restoring to the Lieutenant Governor the power to appoint committees, and that calmed all the waters. That actually came about later. We had to live with the mistake.

There were two things that I thought that Zell did that hurt us. The first one was that he almost immediately, that first year, said that he didn't have any interest in running for reelection. And I thought that – whether it was true or not true at the time, I thought it was not a good time to talk about that, because I thought it undermined his power in the Senate. And the Committee on committees was the other thing. Now, the good news is that he put people who were quality people on that committee. And basically, if he really wanted somebody on a particular committee, they followed his lead. And so he didn't lose as much power as he apparently did. In reality, he still was very powerful.

SHORT: Well, in addition to you, there were a handful of senators who were very, very effective at that time, and are speaking now, and who remained in the Senate for a long time. Al Holloway and Paul Brown, Culver Kidd.

JOHNSON: Frank Eldridge.

SHORT: Frank Eldridge, Tom Allgood. Tell us about those gentlemen.

JOHNSON: Well, all of those people that you mentioned were just really wonderful people to work with and to learn from. I butted heads with Al Holloway a couple of times. He thought at the time it was just because I was an upstart who didn't know what I was doing. But what I was really doing is following Zell Miller's lead and doing what he wanted to do, but he didn't want to

be associated with it, if you know what I mean. The first instance with Holloway, who was a very dear friend, Governor Busbee had wanted to give the teachers either no raise or a very, very small raise at a time when that was really important to Zell. And with him in the background telling me all the parliamentary things I needed to know, we basically used a precedent from the Carter years and increased the bottom line of the budget beyond the Governor's real conservative projection. That caused more discussion than any part of this project. But we did it in order to give teachers a 10-percent pay raise. And it was a really important thing for me, because it was the first significant thing that I had taken any sort of a leadership role on. I don't get any of the credit for that. Miller gets the credit, because he was basically showing me step by step how to do it.

But the way it got me crossed-up with Holloway was that we passed that and nobody complained about that in the Senate. It passed overwhelmingly. It went back to the House. And, of course, the Governor raised a little bit of Cain about it. And Joe Frank was his person in the House, and they cut it back in the Conference Committee. But when it came back to the Senate, just as Miller was about to appoint the Conference Committee on the budget, I stood up and made a parliamentary inquiry, and that is what could we do to instruct the Conference Committee and, therefore, limit their ability to negotiate on this particular issue. Of course, he had already told me that I had to do that before he actually named the committee. I had to make that motion. But I went down and made the motion that we instruct the Senate conferees to maintain a position in conference that would keep the 10-percent pay raise for the teachers. And it passed overwhelmingly.

Well, Holloway then, when Zell announced the committee and announced Holloway, who was the majority leader at the time, or the president pro tem at the time, Holloway refused to serve on the committee. And he made a fiery speech and jumped on me, both in front of the cameras and behind the scenes, saying that he wasn't about to serve on an instructed conference committee where his hands were tied and he couldn't do the work that he was required to do. And so Miller appointed somebody different. We ended up with a compromise down the line, and we all agreed to it, and the teachers got a 6-percent pay raise, which at the time was the biggest pay raise that they had gotten in 15 or 20 years, well-deserved. And that's one of my really happy memories.

But those guys –Holloway was from Albany. He was hardworking. Jack Riley from Savannah was the majority leader of the Senate at the time. And I learned an awful lot from him, including about all the utility industry. Jack would, from time to time, find himself crossed-up with Georgia Power, and it was interesting to see that. Frank Eldridge became a very close friend and advisor. And I, in fact, maintained a friendship with Frank for years and years, literally right up until the day before he died. I'll always just love him and everything he taught me. And he had a great sense of humor. He was one of those people that followed the advice that I now give to young lawyers and my students at Mercer. I tell them, "Take what you do very seriously, but don't take yourself seriously. You'll get yourself in trouble every time." And Frank lived by that. And I learned a lot from him.

And then my seatmate in the Senate was Roy Barnes. And Roy and I were both young lawyers. He fancied himself a lot older than me. And I had to remind him, after he lost the governor's

race when we were having a farewell session over there, just the two of us, in the Governor's Office – and we were just telling stories and remembering things together. And he said, “Now, Ed, you may not remember this, because I'm a lot older than you are.” And I said, “Yeah, from March until September.”

[laughter]

JOHNSON: But he was my seatmate. We had Paul Coverdell. At the time, there were only five Republicans in the Georgia Senate. And a lot of people have assumed that – they look at that period of time and they put today's sort of impression about what partisan politics is all about and project it back into that period of time. But it just wasn't that way. We had fifty-one Democrats and five Republicans. But the truth of the matter is, we all were not party people. In fact, there were no real serious party people in the sense that we see it now. We were all really independent and free to do things based on what was good for the state. Coverdell became one of my dearest friends, and I think he was one of Miller's dearest friends. And I remember when I announced that I was leaving the Senate to go on the bench. I looked out – I was down the well and I was remembering things and people. And I looked up, and Coverdell was crying. We had become such good friends and had done so many things together that I think he was genuinely sad that I decided to leave. But I told him that I had learned the two loves in my life were the law and public service and that I was not doing either one of them particularly well trying to do both during my time in the Senate, and I'd decided that the judiciary was the way that I could do

both, and so it was time for me to go.

