

The “Farewell” Interview:

On the Retirement of Louisiana Supreme Court Chief Justice Bernette Joshua Johnson

Interviewed by Patrick A. Talley, Jr. and Kim M. Boyle

Chief Justice Bernette Joshua Johnson is the Louisiana Supreme Court’s 25th Chief Justice, its second female Chief Justice and its first African-American Chief Justice. Her professional career has included a series of “firsts.” She was one of the first African-American women to attend and earn a JD degree in 1969 from Louisiana State University Paul M. Hebert Law Center. Her judicial career began in 1984 when she was the first woman elected to serve as a judge on the Orleans Parish Civil District Court. She was then elected to serve on the Louisiana Supreme Court in 1994 and was re-elected without opposition in 2000 and 2010. As the senior justice on the Court, she was sworn in as Chief Justice on Feb. 1, 2013. Now, she is planning to retire from the Supreme Court at the end of December 2020.

Talley: Chief Justice Johnson, you have served the Louisiana judiciary with distinction and honor for almost four decades. In doing so, you have exemplified judicial excellence and integrity at the highest level. You have been prominently recognized on numerous levels for your accomplishments and contributions to the Louisiana legal profession. Now, after 36 years on the bench, including 26 years on the Louisiana Supreme Court and currently the Court’s Chief Justice, you are retir-

ing in December (2020). How do you feel about that?

Chief Justice Johnson: I think there is a time for everything and everything has a season. I think about it in that light. I was born in 1943, which means I’m 77 years old. It is time for me to move on and do some other things and rely on younger lawyers and others to take up the gauntlet and continue the work that needs to be done.

Talley: You have had many interviews

and articles written about you during your tenure as Chief Justice, including several in this *Journal* over the years. Kim (Boyle) and I are honored to be able to co-author this interview. We call it a “farewell interview,” but I know you’re not going anywhere.

Chief Justice Johnson: I will just try to ease back into private life. That’s the goal right now. Maybe just simple things like going through the grocery store without being recognized. (Laughs).

(Left) Louisiana Supreme Court Chief Justice Bernette Joshua Johnson’s official portrait. Photo courtesy of Louisiana Supreme Court.

Talley: Let me ask a few questions about early in your career before you became a judge. I grew up in the 1960s and I have a lot of memories of my childhood days. One of the vivid memories I have is of the gas stations where we would stop on our family trips and they'd have separate restrooms labeled "men," "women" and "colored." I was very young then, but I remember thinking how odd that was. I'm sure you recall those gas stations, too. In fact, you've had to face that and overcome many other vestiges of discrimination, not just racial, but gender, your entire life, starting early in your professional career. You fought against discrimination working as a community organizer for the NAACP. You also worked at the Department of Justice's Civil Rights Division. You spent much of your early career working to ensure that the Civil Rights Act and the Voting Rights Act were recognized and enforced. Tell us what it was like working as an advocate for social justice and civil rights in the 1960s and how did this influence your judicial philosophy in the years to come?

Chief Justice Johnson: I remember those "colored" signs as well. I'm talking about my background and growing up in a segregated South. After I graduated from Spelman College (in Atlanta, GA), I had a chance to work for the Legal Defense Fund. One of my assignments was to work in those areas where the Legal Defense Fund had secured a judgment against the school district to desegregate schools. I grew up in the Lower Ninth Ward. I'd get on the St. Claude bus and pass Francis T. Nicholls High School every day. I thought that after *Brown v. Board of Education* was decided, I would have an opportunity to attend that high school. I was in middle school when *Brown* was decided. But, because we allowed the states to put the judgment in place over a period of years, I had already graduated from Walter L. Cohen High School by the time the schools were desegregated in New Orleans.

But I am familiar with those colored signs. They were everywhere. When we talk about my work at the Civil Rights Division of the Department of Justice, we were dealing with public accommodations, hotels and restaurants, and all of them were public places that were open to just one race. It was where African-Americans were

segregated by race. I'm talking about the Commerce Clause because, if you read the cases that struck down segregation and public accommodation (restrictions), they did it on the basis of the Commerce Clause. The cases say that segregation was a burden on interstate commerce because African-Americans could not travel freely. We all knew that growing up. If you left New Orleans for Chicago, you needed to land somewhere by evening where you could spend the night in a hotel or motel that would accept black folks. So, if you left New Orleans, you needed to get to Memphis by evening. In Memphis, you spent the night there in a colored hotel. Then you drove the rest of the way to Chicago. We have a period of time throughout (the history of) segregation where African-Americans were limited in every area, including travel and education. You read stories all the time about lack of access to health care, not just education, but lack of access to everything. Other Americans had easy access. I can tell you from living through that era that it was exciting work to be in your 20s and trying to bring down a system that had been in place and ingrained (for many years).

