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On the occasion of the publication of Judge D. Lowell Jensen's Oral History

I first met Lowell when I came to the bench in 1989. By this time, he was already well established as a district judge. In that capacity, he offered his wise counsel and guidance. But most of all, Lowell provided guidance by his example. When traveling around the country to judicial and bar meetings, and people heard I was from the Northern District of California, there was almost invariably the question, "How is Lowell Jensen?" and the comment "What a wonderful judge he is." I can think of no one in my experience who has engendered more good will in the contacts he has made over the years than Lowell. And this from everyone—plaintiff lawyers, defendant lawyers, prosecutors, criminal defense lawyers, bureaucrats in Washington—you name them, they're unanimous in their praise of, and affection for, Lowell.

It is a great honor for me to add my voice to a chorus of praise for Lowell as both a colleague and a friend.

Vaughn R Walker, Chief Judge
U.S. District Court for the Northern District of California
June 9, 2009
Introduction by Edwin Meese III

It has been my privilege to know Lowell Jensen as a friend over the past fifty years and to work with him in the legal profession during much of that time.

Lowell graduated from Boalt Hall, the law school of the University of California at Berkeley, served in the U.S. Army, and in 1955 joined the Alameda County District Attorney’s Office, which is a legendary public law institution that had once been headed by Earl Warren, who subsequently became Governor of California and Chief Justice of the United States. Four years later it was my good fortune to be appointed as a Deputy District Attorney in that same Office and to meet Lowell, who had already become one of the top trial attorneys.

The significance of the District Attorney’s Office in Alameda County, which includes Oakland, Berkeley, and several smaller cities, was its statewide and national reputation for excellence and integrity. J. Frank Coakley, the District Attorney under whom Lowell and I served, was a co-founder of the National District Attorneys Association as well as a leader in California law enforcement circles. In this setting Lowell distinguished himself as an excellent lawyer, as an eminently fair prosecutor and as a man of the highest character. He was respected by colleagues and opponents alike, and earned the admiration of the judges for whom he practiced.

Lowell prosecuted many famous cases in Alameda County during his twenty-six years in the D.A.’s Office. In 1965 I was a member of the trial team, led by Lowell, that handled the prosecution of some 773 defendants in a group that called itself the “Free Speech Movement.” They had invaded Sproul Hall, the administration building of the University of California. The organizers of this illegal activity proclaimed that with so many people involved, the legal system could never hold them accountable. Working cooperatively with the judge and opposing counsel, Lowell set the tone of those proceedings. His example of patience, courtesy, fairness, and a concern for the future of the defendants (many of whom were young students who had been lured into criminal conduct by the movement leaders) resulted in all being convicted and the rule of law being upheld.

When J. Frank Coakley retired in 1970, Lowell was the unanimous choice of the lawyers in the Office and the Alameda County legal profession to be the successor for District Attorney. In that position, he provided great leadership to the Office and to the police departments throughout the County. He placed great emphasis on the modernization of legal processes and on the education and training of the attorneys who served in the Office. He also gained recognition for his work on behalf of the justice system throughout California.

Lowell’s reputation as a lawyer and law enforcement executive brought him to the attention of Ronald Reagan, the newly elected President of the United States, in 1981. Lowell was appointed Assistant Attorney General in charge of the Criminal Division of the Department of Justice. Shortly thereafter, he was elevated to Associate Attorney General, with responsibility for all law enforcement and criminal justice components of the Department, including the Federal Bureau of Investigation, the Drug Enforcement Agency, the Federal Prisons, and numerous other justice agencies.
With his successful background in local, state, and national law enforcement, it was only natural that Lowell would become the Deputy Attorney General when I was appointed by the President to head the Justice Department. It was a great pleasure working together again and I continue to be grateful for Lowell’s outstanding work in that position. His calm demeanor, good judgment, and common sense contributed greatly to the successful operation of the Department.

My wife, Ursula, and I appreciated greatly our friendship with Lowell and his late wife, Barbara. So, when they decided it was time for them to return to California, where their children lived with their young families, we understood, although we would have liked to have them continue with us in the Nation’s Capital.

Because of Lowell’s great service in Washington DC, the President would have been glad to appoint him to the Federal Appellate Judiciary. But it was characteristic of Lowell to prefer joining the trial bench as a Federal District Court Judge, where “he felt the action was.”

For over two decades, Lowell has served in this role, enhancing his reputation by his fairness, knowledge of the law, and skill in the conduct of trials. He has made a special contribution to the lives of the many young people he has mentored during his years on the bench—interns, externs, and clerks who have worked for him as well as fledgling attorneys who have appeared before him in court.

Lowell Jensen has served his Country well as a lawyer, public official, and judge throughout his distinguished career, his example to others, and his devotion to the law and the cause of justice. I am grateful to him personally for his friendship and the opportunity to work with him over the years and I admire and appreciate the judges of the Northern District of California for making possible this well-deserved historical record of a great man.

Edwin Meese III
75th Attorney General and Counselor to President Ronald Reagan
Ronald Reagan Distinguished Fellow and Chairman of the Center for Legal & Judicial Studies, The Heritage Foundation, Washington, DC
Introduction by Roger M. Olsen

Lowell Jensen has always said that you could measure a person by whether or not they have enhanced the lives of others. Over the years my own life has been enhanced many times over by Lowell beginning with the first time that I met him forty-two years ago. In the summer of 1967, I was a law clerk in the Alameda County District Attorney’s Office. I can still recall the first assignment he gave to me. It was to review and critique the prosecution’s response to a Penal Code Section 995 motion in the murder prosecution of the Black Panther Huey Newton. I was so overwhelmed, and so grateful for the assignment. I wanted to do the best I could because it was an important case. Thankfully, Jeff Horner had written the response to the PC 995 motion so there was little for me to do.

That summer Lowell gave me the opportunity of a lifetime. As a law clerk I did legal research on a variety of California Penal Code crimes and procedures, but, I also did some things few clerks get to do. I climbed into a small airplane & took aerial photos of a robbery shoot-out scene in Oakland, while literally leaning out the window of the plane to take the pictures; I developed the pictures as trial exhibits and testified at the trial. In other felony cases, I prepped witnesses for trial, I prepared diagrams as exhibits for trial, and I testified in the trials. Between assignments, I went to court to watch the senior prosecutors in trial. What a learning experience! When I came back for my final year at Boalt, I compared summer experience with my colleagues who wanted to do litigation. Every one of them had spent the summer in the library. When they heard my experiences, they were all green with envy and several of them applied for a job with the DA’s Office, albeit unsuccessfully. This was the beginning of learning that working under Lowell Jensen meant having unique experiences and breadth of responsibilities not found in the private sector and, in my own experience, not found in other government agencies either.

Immediately after graduating from law school I went to work for Lowell and from 1969-1972, I was a Deputy District Attorney prosecuting defendants charged with California misdemeanor and felony crimes. I remember so well the camaraderie and the excitement of learning how to be a trial attorney and improving my skills as a prosecutor. The Alameda County District Attorney’s Office had a long-standing and wonderful reputation which was met the challenges of the student protests and riots in Berkeley and the University of California campus, as well as the high profile criminal activity spawned by the Black Panthers and the Hells Angels who were headquartered there. Through it all Lowell maintained a steady and firm management of the office thereby avoiding charges of overcharging or vindictive prosecutions.

After Lowell assumed the position of District Attorney of Alameda County in the spring of 1969, he immediately began to reorganize the office, making it more efficient, and more responsive to the needs of the courts and the community. He also increased our salaries. I learned over time that he had with two objectives guiding his management philosophy. The first was that the criminal justice system required swift and certain justice. The second was that the criminal justice system must be both fair and humane. Obviously there is a certain amount of dynamic tension between the two objectives, but he made more progress in this regard than had been made by his predecessors and established standards which are still in use today.
Of course, I was a brand new lawyer in 1969, but I remember my superiors instructing me in
great detail the significance of these changes. These instructions didn’t come at continuing legal
education lectures, but over donuts and coffee before the day began at the office’s coffee
machine, or over a quick lunch at Randazzos, or over drinks after work at one of the local
watering holes. What I remember most was the atmosphere and environment he instilled in
others: you could always walk into someone’s office and pick their brain. What was important
was getting the right result. Continuing education was provided by Jack Meehan who became
District Attorney when Lowell left the office in 1981 to join the Justice Department. Meehan’s
even-handed explanation of the recent court cases taught us how important it was to stay abreast
of the law, but also how to read into an opinion so that it was not forgotten. Most importantly,
the DA’s office placed great responsibility and trust on each attorney thereby giving each of us
considerable discretion in determining the guilt or innocence of those charged with crimes.

In 1971, I assisted Lowell researching and writing the brief for the government seeking for a
rehearing before the California Supreme Court on whether the death penalty as administered was
unconstitutional. The experience was unique and I saw for the first time Lowell’s ability to
supervise and coordinate our office’s efforts with those in the District Attorney’s Office in Los
Angeles. Unfortunately, the outcome was disappointing since we were unsuccessful, but the
coordination effort and the need to file the brief made me realize that even when the odds were
against you, you don’t give up. From 1972-1981 I practiced law in Washington, DC. but stayed
in touch with Lowell and came to know Barbara, his late wife, and his children.

In 1981, I was indeed fortunate to have had the opportunity to work for Lowell in Washington,
D.C. in the U.S. Justice Department’s Criminal Division as a Deputy Assistant Attorney General
(supervising the Fraud and Appellate Sections and the Office of International Affairs). In the
spring of 1983, Lowell became the Associate Attorney General, & I followed him there. The
Justice Department was and is considerably different from the DA’s Office. It is not just that it is
bigger and that there are more federal law enforcement agencies and personnel or that federal
crimes are different in nature from state crimes, but the agenda is also different. Many days we
were reacting to the perception of reality because of an article in the Washington Post or the New
York Times. I remember that upon leaving the Department in 1987, I knew that when I read the
newspapers it was to see what the news was, not what my assignments were going to be that day
or that week. The Justice Department is also an interesting place to work from my personal
experience because you write letters you don’t sign (but are for someone else’s signature) and
you sign letters you don’t write. Lowell and his immediate staff would frequently have
discussions about the purpose and function of certain correspondence and some of the text or
language used.

Incidentally, there is one habit Lowell has which has driven me crazy over the years. He always
had a clean desk and I do not mean an empty desk, but all the correspondence and materials have
a specific place. There are no loose papers on his desk and when he leaves work at the end of the
day, his desk is cleared off of all extraneous papers. He is never looking for papers he has
misplaced because he doesn’t misplace his papers. I tried to emulate him in this respect, but
without any success and have given up long ago.
At Justice, he gave me broad responsibility to improve our ability to obtain evidence from foreign sources such as Switzerland, and the Caribbean offshore tax havens. Many people from many federal agencies were involved, but Lowell was the captain of the ship. I am proud of the advances we made which are still the cornerstone of law enforcement efforts at foreign evidence gathering today.

Lowell and I both testified many times before Congress which is a unique experience. There are no rules of evidence, no judge to rule on admissibility or the probative value or fairness of the questions in the hearings, and, of course, members of Congress with their own agenda which can make the process interesting. There always hearings on the House and Senate on criminal matters, and it was frequently the case that someone would walk into my office and advise me that I would have to testify on a matter before Congress in one or two days. That always made for wonderful discussions over drinks after I had been grilled by the friendly members of Congress.

My wife and I became good friends with Barbara his wife and enjoyed many wonderful evenings together talking about our successes and our difficulties. Barbara was a wonderful lady, so full of life, so interested in what was going around her, and unlike Lowell, she told you right up front what she thought of someone or an item in the news. You were always welcome in their home. You never had to guess what Barbara Jensen’s opinion was on a subject, she told you. This leads me to one evening at dinner at their home in January 1983. The weather was particularly cold, and snow was on the ground. At the dinner table Barbara asked Lowell about his trip to Buffalo, New York earlier that week. Lowell was always attending a Law Enforcement Coordinating Committee (“LECC”) meeting and the Buffalo trip was one of the LECC meetings. The weather in Buffalo was even worse than what we were experiencing at that time in DC. This was not overlooked by Barbara who hated the cold weather on the East Coast. After Lowell described his trip, Barbara asked me if I had taken any trips. I paused and thought I would choke on my answer. I looked across the table at her and I replied that I had just returned from a trip to Bermuda. Barbara didn’t say a word, and neither did Lowell…he wasn’t going to come to my rescue. I thought my goose was cooked. After all, why should I, Lowell’s subordinate get to go to Bermuda while Lowell went to Buffalo – in the dead of winter? In his mind, the LECC meeting was more important. After dinner while driving home, I told my wife that would be my last trip to Bermuda. Unbelievably, I did make other trips to Bermuda, and years later, Lowell, Barbara and Joanne & I had a good laugh about that evening.

Lowell and I are track and field nuts. In April 1983, the four of us attended the Penn Relays in Philadelphia. Subsequently, Lowell and I attended the U.S. Olympic Trials and most especially the World Championships in Track & Field held in Helsinki in 2005, Osaka in 2007 & Berlin this August 2009. The World Championships are not just another track meet. The Championships last ten straight days, with trials in the AM, and the finals and other heats in the evening. These meets give us a chance to enjoy the sport we love and to visit and dine together and share our thoughts and experiences. We sit together for the duration of the meet and are genuinely disappointed with the meet finally ends over a week later! I never try to predict the winners, Lowell and his son Tom are the experts and it would be a mistake to try to outguess them.
Lowell has unique patience combined with a wonderful sense of humor. It was well known at the Justice Department that Lowell never got mad and never got upset. He was always in control and even tempered. But to those of us on his immediate staff (Rosemary Hart, Jay Stephens, Bill McGuiness and I) we would just smile and nod in agreement. We knew that if Lowell ever started tapping his pencil on the desk or table during the meeting, he had heard enough and it was time to change the subject or terminate the meeting. What a wonderful secret code for his staff to know, and leave everyone else out in the cold. Others would walk out of the meeting thinking that Lowell was non-committal, or open to their proposal or neutral on the subject, not knowing what he really thought and that he had already made up his mind.

There are so many things to say about his sense of humor, but one incident sticks in my mind. When he was sworn in as the Deputy Attorney General of the United States Department of Justice, I went to the Deputy Attorney General’s Office to congratulate him. All the dignitaries from the White House, law enforcement agencies and Congress were present. I shook his hand and congratulated him. He replied with a smile, “When I first came here, I didn’t know what a Deputy Attorney General was—Now I am one.” It doesn’t get any better than that.

Another of my favorite incidents is one which Rosemary Hart told me years later. She was on Lowell’s immediate staff in the Criminal Division, the Associate and Deputy Attorney General’s Office (1981-1986). In the spring of 1986, Rosemary had just walked into Lowell’s office and told Lowell she had some important news to share with him. Lowell said he had some important news, too and said he was going to become a United States District Court Judge. Rosemary said her congratulations and Lowell asked, “What is your news?” Rosemary replied, “Craig [her husband] and I are going to have a baby.” Lowell paused, smiled and said, “Your news is better than mine.” Together they then shared her wonderful news. In May 2009, Rosemary’s & Craig’s son, David, graduated from college.

I was continually amazed at how much respect was accorded Lowell by everyone, judges, lawyers, probation officers, etc. It was not the office he held, but the way he conducted himself. I have tried to emulate him as much as I could by trying to be more thoughtful, more patient, and more focused on the details, but he is a hard role model to try to emulate. I have been privileged to witness over the years the many people he has helped or assisted in one way or another, other law clerks, other lawyers (defense attorneys and prosecutors), state and federal judges, and many more. Some have followed in his footsteps and become judges. Others have followed different paths. I believe that all have made a difference in the administration of justice. When the opportunity arises and we visit with each other, we love to share our personal experiences with Lowell, delighting each other with something we didn’t know about him and his life.

In closing, my mind is filled with so many experiences and thoughts which time and space doesn’t permit me to include. However, I am certain about these observations. Lowell is right, and enhancing the lives of others is the true test of a person’s life. The highest calling for a lawyer is public service. Indeed, my own tenure in the Alameda County District Attorney’s Office and the U.S. Department of Justice were the highlight of my professional career. The friends I made in public service remain my steadfast friends because we live by the philosophy Lowell inspired in us. That is no coincidence. We all feel the same about the values of public service. And I shall always be grateful that Lowell Jensen came into my life, gently directed my career and became my friend. In 1998 my wife and I endowed a student scholarship at Boalt
Hall for public service; it is entitled “The Judge D. Lowell and Barbara Jensen Public Service Fellowships.” Each year two students are awarded scholarships for public service during the summer. And each year an alum of Boalt is awarded “The Judge D. Lowell and Barbara Jensen Public Service Award” for outstanding public service. We were privileged to do our part to enhance the lives of others.

June 3, 2009
Interview History by Lisa Rubens

Lowell Jensen has had a long and distinguished career dedicated to the administration of justice and the reform of legal institutions at the local, state and national levels.

Jensen grew up in Alameda, the small island town of Alameda, west of Oakland. His family was active in their church and in the commercial life of the community. Graduating from UC Berkeley’s Boalt Hall School of Law, Jensen was hired in 1955 by Alameda County District Attorney Frank Coakley, who valued Jensen’s roots in the community and his skill on the basketball court.

Jensen served in the Alameda County District Attorney’s Office for twenty-six years, from 1955-1981. He advanced from Deputy District Attorney to District Attorney—a post to which he was elected three times. Jensen describes the history of strong and modernizing leadership that emanated in the Alameda County DA’s Office and his own efforts to further that tradition. Jensen casually recalls the occasional visits by Earl Warren—the most famous former Alameda County DA and presiding Chief Justice of the Supreme Court—who wanted to catch up on local news and the office’s procedures.

As DA Jensen tried, or supervised the prosecution of a succession of cases that gained national attention, including the Free Speech Movement, the trials of leaders of the Black Panther Party, the trial of the “Oakland Seven” draft protesters, cases stemming from the assassination of Oakland School Superintendent Marcus Foster, the kidnapping of Patricia Hearst and the kidnapping of a busload of school children from the small Central Valley town of Chowchilla. These, among others discussed in this oral history provide a legal chronicle of the upheavals and social movements of the 1960s and 70s.

Throughout his career, Jensen has also played a significant role in the efforts of state and national professional organizations to standardize sentencing procedures and to teach best practices in the exercise of prosecutorial discretion. He earned wide respect and an established place in a network of prosecutors and reformers, people genuinely concerned with the proper administration of justice in an era when crime rates rose dramatically.

In 1981 Jensen was appointed by President Ronald Reagan to head the Criminal Division of the U.S. Department of Justice. In 1985, when his former Alameda County colleague Ed Meese became Attorney General, Jensen advanced to the position of Deputy Attorney General. Most investigating agencies of the Department of Justice, including the FBI, DEA, US Marshals Service, Bureau of Prisons, INS, as well as Litigating Division within the Justice Department and US Attorney’s Offices across the United States reported directly to him.

By 1986 there was talk of Jensen becoming director of the FBI. But when a seat became available on the U.S. District Court for the Northern California District, he and his beloved wife Barbara took the opportunity to return to their home in Alameda County. D. Lowell. Jensen still sits on that court today, recognized as a leader in the legal world and honored by his peers.

The thirteen interviews that constitute this oral history give life to an extraordinary and enduring career. It was an honor and weighty task for me to undertake Judge Jensen’s oral history. I am a
scholar of US social, political and cultural history, with no training in the law. I knew that many scholars outside the field of law, as well as a general public, had opinions formed by the popular press and a sui generis notion of Jensen’s politics. Fortunately I shared the interviewing process with Marcia Jensen, a former assistant U.S. Attorney —and the Judge’s daughter. Ms. Jensen was no soft-ball pitcher. She had a driving interest in questioning the Judge about his fundamental beliefs and the policies he promoted. She elicited reflections on the relationship between his politics and his actions as a key player in the administration of justice and the reform of criminal procedures. A delightful rapport is evident between father and daughter. But even more pervasive is the evident respect between two professionals saturated in the law.

Over a two-year period, all the interviews were conducted in the Judge’s chambers in the Oakland Federal Court Building—an edifice that Jensen had a significant hand in bringing to Oakland. The Judge read all the transcripts and made minor corrections. I thank Victoria Mizzi, the Judge’s long time judicial assistant, for her help in facilitating appointments and providing background documents.

The clarity of Jensen’s memory and his willingness to reflect on controversial issues is a notable feature of these interviews. I regret that I did not follow up on some of his answers. There remains much more to discuss about who and what he knew from his positions at the center of power. Nevertheless, this oral history provides compelling and valuable descriptions, with insights that would otherwise not be available in the historical record.

**Interview History by Marcia Jensen**

In 2005, when my father came to me and “suggested,” as he often does, that I participate in the interviews and preparation of an official oral history, I readily agreed, but with some trepidation about the process. In order to dispel that, I took a course offered by the Regional Oral History Office of the Bancroft Library at U.C. Berkeley, in order to understand just what an oral history was, and how one went about preparing one. That was followed by some research into the Free Speech Movement, the Black Panther Party, and the Symbionese Liberation Army. As usual, and no doubt by design, the name D. Lowell Jensen appeared virtually nowhere in my research, though as this oral history demonstrates, he was intimately involved with each one as a prosecutor, a somewhat unique role not often chronicled by social historians. It was therefore interesting to get a different perspective and insight into these and other significant events from Judge Jensen, and I hope that the reader of this history will have the same experience.

Finally, I would not be writing this paragraph today without the help and guidance of Lisa Rubens. Lisa taught me to think and interview like a historian, not a lawyer, and she has my enduring gratitude for making this process interesting, educational, and fun—and for providing a ready excuse to go back to Cal. Thanks are also owed to Victoria Mizzi, without whom none of us would have stayed on any schedule at all, and who tirelessly and smilingly accommodated all of our requests. And finally, thanks to the United States District Court for the Northern District of California, which saw fit to commission this history, and to retain its patience and generosity through what has been a long process. I can only hope that the result has been worth the wait.
Acknowledgments

The Regional Oral History Office thanks the United States District Court for the Northern District of California Historical Society and the United States District Court for the Northern District Court for their generous contribution to this oral history.
Rubens: Let’s begin with your birth.

Jensen: I was born in Brigham City, Utah, which is just north of Ogden, and it was June 3rd of 1928. I was born at home; my mother’s parents’ home. I was born in the home—not in a hospital.

Rubens: Were you the first—?

Jensen: I was the first, right.

Rubens: Your mother was Elnora Hatch—?

Jensen: Elnora Hatch Jensen.

Rubens: And dad was—?

Jensen: Wendell Jensen.

Rubens: Where had they met?

Jensen: They met in Brigham. They’re both descendants of early Mormon settlers in Utah. They came in different waves of immigrants, but I think they met in church gatherings and that sort of thing. They got married and I was the first child. That was in Brigham City and then shortly after that they moved to California, to Alameda, but the reason they came to California was my father had been a missionary in the Mormon Church and he had come to California on his mission, so he was familiar with it and he obviously was taken by it. His sister had already come to California. They lived in Southern California, but her husband helped my father get a job. So he came out to California working for a food distribution operation called Standard Brands.

Rubens: That was a pretty big—?
Jensen: It was a big organization.

Rubens: And why Alameda? That’s where the—

Jensen: That’s where the job was.

MLJ: I thought you were in Salinas or Watsonville first.

Jensen: No, we were in Alameda first, when they first came out here in 1929.

Rubens: So in ‘29 you’re a year old?

Jensen: It was ‘29, yes. It was within the first year, yes—so they came before I was a year old.

Rubens: The Depression came along pretty quickly. He held onto that job?

Jensen: He had that job all the way through. It was a good situation now as you look back on it. He was in pretty good circumstances. He had the job when he arrived.

Jensen: Right here; I can give you some genealogy if you’d like.

Rubens: Sure, why not?

Jensen: As I said, both my mother and father are descendants of people who came to Utah early on—members of the Mormon Church. My father, his grandfather came from Denmark. They were in an area in Jutland, in the northern part of Jutland, and converted to Mormonism and came over by ship. There were several shiploads of people from Denmark that came to Utah. They came by boat to New Orleans, then came up the Mississippi, then came across the plains. That was my great grandfather, and he settled in the area of Brigham City.

Rubens: Would that be in the 1860s?

Jensen: Eighteen fifty—middle eighteen fifties. They were farmers—had come from farmland in Jutland and they settled in farmland in Utah. We’ve seen the
country in both places and it’s remarkable how similar they are. The territory and the land are quite similar in terms of Jutland and Utah.

Mormon missionaries in Denmark had converted them to Mormonism, and they—just the husband came at first. He came with three of their children. Two of them and the wife stayed back in Denmark. Ultimately the children came from Denmark, but the wife died and never did leave. But he came to Brigham and then when he got to Brigham City, he remarried. So they had another family and then the Mormon family—you’d have to track them back because there were multiple marriages. So, my father was born in Brigham City and then my mother was born in Idaho. And her family goes back to forebears from England. A grandfather, great-grandfather became a Mormon in the New England area and then came with the church all the way out from New England. So they came across the plains with Brigham Young.

Rubens: In that original settlement?

Jensen: In the original settlement.

Rubens: Wow.

Jensen: Then they were assigned by the church to go to open up some territory. Her grandfather, I think, was assigned to go to Idaho to open up an area in the Southeastern part of Idaho. So they settled up there and my mother was born in Chesterfield, Idaho, which is now a historic town. It’s a beautiful area. Then she came back to Brigham City and that’s where they met.

Rubens: The family enterprise was farming?

Jensen: They were both farmers, yes. The Jensen family farm was in Brigham City for a long time.

Rubens: So what was your father looking for when he took this job in California?

Jensen: I really don’t know. He wanted to come to California, and I think he liked being in a job in sales; he did sales and he was quite good at it. So the job fit. He was fortunate to get it, and they came out and brought little me at six months old to Alameda.

MLJ: So there wasn’t any question of him staying in farming? He was not a farmer?
Jensen: He didn’t want to stay in farming. He always was interested in farming and that sort of thing, but I think he was more interested in other pursuits.

Rubens: Well it’s sort of like how are you going to keep them down on the farm—

Jensen: On the farm once they’ve seen—

Rubens: —after they’ve seen California?

Jensen: Well, that’s basically it.

MLJ: Was he the oldest son? Was he encouraged to be in farming?

Jensen: He was not.

MLJ: Were other people taking over?

Jensen: No; he was not the oldest in the family. There were other people taking over the farms and—of course my mother, she was in a farming family too. She wasn’t taking over any of the farms.

Rubens: But there was family out here? You said there was a sister in Southern California?

Jensen: The sister in Southern California, right, and they had already come out. And I’m not quite sure how the connection with Standard Brands existed; but her husband helped my father get the job in selling for Standard Brands. But after they came out, he stayed with Standard Brands for years.

Rubens: So we had said you went from Salinas to Watsonville?

Jensen: Watsonville and then back to Alameda.

Rubens: And you’re in Alameda by the time of high school?

Jensen: No; we came back to Alameda about the first grade. So I was only in Salinas and Watsonville through kindergarten.
Rubens: So, do you have memories of that particular—?

Jensen: Yes; I remember it a little bit but not much. I remember I went to a kindergarten in Watsonville, and the only reason I remember is that the name of the school is the Minty White School—going back and seeing the Minty White School, but that was kindergarten and then we moved back to Alameda. We were in Alameda thereafter—all the way through.

MLJ: In the same house?

Jensen: We moved several times in Alameda, I think about four times at least, into different houses. We were sort of moving up along the way.

Rubens: I was going to ask...we’re talking about 1929 through the ‘30s?

Jensen: Twenty-nine through the thirties. I think they came back to Alameda around ‘34—’35, something like that, but we had been down in the Watsonville-Salinas area, before that time. And my father was moving up in Standard Brands, from being in sales to being a Regional Manager in sales—that sort of thing.

MLJ: What was he selling?

Jensen: He was selling foodstuffs, but one of their basic products was Fleischman’s Yeast. It was a big thing at that time and he sold it to retail stores. Most of his sales were to markets and various chains and—.

MLJ: Would he sell just the Fleischman’s Yeast, or also sell the shelf space where different things would be placed?

Jensen: Well, I don’t know what they were doing on the space and everything, but they had other products. Fleischmann’s Yeast was the one that I remembered most. But as I say, he was basically doing sales—becoming a salesman, and then a manager, and then a regional manager in Standard Brands. He came back and was based in Oakland where their headquarters were located.

Rubens: Where was their headquarters?

Jensen: Headquarters were in Oakland.
And it may have been that the Corporate Headquarters was someplace else, but the area around here and the whole, I think, western states was headquartered in Oakland.

MLJ: Isn’t there a Fleischman’s factory in Oakland?

Jensen: There was a big Fleischman’s factory out on 98th I think it was, in the old days. There was an old Fleischman’s Yeast factory out there. He didn’t work there, but they made their products there. It’s not where their offices were; their offices were over in West Oakland.

Rubens: So are you aware of an increasing standard of living in your family, particularly?

Jensen: Not particularly; it was—we lived fine.

Rubens: Comfortable and—?

Jensen: We were comfortable; it wasn’t more than that.

Rubens: How many kids ultimately were there?

Jensen: Well, I was the oldest and then a brother who was born in Salinas, and then after we moved back to Alameda I had two sisters who were both born in Alameda. So, there were four children and I was the oldest.

Rubens: Was there any household help at all or—?

Jensen: No; we didn’t have anything like that. We lived in just a—private home all the time. We were in individual private homes, in nice homes.

Rubens: Yes; Alameda must have been so lovely.

Jensen: Yes; it was a lovely place to live. It was very quiet and it was a residential community—no question about it. But we lived...not high ...but we lived fine.

Rubens: What was the car your father had? Did he get a new car every year?
Jensen: Yes; he did get a new car every year.

Rubens: That was sort of the—

Jensen: It was sort of his affectation. He liked cars and so he kept on getting new cars as we moved around, yes.

MLJ: He got new cars every year throughout his life didn’t he, pretty much?

Jensen: Just about.

Rubens: Did he have a favorite brand? I mean people—.

Jensen: Buicks were the ones he got generally. I would say the Buicks developed over a period of time; that was his favorite car.

Rubens: So was there a pretty strong Mormon community? Is it growing?

Jensen: Very strong. In Alameda the structure of the Mormon Church is that at the base there’s a “Ward,” as it is called, and that’s in a city or multiple cities—it’s the local unit of the church itself. And then there is management at the regional level over that. There is what is called a “Stake.” There was an Oakland Stake which encompassed all the cities in Alameda County, I think. Then Alameda itself was a Ward, and both my father and mother were active in the church. And my father became what’s called the “Bishop.” The Mormon religion has a lay clergy; they don’t have a professional clergy. They basically select their own people as leaders and he was the Bishop in Alameda for several years. In fact, he was the Bishop when they built the church; so he was in charge of putting it all together. The church is still there. It’s in Alameda.

Rubens: Where is it?

Jensen: It’s on Grand and Encinal.

MLJ: What obligations did you have given your parents’ involvement in the church, and because your father was the Bishop?
Jensen: I didn’t have any obligations as such, but I went through all the different steps and then—.

MLJ: But what are those?

Jensen: —participated. Well, you become—There’s a “priesthood;” they structure it so that as you grow older you grow into higher and higher levels of the priesthood, so I got into the basic levels and participated in programs at the church. They have—you give speeches at church services and that sort of thing. I did that. My father was a very good speaker, and he spoke as the Bishop. He did a lot of that.

Rubens: At what age did you give speeches for the church?

Jensen: It was around 12, 13, 14.

Rubens: What would these be on—parables or—?

Jensen: On just—.

Rubens: Teachings?

Jensen: Yes, basic teachings of morality, good things, what is good—the way one should live. They’re meant to encourage everybody to live well and to live well with one another, that’s basically what they were about.

Rubens: Did this come naturally to you? Or was this a requirement of the steps?

Jensen: Well you—I think you had to sort of work at it, and I felt that I always had to work at it. I thought it was good to work at it, to make public presentations. It was helpful to do.

MLJ: How long were they?

Jensen: I think they were supposed to be something like four minutes. I think they were supposed to be really brief. They didn’t take up an awful lot of time.

MLJ: Well, four minutes at age 12 is an eternity.
Jensen: It’s quite a bit.

MLJ: Did you compose them yourself?

Jensen: Yes, I did—not a lot, but mostly through reading that was suggested to me by my father.

Rubens: So your father took an active hand in your teaching?

Jensen: Oh yes, absolutely.

Rubens: Now forgive me, I’m ignorant on this too; does the family go to services?

Jensen: Yes; the family goes to services on Sunday, and there are also weekly—they have different meetings during the week. They have organizations that my mother would belong to, and she would go all the time. My mother played the piano; she was an organist and a pianist and so she participated in that way. She was in the women’s groups that are associated with the church, and they had men’s groups, children’s groups, groups for many purposes.

Rubens: And the youth?

Jensen: Right; the basic youth things I got into, they sponsored a Boy Scout Troop, so I was in the Boy Scouts.

MLJ: What rank did you achieve in the Boy Scouts?

Jensen: I struggled and got to be an Eagle Scout.

Rubens: Well that’s—

Jensen: No—it was good. Scouting was really good because in Alameda they had a summer camp up in the Sierras, so I spent several summers in the Sierras at a Boy Scout camp. It was a good experience.

Rubens: How would you characterize your household?
Jensen: It was very peaceful and calm—very warm.

Rubens: Warm...?

Jensen: Good deal of warmth. We got along very well. The children were very close and mother was home all the time.

Rubens: You walked to school?

Jensen: Yes; I always walked to school—never lived any distance where you had to go by car.

Rubens: A safe place? I mean, was there—?

Jensen: No; they were always safe.

Rubens: Not crime and—?

Jensen: There was not even a thought about that. It wasn’t even an issue at that time. You didn’t think about it at all.

Rubens: And finally, what about your father and mother’s response to the Depression and the New Deal? Was there a discussion of—?

Jensen: No; we really didn’t have a great deal of that.

Rubens: Were they Republicans?

Jensen: They were Republicans. They weren’t active at all. They just voted.

Rubens: Do you think your mother voted?

Jensen: Yes; I’m sure she did. But it wasn’t discussed as an issue; we didn’t have an awful lot of discussion about it.

Rubens: So Roosevelt was neither a hero nor a—?
Jensen: Just a figure. It wasn’t something where there was any kind of controversy or any kind of difficulty about it. Just that that was where we were. I don’t think that we really had problems in the time of the Depression—it really didn’t hit our household particularly because, as I said, my father always had a job, and always had a job that took care of everybody. So it really wasn’t much of an issue.

Rubens: Then to represent a food company also quartered them off from the real—the vicissitudes of what the labor struggles were about.

Jensen: Right.

Rubens: Those were really about the fields and—?

Jensen: That’s correct. He didn’t get into that. He really didn’t have a job that touched that.

Rubens: There was that great general strike in San Francisco in ‘34 and it had—.

Jensen: Yes; he didn’t have anything to do with that. Well then see, ultimately what happened after we came back to Alameda and he worked for Standard Brands for a while, I’d say right around the ‘40s—beginning of the ‘40s, he decided that he wanted to work for himself.

So they opened up a family restaurant—my folks did. It was on Park Street in Alameda and it was a true family restaurant. It was—the only thing they served was lunch and dinner—no alcohol, nothing of that sort, but you could get a piece of roast beef and some potatoes and some peas and a homemade roll and a piece of homemade pie for, I think, 87 cents—something like that.

Rubens: What was it called?

Jensen: It was called the Alameda Food Shop.

MLJ: How old were you when they started that?

Jensen: I was about starting—it was in high school, about high school time.
Rubens: Had you continued with going through the steps to do what you were supposed to do as a Mormon, because wouldn’t you have a mission right about that time?

Jensen: Yes; we’d start in—around college time—they would start doing that and there was some discussion about it, but I was going to go to college so I didn’t go on a mission.

Rubens: Oh you didn’t?

Jensen: I did not.

MLJ: Was there any consternation about that?

Jensen: Never any really—I don’t think. My folks would have preferred that I did, but they didn’t really get upset about it. They just said “okay.”

Rubens: How did you come to that decision?

Jensen: I’m really not sure. I did want to stay and continue right straight through school and the mission would take you out of school.

Rubens: It usually takes you out of college.

Jensen: Yes. I decided I wanted to stay in college, so I never did.

MLJ: Did that start your break, for lack of a better term, with faithful Mormonism?

Jensen: Yes. I mean, that was probably the first step. Obviously, if I had gone on a mission it would have been a lot different. But I didn’t stay on the basic track as you grew through the steps of Mormonism.

MLJ: Did any of your siblings go on a mission?

Jensen: No—no one did.

Rubens: So your parents’ hand, I mean, the Mormon hand wasn’t so—
Jensen: Well they—.

Rubens: —strong or—?

Jensen: They didn’t really push it. I mean, it was open and it was clear that they would like you to do that, but they didn’t push it.

Rubens: So your father’s status as a Bishop wasn’t so—

Jensen: Well, no. Well, he was a lot older by then. I think he was Bishop for maybe eight to ten years, and then he did not do it anymore. Right about the time when he started in trying to run the restaurant—that’s a tough business.

Rubens: I can imagine, yes.

Jensen: He was in the food business. He wanted to do it and so he opened up the restaurant.

Rubens: Was this partly your response to the war? Had the war broken out then?

Jensen: Yes, about then.

Rubens: Because the population must have started to swell?

Jensen: Yes, because let’s see; it was ‘41.

Rubens: Yes; December 7th, yes. But I think the ship industry—I think there’s a lot of growth. The Lend-Lease Act started—.

Jensen: Oh yes, definitely.

Rubens: Were you aware of—

Jensen: I was aware of what was happening, but not in that sense.

MLJ: Who did the cooking at the restaurant?
Jensen: There was a cook—a professional, hired cook, and my mother. My mother sort of controlled what was going on. My mother was a good cook.

MLJ: I’m smiling because I don’t remember his mother being a particularly good cook, but perhaps tastes in 1941 were different from—.

Jensen: No, and you’re talking about a different type of cooking. She was very, very fundamental. Everything was good and hot—but it wasn’t exotic. I mean, there were no adventures in the cooking. It was just solid, basic cooking.

Rubens: Is this where families would go after church if it was a Sunday afternoon?

Jensen: Yes, they would go—right. And people would eat there who were businessmen in Alameda.

Rubens: So it was open during the week? It was lunch and dinner?

Jensen: Yes; it was open during the week, right, and all the kids worked in the restaurant. I washed dishes for a long time and I did some cashiering and helped my father do baking because we did baking. We made rolls and pies for the—.

Rubens: I assume with Fleischman’s Yeast?

Jensen: Yes, absolutely. There’s no question that was—.

MLJ: Was there a soda fountain?

Jensen: No, soda fountain; it was just a plain, basic restaurant where you came in and you had your dinner. As I said, it was just solid—it was not expensive. It was good food.

Rubens: You didn’t have to worry about a liquor license and—

Jensen: No, nothing—no.

Rubens: —just straight commercial?
Jensen: It was straightforward, but it was hard work because the business is not easy. And then there was also—ultimately what happened, my father got tired of dealing with the personnel issues—hiring people and not getting good people or having difficulties with getting good people. And we did have very good people work there, but there’s always a problem in terms of the people—the waitresses and everybody else; and he finally got out of the restaurant and went into the business of coin-operated machines. So he moved from the sales of the food, to the cooking of the food, to the distribution of the food through coin operations. So he had a business where he serviced coin-operated machines.

What you do is you stock them and you take the money. You work for various people and actually, his main client came about because across the street from the restaurant was one of the first Longs Drugs stores. My father became friends with the Longs, who started it all. Then when he started with coin-operated machines, he put them in Longs stores. So he ran the coin-operated machines for Longs, and ended by doing that.

MLJ: What years—was it in junior high, high school, or college that the restaurant was in operation?

Jensen: —the high school and college years.

MLJ: When did the restaurant decide to sponsor the basketball team?

Jensen: Now that was in college years, yes. We had an Alameda Food Shop basketball team.

MLJ: What role did that have in your athletic development?

Jensen: Not much; we weren’t very good.

MLJ: Did you play sports in high school?

Jensen: I played basketball in high school. But my interest—I don’t know exactly when it came about—but at some point it occurred to me that I was going to be a lawyer. I don’t know why that happened. There were no role models—my father—nobody in the family; there were no lawyers. And for some reason I decided that I would do it, so when I started college I took pre-law, and that had come about somewhere around high school time.
Rubens: Well let’s just talk very briefly about high school. Were you a good student?

Jensen: Yes.

Rubens: You liked school?

Jensen: I liked school, yes, and I did well in school.

Rubens: Any teachers particularly that had an influence on you or impact?

Jensen: We had a homeroom teacher. They broke you up into homerooms at that time. We had a homeroom teacher, and she was fantastic. She ran everything. She was just a wonderful teacher. I had her one time—twice, I think. She taught mathematics, and I think I had her for Algebra and something else.

Jensen: But as a homeroom teacher, she ran the whole show. She was terrific.

Rubens: So she was organized?

Jensen: Organized, everything else, yes. She was wonderful.

Rubens: What was her name?

Jensen: Her name was Dorothy LeHew, and she was a terrific teacher.

Rubens: You mention the group of boys. Was the school co-ed?

Jensen: The school was a co-ed public school, but they broke up their homerooms by gender, so you had—

Rubens: Did they really?

Jensen: Yes, they did. So we had a homeroom of a group of boys, and then there would be a group of girls.

Rubens: Did you have a particularly good cohort of friends?
Jensen: Yes. I had good friends. I had them through scouting and through the schools, and I played basketball.

Rubens: Were you involved with student leadership at school? It sounds like you were—

Jensen: I didn't run for office, that sort of thing.

Rubens: It sounds like you had the role in the church. That's where you were being groomed as a—

Jensen: Yes. But I didn't run for office in the school. There wasn't much attention paid to that. It was a completely ceremonial thing and there was no big deal about who's the president of the class and stuff like that. Maybe those who did it thought it was a big deal, but the rest of us didn't.

Rubens: I'm just trying to get at the cultural atmosphere. This is during the war. You're in high school?

Jensen: Yes.

Rubens: Because you start college in '45, I think. And I don't know if the war is over yet?

Jensen: Yes. I started college in the fall of '45. That's the end of the war, and I started into high school in '41. So those are war years.

Rubens: Are you conscious of the war?

Jensen: Oh, yes; absolutely.

Rubens: Are you tracking troop movements?

Jensen: Well, we paid attention to what was going on, but only through the ordinary news sources. And back then you didn't have much by way of news sources.

Rubens: You had the radio?
Jensen: You had the papers and the radio. Yes, right. So you were aware, but I don't know that there's a lot of potential. We didn't discuss it a lot.

Rubens: Were there military recruiters on the campus or ROTC or anything like that?

Jensen: No, no. I was in ROTC in high school but I didn't do it in college.

Rubens: What did it mean to be in it in high school?

Jensen: You just walked around with little fake guns, I think.

Rubens: But Alameda must have really been growing.

Jensen: Oh, yes; it was.

Rubens: That naval base. Were you conscious of a—

Jensen: A lot of action in Alameda, because the naval base was a very big development for Alameda. Alameda was a very small city. I would say it was maybe 30,000, something like that. And it's leveled off, I guess, to about eighty—something like that, now.

Rubens: That's a spike.

Jensen: But the naval base was a very big part of that. It developed another high school. There was only one high school in Alameda when I started and then with the naval base and all the development around that, they opened up another school down at the other end of Alameda.

Rubens: Were you seeing a changing social composition in Alameda—it remained white?

Jensen: It was basically white. There were a couple of African American kids in our class and we had quite a bit of Asian kids, Japanese. There were a lot of Japanese children in the high school. When I was in grammar school, we played baseball and we would play against another team; they were all Japanese, from another school.
Rubens: You think these were farming families?

Jensen: No, they did all kinds of different things. And when the Japanese were taken out, it was really a traumatic kind of thing.

MLJ: Were there people taken out from your high school?

Jensen: Yes. There were people taken out of Alameda.

Rubens: How did you become aware of it?

Jensen: Just because there weren't any there. They weren't there anymore. I knew them. I had good friends who were Japanese and they were moved out. I don't know that I understood everything about what was going on, but it was obvious that they had been moved out to the internment camps.

Rubens: Did you follow it on the news or talk to your parents about it?

Jensen: They didn't really have much news about it. No.

Rubens: Did you talk to your friends about it? Did they know what was going on?

Jensen: Only that our friends were gone.

Rubens: But they didn't say, "This is happening to us."

Jensen: This is a horrible thing. We obviously did not agree with it in a philosophic sense. But just fundamentally, it didn't seem fair to take these people who were really good people; and they were no longer there. We never had the sense that there was any notion that they were going to be any threat because they were Japanese. That was not a part of our thinking.

Rubens: Did you see them again after they disappeared?

Jensen: Did not. I did not see any of the people that I had known in the grammar school, high school years.
Rubens: Have they showed up, the high school people, at any high school reunions so you could figure out what happened to them?

Jensen: No, I don't know.

Rubens: You know, on the Berkeley campus, Stiles Hall, the Ys, and some of the Christian Fellowship, did take a position of trying to thwart that and protect their property. I didn't know if the Mormon Church had a position or there was just—

Jensen: I don’t know. They did not make it as part of any kind of conscious effort.

MLJ: Now in public school, if there was any student that is suddenly gone there would be counseling, there would be announcements about what happened to so-and-so.

Jensen: We didn't have anything like that at all.

MLJ: Was there any acknowledgement by the school at all that these people were gone?

Jensen: No, no. It just didn't happen. It was gone; they were gone. And it was sort of the notion that the school didn't have anything to do with this. It wasn't part of the school. You would go to school to learn ABC, and you weren't going to school for any other purpose. The schools didn't have any kind of reaction to it.

Rubens: Now, a couple of other things are going on. Were you aware of the founding meeting of the United Nations?

Jensen: Yes, yes.

Rubens: Sometimes high schools had delegations that—

Jensen: We did. I think I went to some of those in terms of Boy Scout troops. We went over to San Francisco for some—and we participated in some of the ceremonial stuff. Yes, so I knew that was happening. Yes, definitely.
Rubens: And then, of course, the bomb. Were you aware of the dropping of the bomb?

Jensen: Yes, absolutely aware of that. It's just an event. And I don't know that it was something that we examined or—

Rubens: Particularly talked about or worried about?

Jensen: Its ramifications, or what this meant, whether it was proper to do that, whether it was not—it was just one thing. It was just the way that the war ended.

Rubens: Just before you go to college, could you characterize at all what the general, the ambient culture was like? You say that somehow you knew by the time you were going to college that you were going to be a lawyer. But, did you see film noir; did you read crime detective novels? Did you take an interest in popular culture?