But we had some great people: Bob Bell, who later became a Republican candidate for governor. Of course, Coverdell became a United States senator. And we had Peter Banks; he was a really, really effective senator. Hugh Carter, the President's cousin, who wrote a good book, told a good story and was fun to be around. We had a good group, and we had a lot of fun together.

SHORT: So you went from the Senate to the Judiciary.

JOHNSON: In 1980, twenty-eight years ago.

SHORT: Twenty-eight years ago.

JOHNSON: Yeah.

SHORT: State court.

JOHNSON: Tom Camp was a judge who had been there for probably 20 years or so. And he had been the administrative assistant to a congressman, had come back home and run when that congressman decided not to run again. And I can't remember what his name was. It was an odd name. But Tom was from old Campbell County, which is now part of Fulton and was my senate district: Fairburn, Union City, Palmetto, all of that. I tried a few cases in front of him. Got to

know him pretty well. And at some point, he told me that he would like to see me take his place. And he told me, he said, "I'm not close to George Busbee. But if you can convince George Busbee to appoint you to this seat, then I'll resign." And he knew my uncle, and they had been friends. And I went over and talked to Tom Perdue, who was one of Busbee's assistants, Norman Underwood. And I think Judge Camp even ended up talking to Governor Busbee directly. And Busbee did what I would have done if I'd been governor. He said, "I like Ed. He's been a good senator. I think he's smart. I think he'll work hard, and I would love to appoint him. But I can't promise you that, because, number one, I don't know who would get on the list. He's still pretty young. I don't know if he'll get on the list, so I just can't promise you." Well, Judge Camp told me, "If he can't promise me, then I'm not going to resign, but I won't run again. And if you want to run for it, you should do it." And that's what I decided to do. And so I ran in a contested partisan election and got elected. I think I had – I don't remember what the percentage was, but there were two or three opponents in the race, and I got more votes than all of them put together, by a long shot. And then having been elected, Camp went ahead and resigned. At that point, he called the Governor and he said, "If I step aside now, before the end of my term, would you appoint Ed to take the rest of my term before his begins?" And Busbee said, "Oh, yes. That would be fine." And so he resigned, and I actually took office a month or so before I normally would have.

SHORT: Before we talk about your career as a judge, let's talk for a minute about Georgia's judicial system and how it works. Three-tiered system: trial court, appeals court and Supreme

Court.

JOHNSON: Well, Georgia's judicial organization is about the same as the federal system. And it's consistent with the way judicial systems are organized in other parts of the country. There are a few things that are a little bit different about it. We do have a general jurisdiction trial court, the Superior Courts of the state. And then by local legislation, a lot of the counties in Georgia created state courts, and before that, civil and criminal courts. The one that I served on was one of those courts that had been for some period of time a two-division court: one that was civil and one criminal. But those were combined in the 70s, and I think in '74 it became a state court that had jurisdiction over both civil and criminal cases.

But the interesting thing is that the Georgia Constitution sets out very specific original appellate jurisdiction in a way that's different from most every other state. The Supreme Court has original appellate jurisdiction over a certain class of cases that are designated in the constitution. And the court of appeals has original jurisdiction for every other kind of case that can come up. Most states are along the federal lines, where the court of appeals will hear everything initially, and then the Supreme Court will decide to hear the ones that they want to hear based on writs of certiorari. But Georgia didn't go that route, so right now there are a number of kinds of cases where if you lose at the trial court, you appeal directly to the Supreme Court and bypass us all together. There have been some suggestions in various commission reports over the years that we change that and go to a federal model. And frankly, I think that's probably a good idea. The only holdup right now for doing that on the Court of Appeals perspective is that our workload is

so heavy compared to other states with intermediate appellate courts.

When I became chief judge of the Court of Appeals in 1998, we had the heaviest workload of any appellate court in the country, by far. We were handling about 350 cases per judge per year. The standards for what is a reasonable workload for intermediate appellate court judges suggested that between 100 and 120 would be the proper range. We were way out of line with that. I was successful in lobbying to get the court expanded during my time, and we went from a nine-judge to a twelve-judge court. And that reduced our workload down to about 265 to 270 cases per year per judge. And the biggest holdup to changing our system is that we would then get all of the other cases that the Supreme Court now takes, and we'd be right back in the same mess we were at time when there's not any inclination or any money to expand the Court of Appeals any further than it's already been expanded. We really need probably 18 to 24 judges. The state of Tennessee is a great comparison. It's about three-fourths the size of Georgia and has about two-thirds as many lawyers, but their intermediate court of appeals has 24 judges. Twelve of them handle just civil appeals, and 12 handle criminal. I don't know that that's a good way to handle it, but they have an appropriate number of judges to keep the workload where it should be.