Look at this generation of young people and how they are determined to bring down this fascination with assault weapons in America...the parents of students from Sandy Hook Elementary School (Newtown, Conn.) and the young people who witnessed their classmates slaughtered at Marjory Stoneman Douglas High School (Parkland, Fla). When I saw them, at 15 and 16 (years old), standing up to folks, saying, "We are going to get rid of assault weapons in America," I knew they are the ones who have the energy to do something and to make America better.



Chief Justice Bernette Joshua Johnson with her brother, Sigmund Joshua, and her mother, Olivia Joshua. Photo provided by Louisiana Supreme Court.

Talley: How do you think that impacted your judicial philosophy?

Chief Justice Johnson: It formed my life. It says that if you work hard and you are energized, you can change the system for the better and we can make America better and get rid of racism. Hopefully, that's what this young generation is trying to do, end racism. We finally need to get past all of the ghosts that keep us trapped into the system. America has to live up to its creed. We must have justice for all. And that drives what I've been doing in recent years with regards to incarceration rates.

Boyle: Obviously, your career is foremost a career of firsts. You serve as a mentor for so many of us coming up as lawyers in Louisiana and around the country. You were the first African-American and the first female, or a combination of the two, in so many different venues and so many different roles. You were one of the first African-American females to attend and graduate from Louisiana State University Law School in Baton Rouge. You were the first female to sit on Orleans Parish Civil District Court. This was in a period when



Louisiana Supreme Court Chief Justice Bernette Joshua Johnson with Ruby Bridges Hall, a civil rights activist and the first African-American child to desegregate the William Frantz Elementary School in New Orleans. Bridges Hall was a keynote speaker at the 2014 Annual Meeting in Destin, Florida, and Chief Justice Bernette Joshua Johnson introduced her. Photo by Matthew Hinton Photography.

not a lot of women were practicing law. And, of course, you were the first African-American female to sit on the Louisiana Supreme Court, and the list goes on and on. So many of us have tried to follow you and model our careers after the numerous things you've done. Going back to the previous question, growing up during this period in the 1950s and 1960s, graduating from high school, attending Spelman (one of the top HBCU, historically black colleges and universities) in the country at that time and still an iconic university, then deciding to come back to Louisiana. People would say, "Wow, how could she look at this situation and say, I'm going to be a lawyer. I'm going to be a judge. I'm going to be successful." How did you make that happen? What do you attribute your success to with all the barriers you had to knock down and all the challenges you had to face, and continue to face even to this day?

Chief Justice Johnson: I will start with my parents, Frank Joshua and Olivia Joshua, parents who always encouraged excellence. My Dad loved to read and he would come home in the evening and read his *Time Magazine*. We'd also watch the evening news. That's when there were a

few channels and it went to the national anthem at 11 o'clock. In another interview I did, while talking about my parents, I said I grew up in a house where my parents didn't discourage me and tell me what I couldn't do. They realized I had promise. And I would say all sorts of audacious things. I think I told my Dad one day that I was going to Columbia University. But, I didn't know at the time that Columbia University didn't admit women. The women went to Barnard College. So, it was really an obstacle of gender rather than race. But my Dad never said, "No, you can't go to Columbia." In addition to excellent parents who encouraged me, I'll say I could get out of doing anything if I said I had to study. I wouldn't do the dishes because "Bernette has to study." I also had excellent teachers. When you talk about the segregated South, I just have to always give credit to teachers who inspired us and poured everything they could into us, teachers who prepared us for whatever was coming. I went to Cohen High School. I remember all my teachers. These are the people who inspired us and, even during segregation, did not limit us. I wound up at Spelman College because a team of Spelman recruiters came to our

high school and showed the movie about Spelman College. I went home and told my folks, "I'm going to Spelman College." Spelman gave me a scholarship, so I headed to Atlanta. I found a little note (recently) that room and board were \$50 a month. Spelman College opened up a whole new world for me because we had a faculty that was diverse.

I landed in Atlanta in the midst of the civil rights struggle. I was there from 1960 to 1964. For entertainment, we would go to rallies at churches and go listen to speeches. On Saturdays, we'd picket at Rich's Department Store. To their credit, there were many folks I know who dropped out of Spelman and became involved in the struggle full time. I didn't do that. Instead, I got my degree and had the great opportunity to work for the Legal Defense Fund. I worked for the NAACP Legal Defense Fund the summer after graduating from Spelman. I didn't come back to New Orleans. I left Atlanta and flew to New York to get oriented for the new job. I had never met lawyers until I worked for the Legal Defense Fund. All of my role models until then had been school teachers. I did a gap year where I lived in New York City and worked as a social worker with foster kids. I took the LSAT and was admitted to Boston College and the University of North Carolina and other schools.

But I decided to come back to Louisiana and attend LSU Law School, specifically because LSU had not had a black student enrolled in 10 years. (Ernest N.) "Dutch" Morial and (Judge) Robert Collins were the first two black students at LSU. They graduated and, then for 10 years, there were no students of color. Then Gammie B. Gray and I entered LSU Law School in the fall of 1965. You know, when I was a trial judge, you'd always try to remember something and connected it to a hurricane. Was it before Hurricane Betsy or after? Was it before Hurricane Katrina? I was in a shelter in September 1965 when Hurricane Betsy came through. I can remember being in that shelter with others, with the waters coming up on the bottom level, and we all went to the second floor. Our rescuers got us out in boats. Then, my brother drove me to Baton Rouge to start law school at LSU.