Jensen: Sure. I can't go back and say there is the trigger. I just can't do that. So I don’t know.

Rubens: But I wondered if these things played a part in your life at all.

Jensen: I'm not sure that they did.

MLJ: I get the sense when you're talking about what was going on in your family that your family was aware of what was going on, but apolitical.

Jensen: That's correct. Yes, they were not political.

MLJ: So there were no political discussions that occurred?

Jensen: No, they were far more involved in the activities in the church. The social activities in the Mormon Church absorb all of the people. And they're designed to do that, so that you participate not only individually, but as a family, as a group. They make sure that everybody is into that kind of relationship; so it's a social relationship. It's all absorbing. It's not as much as it is in things like the Utah towns where most of the people are Mormon. So here it's not the same, because they're not.
Rubens: Did you get any direction, then, from your family through church values like public service, or community service, or reaching out in that way?

Jensen: By osmosis, I think. Not by any kind of specific directions or actions that were directed at that. But as I said, my father played a leadership role in the church. It was an important part of their lives and he worked many hours in doing things for the church that he didn't have to. I mean, he put a lot of time in working for other people. You had to absorb that as being the way people do things. He did it by taking on responsibilities. And he did a very good job.

Rubens: It sounds like you're also saying that the atmosphere of the house was pleasant, warm.

Jensen: It was very pleasant, yes.

Rubens: So that would encourage that kind of social, if not political consciousness?

Jensen: There was really no tension.

MLJ: There was no career direction that came from—

Jensen: No.

Rubens: But college was assumed? You said that.

Jensen: Yes. I was going to go to college.

Rubens: Were you going to go anywhere but Berkeley? Would you have considered Stanford?

Jensen: It was the only thing I could do, because we didn't have any money. Fortunately, the University of California was not expensive at that time. I think it was something like twenty-seven dollars a semester or something. So I lived at home.

MLJ: Was there any consideration of anyplace else?
Jensen: I never thought of going anyplace else. It was there and it was a great university, so why not go there?

Rubens: I would assume some of your church buddies maybe had gone already?

Jensen: Yes, they had. They'd gone to BYU. Brigham Young is the big Mormon School. My younger sister went to BYU. None of the other kids did. And there was no real pressure to do that. I think it would have been—

Rubens: Was there more money by then?

Jensen: There was more money available. But at the time I was going to go to college, my folks could not have afforded; I couldn't have afforded to go to a place where you lived away from home.

MLJ: Did you do well enough in school to consider any scholarships that might have been available?

Jensen: No. Nobody talked about any of that stuff. You did it on your own. The schools did not tell you about what was available. So when I graduated from high school, nobody told me that there was a thing like a scholarship. I mean, it was just a question of where you were going to go to school. Some of the kids went to Stanford, but those were generally wealthy kids. And some kids went to San Jose State.

Rubens: And Stanford wasn't such a high ranking school then?

Jensen: No. It was not that high. It was a very good school. Everybody understood that. San Jose State was the other school that people went to, and that was sort of the lower levels. But if you were a good student, and you wanted to go to school, you went to Berkeley. And when Berkeley is that close and it's inexpensive, why not go there? So I never really thought of going anyplace else.

Rubens: How did you get to Berkeley from Alameda?

Jensen: Drove; had a car.

Rubens: Really?
Jensen: Yes. My folks got me a little Ford and I drove to Berkeley. They had little station wagons, so I had a station wagon. It turned out to be an important car, because around the corner was a young lady. We rode to school together, and that's my wife, Barbara. So we started out by going to school. We were in high school together. I knew her in high school, then she went to Cal, so I gave her a ride.

Rubens: Was she also in the church?

Jensen: No. She didn't have a church.

Rubens: Were you a general education major? Humanities major?

Jensen: Yes, yes. In college, they would talk to you. They don't reach out, but they would sort of advise you. If you were pre-law, you could go talk to someone. So I knew that I could do that; yes. But pre-law, they told you that it's a good idea to get a degree in political science or in economics. So that was pre-law, to go through one of those programs. I don't know who thought that up. Doesn't make much sense to me now that I look back on it.

Rubens: You said that in the interview with your grandson, that in certain ways, maybe you should have majored in English. Facilitate your writing.

Jensen: Right; you should. Because economics didn't do me any good. Now, you could go into economics and there were big schools of thought in the law with reference to economic theory. But if you're going to go into economics and you're going to get into it at any deeper level, you have to be a mathematician and you have to take a lot of mathematics, which I had not done. And they didn't think about that at all. So I could take the beginning economics, but unless you know something about mathematics, you really can't go forward much in economics, so I never really did. So I don't think that was helpful.

MLJ: Did you end up graduating in economics?

Jensen: Yes. I got a degree in economics.

MLJ: So when you couldn't take the more complicated math classes, what did you end up doing?
Jensen: Just finished up in general economics. I don't know what they thought it was, but I didn't care because I knew I wasn't going to do that.

Rubens: Did you have a sense of what kind of law you wanted to do?

Jensen: No, not at all. Just knew I was going to be a lawyer.

MLJ: I thought at some point you wanted to do tax law.

Jensen: Oh, I did. After I got into law school, then I started looking at different things.

Rubens: All right, but throughout college, there was this generalized sense of, "I know what I'll do when I get out."

Jensen: Yes. That's right.

Rubens: Were you thinking about security, or money, or culture?

Jensen: Not particularly. Just that you're now going to have something to do with your life and the law was to me, for whatever reasons, I saw it was an attractive kind of work.

Rubens: Not the politics of it or the administrative—

Jensen: No. Being a lawyer. As you said, I really didn't have any specific area of law that I was pointing towards. I didn't get ready to get into a specific area of law, but then after I got out of law school, I started looking.

Rubens: What was it to be at Cal at that time? Firstly, you had this lovely young lady you're driving to school every day . . .

Jensen: Right, right. Yes, that was a very big date.

MLJ: When did you start dating?
Jensen: We started dating when I was, I think, about a sophomore in college. As I said, I was just taking courses for general education and for getting ready to go to law school.

Rubens: Must have been a pretty robust time there, because the GIs were coming back. Were you aware of that?

Jensen: Oh, yes; absolutely.

Rubens: Did they seem different than the other kids?

Jensen: Well, they're older and they're more mature. One of the things I noticed was I could not even think about playing basketball then because all the people coming back from the war were so much bigger. I was a kid and they were grown-ups, so I didn't play. But those sort of things. Then in law school, we had several people who were back from the war, we had the young kids like me, and then the people who had been around for a while.

MLJ: Were you considering trying to play basketball at Cal? Is that what you're saying?

Jensen: Yes, yes. But I never could. I was never going to be big enough.

MLJ: Is that why you had the Alameda Food Shop basketball team?

Jensen: Well, basically, I wanted to do it, and I had some friends who liked to play basketball, so we got this little team to play in the city league. So that was the Alameda Food Shop.

Rubens: In the city league?

Jensen: Yes. There was a city league, in which we were sponsored by the Alameda Food Shop, which meant they bought a uniform. We had this uniform that you played in.

Rubens: What other kinds of city teams would there be? Just young working men?

Jensen: Yes, there were different groups.
Rubens: Sponsored by clubs, such as the Lions, or sponsored by business?

Jensen: Yes, both. And just kids who wanted to play.

MLJ: Just jumping forward a bit with your career. Did your career in athletics eventually have anything to do with your career in law?

Jensen: No, I don't think so. Ultimately, no.

MLJ: It didn't assist in your hiring by J. Frank Coakley?

Jensen: Oh, yes. It may have. That's right. Actually, when I got out of the Army and was looking around and got into the business about what kind of job, where are you going to go? I interviewed with J. Frank Coakley, who was the DA in Alameda County, and he wanted people who had roots in Alameda County. I did; and I'd gone out to Berkeley and gone to a school that was honored in Alameda County. And also, I could play basketball; and he and the head of the probation department had organized basketball teams. They played together. So he wanted people who could play basketball. So that helped me get a job.

Rubens: That's great.

Jensen: That's true.

Rubens: But some other important connections are going to be established in law school. I want to ask you though, any teachers in college that were particularly outstanding; that are memorable?

Jensen: I had a good economics teacher who I just thought was a very bright man and really clear and direct. His name was [David] Leitch, I think. He was a teacher at Cal. He impressed me.

Rubens: Kept you going in that—

Jensen: Yes. That it was an interesting thing to do for a while.

Rubens: So basketball is the thing. I was wondering if you were watching baseball at all.
Jensen: No.

Rubens: Because there are a couple of things: Jackie Robinson. . . .

MLJ: Well, you are a sports fan. . .

Jensen: Oh, yes. I'm a sports fan, for sure, but I'm a fan of any sport. I've always been and still am. But in terms of participation, the only sport I ever participated in was basketball.

MLJ: So would you follow all kinds of professional sports and know what was happening with Jackie Robinson, or with track and field, for example?

Jensen: Oh, yes, absolutely. I followed that.

Rubens: Did you have a team?

Jensen: Yes. I was chauvinistic, in a sense. I'd gone to Berkeley. So I started with Berkeley, and that means that we're against Stanford, right? And USC is terrible. But as soon as you go out of the state, then if SC plays Notre Dame, I'm for SC. That sort of thing. So as you come back to the home base, then I would favor those teams. But I didn't have any big—

Rubens: Baseball team that was—

Jensen: I went to baseball games in Oakland in the old days when Oakland had a minor league team. They had a minor league team called the Oakland Oaks. They were down in Emeryville. I went to games there several times. They played the San Francisco Seals. And Jackie Jensen, who was a big star from football at Cal, he played for the Oakland Oaks. I remember seeing him play for the Oaks before he went into the major leagues.

MLJ: You're also a huge track and field fan. So were you following the Olympics?

Jensen: Yes. I followed track and field all the way through. Yes, I followed the Olympics. All the people who were considered track. One I really remember was when Roger Bannister ran a four minute mile. I remember that because I was in the Army in Japan. We read about it and it was a big thing, a very big thing.
MLJ: But you just followed sports as a general interest, not necessarily for its political or social ramifications?

Jensen: I just followed sports as a general fan. As a fan. It was enjoyable and I enjoyed following it.

Rubens: I have a personal interest in the 1939 World’s Fair and I wondered if you went there.

Jensen: We did go.

Rubens: If you had a memory of it?

Jensen: Yes, I do. I remember that. We went to the World's Fair several times as a family. We always went as a family. I remember seeing the shows, the water shows, and the aquatic shows that they had. And they had roller coasters and whatever. I forget what they had. But they had an area that had all kinds of games.

Rubens: Yes, it was called the Gateway, actually. The amusement zone.

Jensen: Yes, yes. I did go there. We went to the historic things of California and the shows they put on. And I think we went on the ferry from Alameda. There was a ferry to get over there. I'm pretty sure we went on a ferry to get there. We went several times. It was very exciting.

Rubens: By the way, would the family go to San Francisco? Was there high culture that—

Jensen: We went. But we had a restaurant so we didn't go in every day. And my folks were not involved in the cultural life of the city. They didn't go to the symphony, the theater, that sort of thing. We went to the movies. But their social life was directed at the church.

MLJ: Yet your younger brother ended up being a professional pianist and very involved in culture.

Jensen: Because my mother is a very fine musician.
Rubens: You said she played the organ for the church.

Jensen: She played the organ, she played the piano, and she had a piano. It was one of the really nice things we had. A nice piano. Very good baby grand.

Rubens: Were you given lessons when you—

Jensen: I was given lessons, and I was terrible. I would not do the lessons. My sense of discipline was not very good and my mother was disappointed in my approach. And then my brother was fabulous. He just took to it and he's a great pianist. Really very good.

Rubens: What's his name? We should just—

Jensen: His name is Rollin. R-O-L-L-I-N. And he became a pianist from early on. Even in high school he was a very, very skilled pianist. I remember he played Gershwin’s *Rhapsody in Blue*. They put on this play in high school and he did the piano and he played the whole thing. He was really good.

Rubens: I wonder if he came to see some of the big band players and piano players that came to the World's Fair.

Jensen: Yes, yes. He did.

Rubens: There was a big circuit here in Oakland, too, of players. I know that Gershwin came out here.

Jensen: We would go. Barbara and I would go to see the people in San Francisco play. But I was never a good musician. Now, I did learn how to play clarinet.

Rubin: When did that happen?

Jensen: I played the clarinet in the high school band. But then again, I was not very disciplined so I did not become very good. I could play enough to be in the band, but that was about it.

Rubens: What are the names of your two sisters?
Jensen: My older sister is Marlene and the youngest is Sharon.

Rubens: Did either of them go into professions?

Jensen: My oldest sister is a teacher who taught in Berkeley. She taught in the elementary schools in Berkeley for a long time, for a whole career. She's now retired. My younger sister—and these are how these circles happen—she met a kid who worked for Longs and they got married and he grew up in Longs. And his is actually one of these stories where he started just mopping the floors until he ended up being their Chief Financial Officer and being in charge of all of their acquisition of real estate all around the whole area. He did a very good job. He's just retired, too. But my younger sister, she didn't work at all.

Rubens: So high school, you graduate in—

Jensen: '41 I start high school. '45 I get out of high school. College '45 to '49. And then I start law school in '49.

MLJ: Did you receive any honors when you graduated from high school?

Jensen: I wasn't the valedictorian. I think there were about 200 people or so in my class, something like that. I think I was fifth in the class. That's pretty good. I was in the CSF [California Scholarship Federation] as a life member.

MLJ: Did you meet any fellow college students who ended up being influential in your life or your law career?

Jensen: Barbara. She was basically the most influential person in my life.

Rubens: Did you belong to a fraternity?

Jensen: I did not.

Rubens: Did you live at home all four years?

Jensen: Yes, yes.
Rubens: And Barbara, too?

Jensen: Yes, yes. I think she at one time was thinking something about getting into a sorority, but she decided not to.

MLJ: Had you met Stan Golde in college, or not until law school?

Jensen: In law school. That's where we met.

Rubens: So there's just no question but that you're going to go to law school.

Jensen: Right, right. If I get there—and I didn't really do so well in college, but I did—

Rubens: What'd you do in the summers?

Jensen: I worked. The restaurant was folding down so that there wasn't much for me to do. During the summers, I worked as a playground director for the city for a couple of years.

Rubens: For Alameda?

Jensen: Yes, the city of Alameda. Then in college, I worked on the Chevrolet assembly lines. We made Chevrolets. I was in a Chevrolet assembly plant in Oakland down on 73rd. I worked there during the summer and then I worked for the Chevrolet truck plant out in San Diego for a summer.

Rubens: That must have been pretty good wages.

Jensen: They paid good money.

Rubens: Yes, those were union jobs.

Jensen: Yes. They were good jobs; so I got them.

MLJ: Did you have to be a union member to work during the summer?
Jensen: Yes. I was a member of the UAW. That was a good job and it paid well. So that was supporting my existence in college.

MLJ: What kind of cars were you making?

Jensen: Making Chevrolets. The nineteen—

MLJ: Not any particular kind?

Jensen: Well, just sedans. Regular motor cars. I mean, in those days, they just had coupes and sedans and that's it. They didn't have all the exotic stuff. You just had—

MLJ: Which part of the car were you putting in?

Jensen: There was a line that's going along in the bottom of there, the body line. The chassis starts out and they start putting stuff on it. And then you come along to a point where you have the front fenders on the car and the engine’s on the car and all the wheels and all that stuff. And then there was another line up here where they were making the bodies of the cars. And then they would come over and drop the body down onto the line with the chassis and the fenders and I had to hook the fenders onto the body when they came down. That was my job.

MLJ: You wouldn't describe yourself as particularly handy, would you?

Jensen: I'm not, I'm not. But I did learn how to do that. I had to learn one thing. You had to put some bolts behind the fender that would be between the fender and the body of the car. You put a big nut through and then you'd screw these all together. But you had to hold the bolts behind with a couple of fingers to do that, so you had to learn how to do that. They just showed you and then you had to learn how to do it. Well, I didn't learn how to do it real well for a couple of days, but I'd make cars. There were a couple of cars that went through without any bolts. That happened in these lines. I was not the only guy doing this, but the biggest job in the whole assembly line were these guys who were incredible experts at the end of the line who would fix everything that was not well done by the time it got to them. So I got to be pretty good at it.
MLJ: So you didn't have to be a skilled mechanic or craftsman to put these cars together?

Jensen: No, you didn't have to have that. You just had to be willing to work and to have some sort of ability to figure out what the tools were supposed to do.

MLJ: It wasn't hard to get into a union at that point?

Jensen: No. At that time, it was not. You had to. It was just automatic. If you got the job, you joined a union and that was it.

Some of the people in the plant were at a higher level in terms of skill. I was on the assembly line. But there were people in the body line that worked up above who were really skilled mechanics, who were very high level, and they got paid very well. They were in different kinds of relationships with both the company and the union than I was. But I just got hired and automatically went into the union.

Rubens: So they took on a certain number of college kids in the summer?

Jensen: Yes, yes. They did.

Rubens: The workforce, too, must have been—was it a white workforce?

Jensen: Oh, yes; right. I don't remember any African Americans working there.

Rubens: I meant to ask you also if you were aware of the '46 general strike in Oakland.

Jensen: I knew that it happened, but I didn't know any—

Rubens: Did it impinge on you?

Jensen: It didn't affect me.

Rubens: Yes, you were driving to school, so didn’t need public transportation.
Jensen: Yes. It didn't affect any of the activities we had. But it was an affair that everybody was aware of. I guess there were some discussions of it at school, but I don't know.

Rubens: Yes. Good economic study.


Rubens: Yes. It's sort of a town/gown experience. I mean, you're at Cal. You're not involved with the community particularly. Was that your break from the Mormon Church, then?

Jensen: Yes. See, I did not really go to church at all after that. I was going to school. Barbara was there, and she was not a Mormon.

Rubens: When did you marry?

Jensen: In the second year of law school. So '51. We got married just before the end of the second year. Here is a Stan Golde story—they also got married in the same timeframe.

Rubens: He entered law school with you?

Jensen: Yes, right. And then they got married, he and Pat. When we got to the end of school, and they were discussing where you might be going to work or things like that. I talked with one of these people in the law school and he said, "Well, your grades improved in the third year. You got married. Well, that's very helpful." And Stan goes in and the same guy says, "Your grades were down a little bit in the third year. You got married. Well, that's what happens." So the advice that they gave you in the law school was not very good.

Rubens: What governed that you would get married at the end of the second year as opposed to just as the relationship progressed?

Jensen: Nothing, nothing. We got to a point where it seemed like a good idea.

MLJ: Did you know you were going to be off to war in Korea?
Jensen: Yes. I knew that I would have to go into the Army, because I had a deferment in law school, otherwise I would have been drafted.

Rubens: So the war breaks out in '50, your second year?

Jensen: Yes. And I would have been drafted but for the fact that I was in law school and they deferred me to finish law school. Then I'd have to go in. That was understood.

Rubens: That was true of all your law school mates, then, right? You didn't see people—

Jensen: We were all in the same position. There were some who were exactly in the same position, more or less—that you're drafted immediately after law school. They had been deferred also.

Rubens: There are a couple of areas I want to open up. What was your law school class like? How would you describe it?

Jensen: Pretty close.

Rubens: How big was it?

Jensen: This was the old days, and this was one of the things where we had maybe 150 people, I think, to start. We were in the old Boalt Hall, down near—it's in the middle of the campus. It's still there. It's near something called California Hall.

MLJ: They built what's now probably an older part of the law school while you were in law school, correct?

Jensen: Well, they built the new law school. The old law school, they didn't do any building at all on that. I mean, that was it. That's where I was in the first and second years there, then the new law school opened in '52 so we moved up there. But this is the old days where they said, "Sit down. Look to the left, look to the right. Only one of you is going to be here when you graduate." And that was basically true. At least half the class left after the first year. Didn't make it.
Rubens: As with choosing a college, did you think about going to some other law school besides Boalt, or were you just going to go—

Jensen: No, no. I only applied to go to Boalt. It was the same sort of thing. I really couldn't afford that, the law school.

Rubens: Did you get a fellowship to Boalt? Were there any of those?

Jensen: No. I didn't get any kind of assistance. But that one was about thirty-five bucks a year. So I went to Boalt. And that's pretty good.

MLJ: Did Boalt have any kind of reputation at that point?

Jensen: Boalt had a great reputation. It was deemed one of the better schools in the country, and particularly as to public schools. It had a good reputation. And in terms of the State of California, it was always a premier law school for the State. I think there were only a few schools. We had Stanford, Santa Clara, and USF, I think, back in those days. And Saint Mary's, I think, had a law school. But Boalt was the best. So even in those days, if you graduated from Berkeley, that was an advantage of some sort. So I think it was a good idea that I went to Berkeley. But that's the only law school I applied to.

We ended up with seventy. Sixty-seven, seventy, I think, was the total number of students in the class.

MLJ: Did you have any women in your class?

Jensen: We had three or four women. Yes.

Rubens: And that first year is the Loyalty Oath crisis at Berkeley. Were you aware of that?

Jensen: I didn't get involved in it and it didn't affect any of the activities at the school that I was aware of.

Rubens: Any discussions with the professors?
Jensen: Well, there were some professors who got involved with it, but I don't know that it had any effect upon the regular sort of classroom activities at the law school.

Rubens: When the Judge D. Lowell and Barbara Jensen Award was created, you said how honored you were because, in fact, Boalt made you who you are.

Jensen: Well, it started my career. As I said, I wanted to be a lawyer and I had focused on getting through law school and Boalt was, as far as I was concerned, the only school that I really wanted to go to and that I could go to. It got me started. I was trained. I had a good legal education from Boalt. I had good faculty, good people. I learned how to work hard. I mean, I hadn't been a very good student, really, before law school. You didn't have to work very hard. But in law school you have to work very hard. So I learned to do that and I learned to think like a lawyer, which I think was extremely helpful. The fact that you graduated from Boalt is a good thing. I think it helped me get a job in the DA's Office. It was, I think, a fine school then and it's a premiere school now. So I think it's a good thing to go there.

Rubens: How do you learn to work hard? You just know you're—

Jensen: You just do it. You just have to work harder than you did before—to stay up.

Rubens: More to read.

Jensen: Read more. More intensely. Think about it. Do some real analytical thinking. Before, it's just sort of rote memory. I had a good memory and I could remember things, basically. So if you went through the classes in undergraduate, you'd just memorize it and you'd regurgitate it, and that's it. But in law school, you have to do some thinking about what it is you're doing. Just memorizing isn't going to get you there. You have to understand what it is and you have to work in terms of how it fits into the greater scheme of things. I think I learned how to be a good student and a good analyst of what I was thinking about at Boalt.

MLJ: Did you study with other people?

Jensen: Yes, I did. I was in study groups. We started in study groups. That's where I met Stan, for example. We had about four or five people who had not known one another before. Some of them had. But they got together. And I don't know exactly how the agglutination process took place. But I got into some
study groups and that was very helpful as far as I was concerned. Because it helped you, but it was in one of these sorts of things where your participation was such that you had to make sure that you were doing it, because you were helping other people. And if you were doing it they depended and relied upon you. I think that's a very helpful thing. So the study groups were good.

Rubens: Was it also kind of intellectually exciting?

Jensen: Sure, sure. I was learning and it was sort of—as I said, it was the first time I had really been a good student or learned how to be a student. It helped in that sense.

Rubens: Did it introduce you into the world, in a certain sense, in terms of what the structures of corporations and—

Jensen: Well, I suppose you paid more attention to it, sure; because you were learning basic definitive law in all these areas.

Rubens: And the case law. . .

Jensen: We had a case law approach, the Socratic approach. We had just fundamental sort of things. We didn't have very many courses that were optional. Almost all your courses were mandatory, and they were all the basic kind of courses that you had to know to pass the Bar. That's the way they focus on it. In the third year, you could take some optional courses. I'm not even sure that I did.

MLJ: To follow up on Lisa's question a little bit. She's asking whether this, in a sense, made you more aware of the world. You described a home setting that was pretty apolitical.

Jensen: Yes. Yes. But it was more political in law school because people had more positions they took about the world that had not been a part of my previous studies. These people had opinions and were paying attention to the political dimensions of everything. That's sort of the first time I was introduced to that.

MLJ: Was that in your study group or just generally?

Jensen: Well, in law school itself and in general. Just being in the law school—that's the kind of thing that lawyers are involved with. I didn't get active in any particular groups but there was a great deal of discussion and thought. Not
necessarily controversy, but you would get all the different positions exposed in terms of anything that was going on, and it was very illuminating.

MLJ: Were law students at that time like law students now, where they come into school idealistic, with the idea that they’re going to change the world or fight for their particular cause?

Jensen: Oh, yes. They’re quite idealistic, I don't think there's any question about that. They were.

Rubens: You said earlier that at some point you were thinking about tax law. Did it start—

Jensen: Yes. Because after I took Tax, it had a lot of detail to it and it was kind of interesting. I write very small and I think I got the whole Internal Revenue Code on one piece of paper back in those days. Also, a good friend of Barbara's mother was a CPA in San Francisco. We met them and he wanted me to go to work for him. And I thought about it.

Rubens: What was Barbara doing, by the way, while you were in law school?

Jensen: Supporting me. This was the old days. That happened. She worked for California Packing Corporation. She had gotten a degree at Cal in psychology and she was thinking about going into psychology. She couldn't get a job anywhere, so she became a typist and a stenographer. We needed some money, so she worked in San Francisco at Cal-Pack.

MLJ: What kind of psychology jobs was she looking for that she couldn't get?

Jensen: She went out and applied to be an assistant to a doctor who worked at the County facility, County Corrections Facility.

Rubens: Prison?

Jensen: Yes. There was a job for an aide to a guy who was a doctor out there, but he was also involved in mental kinds of things and social problems. But she couldn't get a job there. She was graduating in the day when you got your great education and you were a woman; you came out, you were a stenographer.
MLJ: Was that it? The problem was that there was a difficulty in that she was a woman?

Jensen: Oh, yes. I think so; definitely. It was that the jobs that might be open to her were not open.

Rubens: Industrial psychology started to grow, but—

Jensen: Yes, there wasn't much there. I don't know, but I don't think it was a very good choice in terms of going into psychology. Her father was an engineer and a good engineer. He worked for Bechtel and for several of the big companies. I think she should have gone into architecture or something. She had a great sense of design and space, and she could have done that very well. If she'd done that, she might have gotten a job. But getting into social areas, I think, didn't work.

MLJ: I'm trying to think of what jobs were open to women besides stenographer. Teaching, if you had a psychology degree?

Jensen: I think she could have gone into some interior design and architectural firm as an aide, that sort of stuff. She'd have been very good at that. But she didn't. For some reason, she liked psychology so she got into that. But that field was really not open. But then she also needed a job. We needed a job.

MLJ: At some point she worked for the law school. When did she do that?

Jensen: That was after I got in the Army. After I got out of law school, a week later I was in the United States Army.

Rubens: You graduate in '52. A week later?

Jensen: After I took the Bar. I took the Bar and I went into the Army. Right; so then she is looking around—

Rubens: You've now been married one year, basically, right?

Jensen: Yes, right. And so she got a job in the law school.
Rubens: Did you live at home until you got married?

Jensen: Yes; then we moved into a place in Alameda.

Rubens: Still commuted?

Jensen: Yes. Then we moved to Berkeley. And when we finished school, we lived in Berkeley. She was living in Berkeley when I went into the Army, and then she got a job at Boalt and she was working. At that time, their whole management superstructure was two people. Barbara was one. She did all the grading and then she dealt with all the issues about entry into law school.

Rubens: Was the first woman Dean at Boalt when you were there?

Jensen: She was not there. She hadn't started. She was a student around then. But Barbara Armstrong was my professor.

Rubens: She was the only woman.

Jensen: She taught Community Property, Family Law. She was the only woman Professor who was there. She was a fantastic teacher. Although I remember she told us one time that we were going to have an objective portion of our test and she said, "Please, don't any of you say that these questions are ambiguous, because they're not." And that was followed by a debate for an hour as to whether or not one of the questions from last year had been ambiguous. She was great.

MLJ: Now in law school, students do clerkships or they work during the summer, or they do something that may help them figure out what they want to do. Was any of that available?

Jensen: I think there was, but I would think you had to be in a position where you knew a lot more about the practice of the law than I did. Because nobody that I was in contact with did that. Everybody worked—— all the people that I knew. I needed money. I couldn't, for résumé purposes, go work for a public agency or something like that, or for a judge or whatever, because it'd be good for your résumé but it didn't give you any money. I needed some money.

MLJ: Were there any moot court competitions or anything like that?
Jensen: Yes, but I wasn't in any of them.

MLJ: You weren't interested in the litigation aspect of law at that point?

Jensen: No.

Rubens: And law review. Was that . . .

Jensen: There was a law review but I was not a good enough student to be on the law review.

MLJ: Did you know anyone who was?

Jensen: Yes, I think I did, but not closely.

Rubens: The law school did a study with a man named Zedeck. The twenty-six factors that make a good lawyer. Have you seen that?

Jensen: No.

Rubens: Some factors were creativity, innovation, research, writing, speaking, all of that. By the time you got out of there, did you feel you'd learned any of those, or do you really learn on the job?

Jensen: Oh, you learn on the job. That was not part of my law school career.

Rubens: Stress management?

Jensen: We didn't have that at all. The closest thing we got to some sort of vocational area that was developmental was a CPA who taught accounting kinds of things at the school. He was teaching undergraduates at Berkeley, and they got him up to teach lawyers the whole area of accounting. That was the first time that had ever been done. I thought it was sort of a disaster. But they did it. I think that's the only time they did it.

Rubens: Why was it a disaster? Was it just not organized?
Jensen: It didn't even work. It wasn't organized very well and didn't do very much. This was one of the first times where they were sort of saying, "We're going to now learn some things that you're going to be using as lawyers when you get out into practice." Now that I'm trying to remember, I don't think we had any sort of practice courses. They did have moot court of some sort, but not as developed as they do now.

Rubens: By the time you graduate law school still you're not—?

Jensen: I have not decided what I'm going to do.

Rubens: You know you're going into the Army.

Jensen: Right.

Rubens: Are you fearful at all going into the Army? I mean, is it just another thing you're going to do?

Jensen: Yes; I didn’t really have the image that I was going to be on the—

Jensen: —in the trenches, but there was an interesting sort of thing that happened. I went in a week after I had taken the Bar. So they give you a physical and I couldn’t see very well because I had been reading. My eyesight—well it turns out my eyes are not very good, and back then when they gave me my physical I didn’t make what they used to call an A-Profile, which means you’re completely healthy. Since my eyes were not very good they gave me a B-Profile, which meant that I didn’t have to go in the Infantry. I didn’t get into the Infantry at all because of my profile. So they sent me to the Signal Corps and that worked out fine.

MLJ: Were your other classmates going into the Army as well?

Jensen: Yes; one of the people who I knew quite well went into the Army at the same time. A fellow named Wes Griswold, and Wes and I went into the same service branch. We both went into the Signal Corps and we both ended up in
Basic Training at the same place. So he and I were there, and just a quick aside—.

Rubens: At Fort Ord?

Jensen: No; we were channeled through Fort Ord and then we went down to San Luis Obispo. There was a camp down there for the Signal Corps. And so that’s where we went—and you got into different areas of the Signal Corps. And it turned out that I got to be a cryptographer, so that was a good deal because you have to be in a place where you don’t have to be out in the dirt.

MLJ: What does that mean you’re literally doing?

Jensen: You’re doing ciphering and deciphering of messages. But you don’t have to crack the code. You know what the codes are and so you send the messages using the different code systems then you decipher it at the other end using the code system, so that’s what I did. So you’re a cryptographer but you’re not a crypt-analyst—because—I couldn’t figure out how to do that, but I knew how to send and receive coded messages.

MLJ: So you weren’t trying to crack enemy code?

Jensen: No, not at all. I was just sending messages.

Rubens: Literally how is it being sent?

Jensen: Well, I would sit at a teletypewriter and I would send messages that were—these are all standard sort of things—you’d have a tape that’s being fed into the teletype machine. You’re typing the message; and when you type it the signal is being mixed with the signal that comes from this tape. The tape is randomly cut so you have this random-cut tape that’s running through as you are typing out the messages and they are encrypted because of the reaction with the random tape. Then at the other end somebody else has the same tape; it’s random but they’re made randomly for use at different places so that you know what tape you’ve used—it’s available at both ends. So as I type, the person over in Japan is looking at this and it comes out using the same random-cut tape. Then it’s decoded by going through the same process.

Rubens: Are you interested in what you’re reading or sending or—?
Jensen: Yes. I’m sending messages—

Rubens: Are they about troop movements?

Jensen: Sure, yes; basically involved in the troop movements of the people who are leaving from Camp Stoneman, which was up in Pittsburgh—it used to be, and then you came down through San Francisco and then you went to Tokyo. So I was doing the sending of the messages, and all the data, and all the details about that. But I didn’t have to know how to crack these things. I mean, I would not be able to. If you, in effect, intercepted the signal between the two posts, you would get an encrypted message and you’d have to figure out how to break that.

Rubens: What years were you in the Army?

Jensen: Fifty-two to fifty-four I was in the Army.

Rubens: At—

Jensen: Well I was at different places. First I was at Fort Ord, and then we went to San Luis Obispo and then I got stationed at the Presidio in San Francisco. So that worked out—

Rubens: For Barbara and you then?

Jensen: Well after she had quit her job and—.

Rubens: At the law school?

Jensen: Yes, because she was going to go up—I was going to go to Seattle. I was going to be up there, then they sent me back down here.

Rubens: Here meaning Oakland?

Jensen: Oakland, yes; so we came back.

Rubens: Where did she go to work then?
Jensen: She was still working at the law school.

Rubens: She stayed at the law school?

Jensen: I think she was able to do that.

MLJ: So could you live somewhere off of the Base?

Jensen: I could. I was stationed and I had a bunk -a bed- in one of the Presidio Troop Rooms. It was in the residences in this big area over in Presidio, but I didn’t have to stay there. I could go and live someplace else if I wanted to, so I lived at home—or I mean, I lived in Berkeley. And then I would have to come back to my barracks where I was supposed to be to do KP duty or stuff like that.

Rubens: They had you do a whole range of—?

Jensen: Yes, I had to do everything, yes. But you could work it out. So I could live in Berkeley and still—then I got sent overseas because when I first went in the Army I had just taken the Bar, and I didn’t have the results yet. If you were a lawyer, you could apply for a program; you could go to Judge Advocate General School at the University of Virginia. But I couldn’t do that until I was a member of the Bar. So when I passed the Bar, it was—I got the word in about December, I think. By that time this program had been closed. So there was no way I could do that. So, I was in the Army and I stayed in the Army and I was a cryptographer. When I got to the point where I had about a year left, they said, “You have to go overseas,” because that’s the way the Army works. So I got sent to Tokyo.

Rubens: You did?

Jensen: Yes; actually the guy who was running the troop movements said, “Assign yourself anyplace you want to go.” So I assigned myself to the Far East Command Headquarters in Tokyo.

MLJ: Why did you choose Tokyo?

Jensen: Because it—I didn’t know anything else.

MLJ: What were your options?
Jensen: I could have gone to Korea. But in Tokyo there was no fighting and I figure that’s where McArthur was so why shouldn’t I be there? It actually worked out well. So I went over there and then—

Rubens: About a year?

Jensen: Yes.

MLJ: How long did it take to get from San Francisco to Tokyo?

Jensen: It took 20 days, I think, on a Kaiser ship that wallowed around in the ocean and almost sank. But we got there and then they opened up the program for Judge Advocate General and said you can now sign up, you can go, and you can go through the school.

MLJ: And you did?

Jensen: I turned it down because you had to also sign up for another three years to do it. I was almost ready to get out; so I didn’t do it. But that’s fine; I’m glad I didn’t do it.

Rubens: You were still doing cryptography?

Jensen: Messages; that’s what I’m doing—that’s right.

Rubens: Was that kind of boring?

Jensen: No, it was good. It was interesting because you are privy to what’s going on because you’re sending all these high-level messages, and you send messages which included periodic summaries. So you knew what was happening; obviously you could not communicate that to anybody.

Rubens: You had to have a clearance?

Jensen: Yes.

Rubens: I would imagine.
Jensen: Oh yes; you had to have a clearance for that.

MLJ: Did you get it before you became a cryptographer or once you became—?

Jensen: When I got to be a cryptographer, part of the process is to get you cleared. Because they’re not going to let you do the messages until you are.

MLJ: What were things that would disqualify you from getting the clearance, or did you know?

Jensen: I don’t know. I had no idea. Well, I was clean. I didn’t do anything.

Rubens: Yes; I mean ‘52 is the big Smith Act trial starting and—.

Jensen: Yes; but I had been in the Boy Scouts, so I mean that’s—.

MLJ: Well, not necessarily.

Rubens: Well now, yes, I guess you’re right.

Jensen: But the other was a good deal, yes.

Rubens: I suppose the issue that you raise there, I mean were you aware of gays in the military or Boy Scouts or—

Jensen: No, not at all. I was aware there were gays in the military, yes, because there were gays in our barracks, but that’s just reality. It didn’t have anything to do with what was happening or how the Army worked. It was just—it was not public at all. It was just a fact of life.

MLJ: What, if anything, was beneficial to your later life and career from being in the Army?

Jensen: Well, you did get a chance to meet the whole world and a chance of assessing who did things and who didn’t do things, and what it was to be in a position—I remember the guy who ran our particular shift at Tokyo was a Lieutenant who was thoroughly incompetent. He could not do anything. I mean, he depended totally upon what we did. And so it teaches you that rank
does not necessarily carry with it the ability to do the things you’re supposed to do. I mean, the reality is there are people who really produce and you get a sense that there’s a difference between the people who produce and the people who don’t. And then you meet a whole host of people you would otherwise never meet.

Rubens: From all of the different parts of the country?

Jensen: Yes. I tend to think it’s a good experience. It’s good—putting you into the whole mix of the reality of the country.

Rubens: I would expect that at Berkeley, even in law school, most of your fellow classmates were Californians?

Jensen: Yes; and they’re coming from a different level.

Rubens: Working class and—?

Jensen: —high level people. The Berkeley people are—it’s a selection process that’s going on as to who is going there.

Rubens: No; I meant in the Army.

Jensen: In the Army there’s not—that’s right. Everybody is there, yes. There are some people who were really bad, and you stay away from them.

MLJ: Nowadays, with the volunteer Army, a lot of the criticism is that people who don’t have an education, don’t have a job, the disadvantaged, are now in the Army. Did you have a diverse group of people just because you were being drafted or—

Jensen: Yes.

MLJ: —or did you have other factors involved?

Jensen: Oh, I think there was—there was an interesting reverse factor in that there was a regular Army in which you had a dog tag, and on your dog tag it said “RA” and then a number. That means you’re in the Regular Army. If it said “US,” that means you were drafted. So you knew who the draftees were and who
were not by whether—what your dog tag said. And at that point, the Army was really being run by the people who are US. I mean, that’s where the really bright people were because they had to go in, and they had to do this sort of stuff. My Lieutenant was RA, but he couldn’t do the work, so the US people were doing it. So, it was very important that you had the US people in the Army. Griffin Bell once said “There are two things you’ve got to do—there are a couple things that you have to do to fix up the country. One is you ought to move all the Washington components of government out to Denver or someplace else so they’re not in Washington and the other is have a universal military service.” And I’m not at all sure that’s a bad idea—that you do some kind of service. A lot of countries still do. You know, we may have to do that some day.

MLJ: Did you learn any management theory or skills in the Army that you brought into your managerial theories later on?

Jensen: No; I watched that manager; I watched people who couldn’t manage.

MLJ: Did that change how you managed when you became a manager?

Jensen: I don’t know that I went back and said to myself “I learned this lesson,” at that point, but it’s part of your overall notion. I think that management is a function not only of structure but of people, and that you learn very clearly that you can have the best kind of structural hierarchy you want but it’s not going to work if you don’t have people who can do it. So, I think that part of being a good manager is recognizing that you haven’t accomplished what you want to accomplish just by putting it out on paper.

Rubens: Did you have any special privileges being a cryptologist? Did you meet with higher brass or did—?

Jensen: No, no.

Rubens: Did bigwigs come through that you—?

Jensen: I think we had an easier time—they paid attention to us because they really need you—so they treated us well. We had a good unit. We had bright people, really good people in my unit in Japan.

Rubens: And Japan itself—did you—
Jensen: I got around a little bit in Japan. We went to one of the shrine cities in the north called Nikko, which was interesting. Then one weekend another guy and I got to go down and climb Fujiyama. The mountain is only open during August, I think, for a period of time. You can’t go up at any other times because of the weather. There are switchback trails you take. It’s a religious experience to be there at sunrise. We climbed all night long and got up to the top of Fujiyama. So, I remember that; that was fabulous. That was the best Japanese experience I had. Other than that, you’re just in the Army.

Rubens: You’re on a Base and get off a little bit?

Jensen: You’re on a Base, yes, and we had a good basketball team. Yes; we did. We actually won our area of Japan—of Tokyo, we won the leagues there. Then we played, I think, the 1st Cavalry who were up in Hokkaido. They killed us.

MLJ: So you climbed Mount Fujiyama, but in Boy Scouts you were saying you went up to the Sierra.

Jensen: Oh yes.

MLJ: You had done a lot of camping and mountain climbing?

Jensen: Had done a lot of hiking, yes. One of the things we did up in the Boy Scout camp was a lot of hiking in the Sierra, and you’re up there for a couple weeks. I was one of the people who was a—leader. We would take scouts out and we would go into the back country in the Sierra. At another time we hiked from the area above Pinecrest over to Yosemite. It took us about five days; it was wonderful.

MLJ: You said that Barbara’s father was an engineer who worked for Bechtel and worked on Hetch Hetchy?

Jensen: Yes; he did.

MLJ: Did you go into the Hetch Hetchy area when you were hiking, or talk to Barbara about that?

Jensen: No; we went through Kennedy Meadows at one point. We were at Hetch Hetchy Dam, you start there, and then you go up into the back country from there. So we did a lot of hiking coming out of Hetch Hetchy. That’s where
Barbara’s father had worked building that Dam, then coming all the way down to Crystal Springs. That had been his job.

Rubens: Was he retired by the time—?

Jensen: He was still working when we got married.

Rubens: Just to flow it back a little—I meant to ask this earlier—was there any objection in either of your families to—

Jensen: No; the families were fine.

Rubens: But it was not a Mormon service?

Jensen: It was not a Mormon service, no; it was a service in an Episcopal church in Alameda, but the families were fine.

MLJ: Was there any pressure to have your children raised Mormon?

Rubens: I was just going to ask whether you and Barbara discussed what you would do about raising your children—

Jensen: We discussed it and Barbara wanted to go to the Presbyterian Church in Castro Valley. So we did. They weren’t raised Mormon.

MLJ: This wasn’t an issue with your parents or your family?

Jensen: They may have—well, put it this way; they would have preferred it went the other way, but it didn’t make any difference as far as relationships were concerned.

Rubens: When we were talking about the kids, now it doesn’t stay in my mind. Of all four of you, did anyone stay in the church?

Jensen: My youngest sister.

Rubens: Sharon?
Jensen: Yes; she went to BYU.

Rubens: Oh, you said that; right, yes.

Jensen: Yes; she did. But then she ultimately didn’t go to church all the time.

Rubens: Did she marry Mormon?

Jensen: No; she didn’t. None of them did—none of my siblings—

MLJ: None of the grandchildren are practicing or remotely Mormon—is that right?

Jensen: There may be, because one of the grandchildren, my youngest sister’s son, is married to a Mormon girl. So they may practice.

Rubens: So even in the Army—you write letters to Barbara?

Jensen: Yes, and communicate right before—.

Rubens: No problem communicating?

Jensen: Well, she couldn’t come over because I was a non-commissioned Officer. Since she couldn’t come to Japan, our connection was writing back and forth.

Rubens: You’re gone a year?

Jensen: I was gone about 10 months.

Rubens: Ten months—how did they let you know you were done, because isn’t the war—?

Jensen: That’s my time; I was drafted for two years. I had two years duty.

Rubens: Was the war over by the time you—?

Jensen: No; it was still going on—just winding up I believe.
Rubens: I just wondered if by being in the war—having gone through that whole period at law school—if the Cold War had impressed itself at all in your sensibility? I mean, were you concerned about—

Jensen: Well, it wasn’t a matter of concern but—

Rubens: First world, second world and—?

Jensen: Yes; but like anybody else I was aware of where we were and what the true problems were and the confrontations were, but that’s about it.

Rubens: In ’52 were you an Eisenhower man, I mean particularly or—

Jensen: No, I was a Democrat.

Rubens: How did you become a Democrat?

Jensen: I just did.

Rubens: When you registered to vote?

Jensen: Yes; the first time I registered to vote I was a Democrat and I’m—there isn’t a lot of political thinking that goes into that. I just decided that’s where I wanted to be.

Rubens: Another time I want to go back then and pick up some of that because war just filters through this whole period. So there’s so much going on in terms of Knowland coming into the Senate. For now your tour of duty is over, you come back.

Jensen: Come back to California.

Rubens: To Barbara and Berkeley?

Jensen: Correct.

Rubens: And start looking for a job?
Jensen: Correct.

Rubens: Did it take you very long?

Jensen: No, a couple of months.

Rubens: Does Boalt help you at all?

Jensen: I think it helped me, as I say—.

Rubens: I meant literally—would you go to them as a job agency-

Jensen: -to help me get a job? No. They didn’t help at all.

MLJ: Were classmates of yours working places that you were contacting?

Jensen: Not in the DA’s office, I didn’t have any classmates.

MLJ: Bob Raven, was he working at—

Jensen: He was working at Morrison and Foerster, I guess. But I didn’t apply there. When he got out of law school I’m not sure if he went directly into Morrison and Foerster or not. But he was in my class, so when he went out I’m not sure if he went there directly but he—very shortly after that he went to Morrison and Foerster and stayed there his whole legal career.

MLJ: He wasn’t somebody you contacted?

Jensen: No.

MLJ: Was there anybody you contacted?

Jensen: I think that the only person I had a job interview with was Frank Coakley.

Rubens: Really, all right; you’ll think about that a little bit.
Jensen: Yes.

Rubens: Because that’s the part to think about; the only other thing that’s so crazy—were you aware of the Rosenberg execution? Did that affect you?

Jensen: Yes; I was aware of it, but it did not—

Rubens: Again, it’s not one of those—?

Jensen: —but there’s not a significant part of it—

Rubens: Figuring out if the death penalty was appropriate or not appropriate? This is going to figure in your life later on but—the question I also had was if there were legendary lawyers that came and talked at Boalt Law School?