SHORT: Would that require a constitutional amendment, to expand the court?

JOHNSON: It would. Well, not to expand the court so much. We can do that by statute. But in order to implement a system in which the Supreme Court was a cert-only court, the constitution

would have to be amended and the jurisdictional requirements would have to be changed.

SHORT: Now let's get back to Fulton County State Court. What types of cases did you handle?

JOHNSON: Well, on the criminal side, we only had misdemeanor jurisdiction. On the civil side, we did everything except divorce and equity cases. And so it was a great training ground for my later experience on the Superior Court. We tried really complex civil cases, a lot of medical malpractice cases, complex business litigation. The plaintiffs' lawyers, of course, get to choose the forum. And they would come to the State Court because we could get a trial faster than the Superior Court. As I later learned, to my dismay, the reason for that was that the Superior Court was so bogged down with domestic relations cases and felony cases that they didn't get to do the really interesting work that we were doing, because we could get to it faster. And so it was a great experience. The misdemeanor court was an interesting place to learn how to try criminal cases. I've always thought that a judge who came onto a trial court from a civil litigation background like I did had an advantage, because the criminal law is easier to learn and you can pick that up very quickly. A judge who comes to the court having done criminal cases has a lot more to learn, and it's a lot more difficult to make the transition from bar to bench. But it was a great experience.

SHORT: You were mentioning the time it takes to try these cases. Some people feel that the wheels of justice in Georgia turn too slowly. What do you think about that?

JOHNSON: Well, there's an old adage that lawyers have that justice delayed is justice denied, and there's an awful lot of truth in that. And I have to say – we agreed at the beginning of this interview to be candid, even blunt. The court system in Georgia has never in my lifetime been given the resources that it needs to get cases tried in a reasonable amount of time. Given the population of the state and the number of lawsuits that are filed, including a lot of them that have to do with the government, we probably need at least twice as many trial judges as we have. We need a larger intermediate appellate court with a different range of jurisdiction. It costs money. But a lot of people don't understand how little state money goes into the judicial branch of government. That last time that I actually calculated it, it was about seven-tenths of one percent of the state budget. And the truth of the matter is, the overwhelming percentage of the cost of running a court system falls to the counties. It's really not very fair the state, in my view, has not ever accepted its responsibility for doing that. And the counties, thank goodness, have stepped up. And particularly in the urban areas, we haven't always been given everything we need. But the counties have at least been responsive and made it possible to have an effective system. But when you're in a county like Fulton or Dekalb or Chatham, where it takes two years between the time of filing and the time that you get on a trial calendar for the first time, that's not a good system, that's not a good system. We ought to be able to try cases within eight or nine months after they're filed if the lawyers are all ready to go. And when you have a backlog, it's not a good deal. And it's frustrating especially to the trial judges, because they know that no matter how hard they work and how many hours they work, when they finish one case there's another

one right there to take its place. It's sort of analogous to a busy grocery store. They can add cashiers and help get customers out a little bit faster. But for each individual cashier, there's always the next person in the line, and so they don't ever get to sort of relax and think about what it is they're doing. They're so busy doing the work that they're robbed of the opportunity, a lot of times, to really reflect on it, think about ways to do it better. It's always crisis mode.

SHORT: Is there any wisdom in putting a deadline on cases?

JOHNSON: I don't have any problem with that. Our Court of Appeals has deadlines built into the constitution. At the trial level, there's no wisdom in doing that unless you put the resources in place for them to do it. Because, the truth of the matter is, they really are doing everything that they can do. Part of the problem with Georgia's judicial organization is that it doesn't give any management institution the ability to allocate resources geographically. So you may find, for example, that judges in some of the urban areas are constantly under the gun and working long hours to get their work done. Whereas, in some areas of the state, judges really don't have enough to do. It seems to me that a wise organizational structure would allow you to take judges who don't quite have enough to do and use them in places where there's too much to do. And we're not in a situation where that's ever been done.

Frankly, one of the reasons for that is the superior court judges themselves have resisted any sort of centralized management function in the Supreme Court. There've been study after study, blue ribbon commissions, who have recommended that we go to what is called a "unified court

system,” so that the Supreme Court, in addition to doing what it has to do to decide cases, would also be the management arm for the entire judicial system. Superior court judges are reluctant to see that happen. Some of the reasons they’re reluctant are pretty good, and some of them just have to do with turf, and they cherish their independence. They don’t want somebody telling them where they have to sit and when they have to sit and so forth.

SHORT: So you were an experienced judge when you went onto the superior court.