Boyle: I would like to follow up on your time at LSU because I have always been personally interested and intrigued about this period. You have that background of working with the Legal Defense Fund and being in Atlanta at the height of the civil rights movement. Dr. King and his team had that base in Atlanta and then you spent time in New York. So what was the pull towards LSU? We have seen photos from LSU where you obviously stand out from your classmates, not just from the gender standpoint but from the racial standpoint. We heard some of those horror stories about what you had to deal with and what it felt like to be in a segregated legal environment back then. Did you have any thoughts about transferring after the first year and going back to the East Coast? What kept you there for three years where you just plowed through?

Chief Justice Johnson: In terms of enrolling, our work with the Legal Defense Fund involved school desegregation cases in Louisiana, Montgomery, Alabama, South Carolina, Tennessee, and all over the South. What folks don't understand is, once you get a judgment like *Brown v. Board of Education*, then you have to convince some families to take advantage of it. My job was called disseminating information, going to these places, and meeting with usually the NAACP president where we had filed a lawsuit. Then you have to convince parents that it's worthwhile to take advantage of that opportunity. Most school districts desegregated from first grade, except for Little Rock, Arkansas, where they desegregated the high school first. You've got to tell parents that it might be dangerous, your child might be harassed or might be at risk, but it's worth it to send your child to this newly desegregated school. I spent the whole summer doing that. After you have spent time convincing parents to send 5- and 6-year olds into what you know will be a hostile environment, I knew I needed to go to LSU. I couldn't say, "Look, send somebody else to do it." So I enrolled in LSU and had no idea whether there would be any other black folks when I got there. Fortunately, Gammie Gray had the same idea. She was from Baton Rouge and had attended Indiana University. She came back to Louisiana and enrolled at LSU. So, we were classmates. When I walked



Chief Justice Bernette Joshua Johnson is awarded the 2018 LSU Distinguished Alumnus Award by LSU Dean Thomas Galligan. Photo provided by LSU Paul M. Hebert Law Center.

into that classroom, I wasn't expecting her. And I'm sure she wasn't expecting me. We became study partners and friends over the years. So, I had a support system. You know, folks ask me all the time, "Were you harassed?" I'm in Baton Rouge at a time when David Duke is in undergrad school and they were still showing "The Birth of a Nation" in the Student Union. But I'm in a law school environment where I wasn't really openly harassed. I would suggest I was more ignored. But in every situation, there will always be folks who will support you and provide what you need. Margaret O'Meara (Correro) was a class ahead of me and made sure I had everything I needed, all the notes I needed. My classmates had the advantage of the fraternities that provided them with the materials and the environment. Margaret gave me everything I needed. Also, I had teachers like Benjamin M. Shieber, who was a senior faculty member at the Law Center. So, I had what I needed to get through law school. At that point, I think Southern University might have had around 10 or 15 students, and I'd go down to Southern University Law Center and use the library there and interact and study with their students. Southern University Law Center is now the most diverse law school in the state. I think they probably had 300 or 400 students at one time. To go from 10 or 15 students to over 300 or 400 students, you've got to give Chancellor Agnihotri the credit for building that Law Center.

Talley: Chief, I've seen that LSU photograph of your law school class in 1968. It's just amazing to me every time I see it. I wonder how someone could have the courage to be in that environment when you're surrounded by what appears to be 40 or 50 white men. It had to be an intimidating situation for you. But now, I understand you had to practice what you preach, right?

Chief Justice Johnson: Yes. You know, you can't be intimidated. I mean, you may look different, but as long as you have confidence that you belong there and you can do the job, the rest falls into place. Gammie and I were the only two black students at LSU Law School. Now, I'm the only female and the only African-American on the Supreme Court. You just have to walk into the situation and be assured that you are prepared. You are intelligent. You can do the work. I knew I needed to get this degree and then I'd go off and do what I needed to do.

Talley: Your LSU experience was probably good training for what was to come because, in 1984, you were elected as the first woman to the Orleans Parish Civil District Court. That was a male-dominated bench at that time. You served as a district judge for 10 years. Tell us about the challenges you faced at that time. Were they different than your law school challenges or similar? What stands out about your years as a district judge?

Chief Justice Johnson: I always start the conversation by saying I loved being a district judge. I loved being a trial judge.



The Louisiana State University Law School Class of 1968 photo was provided by classmate Thomas R. Blum, standing behind Bernette Joshua Johnson, second row, second from right. Inset are Bernette Joshua Johnson and Gammie Berthella Gray, the first African-American female law students at LSU Law School, taken from the 1968 LSU Law School Class photo. Photo provided by Thomas R. Blum.