Jensen: Let me think about that because I can’t think of any who were legendary. There were some people—

Rubens: Well, San Francisco in the early ‘50s really had some silver-tongued people.

Jensen: Yes; but I don’t think anyone—I remember one of the civil lawyers from Oakland coming in and talking about trying cases at one time.

Jensen: He was a plaintiff’s lawyer.

Rubens: Well there’s the Noon bell. [Siren]

Jensen: There you go.

(Ending organizational conversation omitted)
Rubens: I have just one observation and one question left over before we move into how it is that you were hired by Coakley. I’m going to make the observation first, and I’m choosing my words carefully because—life seemed to go along very well for you.

Jensen: Yes.

Rubens: It didn’t require a lot of hand-wringing. There was some thought; you made choices vis-à-vis your family, but you know about a lot of the social events that are going on around and they don’t touch you, nor should they. I was thinking especially about the Oakland City strike because you had a car.

Jensen: Yes; you’re aware of it, but it really didn’t come down to family situations. My folks never had to make decisions based upon those things; so we didn’t either.

Rubens: I also wondered where you shopped—did you ever shop as a family if you had to get school clothes, or did you go to the downtown stores in Oakland, or—?

Jensen: Yes, we did. We shopped at Capwells, Roos Atkins, Montgomery Wards, I remember.

Rubens: Kahn’s is the centerpiece of the—?

Jensen: Yes; they were the beginnings of malls. But they were good—so was Capwells. Sullivan & Furth used to be in Oakland. I remember going there. That’s the one where the big dome is, in City Center down there.

Rubens: Those were their names?

Jensen: Capwells, Sullivan & Furth.

Rubens: I only knew it as Capwells.
Jensen: Yes, and there was Roos Atkins when it first—.

Rubens: And then Kahns.

Jensen: Later on I’d shop out at George Good’s in Berkeley.

Rubens: In Berkeley?

Jensen: Yes.

Rubens: Related to this, did you travel into San Francisco much?

Jensen: Not a lot; we did come over and go to Golden Gate Park, went out to the beach.

Rubens: Would you get onto the ferry at 7th Street?

Jensen: I don’t remember us ever going—yes, we did go on the ferry. The ferry would be down at the end of 7th Street.

Rubens: Because the bridge isn’t open until ‘36.

Jensen: Before the bridges we did go on the ferry a couple times, yes. They would go from the foot of 7th across to San Francisco and then on back—I’m not exactly sure where.

Rubens: Yes, because all of that is going to just change. When you come into the DA’s Office, they’re going to start redevelopment.

Jensen: Well, I remember when there were tracks on the bridge. They had railroad tracks on the bottom and they had cars on the top, and trucks, and trains on the next surface.

Rubens: That was the key route system?

Jensen: Yes.
Jensen: The train system went through Alameda. You could get a train in Alameda and go to San Francisco. The bridge got put in of course, later on. And then the rubber people took over.

Rubens: Right; that was the claim—GM, Concrete and Rubber.

Jensen: Right.

Rubens: We also ended with you saying that you registered as a Democrat.

Jensen: Yes.

Rubens: But I never asked you what was the first election you voted in? Do you remember?

Jensen: Forty-eight, forty-nine, fifty—Eisenhower, maybe.

Rubens: So, a national election?

Jensen: I think so.

Jensen: I was a Democrat and voted for Eisenhower; I think that’s right.

Rubens: Was there a reason particularly why you—?

Jensen: No, no. It wasn’t a politically thought out reason, just that’s the way it seemed to go as far as the media and everything else.

Rubens: You were convinced.

Jensen: Yes; so I said “I’ll vote for him.”

Rubens: All right; what I really want to get to is what’s going on with Knowland and Brown and the election here in California in ‘58, but we’re not quite there yet. So you’re back from the Korean War—never had to face the battlefield?

Jensen: I was not in Korea, no. I was in Tokyo all the time.
Rubens: And you don’t have a clear idea of what kind of a lawyer you’re going to be. You have graduated from law school, you’ve—?

Jensen: No, I had passed the Bar and was sworn into the Bar when I was in the Army. Then when I get out I don’t have any idea how I’m going to enter the profession.

Rubens: Law school had not really groomed you to make decisions that way?

Jensen: No.

Rubens: Some people knew they were—.

Jensen: Maybe some people did, and maybe there were interviews of people, but I never was interviewed and that sort of thing. I think that process really came on later. I don’t think it was really part of the law school existence then, and I wasn’t on the Law Review; so I wasn’t into clerkships and that kind of thing; so...

MLJ: The evolution of law schools and the legal profession hadn’t got to where it is now where people almost specialize when they’re in law school?

Jensen: Absolutely; it had not. There were some people who knew exactly what they were going to do. I had some friends in my law school class who were engineers and they were going to go into patent law. They did; they opened up a patent firm and they had a fine patent firm. They had been at it and they’ve just—it was then sold several years ago. They knew where they were going to go, but that was not characteristic.

Rubens: So you have a young wife to support, you have yourself to support, a career to start. How are you deciding what to do?

Jensen: Well, the first thing when I got back we took a trip. We drove across the country and kicked back and thought about things.

Rubens: Did you have a destination when you took the trip or just—?

Jensen: We went back to New York. We went through New York and DC and then came back. That’s the first time I had ever been out of California, other than
the Army. No—we had been out. We had been to Yellowstone, I think, and the Grand Canyon and that sort of thing.

[When we got back] I just started talking to people that I knew. I didn’t really sign up with any professional organization to find a job. I talked to some people, and I think I actually did a civil case—some friends of my family wanted to do an adoption and I did an adoption for them. I think that was my only civil case. And relatively early in the game, across the street from us was a Judge in the Alameda County Superior Court named Don Quayle. He had been on the Superior Court for some time. He tried criminal cases and was a well-known judge. His daughter and my youngest sister were practically inseparable, so he knew the family and that sort of thing. So I said—I think I said to myself—I’m going to ask Judge Quayle if maybe he could get me a chance to talk to the District Attorney. So he called up Frank Coakley, and Frank Coakley called me up, and I went over to have an interview. That’s really how I got the access. Of course, as you know—I don’t think they did things by way of resumes and that sort of thing and screened you through—the real way it happened would be by referrals. The people who are known to Coakley are the people in the DA’s Office, and Judge Quayle was a fine judge who recommended me and sent me over to Frank Coakley. So I had an interview with Frank Coakley and I got hired.

MLJ: Were you interested in the DA’s Office before that or—?

Jensen: I was interested, yes—as a possible job; but mostly as an occupation to go to—not necessarily because it was a big goal to be a part of prosecution. It appealed to me that I could work for a public agency, and work for an agency that was well-known. The DA’s Office was widely respected and not easy to get into, so I thought it was a great opportunity. It turned out that the interview was successful and so I got hired. I didn’t get hired as a lawyer; I was hired as a law clerk.

Rubens: Oh really?

Jensen: Yes. I could wait until a position opened up, then they’d put you on as a Deputy District Attorney, but the first job I had was basically as a law clerk.

MLJ: Were you paid as a law clerk?

Jensen: I was paid as a law clerk. I think I made $280 a month.

MLJ: How many law clerks were there?
Jensen: There were about three or four, and they worked with the Investigative Division in the DA’s Office to help in terms of case preparation—helping out the investigators.

Rubens: How many Assistant DAs were there?

Jensen: At the time—I was thinking about that; I think there were maybe 40. But you have to also say that at that time the Office handled all of the criminal business of the county and all of the civil business of the county. So it was an office where the DA was, in essence, the County Counsel in terms of the way the structures are now; but in those days the DA’s Office did all of the representation—the Board of Supervisors, all of the schools, all of that sort of thing, so about half of the Office was a civil function. So, when you say there are 40—45 lawyers, it means there’s only about 20—25 lawyers doing criminal.

MLJ: Were you directly hired to do criminal work as a law clerk?

Jensen: I was hired to do criminal.

MLJ: Because you asked to or because that’s the way the Office worked?

Jensen: I asked for that and they let me do it because it was—if you wanted to be in the Office and you could go to the criminal as opposed to the civil, generally people wanted to go to the criminal instead of civil work, so I was put in criminal. But I didn’t get to be a Deputy DA until the following summer. I got appointed as a Deputy DA, I think, in 1955.

MLJ: How long were you a law clerk?

Jensen: I was a law clerk from . . . six months or so.

Rubens: About six months? Just to belabor this for a minute, you must have had friends who were already working in corporate firms in San Francisco?

Jensen: Yes—not a lot.

Rubens: Just trying to think—other connections? Was Golde already—?
Jensen: Stanley was already out and he was working for a lawyer in Oakland who did mostly civil work and some criminal work. Then he went to work for Rupe Crittenden who was a really fine, fine criminal defense lawyer who ultimately became a Judge. He was a Judge in Berkeley. But Stanley worked for Rupe Crittenden and learned how to be a lawyer, really. He was his mentor. Rupe Crittenden was a wonderful lawyer, so that’s where he was, I think, at that time. But I would have probably—maybe I would have gone into that—but I wasn’t as much interested in it. I don’t know why, but I was much more interested in getting a job in the DA’s Office than in going to work in a smaller firm or in a defense firm.

MLJ: Did you ever consider working for yourself?

Jensen: Well I did. I did an adoption. I didn’t make any money at it but really—hanging out a shingle did not appeal to me particularly. I would like to have some sort of regularized income if I could get it; that’s why the DA’s Office appealed to me. And it would be something where actually Barbara could stop working because she had been working all the time since we’d been married, all the way through, and she was still working. That’s the only thing we had, so it would be a good idea if I could get a job.

Rubens: I’m trying to get at if there was also something that was exciting about representing a city—of really being someone who—?

Jensen: Well, I think it’s a good job. I mean, the DA’s Office as I said, I think it was a highly-respected Office. And one of the things about it in those days, the DA’s Office was a stepping stone in a very real sense—in that you went to the DA’s Office and worked there for a couple years and then you can go out into civil practice. I realized that, and maybe even had that in mind as where you might go. You learned how to behave yourself in a Courtroom and you became more attractive to the civil firms who were doing trial work at that time. And people were on frequent occasions hired as beginning lawyers, or laterally into civil firms because they had the prosecution experience. That was a frequent occurrence. That was one of the things I had in mind. Well, it still happens.

But it’s changed a lot because then, as a Deputy you tried criminal cases, but you also could do civil practice as long as you didn’t have a conflict. So most of the lawyers who were in the criminal end of the DA’s Office also had civil practices; they did things like probates and things like that that were interesting. I didn’t have—.

Rubens: So it’s really a training ground?
Jensen: It was a training ground, but people could do it as a source of income, if you had enough of a practice. You could augment your income by doing civil work.

MLJ: So essentially you were a public servant in the DA’s Office, but you could have a private business?

Jensen: Exactly right.

MLJ: Could you work out of the DA’s Office in your private business?

Jensen: No, no; you had to work at home. Occasionally, a phone call would come in. You could maintain a private practice, but you were not supposed to really be in practice where you really had a civil practice. Theoretically, you helped people in your family, or relatives, or things like that, but people actually did more than that. They would represent people in Probate Court and that kind of thing because it wasn’t that much of a cross-over. I think there really is kind of a cross-over when you think about it, but they didn’t at that time. So, you could do a civil practice. I didn’t do that because I was more interested in learning how to be a Deputy DA.

Rubens: What do you really do with these steps that you take? What I want to get to also is what kind of knowledge did you have of Earl Warren? Speaking about one of the greatest stepping stones, when is it that you really have shadowed him?

Jensen: I knew of Warren, of course, you can’t be a law student at Boalt Hall without knowing of the history; and it’s a part of the existence of being in California. So I knew of Warren, and the fact that he had been in the DA’s Office was one of the reasons why it had so much respect, because he had done a lot to get the Office started and had professionalized the Office.

Then it had been carried on by Coakley. Coakley had been his Chief Trial Lawyer, so Coakley was part of the Warren-era in a real sense. So you were still going to work for a firm that had that kind of a distinction. So it was a very good place to be.

Rubens: You had not met Warren at this point, had you?

Jensen: No; I had not.
Rubens: What did you do within those first six months?

Jensen: Just helped out with cases. You really didn’t do much law—just helping out in terms of locating witnesses and files and assisting in the preparation of felony trials.

Rubens: Isn’t it in that first year that Coakley prosecutes Burton Abbott?

Jensen: Yes. I remember that very well. This is what happened—what happens when you come into the Office, all the felonies are tried in the Courthouse in Oakland down by Lake Merritt; that was the core of the Office. And then you had Municipal Courts in Alameda, and you had an Oakland Court, and you had Berkeley and Albany and Fremont—no, it was Fremont/Newark/Union City; they had something out there at the time, and Livermore/Pleasanton. But what happened is you’d go out into the branch offices. So I went out to Berkeley for a while and then Oakland, and as I said, I was in Oakland for quite a while. When the Abbott case came along, I was in Oakland as a Deputy DA, and—.

Rubens: At the Municipal Court?

Jensen: At the Municipal Court. And what happened was Frank Coakley’s approach to the Abbott case was to prove that Abbott did it, but at the same time prove that nobody else in the world could have done it. I mean, it was relatively thorough; they even said he had investigators walk from this area to Trinity—that was where the body of the girl was found who had been killed in this murder—walked through the whole distance...and talked to the people in gas stations and stores along the way about anything. So they really did everything they could to prepare the case. And what happened was he took manpower from the rest of the Office to get ready to do this case. Out of Oakland, they took the senior lawyers who had been in Muni Court, and left the kids who had just barely gotten there. I was one of the people who didn’t get assigned to go work on the Abbott case. But what it meant was there were only a couple of us left in the Oakland Court. It was myself and another Deputy, John Sutter. He and I were there. John Sutter became a Judge after that and John is a real good guy. He and I were the lawyers for the old Municipal Court, and we tried—in those times there were two Courts that tried misdemeanor jury trials. They tried Court jury trials every day. So John and I tried all the jury trials during the Abbott case, because nobody else was there.

MLJ: How many cases did you try?
Jensen: I think I tried eight juries in three weeks once. I think that was the most, but I must have tried twenty jury trials during that period of time, and John was in the other Court. You’d almost pick the jury without even knowing what the case was about other than the name, then you’d find out what it is because you didn’t have much time to prepare. But you just tried the cases back-to-back, so I learned an awful lot.

Rubens: How come you didn’t know—is there a secretary there who sort of knows the order?

Jensen: Well, they give you a file, yes. And you read the file. The files are pretty good, and the Oakland Police Department is good on records. They’d put them in very logical order so you knew who the witnesses were to prove anything, and the Police Department would have somebody to help you out. They’d be doing subpoenas and then you’d talk to people on the phone at night, then get up the next day and go.

MLJ: Would you issue subpoenas to people in eight different cases and then walk into Court and not know which case is going to go to trial?

Jensen: No, no, no; no, you knew which one was going to go.

MLJ: Later on the DA’s Office would—the caseload became such that you would end up—.

Jensen: Right; back then you knew when a case was going to go. You very rarely had a situation where you had two cases that had to go on the same day and you had to pick one and kick the other. It sort of got to that once in a while, but most of the time you knew which case was going to go.

MLJ: Would you ever end up with a situation where you were going to be trying a case and didn’t know if the witnesses were going to be there or not?

Jensen: Oh sure.

Rubens: So you had to talk to your witnesses, then you’d stand up and give an opening statement not knowing—?

Jensen: And then see if the witnesses are there? Yes. But everybody showed up. This is where I used to always say—the Judge would look down at you and say,
“Are you ready?” And I’d say “Ready, Your Honor,” and I knew I wasn’t really. But I knew that I had a good chance of being ready. The witnesses probably were there. But then I learned later on as a Judge that ...when I answered that question, I always thought the Judge was ready—but that’s not necessarily true either. When the Judge asks that question, the Judge may be in the same position as you are—he’s hoping that he’s going to get there.

Rubens: What’s he waiting on, the Judge? What might—?

Jensen: The Judge is—he’s asking me if I’m ready. I’m saying that I thought the Judge was ready, but the Judge may have been in a position—all he’s going to do is he knows which case is going to go and then he’s going to go back into chambers and he’ll read about all this. So when he asks me if I’m ready—he’s probably in the same position I am in, all right?

Rubens: I see.

Jensen: But I didn’t know that.

MLJ: When you were trying all of these cases, would your opponents be the Public Defender or would they be private lawyers?

Jensen: Private lawyers and Public Defender.

MLJ: So there wasn’t a Public Defender sitting in court with you all the time so you could just go one after the other?

Jensen: No, no; that’s right. They’d just be in and out. There were a lot of cases, I think—maybe at least half the cases were private counsel.

MLJ: How large was the Public Defender’s Office at the time?

Jensen: It was smaller than the DA’s Office. It was only doing criminal, so I think you’re only talking 15 lawyers, maybe less than that, 12 lawyers—whatever. It was pretty small.

MLJ: At that time, which Judges were you trying cases in front of?
Jensen: Well, I know Eddie Smith was one of the Judges and Jim Blaine, and I don’t know. There were several Judges; there were four or five Muni Court Judges I tried cases with all the time.

MLJ: But nobody became a mentor or a—?

Jensen: No; I never had any Judge become a mentor.

Rubens: When does Lionel Wilson become a—?

Jensen: That’s later on. He was trying cases. I tried criminal cases with him. He was a criminal defense lawyer trying criminal cases, then later on he had a private practice, a civil practice, too, and then became—.

Rubens: Early on; it’s in the ‘60s at least, yes.

Jensen: Oh yes; he was there. He tried cases.

MLJ: What about other people who became big figures in the black community like Clint White?

Jensen: Well Clint White—I tried cases with Clint White all the time.

MLJ: Clint White is sort of a Johnnie Cochran-like figure in his day or—?

Jensen: He was more than that; he was a powerful figure. He had a magnificent voice and a great presence. Whenever Clint came into the Courtroom, you knew he was there. When he spoke everybody shut...stopped talking and listened.

Rubens: Clint White was the head of the NAACP; is that right?

Jensen: I don’t think so, no. He just did private practice in Oakland.

MLJ: Aside from learning trial skills you had to learn at the time—what trial skills did you find were valuable as you went through your courtroom experience?
Jensen: We really didn’t have the kind of training programs they have now. Most of the agencies then, they’d just let you try cases. Maybe they’d have somebody go down and watch you for a while, but by and large you’d just go ahead and try the case. So it was on-the-job training, basically.

Rubens: Were the Judges kind of training you by what they’d admit and not admit?

Jensen: Yes, absolutely; you learned an awful lot from the Judge.

Rubens: Give me just a sense of what these misdemeanors are. . .

Jensen: Drunk driving, petty theft, batteries. We even tried public intoxication cases and we tried failure to support cases. We tried those cases back in the old days—where you tried the paternity issue as well as the failure to support. I mean, you had to prove that the baby was—that this was the father—that’s something that went to the jury. So we tried those kinds of cases, and all kinds of traffic cases; serious traffic cases like reckless driving, and hit and runs. Those were the kinds of cases we tried.

MLJ: It was just you and John Sutter in the Office trying cases at that time, had you been assigned to or found a mentor in the DA’s Office who was helping you out?

Jensen: No, not really. The figure who helped out the most was a lawyer by the name of Ed O’Neill, who was the second in command in Oakland for a long, long time, and he knew everything. He knew about the law. He knew about how you handled yourself. And if you needed any advice in terms of how you should do it, you’d talk to Ed O’Neill. He was a father figure for the Oakland Muni Court. He was there for years.

Rubens: Did he have aspirations himself to become DA?

Jensen: I don’t know. I think he wanted to run the Oakland office once upon a time, but he never did. But he was always the person who you went to first. He was very good.

MLJ: Did you come into the DA’s Office with any over-arching philosophy of prosecution or how to behave yourself as a prosecutor?
Jensen: No. I learned on the job, by paying attention and having an instilled tradition in the Office that you were completely...there was no unethical behavior tolerated. You had to be—when you gave your word, your word was good and you had to do that. The Office did that, and it was just expected of you that you behaved yourself in a Courtroom and that you could be relied upon by the Judge and by the jury. That’s the way you behaved yourself.

MLJ: And also defense counsel, I assume?

Jensen: Defense counsel the same thing. As I said, you dealt with the defense counsel on the same basis, that they could trust what you said. Otherwise, you didn’t have any kind of relationship with people.

MLJ: How was that tradition established? Because there are clearly prosecutors who have a very different philosophy than that, and prosecutor’s offices that have a philosophy that the goal is to convict someone, versus the goal is to actually do justice. The Alameda County DA’s Office developed a reputation that its primary goal was to do justice. How do you think that was instilled?

Jensen: I think you can trace that back to Warren’s positions, and Coakley’s positions were exactly the same. I mean, they were developed—Warren always had the position that the goal was not to convict; the goal was to do justice, and that it isn’t a dishonor to not convict. There are plenty of situations where that should be the result, but you never had that kind of pressure. There was pressure to be a good trial lawyer. That’s what the Office was all about, being a good trial lawyer. That was the thing that was recognized. That was the drive that you had to gain skills as a trial lawyer—because that was recognized as the pre-eminent kind of skill that was expected in the Office. So you had to work at that, and you did that by winning cases. But you still did it in an ethical way.

MLJ: Did you ever find yourself in a situation where you thought based on the evidence, or what a witness had done, or a ruling from the Court, that you should be dismissing a case or not trying a case?

Jensen: I had some cases where—I remember a case where a small child had been molested, but the child could not qualify as a witness. We had to dismiss the case on that basis. That was an example of Rupe Crittenden, remember I was telling you about him? I remember this very well ...he represented this guy and we had to dismiss the case because the child could not qualify as a witness. He had the guy plead guilty to a misdemeanor because he thought he needed to plead guilty because he needed it for his existence and well
being—I had never heard about that. That’s the first time I saw that, even after the case could not be prosecuted as a felony, he had him plead guilty to a misdemeanor because he thought that was what his client should have for his overall existence. And he did.

Rubens: He sounds like he believed the client was guilty.

Jensen: Yes, absolutely; the client was guilty. I don’t think there was any problem about that, but the child couldn’t qualify.

Jensen: There are cases where the people didn’t show up, and you’re just as happy they didn’t show up. The case is not very good. What happens in the DA’s Office is a good deal different than the federal law. In the state system and in the Alameda County system, over the weekend a whole bunch of people get arrested. They’re arrested by the police on probable cause for the commission of many kinds of felonies and then they’re screened by the DA’s Office to see whether or not you’re going to charge, because you shift from a finding of probable cause to the availability of evidence to prove guilt beyond a reasonable doubt. That’s a big, big shift. So cases would come into our Office and we would turn them down when they were screened by a Deputy District Attorney before they’re filed—that’s another function you did as a Deputy District Attorney—learning about cases.

So, in comes the case, and it doesn’t mean that just because there’s been an arrest there’s going to be a charge. So, you had a big screening process where you learned a lot about what cases are worth and what they should be prosecuted for, either for a lower level offense or not at all. That’s the system in the state cases. You have arrests being made on the basis of probable cause by officers without a previous determination that the case is good enough for prosecution.

In the federal system, you proceed by indictment, and by the time you’ve been indicted you have evidence beyond a reasonable doubt before you go arrest them. So you start in the federal system—the arrest starts at a much higher level than the state system.

Rubens: Isn’t this where there’s going to be room within about three or four years where the charge is going to be—you’re deciding to screen people who are black, or who are poor, or who are part of organizations? I mean, there’s going to be some question about who is prosecuted versus what—.

Jensen: Yes, that decision is always there; and it’s always there as the fundamental decision by the public prosecutor. As a public prosecutor, to me, that’s the critical decision—entry into the criminal justice system; and that decision is
made by a prosecutor. That’s simply our system of doing this. It’s always been our system, as it was the system when I started out—the prosecutor initiates the criminal charge.

Rubens: What you seem to say is the essence of your decision is whether you have evidence to—

Jensen: Right.

Rubens: —as opposed to—it seemed to me there were going to be claims later on that there was a selective targeting of who is going to be prosecuted.

Jensen: Yes; I think you can make that argument. You’ve got to take a look and see whether or not there’s any problem like that. That was not a problem in our Office. I don’t believe it ever was. As a matter of fact, one of the things that I think that we did when I was DA, which I think was one of the more important things that was done in California prosecution, was the development of the Uniform Crime Charging Standards in the ’70s. But that, in essence, is what we had always done—you didn’t charge a case unless you had witnesses available who could produce admissible evidence that was sufficient to prove all the legal elements and of sufficient weight to get to a rational jury. We had operated on that basis in the DA’s Office from the word go. The way I was trained is that you try these cases or you charge the cases based upon the available evidence, and that’s your decision; that’s the only decision.

MLJ: You said you developed uniform charging; that was something that was done by the DA’s Office?

Jensen: It was done by the California District Attorneys’ Association with a grant from LEAA, the big national funding agency. The grant was to have the state of California DAs adopt a California-wide crime charging standard. And all the DAs in California were a part of it. I was a part of their Executive Board, but it was run out of LA, where the funding had been sent. They had an Executive Director who was one of their attorneys assigned to run the project and do all the paperwork. But we had the final decision-making power. We came up with and approved a draft—I think it was the first one where there was a state-wide decision that these are the charging standards to be used by all California prosecutors.
Rubens: My understanding is there’s a prelude to this—I guess starting in ‘65 in response to the Watts Riots where there’s a DAs meeting to learn from what went on in LA, and I don’t know if the roots of this are there, but—.

Jensen: I don’t know that that was the direct reason. I think the reason to have the project in the ‘70s was because you had available money, but everybody knew it was something you should do. It comes out of exactly the problems that come about, as I was saying, where the DA’s Office is faced with the responsibility of making the initial decision—the threshold decision to charge. And everybody knew that that’s the critical decision. There were various approaches to this taken in different offices and we concluded that it was a good idea to come up with one basic crime charging standard for the whole state.

It’s a learning experience, because there could be DAs, obviously, who said “Don’t do this.” I mean, you could have a situation where in comes the case, it’s given to you, and the police also tell you that the witness is leaving tomorrow for—going to move to New York—okay? Can you charge that case? The answer is no, unless you will have an available witness to prove it—but as a general rule, nobody knows that when you charge it. But you should not charge it and let it go through the system and have somebody plead guilty to it when you know you can’t prove it.

MLJ: To pick up on what Lisa said, there were obviously examples of where DA’s Offices didn’t take the approach that you’re describing in Alameda County. Say with the Watts Riots, there’s a perception, if not a reality, that people are going to be charged because of a factor like race or poverty. When the charging standards were developed, was that specifically excluded as a factor? Were people told, “You can’t think about this?”

Jensen: Oh yes.

MLJ: Or did you just talk about it in terms of “You need this amount of evidence?”

Jensen: That, plus. A good part about that is that the evidence itself is neutral as far as any of these discriminatory factors are concerned. I mean, theoretically the decision is made without a discriminatory bias—and part of the recognition is that you want a standard like that. You want a standard that excludes any kind of possibility of an individual Deputy DA having such a motivation as much as you can. One of the biggest problems we had was some of the Deputy DAs would just charge anything the police asked them to charge.
Rubens: Well, that’s just where I was going to go. I was going to ask you about the relationship between the—?

Jensen: We had a close relationship with the police department which is, I think, a good thing because ultimately it’s a great learning experience for the police.

Rubens: The police have been under the lens at different times . . .

Jensen: Oh yes; they got into the lens first, I think, in reviews of the system. Over a period of time you’ve had different lenses on people and you’ve had the police there from the start.

Rubens: I forgot to look up who was Police Chief when you came in. In ’59, Toothman is going to come in.

Jensen: Yes; Toothman, he’s the new one now.

Rubens: Comes in ’59—Wayne Vernon was earlier.

Jensen: Right; I remember Vernon, and I remember Toothman, but I don’t remember—

Rubens: In the ‘40s there had been a big challenge.

Jensen: There had been a big prosecution. The DA’s Office had tried some of the Oakland police.

Rubens: Yes, about beating—.

Jensen: Inspectors for lying in cases. There had been a big prosecution against police officers, and a big cleanup of the Oakland Police Department that had come about by prosecutions.

Rubens: The Chief resigned and the officer went to San Quentin.

Jensen: It was in the late ‘40s and the ‘50s.
MLJ: Was that under Warren?

Jensen: Under Coakley. That was part of the history.

MLJ: Was that part of the reputation and history of the DA’s Office for its integrity, that it would charge a police detective?

Jensen: That’s right. I think one of the people who was prosecuted was convicted of perjury for answering a question, “I don’t recall.” And they proved that that was a lie, and he was actually convicted.

MLJ: That’s rather extraordinary.

Jensen: It is extraordinary, but they were able to prove that that was a flat out lie, and he went to prison. So the Office had always had sort of an approach where they understood that their role was to make sure that the rest of the system was clean also, including the police officers. I don’t think there was a real big problem about police corruption, but every once in a while there were instances of police corruption, and they were prosecuted. So that was part of the history—in Oakland it was.

That is what I was saying, that there were Deputy DAs who, when they get all this paper coming over from the police department—there’s also a push from the police department “Let’s get this done; do it all,” thing—and some of the Deputy DAs would just sign off on everything and they wouldn’t really screen it. And, interestingly enough, that was looked upon as a weakness in the Office. You don’t do what the police ask you simply because they ask. If you did that it was really a mark against you. So the idea was that they do their role and you do your role—and your role is to tell them “no” when you can’t go ahead. That was always of value.

MLJ: Was there Deputy DA shopping by the police department?

Jensen: There was.

MLJ: For the ones that would sign off on a case?

Jensen: They’d look for people who would be more inclined to get you what you wanted. You could see where your case is going to be handled by Deputy DA A or B, and A is a friend of the police. Get him to do it, right? So that was
something that the Office management had to pay attention to, to see if it was getting too close.

MLJ: You said it was a learning experience—this process for the police officers?

Jensen: For both of you. For you in terms of what a case is worth, because then you can see it through the process. You see it as it goes through the trial process, and you see what decisions have been made, and see how it actually plays out, because there’s a big difference between just looking at the case in terms of what the police report says and having a sense of what it really means. Then you could learn that, so I think that the—.

Rubens: Just forgive my ignorance—you don’t have juries in these Misdemeanor Courts?

Jensen: Oh yes; these are jury trials. They’re not all jury trials, but most of them are jury trials, because back in those days if you had a non-jury trial it was the same thing as pleading guilty; and everyone understood it as being a plea of guilty. When you put on a non-jury trial, you’re basically educating the judge about the client. So it’s a sort of pre-probation process. It even got to the point in California where it was assumed that any bench trial, or a trial before the Court, was essentially a plea of guilty.

MLJ: That fits the term “slow plea?”

Jensen: Yes.

MLJ: When you did that, was there some kind of record made or an agreement beforehand about what was going to happen with the client?

Jensen: Well, you knew. Part of the process, of course, is talking to the defense attorney about reaching a resolution of the case. As everybody knows, most cases are resolved by a plea of guilty or some sort of plea disposition, or plea agreement. We did that, and one of the ways in which you could do this was to have an agreement to have a bench trial, because some of the time the lawyer simply wanted to have the client be able to make ...to say something; because a lot of times people just want to be heard. So this gave you a chance to be heard. But then you have—it’s understood that meant you’re also going to be found guilty.
MLJ: The process for negotiating and entering a guilty plea in Criminal Court has evolved greatly over the years and become much more complex. How formal was it at the time that you’re describing?

Jensen: It was very informal. You talked about it, and the way the DA’s Office operated was—very early on the Deputy DA was given authority to negotiate cases. There was very little of where you had to—where you could not agree to a disposition until you had two levels of supervision over you agree to what you had agreed to. There was a lot of authority given to Deputy DAs. And either—I don’t know whether it was specifically adopted as a management technique—but the whole idea was you learned better when you were delegated more power or authority.

It was deemed to be a good idea to delegate authority to Deputies. But that was also something where you learned from what happened, because once you agreed that was it; the Office was bound. When the Deputy agreed, the Office would go along with what had happened. And sometimes it was a dumb decision, and that means that the person who made that agreement got marked down. I mean, they were not viewed as a very good lawyer, or a very good Deputy, because they didn’t know what they were doing—but they did have a lot of authority.

MLJ: At that time was there some formal notification? Nowadays if your defendant is going to enter into a guilty plea there is paperwork, and there is acknowledgement, and there’s signing away of different rights. There’s a very complicated process.

Jensen: There was virtually nothing. It was all—

MLJ: Did the Judge inform the person of their rights?

Jensen: Yes; the Judge informed them of their rights, and the lawyer informed them of their rights. I mean, the idea was the lawyer told them what this was, and when you pled, we all understood that the lawyer had already told them what their rights were; so the plea colloquy that exists now was really very, very short. You didn’t have the same kind of plea colloquy that you have now. It was just, “What’s your plea—guilty?” “Okay.” “Has anybody talked to you about this?” “No? Okay, all right.” So the plea dispositions were informal, not written, and they were handled at a very low level. And you know, you could make a study in terms of whether it was better or not. I think it’s better to have more management of the system, and as the systems get bigger and bigger and bigger, you have to have this. You have to remember, when I’m first starting out, we don’t have the workloads that you’re talking about now. We had two
Courts in Oakland that were handling jury trials. We had two Courts in Alameda County Superior Court that were handling criminal cases—that’s all. So you didn’t have this push of massive cases coming through. There was more time and more care given, even though it was informal.

Rubens: And that’s going to change pretty quickly?

Jensen: That’s going to change, that’s right.

Rubens: In your tenure?

Jensen: It started to come. The massive cases started to come in.

Rubens: So should we go there ...or were there some other high-profile cases that you...?

Jensen: Well, I remember the Abbott Case that you brought up.

Rubens: Did you see Coakley?

Jensen: We had a meeting every week and, see, one of the things that the Office did was try to keep in touch with everybody, so the whole Office went down and sat in the library in the Courthouse and we did it either on a Saturday or, then they moved it to Friday evening. So the whole Office—you could get—as I say, the size of the Office was such that you could sit in the library. It’s a pretty big library, but not that big. So a couple dozen, maybe three dozen people could be in there, but you had a meeting every week. One of the reasons for the meeting was to keep you up to date on the cases. One of the lawyers would report on all the cases that had come down and anything that had happened during that week, so that you were kept apprised of everything that was happening. You were kept contemporary as far as legal developments are concerned by that means. Theoretically, you should be reading these cases. You were expected to keep up with Advance Sheets and that sort of thing, but there was a weekly meeting where you were told; and that was a meeting that allowed policy to be developed and distributed. It kept the Office together as more of a unit because you knew everybody. So that went on for a long time.

MLJ: During the course of your tenure, that weekly meeting remained at the DA’s Office, even when it grew to over—?
Jensen: We kept that meeting, except that we expanded it. We couldn’t have all the offices there, so we’d tape it on video and send it out on video to the outlying offices. As soon as we had video, we did that. So there was a presentation at the Friday meeting at the Courthouse, then that went out the next week to all the offices.

Rubens: And they’d gather and have their meetings?

Jensen: They’d get it in their own meetings, because we couldn’t put everybody together. It was too big.

MLJ: Was that one of the early developments of the DA’s Office? Wasn’t the Alameda County DA’s Office one of the first offices that used video?

Jensen: We got another grant; we did. We got a grant from California to allow us to—if we could get the county to buy us the hardware, we could hire people. We hired a photographer, a guy who could run the video.

Rubens: Videographer.

Jensen: And an aide to him. And then we assigned him one of the lawyers, who wrote the program. So we used video right at the beginning—as soon as it came out.

Rubens: And your thinking in this was that it was important to—?

Jensen: To get the message out, in terms of making sure that everybody was keeping up with the laws as they were being developed, because at that point things were happening, for example—the Exclusionary Rule came in. When I first came to work in the DA’s Office, there was no Exclusionary Rule. Shortly after that it came in, and at that point it became almost a cottage industry to get out the word in terms of what the Courts were doing about the Exclusionary Rule, because these cases would come in and there would be different fact situations, legal situations, and now there would be a decision. We had to get those out for our lawyers and for the police to understand what was happening. So it became very important to keep up to date on what the rules were.

MLJ: So as the Court went through the modification of the criminal law with the Miranda decision and the Exclusionary Rule—as those changes took place in the general criminal law, they had to be filtered down to the—?
Jensen: They had to be taught to your lawyers, and this already existed in the Alameda County DA’s Office—this means of getting out the law as soon as it happened. So we didn’t depend upon the lawyers to read it themselves under their own timeframe. You got it—by definition, the Office gave it to you.

Rubens: That was that meeting?

Jensen: That meeting.

Rubens: You also said there were these Advance Sheets; it was someone’s job to summarize them?

Jensen: Yes; somebody summarized them, and gave you the Office position in terms of “What does this mean?” That was done at the Friday meeting, and then it was on the tape. It went out to the other meetings and then the police could get those tapes, too. Then we expanded into specific tapes for specific areas. Then we also used video to help case preparation. We’d videotape things for trials, so we were using that relatively shortly after the technology first came in.

Rubens: So is this around ‘66—Miranda is ‘66, isn’t it?

Jensen: It’s in the ‘60s. The Exclusionary Rule was at the end—the middle ‘60s, and then there were cases on things like the discovery process now being generated. You didn’t really have Discovery before that time. Case law developed Discovery—disclosures that were required to be made. There were cases on the way lineups were conducted that were brand new, that you had to do. In the old days, the world was you could present—see, one of the other things you did in the Municipal Courts would be to put on what are called preliminary examinations which are—you present to the Judge the witness and the basic outline of a robbery; they testify before the Judge and you put those on—the Deputy DA. The reason is to show probable cause to have the case then go to the Felony Court, the Superior Court in the County Building.

So you’d be moving those along and you’d put on the preliminary examinations before the Judge. The Deputy DAs would do that. In those days you could—I think you could do a robbery case in about two or three questions. You could say, “Who are you?” “Where do you live?” “Was there one moment where somebody came in your store and held you up and took your money?” “Is that the person who did that?” You can tell by that, okay; then it’s all done. Then the question would be, “Well, did you give a statement to the police?” “Object—irrelevant.” “Sustained.” “Did you attend a lineup?” “Irrelevant.” “Sustained.” “Isn’t it true that this evidence was seized and you
didn’t even have any reason for it? It was unconstitutional?” “Object, irrelevant.” So these all just went straight through in terms of, you put on a witness; the robbery took place, you identified the robber, and that’s all.

But then these developments came along and that’s where you had to learn. So you had to teach the new world.

MLJ: So it was your job, in the DA’s Office, not necessarily your job personally but the DA’s Office’s job, to implement the changes in the criminal law throughout the system, to the police and to the lawyers that were now going to work in the system?

Jensen: Absolutely.

Rubens: And the Judges, in fact?

Jensen: As a matter of fact, I think that this is not recognized particularly, but one of the great teaching forces in the criminal law are prosecution offices, because they have to. They have to do this. A case comes down and it pronounces a new rule of law, and some of them are marginal and some of them are incredibly significant—like we’re talking about the Exclusionary Rule. It comes down. All right, there’s the case. It’s in existence. Okay; how are you going to learn it? Who’s going to practice it? Well, the first person who is going to have to practice it is the Deputy in Court who is putting this case on, and so the Office has to teach that law to this Deputy. And basically, you’re teaching the Judges, too. They’re watching what’s happening; and you’re teaching the police how to do this because as the law is being developed, no one is issuing textbooks or follow-ups on it at all. They’re just developing a law. But what I mentioned before—this sort of cottage industry after the Exclusionary Rule—there were certain lawyers in the prosecutors’ offices in the State of California who took it upon themselves to take every case, and report every case, and put it into some sort of analytic order; then they would give them to their own DA’s Offices and ship them up to other places. We did that in Alameda County, people did it in Los Angeles, people did it in other offices, and it became well known statewide because they were looked to as the source of the law. They would analyze it, put it together, and ship it out.

Rubens: And the impulse to do this is mostly to be—?

Jensen: Got to, because you have to try the case. You can’t be vulnerable. It doesn’t do you any good to try the case and convict and have a flat-out existing error in terms of the Exclusionary Rule. You can’t do that; so you have to teach people.
Rubens: Am I naive on this, or do you think this is important—what is pushing these kinds of reforms? I knew about it later in terms of the Civil Rights Movement.

Jensen: Well, a lot of these are the developments of the Warren Court. Due Process—they’re now giving a real significant definition to Due Process. They were doing it throughout that time, and you didn’t think the Exclusionary Rule was the biggest step forward as far as that’s concerned. It drew a lot of opposition; a lot of people were saying, “Oh, that’s just terrible.”

MLJ: But can’t you think of those developments by the Warren Court and the criminal law in a Civil Rights context where you’re looking for the person who’s normally been on the wrong side of the Due Process powers and saying, “We’re going to empower you.” “We’re going to say that you can’t have a statement forced out of you?”

Jensen: Yes, as I say, it’s the rights of the defendant being developed through the Due Process Clause and through the Fourth Amendment. This is something that just came about, and this same kind of motivation is to bring Due Process into the criminal justice world because, as I was saying, you have a reaction to that—“How can you try a case like that? That doesn’t seem fair.” And I think that’s what happens, it doesn’t seem fair, and I think you brought these new rules in order to bring a sense of fairness into the system.

Rubens: So you’re going into ‘56—’57, having a sense like things are changing—

Jensen: Well, as I said, the Exclusionary Rule—that was the biggest change and that started us with everything.

Rubens: Did you have any particular feeling about the death penalty? Didn’t Burton Abbott get executed?

Jensen: He got the death penalty, yes.

Rubens: He was executed in ‘57. His wasn’t a celebrated death penalty case; I guess ‘59 is when Caryl Chessman is executed. That brings a lot of national attention to the—

Jensen: Well, that one brought all kinds of attention because you have there a fundamental fairness issue in terms of, can you have a death penalty when nobody has been killed? Those kinds of things become real questions—they
still are, and Chessman was one of the reasons that started. I did not have a really well-developed sense in terms of my position on the death penalty, but over the years as I saw these cases I thought that there was no reason why you shouldn’t have a death penalty, but it ought to be limited in its application to the most egregious, the most serious cases that you’re faced with. And if it had an application at all, it had to be in those cases. So I never agreed with the death penalty as sort of broad-ranging for all felonies. At least you had to have someone killed, and somebody who was killed not accidentally, but someone who was killed where that was the purpose of the criminal conduct. So unless you have that, I don’t think that the death penalty is at all an appropriate way of doing things.

Rubens: But of course, in the DA’s Office you weren’t going to take a position on the Carol Chessman case, or—?

Jensen: Well, we didn’t have that case, but we had death penalty cases like *Burton Abbott*. But *Burton Abbott* was this very straight-forward case where a girl was kidnapped from Berkeley, taken off the street, taken up and killed and buried up in the Sierra; so there’s a kidnap/murder of this young girl. I mean, that was classic death penalty at the time.

MLJ: But I think Lisa was asking you, as a Deputy DA or as a DA’s Office, would you take a position, yeah or nay, on the death penalty?

Jensen: They didn’t on those, no, not when you had the case. You might discuss it, you might have discussions because that’s your profession, and you’d have professional discussions about it, but you didn’t take specific positions. I think my recollection—the first time that we ever had a very, very specific response was when the California Supreme Court found the death penalty to be unconstitutional. At that point, the DA’s Association asked Alameda County to write a rehearing motion, which we did, to defend the death penalty and ask for a rehearing in that case. And that’s one of the first times we took a formal position.

MLJ: That was in the ‘70s?

Jensen: Yes.

MLJ: But you wouldn’t do something where...you often see people on TV now that are “talking-head” lawyers, commentators who will say “This is appropriate,” or “That’s not appropriate.” That wouldn’t have been done at that time?
Jensen: No, that was not done at that time. It was done later on, after the California Supreme Court found the death penalty unconstitutional- and there was an Initiative to restore it, you had the DA’s Association taking positions on that and that sort of thing.

Rubens: What is the DA’s Association?

Jensen: The DA’s Association is—all of the DAs in California are automatically members of this. They have a DA’s Association, they have an Executive Director, and they have meetings.

Rubens: It’s a Professional Association?

Jensen: A Professional Association. When I first got there it was one that included the County Counsel, because for a long time the County Counsel and the DA were tied up a lot.

Rubens: But not as Assistant DA?

Jensen: No. It’s just the DA, and actually, we changed that when I was there. We opened it up to Deputies and kicked the County Counsel out.

MLJ: Did it also become a lobbying organization?

Jensen: They always were a lobbying organization. They had a Law and Legislative Committee, they called it, and they met in Sacramento. They were represented in Sacramento and I forget; I think Warren was part of—started some of this— but Frank Coakley definitely did. He had one of the Deputy DAs in Alameda County assigned to Sacramento to be the representative for the DA’s Association as the Law and Legislative Director. That happened for years until the Board of Supervisors found out they were paying for it, and they said “Don’t do that anymore.”

MLJ: Just to jump way ahead, didn’t Ed Meese eventually get that?

Jensen: Ed Meese was one of those people, yes. He was assigned by the DA’s Office to go up there and be the Law and Legislative Representative for the State of California out of Alameda County.
MLJ: That’s when he met Reagan?

Jensen: That’s when he met Reagan.

MLJ: Can I go back a minute to talking about taking positions on things like the death penalty? Was there any culture or education in the Alameda County DA’s Office regarding your interaction with the media?

Jensen: You didn’t—I mean, the DA talked to the media. Actually, Warren, I think, started all that. He would have regular press conferences, and he would talk to the media. Coakley would do that every once in a while; he didn’t like to do it. We did not have a press officer for the DA’s Office.

Rubens: You did not?

Jensen: No. Coakley never did, I never did. And we didn’t have any prohibition for Deputies talking to the media. They could talk to the media. It was sort of like the delegation of authority in handling cases in that it wasn’t a prohibited act—if a media person talks to you, you answer the questions. People would do that, but there was a sort of culture not to do it. You didn’t talk to the media a lot.

Rubens: I’m a little surprised at that culture. I can understand, but once you just so quickly are going through such high-profile cases, I’m surprised that you didn’t get somebody to be your—.

Jensen: We never did, we never did.

Jensen: And we didn’t really talk about the cases. When we were trying the cases it was customary that when the media asked you a question you’d say. “We’re still trying the case, so we really can’t talk about the case.” That was sort of the basic answer.

MLJ: Where did that response come from? Was that just a cultural practice that was passed down, or education, or was that a policy?

Jensen: Well I don’t know that it can go back to any specific cases.
MLJ: I ask because it’s so very different from what happens now, where the lawyers are all out on the steps talking to people.

Jensen: Well, there’s a lot more attention paid. There wasn’t that much attention paid to criminal cases. Abbott had an enormous amount of press coverage, and some other cases had some, but they were only few and far between that had that kind of—.