JOHNSON: I had been on the state court for about seven-and-a-half years. And Judge Williams told me that he was not going to run for reelection again. And that being my uncle’s seat, I just couldn’t resist. So I took the chance. A lot of people thought I was crazy, because the state court was really a more fun court to sit on, had more interesting cases and less of the really tragic human cases, the felonies and the divorces. But I couldn’t resist the temptation. And he wanted to serve out his term, because it meant that he would have been there 24 full years. And so it was an open race. The only change that had occurred was that races were no longer partisan, and so I ran in the non-partisan primary and was elected to that court in 1988.

SHORT: Are non-partisan elections the best way to go?

JOHNSON: Oh, I think so. In fact, there are so many offices in state government where being partisan actually is a detriment. The judicial branch, there is no place for partisan politics in the

judicial branch. The public ought to know and be assured by every possible means that the courts are not political, that the judges owe their allegiance to the law, whether it's popular or not popular. That's for the legislature to deal with if it's not popular. And there's no such thing, really, as a Democratic judge or a Republican judge. And I would go further and say there's no such thing as a Democratic district attorney. The prosecution of cases needs to be free of any partisan taint or even the appearance of partisanship. All the law enforcement should be the same way. And we're still electing sheriffs on partisan ballots. They have limited law enforcement duties in big areas like Atlanta. But in rural areas, they represent the law, and they need to be free of the appearance of being involved in partisan politics when they enforce it.

SHORT: So you're saying judges and politics are not a good mix.

JOHNSON: Exactly. I have said to new colleagues when they come on the bench, and I live this every day, I do a lot of things on the bench holding my nose because I think what the law is in a particular instance and how it applies is not good public policy. But I do it anyway, because I understand that my job is not to make public policy. That's the legislature's job. And there's no law against them making mistakes. I'm sure we did when I was there. I probably already talked about at least one of those. But their job is to make the law, and our job is to apply it. So I tell judges, "When you come in, put any kind of political agenda you have on the backburner. Vote the way you want to. Support candidates in the party that you think is the right way to do it. But when you put on that robe, you leave all that behind. Because if ever one time, if ever

one time, you let your political views cause you to make a decision that's not consistent with what the law requires you to do, you have lost your soul as a judge.”

SHORT: Okay. February 28, 1992. A big day for Ed Johnson. You went on the Court of Appeals.

JOHNSON: It was a great day. That process was interesting. As close as I had been to now-Governor Miller, I had no assurance that I would get that appointment at all. I applied for the job. There were two openings: one on the Supreme Court and one on the Court of Appeals. Governor Miller and I had laughed for years about, if he ever got to be governor, he'd put me on the Supreme Court. Governor Barnes and I had that same relationship. But when it came up – I had talked to a lot of people on the Court of Appeals, and I knew all of those judges. I had served with some of them on the trial bench. And I thought that was a great place to go. Governor Miller had an opportunity at that time to fill a seat on both courts at the same time. He was mindful of his place in history. He had an opportunity to appoint the first black female ever to the Supreme Court in any state. And I think that he was genuinely torn. He told me straight up after he had decided who the two people were that he wanted to appoint he was still unsure whether he should appoint me to the Supreme Court and her to the Court of Appeals or vice-versa. And I told him, I said, “You go make your history, because that's more important.” And basically, I think that's what he really wanted to do. In fact, I'm sure that's what he really wanted to do. But out of loyalty to me, I think he would have been willing – if I'd said, “Well,

I'd really rather do the other," I think he probably would have done it. But I'm just tickled to death the way it turned out. I have loved every minute of this. My 17th anniversary will be here later on this month, in about three weeks. And it's been a great experience, and I've never one time regretted that I chose to do this rather than the other.

SHORT: Did you ever aspire to be on the Supreme Court?

JOHNSON: Well, I did. And there were three opportunities that came up. The first couple came up during Governor Miller's first term. In fact, one, tragically, came up very shortly after I had been on the Court of Appeals. Judge Charles Weltner, Justice Weltner, had esophageal cancer, and he died in September, I think it was, after I went on the Court of Appeals in February. And, of course, it fell to Governor Miller to fill that seat. He and I actually talked about it. There were some things that had occurred in my personal life that made it a bad time for me. We had lost a child. And I told him, I said, "You know, there are going to be other opportunities. But I've only been on the Court of Appeals for seven months. I've enjoyed every minute of it. I'm learning a lot, and I feel like that I need to learn more. So thank you for giving me the opportunity to apply, but I'm not going to apply." And that happened again when – I don't remember whose seat it was, but Hugh Thompson was appointed to the Supreme Court. And I had an opportunity at that time. Or I guess the second time was when George Carley was appointed. Now it's all a blur. But at that point I had been admitted to an LLM program in judicial process at the University of Virginia. I was in the middle of that. My thinking was that

this vacancy occurred so close to qualifying that whoever got appointed was going to have to run. Now that I think about it, it was Hugh Thompson, because he did have to run that very summer. And that would have meant forfeiting my second semester at the University of Virginia, which I didn't want to do. And also, we had lost another child. And I didn't want to be in a position where I was running all over the state that summer campaigning with Carolyn being at home hurting. And so I turned that opportunity down.