In fact, I loved being a trial lawyer. There are some folks who don't like to litigate. They don't want to go to court. I practiced in federal courts and state courts, and I enjoyed the process, the interaction, the winning. I really enjoyed the winning.

Talley: I can empathize with that. We like that, too.

Chief Justice Johnson: There are a lot of lawyers who just want to do transactions. Some want to just write briefs. Others want to do contracts, but they don't want to go to the courthouse. I enjoyed being at the courthouse. When I got to Civil District Court, my colleagues had to get used to me and I had to tell them, "Look, our conference room is not a men's locker room." But in terms of helping me, I can't say enough times how much I appreciated my colleagues. Henry Roberts was Chief Judge when I got there. You have to talk with young judges about judging. You have to say things like he told me, "Don't worry about making a decision. Your job is to be an umpire and call the strikes." You can't make everybody happy. Somebody is going to like what you did and someone's going to be unhappy. So, that's what the Fourth Circuit is for. Let them take a writ. I learned that early on. We have judges who have too much trepidation in making a decision. Study the case. Look at the jurisprudence. Review the testimony and make the call. We had to put a rule in place

just to jump start judges who wanted to delay it. You can't delay making a decision if you're a judge. I learned that early from Henry Roberts. Make a decision. Don't worry about whether it's right or wrong. If you've done your best with it, make the call. And the appellate court will tell you whether you are right or wrong, and then lawyers take it to the Supreme Court.

I had a couple of cases where the Supreme Court agreed with me after the Fourth Circuit reversed me. But usually I told the staff, if someone files a writ, just put it in the drawer. If I get reversed, bring it to my attention and I'll read it and see what the court said. Lawyers tend to think of judges as taking everything personally. I tell a story about being at an event and a lawyer came up to me to apologize for taking a writ. I said, "Oh, I don't even remember what case you're talking about." I tried to pull my docket and set cases, pack them deep, maybe five-case sets of trials so that, if some of them are continued, we can be sure to move things along. Nothing settles a case like making the lawyers get ready for trial. I enjoyed being a trial judge. But you were asking me about other challenges?

Talley: I was asking about challenges you faced at that time being with an all-male bench. Was it different than your experiences at LSU? And how did it impact

your judicial career?

Chief Justice

Johnson: It was collegial. The judges at Civil District Court were great to me. They gave me advice and assistance. I tell folks the story about my first jury trial. After handling the conference on the jury charges, I was sitting at my desk struggling with it. Then, there's a knock on my chambers and it was Tom Early (Judge Thomas A. Early, Jr.) coming to help me with my jury charges. You always have what you need. There are folks who are collegial and want to assist and help you succeed.

Boyle: To change topics, we want to talk briefly about the Court's relationship with the Louisiana State Bar Association (LSBA). You swore me in as president of the LSBA and that's something I've always treasured. Pat is currently the LSBA secretary and editor of the *Journal*. From the lawyer's standpoint, we know how important the relationship is between the LSBA, particularly its officers and Board of Governors, and the Louisiana Supreme Court and, to a large degree, with the Chief Justice of the Louisiana Supreme Court. Tell us about the relationship between the Court and the LSBA while you have been Chief Justice and why that is important to you.

Chief Justice Johnson: It's valuable. It's important. It's something I treasure, the good relationship with lawyers. I know that all states don't have that experience. I talked with past LSBA President Barry Grodsky to understand the disparity. He talks about the good relationship in Louisiana. With other bar leaders in other states, that's foreign to them. I'm hoping in future years, we will still have that collaboration with each other. I think the Joint Summer School for judges and lawyers is a big part of the relationship. Judges are encouraged not to set trial so lawyers are able to participate in the summer program. The Judicial College happens at the same time. The judges and lawyers collaborate on planning that meeting, and it encourages all to take advantage of the event. And you can't worry about the critics. I know there have been a lot of critics, particularly a lot of criticism towards New Orleans judges who go to the summer program in Florida. What folks don't understand is the value of that interaction between judges and attorneys, outside of the courtroom, even if it's a reception or a lunch. I get more work done in Destin than I do anywhere else in a week because I can put meetings back to back. In 15-minute segments, I can meet with everybody. Also, you don't have those emails back and forth when something may be misunderstood. In a face-to-face 15-minute meeting, you can get more done than a year of emails back and forth. I know some of the criticism about Florida is: Why aren't we doing the events in Louisiana? Well, because experience tells us, in terms of hotels, it was a problem trying to find some way to accommodate the entire bench and bar. I can recall, once, we had the Annual Meeting in New Orleans. Local judges signed up, but then they went to work. You have to disconnect folks from the work. I try to disconnect myself by just leaving the work phone somewhere else so you are not answering emails and tied into what's going on. I think it's important. I think it's valuable. And I'm hoping that the bench and bar summer program will continue into the future.