Rubens: We just had that intense period in the ‘60s where we had the Free Speech and the—?

Jensen: Yes, there was quite a bit, and people would talk to the press, but—.

Rubens: So up to ‘62—I’m going to move us along just a little bit because I think we can see some of this in light of how cases really played themselves out. Between ‘55 and ‘62, I don’t have any record of a big case, of anything that’s of a really political nature until the Free Speech Movement is—.

Jensen: Yes, that’s really when it starts, and that’s ‘64. But before that—well, there were a lot of cases, and people were tried, but I don’t know other than Abbott that many of them had any media attention that was beyond simply the people who followed the Courthouse.

Rubens: What I’m now paying attention to is—it just seems the drama that’s taking place in Oakland has to do with the—well there’s even a State Commission, I think, in ‘49 that starts asking about hiring in the Police Department, in Fire, in trains. And then there’s a lot of effort in the mid-’50s when the freeway is going to go in about who is going to work on it. So there’s a lot of contention. But really, my understanding is that it’s not played out so much on a local level, that it’s the Fair Employment Practices that—.

Jensen: It’s more legislative. The struggle is over what are the policies going to be for the institutions, and not necessarily in the Courtrooms, because you don’t have the structure for civil rights cases. When I was trying cases, you didn’t have cases that were brought against police officers. You just never—it never happened. As a matter of fact, there were practices at the time where if you had a situation where it was something that had a problem with the case, it wasn’t infrequent that the deal that was agreed to in the Plea Agreement was, “We dismiss the case and you don’t sue the police officer.” Then finally that was—they said “They cannot be tied together; that’s an improper nexus.” But there was a time when that’s what happened in the Courts.
Rubens: Did you ever feel—I just want to stay with that police/DA’s Office—it seems the police weren’t telling the DA what to do, and the DA seemed to have more independence. One of the things the police—I think in ’57—the figures start coming out about dealing with juvenile delinquency, about sending cop cars up to Oakland Tech, and this is an example of how the new racial politics is beginning to emerge.

Jensen: We had some role in that. The DA’s Office, I know, was involved in some inter-agency kind of commissions and committees where you’d have a prosecutor and a school official, you’d have a probation official, you may have somebody from the City. Those were ad hoc groups that were put together in cities, basically. So we did that in Oakland for sure; and the deal was to now work out the way in which police would interact with a school, because the schools obviously were concerned about how this would happen. They didn’t want police coming into the middle of classes and carrying out police activities. They worked out protocols in terms of how one would deal with the information that was needed from a school, or from a student, or from faculty, and those were done basically with ad hoc groups that talked these out.

Rubens: Yes. And that leads to one of the first Ford Foundation Grants ever to go into a city—.

Jensen: Probably so; I think it probably went into a city where they had done something like that and it was—.

Rubens: It goes here to Castlemont District.

Jensen: We did that. I think, as a matter of fact, I’m pretty sure that Ed Meese was involved in that a lot.

Rubens: When does Ed Meese come into the picture?

Jensen: I would say about ‘60. I came in about ‘55, he came about ‘60 into the DA’s Office. He tried cases, and he went through the basic process—but then Coakley sent him up to Sacramento to be the Law and Legislative Representative, so he was up there relatively early. Then he also was assigned the task of working with the Grand Jury. Back in those days, the Grand Jury had a civil and a criminal function, and he did the Grand Jury. A lot of your cases would go through the Grand Jury. He would monitor those and arrange how they would be presented to the Grand Jury; the timing, and all that kind of thing. So he did that. He tried some cases. But basically, he did Sacramento
and the Grand Jury. And he came in at about the ‘60s. Then the biggest case we had was when the Free Speech came, and so he and I tried that.

**MLJ:** Before we do Free Speech, maybe we can just do a little about the DA’s Office. Ed Meese was one of your colleagues who obviously became important later on in your career. Is there anyone else that was important at that time—Judges, defense attorneys, or people in the DA’s Office, that you can think of particularly?

**Jensen:** Well, there were people like Folger Emerson, who was the head of the Criminal Division when Coakley was there. When I first got started he was the lead trial lawyer, after Frank Coakley, on the *Abbott* case—a very fine lawyer, and he was a very fine guy, he was a very fine teacher. Like Ed O’Neill, he was one of these people who taught you how to behave. After I had been in the Municipal Courts for about three years—two and a half or three years or so—I was sent to the Courthouse to be on the trial staff at the Courthouse where I’d be trying felonies. There I worked for Folger Emerson. Some other people were there, but he was a figure who was important.

**Rubens:** So you took to it; you did well? They moved you up?

**Jensen:** Yes. They moved me up. Well, that’s routine, sort of, that they run you through those things. When I started trying cases at the Courthouse I did fine, so they kept me there.

**MLJ:** You mentioned Rupert Crittenden. He became a Judge, didn’t he?

**Jensen:** He became a Judge in Municipal Court and he tried the FSM. (Free Speech Movement)

**MLJ:** Now you hear a lot about various conflicts of interest. Stanley Golde was a lawyer on the Free Speech Movement case and the case was tried in front of his former partner, Rupert Crittenden—

**Jensen:** Right.

**Rubens:** Was there any discussion about any possible conflict or ethical issues with that happening?
Jensen: Who would complain—the DA? The DA is not going to complain about Rupe Crittenden trying the case; he’s a fine Judge. The DA is not going to complain about Stanley Golde trying a case; they tried cases with Stanley Golde for 10 years. What difference did it make? It’s just one more case.

MLJ: I’m comparing and contrasting to, I think, how that kind of thing might be viewed in the modern era and seeing whether you have an opinion whether people were generally believed to be more reliable, or whether they had more integrity, or whether there was less of a microscope on—?

Jensen: I don’t think people have changed. I don’t think people have changed in terms of the way they relate to one another and what their sense of morality or their sense of ethics is. They were every bit as ethical as nowadays.

Rubens: Yes, Mal Burnstein was the lead lawyer for the FSM, and he says that we wanted Golde. He had a stellar reputation, and he also thought that he would make Crittenden honest. I mean, they thought he would—.

Jensen: But see, we didn’t have any problem with Rupe Crittenden. As I say, he had a reputation in the DA’s Office in all the cases that he tried as a criminal defense lawyer as being, if not the best, at least one of the best criminal defense lawyers in the county. So, you don’t have a problem with that kind of person trying a criminal case. I mean, he’s fine as far we’re concerned, and the fact that Stanley Golde had worked with him doesn’t really detract from that. They hadn’t been together for a long time. When he began to try Muni Court cases, Stanley Golde had been off for years by himself.

MLJ: To do the chronology leading up to the FSM cases, you said you were in Muni Court for three years; from when to when?

Jensen: About three years—from ‘55 to ‘58 or ‘59, then I went to the Courthouse and started trying felony cases.

MLJ: Were you still assigned to felonies when the Free Speech Movement came along?

Jensen: Yes.

MLJ: Yet you went back to trying misdemeanors?
Jensen: No, I—.

MLJ: That’s a Muni case?

Jensen: Oh yes, yes, but that’s a big deal misdemeanor.

MLJ: Right; but I just wanted to see how that worked.

Jensen: Well sure; the way they do it now and the way they should have done it then, I guess, is that you rotated people through, and when you came from the lower Court and then tried cases in the Felony Court, you went back to the Municipal Courts in some sort of supervisory position. I never did. When I came down to the Courthouse I stayed at the Courthouse thereafter, all the time trying felony cases. I think it was ‘66; I became the head of the Criminal Division, or sort of the Chief of the Criminal Division. And I was appointed as the Assistant District Attorney. Those were the titles then.

Rubens: By the way, is the Office expanding during this period? Are you getting more—?

Jensen: Yes; there are more—not as much as the ‘70s—but it is expanding. And one of the things that happened that I think was important from my standpoint in terms of my career, is that the County Counsel’s Office was formed, so the civil function left the DA’s Office. That happened in the ‘60s, and Frank Coakley, he fought that all the way, and Earl Warren didn’t like it. He didn’t want to do that either; he wanted to keep the DA’s Office representative, but the world moved on, and almost every county in the State of California had gone to this.

Rubens: This is part of the specialization, professionalization?

Jensen: Yes it was, sure. This was deemed to be good administration and that’s the way you did this properly, because if you were the DA for the Board of Supervisors, they were your client and you had relations with them, but they are also the ones who are funding you and dealing with you, so it’s a funny kind of relationship. But they kept that for a long, long time. I think we were one of the last counties to have the County Counsel’s Office created; so that split off the civil function from the DA’s Office.

Rubens: So could you keep your lawyers and they could...
Jensen: Their lawyers left and went to the County Counsel. One of the lawyers who left was Dick Moore, who was the head of the civil part of the Office. He went to become the County Counsel. He’s a tremendous lawyer, and if he had still been in the DA’s Office when Frank Coakley retired, I think he would have been appointed the DA.

Rubens: Why is that?

Jensen: Because he was ahead of me, he had been in the Office a long time, and he was a great guy. I mean, the Supervisors knew him very well and they trusted him, so if he had been in the Office, I think he would have been the clear frontrunner, and I think he would have been appointed.

Rubens: I wanted to ask you about relationships with the City Council and Governor—Mayor as well. Houlihan is the Mayor, isn’t he?

Jensen: We had a great relationship up until the time he started stealing money.

Rubens: Is he still—?

Jensen: He is while he’s mayor. He’s a lawyer and he’s practicing.

Rubens: Oh, from his practice, yes.

Jensen: Yes, in his private practice. He actually stole money out of probates that he had.

Rubens: Yes. There was never any allegation that he took it from City money?

Jensen: No, no; it was all private practice.

MLJ: What year was that?

Jensen: That was in ‘66, and I was just becoming the head of Criminal. I did the investigation, the indictment. We indicted him, then he pled guilty and went to prison.

Rubens: So Dick Moore splits off?
Jensen: Yes.

Rubens: Do you know the date when the County Counsel...?

Jensen: It’s in the ‘60s; I’m not quite sure.

MLJ: In terms of personnel and numbers, how did that change the DA’s Office?

Jensen: By that time, the DA’s Office Criminal had more lawyers than the Civil functions did, but it took off maybe 20—25 lawyers who went over to the County Counsel’s office.

Rubens: The staff of the DA’s Office—this is a primarily white—?

Jensen: Yes, absolutely; correct.

Rubens: And are they mostly local—are they guys—?

Jensen: Mostly local people—Stanford, Hastings, St. Mary’s, and USF—very rarely did they come from out of the area. That was one of Frank Coakley’s basic ways of approaching things, was to hire people who had roots in the community. That’s one thing that helped me, because I had roots in the community.

Rubens: Sure, yes; I wanted to pick up on that a moment ago. Last week we talked about the fact that Coakley particularly liked that you could play basketball.

Jensen: Yes.

Rubens: You were a good basketball player. So I was trying to get at the social life of the Office.

Jensen: It became your whole life. When you got into the Office, that’s it. The people that you worked with became your best friends.

Rubens: When would you play basketball?
Jensen: When I was in the Office, in the ‘50s.

Rubens: Was this a lunchtime break or—?

Jensen: Well, we did that, yes. We used to play in this building when it was the Athens Club. See, years and years and years ago, this site where the [federal] Courthouse now is, was the Athens Club—great little club. You could play basketball there, and we used to come over and play basketball. See, I didn’t really get to be a basketball player until after I was in the Army because when I was in high school I was just a skinny kid. I think I weighed 155 pounds, so I really couldn’t play very much. But I grew up, basically, and by the time I got out of there—I played in the Army some—I could play a little basketball. So I played with the DA’s Office, but what we did was we had games where we would play on some evening of the weekend, and we’d have a game. We had this annual game where we played the Probation Department, so this was a big affair. That’s what they were interested in.

MLJ: So part of the social camaraderie in the DA’s Office were the—not only was there a basketball team, but there was also a baseball team—wasn’t there?

Jensen: They had a baseball team, softball team—really good softball team.

MLJ: Had there developed a trend of hiring, or acquiring, ringers to play on your team?

Jensen: Well yes. What happened was—I think you could hire law clerks. So Coakley hired some law clerks for the summer who actually played for Cal, then they became people who worked for the DA’s Office, and they could play. Then the Probation Department did the same thing with—I think the whole St. Mary’s Varsity starting team—so you had some people who were playing in these games who didn’t really work in the Office. They were the sort of highlights—the people who just staffed it. It got to be a little carried away, so they finally cut that out, so you had real people against real people; but for a couple years there, it got a little carried away by Frank Coakley and the head of the Probation Department.

Rubens: Coakley had a reputation—he was supposedly short and kind of heavy?

Jensen: He’s short; you know, he was not a big basketball player. He’s a big golfer, but he—.
Rubens: He liked having these teams and—?

Jensen: They...actually one time he and Lorenzo Buckley had a little luncheon and they decided that in the basketball game what would happen is that Frank Coakley would shoot all the free-throws for the DA’s basketball team, and Lorenzo Buckley would shoot all the free-throws for the Probation team. They agreed to that and we said, “We’re not playing.” Because you can see this game...people would kill one another to let these guys shoot free-throws. So we didn’t do that.

Rubens: Was Coakley part of the social life of the town?

Jensen: No—well, he had a social life.

Rubens: I meant some of the big people; you know, the Knowlands and the Kaisers. . .

Jensen: He had a good relationship with the Knowlands. I don’t know that they were close friends, but they certainly knew one another. But it was mostly, I think, at ceremonial things or in civic affairs and that sort of thing—not as—

Rubens: Country club?

Jensen: —not country club; they didn’t do that sort of thing.

MLJ: Did the DA—Coakley or Warren—or anybody have a political presence in Oakland or in Alameda County?

Jensen: They did; sure. You went to political—as a political presence, you’re going to have to run for office, and everybody did—Warren did, Coakley did, I did. I would go around and I would speak to anybody who would ask. You go and talk to all these groups all around the county all the time you were in office and explain what you did in the DA’s Office, and explain how the Office ran, and try to sell the Office. So that was a part of your political identity, because the politics were that you were not partisan—the offices are completely non-partisan, the DA, the Sheriff, that sort of thing. They’re non-partisan, and they really were; they didn’t have any participation by the political parties. You didn’t even get endorsements by the parties. The closest thing to endorsements that were political were by the Democratic Lawyers Committee, or the Republican Lawyers Club or Committee, and that was it. So you had a bi-partisan election and a bi-partisan campaign and you went around to
everything you could—went to luncheon clubs, or wherever you got invited; so...

Rubens: It was always an elected position—the DA; is that right?

Jensen: Yes, always elected.

Rubens: I see that you had four different elections, but what would happen is sometimes the DA would resign and then the—.

Jensen: Well, when I got elected the first thing that happened was Coakley resigned in 1969, and the election year was ’70. When he resigned, the Board of Supervisors appoints. So I was appointed by the Board of Supervisors, and then I ran for election in 1970.

Rubens: Then you had to run four more times?

Jensen: Each four years, yes.

Rubens: Apparently that’s—maybe it’s true of other cities, too, but in Oakland it’s been remarked—

Jensen: —that what had been done is the DA has stayed within the Office the whole century, and it is true now. There has been a tradition that the people in the Office succeeded people in the Office. That’s happened all the way through. So, when I left, Jack Meehan came in from the Office and he was appointed by the Board.

Rubens: Did you resign as well? Is that right?

Jensen: Yes.

Rubens: I mean, it’s just a strategy of—?

Jensen: No; I didn’t resign as part of a strategy. The election came and I resigned.

MLJ: I think what Lisa is getting at is did the DA traditionally resign or retire prior to an election, a specific election, to allow the appointment process to take place?
Jensen: The answer is yes.

MLJ: Versus an open election.

Jensen: Right.

Rubens: Yes; I think it was true of the City Council. Apparently, that happened regularly and—.

Jensen: Right; that happened. It didn’t happen in every DA’s Office; it happened here. Sometimes the DA just retires and he’s gone and then you have an election, like Santa Clara County.

Rubens: I do have one other trial here. I was looking for one of the big cases, and there was Jerry Newson. He’s tried for murder of a pharmacist and there are three trials to get a conviction.

Jensen: I didn’t try that.

Rubens: One of Newson’s attorneys discovered a hidden microphone in the visitor’s room in the county jail and Coakley defended the practice. He says, “I wasn’t going after the attorney-client, but I was going after what the girlfriend was going to say;” in, to him, what was a hideous, heinous case.

Jensen: It was a big case. I didn’t have anything to do with it.

MLJ: To build up to the Free Speech Movement, were you aware of, or did you know as a member of the DA’s Office what was going on there?

Jensen: Well, that was not the first demonstration. These demonstrations, and the sit-ins, and whatever they were; they were going on. I think they started—wasn’t it in San Francisco? Plus, they had some of that in the Tribune, and we were concerned with this all the way along. All the DAs in the State were. There were people from the Attorney General’s Office who were talking about this. And how did you deal with a mass trial? I mean, nobody had dealt with that before, so we were concerned about that and did an awful lot of thinking about it. We had really been prepared if we had had that kind of a situation happen in Oakland, or any part of Alameda County. We had our own basic protocol for how you were going to handle the problem of a mass arrest and a mass prosecution.
MLJ: You mentioned *ad hoc* committees dealing with the high schools. Was there any *ad hoc* committee dealing with the University in anticipation that there was going to be a problem at the University?

Jensen: No; we didn’t have anything.

Rubens: But there was—I’m not going to say this right—did the DA’s Office have its own surveillance capacity?

Jensen: We had the capacity to surveil, yes. We could have—in a sense we could have somebody go out and watch what’s happening. That’s surveillance, and we could have lawyers who are investigators go out and watch what happened. Some of the people in the Berkeley office went out and watched what happened at Berkeley before the sit-ins took place. There was a lot of action on the Berkeley campus before the sit-in. And there were questions about whether there would be any prosecutions, but nothing ever developed until we actually had arrests being made on the campus.

MLJ: There’s campus police; were they—?

Jensen: There were campus police. They are different than the Berkeley Police Department. The campus police were the main force that would deal with this initially. They were the ones who had their cars surrounded in the Berkeley Square, and that sort of—.

Rubens: Well, the Alameda Sheriffs had been called in as preparation.

Jensen: The Alameda Sheriffs got called in at some point—not on the first one, I don’t think—but later on. There’s a mutual assistance kind of program, so police agencies can call people in, and the Berkeley police and the campus police called in people on their really big demonstrations.

Rubens: Even from the sit-ins in 1960 at the San Francisco Board of Supervisors—

Jensen: The hotels?

Rubens: —where they flush them down the—.

Jensen: Yes; right—that was way early, yes.
Rubens: ‘60, and then in ‘63, are the hotels and the auto row—those are mass arrests.

Jensen: Yes; they are. That was a real concern.

Rubens: It really tied up—?

Jensen: That’s right. So that’s what you’re thinking about, and we did do a lot of thinking, and did develop our own way of handling this.

Rubens: What did that literally mean, just sitting with other DAs, or would there be—?

Jensen: Yes, yes; and thinking about how you’re going to deal with problems; about how do you individually identify the person who gets arrested in a mass arrest. See at Berkeley, the sit-in turned out to be fine. Everybody just sat there, so you took their picture and identified them, and you took them out, so it developed itself. We didn’t have the problem of any kind of dynamics in the situation. We were ready for them to do this, yes.
MLJ: There is no doubt there is media attention, political attention, and other ramifications; and there are a lot of lawyers who would not try the case. So how did you develop a theory about how to approach this?

Jensen: Well I guess you simply—it’s a matter of will and of self-discipline, I suppose. It’s what becomes important. What more do you want me to say? I’m just trying a case and I realize how one exercises peremptories, and you get to the issue of who should be on the jury. It was my thesis that there ought to be African American jurors. I wanted to have African American jurors and, when you think about it, it was not necessarily a good idea to serve on this case—either as an African American or as a white person. People who were prospective jurors had all kinds of reasons not to serve. It was not easy to get twelve people who were willing to serve, including African Americans. So I wanted to have African American jurors—or whoever I could get. Obviously I wanted somebody that I thought would now listen to the facts in the matter and return a verdict, but it didn’t matter to me and, as a matter of fact, I would just as soon have had a trial where there were African Americans on [the jury].

Rubens: It sounds to me like the real peremptories were being used by Garry, that he had used—

Jensen: Well, I used peremptories too.

Garry used peremptories, but he was more successful than I was in terms of getting people challenged for cause, because he really wanted to exercise that function of the voir dire, and he did. He did extremely well. If you look at the book, there are a lot of people where you follow the voir dire, and – see, this was interesting because the lawyers did the voir dire. If you go back, in terms of tensions in the Courts and that sort of thing, the Federal Courts still have the Judges run voir dire. There is no right of a defense attorney, or any attorney in a Federal case to engage in voir dire personally. I mean, the Judges do that. But in the California system, and most State systems, you’ve always had lawyers doing it, and our background in Alameda County had been that the lawyers ran the voir dire. So this was not unusual, we did that.

Garry did it. He was very thorough in his examination, and he’d get to the point where people would say something and the Judge would say, “Well, you can’t serve.”
How did you assess him as the trial went on, as an opponent?

He’s a very good trial lawyer—a very good trial lawyer.

Did you get along with him personally?

I got along with him fine. We disagreed about lots of things but we—I think he’s a professional in terms of the way he handles a trial. There was a level of the conduct of the trial itself in terms of being a professional, in terms of how you run the trial that I think we both understood. I think we understood that he would push harder than maybe I did in terms of the positions he would take, but he was a fine trial lawyer. And as I say, he also kept a very fine trial lawyer to be his second.

My understanding is he also had a good rapport with juries. He had kind of a folksy quality.

Yes, he did. He could talk to them. He would talk and they liked him. You have to get to the point where the people kind of like you, and that’s hard to maintain all the time; but he did.

I’d like to pursue that a little bit. You said you got along with Charlie Garry, and you basically got along with the defense attorneys, and the defendants, in the Free Speech Movement case. As I was going through research and reading books on this, both with the Black Panthers and in the Free Speech Movement, you seemed to escape with the respect of the defendants and the defense attorneys where your colleagues didn’t. For example, there was a piece done by Susanne Goldberg on the Free Speech Movement in which she was comparing you to Ed Meese, and says, “I recall vividly during the trial of the FSM defendants, the two prosecuting attorneys, Lowell Jensen and Edwin Meese, both are in government positions today; Lowell Jensen, by no means on our side, treated us with respect and we respected him. He was intelligent and a gentleman. Edwin Meese treated us as scum, people with values he disapproved of and we were not to be treated with respect.” I’m just wondering—do you think that’s fair?

Well, I would agree with that—obviously I would agree with it when she’s talking about me—but not when she’s talking about Ed.

So you don’t think it’s fair?
Jensen: No, no, I think we have a different sort of approach. My approach was more to the business of what we’re going to do. I never wanted to get into a situation where you didn’t have a level of respect as a part of the Courtroom. It never occurred to me as being a good idea—you always wanted to maintain the ability of the other side to have a level of self-respect, so that was part of the way I would try cases.

MLJ: You seem to have even the respect of the Panthers during that time.

Jensen: I’m not sure that’s so, but I think that I came across as the person who would—who was trying to do it on the facts, and upon that alone, and not making some kind of a political statement about what we were doing.

Rubens: Did you form a particular opinion about Newton? Because you had seen him again and again—

Jensen: I don’t know what you mean by form opinions. He was highly political—

Rubens: He seemed like a political—.

Jensen: Very, very much so. He was very bright, but he was sort of out of control. He did things as a young person, and later on, that were really acts of—without much self control at all. That’s why he got into trouble—really odd.

Rubens: Newton is convicted, yes?

Jensen: Yes.

Rubens: And then he runs away; is that right?

Jensen: No.

Oh, you mean...well what happened is when the shootings took place, it was down on 7th Street in West Oakland, and when Huey and the guy who was with him—I think—but anyway, they commandeered a car to take them to the hospital. So, he was taken to the hospital by a guy that we actually charged Huey with kidnapping. He was a person who was there on the street; he wasn’t part of the Panthers or anything. He just—at gunpoint was commandeered to take Newton to the hospital.
MLJ: Later he was going to be a witness, but then forgot what happened?

Jensen: He said he didn’t know. He testified to the Grand Jury, then at the trial he didn’t remember anything about it. So now we didn’t have any evidence to put on, so that kidnapping case—that charge was dismissed.

MLJ: Was there some controversy and accusations regarding that—that somehow he had been manipulated to say one thing and then he said another?

Jensen: Well I don’t know—you mean in terms of how we had manipulated him?

MLJ: Yes; the prosecution manipulating him.

Jensen: Well, maybe there were charges but I don’t know what they were. I mean, he was kidnapped and he testified to the Grand Jury and he said “that’s what happened.” Then later on he didn’t have any recall about that, so—

MLJ: What investigation did you do of the victim, Officer John Frye?

Jensen: As much as we could in terms of the background.

MLJ: There were some things in his background that were brought out that suggested maybe he wasn’t under control either?

Jensen: That he was racist, yes—yes. There were things he did with—I don’t know that I saw them as being in any way definitive. I didn’t think that we established the fact that he was a racist police officer.

MLJ: The defense, and also some of the Panthers in their observations about the trial, had a lot of questions about the testimony of the bus driver.

Jensen: Yes.

MLJ: What was the story with the bus driver?

Jensen: What had happened is at the scene of the shooting, it was at night and it was on 7th Street. A bus had been stuck behind all this and the bus driver could see what happened. He then was questioned by the police, and he basically
gave a description of the events that came out about the same as what the police witnesses had said, and not what Newton had said. So, he was basically our witness and he testified at the trial.

Rubens: This was Dell Ross?

Jensen: No, no, no; his name was Grier. I think his name was Grier. Ross was the person who was kidnapped. Grier testified at the trial.

Rubens: Isn’t the issue whether Newton was holding a gun?

Jensen: Part of it is, in terms of who started shooting; and his recollection of what he had seen was that Newton started it. I think he testified that Newton was the first one who fired. I don’t remember exactly.

He was called as a witness by the prosecution because what he said supported the prosecution’s case, but he had not been interviewed by the defense until the week before. We had, actually in the disclosures of witnesses, the Judge had said “You don’t have to disclose his name until just before the trial,” so he was a last minute witness who testified.

Rubens: How come the Judge said that?

Jensen: Because of the threats—potential threats and, in terms of Dell Ross—I mean, the person was kidnapped. At the second trial, he testified again, and he told the story about how there had been some intimidation. So, I mean, it isn’t as though there was not the prospect of that, and that’s why Grier’s—the bus driver’s name—was not given to the defense. But then he testified, and one of the most dramatic moments I’ve ever seen in a Courtroom was when he was testifying and he gets—

MLJ: And he’s black, right?

Jensen: He’s black—an African American—and he’s testifying and he gets to a point where he’s asked “Who was in the other car and are they here?” “Is Huey Newton the person you’re talking about?” and he identified Newton as sitting down at the table. And I think Garry said, “Well you can’t do that; he has to come down here and touch him.” I said, “Well that’s not necessary; his lawyer is well aware of his testimony.” And the Judge said, “Well why don’t you go down?” So we had this Courtroom scene where this witness who had just identified Huey Newton is now supposed to go down into the Courtroom and touch him in order to verify his testimony.
It’s a very tense Courtroom. I mean, as I said, there were no metal detectors or anything else. The Courtroom was full of Newton supporters, and he gets off the stand. He walks down and it’s very quiet, and he walked over and he sort of—as he’s going by Newton he touches his shoulder and it just—you could cut the Courtroom with a knife. So I said, “Can we have a recess?” and we did—we did. But that was part of it.

Rubens: The theatrics—?

Jensen: Many of them, absolutely.

MLJ: How long were the closing arguments?

Jensen: A day or so.

Rubens: Were you sweating out the preparations for this? Are you—?

Jensen: Yes, because this is a hard trial. There was a lot of work put into this. You’re working on it day and night.

MLJ: How do you do your preparation? You didn’t have a staff did you?

Jensen: Well, we had a secretary available, but most of the stuff that I did I wrote out myself, and I never did get to be very good—we didn’t have computers—that sort of thing. We had typewriters, and I wasn’t a very good typist. I learned how to type in the Army, but then I didn’t type after that, so I wrote things out.

MLJ: Do you have any of your notes?

Jensen: I don’t think I do; I may have some that are still kicking around, but I don’t think I have any.

MLJ: How long was the jury out?

Jensen: The jury was out for about a full five days.

MLJ: What was the atmosphere like at the Courthouse while the jury was out?
Jensen: It was a very tense time. We just sort of shut down.

MLJ: Were there statements being made?

Jensen: While they were out they were sequestered. There was an enormous police presence, and I don’t know—you can probably check this, but they said it’s one of the quietest times that the City of Oakland has seen. There was nobody moving.

MLJ: Were there any statements made by the police during that time, or Coakley, or the Mayor?

Jensen: Nobody said anything; there were not any statements because it was understood that you don’t say anything while the jury is deliberating. Maybe you said something before, but . . .

Rubens: Were you actually in the courtroom, or are you waiting for the call back?

Jensen: I’m waiting for the call in the office, or whatever, on what’s happening.

MLJ: Were there security measures put in place for when the verdict was going to come back?

Jensen: There were police around. Actually, what happened is when the verdict came back, and it came back as manslaughter—and that’s a conviction, All right? But the police thought it was murder, and that night a couple of Oakland police officers fired on a Black Panther Headquarters in Oakland. So we ultimately had to—they were identified and prosecuted for firing on the Headquarters.

MLJ: Were they convicted?

Jensen: They were convicted.

Rubens: Were you the one who prosecuted them?

Jensen: By that time—I didn’t try them. I didn’t prosecute it personally, one of the other lawyers in the Office tried that.
Rubens: How was that decision made?

Jensen: I think they pled guilty.

MLJ: When the jury came back with manslaughter, what was your reaction to that?

Jensen: Well, my reaction was that this was—I mean, this was an unlawful homicide, and that’s the verdict I wanted. I didn’t want to have them either hang up or acquit. But, so as far as I was concerned, it’s a—but, as I say, there were a lot of people who said you don’t want him to be acquitted—

MLJ: Was Newton released after that?

Jensen: No, no; he was not released at all. He was in jail. We had a sentencing hearing and he was sentenced to prison, and he was taken to prison right away. There was nothing—there was some thought that maybe something would happen when they were taking him to prison. But he walked out of the Courtroom where he had been sentenced and he walked into a police car, and they took him to the State prison immediately.

MLJ: What was the alleged error that was upheld on appeal?

Jensen: Basically, the decision was that the trial court should have given another instruction. The jury was instructed on diminished capacity, which was a part of California law at the time in terms of its effect upon the culpable state of mind of the offender; so there was an argument about what the appropriate instructions should be for “state of mind.” There was testimony, and some of the testimony was—well, a psychiatrist testified something to the effect that there could be an unconscious reaction to all of this. We argued about the instructions, and ultimately there wasn’t an instruction proffered on a state of unconsciousness as a defense in addition to diminished capacity, as a separate kind of concept. The Judge did not give that, and part of the basis for that was that the defense agreed that we would give diminished capacity and not instruct on unconsciousness, so that’s what happened at the trial. But on appeal, the Court said that the trial court should have given that instruction *sua sponte*, regardless of what the defense attorney had said. So it was deemed to be an error—invited error—because the attorney agreed to it at the trial; but that regardless, the Judge should have given that instruction. Therefore, since it could have resulted in a verdict where the jury found differently than diminished capacity—that Newton could have been unconscious—they reversed the verdict.
MLJ: Was that testimony from Bernard Diamond?

Jensen: That’s the psychiatrist who testified.

Rubens: Oh really? Why would the defense have agreed to that?

Jensen: That’s—you’d have to ask them.

Rubens: So once the decision is reversed then—?

Jensen: Back he comes.

Rubens: Then another trial?

Jensen: Yes.

Rubens: So now we have the second *Newton* trial.

MLJ: Just to clarify, he cannot be tried for murder again?

Jensen: He has to be tried for manslaughter.

Rubens: So July 31st, I think, is when the first trial ends with the original manslaughter conviction, but in the meantime is when the Draft is going on?

Jensen: There’s something going on, but I don’t think it’s—.

Rubens: April of ‘68 there’s another shoot-out with the Black Panthers where Bobby Hutton is killed and Cleaver is then brought into the picture.

Jensen: Right; well, that was different. That was a totally separate event.

Rubens: Of course, yes; just happened to be the same political organization.

I wanted to ask you about the Grand Jury because I’ve never quite understood actually how the Grand Jury operates and—
Jensen: Okay. In the State system, the Grand Jury at that time was an alternative way of bringing felony charges. You could do it either through a Grand Jury or through a preliminary examination with a Judge. Most of the time, we did it with preliminary examinations with a Judge. On those occasions, a cross-examination took place of the witnesses. In the Grand Jury, there was no defense attorney present, and the oral examination that was done was done by the prosecutor.

Rubens: Who decides if it goes to a preliminary—?

Jensen: The prosecutor does.

Rubens: Okay; that’s you.

Jensen: At the time, yes. Well, I became the DA at the time Newton’s case was still there, but I wasn’t the DA when we decided those sorts of things. But—you take the case to the Grand Jury and present the witnesses, and they testify as to what the conduct is. The issue is whether or not there has been a showing of a crime and whether there is substantial probable cause to believe that a specific person did it. It’s not the same thing as a trial verdict where you have to prove it beyond a reasonable doubt. It’s to prove that there is a threshold to go to trial; so you prove that there was a crime, and that there is sufficient evidence to now identify the defendant as being the person who committed the crime. But there is no defense attorney there, it’s just the prosecutor and the Grand Jury. The Grand Jury returns an indictment, and in the California system, a transcript of what took place in the Grand Jury is then provided to the Court. The defense attorney, at that point, can challenge it and say it’s legally insufficient for some reason. Generally, that doesn’t happen because it’s just a showing of probable cause that the crime was committed and this person did it. But legally, that’s what happens in the Grand Jury.

Rubens: But the goal of the Grand Jury is to protect the—?

Jensen: They decide. It’s not the prosecutor’s decision, but the prosecutor brings the case and the prosecutor brings the evidence and presents it to them. So the arguments are, “Well, that means it’s the same thing as though the prosecutor is bringing the case himself, so, it really is not much different.” The Grand Jury is reputedly a rubber stamp for the prosecutor’s decision. And you can have big long discussions about all this; I don’t think it’s that way. I think that Grand Juries do do their own thinking, but you’ve got to remember that their thinking is not that this is guilt or innocence. This is probable cause, so they’re
not deciding the case ultimately like a trial jury. They’re deciding whether or not you have enough to bring it to trial.

Rubens: Isn’t it allegedly that they’re also thinking—I mean, Grand Juries used to be made up of the “better” citizens and . . .

Jensen: Well, see there was a real question about that. In the State system at that time, Judges of the Court—sitting Judges—would submit a list of names and they would appoint people, in effect, or they would nominate people; they would nominate people to be prospective members of the Grand Jury. You’d get 30 or 40 of those names from the Judges of the Court and then you’d draw, it was 19, I think, in the State at the time. Those people would be drawn from that list of nominees. And the irony was that that list of nominees is skewed to start out with. But the jurors at that time were supposed to be both civil and criminal Grand Jurors. They did civil functions in terms of governmental oversight, and people would appoint people who theoretically were competent to do that sort of thing, so there were a lot of challenges to the Grand Jury as being not an appropriate body, in that the selection would be skewed by the way it took place. In the Federal system, they pick the Grand Jury the same way they pick a Trial Jury, so you’re called in the same way. But the State systems worked in that fashion at that time; there were challenges to the Grand Jury process on that basis, but—.

MLJ: But then eventually there was a case in California that required all cases to go via preliminary hearing.

Jensen: At one point the Supreme Court said that you had to have a Grand Jury and you couldn’t do it through—with just the Judge doing it. So, if the defendant wanted to have a Grand Jury, they had to be presented to the Grand Jury.

MLJ: But the effect of that was to make every case go to a preliminary examination?

Jensen: Right.

Rubens: And is that how it remains?

Jensen: Now the law has been changed and you can do it either way, but most of the time you do it through preliminary examination. See, one of the problems is that if you have a Grand Jury and there’s been an indictment, and then time passes and you want to go back and use the testimony—for example, Dell Ross—I couldn’t use Dell Ross’s testimony because he had never been cross-examined. There had been no confrontation, so given no confrontation, you
can’t use that testimony to show the truth of the matter that’s been presented. But in a preliminary examination, there’s been cross, so that testimony has been preserved. But if you use a Grand Jury, it hasn’t been preserved.

Rubens: Similarly, isn’t Grand Jury testimony open to the newspapers?

Jensen: It is after you file it in California. I guess there are some times where it’s been sealed—individual cases by individual Judges, but the process was once you filed it, it’s public and the argument is in terms of the sufficiency of the evidence.

Rubens: Okay, we’ll pick up the next Huey Newton trial and then, I think, People’s Park—there’s an interesting issue in People’s Park about if we know why the Alameda Sheriffs started firing on the students, if you know anything about that—

Jensen: Well, I knew about it, yes.

Rubens: Is there anything going on at that time in terms of crime on the waterfront—union racketeering, search and seizure, drugs?

Jensen: I know about it. Everything is going on at the same time. I mean, these are the focal points and the highly visible cases as far as politics go.

Rubens: And cases that really had a national impact—

Jensen: Yes. People paid attention to them, as they should, but at the same time—it’s just like I was talking about when Frank Coakley was trying Burton Abbott for the murder of Stephanie Bryant—we’re still trying misdemeanor drunk driving. So that’s still going on.

Rubens: Yes, but I’m going through newspapers to see whether there is any other evidence of Oakland being held under the lens for other issues. It seems maybe there’s—.

Jensen: Well, this is part of another theme—that Oakland has never been as bad a city as the media has always said. It’s never been a city filled with crime like they portray.

Rubens: Or governmental corruption, it seems—
Jensen: There has been some governmental corruption; we’ve got Houlihan, but that’s a complete aberration. There’s no history of this; it’s not systemic—it’s just individual.

Rubens: The Coliseum’s going up, and later on it will be an issue of how the bonds are allocated, but you just don’t see other things coming through the—.

Jensen: The trouble is you’re not going to get much from me on that, because I’m not doing that. You’re in your own little tunnel, and I really don’t know what’s going on. You have to know what’s going on in the whole world or you can’t be a trial lawyer, but those kinds of events—I really don’t know.
Jensen: The rest of it is commercial people who publish this. The extracts and the synopses and that sort of thing, they’re done by the publisher. In some instances I think courts do synopses, but I don’t think this is one. I think the head notes are done by the publisher. So, some lawyer who works for Bancroft Whitney goes through, reads the case, and then extracts all these and does the summary and the head notes, as far as I understand it.

Rubens: So if there’s some protest or issue about how it’s being—?

Jensen: If somebody says you didn’t accurately say what’s in the opinion?

Rubens: Right.

Jensen: I’ve really never heard of a protest like that.

Rubens: Okay, okay; because one of the things that’s so interesting is that part of the Newton trial; and I guess they’re reflecting on it here in the decision, questioning what the bus driver actually said. If he said, “I didn’t get a clear view,” or “I did get a clear view?”

Jensen: Yes; well if it’s in the decision, that’s the Court record. That’s not the people who were publishing it. Anything in the opinion is put there by the Judges.

Rubens: Yes, I’m sorry. Now I’m going back to the actual case. I think you said that he did get a clear view—

Jensen: Well, there was an issue in terms of what he said. They had a tape of what he had said in the trial, and the question is whether the transcript accurately reflected what he said.

Rubens: The tape said “did,” I believe.

Jensen: Yes.
Rubens: And you were making your summaries and your presentation as if he did say that.

Jensen: On that basis.

Rubens: That’s right; then—?

Jensen: Then the issue is—

Rubens: They played it back.

Jensen: —they played it and they could hear it saying “didn’t.”

MLJ: Do you remember that?

Jensen: Oh yes. But that happens when you have transcriptions. There’s this argument that goes on all the time, you want to make sure you tape all these things, so you know exactly what happened. That assumes that just because you have a tape, you’re going to know what happened. And it doesn’t always happen that way. I mean, we’re doing a tape right now and somebody who does the transcription, on occasion, is going to get to a position where they have to decide what it is that they’ve heard. Well, that always happens, and that’s what happened there.

Rubens: Yes, that seemed—I mean might that even be a strategy? I couldn’t see you intentionally saying “did” versus “didn’t.”

Jensen: Well, we didn’t do that—no.

Rubens: Not in that case, yes.

Jensen: No, no; that didn’t ever happen.

Rubens: There was one other like that. Going back over the issue of instructions to the jury, where the defense withheld, or said “I want you to withhold the issue of unconsciousness,” at some point. Part of the appellate opinion says something like “counsel’s withdrawal of them, the issues of unconsciousness, or the
failure to press for them, is irreconcilable with deliberate tactical purposes on the counsel’s part.”

Jensen: That’s the Judges writing the opinion telling you what they think, and they say it’s irreconcilable. It’s their conclusion that the defense attorney wouldn’t have done that. That is their judgment. That’s not something that was said in the Courtroom.

Rubens: Why would the defense not want that to go to the jury?

Jensen: Well, I don’t know. The way the instructions—as I remember from reading this and refreshing my recollection, I think we talked about the instructions at a session with the Judge in chambers and went over everything there. But that wasn’t reported. So after it got all done, the Judge came back out and put on the record what had taken place. What you’re doing then is you’re saying what happened in those sessions is whatever the Judge put on the record as a memorialization of what took place. I don’t think there’s anything in there that says exactly what was said in chambers.

Rubens: No; you don’t get the clear—

Jensen: Well, it was not reported at the time it happened. The Judge is telling you what happened afterwards, and then the Appellate Court is reading into it what it thinks must have happened. I don’t know whether it didn’t happen or whether they think it must have happened in some kind of way.

Rubens: It’s hard to track.

Jensen: It would be better if it was about the instructions. Whenever you have—I always do my own draft of instructions and give it to the attorneys, and then let them come in and argue about the whole thing, but then we put that on the record—that’s all reported.

Rubens: Would it have been in your purview at some point to say, “Well, wait a minute; are you sure you included unconsciousness as part of the instructions?”

Jensen: Oh, I would argue what I think should be in the instructions, yes. I don’t know now what I argued, but I think I completely agreed that diminished capacity was a sufficient instruction.
Rubens: All right, so it’s not as if one should have known that this was—?

Jensen: Well, I don’t know that anybody would have recognized this as being a so-called “sua sponte” duty of the trial Judge to say “I’m going to give this instruction even though it’s been agreed that it would not be—”

Rubens: Yes; to protect himself—

Jensen: That’s unusual.

MLJ: *Sua sponte* means?

Jensen: It means, go on your own—to do it on your own, because you’re not asked to do it. In effect, what the Court is saying is “*no matter what the party said, you should have done it because you’re the Judge.*” Which is somewhat unusual.

Rubens: Actually, what I was trying to ask is whether you as the prosecutor maybe should have been insisting that those grounds be—?

Jensen: I think that there is a responsibility of the prosecutor to try to have the instructions accurately portray what the trial was, and if there’s something that’s been left out that I think should have been there for purposes of appeal, I would tell the Judge, but I didn’t think that you had to give both of them.

Rubens: So you’re clear about that, because instructions to the jury are going to hang up a lot of things aren’t they? I was thinking today driving downtown, it’s a beautiful fall day; everything is very peaceful. I just couldn’t imagine what it would have been like to see this army of—

Jensen: Of people down the street?

Rubens: Yes; surrounding the Courthouse and—

Jensen: It was amazing.

There were two large groups. The Courthouse was basically surrounded during the *Newton* trial. There were lots—I wouldn’t say surrounded; there were a couple hundred people around it.
Rubens: Could you get into your office without much—

Jensen: Yes; I could get in and out. It wasn’t that much of a problem. There were lots of people around, and a lot more than there would be otherwise. It was not a normal circumstance, but it wasn’t such that you had to fight your way in or anything like that.

Rubens: But you hadn’t seen anything like that in—?

Jensen: No, no; but then we’ll get to this later—this is totally different than the streets down here when you had the *Stop the Draft*. That’s different.

Rubens: It’s pretty amazing how eventful this period is—’65 to ‘69.

Jensen: There are a lot of things going on.

Rubens: It’s implied here, but we had been talking about what kind of preparations your Office made in anticipation of mass trials, and what kind of coordination did you have with the police and with the Sheriff, and even with the Governor’s Office? And of course, there was the *Watt’s Riot* in July of ’65—

Jensen: A number of things happened around the country, and Oakland was always viewed as a—

Rubens: A potential focus, yes. And by the way, I talked to Mary Jo Coonan, who had something called the *National Jury Project*. she said that now we’re talking about, what is it called, “*target pools,*” and that jury selection and voir dire was based on educating the Court, and if not the Court, the press. That now it is done in an entirely different way.

Jensen: Yes; trying to make it more systematic.

Begin Audio file 8

MLJ: I’d like to ask a wrap-up question on voir dire in the *Newton* trial. To your knowledge was this the first trial where the issue of the actual jury pool and challenges to its composition had come up?
Jensen: No, no. There had been some really very serious litigation before that in Alameda County—there had been one situation where we had used a test for jurors. The test had been devised by the Alameda County Bar and adopted by the Judges and then was used. After having used the test for years, one of the Superior Court Judges found that the test worked a discriminatory impact on African American jurors and said that any jury selected with that test would be thrown out.

Rubens: Yes; I think you said this.

Jensen: We had specific litigation about that. It went into the Federal Court before it finally got resolved where we didn’t use the test anymore, and it really didn’t make that much difference.

MLJ: What kind of test was it?

Jensen: It was a simple test—could you read, write, and could you answer simple questions. It included areas of civics, and it was not a very difficult test I don’t think; that’s what the theory was. However, the court found that it worked a discriminatory impact.

Rubens: Did you have a role in this at all?

Jensen: I was in the Office when that happened, but I was not the District Attorney. But it was a serious kind of thing because you’re talking about—if you were going to use the notion that any jury selected by using that test would have to undo the case—we had 15 years of cases that were affected by that. So, ultimately we got them to agree that the courts did not hold that it was retroactive to everything and so it didn’t have that effect. But there had been serious discussions about all this.

Rubens: So do you know who brought this case? Was it the NAACP or—?

Jensen: No, I forget; I think it was the Public Defender at that time. I’m not quite sure whether it was the Public Defender, or brought by private counsel.

MLJ: The other big picture thing I wanted to pick up on, you had commented that you thought the African American leadership in Oakland was outstanding as opposed to say, Los Angeles. What did you have in mind?
Jensen: Well, I don’t mean “as opposed to,” I’m saying that there were very fine lawyers who were representative of the African American community who had a lot of impact upon it and had influence in it who were very, very solid people.