I did actually then apply one other time, but it was after Governor Miller's reelection. And they tell you, if you ever get an opportunity to do that, you don't turn it down, because if you do, you're not going to get a chance again. He had given me two opportunities to do that. When the third one came, he had had a very close reelection. There were some really important people who had helped him get reelected, and those were people who had other folks in mind for the Supreme Court. And so he was very candid with me when I did my interview. I made the short list for that appointment. And he was very candid. And, frankly, I think he was a little heartbroken. But I said, "You know, you gave me other chances. If you've got to do something else, I understand that completely. I'll never look back with any regrets." And I said, "If it makes you feel any better, I want you to know with all of your heart that if I had those decisions to make again and turn down those opportunities again, knowing what I know now, I would make the same decision." So I'm not second-guessing passing up those opportunities when I had the opportunity. And even if I knew I'd never get to serve on the Supreme Court, I would still make the same decision for the same reasons.

SHORT: I would like now to impose upon you to talk a little bit about the operation of the Court of Appeals.

JOHNSON: Okay.

SHORT: And your relation to the Supreme Court.

JOHNSON: Okay. We ready? Well, the Court of Appeals has 12 judges. They are divided and hear cases in panels of three. When an appeal is docketed in our court, we have a blind computerized assignment wheel, and it automatically assigns the case to a particular judge to have the first responsibility for looking at it, doing the preliminary research and preparing a proposed opinion. And that computerized assignment system operates to assign 25 percent of all the criminal cases and 25 percent of all the civil cases to each division. And then within the division, one-third of all the civil and one-third of all the criminal cases to each judge, so that we all have an equal number of cases to deal with. We have staff attorneys to help each judge. Each one of us has three staff attorneys. Back in the time I was in the Senate, that decision was made. And the situation was that the court was beginning to have a rapidly-growing caseload. There were two models in the country for dealing with that at an intermediate appellate court. One was to increase the number of judges on the court, and the other was to increase the staff support that the judges have. Georgia adopted the second model. So instead of increasing the size of the court, they increased the number of lawyers working for the court to help the judges. Who

knows which of those two models is the better model? Since we expanded the court from nine to 12, I have thought that in many ways we were better able to communicate with each other when we were a nine-judge court. But in other ways, the 12-judge court has really been beneficial. But that said, we have a constitutional deadline. You asked earlier about deadlines. We have three terms of court per year. They're the same exact terms as the Supreme Court. We have a January term that begins January 1 and goes until about the middle of April. Then we have an April term that begins the middle of April and goes until the end of July. We have a September term that begins the first of September and goes until the end of the year. The constitution requires that every case that the Court of Appeals and Supreme Court have has to be decided by the end of the second term after it's docketed. And if it's not decided by that time, it is affirmed as a matter of law. The trial judge – whatever the court at the trial level did, that's what the decision ends up being. In the history of the two appellate courts, we have never one time allowed that to happen. We've never missed one of those deadlines, and we've never had a case affirmed as a matter of law because of that.

So each one of us has a staff of four, an administrative assistant and three lawyers. In addition to that, we have around a half-dozen central staff lawyers that take responsibility for looking at every case that comes in to us when it first gets there to make sure that we have jurisdiction, that all of the requirements were met. And the reason we want to do it early is because sometimes lawyers and people who are representing themselves will make mistakes that we can fix if we know about it early enough. If they filed an appeal the wrong way or in the wrong court, there's still time sometimes for us to tell them how to do it properly so they don't lose their right to

appeal before the deadlines run. So we have a staff that does that.

We have become a more sophisticated court in terms of technology. Before this most recent recession hit, we were on the eve of having an electronic filing system that would allow us to accept all of our appeals electronically, including the briefs. Being one of the old guys, I'm the second-most senior judge on the court, I don't like these newfangled things. I have trouble reading pages on the computer as opposed to reading the hard page. But all these young ones have convinced me that that's the way to go and that's the way of the future, and so we are moving – and the Supreme Court as well – moving forward with that project. It's kind of on hold right now while we wait for the economic conditions to improve.

I have a delightful group of colleagues. We have people that I served with on both levels of the trial court, Judge Charley Mikell from Savannah being one of those. We have a couple of folks – Judge Debra Bernes, one of our newest judges, appeared before us dozens and dozens of times before coming to the bench. We have a diverse court. We have four women on the court now, so one-third of the court. When I first got there, there was one, and she was the first one ever. We have African-American judges. We've never had that before. We had 25 percent of the court were African Americans, until December 31st, when Judge Ruffins term ended. And he had not sought reelection, so he's gone. But now we have Judge Herbert Phipps from Albany, a very experienced jurist. Wonderful, wonderful intellect. Was a juvenile court judge. I think that's one of the most important jobs in the judiciary. Also later appointed by Governor Miller to be a Superior Court Judge, and then Governor Barnes appointed him.