Boyle: Chief, I would just like to say, as a former president of the LSBA — and I know Pat echoes me as a current officer — the LSBA, its president and its officers have always appreciated the manner in



Three Louisiana Supreme Court Justices, from left, Justice Jeannette Theriot Knoll, now retired; Chief Justice Catherine D. Kimball, now retired; and Chief Justice Bernette Joshua Johnson. Photo provided by Louisiana Supreme Court.

which you have remained involved with the LSBA. Whenever we call, whenever we ask, whenever we need you to swear in someone or give a speech, you are always there unless you are involved with a pressing concern. That is definitely one of the things that will be missed when you end your tenure as Chief because you've always been there for all of us. Thank you.

Chief Justice Johnson: Well, it's been reciprocal because, you know, as judges, we can't defend ourselves. There's no way the judges can go stand on Tulane Avenue (in New Orleans) on the front steps of the courthouse and explain why they ruled in a certain way. Judges cannot defend themselves. So, we have to rely on lawyers to explain the process and why things happen the way they do.

Talley: Kim said it much better than I could have, but I also appreciate your making it a priority to have a good relationship with the LSBA. For me personally as a lawyer, I've gotten to know many judges, including yourself, during those summer events. It means there's more to practicing law than just practicing law. Speaking of the Bar Association, we have recently admitted a new group of members to the LSBA this year and there has been some discussion about how they came into the Bar. Tell us about the Court's role in the dissemination of the July 22, 2020, Order, which waived the requirement for 2020 law graduates that a Bar applicant must take and pass the Louisiana bar exam,

a/k/a the diploma privilege. What was the basis for the majority's decision and what do you say to those who disagree with the Order?

Chief Justice Johnson: Yes, the diploma privilege waived the bar exam for this class of 400 or 500 young people. It's not something they asked for. When we begin this discussion, we have to begin with the coronavirus, COVID-19, and all of the limitations of people being in a closed space. We have had just about every disruption possible. In addition to the virus, we had a live exam scheduled and then we had a hurricane coming through and we were worried about the connectivity of the Internet and whether the graduates have what they needed to finish the exam. So I don't think these young people should be labeled in any fashion or that anyone should expect that they were less prepared. They had tremendous obstacles to overcome this year. As they enter the profession, I'm hoping they'll fold in with other lawyers and be accepted. We did the best we could. We tried as long as we could to plan for a live exam. It wasn't working and there was nothing else to do. We can't keep the graduates in limbo forever. So going back to Barry Grodsky, he put together the mentoring program, Transition Into Practice (TIP), some years ago. We put it on the shelf because we didn't need to put it fully into place, but it was wonderful to dust it off and implement it with regard to this class. I have not had a chance to check recently, but I'm hoping they have been

able to get every young lawyer connected with a mentor. I'm always saying: When you get to the end of the list and there's a few folks needing mentors, just get back with me and I'll mentor those young lawyers.

Talley: You've had a long and wonderful career. What advice would you give to these young lawyers as they are starting out on their journey?

Chief Justice Johnson: Don't worry about making a decision. Don't worry about how taking a position will impact your future career. Don't be afraid to make mistakes. If you see a need, step up. If you see an issue that you think requires your attention, be involved. And I think that goes back to the civil rights struggle. Just have the courage. We see it with young people with Black Lives Matter. We see young people rally about gun control and many issues that impact this nation. We want to get to a point where there is justice for all in America. I still believe in that. I think we can do it. I think we can get there.

Talley: We're going to change tracks and ask a few questions about your judicial philosophy. In other interviews, you have said that you believe the greatest natural resource and most valuable asset are children. Why do you believe this? And how has this impacted your judicial philosophy over these many years?

Chief Justice Johnson: That's why I've spent so much time trying to mentor young lawyers. I have interacted with law clerks and other young lawyers over the years, always trying to encourage them and motivate them, because that's what moves us forward. Young people understand that we have the same system of morality. We all believe in the Constitution and we all believe in fundamental fairness. That's what we all want. We want to try to implement that. We want that for America. We want to get past the right-wing pieces, the white nationalism and all the rest that is damaging the country right now. And the original Americans, the Native Americans; It has distressed me greatly during the coronavirus to learn there are so many of them who are on reservations without water, medical attention and all the things we need. They have to advocate for the pockets of America where we've been ne-

glectful. There's just so much work to be done, and you can't get discouraged about the scope of the work. We just have to motivate and encourage young people to be energized and to keep working.

Boyle: As a lawyer, as a judge on the Civil District Court, and certainly in your role on the Supreme Court, in particular as Chief Justice, you have always talked about respecting the Rule of Law and that's how you've lived your career. But you also talk about the fact that "laws are not the same as justice," which, to me, is a very, very strong statement. I think I understand what you mean. But there are some in our profession who purport not to understand what you mean by that. How do we respect the Rule of Law as we understand and define it, but, at the same time, ensure that justice is actually being accomplished?