MLJ: Were they influential at all in moderating or helping to figure out the relationship between the black community that was the Panthers, the middle-class black community, and the police during the–

Jensen: Well, I don’t think the Panthers–I don’t know exactly what their level of community support was. It was a little hard to tell. I mean, it was self-generated. They acted as though they had all kinds of support, and I never really thought that that was true – their notion about their representative quality in the African American community was over-stated. I think there were a lot of people who did not agree with that.

Rubens: Did you feel that at the time, and would that have mitigated your fear if you had some–?

Jensen: I think so. You see, you have the leadership that comes in after the Panther movement. Lionel Wilson becomes the Mayor of Oakland. Lionel Wilson doesn’t get there by the fact that the Panthers were his political base. His political base is much broader than that. It’s a middle class, basic kind of community support.

Rubens: Professional–yes. That’s what seems so interesting, that there are these *ad hoc* meetings and these councils being formed at the same time that some of these sensational trials are taking place. Newton didn’t have African American attorneys.

Jensen: No.

Rubens: I think Angela Davis was one of the few who had one. And she was in the Communist Party.

Jensen: I think that’s right. Newton had–I think there were five people who were the attorneys – and I think one of them was an African American, but he wasn’t really very active in terms of criminal defense.
Rubens: At the same time, you’re an Assistant DA now, but are you saying to Coakley “I think we need to get more representation in the prosecutor’s office?” Are people talking—in ‘66 there was one black fireman. I don’t know what the figure was on police; it wasn’t good. Is there any general sense that something should be done?

Jensen: Yes, there was a sense that we ought to do something. And over a period of time, we did. We brought in a number of African American lawyers. Don McCullum was one who Frank Coakley hired. He was in the Courthouse. He ultimately became a leader, and he was a Deputy DA. He was a City Attorney in Berkeley, and he was on the Superior Court here in Alameda County.

Rubens: What’s his last name?

Jensen: McCullum.

Jensen: He came into the Office at the time I was there. He was a Deputy DA at the same time I was, but he was basically the only one, the only African American.

MLJ: When you came in you hired quite a diverse range of people, didn’t you?

Jensen: Yes, I think so, over a period of time.

MLJ: There are a number of African American, Asian—people you hired who are prominent now—John Burris, for example?

Jensen: John Burris worked in the DA’s Office; Billy Hunter, he came to work as a Deputy DA; and a number of people—Jerry Curtis, who just passed away was in the Attorney General’s Office a long time.

MLJ: And some women who are now your colleagues on the Federal bench, Sandy Armstrong—

Jensen: Yes, Sandra Armstrong worked for me.

Rubens: Did she start a Civil Rights Center? Or someone who worked for you then started a Civil Rights Center that I think?—we’ll get to that.
Jensen: Yes.

Rubens: The other thing you mentioned was *Miranda* comes down in ‘66, and in certain ways that’s to influence how the police are handling arrests, but I don’t see it discussed in the—

Jensen: That’s part of the role that the DA’s Office played. It had been there for some time. Actually Warren did this; Coakley did this; and I did it. And Ralph Hoyt, he was the District Attorney between Warren and Coakley. They were all from inside the Office, and the Office always did play a role in teaching its own lawyers and in trying to offer teaching to the police departments in terms of how you should do things. So as I said, we had these meetings every week and we would then put out what we thought the world was now as a result of the new cases. We would tell our people as well as the police.

Rubens: I see. How, literally, would you do that? Memos?

Jensen: We’d produce videotapes which were used as training tapes in line-up training.

Rubens: Yes, because the line-up changes dramatically, too. So, the second *Newton* case—

MLJ: I wanted to ask you an overview question regarding when the verdict came down in the *Newton* trial. Was there anything you were hoping that the community at large or the media would take from how the case had been conducted?

Jensen: Other than simply a sense that this was the rule of law in action. That was always what we wanted to convey was the reason we engaged in the prosecutions – that they were as a result of the rule of law. There were violations of the law, and it was then our responsibility to prosecute. We were doing the job we were required to do, and I always wanted to make sure that people saw that it was being done in a way that was fair. The job could be done in ways that are unfair and abusive, and we never did that. I think we never did.

Rubens: You were clear yesterday that you were satisfied with the manslaughter verdict, that—?
Jensen: Well, I was not satisfied, but I was satisfied that it was a verdict of a conviction of unlawful homicide, so we had accomplished that, but I thought it should have been a murder conviction.

Rubens: You were hoping for murder–yes, okay. And then there was no eruption in Berkeley, in Oakland.

Jensen: There wasn’t any eruption.

Rubens: Even though Cleaver said “All hell is going to break loose.”

Jensen: I don’t think anything did break loose.

MLJ: You talked about the policemen who—

Jensen: Well, the police were unhappy with the verdict and they took some shots at a Panther Headquarters down in Oakland. They were arrested, tried, and convicted.

MLJ: Were they on duty when they did the shooting?

Jensen: They were on duty, yes.

Rubens: So, Newton goes to jail while we’re waiting for the appeal.

Jensen: He’s in jail, then it’s reversed and it’s sent back here and he’s retried.

MLJ: How long a period was that between the conviction and the reversal?

Jensen: I was trying to think. Here’s the conviction – it’s May of 1970 – so that’s a couple years it’s been up in the Appellate Court.

Rubens: He’s in jail in ’69, because one of the things I found extraordinary is that he issues a greeting on his birthday and it has to do with–where did it say this? It has to do with “Support the Oakland Seven” and I thought, “How can you do that?”
Jensen: They’re overlapping.

Rubens: So you can do that? You’re in jail and you can make a tape-recording and send it out to—?

Jensen: Whatever the jail does. The Newton case goes back to ‘67, October of ‘67.

Rubens: ‘68 it’s overturned.

Jensen: No, this opinion is May of ‘70.

MLJ: Were you District Attorney when the Oakland Seven trial came up?

Jensen: Yes. I became District Attorney in July of ‘69.

Rubens: That’s right; and by the way, you have to run right? You run in 19–?

Jensen: Right; I run in 1970. That’s the election.

Rubens: Had the second trial started when you ran?

Jensen: I’m not sure, I don’t think so. I was elected in early 1970 because I was the only one running. I didn’t have to wait until November of 1970; I got elected in January. When the filing periods were over no one filed, so I ran unopposed.

Rubens: Was there anyone else that – were you the only, the top candidate? Was Coakley looking at anyone else over the last couple years or was it pretty clear?

Jensen: Over the last couple years when he was going to leave, it all depended upon who was there at the time. The circumstances, I think I mentioned before, were that they created the County Counsel’s Office and Dick Moore, I think, probably would have been the District Attorney if he hadn’t gone in ‘67 to become County Counsel when they created that office. Then it got to be ‘69, when I was the candidate, and Coakley backed me. He went to the Board of Supervisors and resigned, then the Board of Supervisors appointed me.

MLJ: There wasn’t any political maneuvering or jockeying in the Office?
Jensen: It’s all political, but there wasn’t anything in the Office and I don’t really recall any kind of currents in the Office, or difficulties. It was all left up to Coakley, and he said “You’re going to be the one I select,” and that was it.

Rubens: Coakley didn’t have political ambitions? He retired and—?

Jensen: Well, perhaps he had earlier, but he had been in the DA’s Office, I think, for over 40 years or 47 years, something like that, and he had been the DA for 22 years at that time so he was just retiring because it was time to retire. He retired earlier than the next election in order to allow the Board of Supervisors to appoint someone so I could then run in 1970 as the incumbent.

Rubens: It’s always been done that way, apparently.

Jensen: At least in this county it had been done that way before. But in other counties it doesn’t happen that way.

MLJ: Was there any notion or possibility that the Board of Supervisors could reject his recommendation?

Jensen: They could, but they didn’t. There wasn’t anybody—

MLJ: Was it even anticipated as a problem?

Jensen: It didn’t come up as a problem. It wasn’t anticipated; the understanding was that Coakley was in favor of my nomination and so was Dick Moore, who was the County Counsel, so the significant figures that the Board looked to for its advice were the ones who said “Appoint Lowell Jensen,” and they did.

Rubens: Did you have a particular relationship with the Mayor?

Jensen: I knew the Mayor, but I wasn’t close, and the Mayor didn’t have any effect upon that at all.

Rubens: That part, no.

Jensen: Because this is the County Board.
Rubens: Yes. I had been meaning to ask—it’s really a weak Mayor system in Oakland, isn’t it?

Jensen: That’s one of the things that Jerry Brown got kind of turned around is to make the Mayor a more significant figure.

Rubens: I don’t think the Mayor was even full-time in Oakland until sometime right around the ‘70s.

Jensen: Something like that, yes, but the Mayor—

Rubens: It’s really kind of shocking.

Jensen: We’ve had Mayors who, although they didn’t have technical positions; they had functional positions in which they were the leader. There’s no question that John Houlihan was the Mayor; no question Lionel Wilson was the Mayor. They had strong positions.

Rubens: By the way, right around when the conviction is overturned, while Newton is in jail, there’s a trio that runs for office in Oakland from the Peace and Freedom Party. Newton runs for—, Seale runs for the Assembly.

Jensen: Bobby Seale?

Rubens: Yes; Cleaver, I think, runs for—

Jensen: I forget; Cleaver left around ‘68 or ‘69.

Rubens: Yes; it’s Cleaver, it’s Seale, and who is the third one? Newton.

Jensen: Newton was in prison.

Rubens: He’s in jail, and he’s running on the Peace and Freedom Party platform for Congress, and Seale is running for Assembly, and Newton is running for Mayor. I took this off some Panther website, and it said they all had a very significant showing, but it couldn’t possibly be. It’s not until ‘73 that—

Jensen: Wilson is elected?
Rubens: Yes.

Rubens: And that same year Bobby Seale runs. So, were the—?

Jensen: When the second trial comes up, the case came back on appeal and I’m the District Attorney at that point, so the case will be tried by one of our top trial lawyers. It is retried and it hung up.

MLJ: Was that Tom Orloff?

Jensen: No; that was Don Whyte who tried that.

MLJ: Was the Defense Attorney the same or different?

Jensen: Charles Garry represented him.

Rubens: By the way, did you have to argue before the Appeals Court?

Jensen: No; the system at that time, and still, is that the Attorney General does that. The Attorney General, in effect, represents the individual counties in terms of Appellate—

Rubens: But the Defense Attorneys go?

Jensen: The Defense Attorneys go, or you get either the trial attorneys or other people. I don’t think that Charlie Garry argued this in the Court of Appeals. Did he? I don’t know.

Rubens: I thought that was what it was saying right in the beginning, but I don’t really know how to read that. Okay; but you—?

Jensen: I didn’t.

Rubens: Why didn’t you assign yourself the retrial?

Jensen: I was just a brand new District Attorney and it just seemed like the right thing that I not be the one to retry it. So we got a very good trial lawyer to do it.
Rubens: But it hung up?

Jensen: It hung up, yes. The retrial was the same thing; the only thing is they found Dell Ross again, and he testified about the same as he had in the Grand Jury, but you couldn’t do anything because there had already been an acquittal on that charge and he explained that he had been basically intimidated by the Panthers, but it still hung up.

MLJ: Did anyone talk to the jurors after the trial? Do you know what the count was, or what they said about—?

Jensen: The count was in favor of conviction I believe, because it was one of the factors we considered in deciding to conduct the retrial. One of the reasons you retry it is based on an assessment of what had happened in the second case, and in the second case I think there had been a majority of jurors afterwards who said that the count was in favor of a conviction. I don’t remember exactly what it was, but that was one of the reasons we retried it.

MLJ: How was the atmosphere different, if it was, in the second trial?

Jensen: The atmosphere was completely different. There wasn’t the same kind of activity around the courthouse, it wasn’t covered with the same intensity, so it was more like any other trial.

MLJ: Any theories why?

Jensen: I don’t know. By then, the Panthers had lost a lot of their steam and we already had the event where there had been—I think it was in 1968 when Cleaver was arrested after a shoot-out– Cleaver and Hilliard and several other people had been arrested, and that’s when Bobby Hutton was killed. So that was going on, and I think the Chicago trial was too.

Rubens: Of Hampton, the Democratic Convention?

Jensen: It wasn’t that.

Rubens: That takes place in August of ’68, and sometime in—
Jensen: So, a lot of things had gone on that in effect took away the centrality of what was going on in Oakland. A lot of things were going on in a lot of different places, and I think the Panthers lost the prominence that they had here, so it really was not the same kind of feeling in the city that existed back in ‘68.

Rubens: I think the trial of the Oakland Seven had spent a lot of energy. I think also that with the continued escalation of the War in Vietnam—it’s not going to be until ‘69 that the troop numbers are at their peak. And in April of ‘68 there is the assassination of Martin Luther King, then Robert Kennedy; there’s sort of a pall.

Jensen: Yes, sometimes there is a tendency to look at these things in isolation but they’re not isolated, particularly in terms of whether it’s high-profile. For example, the first Newton trial was very high-profile and the second one was not.

Rubens: Yes, between the first and the second trial also, the Panthers had spread throughout the country – it was basically on an axis in New York and California, and then as you say, there’s Chicago and the COINTEL program that Hoover is going to start – and he says that he’s very concerned about the Panthers. He calls them the greatest threat to the internal security of the country. What role did counter-intelligence actually play?

Jensen: That’s his role.

Rubens: That’s right. You might have had that role later on, but—Okay, the Newton trial hung up. Is this is a disturbance to you?

Jensen: Well, he should have convicted, but that’s what happens when you have juries that hang. This was one where I really think he should have been convicted, so we tried it again and it hung up again. At that point it just doesn’t look there is ever going to be a verdict so it would be unreasonable, I think, for us to try it again. Legally, we could probably do that, but I didn’t think that from a practical standpoint it would make any sense to do so. So we dismissed it.

MLJ: Was it the same Judge?

Jensen: It was a different Judge.

MLJ: Do you know who it was?
Jensen: I can’t recall right now.

MLJ: The third trial, how long is that after the second time?

Jensen: Another year.

MLJ: Then that was Tom Orloff who tried it?

Jensen: No, I think Don tried it again.

MLJ: Was Charlie Garry still in it at that time?

Jensen: Yes, I think so.

Rubens: In terms of how it impacted your Office and how you did things, it seems like it—

Jensen: It didn’t have an impact in that sense. It was just another trial at that time. It was an important trial obviously, but it didn’t have the same kind of impact that the first did.

Rubens: Now the other trial that’s wending its way in was the Draft Board case, which was also a loss for the Office?

Jensen: Right.

Rubens: By the way, there’s this crazy little fact that in June of ’67 the Berkeley Draft Board was bombed and they never found who did it, and there was always a—

Jensen: As far as who did that?

Rubens: Yes; Rosenfeld thinks that it was the FBI.

Jensen: He thinks the FBI bombed it?

Rubens: Yes, you know, trying to—
Jensen: —like planting something?

Rubens: Yes, exactly.

Jensen: They planted the bomb?

Rubens: Yes.

Jensen: That’s pretty clever.

Rubens: Yes; but what’s going to come out in the Oakland Seven trial is that there had been two guys from the Intelligence Division of the Oakland Police who had been part of the—

Jensen: They went to meetings.

Rubens: They went to meetings, yes, and the leadership testified to the fact that they were the ones who were saying “let’s get some bombs; let’s get some arms” that they were the ones—

Jensen: They went to the meetings, but I don’t know that what you just described happened.

MLJ: Can you step back for a second and explain what the Oakland Seven trial was about and what the group was?

Jensen: Yes; the reason and purpose of the organization was to stop the Draft, and this is where we were talking about teach-ins and meetings at Cal. They would then come down to the Draft Board, which was located just a couple blocks down from the Oakland courthouse. What would happen is that people who had been drafted reported there and then got on buses and were taken down to Fort Ord and processed into the Army. So the demonstrations were set up to stop the Draft by not letting the Draft Board work, in the sense that you couldn’t have people processed through there, and the way to do that was to block the streets. The theory was that if they blocked the streets around that area, the Army couldn’t run buses in and out, and therefore you’d stop the Draft. So that was what was going on, and there were huge demonstrations in the street. There were thousands of people in the intersections down here.
Rubens: Joan Baez came and they let her go and sit-in in the first day, and—

Jensen: There were all kinds of people there, and that went on for about a week or so. The idea behind the charging process was to prosecute people for being part of the sit-ins, and one of the problems with the prosecution was always that the theory was to charge the sit-in as a misdemeanor trespass, however, under California law at the time, a conspiracy to commit a misdemeanor was a felony. That’s how it got to be charged as a felony – on the theory that it was a conspiracy to commit a misdemeanor. Most of the time conspiracies are to commit bank robberies, to commit felonies; but California law permitted a felony prosecution for a conspiracy to commit a misdemeanor on the theory that the conspiracy itself posed a greater threat to the community, and that that kind of criminal conduct should result in a correspondingly greater punishment. But it is still the same thing – you’re raising a misdemeanor trespass case to a felony by calling it a conspiracy.

MLJ: Was this a decision that was made by you, as the District Attorney, to charge it this way?

Jensen: I was not the District Attorney at the time. I didn’t make that charging decision, but I tried the case as it was charged because I was asked to try it.

MLJ: Did you object to the charging?

Jensen: We talked about that, and my position was that we should try them for the misdemeanors; it’s a lot easier and a lot more effective. That wasn’t the ultimate decision. The decision was to try them for a felony.

Rubens: Then I think right away in pretrial one of the misdemeanors was thrown out – public nuisance?

Jensen: It could be, yes. I don’t remember that.

Rubens: So there were two counts—two charges—and apparently two things happened that were surprising. We talked about one before where you started questioning a Man of the Cloth, he was a Lutheran, I think. I can’t think of his name right now—Churchill, Church? He was a Campus Minister and you started talking to him about the morality of the War, and the defense alleged that it opened the door for them to raise issues related to the morality of the War.
Jensen: Well, I don’t know whether that—that wasn’t why I was doing it. I don’t remember why the subject came up, but the way it started out was that in our view, this is not a trial about the War. The reason for the demonstration and the content of the speech that’s involved was not our issue. The issue is whether or not you are committing conduct – that is, whether the conduct itself was criminal – and whether that conduct was raised to the level of a felony due to the fact that it was a conspiracy. In that context, whatever position you took on the War was not an issue as to determining whether or not you are a conspirator. But it inevitably got into the trial.

Rubens: Then apparently there was also an issue regarding playing excerpts of tape recordings from the rally that the students held on campus. The defense objected to you playing only excerpts, so it turned out that the jury had to listen to the whole thing.

Jensen: Right; the whole thing.

Rubens: And the claim is that—.

Jensen: They liked it, they enjoyed that—

Rubens: Yes; they were educated—

Jensen: It’s the moment of truth. Listening to the entire recording has a lot more activity and meaning to it than if you simply pull out the pieces that are incriminating; they are incriminating, but the context is not so incriminating. I think playing all of the tapes was one of the things that affected the jury.

Rubens: That must have been a disappointment to you, to lose that.

Jensen: Well, that’s what happened. You never like to lose cases, but I don’t think I was that surprised.

MLJ: Did you think it was mischarged?

Jensen: I don’t think it was mischarged. I think it—

MLJ: Overcharged?
Jensen: Well, overcharged is probably a way of saying it. At least it’s within that – if you say “overcharged” I think you’ve probably got some basis for saying it, as opposed to other things that are said about it.

Rubens: Was Coakley, maybe even Meese, involved in that?

Jensen: Meese wasn’t involved in that at all.

Rubens: Are they just seeing it more as a real threat to society?

Jensen: This one was seen as much more of a threat and much more of a problem for the community than the Sproul Hall sit-ins. Sproul Hall was self-contained. The reason for those demonstrations was not seen by the police and the DA as being a reason that we were committed to or that we had any stake in; but shutting down a city and stopping a Draft is something else. You have to remember that almost all of the leadership in the police and the DA’s Office at that time are people from World War II, so you’ve got a lot of people who have been through all this, and their position is that you don’t shut down the United States Government in the middle of town because you don’t like what’s going on. I mean, there was much more of a commitment to doing something about this, in the sense that it had a resonance that perhaps Sproul Hall did not.

Rubens: Do you remember any kind of – would there be anyone who is going to chastise the Office, or say “Gee, you let these guys go because of this over-charge?”

Jensen: I don’t know that there was much by way of a community reaction to that.

Rubens: I meant from the Governor.

Jensen: I don’t remember that.

Rubens: Or from the Attorney General, or—?

Jensen: I don’t know; this was more local.

Rubens: At some point Eldridge Cleaver goes—
Jensen: That’s in about ‘68; that goes back to the overlap, I think. After Martin Luther King was assassinated, there were some demonstrations. It wasn’t exactly related to that, but it had some sort of tangential relationship it seems to me. I don’t remember exactly now, but that was a relatively tense time and a police car pulled up alongside some parked Panther cars. When the police car pulled up, some shooting started which turned into a shoot-out that went on in the West Oakland—North Oakland area. As soon as the shooting started, police came in from all over the place. You had people scattered all about and that’s when Cleaver got arrested, because he and Hutton had gone to a house around the corner. There was a kind of stand-off there, then the house caught on fire and Cleaver jumped out, and Hutton jumped out. When Cleaver jumped out, he didn’t have any clothes on.

Rubens: Right; to show that they weren’t—

Jensen: —that he wasn’t carrying anything. When Hutton jumped out, he was carrying something, and he was shot and killed.

Rubens: He wouldn’t take off his underpants, that’s right.

Jensen: That resulted in an indictment of all the people involved there, including Cleaver. David Hilliard was one of the Panther leaders who was involved in that, and several others. There were about six cases that had to be tried, and Charlie Garry represented them. Then Cleaver, when his case was about to come up for trial, that’s when he left.

Rubens: He fled before the case?

Jensen: He took off, yes, after he had been charged and the case was going through the Courts and before it came up for trial.

Rubens: By the time he came back were you—?

Jensen: I was the DA.

Rubens: Once he comes back, is he prosecuted?

Jensen: He pled guilty when he came back.
Rubens: And Newton is going to flee to Cuba, too, at some point?

Jensen: I don’t know. Well, Newton was involved in several things after he got out–after he had been dismissed in the initial case. He was still involved in things; one was a notorious case where a prostitute was shot and killed in Oakland. He was tried for that and I think he was acquitted there. So it was other things that – was it a hung jury?

MLJ: Was that the pistol-whipping of the tailor?

Jensen: That’s a different thing he was involved in. There was an accusation that he had pistol-whipped a guy who was either his barber or his tailor.

MLJ: That’s interesting in that it indicates a trajectory that Huey Newton’s life took. Did you form an impression of him? You said he was very bright. Was he a charismatic leader, or was he just a person who was out of control who committed a criminal offense in the right place at the right time?

Jensen: Well, he obviously had a problem with self-control, and he got into real problems within his own organization and with other people, and ultimately, just the drugs that he got involved with were a function of that and that ended up being why he was killed.

Rubens: I was thinking, did you have a favorite Panther?

Jensen: Well...Cleaver. When Cleaver came back, we were getting ready to try him and we really didn’t particularly want him to come back. We had already tried all these other cases – three or four or five times – and the evidence was all over the world. It’s scattered everywhere and here we’ve got to get everything back. Now here comes Cleaver, so we’re going to have to put all this back together and try him. But when he came back, he said well okay – he’d plead to a deal, so we reached an agreement with him regarding what he would do. I think Orloff was there when he pled guilty. I wasn’t in the Courtroom, but Orloff came back later and said he pled guilty. I said fine; and then Cleaver had a press conference. We didn’t know what he was going to do and we couldn’t control it, so right after Cleaver pled guilty he had a press conference, and we we’re saying “Okay, what’s he going to say?” He had the press conference, and said “You know, they were right; the Oakland police were perfectly right in what they did.” He agreed with everything the police had done, and said the Panthers had been wrong. So he’s my favorite Panther.
Rubens: Well understandably, yes. In the meantime, one of the things the Panthers do, I think, is open up a lot of childcare centers, start a food program, and are trying to get old members—

Jensen: It sounded like they were trying to do things like that, but I’m not exactly sure how far they actually got. There was probably more talk about it than actual—

Rubens: What I’m leading up to is the emergence of two women who are important, Elaine Brown and the other one just went out of my head. Not Cleaver’s wife, though she goes on to law school, but it reminded me–Mary Jo Coonan, with this National Law Jury Project, said that she actually should have been the Oakland Eighth—that she was one of the people who had—

Jensen: One of the people?

Rubens: Yes, who – and I forgot to ask about you know how these seven are picked – I asked her, “Why weren’t you picked?”

Jensen: I’m not sure why. I think the defendants were picked because we thought we could probably make a case against them.

Rubens: Yes, she thought that may be – she never quite understood why she wasn’t picked. There were two other women who were on the—

Jensen: We didn’t know the inner-workings of who was really in charge – all we could do is externally say from what was said or what we could observe.

Rubens: So you don’t think anything connected with gender would prejudice—

Jensen: Oh no; it wasn’t anything like that. I don’t think so. Was there a woman? I don’t remember if there was a woman in the Seven or not.

Rubens: No, there was not, and that’s what she’s saying—she should have been the eighth. She thinks maybe they dropped her because she—

Jensen: Well, she should have let us know.

Rubens: All right; so it’s Elaine Brown and—
MLJ: The only person I can think of is Kathleen Cleaver.

Rubens: One other woman’s name.

MLJ: Angela Davis, but she’s not in the Panthers.

Jensen: She wasn’t involved in that.

Rubens: So what’s going to happen next? I think pretty soon we’re getting up to the Remiro – the Marcus Foster case.

MLJ: Before we do that, we skipped over Houlihan. It’s an interesting case and one of the few examples of corruption that you find in California. Do you have any observations about the Houlihan prosecution?

Jensen: Houlihan was the Mayor of Oakland, and was a very effective Mayor. He was well-regarded, I think, by other people in political areas. I don’t know if he had some idea about going on to other offices, but he was a very good Mayor. It happened that he was also a lawyer in town and his practice involved probate, among other things. I’m not sure exactly how it turned up, but we got irrefutable evidence that he had stolen from the probates that he was handling. I think it was three or four different probates that he was handling from which he had stolen money, then used it personally. That was the prosecution. It wasn’t a public corruption prosecution in the sense that he was misusing the Mayor’s Office. He wasn’t selling his activities or his authority as Mayor; he was just abusing his role as a lawyer in the Probate Court.

Rubens: So in ‘66 he announces his retirement, and then in ’67—did you prosecute him?

Jensen: I did the investigation, yes, and took statements from him. He pled guilty and went to prison.

Rubens: Okay, and he’s in prison from ‘67 to ‘69. He’s paroled in ‘69.

Jensen: Yes. He took quite a bit of money, but that was what you got in those days—later on we’ll get to the types of sentences involved. He had an indeterminate sentence.
Rubens: One of my notes here indicates that the scene of the Prison Rights Movement is going to shift from Oakland, where it really focused on police-community conflict, to Soledad, then ultimately to Marin. That’s in 1970, I’m pretty sure, when George Jackson is imprisoned for life—really an indeterminate sentence—for having stolen, I don’t know, $70 worth of materials from a gas station? I wondered if you had a position on that; on the indeterminate sentence?

Jensen: Ultimately yes, because I played a relatively significant role in the development of sentencing law in California. By the time we did this, this is the ‘70s now, when the law changed. At that time, I was the head of the legislative operation of the DA’s Association and the Peace Officers’ Association, so I spent a good deal of time in Sacramento writing that legislation.

Rubens: For determinate sentencing?

Jensen: For determinate sentencing – to replace indeterminate.

MLJ: Support for determinate sentencing came a lot from defendants or convicted prisoners, is that correct?

Jensen: I think the Prisoners Union was in favor of a determinate sentence, and I think the ACLU was in favor of a determinate sentence. I think California was split; that the Northern ACLU and the Southern ACLU had different positions on it. I don’t recall exactly what position each had, but it was split. However, there was support for determinate sentencing for a couple of reasons; one was that it included a right to appeal, and the indeterminate sentence really didn’t have any kind of systematic way of appealing. The only way you could challenge sentences was on whether they reached a level of being cruel and unusual such that they resulted in a Constitutional violation. The only way, therefore, that you could appeal those sentences was on Constitutional violations, not in terms of the way the system was constructed.

There was also the problem that the prisoner didn’t know what would happen, in the sense that when you sentenced somebody to prison the Judge says, “You go to prison for robbery. “Your term is five years to life.” And you go off, and the amount of time you’re actually going to do is set by the Adult Authority, an executive body appointed by the Governor. They’re going to decide how much time you actually do. Also, when the judge says “five years to life,” there was a statutory requirement that a minimum time had to be spent in prison, then you could be put on parole. So five years meant time
both in prison and on parole, so you could get out of prison after just 20 months under California law.

But you had to go to prison, and you had to wait until the Adult Authority decided, and they didn’t have to decide. So you go and you’re the prisoner; you don’t know when you get out. And you’re in prison, really based upon an Executive Branch decision, and you stay there until they let you leave.

Rubens: There was a lot of organizing going on in prisons at that time. George Jackson was organizing.

Jensen: I don’t think they were organizing about that.

Rubens: Well, no. They’re organizing themselves into more militant—George Jackson, I just remembered, headed a Panther unit in the prison. Then there was a claim also that the Adult – what do you call it?

Jensen: Adult Authority.

Rubens: A claim that the Adult Authority is just automatically not reviewing cases involving black prisoners, whereas white prisoners are—

Jensen: I don’t think so. There may be a claim, but I don’t think that the Adult Authority was making decisions like that. There may be real problems about how you do it, and ultimately, I think the idea of having the Executive Branch make a decision like that is not an acceptable idea. The sentences ought to be for what the conduct was, and if you have the Adult Authority evaluating this, and you’re in prison, they can make decisions based upon how you behave in prison; which means that you can stay in prison not for what you did when you were sentenced, but for what you’re doing in prison. And that was part of the objection, that the indeterminate sentence allows that to go on; allows an Executive decision without a new trial for new conduct – that sort of thing.

The other side of that is that the sentences are disparate. That creates the problem where there is no single thing that Judges live by that says you must give the same sentence for the same offense and the same offender history – that similarly situated defendants will get the same sentence. It depends upon what Judge you get, and there would be widely different sentences given by Judges, even on the threshold issue of whether you go to prison or not. You can have exactly the same thing in terms of any kind of comparison – where you have an offender who is the same in terms of offender history, and the offense is the same, and in one court you go to prison and in one court you get
probation. There wasn’t anything other than a decision by an individual Judge that did that.

Rubens: Because more and more white students are being arrested for marijuana violations, it’s starting to become clear that—

Jensen: Well, that means that Judges can give different sentences, and Judges were not required to explain anything. There was nothing to require that a Judge articulate any reason for the sentence at all. It’s just that the Judge had the power to either sentence you to prison or not. All they had to do was say “This is your sentence,” and there was nothing that the Judge was required to articulate that explained the decision. So from the standpoint of the prosecution, the goal was to get some level of proportionality to the system and, in fact, to toughen it up.

MLJ: What was the impetus to get it started in the ‘70s? Was there a particular case that brought attention to it?

Jensen: It was more of a jurisprudential sort of thing – scholars—the whole indeterminate sentencing structure was being studied and there was a great deal of dissatisfaction with it. Studies critical of the structure were being produced because, when it was first put in place, essentially the goal was rehabilitation. The notion was that a defendant would go into the custodial setting and the idea would be to provide rehabilitation. Upon rehabilitation, the defendant would return to the community. But you can say that and it sounds pretty good, except for the fact that nobody knows how to run a rehabilitation program that’s going to work – particularly if participation in it is going to be coerced. So the idea that you can really run an effective rehabilitation program is problematic.

The second thing is the idea that one can conclude a person has been rehabilitated. That conclusion is essentially a projection as to what a defendant is going to do in the future. The evaluators will say “Well, we’re not going to let anybody go who is going to recidivate.” All right; we’re not going to do that, but how do you know? And how can you make a decision as to when somebody has been rehabilitated? That turns out to be basically a subjective decision of this Executive Board.

So, critical studies were being done; people are looking at the structure; criminal justice scholars are writing pieces about it; and it’s becoming a movement nationally. It was California, Minnesota, and some other states which began looking at this issue due to dissatisfaction with the indeterminate sentencing system for the different reasons I was discussing. The prosecutor may have a different reason to criticize it than the defendant does, or the
prisoner does. But they all joined together, in effect, to say “let’s change this system.”

Rubens: Are you working on that committee yet, or is it going to be later?

Jensen: No, I’m not the DA yet. I’m aware there is a committee, but I’m not on it. Meese is doing it at that time. I’m prosecuting cases, but I’m not the DA. I don’t get into the sentencing legislation until I become the DA, and then because I’m the DA in Alameda County and there’s been a tradition of Alameda County having people in Sacramento as I had mentioned before, I become the one who is now assigning the people to be there. I also become, in effect, the leader of the DA’s Association in declaring positions on legislation in Sacramento. I’m in that position because I’ve become the DA in Alameda County.

MLJ: Did you assign yourself the task of writing this legislation, or was it in process when you—?

Jensen: It was in the process when I became DA, and I think by then the person I had assigned to do this after – let’s see who was it? I think Meese was followed by Carl Anderson. Carl Anderson was a lawyer in the DA’s Office, then he was appointed to the Alameda County Superior Court, and then to the Court of Appeals in San Francisco, and just recently he retired. But he had been up in Sacramento. Then after Carl, I think it was Dick Iglehart. Dick Iglehart worked as a Deputy DA for me in the DA’s Office and I sent him to Sacramento to represent us there. He was up in Sacramento when we were doing the determinate sentence legislation.

Rubens: You sat on this committee then, did you enjoy it?

Jensen: Oh yes. I think it was interesting work, and I really thought that the world is better off with determinate sentences, and still do.

Rubens: When did that legislation come down then?

Jensen: In ‘74, around there. ‘73–’74.

MLJ: Just to jump ahead, when you go into the Federal system you were involved in bringing determinate sentencing to the Federal System?
Jensen: Doing the same thing. Sentencing guidelines, right.

MLJ: The same issues?

Jensen: The same issues. Really the same thing, because the Federal system also had an indeterminate sentence structure, and they were going through the same thing about whether or not it should change.

MLJ: But this is much later; in 1984 – why such a gap?

Jensen: The Federal system is slower. They’re generally behind the State systems.

Rubens: How much time were you spending up at Sacramento?

Jensen: Two, three days a month or something, and then when you get into it and there’s something going on, you go up a couple days – three days in a row. But we were going up and trying to draft things, and seeing how the new system could be made to work.

MLJ: Did the California legislation become a model anywhere else? Was it used in the Federal system?

Jensen: I don’t think it was a model any more than any of the others. It was one of the earlier ones in terms of the way you approached this, and maybe it was one of the first ones where it was left to the legislature to craft the determinate structure in regard to deciding what is the appropriate penalty, and declaring that that is the penalty to be used by the Courts. Somebody has to assess that, and in California it was done by the legislature based upon its history and experience with indeterminate sentences. In other areas, like Minnesota, it adopted a system that became the model for the Federal Government, in that Minnesota had a Commission which was appointed to look at this area and make recommendations to the legislature. In essence then, the law contemplated that the legislature would look to experts to advise it. That was the system that the Federal Government used rather than the California system where the legislature itself was involved. But you really never removed the legislature from that determination – you’ll see when you get to the Federal system. I mean, Congress is involved in it anyway.

Rubens: Just to follow up with Houlihan, he’s pardoned in ’73. Who is he pardoned by?
Jensen: The Governor.

Rubens: Yes. Is this Deukmejian?

Jensen: I think that it’s Reagan.

Rubens: Reagan, yes, of course it is.

Jensen: Actually, he had really been rehabilitated. Really, he did a lot. He became a consultant thereafter and was really a very productive person.

MLJ: Did he lose his license to practice law?

Jensen: He did.

Jensen: He consulted on City government. As I said, he had been a very effective Mayor. People recognized that, and when he came out he was looked to for consulting in any number of areas, and he did well.

Rubens: Since we’re talking about Houlihan – I think it’s right around this time that William Knowland shoots himself. I reviewed a book for The Chronicle called One Step from the White House. It was by two Tribune reporters, and Knowland had just an amazing career, the rise and fall. It is in the ‘70s, I think right around ‘73–’74.

Jensen: It seems to me that it’s later – after the Symbionese Liberation Army.

Rubens: Did you have any particular relationship with Knowland?

Jensen: No. I had met him along the way, and The Tribune always paid attention to what was going on in politics, so you always wanted to have contact. I ran for office, so I was interested in knowing people. I knew people in The Tribune structure, and the Knowland people, and would get their support. They always endorsed me.

Rubens: Yes, and the coverage always seemed pretty favorable. If you were upset with something would you call somebody up and talk to them?
Jensen: No, we didn’t have any press people.

Jensen: Basically we would just talk to them when they called, and they would call all the time.

Rubens: Even during the heyday of the *Newton* trial you never got anybody?

Jensen: No.

Rubens: And didn’t go to anyone for advice about how to handle...?

Jensen: No.

MLJ: What was your theory about dealing with the press?

Jensen: Not much – sort of stayed away. I was never really comfortable with going to the press. But I think they had an obvious responsibility, and they should be doing what they were doing – paying attention to what we’re doing at the DA’s Office, because we’re doing something that’s public. So they were entitled to ask questions. There’s no question about that.

MLJ: A lot of people approach that differently; like a career prosecutor who has political aspirations to go somewhere else wants to be in front of the camera holding a press conference. I’m just wondering, where did this notion come from in the Alameda County DA’s Office, that people generally wouldn’t go before the press? Or that you, personally, didn’t want to deal with them?

Jensen: Well, it wasn’t necessarily always true of the DA’s Office. Earl Warren had no hesitancy, he called press conferences; but Coakley didn’t do that. I don’t think Coakley was very comfortable with that. And I wasn’t particularly, so we would respond to press coverage, but we didn’t really have anybody speaking for us, or going out to look for photo ops or press opportunities. Maybe if somebody wanted to run for office, they could go out and make themselves available. But see, this was also before television was a big thing. The press then was essentially newspaper and radio. That’s what you looked at as the media.

Rubens: Exactly, yes. It’s kind of a critical period in the Knowland empire because he’s really not expanding. At that point, he’s actually starting to chop off his suburban and smaller outlets, I think.
Jensen: He came back and ran for Governor.

Rubens: Well that was earlier; that was in ’58. He runs for Governor in ’58. That’s why Pat Brown gets in. Then Knowland has big aspirations in ’64, because he nominates Goldwater. I forget at which point he is what the reporter meant by “one step from the Whitehouse.” He might have been a compromise candidate, maybe, during the Nixon election. I can’t quite remember that.

Jensen: Could be, I don’t know. There were all kinds of threads going on.

Rubens: Yes, and things that had to do with if – if two factions didn’t work out, then he would have stepped in – but I think that was when he really starts to lose his way. What was the conglomerate called? The one that owns *The Tribune* and the *Contra Costa Times* and....

MLJ: I think it’s Knight Ridder.

Rubens: Well they were kind of building up what he eventually chopped off. He just calculated wrong. His fortunes are going down and he’s having trouble with his wife. I forget exactly all the things, but I think it’s right around then.

Jensen: The DA is not really involved in that. You’re running a professional office and your way of politically connecting is by being a good professional prosecutor, not by being involved in political parties. So I didn’t really know what they were doing or what the issues were, or who was moving and who was not moving in the political parties, because I’m only concerned with the DA’s Office.

Rubens: But I think that’s a choice you’re making; you could have been...

Jensen: Well, that would have been true of the DA’s Office along the way. Coakley had done it the way I did.

Rubens: Yes, Coakley seems to really be your model.

Jensen: Yes, he was a wonderful DA – tough, honest guy.

Rubens: When does Knowland die?
Jensen:  Knowland died in February, 1974, and, interestingly enough, the timing is that it is the same night that the Symbionese Liberation Army kills Marcus Foster. I was at a dinner in Oakland where the speaker was Earl Warren. He was back in town talking and visiting the Office. [Warren died in July, 1974]

Rubens:  I want to go two different ways, and we should get to the Symbionese Liberation Army in just a minute, but—had you ever met Earl Warren?

Jensen:  Oh yes, I met him.

Rubens:  How did you meet?

Jensen:  I met him along the way. He was very gregarious and a good friend. He always paid attention to people all along the line. Every year he would come back to Alameda County and to the DA’s Office. He would meet with the Judges, and they had a press party for him. This was a ritual during the Christmas and New Year’s season. He would come back and attend the football games. He’d go to the Rose Bowl and he’d go to the East/West Game and he’d come to the Office. Every year he’d come back, and when they had the press party, it would be on a Friday and Frank Coakley would come up and sit down in the Office with Warren, and with me as the DA, and we’d talk. It was wonderful, like I said a wonderful experience. It was just fabulous.

Rubens:  What would you talk about?

Jensen:  The old Office and what’s going on, and just people keeping up to date on all the people they knew. He was always interested in who was doing what, and he always wanted to know what the Office was doing. He never ever lost touch with the Office. He always paid very close attention to it. When Frank Coakley was there – Frank had been his Chief Trial Lawyer—and then when I was the DA, he would come up and visit.

Rubens:  When you’re meeting with him, have the decisions in Brown vs. Board of Education and Miranda been published?

Jensen:  That’s right, yes. He came to the Office often. During the ‘70s, he would come all the time.

Rubens:  I can’t imagine that there was protection around him, was there? It’s just a different...
Jensen: Not a lot. Actually, we would generally give him a ride, or one of our investigators would go pick him up and bring him over to the Office. That sort of thing, but it was a great time.

Rubens: What did you talk to him about?

Jensen: We’d talk about the Office, but I didn’t talk about any of his work.

Rubens: That’s what I wanted to know, if you ever asked him about opinions or...?

Jensen: Coakley talked to him. He thought that some of his decisions were crazy, and there would be a little tension going on about say, the Exclusionary Rule, and *Miranda*, and stuff like that. Coakley was really of the mind that they were not good decisions, but okay, they’re going to be there; we’re going to live with them and so...but I don’t think there’s been a real problem with them. I think they’ve probably—in the long run they’ve been very good for law enforcement in the country.

Rubens: Did you feel you could ask Warren something you wanted to?

Jensen: Sure, oh yes.

Rubens: Did he comment on what you had been going through?

Jensen: Oh sure. He wanted to know exactly how things were going. That’s particularly what he wanted; he wanted to find out about how you were doing things in the Office and what the Office was pursuing. He just wanted to be kept up to date on what was happening. He was very interested in how we developed. We were growing like crazy at that time. This was when the Office was really expanding. It had been expanding all along, but the real crime expansion in the country comes in the late ‘60s and early ‘70s, so the DA’s Office expanded enormously during that period of time.

Rubens: Who do you have to go to to get the money to–?

Jensen: The Board of Supervisors is who funds, but we had arrangements with them that if the Superior Court added a new Criminal Court, then we got X-number of Deputies and money. The Superior Court would be adding new Courts constantly because they had so much criminal business to do. Every time they did that, we’d get more people.
Rubens: Why is crime expanding?

Jensen: A lot of people have asked that question. There are all kinds of studies, huge studies that have been done about this. There was a huge expansion of crime in the ‘70s.

Rubens: One is reason is drugs; there’s no question about that, right?

Jensen: Drugs, sure.

Rubens: Another reason may be the displacement of people due to the redevelopment that’s taking place in the city, whether it’s from BART, or Acorn, or Seventh Street ...

Jensen: This gets back to the question: what are the root causes of crime? You can discuss that for a long, long time and you can always come up with different explanations, but there’s–whatever the root causes are, they were really in effect at that time because there really was a serious expansion of crime. When I became District Attorney in ‘69, I think there were something like 55 to 60 people in the Office, and when I left in ‘81 I think we had 120 lawyers. Basically, we had doubled during that period of time.

Rubens: You’re referring to the number of lawyers when you say 55 to 60?

Jensen: Yes, 55 to 60. There were also investigators and that sort of thing. When I was trying cases, and during the time I was running the Criminal division, we had two Courts; two Criminal Courts in the Superior Court that were handling all the criminal business. Before I left, I think there was one time where we had eight Courts simultaneously trying first degree murder cases before a jury.

Rubens: And still having backlogs, and-

Jensen: Yes; so there was a huge expansion.

Rubens: We talked earlier about you making an effort to recruit women and...?

Jensen: Right. Part of it was that I had more of an opportunity to hire people. One of the things that happen is that you may have the best of intentions and try to do things, but you don’t have an opportunity, because the positions are filled and
there aren’t any new positions becoming available. But during my time, the positions were opening almost always, so there were always opportunities to move.

MLJ: Also, the DA’s Office was not subject to a Civil Service system, so personnel could be hired and fired at the pleasure of the District Attorney. I was wondering how the DA’s Office managed to get itself out of a Civil Service situation, and whether that helped in diversifying the Office?

Jensen: It helped a lot, and it got there because Earl Warren didn’t want to have a Civil Service. Civil Service got developed in other areas of the county, but it was traditional that it didn’t go to the DA’s Office. Coakley didn’t want it, and I didn’t want it, and it did give you a lot more of an opportunity to run the Office and its processes independently, and it did allow me to make decisions like diversification that I might not otherwise have been able to do. But we did, and two things were going on to encourage diversification: one is, as I said, the expansion was occurring; and second, the unusual situation where you didn’t have Civil Service.

Rubens: No one is challenging that; there’s no push-

Jensen: No. The challenge is ultimately to you as the county’s prosecutor – political challenge. What I mean is—you’re serving at the will of the Alameda County electorate, and if you’re doing it correctly they’ll reelect you. If you aren’t, they won’t.

Rubens: What is the caliber of lawyer that you’re getting?

Jensen: Fabulous. The Office had always had a good reputation. It was an Office where you learned things. Coakley always saw it as a training ground for the rest of the Bar, so people would move through and they would be trained not only in terms of courtroom skills, but in terms of their ethical behavior. So, if you came out of the DA’s Office, you were a good lawyer and you behaved yourself. That was an attractive thing for the profession and it was always something that we felt was an important contribution to the legal culture – to have an office that did have those standards and did have people coming through it all the time. The Office’s reputation was such that you had wonderful applicants all the time.

We had really very fine people all the time. It wasn’t that you had to go out and really look for them. Ultimately, we developed systems where we were going out to the law schools and talking to people to get them to come in to summer Clerkships and that sort of thing, but early on...
Rubens: -from around the Bay Area and-

Jensen: Yes, basically the Bay Area, but we never had a problem with getting good people who wanted to come to work. And that’s still true.

MLJ: Did the summer clerkships become, in effect, a farm system for the DA’s Office?

Jensen: Yes, definitely.

Rubens: When did those come in?