We have a delightful new colleague who's been on the bench now for one month. In fact, I was

teasing her recently. I said that I've been thinking that the time was drawing near for me to leave the court and go pursue other interests. And I had been thinking about that for a long time. And on January the 6th of this year, I was sitting over in the House chamber for the investiture ceremony of our new chief judge. And I said, "Lord, give me a sign that I'm right, that it's time to go." And I said, "He gave me two in one day." We were there for the investiture of one of my students from Emory Law School as the new chief judge of the court. And we had our newest judge there. And I looked at her biography and realized that I had been on the bench since she was 12 years old.

[laughter]

JOHNSON: And so I decided, "Well, these are the two signs that I was asking for. It's pretty much time for me to hang it up," and I had made the decision that I would not seek reelection in 2010 when my term expires.

SHORT: You have served as chief judge.

JOHNSON: Yes.

SHORT: What is the difference between a chief judge and a presiding judge and a judge?

JOHNSON: Okay. That's a great question, Bob. The presiding judges, under our rules, are the four most-senior judges on the court. And the only difference between an ordinary judge on our court and the presiding judge is administrative. The presiding judges organize the court calendars for their panel, set the dates for hearings, handle all the administrative details for the panel. And in addition to that, the executive committee of the court for administrative purposes is comprised of the chief judge and the four presiding judges. The chief judgeship is largely administrative. It is an unbelievably challenging job to handle all of the details of court administration while trying to get all your casework done. We rotate that job by seniority. Every two years we elect a new chief. It's sort of like a lot of other things in life. When you become chief judge, you grow into it. We've had some that went into it with great talent and some that went into it with not-so-great talent, but they all did a great job when they were there. They grew into the position. When I became the chief judge of the court on January 1, 1999, Judge Carley, who had been my first presiding judge and is now on the Supreme Court, sent me a little collage-type affair. It showed the bodies of then eight judges in the form of dogs with the photographs of my colleagues pasted on the dogs' bodies, and it showed my photograph on a fireplug.

[laughter]

JOHNSON: He said that someone had given him an identical cartoon when he became chief judge of our court and that he had found that it was true, and that he wanted me to have a head's

up, and that's what he did. So it was an interesting beginning. But I had a great experience as chief judge. I presided over a time when we expanded the court, first to 10 and then to 12. I was there when the first female who had ever served there left and we had gone back to an all-male court for a while. I was there when we got the last pay raise that we've gotten. We hadn't had one in years when we got that one, and we haven't had one since. So it was an interesting time. We started a practice during my chief judgeship doing strategic planning, and the chief judges since me have followed up on that. And we've been doing that to think about the long-term needs that the public will have that the court needs to fill and how we would go about doing that efficiently. But generally, when it comes to deciding cases, there are no differences between any of those classes of judges. It's all administrative.

SHORT: You spoke of computer filings. Tell us the difference in your time spent between oral arguments and reading the computer.

JOHNSON: Oral arguments, because of the increase in the caseloads of courts all over the country, courts have adopted rules that have more or less limited people's right to have oral argument of cases. The first thing that we did – when I was first a lawyer and when I first came on the court, anybody who wanted an oral argument could get it. In fact, when I was first handling appeals in the Court of Appeals as a lawyer, if you had an appeal, you were automatically assigned to an oral argument calendar. Now, you didn't have to go. You could call up there and say, "We don't want to argue the case. We'll submit it in writing," and they

would accommodate that. But you were on the calendar. It later was amended to provide that you had to ask for oral argument. But anybody who did ask for it was granted oral argument. And the number of cases on the calendars dropped precipitously. We went from having every case on the calendar to having only about 40 percent of the cases on the calendar.

As the workload increased in the middle 90s, all over the country, not just with us, the practice became more oriented toward granting oral argument only in cases where the argument would really assist a court in arriving at a correct decision. And we instituted a rule modeled after the 11th Circuit Federal Court of Appeals that required people who were asking for oral argument to give us information in the request that would justify taking the time to hear the case orally. We realized at some point – and it's really disappointing to me as a person who teaches appellate practice and procedure to law students – how poor the quality of a lot of our arguments had become. People were standing up there basically just reading to us what they had already given us in writing and were not adding anything to our understanding of the case or answering any questions that we would have. And so it became a reality that a lot of judges perceived that the oral argument was less than helpful, and it was taking away from time that we had to work on the cases in our offices. So now they're required to ask for it and justify what they're doing by telling us enough about the case in the request that we can see on the face of it that this is something that we're going to have a lot of questions about and need the opportunity to see the lawyers and hear them face to face.

SHORT: Do you have an opportunity, or do you want the opportunity, to question lawyers from

the paperwork that they've sent you?