Chief Justice Johnson: I've had a long history with justice reinvestment and that has taken up a lot of my time over the last five years or so. I tell this story. I went to a meeting of the Conference of Chief Justices in San Antonio, Texas. The speaker at that luncheon was William C. Hubbard, then-president of the American Bar Association (2014-15). He talked about how South Carolina was able to get its prison population down. Now, he said, when they started out about 10 years ago, South Carolina was number 11. Since they have put some things into place, South Carolina is now number 26. I said to him, "In Louisiana, we'd be dancing in the streets if we were number 11." And number one is the worst and not the best. The United States imprisons more people than anybody else in the world. So, our country is the worst in the world, and, in the United States, Louisiana is the worst in the nation. That's nothing to be proud of. Everyone was proud to see LSU number one in collegiate football. Now, are we proud of the fact that we lock up more people than just about anyone else in the world? I am always trying to get an answer to that. We are going through an election cycle now where judges are campaigning for election and I do support the election of judges. But there are still judges who campaign and talk about "I'm going to be tough on crime, lock 'em up and throw away the key." William Hubbard and the folks in South Carolina, their point is: Is that smart? Are there more crimi-

nals in Louisiana than anywhere else in the world? Did they all migrate here from other places? Alabama is number three. Mississippi is number five. So, maybe all the worst people came here? We are spending enormous amounts of money to lock up people and it has to do with how we use habitual offender laws. I say all the time, charging a defendant as a habitual offender is discretionary. A district attorney is not required to use the habitual offender law in every case, and we certainly should not be using it for nonviolent crimes and property crimes. I mean, in a time of coronavirus, do you really want to prosecute somebody who is stealing bread to go home and feed their kids? Do you really want to? No, you don't. When I got to the Supreme Court, one case involved a defendant who stole a pair of \$5 tennis shoes from Family Dollar. Do we really want to spend a million dollars locking up somebody who stole a \$5 pair of tennis shoes? I'm trying to get the Chambers of Commerce and business people to understand this. What we do in Louisiana doesn't make good financial sense. At one time, our budget for the Department of Corrections was something like \$700 million. But do you really want to spend \$700 million to lock somebody up where a lot of them just stole cheap tennis shoes, hedge clippers or bread? I mean, good grief! At some point, even folks who want to be tough on crime need to be smart. Now I've never shied away from saying that we need to lock up the sociopaths, child molesters, armed robbers, axe murderers and all the rest. We must operate a prison system for folks who cannot be rehabilitated. But in Louisiana, we are not being smart. Maybe in future years, I'll be involved with some business people who finally understand that we could save a whole lot of that \$700 million budget if we're not building prisons and spending it to incarcerate low-level offenders, not violent crimes, but just property crimes, and so forth.

Talley: From your perspective as the 25th Chief Justice of the Louisiana Supreme Court, how has the judiciary changed over the years?

Chief Justice Johnson: In terms of diversity, yes, for sure. I just went through a book titled "The Biographies of Louisiana Judges." At that point in 1985, I think there

might've been about eight black judges, six women, all total...in the whole state. If you look at where we've come from 1985, when I joined the bench to where we are now, we have diversity and we have women at every level. We have women as trial judges and appellate-level judges. We have African-Americans as trial judges and on the courts of appeal. I think, in that regard, we're doing better because now the folks who are bringing their cases to the courts are seeing people in the judiciary who look like them.

Boyle: As you are aware, your letter of June 8, 2020, to colleagues in the judicial, executive and legislative branches of Louisiana government (asking them to consider ways in which they can improve the justice system) received a tremendous amount of national publicity. I've talked about the letter with my friends in other parts of the country who are involved in civil rights and criminal justice issues. The letter was positively received around the country. One question I had, and other members of the Bar had, it seems like it was a full circle career-wise for you. You began your career doing civil rights work and fighting against these injustices. And as you get to the close of your career, you write this phenomenal letter. Can you tell us, Chief, what were you intending to accomplish with the letter? (The letter is accessible on the Louisiana Supreme Court's website at: www.lasc.org.)

Chief Justice Johnson: To get to the point of having the courage to say something when it's necessary. North Carolina Supreme Court Chief Justice Cheri Beasley did a video where she lamented the death of George Floyd and expressed her concerns for twin sons. You have to have the courage to speak out. If you've got black sons and brothers, you have to speak out if you have a voice. You're saying, "Look, an African-American man should not be at risk when they are walking around doing the same things other folks do." What if George Floyd had been white? Would there be someone standing on his neck? It was on every TV station; every time I turned on the television, they were showing the whole film again and again, where this police officer is kneeling on George Floyd's neck for eight minutes and he is saying that he can't breathe. He



Chief Justice Bernette Joshua Johnson hosts the 2014 Access to Justice Pro Bono Awards ceremony at the Louisiana Supreme Court. Photo by Matthew Hinton Photography.