Jensen: They came in, oh, I guess around the late ‘70s.

Rubens: You talked about how the numbers expanded during your tenure. Do you know how the breakdown of male and female, and different ethnic populations, changed in the employees?

Jensen: They changed in that we had – when I first started, I think there were only about one or two women – and then we hired quite a few women along the way, until they became a significant part of the Office. We also had a number of African American lawyers. We had trouble finding Hispanic lawyers to come to work, though we did have Asian lawyers; Chinese, Japanese, and Filipino lawyers who came to work. We really did have a good, diversified base of lawyers.

MLJ: I’d like to see if you agree with this premise–that in criminal law practice in Alameda County, women had more of a chance for advancement to supervisory roles, or to roles as trial counsel, than they did in civil practice which was dominated by big private big firms where women were still running up against a glass ceiling?

Jensen: Well, I think so but I think there are still issues in terms of glass ceilings that are out there. But I do think women moved faster in the DA’s Office than they would in a big law firm. I think that’s always been true. Government positions have always been a way in which women had an opportunity to go to work whether you worked in law or not. For example, Sandra O’Connor comes out of Stanford, brilliant – can she go to work for a law firm in San Francisco? No. Where did she go to work? She goes to work for the San Mateo County District Attorney’s Office. That’s the first law job she had, and I don’t think
that is so unusual. I think that Government positions were open for a lot of reasons for women to move into well before they could move into private practice.

Rubens: What is the percentage of your staff that stays with the Office versus that which moves on?

Jensen: Well, at the higher level I think it is a good deal more women. I don’t know what it is, 30–40 percent? It’s not as high as the law schools. Law schools are now mostly 60 percent women, I think Boalt is at 58 percent now. They’re still working on getting there, but it’s a significant percentage.

Rubens: I actually meant in terms of your staff overall – has it increased? If you could make a statement about whether people going through the Office were staying for only a couple of years – men or women – then going into other firms, or would people stay with you?

Jensen: They would move on, but there are more people now who see it as a career than when I first started, because it wasn’t a career when I first started. Now, a lot of people come into the Office and see it as a place where you stay.

Rubens: Were the salaries going up too, proportionately?

Jensen: The salaries were going up. I don’t think they were ever going up as they should be, but they did go up. I still think it’s hard for somebody who is in one of these public service jobs to have enough money to keep everything going. I mean, when you get to the level where people are going to college and that sort of thing, you find the need for everybody to work. Barbara worked because she needed to when I was in the DA’s Office. I’m the DA, and we needed more money.

Rubens: Once your children started going to college?

Jensen: Sure.

Rubens: Yes, I see your point. But you were saying that over your tenure from ‘69 to ‘81...
Jensen: ‘82. There’s much more of a stable career force there than there has been in the past, and the expectations are different. When I first started, the expectation was that you didn’t stay there. And you didn’t expect to.

MLJ: Did you find that as you stayed there longer, instead of Deputy District Attorneys following a track into private practice, that many of the people who worked for you ended up becoming Judges instead?

Jensen: Yes, now they had...

MLJ: Do you have any notion of how many people who worked in the DA’s Office ended up a Judge?

Jensen: I think there are a couple dozen people who worked for me who are Judges now.

Rubens: Now, from there?

Jensen: Yes.

Rubens: We’ll have to make a list. There is one on the Supreme Court in California.

Jensen: Yes, the California Supreme Court, Courts of Appeal, Superior Courts, Federal Court, yes; there are a lot of Judges that came out of the DA’s Office, but we can find out.

Rubens: Are you saying it’s disproportionate? Do you think it’s an unusual number?

Jensen: I think it’s higher, yes. Also, you can go back and you’ll see other factors. You’ll see a lot of Judges who came out of Reagan appointments, Deukmejian appointments, Pete Wilson—those Governors who were comfortable with prosecutors being appointed.

Rubens: Do you know if you were considered at all for an appointment while you were DA?

Jensen: I was considered. They came to talk to me about going on the Court of Appeals. And I said, “I don’t want to do that.”
MLJ: Weren’t you considered for the Supreme Court, or was that just media speculation?

Jensen: Later on after I had gone back to Washington from California.

Rubens: While you were the DA here, were you being considered for appointments?

Jensen: I was for the Court of Appeals, but I said I didn’t want to do that.

Rubens: Why didn’t you?

Jensen: I didn’t want it, it’s – what is it they say? When you’re appointed to the Appellate Court it’s just like being sentenced to life in law school. So I don’t know; I like Trial Courts better.

Rubens: Yes, and it sounded like you enjoyed...

Jensen: There’s no question.
Rubens: There are two new books on the history of Oakland that look at race in the post-World War II era. One is by an historian, Robert O. Self, American Babylon; the other is Race and the Struggle for Postwar Oakland, and other by a Yale sociologist, Chris Rhomberg, No There There: Race, Class and Political Community in Oakland. They go over some of the same ground from different perspectives.

Jensen: Would they pick up all of the early players, Tom Berkley and things like that?

Rubens: No; they’re looking—

Jensen: They don’t have Tom Berkley? Tom Berkley was one of the original lawyers in this area. He was in a business practice the whole time and he never ran for office or anything, but he was a mover-shaker.

Rubens: An African American?

Jensen: Yes. He’s the guy who basically brought the Port of Oakland the container ship. He did the arrangement with the Chinese to build the container stuff down there. He was on the Port of Oakland.

Rubens: I see; because it said the first container ship arrived in ‘62.

Jensen: He was on the Port of Oakland then.

Rubens: Is he gone now?

Jensen: He died a couple years ago. He ran a paper; he ran the Oakland Post. He was the Editor or the Publisher for the Oakland Post.

Rubens: Maybe they did talk about him, and I don’t remember that.

Jensen: You should talk about him because he was very important.
Rubens: All right; I will check on him. And then I would like to talk about what kind of trials have transcripts, because I haven’t looked at any—but if I wanted to, I could go to the Superior Court?

Jensen: There’s always a transcript made of every felony trial. Not misdemeanors, but every felony trial has a transcript; but they don’t necessarily transcribe them because—in the old days when you did this you would produce a stenographic record or whatever it may be, but you didn’t transcribe it into a written transcript. But if you were going to go up on appeal, then you did, because on appeal you had to have the transcript. But there would be a whole bunch of cases that were tried where it was transcribed, but there was no written transcript made.

And Newton has a transcript because it went on appeal. All cases on appeal have transcripts.

Rubens: I started looking at the Federal years. Those are big years; there’s a lot going on. Number Two in the Criminal Division in the Department of Justice, that’s—

Jensen: Yes; that was a great job.

Rubens: Did you know Alito?

Jensen: I’d met him, but he was working for the Solicitor General—

MLJ: Starr, or—?

Jensen: He was working for Rex Lee, who was the Solicitor General. When the Reagan Administration came in, he had all these bright kids come in and among them were Roberts and Alito. Roberts worked for the Attorney General, served on the staff there; but Alito worked for Rex Lee, I think, at the Solicitor General’s Office, and argued cases. He argued cases before the Supreme Court as one of the young guys in the Solicitor General’s Office. I think he argued 12 cases while he was there. Then he went into the Legal Counsel’s Office, which is the—they’re the lawyer for the AG. Ted Olsen was the Legal Counsel. Rehnquist was Legal Counsel.

It’s really a very, very good position. Alito was a Deputy there, then they appointed him to be the US Attorney in New Jersey; so he went up there, then he went onto the Third Circuit, and sits there now for New Jersey.
Rubens: Do you think he’ll get through All right?

Jensen: Well, I tend to think that he will. I mean, there’s not much there. The stuff that they’re going over, the cases don’t—there’s nothing wrong with those. You may disagree with something, but he’s obviously a capable Judge. He’s a very bright guy. I think he was the Editor of the Law Review at Yale. So that shows you a little bit of brain.

Rubens: Yes; so, it’s mostly—but we left off with your extraordinary memory of Earl Warren coming down and talking to you, and I just have a lot of questions about it, because I decided that maybe one of the things Warren was really interested in was hearing about his former District. Were there people who were still walking the streets who he prosecuted? And what about the abortionists? I thought that would be a way of reflecting back—were there any other kinds of cases—graft, casinos, up through about ’68? I did come upon the opening of the Earl Warren Legal Center in 1968, where Coakley is there, Warren is there, and—

Jensen: Yes.

Rubens: But all of that in a little bit. Let’s pick up where I think our narrative was; we had just finished with the Oakland Seven, so we’re basically in ’69. Earl Warren must have come down and visited Coakley, is that right? That was his wont—were you included in those?

Jensen: No, no; I was never included before I became the District Attorney. But he did come back to the Office all the time. He came every year, as I said. He would come and visit—

Rubens: He kept a house, I learned—

Jensen: Yes; he had a house that was—we had a wonderful case where once we had a problem about people being registered to vote, and voting where they didn’t live. We had something that came out of a situation where people voted in a Berkeley election, and then voted in an Oakland election within about 60 days, so we were asked to investigate all this stuff. We did some investigations about people voting, and we found all kinds of interesting things where, for example, most of the Berkeley Police Department live someplace else but were registered to vote in Berkeley. And it turns out when you get into it legally, it isn’t dependent on a physical location; it’s a mental kind of residence. It’s where you intend to live. If you think about it a little bit, it would be obvious that when you go off to school and you’re now across
the country in school, and you’re still registered to vote back here—you live back here for voting purposes, although you’re not physically present. It’s your intent to return—that sort of thing. We found out in doing this that Earl Warren voted in Alameda County based on his intent to return, and that his house was actually part of the freeway, because it was torn down and was part of the 580 Freeway—that’s where it was located—so that sort of made it clear that you didn’t have to actually physically live there to be a qualified voter. So we didn’t do anything with it—big case.

MLJ: When he was visiting with Coakley before you were DA, would he do a general meeting with the Deputies in the Office?

Jensen: No; he didn’t. He would come, and generally what would happen is one of the Inspectors would go pick him up and they would bring him over to the Office. It was one of these great duties for young kids who were working in the Inspector’s Office; you’d go over and you’d get to go pick up the Chief Justice. He would talk with them about all this stuff and they’d have a great time. Then he would come and visit with Coakley, and as I said—

Rubens: You’d see him walk by, or people knew he was there?

Jensen: Oh yes; I knew—but he would go from there to a party that the newspaper put on for the journalists in the County Courthouse. They would have a reception for him, and he would generally have a luncheon with the Superior Court Judges, and then basically he would spend a day around the Courthouse. During part of it he would come up and talk to Coakley, and then he continued doing that when I became the DA. And Coakley would come also.

Rubens: Coakley would join you?

Jensen: Yes.

Rubens: But you said that you didn’t talk about his cases, or ask him—?

Jensen: No, no; he didn’t talk about those cases. He really wanted to talk about the Office. He loved the DA’s Office. He wanted to know what was going on, and who the people are, and what the cases are—you know; he wanted to be knowledgeable about the contemporary DA’s Office – that’s what he really wanted. So he would come back, and then he and Coakley would talk about some of the old days. For example, they had a case where they prosecuted, I think it was in Alameda, where they prosecuted a graft case. I think they indicted three of the Council of five, and wiped out the whole City Council.
Rubens: Yes, right; I have it right here.

Jensen: There was a real problem, yes; so they’d talk about that case and back when they were doing those types of things. They talked a little bit about the old days.

Rubens: But did he ever say to you “So listen; why did you prosecute *Newton* three times,” or did—?

Jensen: I think we talked about that, yes. I think we did. He wanted to know what was going on in the cases that were high-profile—he knew what they were, and he talked about them, but he really just wanted people-to-people kinds of things. It wasn’t a legal dissection of anything. It was just personal.

Rubens: Sure; but he must have known the Inspectors.

Jensen: Oh sure; he did.

Rubens: He must have been interested in Houlihan.

Jensen: Oh yes; absolutely.

Rubens: So where would you put his personality in relationship to—

Jensen: Charming.

Rubens: When you’re sworn in, a distinction is made between Coakley and his Irish background and kind of hale-fellow-well-met, and you who are more reserved. I have no idea what Warren was like.

Jensen: He was not hale-fellow-well-met, but he was very social and very friendly and he was a great politician. He remembered everybody’s name, so he really had faculties as good as any I’ve ever seen. He could come back and he knew, well, my name, but he even knew Barbara’s name and he really remembered everything like that. He was very personal and we felt very warm about him. His whole persona was warm and gracious.
Rubens: But the workings of the Office—did he ask how many cases are you booking, why is crime rising, and—?

Jensen: Certainly in a general sense, yes. He didn’t want a report, like the FBI Report—but just wanted to know in general how things are; how’s the city, how’s the Office, the people? He liked to know who the young people coming in were—he liked to keep track of all the young people, and see who’s coming into the Office—that sort of thing.

Rubens: It was funny. In this article about when you come in, it pointed out one distinction that was being made between Coakley and you—not so much a distinction, but an area in which you were going to follow along in the same footsteps—sports. That you really said you learned to work on a team, and get along and—

Jensen: Oh absolutely.

Rubens: —it tells you something about your competitiveness and—.

Jensen: I don’t think there’s any question about that. I think anybody who gets into these things where you’re going to get people to be trial lawyers, the level of competitive spirit is really a good thing. And it’s just indicated by being in sports.

Rubens: Yes, and so then you say that you want to spend some of your time still recruiting people, and meeting with the law students, and—

Jensen: Sure.

Rubens: But should we reflect at all? I asked you at one point—you’re doing all these [Newton] trials; you’re going to do the draft resistance; more Panther trials, and then of course, what we’re really getting to is the shooting and killing of the Oakland Superintendent of Schools, the SLA.

In the meantime, crime is changing; it’s in 1968 that the FBI reports there is a 32 percent increase in crime in Oakland, whereas the national average is 17 percent. Is that a different kind of crime? I saw some LEAA Reports in ‘77 and ‘79—but it didn’t help me get a sense of what’s going on in the late ‘60s.
Jensen: These are ordinary street crimes. These are just increases in robbery, burglary, assaults—

Rubens: Breaking and entering?

Jensen: Drug cases; it’s just that street crimes are increasing, but see, that was happening around the whole country. Maybe it was bigger for a given period of time in Oakland, but not really significantly different than the rest of the country. That was at the end of the ‘60s and the ‘70s when there was a big, big jump in the crime rates across the country, and that’s what fueled the DA’s Office into becoming a bigger office, because we got new people as we got new Courts. We had to have more because of the increased workload.

Rubens: Because you had to prosecute these crimes.

MLJ: Sociologists, anthropologists, criminal law experts, psychologists and psychiatrists, have all speculated on the causes for the jump in crime. Being in the District Attorney’s Office, did you formulate any opinions about what was causing the rise in crime rates in Oakland?

Jensen: Not really.

Rubens: Were guns cheaper and—and supposedly being smuggled from Vietnam?

Jensen: Well, everything was cheaper in a sense, but I don’t think that there was a significant difference between Oakland and anyplace else.

Rubens: The Army.

Jensen: Yes; a lot of people had more familiarity with guns and that sort of thing that came out of the Army. But I don’t think it was an increase in some specific area—targeted area of crime. Just overall, the whole—like the ocean is going up—it did; and that’s what happened around the whole country. That’s, as I say as far as the DA’s Office, that’s why we made it a larger office.

Rubens: Then just in going back through some of the pages, I came across some of these cases that the DA must have had to handle by the time you become DA, but here’s just a list of some things; the Oakland Paving scandal, the Alameda City Government Graft, illegal gambling casinos?
Jensen: Well, that goes back to the old days; that’s Warren time.

Rubens: So none of this is happening in your era?

Jensen: That’s pretty well over. When you go back into the Emeryville stuff—Prohibition time.

Rubens: Is it as far back as that?

Jensen: Yes; it goes back as far as that. There is—I always thought it was a wonderful exhibit—over in the Oakland Museum there is a battering ram used by Earl Warren and the Investigators. He had to go and knock the doors down at the speakeasies in the Prohibition times in Emeryville.

Rubens: So you’re not dealing with that?

Jensen: That’s over.

Rubens: I see a retirement notice for Ralph Hoyt, who had been—

Jensen: Well, Ralph was the DA between Warren and Coakley. Ralph Hoyt worked for Warren. He was in the DA’s Office and senior to Coakley, and when Warren retired, Hoyt became the DA.

Rubens: Maybe I have this wrong—did he specialize in abortions? Going after abortionists?

Jensen: I don’t think so. They were some big cases where they had big abortion prosecutions. That happened during Coakley’s time.

Rubens: Not under your watch—All right, by the Fall of ‘62 and ‘63?

Jensen: By then things had changed. The law changed into doing away with abortion as a crime for individuals. They had gone to “Abortion’s okay as long as it is necessary.” And we had a whole regimen where—if the abortion came about because of incest, or a crime, or some sort of rape, or that sort of thing, then you could have an abortion. We in the DA’s Office, we authenticated those cases; so that you could have an abortion.
Rubens: Ah, and I imagine that those are going down, also, with the availability of birth control.

Jensen: They’re going down all the time.

Rubens: The Pill made a big difference.

Jensen: Yes, yes.

Rubens: I also saw a book, which I haven’t read, by Terrance Green; it comes out in 2003. It’s called Old School; he’s 29 years a local law enforcement guy, and then he goes to the FBI’s Human Behavior School in Florida, but he’s talking about how the murder rate was pretty high—.

Jensen: Was he an Inspector in the Oakland Police Department?

Rubens: Yes, yes. Terrance Green—it’s a self-published book—he says that the murder rate in Oakland was the highest of cities over 100,000; that’s just on the cover of the book. But, as I’m looking in the Oakland Tribune for a Police blotter or a crime page, I find a women’s page; I was surprised that very often the front page was not Oakland news.

Jensen: Yes; national news. The Tribune was a national paper in that sense; there are local papers, but there are—well, The Chronicle always says it’s a national paper with local news. The Tribune was that way, too.

Rubens: Yes, I had forgotten that.

Jensen: But they didn’t have—it’s like you go in the foothills and the front pages do have the crime blotter from last night of who got arrested, yes.

Rubens: A-ha; that’s where you have to go to get all the local—?

Jensen: Yes; right.

Rubens: I wasn’t going to do that. I’m counting on you. But the murder rate—?
Jensen: It did go up, but I don’t know that I think it was the highest in the country. If he says it’s the highest—it may be in California—but I don’t think it ever got to the Houston and Detroit levels.

Rubens: Did you ever have any particular dealings with the FBI? Would the FBI be calling you up and saying what’s going on here or—?

Jensen: Oh yes; well, when we get to SLA—we had an enormous amount of contact.

Rubens: All right, we’ll get to that in just a minute. I was looking for any kind of sensational case, but when I asked you, for example, about graft on the waterfront, you said everything is going on. There was a murder of a wealthy oil man and developer, Thomas Wilkes. Do you remember that name? That’s 1968.

Jensen: I don’t know that.

Rubens: He was found dead in an apartment.

Jensen: I may know what it is, but that doesn’t ring a bell with me.

Rubens: So were there a few sensational murders going on at the same time?

Jensen: I supposedly was running the Trial Department, so if it came through I should know about it.

Rubens: Yes; but that had to be the least of your troubles. Maybe this is the time to say—I mean it’s pretty amazing how big Alameda County is. I was trying to get a decent map, which I don’t have. It goes all the way out—so you’re in charge of—?

Jensen: Well, you go from Berkeley to Albany, all the way down the shorelines, you go to all the shore cities; then you go back over to Livermore, and Livermore is completely rural. One of the things we had out there was—as the DA, I needed to pay attention to the Cattlemen’s Association, because they’re out there and they were really involved in, “let’s do something about cattle rustlers.” So, Alameda County is fascinating; we had cattle rustlers at the same time we’ve got sit-ins.
Rubens: See; that’s exactly what I want to hear.

Jensen: No, it’s true. We had everything.

MLJ: There really were cattle rustling prosecutions?

Jensen: Yes; there were. We prosecuted them and we sent some cattle rustlers to prison. We were heroic because cattle rustling had been going on and they hadn’t made cases on them, but the Sheriff’s Office did a great job in finding some of these people. They were in trucks and modern. They would butcher cattle on the road out there.

Rubens: Really?

Jensen: Yes; so it was interesting to catch them and to prosecute them.

Rubens: I can imagine. Did you do some of that yourself?

Jensen: I didn’t personally try any cattle rustling, but we—the Office did.

MLJ: When did the Office establish a branch out in Livermore?

Jensen: That was there from the beginning. That’s where—Coakley used to do these; there was a run where you would go out one day a month—you’d go out to the Court in Livermore, and the Court in Pleasanton. That existed for years and years and years. It was an assignment to go out there on a periodic basis to hit those Courts. There was always a Municipal Court in both Livermore and Pleasanton, and there was one Judge in each. So that was there for years, and then finally the population started going out there too, and the offices and Courts started changing because there were so many people.

Rubens: Would you make that run?

Jensen: Yes; I did that.

Rubens: That’s going to come out in the election I would imagine, too.
Jensen: Yes; I went out there, and tried some cases out there, and made appearances in Court.

Rubens: It reminds me—one more thing about Coakley. You have systematically said what an extraordinary man—

Jensen: He was.

Rubens: —he was, and how much you learned from him. I learned that when he retired he developed a curriculum—

Jensen: The National College.

Rubens: Yes; it was a four-week course at Bates College of Law and it was called the National College of DAs.

Jensen: Yes; in Houston.

Rubens: —and that he had really formed the National DA’s Association.

Jensen: He was one of about—I think there were three people who really got it all together. Frank Coakley and Frank Hogan, who was the DA in Manhattan for years and years and years, and also Pat Brown from San Francisco.

Rubens: Oh, no kidding?

Jensen: They were all involved in actually forming the National DA’s Association. I think Frank Coakley and Frank Hogan were the basic figures, but I think Pat Brown had a good deal to do with it, too.

Rubens: So this has got to be in the ‘50s?

Jensen: Yes; there were sort of *ad hoc* meetings of DAs in some of the big cities which I think were the basis of this. That was a way to get to know the people in New York; Frank Hogan was an incredible figure. He was there for years and years and years; and a guru for everybody in the country, so Coakley and he were, I think, very interested in getting a national organization. They were mostly responsible for getting it going. And that was a good thing for me,
basically, because here you have a tradition of being involved in this, and it’s a very good idea to go to those national meetings. But you have to convince the Board of Supervisors that those are legitimate trips. And Coakley had done it; so there’s no problem, because it was already established. He was probably one of the founding fathers, so I could always go to the National DA’s Conferences. And I did. It was important.

Rubens: Every year?

Jensen: I would go just about every year, yes. I think I got to be a Treasurer near the end after I had been there for a while, but the big thing that came out of that was the Victim Witness Program. We can talk about that later.

Rubens: Yes; we will. Did you ever teach at that—?

Jensen: At the school? Yes.

When I was DA; I went down there several times and taught courses. We would teach terrorism because we—it was in the old days, see, and the kinds of disturbances that were going on in Oakland, the Panthers, that sort of thing—were viewed as a kind of a disturbance that could in those days be called terrorism. So they would invite us to come talk about it—and I had even prosecuted those cases.

MLJ: What were you teaching about—strategy? What crime to charge?

Jensen: Cases and what kind of crimes, yes—and how you did those. I remember I did go down and talk about how we handled various civic disturbances and that kind of thing, and one DA, I think he was from Memphis, came up and said, “You know, we have the same sort of thing.” He says, “We had a Police Officer in Memphis come running into the station, and he said to the Sergeant—“Sergeant, Sergeant, there’s a terrorist out there in the street!” And the Sergeant said “How do you know?” And he says, “Well, it says right on his shirt—it says Adidas right on his shirt.”

Rubens: Oh, that’s funny.

Jensen: But these are the ways we approached things.

Rubens: So you must have seen the complexion of those DAs changing at that school?
Jensen: Oh yes.

Rubens: By the way, were you—I wouldn’t think you would be asked to speak elsewhere in the country? I mean, you must have had to limit what you could do.

Jensen: I went to some things in the State and spoke—and made some appearances, I think, at some social organizations, civic organizations in Sacramento, I think, and in L.A.

MLJ: When did you start teaching at Northwestern?

Jensen: That was later on when I was DA in the late ‘70s—not sure exactly how it got started. Maybe it was through John Keenan. John Keenan was a prosecutor in Manhattan. He had been there when Hogan was there and he was one of the—he and I had talked about Black Panthers, because they had Panthers there and they wanted to know what’s going on—so I got to know John Keenan. Then he came out to a National DA’s Conference and we became good friends. He was teaching at the Short Course at the Northwestern Law School. Every year it put on what they called a “Short Course” for prosecutors, so people from all over the Midwest and East would send people. They had a faculty there that taught basic trial work, and how you handled the crime, and all these aspects of prosecution, so I would go there every year for about three or four years before I went to Washington.

MLJ: Did you do any teaching at local law schools as well?

Jensen: Every once in a while we’d go on trial practice programs. I did that at Boalt Hall a couple of times. That’s about it. Then Hastings had a trial advocacy program that I taught at.

Rubens: What did you teach? I finally got a hold of some information that I hadn’t had before, and it will back us up over the Newton trial just a little bit, but you’re interviewed by Fred Garretson; he’s a staff writer for The Tribune. This is June 29, 1969, and it’s an article called “New DA Filling a Giant’s Shoes.”

One of the things he says is that Coakley and Jensen are both advocates of the controversial “conspiracy theory of jurisprudence,” through which people can be convicted of felonies and given long prison sentences. You talked about how you strung together those different charges in the Oakland Seven, and they constituted a felony.
Jensen: The *Oakland Seven*—eight misdemeanors. But this is saying, “advocates of the conspiracy theory.” I don’t know what that really means, but we had charged a conspiracy for the misdemeanors in the *Oakland Seven*. He’s probably talking about that.

Rubens: That is what he is saying—was there some discussion about “conspiracy theory?” Was that a legal concept? The article quotes Coakley saying his Office “has pioneered new legal ground in the use of conspiracy theory. *I think I know more about conspiracy than others.*”

You say, by the way, that you will personally prosecute more cases than Coakley, although you acknowledge you have heavy administrative duties. “*Jensen said he ...*”

Jensen: Did I say that?

Rubens: Yes; well it says “*Jensen said he intends to push this approach—vigorous law enforcement that has fairness and integrity and will earn respect for law without getting tangled in what he calls that tyrannical kind of label popularized today as law and order.*” I didn’t know if these were tropes in legal parlance, or were you coining it—“conspiracy theory?”

Jensen: No, no, no; conspiracy is—there’s no new conspiracy theory. Conspiracy is a basic part of all that goes on. People are confused because there are two aspects to it. The one aspect is that every joint venture in crime—where there are multiple participants—take, for example, a robbery where you get the guy who goes in with a gun and holds the place up, and there’s a guy who’s a lookout out there, and then there’s another guy with the car. So you’ve got three guys, and they all do it. Well, they’re all guilty of the robbery even though only one of them used the gun to get the money because they aided and abetted, but they also conspired to do it. They agreed to do it; they all got ready to do it; and they went and they did it. It’s a way of assigning responsibility; it’s a theory of liability in every case. So, if you can show a conspiracy—when we get to the SLA that’s where we’ll get to it.

Rubens: Fine, but is Coakley a kind of a pioneer though?

Jensen: I think he’s not a pioneer because it had been there for a long time.

MLJ: In the context of the *Oakland Seven* if I could just see if your memory comports with my memory – did you say that Coakley decided to charge the
Oakland Seven sit-in protest as a conspiracy to get the felony, and that you thought it was more appropriately charged as individual misdemeanors?

Jensen: Yes; I thought you should charge them individually on the misdemeanors, because the controversy over the conspiracy charge in that case is—that’s the other part I was going to say about conspiracy—it is also a crime in itself. I mean, it’s a criminal event; it’s a so-called inchoate crime, where you don’t have to actually commit the underlying crime to be guilty of a conspiracy. If you sit down and you plan to do the robbery, and you take a step toward doing it, like getting the gun or getting the car, all of your planning is in itself a crime. So you can have a substantive crime of conspiracy, as well as conspiracy being a theory of liability. So the controversy is in using it as a substantive crime and thereby promoting a misdemeanor to a felony by the fact that conspiracies, as substantive crimes, are felonies.

Rubens: All right, so that must have been the trope. That must have been something you were talking about when you went to these Institutes, or Short Courses. By the way, I’m just full of too much information—College of Holy Names begins to sponsor a Short Course on Race Relations that a lot of people are attending—not Berkeley—but right in this same era in ‘68. I don’t know who is attending. I thought that would be interesting to pursue at some point.

Jensen: It may have been some people from the Office who went there. I didn’t go.

Rubens: All right; one last thing. Frank Bardacke, a Cal graduate student who was one of the Oakland Seven defendants, commented on Monroe Friedman, who was the Judge—

Jensen: He’s the Judge in Huey Newton.

Rubens: Yes; and first he describes him: he says he’s old, he’s short, he has one digit on his hand; and he thought that they were going to get the best out of him. They tried to decide whether if they went to someone who was more—that he was a liberal; that’s what he’s saying.

Jensen: He was appointed, I think, to the District Court here as an interim appointment. He was appointed as a Democrat and then he had to be withdrawn when—I think when Eisenhower came in. I guess he was appointed by Truman.

Rubens: Why did he have to be—?
Jensen: Because he had been appointed during the time after Congress had gone out of Session—it was an interim appointment. You have to renew it when Congress comes back. And by the time Congress came back, it was a new President.

Rubens: I see; did you have an opinion about Freidman as a Judge?

Jensen: Well, he was fine.

Rubens: How is a case assigned to a Judge?

Jensen: They were assigned just on the wheel. It was random, although with Freidman, he tried Newton and he got assigned by the presiding Judge of Alameda County basically, because every other Judge said “I don’t want to do it.”

Rubens: Okay; maybe I should stay here for just a minute because there was another guy I wanted to ask you about. He’s also—Phillips.

Jensen: George Phillips?

Rubens: Yes; I had asked you about selective prosecution. I said that I had run into a woman who felt she should have been the Oakland—one of the Oakland Eight—but she thought that it was that you didn’t want to prosecute a woman, and you said “Oh, I don’t know about that.” But apparently it did become an issue then—the defense raised an issue of selective prosecution, and Phillips simply said “No, we’re not doing that.”

Jensen: Yes. You’ve got to have some sort of selection process that’s discriminating against a protected group.

Rubens: But—?

Jensen: But we didn’t discriminate in whether we took only men.

Rubens: All right.

Jensen: So it wasn’t gender discrimination.
MLJ: You haven’t described who George Phillips is.

Jensen: George Phillips was a Judge in the Superior Court, and he was on for a long time. He was a good Judge. I think he was appointed by Pat Brown.

MLJ: And when you say Monroe Freidman was fine—

Jensen: Well, he was fine; he did a good job under tough circumstances. I didn’t always agree with how he handled things. But he got through.

Rubens: Two quick things; this is Bardacke, so we understand our sources, who said that Phillips had to make countless decisions—take the Oakland Seven case, basically—sympathetic to the defense; that he had to be careful not to displease the District Attorney; that Phillips explained to anyone who would listen that, “the DA might do to me what he is doing to Judge Avakian.” Avakian was another liberal whose decisions angered Coakley and the DA challenged him every time a criminal case came before him.

Jensen: Under California law there is a provision that allows each party to peremptorily excuse the Judge. It’s very rarely used. California allowed you to do that; so the defense could do it, and the DA could do it.

MLJ: But you could only do it one time?

Jensen: You could only do it one time in a case, so we very rarely did it. But Coakley decided that Avakian was a relatively liberal Judge—he had not been sitting on criminal cases particularly, and then he sat on some cases and Coakley just challenged him. In effect, it would remove him from the criminal court and that caused real problems because it interrupted the whole process of managing the Courts. The Judges were not happy with that. So you could do a “blanket challenge,” as it were, because you were allowed to do it peremptorily without any reason at all. And that still exists.

Rubens: Is it still done?

Jensen: It still is, but not very much; I think people got out of it.

Rubens: What kind of criminal cases would Avakian be doing that—?
Jensen: All kinds; he was going to have just a plain assignment as a Judge in the Criminal Court.

Rubens: But he was seen as too liberal to—

Jensen: Yes.

MLJ: Wasn’t there a period more recently where—I don’t know if it was an advocacy group or another group—that wanted to do a blanket challenge of Judge Golde?

Jensen: There was. There was some group—it was either NOW, or another feminist group that thought he was being unfair to—

MLJ: Bay Area Women Against Rape?

Jensen: Yes, but they came out in favor of Stanley. This was a different group. They said that he was not being fair in handling cases where there was sexual abuse, and wanted him to be challenged, and they’re just wrong. The challenge ended, and one of the reasons was BAWAR (Bay Area Women Against Rape)—a women’s group that had been the oldest women’s group—they said there’s nothing wrong with Stanley Golde as a Judge; he’s a fine Judge. But there was such a thought—but it was kind of a fringe group that—.

Rubens: But clearly it’s part of the strategic process—

MLJ: Just to explain it more fully—I’m sorry—you can also challenge a Judge for cause. You can use the one-time preemptory challenge like you would with a juror, then you can challenge for cause if you think that there is a particular bias.

Jensen: Yes; but you have to prove something with a challenge for cause. There has to be a cause, and you can challenge any Judge for cause. If the Judge doesn’t step down, what happens in the Federal system, and it also happened in the State system—is that if there is a challenge to a Judge for cause, then it gets assigned to another Judge to hear it to decide whether or not it’s a good challenge.

MLJ: So, for example, Congressman DeLay challenged his first Judge for cause for being a Democrat, and then the prosecutor just challenged the new Judge for
being a Republican; they both got kicked out and now the Texas Supreme Court is going to appoint the Judge to hear his case.

Jensen: Well, that’s strange. [laughs]

Rubens: Yes; I always felt poor Avakian kind of got a bad job—

Jensen: We lifted his blanket challenge.

Rubens: All right, so—funny, Golde—I came upon Golde’s obituary and you spoke so highly of him, and I don’t think I asked you whether during the Free Speech Movement case you talked to Golde particularly.

Jensen: He represented hundreds of people individually, and he was one of the five defense attorneys. So I talked to him about the case. I didn’t talk to him as a friend about what’s going on. We didn’t talk about the case in that sense, no; we maintained a friendship and we talked about everything in the world, but we didn’t talk about the legal issues related to the case itself.

MLJ: One of the things we talked about and that you commented on, was the extraordinary African American leadership in Oakland.

Jensen: Yes.

MLJ: How would you characterize that in coming up to the events with the SLA, where an African American leader is the victim of the crime?

Jensen: That the people who did it are—they’re totally wrong in terms of their perceptions of what is actually going on in Oakland; and they’re totally wrong in terms of the leadership that’s there. Marcus Foster, the Superintendent of the—the Director of the Schools, was an African American and doing a wonderful job, and they thought by doing something to him—killing him—that he would be seen as an enemy of the people, and that what they had done was a wonderful thing. Again, the SLA started with the premise of “the people arising against their enemies,” but Marcus Foster wasn’t an enemy of the people at all—ever.

MLJ: How was he viewed in the community?
Jensen: He had a great reputation and he was—it was seen as, “Finally, we’ve got somebody who’s doing something positive for the Oakland schools.”

MLJ: Had he come from somewhere else?

Jensen: He came from Philadelphia, and he had been very, very well regarded there. He came out here, and I think part the reason for it was for the challenge of doing something with the Oakland schools.

MLJ: His proposal, as I recall, that the SLA indicated that they were angry at—was this notion of identification for the students and—?

Jensen: The students and the Police coming on the campus.

MLJ: Had you had any discussion between the DA’s Office and the schools about how that was going to work?

Jensen: I think there had been some talks, but basically it was with the Police Department in terms of what kinds of steps will be taken, when they had to come on campus for some Police action, and how they would do that.

MLJ: Were you involved in any of those discussions?

Jensen: I wasn’t involved in the actual meetings they had. I think somebody in the Office was; we had somebody who was sitting down with school people and with the Police Department, and there was something about Police maybe actually being on the campus.

Rubens: I think it was Police on campus, and also that they could just search students.

Jensen: Well, I don’t think it ever got to the point that we were going to have Policemen come onto campus and just decide to search students if they feel like it.

Rubens: What was the reaction, if you know or have any sense, in the general community when the proposal was first made?
Jensen: I don’t think that it got a lot of attention. It wasn’t something that was on the front-page or anything. I think most people who paid attention to schools were aware of it and that there was some level of controversy over it, yes.

Rubens: ‘73 was the murder and the trial—I think it was just a complete shock?

Jensen: That was the SLA’s idea to get it started that way.

Rubens: I haven’t looked in the Panther papers, but I think the Panthers made no comment on that.

Jensen: No complaint about it, yes.

Rubens: I think they wanted to distance themselves from it as much as possible.

Jensen: Yes; maybe so.

MLJ: Prior to Marcus Foster being shot—had there been any Intelligence, or hints, or anything that suggested that a group called the SLA existed?

Jensen: No, no. They were brand new; they were not known at all to the Intelligence people at the time of the assassination of Foster.

MLJ: When Marcus Foster was shot, how did you first learn about it, and what did you learn?

Jensen: Well I—we were right down the street at Jack London Square. We were at a gathering where the speaker was Earl Warren. He was speaking that night, and Barbara and I were there, and the Police came up and grabbed me and told me that Foster had just been killed.

Rubens: It must have been so out of the blue.

Jensen: It was; it was totally out of the blue.

MLJ: Did you learn at that point that Robert Blackburn had been shot as well?
Jensen: Yes; he had been shot and he was in the hospital, and Marcus Foster was dead, and nobody knew anything about who did this.

MLJ: There was no immediate communication?

Jensen: There was no immediate communication. But later there were letters delivered to the various papers, some of them identifying “us” as the Symbionese Liberation Army; “we killed them, and you will be able to tell we killed them because the bullets are cyanide-tipped—.”

Rubens: Cyanide-tipped bullets?

Jensen: Yes; that’s a signature, and that was true.

MLJ: How did the investigation proceed after you got the letters, or was it proceeding prior to that?

Jensen: It started as soon as the murder took place, but obviously you did it just like a regular crime scene. So, they were leaving from work, both Blackburn and Foster—they had been working late at night and they were walking back to their car from the school building down by the Oakland Auditorium—and the investigation started out just by identifying what had happened. Investigators recovered a bunch of stuff around there, and someone found shells and that sort of thing.

Rubens: Yes; and then the weapon—because they say that during your summation, you hold up a “sleek, black, 380-Walther Automatic” and wave it before the jury.

Jensen: That was it.

MLJ: Did you actually wave it?

Jensen: I may have moved it.

MLJ: If he (DLJ) ever tells you about trial technique, you’ll find that good trial lawyers don’t wave weapons.

Rubens: This is good; why?
Jensen: Because people are afraid of them. They think “What?—God!”, and they will shy away.

Rubens: So you would hold it up?

Jensen: No; you make sure that they understand that it can’t be fired.

MLJ: You go take it to a Deputy to make sure it’s not loaded, so you can demonstrate how dangerous it is.

Rubens: Oh this is wonderful; I mean—what poor journalism—or sensational.

MLJ: Well no—it’s just more fun to say “wave” than “carefully examine.” Did the investigators know prior to the letters being received that the bullets were cyanide-tipped?

Jensen: Yes, yes; that was part of the physical forensics. They knew that.

MLJ: So the letter confirmed that these people must have known something about the murder?

Jensen: Correct; but see, nobody knew about that. That had not been published at all—the early stories about it had described the incident and all of the surroundings, but it did not describe the fact that the bullets had been cyanide-tipped. That was not said, and then when the letters came in, they said “we did it, and this is what we did,” and it was—they meant it as being a way of authenticating the fact that they were—

Rubens: It was they?

Jensen: —because they wanted people to know that their organization did this.

MLJ: How did you go back and actually find Remiro and Little?

Jensen: Well, what happened was there was a regular homicide investigation that got under way right away, and in January—total serendipity—there’s a Concord Police Officer patrolling in a suburban area in Concord at night, and he sees this car kind of going around in circles around him and he stops the car, and in
the car are Remiro and Little; and when he sees a gun, it goes from there into—I believe there were some bullets fired, I’m not quite sure—but anyway there are guns, and Remiro is arrested right away, and he has on his person the 380 Walther. That’s the gun; and so what happened is, well, I think Little was arrested first—and then Remiro got away, and then they caught him and they found him with the gun. Shortly after that—this was in the early morning, I think it was—a call came in, in the same general area where this arrest had taken place—and see, when he stopped them he found they had a bunch of SLA stuff in the back of the car, so they had literature that tied them to this whole thing.

All right; so they knew they had people that were tied to it in that sense, but a fire broke out a couple blocks away from where the stop had been, and it was a fire in a residence in the neighborhood; and it turns out that it was a Safe House where everybody had been staying—where the SLA was staying—and after Remiro and Little were arrested, they figured “we’ve got to get out of here,” so they threw gasoline all over the house and set it on fire. All right; so they all took off, but—.

MLJ: When you say they—who are identified as part of the SLA at that point?

Jensen: Well, they didn’t know anybody; you didn’t know who the people were. The first people who got identified as being a part of it were Remiro and Little, and they didn’t know who those people were. You had to go in and then find out who they were, because the fire wasn’t really that well set. They were able to put it out without too much trouble, and a whole bunch of stuff was left in the house.

Rubens: The original copy of the—

Jensen: All kinds of papers, the original copy of the letter that had been sent to the newspaper—

Rubens: A supply of cyanide, too.

Jensen: A lot of guns and stuff.

Rubens: Yes; and then you get the fingerprints of all these people.

Jensen: We had thousands of fingerprints all over the stuff, so we could go back and actually show where each individual person lived. In the sense that—this is the room where Remiro was before, and this is where Little was, and here’s
where the other people were in there. We found indicia of who these people were, so we were able to find out—

MLJ: Were the initial letters signed only by the “Symbionese Liberation Army,” or—?

Jensen: They were not signed by individual people saying who they are. It was signed as “This is the Symbionese Liberation Army speaking, and this is what we say to you.”

MLJ: When you got the papers, is that when people like Cinque, or Donald DeFreeze, were first—

Jensen: That’s when you first found out—after you got into the house—and then you started to find out who they were. Then you’d start developing who all the people were.

Rubens: Donald DeFreeze, who was General Field Martial Cinque, Willy Wolfe, Patricia Soltysik, Nancy Ling Perry—now she dies.

Jensen: All those people were there in the house in Concord, and then they took off and they went down to Southern California. They stayed around here for a while, but—that was in January ’74, I think, when the arrests take place and when the house burns down.

MLJ: So Remiro and Little have been arrested?

Jensen: They’re arrested; they’re in custody. Now the next thing that happened is Patricia Hearst gets kidnapped—

MLJ: February of ’74? When she was first kidnapped, was there any immediate connection made between her kidnapping and the SLA?

Jensen: I think so; I’m not exactly sure how the connection may be—

Rubens: Gee, I read a book on this but I can’t remember now.

Jensen: Yes; I don’t remember exactly how the—
Rubens: Pretty soon they send the communiqué, within a couple of days?

Jensen: I think they do it right away.

Jensen: She and Stephen Weed lived in this apartment in Berkeley; and there were several people involved in the kidnapping, chiefly the Harrises—William and Emily Harris were part of that original SLA group, and they were the ones who carried out the kidnapping.

Rubens: Were you notified right away about the kidnapping?

Jensen: Oh yes.

I think there was a linkage really quite early—the thought was maybe Weed could produce something, because he was still there. He was a witness to everything, so he could describe everything that happened. So I think there were some indications there.

MLJ: What was the link made by the SLA between the Foster killing and the Hearst kidnapping?

Jensen: Well, once upon a time, they thought—at least this is what we have sort of agreed upon afterwards—is that they figured they would kidnap Patty Hearst and trade her for Remiro and Little; the soldiers of the Symbionese Liberation Army.

MLJ: So it wasn’t—I hesitate to use this phrase but I will anyway—some higher-minded targeting of the daughter of—?

Jensen: No. They knew she was there. They looked into things like this and knew who she was, and that she was a member of a ruling family—the Hearsts. They figured that they would be able to get a lot of action out of the Hearst people in the paper and everything else by doing that. That he might be able to call people up and say, “My daughter...”

Rubens: Did he?

Jensen: No. We talked, and it was obvious that we were not going to agree to do that, so—
MLJ: Wasn’t he condemned for never paying the ransom?

Jensen: I don’t think so.

MLJ: Didn’t she condemn him?

Jensen: Well, she may have.

Rubens: Yes; they asked for a food giveaway—this is by the time she has converted.

Jensen: She’s been in the bank robbery, yes.

MLJ: Did the SLA ever make a specific demand for an exchange, or for ransom?

Jensen: They were asking Hearst to give food to people. That was the ransom basically—they wouldn’t be paying money directly like a traditional ransom, but would pay money by creating these programs for people who needed all this stuff, and that would be the way in which she could be released.

MLJ: When were you talking to the Hearsts?

Jensen: After it happened, we had to meet and talk about what could happen, and make it clear—and Mr. Hearst was obviously concerned about the whole thing, but he understood that there is no way in which we were ever going to agree that Remiro and Little are going to be released for her being returned. There would be no exchanges like that. He understood that, and there was no problem.

MLJ: How was Mrs. Hearst?

Jensen: I never talked to her.

MLJ: Didn’t you talk to her during the Harris prosecution, or didn’t Don Jones talk to Mrs. Hearst?

Jensen: Oh, he may have, yes; I didn’t. Some of the people in the Office may have.
Rubens: Who is Don Jones?

Jensen: He’s an Investigator who worked for the DA’s Office and worked on these cases. He was up in Sacramento when we tried the case.

MLJ: When Patty Hearst was kidnapped, were papers located that indicated any other plans the SLA had to kidnap other people, or—?

Jensen: No, no; but there had been papers in the house in Concord that showed they had plans to kidnap other people. They had targeted Gene Trefethen, who was at Kaiser. He was a Kaiser Executive. They had scoped out his house and everything else. They also had specific plans of kidnapping, I think, some other people—but they had in mind doing more than the Marcus Foster event.

MLJ: What were their big plans?

Jensen: Well, they were going to kidnap some people and—the whole idea was to get the people who were “enemies of the people,” and show to “the people” that we (the SLA) were doing something, and therefore people would rise against the establishment.

Rubens: Even more hare-brained than—

Jensen: Yes; it was really strange.

Rubens: Were you concerned for your family at that point? Did your security go up again? Unlike the Panthers, who—

Jensen: No, not with the SLA because—you know, one of the nice things is that there was a change of venue, so we were up there in Sacramento and didn’t have any focus back home. We had before, but we never had any increased security because of the SLA.

The Remiro/Little trial had a change of venue to Sacramento.