JOHNSON: Well, it's much more difficult to do that if we haven't granted oral argument. And, yes, I'd like the opportunity to ask them questions. We train law students and we make it a game with them. We ask them questions in a mock setting to see how poised they're able to remain and whether they can get back to the point that they were trying to make efficiently when they've been interrupted by questioning. And I tell my students all the time that that's not the way the real world is, that in the real world, when judges ask you questions, it's because they really want to know the answer. They're looking for help. And that questions are good for two reasons. Number one, it gives you the opportunity to answer a question that you may not even know they have. But the other thing is, it gives you an insight into what they're thinking about your case. We still have a mechanism, rarely used, where we can do that even in cases that have not requested argument, or have requested it and not been granted argument. We can send an order to them and say, "We are concerned about this issue," and specifically ask that they address that. The Supreme Court regularly does that when they grant cert on one of our cases. They will send out an order saying, "We are specifically concerned with this issue, and we want to you to – we don't want to limit you to this issue. You tell us whatever you want to. But we do want you to know this is what we're most concerned about." And that's a helpful thing.

SHORT: Well, we all realize that our court system is not 100 percent fault-proof.

JOHNSON: Exactly.

SHORT: And mistakes are made. Recently there have been several cases that have been overturned by DNA evidence.

JOHNSON: Yes.

SHORT: Shouldn't we be careful about that?

JOHNSON: Absolutely. Absolutely. One of the most frustrating things from my perspective, now looking back over 28 years on the bench, is the realization that even though we have the best legal system in the world – that's not just us patting ourselves on the back – everybody envies the American legal system. But despite the fact that it's the best in the world, it is a system that makes mistakes. One of the most frightening things that I could ever imagine was to have a serious case involving the death penalty, and to find out later through technology that someone was convicted of a crime that they didn't really commit and that they had lost their life because of a mistake that we made in our system. I think that's driving a huge change in the public support of the death penalty.

We saw a few years ago in Illinois an investigation uncovered things from just pure mistakes that were innocent and could not have been avoided to corruption among law enforcement people on the ground, where they would focus on a suspect at an early part of an

investigation. And instead of keeping an open mind and going where the evidence pointed them, they went where their suspect was the focus. And a lot of mistakes were made. And the Governor of Illinois suspended the death penalty in that state for a while because of that.

There was a very famous novelist, Scott Turow, a lawyer who had been a U.S. attorney, he had been a prosecutor, had been a death penalty advocate forever and ever, who was asked to serve on the commission. And based upon his service there, decided that even though he had no moral objections to the death penalty and he thought that it was certainly warranted in a lot of cases, that he had become convinced that our system was not good enough to take the chance that we might convict an innocent man. And he changed his views about the death penalty and wrote a book about it. I haven't completely gone in that direction, but I think that it's the height of arrogance for anybody in a judicial position to think that we don't make mistakes and to resist being open to the fact that we could have made a mistake, and be willing to accept responsibility for it and to reexamine.

DNA evidence has been a Godsend because it's widely available. The only downside about that is that there's not DNA evidence in every case. In fact, there's not even DNA evidence in most cases. And so while it's going to be a wonderful thing in those cases where it exists, and can make a difference either positively, as it most often does – it shows that the person who's been arrested and charged is, in fact, the person who did it. But also has conclusively proven that some people were not the ones who did it. It's a sad thing. Because one of the underpinnings of our judicial system is just this belief based on human experience that eyewitness identification is the best kind of identification. But the science has taught us over the last 15 or 20 years that

eyewitness identification is notoriously inadequate and that people make mistakes.

Right here in Georgia there's a case that was in the paper again over the weekend where Paul Howard's office had convicted a man 19 years ago for a rape that the DNA evidence conclusively showed that he did not commit. When we started taking DNA samples from the prison population as a routine matter, they compared the DNA that survived from that rape kit to the prison population, and they actually found that we had already arrested in another rape case and had convicted the actual rapist, and he was serving time in Georgia. But the case recently was dismissed by the prosecutor because the victim was so sure that she had it right the first time that she refused to testify in the new case against the person that the DNA evidence showed actually was her rapist. It broke my heart. Because I know the trauma that that woman went through 19 years ago. I know the trauma that she must have felt when the person that was convicted and sent to prison based on her testimony was shown to be innocent. I understand how hard that would be to deal with if I were the person in her situation. And I really feel terrible that the real rapist is going to get away with it in that case. Of course, the good news is he is in prison. He's not there for her crime, but he's there.

SHORT: Speaking of people who are falsely arrested and convicted and sent to prison without – and DNA says they shouldn't have been there, what should happen to those people?

JOHNSON: Well, hopefully the first thing that would happen is that we would have a hearing and make a determination that they were, in fact, innocent, and then get them out of the system

as quickly as we possibly could. What has happened in those cases in Georgia is that the legislature has voted to compensate those people who were wrongfully convicted to try in some measure to make up for the part of their life that we've, basically, deprived them of. I don't know how you would measure that. I don't know that there's enough money.