keeps his knee on Floyd's neck until he's dead. And I just got to the point where I couldn't watch them kill George Floyd another time. When I tell young people that they must have courage to speak up, I mean it. I can't worry about who may be displeased or upset or angry because I wrote the letter. I'm just speaking for myself. I'm saying that, as Chief Justice of the Louisiana Supreme Court, it disturbs me to be part of a system where we don't acknowledge the fact that there are disparities and there's systemic racism. And that's how I got into the piece. I've observed for several years that we incarcerate more black men for little things. Let's just start with the minor drug offenses. We did oral arguments at Loyola and Tulane law schools, and you talk about marijuana use and everybody kind of giggles nervously. It's because folks use marijuana on college campuses. And drug use in black and white communities is at about the same rate, but the only people who are locked up are African-Americans. And we just

kind of go along. Police officers do drive-throughs of what they call "high-crime areas". They see three young black males standing around talking to each other or sitting on a stoop and they stop and shake them down to see if they have marijuana on them. The letter really comes back to my foundation. If we really believe in the Constitution, then we really believe in the Fourth Amendment. If African-Americans don't have the same constitutional protections, then you need to tell me. After 50 years as a lawyer, I need to come to grips with this. I've gone through the time when "colored" was on the restrooms and we took them down. But if black men are not protected on the streets of America by the Fourth Amendment, you need to tell me.

Boyle: To follow up, do you consider the June 8 letter to be your closing statement to the Louisiana judicial system as you end your term as a jurist and as Chief Justice of the Louisiana Supreme Court?

Chief Justice Johnson: I like the letter as well, and I stand by it. I tell people all the time, that's how I try to live my life. I wrote it and I'm standing by it. We plan to do a couple of other pieces that may well be on public television that talk about justice reinvestment and incarceration and what we need to do moving forward.

Boyle: That sounds great, Chief. To switch gears a bit, we've spent time talking about you as a jurist, talking about what you accomplished as a lawyer, as well as a jurist breaking so many barriers. You talked a little bit at the beginning about growing up in segregated New Orleans and going to segregated schools. Can you tell us about Bernette Joshua Johnson? So many of us have found a model for our careers in you. But I think a lot of lawyers in the state would like to know a little bit about you as a person, in addition to everything you've accomplished.

Chief Justice Johnson: Remembering back to when I was a teenager, everybody thought I was pretty boring. All I would do is study. I can remember back in middle school, when the teacher would need to step out of the room, they'd assign one person to report if the kids were misbehaving and I was often the one the teacher chose. Because I sure didn't mind telling the teacher who misbehaved. I grew up in a family of Baptist preachers and my faith is part of who I am. My paternal grandfather was superintendent of the Sunday school. I grew up with a lot of cousins who were Baptist preachers. So, religion and faith and what Christianity teaches us is part of who I am. Don't steal. Don't lie. Always tell the truth. You've got to have a moral compass. And so, in these trying times, some kids have got to have something to feel grounded. When I first got to the court (I'll get back to family shortly), it always amazed me that some lawyers would study hard, get law degrees and, when the ink is barely dry on their certificates, we've got to disbar them because they steal the client's money. I finally realized that some folks grew up in families where "don't steal" wasn't taught. In CLE classes and ethics and professionalism courses, we can't teach everything. You've got to come to the law with a moral compass. If you did not grow up in a family where your parents told you that you should not steal,

then how can we teach you about commingling? We can't teach it at 25. But that's the kind of family I grew up in. I grew up with brothers. I don't have a sister. So that's another thing that comes from a framework of growing up with brothers, which means that I have a different perspective. My sister-in-law grew up with sisters and she talks to her sisters every day on the phone about everything. Her husband is my brother. If I called Sigmond every day, he'd say, "What's wrong? What do you need?" I don't call my brothers to chat every day. I have a son, David, and a daughter, Rachael. My son lives in New Orleans and Atlanta, where his son, Noah, is 15 and plays soccer. My daughter, Rachael, is a trial judge and I'm very proud of her. She has been married a couple of years and has a wonderful spouse and three stepchildren. Other than that, I am fairly boring. I just work and, when I'm relaxing, I'm with family. I've been involved with a lot of different associations and I served on the board of trustees at my church. In the early years, I would do a free lunch program at the church. I've been active with the Links Incorporated, my Zeta sorority. And, of course, I've been active with the bar associations, the National Association of Women Judges and the ABA. I think all of that's important to be well-rounded.

Talley: Chief, what are you going to do after December? Presumably, you'll have a little bit more free time on your hands to enjoy yourself and relax.

Chief Justice Johnson: I will. I'll relax and rest some. Before the virus, I think everybody was saying, after retirement, it's time to travel. I was talking with one of the other retired justices and she took a round-the-world cruise. Well, you can't do that now. So I guess I've got to adjust to the times.

Talley: Are you planning any trips back to Lemannville, Louisiana? I understand you were born there. I had to look up its location.