Rubens: How come?

Jensen: Because the Court of Appeals in California decided that that would be the best way of doing it. We had a big hearing in Alameda County, and the Judge in
Alameda County said there’s no reason why you can’t pick a jury in Alameda County. Then it went up on appeal and the Court of Appeals said “No; you have to move it.”

MLJ: What was the basis for changing venue?

Jensen: The idea is that the territory where the crime was committed—that the people there know so much about the participants in this that they’ll be biased in some sort of fashion—and you won’t be able to get a fair trial. So, the idea was that these people could not get a fair trial in Oakland or Alameda County because of the fact that the Superintendent of Schools had been killed, and there had also been—by then everybody understood that the Patty Hearst kidnap was a part of this, too. And so the question was—could Alameda County produce a jury that would be fair to try these cases? And it was our position—“Of course they can.” I mean it’s a big, big county, and people can do this—but the Court of Appeals said “No; we won’t let you do that.”

MLJ: Who was the local Judge that decided it?

Jensen: I forget who it was.

Rubens: Who takes it to the Court of Appeals?

Jensen: The Defendants—Remiro and Little; they wanted to change venue. And so we opposed that at the Trial Court in Alameda County. We had a big hearing there, and the Judge said that that there’s not enough to show a change of venue is warranted; because actually, if you have this situation, you can wait until trial and if it turns out at trial that you can’t assemble a jury, then you can change venue—but that’s not going to happen in Alameda County. You’re going to have plenty of people who don’t know about it, or aren’t going to have a feeling about it, and are going to be able to sit.

Rubens: But at the appeal level—?

Jensen: They decided, as a matter of law, that there had to be a change. The Appellate Court said that you have to change venue to another county, and then the Chief Justice, I think, assigns the other County.

Rubens: Had that been common? Had that happened very much?
Jensen: That had never happened—I don’t think it had ever happened in Alameda County. That’s the only time it’s ever happened there.

Rubens: Of course, the big sensational case out of California would then be in LA, where the jury—they changed the place of venue of the Court and it goes to the Simi Valley; who am I thinking of?

Jensen: Oh, you’re thinking of OJ Simpson.

MLJ: No; he didn’t go to Simi Valley. He—

Rubens: No, no, the one before him—oh God, the Rodney King case. That was what I remembered as the most sensational change of venue, but this was not something that normally—?

Jensen: This had never happened in Alameda County, and I don’t think it’s ever happened since.

The Appeals Court just felt that it was too much of a problem—that there had been so much coverage, so much notoriety, with reference to these offenses—I mean these were big things. The SLA shooting and the kidnapping of Patty Hearst were huge. There was an enormous amount of coverage, but the idea that the coverage was so great that you couldn’t do it in Alameda County, but you could do it in San Francisco or something like that, doesn’t make much sense.

Rubens: I understand what you’re saying.

Jensen: But they wanted to move it; but you have to move it into something that’s big enough to handle a case like that, so they’d have to get a bigger county. So they moved it to Sacramento.

Rubens: Did you actually prosecute it?

Jensen: Yes.

MLJ: Who were the defense attorneys for Remiro and Little?
Jensen: The defense attorneys were Ted Merrill; he represented Remiro, I believe. Ted Merrill had been a Deputy DA in Alameda County. I knew him from his time in Alameda County, then he went into private practice and he was a successful private practitioner. He had a practice in Contra Costa County, and he was appointed later on to be a Superior Court Judge in Contra Costa County. He was one of the attorneys, and the other one was James Jenner, who was the Public Defender in Alameda County. The two of them were the trial lawyers for Remiro and Little.

Rubens: How did the case go for you? How did you—?

Jensen: It went fine.

Rubens: Yes. [laughs]

MLJ: When you went to Sacramento, was there a connection that you renewed that became important later?

Jensen: The Meeses; but Ed Meese kept in contact all the way along. Ed Meese was working for Reagan and he had been there—but Reagan, I think, was gone by then—

Rubens: How many days were you up there?

Jensen: The trial took about three months.

Rubens: And it’s about a five hour summation; that must have been—whoa.

Jensen: Well, there was a lot of stuff. See, it was an unusual trial in the sense that the original attack—there had been two figures up against the wall by the school building when Foster and Blackburn went by, and Blackburn had seen it and then he was shot, but he recovered. And he survived.

He could give a general description of who the people were, but he couldn’t identify people. It was dark and all this kind of stuff, but he could give a general description. So we tried the case on a conspiracy basis, see—that’s the point—the conspiracy was that these people who lived in this house in Concord called themselves the Symbionese Liberation Army. They hatched the schemes to do this; they set all this up. They provided the guns and they, as a group, had this in mind, and anybody who is a member of the group is liable for what the group did. So Remiro and Little are members of that
conspiracy to kill Foster and Blackburn; so they’re guilty of the murders. But you don’t have to identify them as being the shooters.

MLJ: But then that also eliminates a possible first degree murder charge, doesn’t it? When you don’t have a shooter?

Jensen: Well, in terms of the—yes—but it wasn’t an issue at the time, because the death penalty was out then. The Supreme Court of California had said the Constitution prohibited the death penalty in, ’72 I think it was, so there was no death penalty at the time.

MLJ: So when you end up having to try it as a conspiracy, it makes it a much more difficult and complicated—

Jensen: It’s a much more difficult case. Because it has to be done—it’s a completely circumstantial evidence case.

Rubens: I see.

Jensen: It has no direct percipient witnesses, other than to the event, but without the identity—there was no percipient witness to the identity, so you had to do it with circumstantial evidence. This evidence was all from the house. We took everything out of the house and had plenty of time to do it, because the place had been abandoned and they set it on fire. We put the fire out and got search warrants and went in and took everything out bit by bit by bit, so we knew exactly where everything was in the house. Then we had all the forensics done on that, and then you could do the fingerprints—

Rubens: Did you have enough people to do all that? Did you have to bring on more people?

Jensen: No, no; we had people—just basic assignments.

MLJ: So, compare and contrast the style of that case with Huey Newton, where you have a direct murder and you’re trying a direct murder.

Jensen: That’s totally different, yes.

MLJ: With the SLA aren’t you—don’t you end up just by the circumstances of what you were given—trying a political case? Don’t you try the SLA?
Jensen: Well, you have to try the SLA; because that was their—one of the whole ideas is that was the motive; that was the goal. The purpose of what they were doing was to kill Marcus Foster in order to foment the people to arise, and so that’s part of what they were doing. But we had all kinds of circumstances; we ended up with maybe 500 pieces of evidence. So the whole case had to be put together; that was done by circumstances.

MLJ: What year were you trying it?

Jensen: That was ‘75.

MLJ: The political and social climate in ‘75 when the SLA is being tried—is it such that you get any kind of comment or criticism that it’s a political trial, versus when the Panthers are being tried?

Jensen: No, none at all. No; it was totally different. When the Panthers were being tried, it was viewed as a political trial trying to do something to take care of the Panthers – to eliminate the Panthers. The SLA; nobody ever did that, and none of the groups that were around wanted to have anything to do with the SLA because it was so strange, among other things.

Rubens: Yes; except there will be one sociologist who does sort of try and bail them out in Berkeley. I can’t think of it—an African American; I’ll think of it. He was the one who sort of led the black protest at the Olympics at ‘68. I can’t think of his name.

MLJ: Harry Edwards?

Rubens: Harry Edwards, yes; he’ll be the one—

Jensen: I don’t think he ever came out in favor of the SLA.

Rubens: No; but I think he drove Patty Hearst across country.

Jensen: Oh no; I don’t think so.

Rubens: He drove somebody across country.
MLJ: You’re thinking of Jack somebody or other.

Jensen: There was another guy who was involved in athletics.

Rubens: You are right; you’re right, who was a commissioner and—oh. That’s not Harry Edwards.

Jensen: No; that’s not Harry Edwards.

Rubens: By the way, speaking of a different political climate, one of the big issues in the Newton trial had to do with his prior arrests, whether he had a felony and—

Jensen: Yes.

Rubens: —and there had been a plea of guilty to the felony.

Jensen: Correct.

Rubens: So in ‘71 that felony is removed from his record, and there’s some statement about it’s a different climate. There is some Judge who—I know I’m not saying this exactly correctly, but—

Jensen: I don’t remember what that was, but the idea would be—the possession of the gun would be illegal because he had the prior felony conviction. See, because if Newton had a gun, it would be a felony.

MLJ: Was that an issue with the evidence at trial?

Jensen: No; it wasn’t an issue at the trial. But Newton did have a conviction before, for an assault when he was a young—

Rubens: So it’s not an issue of whether it’s a felony or not. It’s just whether the conviction will show up on the record?

Jensen: I think that’s it.
Rubens: I know that what Garry says is that we tried to have it expunged and it couldn’t be. In a more quiescent political period in ‘71, it was taken from his record.

MLJ: There were no social protests or anyone opposing the Remiro/Little Trial?

Jensen: There were really no social protests. But I think that the way in which people came into the Courtroom—this is one of the first times we ever had the metal detectors, and the pat-down searches. You couldn’t even come and watch the trial without having that done. And there was some litigation about whether that was proper or not.

MLJ: Didn’t Barbara go and watch the trial under an assumed name at some point?

Jensen: I don’t think she went under an assumed name. She came up and watched the trial a couple times.

Rubens: Did you live up there for a while?

Jensen: I lived up there during the week. What we did was, we actually got a house—we rented a house out by Sacramento State, and I would stay there at night and come into Court. Me, and Don Jones, who was the Investigator; the two of us were out there and then the rest of the people who worked on the case stayed at a motel in town, but that’s where we stayed.

But the other thing that happened up there that developed afterwards—we didn’t know it at the time—but the other people in the Symbionese Liberation Army were there. They came to Sacramento, and they were there while the trial was going on and that’s where they did the bank robbery, when Myrna Opsahl was killed. Relatively recently, they all pled guilty to that. The Harrisses, and Patty Hearst, and the other people who were involved—the remnants of the SLA after they had the big shootout in LA where a number of them had been killed—that group was up in Sacramento, and they did that bank robbery during the trial.

Rubens: During the trial?

Jensen: Yes; we didn’t have any idea that it was connected; nobody knew that it was connected to the trial.
MLJ: Because Patty Hearst didn’t go into the bank?

Rubens: What was their thinking though?

Jensen: To get some money—they needed some money.

Rubens: It’s not “We’re going to show you we’re still alive and well?”

Jensen: No; they were making money. The purpose was to get some money.

Nobody knew they were there. They were hiding out; because at that point Patty Hearst was with them, and she was a fugitive. So everybody is looking for Patty Hearst and for the Harrises.

MLJ: Had they done the San Francisco bank robbery already?

Jensen: Yes; that was long before. That was within a couple of months of the kidnap itself.

Rubens: Right; that’s her demonstration of her conversion.

Jensen: Yes, right; that was in ‘74.

Rubens: So this is all really inter-connected though?

Jensen: Right.

Rubens: The bank robbery occurs during the trial?

Jensen: Yes.

Rubens: You must be hitting your head, sort of—?

Jensen: Well, it was—it didn’t turn up until after Patty Hearst got arrested, and then she told the whole story about what had happened while they were up there.
MLJ: You mentioned briefly that you had dealings with the FBI during the course of the SLA investigation?

Jensen: Well, what happened is that after the murder of Foster—that’s a local crime, okay? And the FBI is not involved in that. When Patty Hearst gets kidnapped; it becomes a Federal crime. The FBI can go looking for kidnappers since there’s a presumption that you go across State lines and that sort of thing, so they can get involved. They had just barely gotten involved when she turns up in the robbery of a bank as Tanya—this is right afterwards. They’re involved in that because that’s a Federal crime, so they are now involved heavily into the whole business of the SLA and the kidnap of Patty Hearst.

But we had all the evidence, see? We had all the stuff, and they wanted all that, so we worked out a deal where we would let them copy it and they could take it and do that, but they had to provide us a copy, too—they had to provide us with a 35-millimeter slide of every piece of paper. So that was very helpful in the trial, because this is in the old days when you didn’t have the ability to show much in terms of graphics, but we had a picture of every piece of paper because we had negotiated that with the FBI.

MLJ: So you cleverly used the resources of the Federal Government to get your visual aids?

Jensen: We did indeed; there is no question. We did, and it was very helpful. They got what they wanted and we got what we wanted.

Rubens: Sure, yes.

Jensen: But we sent one of the things back right away back in terms of evidence from the—I think it was from the house, but it tied back to Patty Hearst. They did some fingerprints for us in their laboratories, but at that time they used the process where they used something called Ninhydrin, and it made the papers all purple, so when you sent an exhibit back, they ruined it. They may have found the fingerprint—but we wanted the exhibit also; we wanted the piece of paper. So we took them all back and took them up to the California AG, who could process them with gas kinds of techniques. They could do the fingerprints without creating any problem, so all the fingerprints were done, basically, by the California people.

MLJ: Aside from your successful negotiation, how was the cooperation between the Feds and the locals?
Jensen: The cooperation was fine; although they always wanted to make sure that if they really had something good, that it looked like—they wanted to be the ones who made the ultimate capture; they didn’t want it to be done by local police. Ultimately, they did, because they’re the ones who made the arrest.

MLJ: Was that a process of negotiation, because locals knew where they were, or was that actually a result of the Federal investigation?

Jensen: No; it was a Federal investigation because they were looking for her as a bank robber. They’re doing the investigation, and they have their own authority and their own jurisdiction, so they would sort of keep it close to their own vests in terms of what was going on, to make sure that they made the arrests. And they did.

Begin Audio file 10

Rubens: The Remiro/Little jury was out for 11 days?

Jensen: Yes; so I’m up tending the garden in the house we rented, because you have to be there.

Rubens: Because it would take an hour and a half, two hours to drive up from—?

Jensen: Yes; I could get there in 20 minutes from where we were. But not from Alameda County, so we were up there. What I had done during the trial, I would go up there on Monday morning and then come back on Thursday night, because we didn’t have trial on Fridays. So I would come back into the Office on Friday and do whatever I needed to do there, and then I would do a four-day week in Sacramento. But then when the jury went out you can’t move, so we were out for 11 days.

There’s a very interesting story that I’ve got to tell you about the jury, and it gets into an area of troublesome law, as far as I’m concerned. The jury goes out and they get various instructions along the way, and at one point the Judge gives them an instruction that is supposed to be for so-called deadlocked juries, and it’s an instruction called the Allen Instruction, which is a label that is given—

Rubens: Spell that.
Jensen: A-l-l-e-n, and it comes out of a case by that name. It’s when a Judge tells the jury that it is important that you reach a verdict, and I want you to go back and deliberate some more. And in some iterations it says words to the effect that “you’re as good as any other jury who is ever going to get this case,” and in effect, it is supposed to stimulate the jury to do something. That’s one of the complaints, that it provokes deliberation, and puts pressure on people to deliver.

Rubens: Had the jury come back to the Judge and said “We’re deadlocked,” prior to the instruction?

Jensen: They had come back with some things that indicated that they were basically deadlocked, or it was suggested that they were, so he decided to give this instruction to them. Well he did that on, I think, the tenth day or something like that, and then they went out again. The next day they come back and they want an instruction on the definition of reasonable doubt. So they go out, and everybody is like, “What is that?!” So, as an optimist, I said that’s because somebody just needed to hear that; and that was true—because a couple hours later they come back with verdicts. And so the case is over; it goes up on appeal and—

MLJ: What were the bases for the appeal?

Jensen: The appeal was—you didn’t have enough evidence; instructional errors; and there were errors in the admission of evidence.

Rubens: Did you expect this?

Jensen: Oh yes; that’s routine, but—

MLJ: Was there any controversy over the instructions for the conspiracy charge?

Jensen: No, no; they were pretty standard. They were very standard. The problem there was whether the evidence was sufficient to sustain that, or to let it go to the jury? And I don’t think there was any question about that. The Trial Judge didn’t, and neither did the Appellate Court.

But what happened is two years after the case was finished, after the jury had come back and convicted them, the California Supreme Court in another case called Gainer—in that case they looked at the Allen instruction. Up until then there had been no decision by the California Supreme Court on Allen
instructions, but there had been decisions by the Courts of Appeal which said they’re okay. And there’s nothing that says they’re unconstitutional, and they’re actually used in a lot of States; and they’re still used in the Federal Court now. But the California Supreme Court said, “We don’t want to use these instructions anymore.” And as a function of their administrative responsibilities, and their inherent power to craft the rules for the Trial Courts, they adopted a rule that said we’re not going to give *Allen* instructions anymore, so they forbade any California case from using the *Allen* instruction.

**Rubens:** That’s the *Gainer* case?

**Jensen:** The *Gainer* case. And then they said, “*This case is retroactive to all the cases that haven’t been decided on appeal.*” So that made it retroactive to our case, to Remiro and Little, because the case is only two years into the process now. Since it’s a big case, it’s still on appeal, and so the *Gainer* case then applied to Remiro and Little. And basically that case said that since the Judge had given an *Allen* instruction, you have to reverse it because that’s error, because the Supreme Court of California has said it’s error, and it made it retroactive to everybody. So it was retroactive to our trial. But the interesting thing was when you went back and you looked at the trial, and you looked at the verdicts, the verdicts against Remiro had been signed off the day before the *Allen* instruction was given. The Foreman had actually signed the verdict of guilt on the day that they came back with the request for the reasonable doubt instruction; but the jury was still deliberating on Little, the other guy. So Remiro’s case had been decided, and then the Judge gave the *Allen* instruction. So the Appellate Court said Remiro is okay; they affirmed that conviction, but reversed Little on the basis of the retroactive application of *Gainer*.

**Rubens:** So what happened?

**Jensen:** Well, then he came back; Remiro is still in custody, but Little came back and was retried down in Monterey, and acquitted.

**Rubens:** Did you retry him?

**Jensen:** I didn’t retry him.

**Rubens:** Who retried him?

**Jensen:** The guy who had been with me in Sacramento.
MLJ: Alex Selvin?

Jensen: No; Buzz DaVega.

MLJ: So there was a second change of venue, because he was tried in Monterey?

Jensen: Well no, it was still the original change of venue order. We just changed it from Sacramento after we had tried it there once.

MLJ: Why Monterey?

Jensen: The Court decided—I don’t know why.

Rubens: Why not in Sacramento?

Jensen: Because we had already tried it and the theory was that now Sacramento had been permeated with the case. So we take it someplace else.

MLJ: You’d have no reason to look at this, but wasn’t the formal verdict for Remiro, with the date on it, part of the record on appeal?

Jensen: Yes.

MLJ: But the only way you figured out this was a problem was by looking at the Appellate Record?

Jensen: Yes.

MLJ: Often times now lawyers will go back and talk to jurors.

Jensen: Yes; we didn’t do that. I didn’t like that myself, personally.

Rubens: Why?

Jensen: I just didn’t like it. I think it was intrusive. And I just didn’t want to do it. I didn’t want to go back and talk to them.
Rubens: Or assign someone to do it; was it—?

Jensen: Well, I guess I could—maybe some other time. But I just didn’t want to do it.

MLJ: Now some lawyers will conduct post-verdict interviews with jurors, often to see if they can find some error that occurred in the jury room. That wasn’t going on at that point?

Jensen: I think maybe they did that. I think the defense did.

Rubens: Would that then be the basis for filing an appeal or asking for a retrial?

Jensen: On the theory that something had happened in the trial, yes. But the only thing that can really happen to overturn a jury verdict is if you can actually show that they reached it by chance. If it’s just that they shouldn’t have deliberated that way—it’s their deliberation and you shouldn’t be overturning it—the rules basically are, you can’t overturn jury verdicts easily, but people go back and look and see what they can get from them. And I think that the defense did talk to jurors in this case.

Rubens: What did a trial like that cost; do you have just a rough estimate?

Jensen: Four hundred, three hundred, two hundred thousand; I think we did figure it out, because we had to debate with Sacramento about who paid for what. I think it cost a couple—maybe a quarter of a million dollars—and that was a long time ago.

When you figure we had to move everything up there—and we had 90 witnesses, I think, something like that, at the trial; and hundreds and hundreds of exhibits. That was a lot of money that would not have otherwise been paid if it had been in Alameda County.

Rubens: Right; you’re saying on top of—?

Jensen: On top of what it would have been.

Rubens: It was $250,000 on top of what would it have cost here in Alameda?
Jensen: We wouldn’t have paid that, because that’s what we had to pay to Sacramento.

Rubens: Got it, whether it was renting, or all the other kinds of things.

Jensen: Yes.

Rubens: What did you save by the luck that the instruction came after the verdict on Remiro?

Jensen: We saved another trial of him. We had to retry the other guy, but Remiro’s conviction was affirmed. But Little was retried, and it had most of the evidence that had been used during the first case.

Rubens: How long a trial was that?

Jensen: That was about a month-long trial. You have to do it, and I don’t know; the case wasn’t as good against Little as it was against Remiro, because Remiro was caught with a gun in his physical possession. We could tie the gun to him in the house, in terms of some shells that were there, and we could tie it to him because he’d been shooting it at a target range; and he had it in his possession, basically, where he lived; and there were specific plans with reference to this killing. But there wasn’t as much with Little; he got tied to the other gun, but to do that you had to tie him through other witnesses, and the witnesses were not that good.

Rubens: Did it change dramatically then—the presentation?

Jensen: Well, it changed it in that it didn’t have the solidity of the Remiro evidence. But that was always the case against Little, anyway.

Rubens: You still had the conspiracy case?

Jensen: Same case, sure; yes.

Rubens: Did you have to monitor that very much?

Jensen: I didn’t go down there.
Rubens: You had faith this was going to—?

Jensen: Oh sure, they knew what they were doing.

Rubens: How long was the jury out on that one, do you know?

Jensen: I don’t remember.

Rubens: But he was convicted without—?

Jensen: No; he was acquitted. Little was acquitted.

Rubens: He was acquitted? How? He spent two years in jail and then is acquitted?

Jensen: Yes.

Rubens: Wow; what ever happened to him?

Jensen: I have no idea; he came from Florida, I think, and went back there.

MLJ: You mentioned, just on trial technique briefly, that you didn’t talk to jurors. Lots of times trial lawyers will talk to jurors to figure out how they did, or what the jury thought was important, or what you did wrong or what you did right. But you never talked to jurors in your career as a trial lawyer?

Jensen: No; I never did that.

MLJ: Had you been encouraged to?

Jensen: The rules in the Office were you could talk if you want; but the rules were, be extremely professional. I actually had to discipline one of our attorneys and suspend him from practice, because he chewed out the Foreman of a jury that had just acquitted. He talked to him, and our Deputy gets a hold of him and calls him all kinds of things, so I had to suspend him.

So that—see, I didn’t like the whole business.
Rubens: But that was a little excessive.

Jensen: Yes; it was excessive. But I just didn’t like it. People did it in the Office though; they did it frequently, and I can see that you could do it and it might be of some value, but I didn’t do it.

MLJ: Did you ever talk to Judges about your trial presentations?

Jensen: Yes, sure. I talked to Judges—early on mostly. They were trying to figure out what you were doing.

MLJ: Just trying to determine if there was any mentoring or education that took place from Judges.

Jensen: I really didn’t have any Judge mentor.

MLJ: To finish this off, you said that later you would send young Deputy District Attorneys to Stanley Golde’s Courtroom to learn how to behave.

Jensen: To watch how a Court should be run.

MLJ: Did you tell him that they were going to come down? Or did you just want them to see how he conducted himself?

Jensen: Well, that happens all the time; there are always spectators out there who watch things, but I told the Deputies to go watch Stanley because he’s a very good Trial Judge; and the way he made the Prosecutor do things—the way he wanted the Prosecutors to do it, was a good learning experience on how you behave in the Courtroom. Because Judges will have different kinds of things, idiosyncratic behaviors, like “You must understand when you’re doing this that you can’t go up and tell the witness unless you get permission from me.” You have little things that Judges do, and the trial lawyers should know that: they should know how you mark exhibits; how you put them in evidence, and how you handle all these things; how you react when the Judge rules, and how you handle yourself, because a good trial lawyer has to be in a situation where the Judge rules and you say to yourself, “That is really stupid,” but you don’t do anything by way of body language, or anything else you say; you just go ahead with what you’re doing.
You just try to figure out “How am I going to get this done?” I think everybody has to do that. But, I think the Judges are great instructors as far as that’s concerned, but it wasn’t an academic kind of exercise.

MLJ: Had you been sent to any Judge to watch when you were a young trial lawyer?

Jensen: No. I don’t think there were any Judges in the Oakland Municipal Court that I would have sent people to either. [laughs]

Rubens: You said it was Coakley who you watched.

Jensen: Yes; I watched Coakley.

Rubens: He must have been incredibly energetic.

Jensen: He’s a tremendous man. He had a tremendous amount of energy.

Rubens: And he had a family, I think I read; his son became a Superior Court Judge in Mariposa?

Jensen: No; I don’t think so. His brother, Tom Coakley, was a Judge in, I think, Sonoma.

MLJ: Just to go back; what was the community reaction, or however you want to characterize it, to the first Remiro/Little conviction?

Jensen: Well, we were very happy.

MLJ: Did the SLA weigh in; were they still out there?

Jensen: They didn’t; whatever they did is unknown. But they were still there, and I haven’t seen them really talk about this. I haven’t seen anything said—Patty Hearst was with them and I don’t know what they did. She told the story afterwards about everything that had gone on.

But from the standpoint of the Office itself, there was a good deal of satisfaction. As you read the papers—we weren’t doing very well in the trial—the papers didn’t cover it well. It’s not an easy story to cover when you’re doing the specific relationships of 12 exhibits to 22 other exhibits, and trying to get the message across that “this establishes this fact,” that’s not a
particularly easy story to cover. So, they sort of covered the story, but not in any depth, and the sense was that it—the jury is out so long, and then they came back and asked for a reasonable doubt instruction, and the papers said “Geez, this isn’t going very well.” So it was a sense of relief and satisfaction that they convicted, because it was an important case and it would have been absolutely wrong if they had been acquitted.

Rubens: Yes; that’s what seems so strange about Little.

Jensen: Well, it happened because of the retrial.

Rubens: By the way—did that impact a lot of other cases you had, the *Gainer* decision?

Jensen: It did. There were some other cases, I think, that were reversed throughout the State. It did a lot. There were a lot of cases affected.

Rubens: Did that affect Panther cases in the rest of the nation or—?

Jensen: It couldn’t. This is strictly California. This is the California Supreme Court promulgating a rule.

My objection has always been is that it’s one thing to say a decision by a Court can be made retroactive on the Blackstonian theory that the law has always been that way, and now I’m simply declaring the law as it’s always been; but you can’t do that if you just make up a new rule. You’re acting like a legislature, so why can you make it retroactive? And Courts do that, and that’s what happened in this case.

MLJ: As a Federal Judge you still give *Allen* instructions, do you not?

Jensen: Yes, I do; but with the parties agreeing to it. I don’t give it in a criminal case unless the Defense says okay. And they generally do. But they’re given all the time.

Rubens: Patty Hearst still is not captured after the Sacramento bank robbery?

Jensen: No, no. She’s out. They captured her in San Francisco; they came back here for some reason. They got some tips, and found her in San Francisco. I forget exactly where.
MLJ: How many months had passed between the Remiro/Little conviction and when she was captured?

Jensen: A couple months—I think it was later in ’75.

MLJ: When she’s captured, are you put in a different position with the federal authorities because now you have to prosecute a kidnapping in Alameda County?

Jensen: Yes; she’s our victim, see? When she gets picked up—

MLJ: She’s a defendant and victim?

Jensen: She is arrested on the federal bank robbery warrant—and she’s kept in Federal custody, and she’s tried for the bank robbery. All that time, we’re waiting in Alameda County to get her to come to Alameda County to be a victim in a kidnapping. So we have to wait for them.

MLJ: Could you talk to her?

Jensen: I talked to her, yes. She was in San Diego in the Federal Detention Center down there and I went down and talked to her about the whole thing, and she was fine. She was an interesting person.

MLJ: Did you talk to her while her case was pending?

Jensen: Yes; but I didn’t talk to her about the case. I talked to her about being in the kidnapping. Then later on I talked to her and she told the story about what happened in the Sacramento robbery, because she was there in a car when the bank robbery took place and knew what had happened when they killed the woman in the bank. But see, that case was tried by the Federal people up there later on, and they tried it on the theory that a guy had gone into the bank, even when Patty Hearst had said he didn’t go in; and the witnesses who said they saw him in there turned out to be no good at all, so he was acquitted.

MLJ: Did you talk to her about her kidnap experience and transformation into Tanya?

Jensen: Not in a sociological sense, but a sort of “what really happened?” sense.
MLJ: Did she have anything interesting to say?

Jensen: She had lots of interesting things to say.

Rubens: That she was brainwashed? Did she tell you about being locked in the—?

Jensen: Yes; well basically we talked about what happened, I guess, but I don’t know that it was—

Rubens: Anything revealing? Or it was just a horrid case?

Jensen: Oh, it’s a terrible sort of thing, but then she also got into situations where—there was a point early on in the San Francisco bank robbery where there could have been a very good defense put on that she had been brainwashed, but later on there were lots of situations where she wasn’t brainwashed, and she was in the perfect position to take off and she didn’t do it. She stayed with them, so it changed over a period of time in terms of what happened with them.

MLJ: What year was it that you were talking to her?

Jensen: In ‘75, I guess.

MLJ: Did you prosecute the Hearst kidnapping personally as the DA?

Jensen: No, I put it into the Grand Jury. I presented the case to the Grand Jury and it indicted the Harrises, I did that personally. But then I wasn’t going to try the case.

MLJ: Why did you choose to present to the Grand Jury rather than do a preliminary hearing?

Jensen: Because it was the same case. It was the same case in the sense that a lot of it was follow-on, and I had done the presentation to the Grand Jury of the SLA case, so I decided I’d do that. But they pled guilty ultimately, so we didn’t have a trial.

MLJ: How did that come about?
Jensen: I think it was still the case that you could get—it wasn’t the death penalty, but it was something that changed the penalty [to increase it] if there had been harm to the victim. And the question was whether, in addition to being kidnapped and suffering all of that, she had been physically harmed. And there really wasn’t any physical harm that could be established, so the penalty for kidnapping was lower—and they pled to that.

Rubens: Why, before the plea, had you decided you wouldn’t prosecute it?

Jensen: I don’t know if I had or not. It wasn’t arranged that way, and I wasn’t handling the pre-trial of it.

Rubens: Did you pay pretty close attention to the trial in San Francisco?

Jensen: Oh yes, sure.

Rubens: Was Melvin Belli her attorney?

Jensen: No; F. Lee Bailey was her attorney, and I think most of the observations were that she would have been better off if she had the Public Defender.

Rubens: Yes; I think that was it. Did you have much conversation with—?

Jensen: Well, I talked with the US Attorney over there just in terms of arranging of how we were going to do this, in terms of making sure she’s available to us when they’re ready.

Rubens: Any conversation with Catherine Hearst or—?

Jensen: No; I think I only talked with her father along the way.

Rubens: By the way, I think the University then removed those information cards as a result of the kidnapping.

Jensen: They may have.

Rubens: Was there any discussion about security at the University?
Jensen: No that was their own issue, and I think it was a good idea that it be that way.

Rubens: Did you have an opinion of these people? What did you think that Remiro and Little were—?

Jensen: It was strange—very crazy, they’re crazy. They had really wild ideas, but lethal ideas. I mean, a lot of people get strange ideas.

Rubens: These are not intelligent, calculating—?

Jensen: But these are people who are willing to go all the way to kill someone, which is really remarkable. What kind of a thing moves you to do that, regardless of your political position? You may think that something should happen in the way the schools are being run, but to kill the Superintendent is just—it’s unthinkable.

MLJ: Did you think they were bright, or just misguided?

Jensen: They were bright; but I didn’t see them as high-powered, intelligent kinds of people. They were adequate in terms of their ability to think and reason and write, but they had this strange gap between the moral question, in terms of how you treat others, and then how you act.

Rubens: Well, they certainly didn’t have the organizational base and sophistication that the Panthers had.

Jensen: Well, they didn’t expand. I think there were 10 of them all told, and I never got the—

Rubens: Yes; a motley crew, there’s no question.

MLJ: But comparing and contrasting to the Panthers—

Jensen: The Panthers have more intelligent kinds of approaches to things.

Rubens: —and they had a community base.

Jensen: Yes; they did it much differently, and they had a much—.
MLJ: But Huey Newton ended up shooting someone.

Jensen: Well, Huey was probably the—he had less self-control and more of a brash kind of impulsive reaction to everything than some of the other people—Cleaver, or Hilliard, or others.

MLJ: So it wasn’t a philosophical or intellectual design that he ended up with a gun in his hand, but—?

Jensen: There’s a lot of personal failure as far as he’s concerned.

MLJ: Would you say he was brighter than the people in the SLA?

Jensen: He was bright;—no, I wouldn’t say that.

Rubens: What was the fallout from the SLA case? Did you maintain a good relationship with the FBI?

Jensen: Oh yes; we had a very good relationship. In fact, Charlie Bates was a good friend. He helped us in the Chowchilla case, and he did something he probably wasn’t supposed to there.

Rubens: I want to back up to a couple of other things. One—switching completely, I wanted to ask you about the shooting of James Rector in—

Jensen: In People’s Park?

Rubens: In People’s Park, yes. The answer is not clear in the literature to the question—how did the Alameda County Sheriff decide that the guns they used should be loaded with—?

Jensen: Shot.

Rubens: Shot, yes; but they had not used shot in crowd management before. Do you know how that came about?

Jensen: I don’t think that we were involved in that. That was a tactical decision by the Sheriff’s Office.
Rubens: Not something that you would have purview over?

Jensen: No.

Rubens: Would it be something that you would ask about though?

Jensen: No; we didn’t get involved in tactical kinds of issues. We’d be involved if there was any arrest situation.

Rubens: Were you concerned that they had escalated to that—?

Jensen: It was a terrible escalation, yes. It wasn’t that anybody shot them to kill; they didn’t set out to kill them. But they were thinking of crowd control.

Rubens: Right; but they had not used that kind of shot before and I’m wondering what made them feel so threatened, compared to what had gone on in downtown Oakland with the Draft.

Jensen: I didn’t see any real difference between the threat of violence from that demonstration and what they had seen here in Oakland.

MLJ: But Oakland would have been the Oakland Police Department, however.

Jensen: Yes; this was not the Oakland Police Department. This is the Sheriff’s Office. And they’re different; the tactical decisions are being made by different agency commands.

Rubens: But wouldn’t you then have some conversation with them where you’d say, “Hey, how come you went to this?”

Jensen: No.

Rubens: This is unnecessary, or—?

Jensen: Maybe thereafter, in terms of assessing it.

Rubens: Is it ultimately the Sheriff who makes that decision?
Jensen: Well, the Sheriff makes the decision in terms of the tactics. We made the decision in terms of whether there was any criminal conduct.

And I think we said “no,” and I think the Federal people did too, because the Federal people got involved in that. They indicted some people out of the demonstrations in People’s Park.

Rubens: Right; exactly. I think what the Left wanted was that the Sheriff be indicted for murder. [Here’s an article that says “Coalition of six bay area radical organizations confronted you [with] a list of demands including—to meet the need of the—.”]

MLJ: Would you have received the list of demands?

Jensen: Yes. [laughs] If somebody sent a demand—would we look at them? Yes; sure.

Rubens: Well, I don’t know—are they saying them, or are they actually handing them to you?

Jensen: I don’t know whether they—I don’t remember.

Rubens: Okay. So that one didn’t seem to have much fallout?

Jensen: Well, it sort of got into another area, because there was a mass arrest made there that the National Guard got involved in. They made an arrest of a couple hundred people and that turned out not to be a good idea, because they took them all out to Santa Rita, and one of the people they arrested was a Chronicle reporter, I think. He went in to see if he’d get arrested, and he was; then he wrote all these stories about mistreatment of people in Santa Rita. So the fallout was that the way it was handled was bad—badly done by the Sheriff.

There were a couple of people who were Deputy Sheriffs who used force on some of the people who had been arrested, and we charged them with a California crime of mistreating prisoners. The Federal people came in and charged them with a Federal crime, a Civil Rights Violation, and took them over to San Francisco to try them. They did try them, and they were acquitted. When that happens, we can’t try them because California law says that if you have been tried once, no matter whether it’s in State or Federal Court, when that’s completed, there’s a prohibition against a retrial.

MLJ: How did they end up going to Federal Court first?
Jensen: Because the Federal people took them.

MLJ: Wasn’t there any negotiation about that?

Jensen: They didn’t really want to negotiate that. This was a high-level thing they wanted to be involved in, so they charged them separately from us and then took them over there.

Rubens: But what is it about it that makes them want to do that?

Jensen: Because it’s a big, high-profile case, and they took them and then—I don’t know – frankly, I think that if we had tried them, they would have been convicted.

Rubens: That they would have been convicted?

Jensen: Yes; but the Federal people tried them, and they lost it.

But then it’s over. If it goes the other way – see, it’s an interesting legal kind of notion—the Federal Government and the State Government are separate sovereigns for purposes of the criminal law, and the Constitution does not forbid a sequential trial from either one of these sovereigns; so if, say Rodney King is tried by the State, and then he’s tried in the Federal Court, it’s okay. But you can’t go the other way, because there’s a California Statute that forbids it. It’s not in the Constitution, but there’s a statute that forbids you from doing that. So, by them taking the case and trying it and losing it, they took away our prosecution also.

Rubens: Did conditions improve at Santa Rita?

Jensen: Over time, yes. They have a whole brand new facility out there now.

Rubens: Is that right?

One other thing I wanted to ask you—when you were talking about being up in your Sacramento digs, and gardening while you had 11 days to wait for the jury to come back—

Jensen: You’ve got to do something.
Rubens: Yes; I learned that you like to garden in your own home.

Jensen: Yes; that’s right.

Rubens: There’s this lovely piece [in *The Tribune*] on your wife. Do you remember this?

Jensen: That’s election time. I think these are pieces that are coming out when I became the DA.

Rubens: Yes, exactly; a couple of things that were brought up here—it said that only four times in the 15 years since you had been with the DA’s Office, Barbara had watched you try a case. It says “...his green-eyed wife slipped into the Courtroom to watch the action. ‘When I do go,’ she explained during an interview, ‘I like for it to be completely anonymous; I just sneak in quietly and sit in the back like any other spectator.’”

Jensen: I see her there.

Rubens: Would it be a surprise to you, or would she let you know?

Jensen: I would generally know if she was going to come in, yes.

Rubens: Would you ask her sometimes—say “This is a good day if you want to come?”

Jensen: Yes; she always knew what was going on. We always talked about it, so she knew what was happening. If it was of interest, then we would talk about whether it’s a good idea for her to come or not, but she could come down any time she wanted. She did come up to Sacramento, for example.

Rubens: A couple other things—she says “we love to entertain.” She talked about you working in your garden, and occasionally going to the golf links, but then she says “Lowell loves to eat.” And I was thinking about the pie this morning. She goes on to say “and he especially enjoys having small dinner parties with 10 to 12 guests,” and how she’s worked out a system for doing that. So this is in ‘69; I mean, one shouldn’t have these kinds of oral histories to be too intrusive into your personal life, but did you feel you had to entertain, or was this purely—?
Jensen: No; this was just personal entertaining. This was not political entertaining. We weren’t inviting people over because of their political significance. We invited people who were friends.

Rubens: At some point, are you celebrating the conviction of Little and Remiro?

Jensen: After we were through, we had a party up in Sacramento when the jury came back. We had a tradition in the Office, which was that when you first start in the Office, and start trying misdemeanor cases; then the rule is that the first one you win, the first jury trial you win, you throw a party.

MLJ: For everybody in the Office?

Jensen: Everybody in the Office.

Rubens: Was this a Coakley tradition?

Jensen: I don’t think it was.

MLJ: Where did it come from?

Jensen: It came—maybe there was something from Coakley, but I think we sort of institutionalized it. It’s interesting because it puts pressure on the person to win a case, because everybody is paying attention to see when the party is going to be held.

MLJ: And the party has gotten to be so big and elaborate that you had to wait for your colleagues to win so that you could put it on.

Jensen: Yes; so you could do it with joint endeavors.

MLJ: Then you also had to do a first-win felony party?

Jensen: Yes; when you came to the Courthouse—you had to do one when you first started trying cases, and then when you first started trying felonies, you had to do that.
MLJ: The parties weren’t just for colleagues in the District Attorney’s Office; there were Judges—?

Jensen: Yes; big parties—had to be.

Rubens: Where would these be held?

Jensen: In the DA’s Office, in the library.

Rubens: There was room?

Jensen: We had a big library, and we had them up there. It worked out okay.

MLJ: But you didn’t have a party when you won cases. I don’t recall you ever having parties when you won cases.

Jensen: No; we had a party after the SLA, because I had been gone, and I came back for that.

MLJ: Wasn’t there a party or gathering after the FSM trial that involved costumes?

Jensen: I don’t know. There wasn’t one in the Office.

Rubens: During this whole span of time—from when you enter the DA’s Office, and then especially during the ‘60s and ‘70s, did you ever develop a taste for crime novels or crime movies?

Jensen: Oh I read crime novels, yes; but I don’t think it was anything significant, other than if there were good movies to go to, we’d go.

Rubens: Not that you learned anything about evidence or—?

Jensen: No; I didn’t see it as—it wasn’t something that I was going to write a piece on.

Rubens: Well yes; but I loved watching *Perry Mason*. I just thought he was—
Jensen: Well, we do that in the trials. You say “This is not a *Perry Mason* trial;” you have to tell the juries, “You know, this isn’t going to be a deal where somebody is going to get up and say I did it.”

Rubens: Yes, I see. Let’s talk just for a little bit about where we’re going to go. The Chowchilla case is next, do you think, because we’re up to ’75 and ’76? By the way, I’d love to just get a comment, if you have one, on Mayor Reading.

Jensen: John Reading?

Rubens: Yes; because in ’77 it’s going to be Wilson Riles, so I never asked you about either Reading or Lionel Wilson. There’s some transformation taking place in Oakland, even though it’s kind of a quiet period, without politically-charged issues or social-upheaval.

Jensen: I don’t think I have a comment, no.

Rubens: So, Chowchilla is ’76, and is there any other major case that we want to pay attention to before you go to the Justice Department?

Jensen: I really can’t think of any. We did have various cases where there were Police shootings.

Rubens: I wanted to ask you something about prostitution, because I think the first news article I ever wrote was on the—what do they call it, the meat market? On MacArthur Boulevard?

Jensen: The only thing I remember is that we did have a lot of prostitution coming out of MacArthur Boulevard. I do remember, I think it was when Joe Freitas was elected DA in San Francisco. He’s a good guy, but he had not been in criminal cases before, and he gave one of these speeches that picked up on “We’re going to now focus on violent crime, and not on victimless crime,” and that sort of thing. And he did wind up making it a focus and said “We’re not going to really be looking at prostitution because that’s basically a victimless crime”—something like that. And so the news people came over to MacArthur and got a woman who was [laughs] “plying her trade” on MacArthur, and said “Did you hear what the DA said in San Francisco?” She said “Yeah,” and they asked “What are you going to do?” She said “Go to San Francisco.”
Rubens: Right, right. [laughs]

Jensen: The San Francisco people got all over poor Joe Freitas.

Rubens: Now Joe Freitas lost the Dan White case, right?

Jensen: He was the DA then, but he didn’t try it.

MLJ: I thought you were going to say that prostitution—it’s interesting because it’s characterized as victimless crime—you could certainly say that. But if you were to talk to the homeowners on MacArthur Boulevard, they will not say it’s a victimless crime.

Jensen: They don’t see it that way.

MLJ: There were apparently lots of complaints about trash, and condoms, and everything else that was going on in their neighborhoods connected with prostitution, that they weren’t happy with.

Rubens: My father was always interested in law, forensics, and polemics, and I used to read *Perry Mason*.

Jensen: Oh, did you?

Rubens: No; I’m quoting you. *Emphasis Added*

Jensen: Okay—

Rubens: I don’t think we had that in the record before and...there’s something here about the Zebra—why are you mentioned in something about the Zebra case? “Lowell Jensen and various East Bay Police Investigators contacted San Francisco today about the link between”—some other cases—

Jensen: I don’t know why; that’s all San Francisco.

Rubens: This guy has still not been found, right?
Jensen: Who?

Rubens: The Zebra?

Jensen: No; I don’t think so.

Rubens: Okay; well thank you.
Rubens: At an event for Friends of The Bancroft, at U.C., I met Marie Collins Bertillion, who told me she had been hired in your office in 1959. I had also found in my research a news clipping that pictured 5 women-

Jensen: Yes; who were in the DA’s Office.

Rubens: And she was one of them. She said she had the choice of going to Civil but she didn’t; she stayed.

Jensen: Yes; she was Criminal. She’s something; she’s really something. She’s great. She’s a good trial lawyer.

MLJ: She became a Judge, right?

Jensen: Municipal Court and then Superior Court in Alameda. She stayed on for years and she did one case for me. We had a big case where there was a train wreck between an Amtrak train and a bus, or a big semi-trailer truck—[Audio Stops]—one of the things we did was had trials that were to be examples; and we agreed that Marie Collins would try them all, so she tried about 20 cases of the many more that were there and fixed all of the damages, and decided other issues. She did great.

Rubens: So it might be interesting to interview her. But she hasn’t answered my phone calls.

Jensen: Yes; she’d be interesting. She’s into everything.

Rubens: But she was one of five women? There weren’t many women.

Jensen: No; she was one of the first women to go on the bench after Cecil Mosbacher. Cecil Mosbacher had been, I think, the first woman appointed to Superior Court. She worked for Warren. And then I think there had been another woman on the Alameda County Court, but Marie was one of the early ones. She was appointed by Reagan.
Rubens: Yes; she was. We didn’t talk very long, but she said that she had taken
Meese’s position and I said, “Well, what do you mean?”

Jensen: Maybe in terms of the Grand Jury, she might have done that.

Rubens: Yes; that’s what she said. What does that mean?

Jensen: That means that we have a Grand Jury, and in those days the Grand Jury
would do both Civil and Criminal things. For the whole year they would be
doing examinations of the civil functions of the County, and then from time to
time we’d have Criminal cases. One lawyer was assigned to the Grand Jury,
both to keep it going all the time, and also to schedule Criminal cases. Meese
had done that, and then she did that.

Rubens: I see. That’s what she meant. I didn’t understand. Last time we finished with
the Patty Hearst case, and I have to just tell you that I saw the American
Experience, which was a pretty good PBS set of documentaries about
American life, and they have one on the Patty Hearst case. And I have to say it
was very shocking to me because it’s Russell Little who’s narrating the whole
thing.