I hear people all the time who really don't know what they're talking about complaining about country club prisons and how we coddle prisoners. And I ask them invariably – all the new judges in Georgia have to go on a prison tour. It's one of the requirements. You have to do it within a year of the time that you take the bench. We don't have any country club prisons in Georgia. And even if we did have, the very idea that you would be locked in a six-by-eight cell – even for me, somebody who loves to read, loves to listen to music, I could do that all day every day, but I'd still go stark-raving crazy if I had to stay there more than a month. So it means a lot when you are locked up for a long period of time. I don't know that there's enough money in the world to compensate those people.

SHORT: Speaking of the death penalty, what effect do you think that the new trend toward life without parole is having on the death penalty?

JOHNSON: Well, there are so many different ways to think about this. When Mike Bowers was attorney general, he was a very – and I think he still is – a very, very strong proponent of the death penalty. And when he was on the judicial nominating commission, he asked every single person being considered and interviewed for a judicial position what they thought about the

death penalty. And when he asked me that question when I was being considered for the Court of Appeals, I gave him the most honest answer that I knew how to give him. It would have been politically better for me just to say, "I support the death penalty." But I didn't. What I told him is that I have presided over trials where people did the most inhumane things to other people that I could possibly imagine, some of the most heinous acts that I have ever even dreamed of. And in those instances, I have wondered whether any punishment short of death was adequate. But at the same time, I realize that we make mistakes. If the goal is to protect society from those people, there are other ways to do it, ways that are less expensive, more efficient. And I'm glad that since that time, in the last several years, we have gone to giving the jury in a death penalty case the option of life without parole. It's expensive to keep an inmate in Georgia. It costs probably 40 dollars a day, or something like that, to keep them. But the cost of death penalty trials, as demonstrated over and over again – everybody points to the Nichols case. That's an anomaly, but every death penalty trial is a very expensive thing for the counties where they are tried. So I think the life-without-parole option has given us a way to protect society as completely from that person as the death penalty would, and it's given jurors a way to have another option in a case where they may feel like the death penalty is not appropriate.

SHORT: Let's talk about Judge Johnson's activities outside of judging on the Court of Appeals.

JOHNSON: Okay.

SHORT: You seem to be very busy.

JOHNSON: Well, I try to stay busy in the sense that it keeps you fresh. I have two sons, one who will be 30 years old. He was born during my last year in the Senate, and I still have a picture of him sitting in my seat there when he was less than a year old. The other one is only in the 9th grade. And I decided that the jury is still out over whether I'm too old to have a 9th-grader. He really keeps me tired. But as a result of the activities of the two boys, I'm doing things outside of the court. I teach at Mercer University School of Law. I teach a course in appellate practice and procedure. For 10 years I taught at Emory, and I taught several different courses there. At Mercer, I donate my time to them. I do it because I want these young lawyers to be as good as they can be, and frankly because I want them to learn from somebody before they get out of law school that it's important to be civil and that you can disagree without being disagreeable. There's too much of a loss of civility in the court system now. But I do that. I love that, and I'll probably do that when I retire.

I'm still very active in the Boy Scouts. I teach merit badges, all of the citizenship merit badges and the law merit badge and communications, things that kind of fall within my area of experience. And my youngest son is about to start his Eagle Scout project. He's going to earn his Eagle rank shortly after his 15th birthday, which I enjoy doing with him. And I'm real proud of him for doing that. And I love to travel. Carolyn and I, we've been blessed. We've been all over the world. We've been to China, and we were in the old Soviet Union. And we've been to Europe, and we have aspirations to see the rest of it while we have time. So I do stay busy. And

I think that all of that helps keep me fresh and it keeps – if you just devote all of your time and energy to your work, number one, you hurt your family, and number two, you narrow your perspective so badly that you're not open to trying new things and experiencing new things at work. And I think it's so important for judges to be open.

SHORT: Your wife's a lawyer, isn't she?

JOHNSON: She's also a judge. She is an administrative law judge with the State Department of Worker's Compensation, the state board, and she's been doing that since 1993. And I tell people now, when I'm being honest with my friends, I say, "I'm right now the second-best lawyer in family. And some time around the beginning of September, I'll be the third best lawyer in my family."

SHORT: Well, that's interesting. And you've certainly had a wonderful career. You've been a great public servant. And we enjoyed having you, Judge. Come back to see us.

JOHNSON: Well, thank you so much. It's been fun for me. And you're being way too generous. My career has been just a drop in the bucket compared to so many other people. I just feel blessed every day to have had the opportunities that I've had.

SHORT: Well, you must remember, Judge, when I first knew you, you were a few months out

of law school.

JOHNSON: That's exactly right.

SHORT: So your career since then certainly had been exemplary.

JOHNSON: Well, thank you so much for saying so.

[END OF RECORDING]

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