Chief Justice Johnson: My birth certificate actually says Donaldsonville, Louisiana. Lemannville is an unincorporated part of Donaldsonville. But I grew up in New Orleans. My family moved here when I was 5 years old. So I've been here a number of years. My father served in the

Navy. Lemannville was a rural community and had few job opportunities. When my father was discharged, he moved our family to New Orleans because of job opportunities.

Talley: You've been a judge for 38 years and you've had a stellar legal career. As you near the end of your career as a jurist, how do you want to be remembered?

Chief Justice Johnson: I say this all the time, you have to keep your ego in check. I think I was a great trial judge. I enjoyed that. I enjoyed the trial work and I enjoyed interaction with trial lawyers. In terms of my writing and my work on the Louisiana Supreme Court, there are not a lot of dissents, but I think it's been consistent because I've tried to focus on fundamental fairness and due process. I wanted everybody who came through my court to leave saying, I disagree, but I think she was fair. All of the other things didn't really matter. If the litigants thought that I was fair and they were treated fairly, all of the rest pales in comparison. If there's some litigant out there or some person who thinks I compromised or didn't treat everyone fairly, then somebody needs to let me know.

Boyle: Your daughter, Judge Rachael Johnson, who is doing a phenomenal job on a trial court bench, said that one of the most meaningful and important lessons that she has learned from you is, "In life, you are guaranteed to face challenges; your approach to the challenges is a true test of your character." Starting as a young child, through college, as a law student at LSU, in your career as a civil rights attorney, being on the trial court bench, being a justice on the Supreme Court, every step of the way, you have faced challenges. How would you sum that up to help guide a young lawyer, judge or justice?

Chief Justice Johnson: It goes back to the other answer, be courageous. You can't worry about the critics. You can't worry about pleasing folks. If you hesitate to do something because you are afraid of how it will be received, if it's the right thing, go ahead and have the courage to do it. And then, like I say to young judges all the time, just have the courage to rule. You can't worry about how it's going to be perceived and whether someone will disagree with

what you're saying. Which is why, I guess, I've written dissents in some instances. In some instances, some of them have been well received and some have not.

Talley: Let's focus on your legacy. I was a history major and I often take a look at legacy. Many people have called you a trailblazer. In my opinion, you are the quintessential trailblazer. It takes a lot of perseverance, patience and courage to be a trailblazer and to overcome many of the challenges you've had to face. What does this mean to you? And do you think this is your legacy?

Chief Justice Johnson: Well, being a trailblazer to me just means the first person to do something. I have tried to be sure that, if I was the first, I was not the only person to do something. You may get to a meeting/event and you're the only African-American in the room. If you look around the room and say, "Well, wait a minute. I shouldn't be the only one here. There should be other voices." You want to be sure that all voices are being heard. So, being a trailblazer is okay. But I think what you need to ask is, as a result of that first person doing something, what did it look like afterwards? If I'm still the only one, then we have a problem.

Talley: That's a good point.

Boyle: I was talking the other day about when you were first elected to the Supreme Court. Many young African-American lawyers did not know anything about the various Supreme Court committees. One of the things you've done that we all appreciate is you went out of your way to appoint and open up that process of committee service to young lawyers of color and to women. You appointed me to some committees I didn't know existed until I received the appointment letter. So, to your point of not just to be the first, but to make sure that you weren't the last, we appreciate it.

Chief Justice Johnson: Let's talk about the Committee on Bar Admissions. When I got to the Supreme Court, I remember the meeting because the court was still over on Loyola Avenue. I was sitting in the conference room when we were talking about the Committee on Bar Admissions, nine sections to the bar exam



Chief Justice Bernette Joshua Johnson with her daughter, Judge Rachael D. Johnson, and her son, David K. Johnson, at the Feb. 28, 2013, investiture ceremony. Photo by Matthew Hinton Photography.

and nine white male examiners. I asked, since women and African-Americans and others are taking the bar exam, why do we have nine examiners and they are all white males? They explained to me: Usually how it works is, the examiner goes down the hall at whatever big law firm they are in and recruits a junior associate and that person assists as a grader. Then that person works his way up to be examiner to replace the current examiner. And so on. I asked about inclusion and was told it would take something like 10 years for someone to work their way from grader to examiner. My response was we can't wait 10 years for inclusion, with all of these women and African-Americans taking the bar exam now. That's just one example. We've got to jump in and move forward. You just can't allow that kind of disparity to exist forever.

Talley: Thank you, Chief. But one question just occurred to me. Your successor on the Supreme Court is an African-American woman. What advice would you give to her?

Chief Justice Johnson: I'll just give my advice to her directly. I'm going to be around to do the same things that Henry Roberts and Tom Early did for me. I'll sit down and tell her what I've done and just offer whatever assistance I can.

I will be happy to do that. (Note: Judge Piper D. Griffin was elected and will be sworn in as the next associate justice of the Louisiana Supreme Court — the third African-American justice and the second African-American woman on the Court.)

Talley and Boyle: On behalf of the LSBA and its members, we would like to thank you for your decades of service to the legal profession and wish you the very best of luck in all your new endeavors.

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