Jensen: Oh he is?

Rubens: They never mention any of the trials. They don’t mention the trials.

Jensen: Did they mention who he is?

Rubens: Well, not really.

Jensen: They didn’t say?

Rubens: Not really.

Jensen: That’s interesting.

Rubens: I’ve realized that Evelle Younger is a big player in this, so you must have
known him.
Jensen: Oh yes; I knew him. I forget when he became Attorney General. I guess I knew him first as the DA.

Rubens: He’s first the DA of LA.

Jensen: I think he succeeded Joe Busch as DA. I met him in the California DA’s Association and then he became the Attorney General.

Rubens: He seems to have a pretty heavy hand in this.

Jensen: He must have been Attorney General right around the time of People’s Park, I guess.

Rubens: Yes; and he seems to have a pretty big hand in the LA case. Just to revisit the escalation of the use of force to subdue the uprisings at People’s Park, I had asked you at the very end whether you knew anything about the decision to use buckshot because that seemed to be new in terms of the skirmishes here in Berkeley; but then that shootout with the SLA in Los Angeles. The house—most of the film was really focusing on when this house is surrounded in LA.

They had to have known Patty Hearst wasn’t in that house. I’m sure they wouldn’t have done that if Patty Hearst was in the house. I cannot believe—

Jensen: Could be, yes. But I really don’t know. I never really got that straight. As I recall, I think you’re probably right; it’s as if they had specific knowledge about who was there. I think they were tracking DeFreeze.

Rubens: Well, they wiped it out.

Jensen: Oh, I know.

Rubens: They got most of them.

Jensen: Yes, all the people who were there; and that did not include Patty Hearst, obviously.

Rubens: Yes; Patty Hearst and the Harrises had just conducted a robbery of a store—the Mel’s Sporting Goods store. So they were on the lam and holed up
somewhere else, but it was an amazing use of gunpowder. There were all sorts of questions and—Charlie Bates—I hadn’t seen him....

Jensen: He was there, yes.

MLJ: There was no consultation between LA and Alameda County when the SLA ended up down there?

Jensen: No, no; this is purely a police action. The only thing that was going on then is I don’t think they had any—I don’t know what the Police investigation was—I mean, that’s what they were doing. They were supposed to be trying to find—they had warrants, I think, Federal warrants for the robbery—and then they had warrants for the kidnapping, but then they were going—I guess—

Rubens: They already had all your meticulous documentation, and then, or course—

Jensen: Yes; they had that.

Rubens: And of course, we mentioned last week that it’s out of that shootout that they find the second gun.

Jensen: Out of the shootout in LA; that’s right.

Rubens: Yes; but I was pretty shocked at the end of the conversation last week that they didn’t convict Little. You must have been pretty disappointed, too. That was probably the reason you didn’t try it yourself, the second trial?

Jensen: By then I was just getting started, yes. It was a while.

Rubens: All right; well what I thought we should just move to the next big case, which is the Chowchilla kidnapping, and then I’d like to go back and pick up some of the electoral issues just very briefly; the ‘73 Mayor—mayoral campaign when Reading does come in and Bobby Seale runs, and then ‘77 when Lionel Wilson comes in, and then your campaigns. Then you also mentioned the Victim Witness—the DALITE and the Uniform Crime Charging Standards.

So, Chowchilla. What an ugly——

Jensen: Yes; absolutely.
Rubens: —horrible, stupid, too.

Jensen: Yes. In a real sense it was just incredible that people would think that something like this could be done, or that they would decide to do it in any event.

Rubens: So, how do you get involved?

Jensen: We get involved when—it turns out that one of the Lieutenants, I think, in the Sheriff’s Office and his wife are coming home from someplace they had been to dinner. They lived out in the Livermore area and they had gone out, and alongside the street they see walking—this group of one older man and these kids; and they stop to see what’s going on and they find out they had just dug themselves out of this buried bus. So now the whole thing comes immediately out. We have this incredible story about how these kids had been in a bus in Chowchilla, in a school bus, and they had been stopped, kidnapped, put in vans and driven down to Alameda County and this bus—this old bus—had been buried in this area where they put sand and gravel; this bus had been buried there, and they forced them all down into the bus. They had some water and some food down there, and they found out who they had—they took names and things like that of these kids; and then—

Rubens: It was about 14 hours, 15 hours?

Jensen: Well what was happening is they put them into the bus, and then they put a big steel plate over it. There was an area that had been cut out of the top of the bus and they had some sort of system for air in there. They put a steel plate over it and then they put a big battery on it; and they buried it in sand. So it was all buried, and supposed to have air going in, and have some food and water in there; and then they were going to negotiate a ransom.

MLJ: Can you back up and describe who they are and—?

Jensen: Well, they are the children.

Rubens: This is July of 1976.

MLJ: The defendants are two people, correct?

Rubens: Three. There are three young men.
Rubens: Rick and Jim Schoenfeld, who were brothers; and a guy named Fred Woods.

Jensen: Yes; the Schoenfeld brothers, I think they lived in San Mateo or something, and Woods lived with his family in a sort of an accessory house, something of that nature, in Woodside. So these were kids with a lot of money and all kinds of time, and they came up with this plot to do this.

Rubens: Fred Woods’ father owned the rock quarry where the bus was—

Jensen: Right. So he was familiar with it.

MLJ: Why Chowchilla?

Jensen: I have no idea; that never really came out. They just figured they’d go to someplace or some school in the middle of the Valley somewhere, and I don’t know why—they just went there. I think they scoped things out.

Rubens: I think the kids were living up there; is that possible? I actually didn’t think of why Chowchilla; I think the kids were living up there—those three kids.

Jensen: Oh, no. I don’t think so. I think they went down there, and before they did it, they knew the route of the bus and they did some sort of surveillance to figure out—.

Rubens: The bus had already made three stops; and this was 4:15.

Jensen: Yes; with the kids.

Rubens: They let off some kids, and then suddenly it happens?

Jensen: Yes; but they had known what they were going to do. They were going to stop this bus, and they had the vans all ready and they drove them back to the place where they had the buried bus and put them in there. And by the time they got out; they had been in there for several hours—12, 14?

Rubens: Do you recall hearing about the disappearance of the bus?

Jensen: No; I didn’t hear anything about the kidnap.
Rubens: Because the thing apparently that was so strange was that there was absolutely no evidence at the scene, I mean no blood, no—just the bus.

Jensen: They just jumped on the bus, and stopped it. They got on with guns and said “You do this,” and “You do this.”

Rubens: Right; so apparently these kids can’t even call in the next morning to demand the ransom—because all the parents are calling up all the time about what’s happening. Where are they? So they didn’t even get to make their plea.

Jensen: Well, whatever they did; whatever stalled them from doing this—it’s sort of up to them. Their theory was that they were going to get a giant ransom delivered to them.

Rubens: Yes; $20 million, I think.

Jensen: Yes; by some strange means—I forget—I think they were going to put it in an airplane or something like that.

MLJ: What was their education or background—besides owning the rock quarry—that allowed them to bury this bus and rig up an air system?

Jensen: Well, Woods—his father owned this place, so he was familiar with it, and with what was out there. I think they just did it on their own. They just did research and planning. Ultimately, it turned out, they had a couple of rented places beneath the Freeway that goes through San Jose and they used that as a planning area. They had everything stashed there; all the stuff they were using to get ready to do this. We found all the materials that they had that outlined what they were going to do. They also had a couple of vans there—all big, black, or something like that—that they had used to get the kids, which they were then going to use as part of getting the ransom.

Rubens: What is driving these kids to do this? I mean, they’re not broke, they have no real skills and ambition, but apparently two of them kind of more liked the idea of it than the reality, and one of them went ahead and really carried it out; and it was kind of half-baked.

Jensen: Well, they didn’t think it all the way through obviously. They thought—there was something that came out about the fact that maybe they had the
idea—“let’s make a movie of it,” or something like that, afterwards. It was some kind of a story—.

MLJ: Where were the older man and the kids that this off-duty Officer saw?

Jensen: They were walking along the street. They had gotten out of the bus; they spent hours digging their way out of the bus. They were moving the dirt, and finally getting this—this big piece of metal that had been put over the top—off; then they scrambled out of the bus and were just walking to get—to find out where they were—because they’re out in the middle of nowhere. They’re walking from this quarry area out to someplace where there are roads and things they can go to, because it’s sort of in the middle between Pleasanton and Livermore where this is all located. And this was some time ago and they were walking out towards sunlight, as they said, to see if they could just get somebody to talk to and to tell them they were safe, and what was going on.

MLJ: How many people were left back in the bus?

Jensen: Nobody.

Rubens: They all got out of the bus, and the bus driver took all of them and walked them along the road, and they were going to try to find help.

MLJ: How did the Investigators put together what had happened besides talking to them?

Jensen: They talked to them as soon as they find them—this is a pretty unusual scene with this one guy walking with about 20 kids in the middle of the night—so they tell them the story of the kidnapping and where they had been. So the investigators get from the witnesses themselves what had happened and we immediately knew that there had been this kidnapping in Chowchilla and that they had been taken and buried here. They knew that. Then they tell the story of how they got out of the bus, so immediately—

Rubens: Then they found out right away that the moving van that had been buried had been purchased in Fred’s name and that the quarry was owned by Fred’s parents so they—

Jensen: So it wasn’t hard to make a connection.
Rubens: So they found them pretty quickly?

Jensen: Days, I think. Then what happened—the interim actually had an interesting kind of part to it—is that as soon as we found out we had the bus driver and the children here, they have to get back to their homes back in Chowchilla, so they get back there—and the kidnap had taken place there. So in effect, you have legal jurisdiction in both Chowchilla and Alameda County. So what happened is Dick Haugner and I—Dick was the Chief Assistant—we flew down to Chowchilla the next day to make contact with their DA’s Office and their people down there, and we find that Chowchilla doesn’t have a DA because the DA who had been there had recently retired and they had not appointed a new DA. So here was this Office with nobody running it, so we basically said “Okay, we’ll put everything on.” So we sent people down and we did the Grand Jury in Chowchilla and had the three of them, the Schoenfelds and Woods, indicted in Chowchilla.

MLJ: What were they indicted for?

Jensen: They were indicted for the kidnapping; a kidnap with bodily harm, which carried with it a death penalty.

MLJ: When we were talking about the SLA, and the Harrises came in and pled guilty to the Patty Hearst kidnapping, there were penalty issues because you determined there wasn’t bodily harm with Patty Hearst?

Jensen: Right; the same thing in this case. What we did—ultimately they pled guilty to the kidnapping; they had nowhere to go on that. Then we had a Court trial on whether or not there was bodily harm.

MLJ: What was the theory for that?

Jensen: Well, that was the agreement. We agreed to have a Court trial on the issue of bodily harm and the trial court found bodily harm. It went up on appeal and the District Court reversed it.

MLJ: I was intending to ask what was the Prosecution’s theory on what the bodily harm to the children had been?

Jensen: Being buried, the psychic sort of harm. Ultimately, the thing that happened was that the appellate court said you had to have physical harm.
MLJ: But wasn’t that the problem with Patty Hearst? She had the psychological harm as well?

Jensen: It was somewhat of that; that’s right.

Rubens: Will the Court later on rule that psychic harm, from the beginning, is something that can be entertained?

Jensen: Well, in this case I don’t think they ever did come out and say that psychological harm would be sufficient for the harm as a predicate for a capital crime and kidnapping. But that’s what the intention was.

Rubens: Are you arguing that?

Jensen: I didn’t argue it; I think Dick Haugner did. He put it on and he argued. Then the Attorney General argued it on appeal.

Rubens: By the way, according to an article, “it’s not until August 4th in a small Courtroom in Chowchilla, Jim and Fred pleaded innocent to 40 felony charges. Rick had entered a similar plea, but after numerous and complicated legal maneuvers, the final Court appearance of the trio was anti-climatic.” That was in ‘77, so a year later.

Jensen: Well, see, they came back to Alameda County because we transferred the case from Chowchilla back to Alameda County for the trial. We did it there initially because all the witnesses and everybody else lived down there, so we wanted to put it on with the Grand Jury there, which is what we did. Then they made their first appearances in Chowchilla, and because we had concurrent jurisdiction in Alameda County, we brought it up here to try it. And part of it was the fact that the Chowchilla DA’s Office needed help.

Rubens: Right; so then when it begins then they plead guilty?

Jensen: Yes.

Rubens: To 27 counts of kidnapping for ransom without inflicting injury.

Jensen: Well, but see that was the issue—whether there was injury. Injury would move it up to a higher penalty, including possible death—I think it was death.
You couldn’t have a death penalty then because at the time it was illegal in California—but you could get life without parole; and in the Court trial, the Judge found there was harm, then the District Court—

MLJ: Who was the Judge during the Court trial?

Jensen: I don’t remember who it was.

Rubens: Again, according to the article, the Prosecution argued that injury had been inflicted—the Judge heard testimony from Ed, the children, various medical professionals, and then the Judge declared that his finding was “Beyond a reasonable doubt there was bodily harm. I made my finding based on the testimony of three of the children. I think they’re telling the truth; the kidnap itself was a violation of bodily security and this was an aggravated kidnapping.”

Jensen: And then the Court of Appeals said you’ve got to have some physical injury.

Rubens: Court of Appeals—okay.

MLJ: Are they still in jail?

Jensen: They’re still incarcerated.

Rubens: They were sentenced to life without the possibility of parole, which was changed in ‘81 to life with a possibility of parole.

Jensen: They are parolable, and they have been denied parole ever since.

MLJ: How often do they come up for parole?

Jensen: I don’t know; every one year or every two years.

MLJ: Wasn’t there a period where Dick Haugner was going up to Sacramento every year to appear at the parole hearings.

Jensen: That’s right.
Rubens: Really?

Jensen: Yes; when they would come up for parole then he would go up and testify about what had happened, describe what had gone on, and then oppose parole.

MLJ: Did he stop doing that at some point?

Jensen: Yes; I guess he left the DA’s Office. I think someone else is doing it now. I think they still do it. I think one of the Deputies in the Office goes to the parole hearings.

Rubens: A couple of other things quickly on the case. There was a Bay Area psychiatrist, Lenora Terr, who conducted in-depth interviews with almost all of the children, and kept doing it over the years, and these kids just suffered tremendously.

Jensen: Well, that’s right in terms of the follow-up. The idea that they didn’t suffer harm is just—it’s strange. They didn’t from a legal standpoint that is what the Court of Appeals said—“We’ve got to see a cut or we’ve got to have somebody with a broken arm.” If you had that—even if it hadn’t been trauma, which is in reality what these kids went through, you could have a legal harm that would be much less than what these kids went through.

Rubens: Yes; so there have been movies made about it, books written about it?

Jensen: Yes; well it’s just so incredibly strange.

Rubens: It brings me back to—I probably shouldn’t be taking your time on this; because it was circumstantial evidence, but Remiro—

Jensen: And Little, in terms of the identity?

Rubens: Yes.

Jensen: Now, see that wasn’t true here.

Rubens: It’s murder, I mean—
Jensen: I don’t know whether they could identify the kidnappers—I forget. But we had circumstantial evidence here, too.

Rubens: Yes; I think they had stockings over their heads and—

Jensen: Yes, but then there was a search at Fred Woods’ place, and—the strange story about that is we went over to the Judge in San Mateo County, and the Judge issued the search warrant, so it was all set to go. I think we were going to go that night. But somebody in their Clerk’s Office leaked it to the media, so the media rushes out to where the search is going to go on and they’re all there. And so now come the people to do the search and they’re saying what’s going to happen now, you know? What happens when you know there’s going to be a search? And it turns out when they get there they find all kinds of things that had relevance. They had records relating to the bus; they had records relating to their surveillance; we had records showing where they had prepared all this stuff, the vans and everything. It was all in Fred Woods’ room, because he had taken off. He was not there; he had gone to Canada and was gone. But all of the evidence was found there, then as I say, we found the place where they had prepared everything, plus the vans they had used in the kidnapping. The circumstances were overwhelming as to the identity of who did it, so it’s the same sort of thing. It wasn’t necessary to prove their identity by eyewitness testimony.

MLJ: How old were the defendants when this went on?

Jensen: In their 20s, I think.

MLJ: Were they going to school and living with parents?

Jensen: They were living—well the one was; Rich was living with his parents in the same area, but I don’t think Schoenfeld—

Rubens: One kid came back to his parents’ house; the two Schoenfelds—I think Schoenfeld and Woods go to Canada, and then one of the other Schoenfelds comes back to—

Jensen: One of the Schoenfelds surrendered to us.

Rubens: Yes; he went to his parents and finally they surrendered.
Jensen: No; his attorney called me up and said he wanted to surrender. His attorney was Ted Merrill, who had been the attorney for Remiro. So he brought the Schoenfeld kid into the Alameda County Courthouse and surrendered him to me. In the meantime, we had the media all over the Courthouse. We had to figure out a way to have them come in without the media knowing it, so we did.

MLJ: What did you do?

Jensen: I don’t know; we went through there with trucks and we took them down to the basement and brought them up through the basement, then up to the DA’s Office.

MLJ: Was Merrill a privately retained lawyer?

Jensen: Yes.

MLJ: So there was money somewhere. I’m just trying to determine—

Jensen: Oh yes; the parents put up money after the kids were picked up. I mean, they were willing to support them with money in terms of representation. But the parents hadn’t done anything—they didn’t know anything about it. Nobody knew about it but these kids.

Rubens: I’m trying to draw a connection, but there may not be one. One of the things that was shocking to me about the whole SLA event is that just recently, in 2003, four people who were involved in the Carmichael bank robbery surrendered—the Harrises and this woman, Soliah, who had been living 20 years as a good citizen and—

Jensen: Right; back in the Midwest.

Rubens: —in the Midwest somewhere and then another guy; I can’t think of his name, who joined the SLA after the shootout. They were all given eight year sentences.

Jensen: Well, they were prosecuted in Los Angeles for a bombing. In addition to what was going on in Carmichael, they had gone down to LA—
Rubens: Lots of bombings.

Jensen: But there had been a bombing down there of police cars.

Rubens: Apparently—yes, a lot of them.

Jensen: So they were prosecuted for that, and see, this was a group that was sort of a follow-on group to the SLA, but for the Harrises.

Rubens: It turned out that Emily Harris had pulled the trigger that killed the woman in Carmichael?

Jensen: Yes; in Carmichael.

Rubens: Her son is in the Courtroom when they’re convicted?

Jensen: That’s right.

Rubens: She is given only eight years; I just thought that was shocking.

Jensen: Well, this is a long time ago. These are the agreements that were worked out, the deal when they pled guilty; I guess they pled in Sacramento, and they pled in LA, too, I think. That’s how it was, and they wrapped it up because, as I said, there had already been a trial in the Federal Court for the Carmichael bank robbery where the guy had been acquitted, but that had been on the theory that he was the shooter, I think.

Emily Harris was the shooter. But see, they knew all this stuff, but they wouldn’t rely upon Patty Hearst; and the reason it all came back up is that everybody finally went to Patty Hearst and she told the story she had always told, which included Emily Harris being the one who killed the woman. So they finally said “we’ll come in and try Emily Harris;” “we’re going to have Patty Hearst as a witness;” and that’s really why they pled up in Sacramento—because Patty Hearst was ready to testify.

Rubens: I see.

MLJ: Now when you say they didn’t rely on Patty Hearst, who are you talking about?
Jensen: The people who put on the first case; it’s the US Attorney—

MLJ: The Sacramento prosecutors or the—?

Jensen: It was the US Attorney because of the bank robbery—and the Sacramento US Attorney tried it. They tried it by using eyewitness testimony but they didn’t use Patty Hearst, although they knew about her. I guess the thesis was that no one would believe Patty Hearst because of her history with the SLA, so they didn’t put her on.

MLJ: Had she been convicted of the bank robbery at that point?

Jensen: She had been convicted of the bank robbery.

MLJ: Was she in serving her sentence? What was her status at the time the trial was going on?

Jensen: Well, the original trial—I forget—you mean the one in Sacramento for the bank robbery?

MLJ: That’s what I mean, yes

Jensen: I forget the timing of that. I think it was after she had been picked up; because she was available as a witness, but she didn’t testify. She had been convicted by about then of the bank robbery. She was tried in San Francisco on the bank robbery.

Rubens: She was tried in San Francisco and goes—is sentenced to four or six years.

MLJ: So the prosecutors made the decision, or the FBI, or whoever was interviewing her, to discount her testimony or just not use it?

Jensen: Well, not to discount her, but the US Attorney decided not to use that testimony—to use the other witnesses they had instead. But then in 2003 when this all came up again, then they said “no, you’ve got to use Patty Hearst.” So her testimony would be the one that—
Rubens: What’s going on in your mind at this point in terms of sentencing practices? Would you have been in any position to advocate the death penalty?

Jensen: Well, we couldn’t.

Rubens: I know that, but in your own mind, did you think that the death penalty should be available, that it was a mistake that it had been—?

Jensen: I think the death penalty should be—I think I could understand that you could have a difference between a death penalty for people who had not committed a homicide and people who had; and that, ultimately, was what the Supreme Court said. But for a long time there, it was okay to have a capital prosecution even though no homicide had taken place. That was Chessman, and the kidnapping penalty in California. There had been this concept that if you had bodily harm that went along with the kidnapping, it could be subject you to the death penalty. So, no, I didn’t oppose death penalties—and I don’t—but I do in terms of how you define them. It’s certainly rational to me to have no death penalty when there’s no homicide, so that’s ultimately what happened, but that wasn’t the law back then.

Rubens: All right, and you’re not in a position to—?

Jensen: Well, we couldn’t do it at the time of the kidnapping; I don’t think that they had restored the death penalty.

Rubens: So you’re not in the position—as DA, you’re not going to be advocating publicly?

Jensen: But we’re trying—it was between life without parole and life with parole for the Chowchilla kidnapping, so we were advocating life without parole on the basis of the harm—and that’s what we discussed where the result in the trial court had been to conclude there was harm, but it was reversed on appeal, so they are serving terms of life with parole, all three of them.

MLJ: I think one of the things that Lisa is trying to get at is given your bully pulpit as the DA, would you ever be in a position to, or want to be in a position to be advocating the death penalty? Or a particular penalty? Or a particular sentencing practice?
Jensen: I would be in a position to advocate the death penalty, and I was part of the advocacy to get the death penalty restored in California. But that’s different than advocating in a particular case—you have to seek to have the death penalty for all these things; I mean, you can have the death penalty and have it narrow, or you can have it broad. I have never been in favor of a broad death penalty. But then I didn’t have to advocate that you should have a death penalty for kidnapping. That was just one of the definitions that happened to be available during the Chowchilla case. Ultimately, that has been taken away. It doesn’t bother me at all that you don’t have the death penalty for some offense where there’s been no homicide.

Rubens: But what form would it take where you could be an advocate for the death penalty?

Jensen: After the death penalty was found to be unconstitutional in California which is in, I think, ’72 or something like that, there were several years where there were attempts to have it brought back by way of Initiatives to restore the death penalty, and as to those Initiatives, the DA’s Association as a whole was in favor of them.

Rubens: That would be in the voter’s handbook—you would see a statement?

Jensen: That’s correct; yes.

MLJ: But you wouldn’t take a political position in the context of an individual prosecution? You would advocate what the law allowed, but you wouldn’t advocate something beyond—

Jensen: In that way, no. That’s separate from making the individual decision—so you have a law on the books is what we’re talking about. The position was that it ought to be a part of the law of California, but then the decision as to whether it applies in any given case goes to the individual Prosecution Office.

Rubens: Yes; it’s interesting because later on it’s going to be a big issue for you about buried memory and hypnosis and—-

Jensen: Yes.

Rubens: This isn’t really a big part of this trial; but they do put the bus driver under hypnosis?
Jensen: Yes; to get the license number. He apparently came up with the lead parts of
the license numbers of the vans they had been taken in, and that helped to find
the vans and connect them with the Schoenfelds and Woods. And he did that
by way of hypnosis, as I understand it.

Rubens: It just seemed to me that this was a time of crossroads where you would think
that bodily harm would include psychic harm—that that would have been
upheld, but it wasn’t.

But I had one last question here; I can’t believe you didn’t have a strong
opinion about why crime was rising, and I just want to make sure—did we
talk about drug use?

Jensen: Well, drug use is becoming an enormous problem and there was a big growth
in terms of drug trafficking.

MLJ: We talked about the general increase in crime in the ‘70s when you came into
office.

Jensen: That’s part of the increase, sure; that’s right.

Rubens: What are the drugs? Methamphetamines and marijuana?

Jensen: Heroin was one of the first things that started. I don’t recall methamphetamine
at all back then. The first worst drug was heroin, and that was the one they
got started on. There were marijuana prosecutions and I think an occasional
cocaine, but mostly the prosecutions were heroin. Then it went over to
cocaine, and now recently it’s moved to methamphetamine; but that’s a long
time ago. Methamphetamine is today, not the ‘70s.

Rubens: Yes, exactly; but all of that is going on, are there—?

Jensen: That’s going on, and it’s part of the growth in crime.

Rubens: I just haven’t come across any big drug busts. I didn’t know if that was a big
part of police enforcement and DA prosecution.

Jensen: It was a big part of police and prosecution, but cases were more isolated
and—
Rubens: There is not a Mafia running this, or a Cartel?

MLJ: What about Felix Mitchell—was he in operation when you were the DA?

Jensen: Yes; Felix Mitchell was sort of the organizational guy you could say was—who was ultimately prosecuted in Oakland. He was the head of the big, big Oakland trafficking ring.

Rubens: When was this?

Jensen: That was done in the ‘80s; after I was not in the DA’s Office.

MLJ: But drug gangs definitely did develop in Oakland that controlled various areas—and I don’t know if that was occurring when you were there or not. For example, gangs controlled neighborhoods or street corners, then Mitchell became famous for using the kids in the housing projects to look out for the police. Was that happening while you were still DA?

Jensen: I’m sure there were drug gangs, but that was after my tenure. There were some drugs there, but that was developing, and I’m sure it was getting to be more and more organized, but I don’t think that it had the same sort of organizational realization in terms of how it linked back into the Colombian Cartels and linked back into the Mafia. See, we never really had that much—the Mafia.

Rubens: Oakland never—right.

Jensen: No, not in California; it never really had much contact.

Rubens: And certainly not on the waterfront.

Jensen: It was completely different—the waterfronts in New York and in San Francisco were totally different. You can go back and do big studies in terms of why that is so. Our problems were coming along, but we didn’t also have the problem of high-level organized crime.

Although, Felix Mitchell was—it was highly organized crime, but it was a local organization.
Rubens: What I’d like to take you back to—it’s not that many years, because the Patty Hearst kidnapping is going on in ‘74, and Chowchilla is ‘75 and ‘76—is the ‘73 election where Bobby Seale is running for Mayor. He forced Reading into a run-off; and Elaine Brown ran for City Council. I don’t know how well she did. My question is—did you think, or were people in general thinking that some balance of power had really shifted in Oakland; such that Seale could force Reading into a run-off?

Jensen: Well, that exhibits some level of a political backing that I never would have expected. And I wouldn’t have expected that to come out of the Panther organization. A couple of steps have gone on now; you’ve had the Newton trials, and you’ve also had the Stop-the-Draft trials, and we’ve had Eldridge Cleaver, and the trials with the shootout that took place there.

Rubens: The Bobby Hutton thing, yes.

Jensen: Bobby Hutton was killed—that had already happened. So all those things had gone on and now we were—there was no more sort of armed conflict—we were now into the political conflict.

Rubens: In fact, it’s beginning in ‘72 that Reading appoints a handful of really establishment, mainstream African Americans to big appointments—including Wilson?

Jensen: In the City Government?

Rubens: Yes. Wilson, Don McCullum, Elijah Turner, Paul Cobb—they’re on something called the New Oakland Committee—and really, they’re charged with appeasing the Panthers and with designing long-term plans for retaining existing employees and attracting new ones to the City. There is some kind of alliance between the City and the Panthers, where the Panthers make a decision “Well, we’re going to get involved in electoral politics.”

Jensen: They obviously did. Because they decided to now basically take on the political establishment, not with guns but with elections.

Rubens: Right; and they had these big campaigns about reforming the tax system, payroll taxes to offset the suburban exodus, affirmative action—
MLJ: This may be completely tangential to where Lisa is going, but there was a time, I think it was in the early ‘70s, when there was white college student unrest—bombings of banks in Santa Barbara and Isla Vista. Did those kinds of bombings occur in Berkeley?

Jensen: Yes; there were.

MLJ: Was that separate from all of this past violence?

Jensen: Well, in a way, it was an escalation of the demonstrations. See, you had gone from sit-ins to bombings, which is a huge escalation of the level of violence. What happened around here was there were several bombings of PG&E towers, and there was a bombing of the Bank of America in Berkeley, and that was a part of what was happening—sort of a political resistance by using violence. But the people who were doing this were in new groups; this was not out of the Panthers. This is out of other groups who basically were generated in Berkeley and beyond. They had some people who were involved in local bombings. They did it in Santa Barbara, and they did it up here.

MLJ: Because it was a bombing, was it a Federal rather than a local prosecution?

Jensen: Mostly, they are Federal investigations, but there’s an interesting connection here. There was a bombing in Berkeley that—led to an arrest and, I don’t recall the name of the guy who was arrested, I’d have to look it up—but he was Wendy Yoshimura’s boyfriend. Now Wendy Yoshimura, it turns out, is one of the people who was with Patty Hearst.

She was linked up with the SLA afterwards; she wasn’t a part of Marcus Foster thing or anything like that, but afterwards she was, in terms of what’s going to happen with Patty Hearst when she is a fugitive from the San Francisco bank robbery, and who are the people who are going to take care of her. The Harrises were always involved in that, and then Wendy Yoshimura was with her back in Pennsylvania, I believe. Then she came back here and was arrested in San Francisco.

Rubens: With Patty Hearst?

Jensen: But she had been in the group that did the bombings.

MLJ: Was it the Weather Underground?
Jensen: Yes; I guess it was the Weather Underground.

Rubens: Are these bombings around the same time?

Jensen: No; they’re earlier.

Rubens: Are they related to the war?

Jensen: I think so; they’re not related to the SLA. This is separate, but [Wendy Yoshimura] is a person who crosses over.

Rubens: I see; that’s interesting. So would that have been Federal?

Jensen: Well, it’s both Federal and local; it’s one of those crimes that are a Local crime as well as a Federal crime. The Federals have better forensic facilities to do that type of investigation. So what happens—the ATF comes in, or the FBI comes in, and they do forensic examinations in conjunction with local prosecutors and local police.

Rubens: In terms of police security, are Kaiser Headquarters, the DA’s Office—is there starting to be stepped up surveillance?

Jensen: I don’t think we did at the County Courthouse. Ultimately, they went to a situation where metal detectors were installed and that sort of thing, but that was an outgrowth of the whole environment. I mean, that came out of the original Panther trials.

Rubens: So there’s a bombing of Berkeley’s—?

Jensen: There were some PG&E towers, and then there was a Bank of America. A Bank of America on Telegraph and—what’s the next street over?

MLJ: Durant.

Jensen: Yes; I think it was Durant.

Rubens: Yes. Sure, they had all those big windows—but I thought that was from People’s Park. I didn’t realize that was separate.
Jensen: No; that was separate.

MLJ: That’s why Bank of America redesigned all their banks into big fortresses.

Rubens: Yes, exactly. Are there other cases we should focus on?

Jensen: Well, we made some arrests; we had some prosecutions, and I’m saying that the one prosecution was this young man who was Yoshimura’s friend or boyfriend.

MLJ: Later, there was a woman as to whom there was a question of whether she was being framed by the FBI for being in the Weather Underground in connection with bombings and—Judy Bari?

Jensen: That’s Earth—I think that’s an Environmentalist.

She was a part of that, and that was totally separate and had to do with environmental things. She and one of her associates, or boyfriend, or something, were in a car in Oakland and the car blew up. And the question was—were they taking the bomb someplace or did somebody put a bomb in there. They were never charged criminally. And then they brought a civil case and the civil case resulted in them getting some damage award against the FBI.

MLJ: Were there arrests in the early ‘70s in connection with the bombings?

Jensen: Well, it was some people who were engaged in and a part of the bombings in Berkeley. I think there was one arrest where they had found a garage, and found explosives that linked the people to explosives.

MLJ: Were there any issues in dealing with Federal officials in those arrests and prosecutions?

Jensen: In terms of the investigations of the bombings, that had happened over a long number of years and the protocols, agreements, and understandings between local Police Departments and the Federal agencies like ATF, and FBI, had already been worked out. The first person on the scene would always be the local people generally, but then they wanted to do the investigations in such a way that they gathered up all the evidence that could go to the forensic laboratories to tie into what they were doing. I remember in the Berkeley
one—the bank—they were able to take evidence back to ATF and find out what batch of explosives it came from—because they could do some incredible things in terms of going back and finding out what the components of the bombs were, and then try to tie those up with bombers.

Rubens: Would FBI agents who were stationed in Oakland come and talk to you about—“we have information that—?”

Jensen: They would talk to the police. They generally wouldn’t talk to us.

MLJ: Were there any of the kind of allegations that were sometimes made, such as that the FBI was tracking the Panthers or some other group?

Jensen: They didn’t talk to us about that. Whatever they were doing in terms of surveillance or whatever, that was part of their own investigation. The investigative activities of the FBI never really got up to our level of prosecution. If there was a connection, it would be with the local police. The Federal system operates on the basis that the prosecutors don’t get involved with the police as closely as we did, for example, in Oakland.

MLJ: So, as DA, you wouldn’t have any control over information regarding what kind of surveillance, if any, the FBI might be conducting in connection with these things?

Jensen: No.

Rubens: Who was the Police Chief in Oakland at this time?

Jensen: I forget the name.

Rubens: Wouldn’t you be meeting with him?

Jensen: We would when it came to the point where you might want to go to the Grand Jury, or use the judicial kind of aspect of all this, then they would come to us. But if it’s just at an investigatory level, it would be with the Police. But if they wanted a search warrant or something like that—our agreement had always been with the local police is that they’d bring us their search warrants so we could screen them before they go to the Judges, so we would get the search warrants as they came through. If you got to that level of an investigation, we would know about it.
Rubens: You’re screening them for what purpose?

Jensen: For legal purposes to make sure that they’re sufficient.

Rubens: Done right and done properly, so they’re not going to come back and fight you?

Jensen: Yes.

Rubens: So I’d like to ask you whether you yourself, not as a representative of the Prosecutor’s Office—but if you yourself felt that, my God, something has really changed in Oakland now with Bobby Seale forcing Reading into a run-off?

Jensen: Yes; you couldn’t help but be aware of it. My relationship to the governance of Oakland was not direct. My relationship is to the prosecution function in the County, but I had always known these people generally. I would know who they were and have some levels of dealings, and when you’d have joint efforts like the one you’re talking about with Reading, they may very well have asked us to be involved in some of that. Actually, I think they did.

Rubens: One of the claims is that the strategy that’s coming to fruition in ‘73 is one that goes back to Byron Rumford’s first campaign for the Assembly in ’48; that black professionals—well, this appointment of Wilson—.

Jensen: Yes; I think that may very well be true.

Rubens: And that some of the people, I guess Cobb and Turner were more to the left than Wilson and McCullum, but—

Jensen: Well, McCullum was a Deputy DA; he had been a Deputy DA in Alameda County during Frank Coakley’s time. He had been in the Navy, and Frank Coakley knew him in the Naval Reserve, so he came to the DA’s Office in Alameda County as a Deputy. He’s been a personal friend of mine for a long time.

MLJ: He became a Judge in Alameda County?

Jensen: Yes; he ultimately became a Judge in Alameda.
Rubens: Did you have an opinion about this—?

Jensen: I had an opinion about McCullum; I thought he was a fine person. But I thought all the people that you’re talking about there are reasonable, good people who have the best interest of good Government and good citizenship combined; so I think what Reading was doing was correct—that if there’s an area where you have Bobby Seale running, then there ought to be an understanding that he doesn’t represent the black communities.

Rubens: Right; and I don’t know what the politics are that went on—if they made any effort to try and persuade him not to run, but they certainly weren’t going to run against him. It’s not like what happens in ‘77 when Ortho Green—he’s a liberal Democrat, former City Manager in Berkeley and a businessman – runs. He potentially could have split the vote with Wilson, but Wilson survives. The other thing that happens in ’74 is that Bill Knowland shoots himself. One book claims that Knowland had hand-picked the previous three Mayors, Rishell, Houlihan, and Reading.

Jensen: I think they were the same groups. The idea is that there are people that have been part of a political group, and then different figures come out of that group to be leaders at different times. I think that happened.

Rubens: Yes; I think Knowland’s world had really fallen apart and he just wasn’t—

Jensen: I remember I was at a reception for the Attorney General of the United States given by the US Attorney. The US Attorney over in San Francisco was Jim Browning, the guy who tried the Patty Hearst case. He had been a Deputy DA in San Mateo County, I believe, and he had a reception at his house for Saxbe, who was then the Attorney General. While we were there, the FBI guy came in and whispered to him and they went out, and it turns out that’s when Knowland had killed himself.

Rubens: They found him.

Jensen: Found that he had committed suicide. I didn’t have anything to do with the investigation.

Rubens: No; I understand. Did you go to the funeral?

Jensen: I think so.
Rubens: It must have been a pretty sad story. I mean, the Oakland he knew was gone; his paper, he had not modernized and he just never rose to the level of leadership that he aspired to once he lost the Governor’s campaign.

But in ’77, Lionel Wilson does run for mayor and is elected and it’s pretty amazing. There’s a new power structure in Oakland.

Jensen: Well, from the standpoint of the DA—remember I told you that this was non-partisan and the DA and the Sheriff and similar positions were non-partisan, and they were rigorously non-partisan—when something like the Mayor ran in Oakland, say Lionel Wilson—I didn’t support him as a DA. That wasn’t part of what people did in those times. Now you do; you see this more often because there’s been a lot more political kind of linkage with the election system, so there’s not as much of the partisan/non-partisan split. But at that time it was completely—I was completely non-partisan; I didn’t endorse anybody or get involved in that sort of thing.

Rubens: Well, it’s also the Alameda Board of Supervisors that approves you, right?

Jensen: That’s right; well, they do my budget. They don’t elect me.

MLJ: Let’s talk about the reverse then; in your actual campaigns and running in non-partisan elections, how did any of these people or parties involve themselves, if at all?

Jensen: Individuals may have. I think, I hadn’t thought about this because I ran in 1970, and then again in—

MLJ: How long had you been DA?

Jensen: I had been DA for a year. I ran and no one ran against me. So that was easy in 1970.

MLJ: Was there a fear that somebody was going to run against you?

Jensen: No, not really. I don’t know, the DA’s Office was looked up to in the community as a very solid institution and it had been through Earl Warren and through Hoyt, and through Coakley, so when I come in, I’m a known figure in terms of at least the people who have anything to do with criminal justice. So there’s nobody out there that wants to run against me.
MLJ: What about people in the Office; for example in the Santa Clara County DA’s Office right now—there are five different people that were in the DA’s Office running for DA.

Jensen: You didn’t do that. You didn’t do that sort of thing. It was not part of the culture in Alameda County. If you’re anointed, sort of that’s it, and everybody gathers behind you, and I don’t think anybody really wanted to run against me. I mean, there was nobody who was unhappy or who—or maybe they had some political ambition or something—but nobody did. In ’74, I did have opposition.

Rubens: Yes; who was that?

MLJ: I’m sorry; you were going to say you thought there was some individual who might have weighed in on your behalf in 1970?

Jensen: That’s ’74—I was going to get to it. So now in 1974 there’s an election with campaigning, and the opponent was a guy named Lew Warden. Lew Warden was a classmate of mine from Boalt, but he was older. He was one of the persons who had been in the Service and then came through law school afterwards, and I was one of the persons who went through law school and then went into the Service. So he was older, and he was in my class, and he was an active Republican. I think he had previously run in Alameda County for a Congressional seat or at least a seat in the State Assembly, or for the US Congress as a Republican candidate, and he decided he wanted to run against me to become District Attorney.

Rubens: He was not in the Office?

Jensen: He was not in the Office; no, he was from outside the Office totally. He was a lawyer who practiced in Alameda County and he didn’t do much criminal practice, but he had done some. Anyway, he ran on the basis that he had a position within the Republican Party that was known; he had been one of their candidates, and he thought that would be the thing that would be to his benefit.

Rubens: Did he have some other claims against you?

Jensen: Well, he claimed that I was not a very successful DA—that my percentages of convictions in the Office were low and we didn’t do a very good job.
Rubens: That’s something I was going to ask you about later. Your convictions seemed pretty high.

Jensen: I thought so; but obviously—I think that’s a function of a whole bunch of people. I didn’t think that I was vulnerable on that ground in running for DA, but I had to run for DA.

Rubens: What else did he claim?

Jensen: Well, I think that there had been a relatively high-profile situation where a young African American man in Emeryville had been killed by police and there had been an investigation, and he said that we had handled that improperly, so that was part of his campaign. We had taken evidence and presented all that to the Grand Jury and there had been no indictments—so he ran against me on that. But now I had to go around and get endorsements, but you didn’t get endorsements from the parties themselves, okay? So the Republic Party and the Democratic Party didn’t endorse the DA candidate.

Rubens: Because it’s a non-partisan position?

Jensen: But there were the Alameda County Republican Lawyer’s Club and the Alameda County Democrat Lawyer’s Club, and they did endorse. I think the only group that didn’t endorse me for the campaign was the Alameda County Republican Lawyers; they endorsed Warden.

Rubens: Was there a Police Officers Association and—?

Jensen: Yes; and Union Associations and Civic Associations, and—

Rubens: So you had not had to do this in ‘70?

Jensen: No; I had not done it in ‘70.

MLJ: Had you raised money for a campaign in ‘70?

Jensen: I never raised any money at all in ‘70.

Rubens: Did you get a campaign manager?
Jensen: Yes; Don Perata.

Rubens: A-ha! What was his position at the time?

Jensen: He was in the schools in Alameda County, I think, but he was involved in political campaigns. He was probably—

Rubens: How did you happen to end up with him?

Jensen: I don’t know exactly how all this happened. But he did end up running my campaign, and then there was a group of lawyers who formed a little committee—they actually had lawyers donating. See, this is one of these problems about when I’m running now; I don’t know anything at all about politics. I’ve not been involved in regular politics at all, and who are the people who know me?—not the politicians, but the lawyers do—so the lawyers were willing to put in some money. I think we ran a campaign with, I think it was about $25,000 or something, but I think half of it was maybe our money.

Rubens: “Our money,” meaning personally?

Jensen: Myself and Barbara.

MLJ: So when you run the campaign in 1974 against Lew Warden you obviously aren’t airing television commercials; what are you doing to run this campaign?

Jensen: We’re doing mailers, and I’m going and speaking where they have Candidate Nights.

Rubens: League of Women Voters?

Jensen: Yes; we’d go before all these things. That was going on at that time, but there was no television.

MLJ: Radio?

Jensen: I did radio stuff, yes.
Rubens: Newspaper interviews.

Jensen: Radio spots, newspaper interviews, endorsements from the newspapers—

MLJ: Did you like doing this?

Jensen: Well, not really; but it did get you a chance to see the people. You learned a lot more about the County. You had to go to every place in the County; so this is when I’d go out to the Cattlemen’s Association in Livermore, and I did—

Rubens: And, of course, they had been happy with you because you had put away the rustlers.

Jensen: Yes; they’d think that was good.

MLJ: How did your wife respond to the campaign?

Jensen: She was great.

MLJ: Did she have to do the Nancy Reagan role?

Jensen: She didn’t have to do anything—well, she would go to certain things. She would go to some of these fund-raisers and things like that, and then we had the interviews by the newspapers and they’d take photographs—there we are, and the dog, and all this stuff, so we did some of that.

MLJ: I remember that.

Jensen: And we had, oh—things would go on cars, signs, I think we had some billboards or whatever; I think we had something like that. Then we delivered a lot of things just by volunteer people—volunteers would go and deliver things door-to-door. So it was a real campaign, but we didn’t have all the money involved.

Rubens: Did the Panthers weigh on it particularly, or—?

Jensen: They didn’t at all, no. But, well, they weren’t going to back Lew Warden.
Rubens: No, exactly.

Jensen: And he didn’t look for anything like that. He wasn’t looking for anything—I mean, he didn’t have much—the County was basically Democratic, and then he’s the outsider in a sense coming in, because he wanted to make sure that everybody knew he was a Republican.

MLJ: So he was actually injecting partisanship into his—?

Jensen: I don’t think he was injecting it in a way that was objectionable, in the sense that he would simply identify who he was and let everybody think about it themselves; but he didn’t seek the endorsement of the Republican Party as such, that I know of. I don’t think so.

MLJ: You were a registered Democrat?

Jensen: A Democrat, right.

MLJ: Was there any way for anybody to figure that out if they wanted to go and publicize that?

Jensen: Oh you knew; you could find out how you were registered. I mean, that’s public I guess.

MLJ: But let’s say a newspaper decided to endorse you—wouldn’t that be a portion of the editorial? To say what party you were in?

Jensen: It should not be, because this was a non-partisan office and it should not be an endorsement that’s based upon your political registration.

Rubens: Was this a November election, by the way?

Jensen: I think it was the Primary; it was in April. That’s when we were running—I think that’s right.

MLJ: It’s a June election I believe.

Jensen: Maybe it was.
Rubens: I’ll have to look this up. Were you involved in the campaign? Do you remember the campaign?

MLJ: I do—yes. I had to have my picture taken in the back with the dog and pose.

Rubens: Dress well?

MLJ: No; we were dressed—I think more casual. I remember having events at the house.

Jensen: Yes; we did. We had fund-raisers.

MLJ: I remember going to some other functions, but I don’t remember what they were, and I remember having to distribute flyers.

Jensen: She was a volunteer. [laughs]

Rubens: A drafted volunteer?

MLJ: So in the June Primary, since you only had two candidates, could you win by a majority?

Jensen: Yes. I know that ultimately we were the only two running, so I guess it was November, I’m not sure, but I was elected by—I think it was about 67 percent.

Rubens: Did you consult with Meese at all about campaign strategy, or did he offer up anything?

Jensen: No; we may have talked to him along the way, but he didn’t play any direct role in it. He was there to offer support.

Rubens: Gave you a small check or something?

Jensen: But I was thinking maybe Lionel Wilson was one of my endorsements. I don’t know. That’s on file.

But I won in every city in Alameda County, which was the best part of the election.
Rubens: And what happened to Warden?

Jensen: Lew just went on and practiced law. I think he ran again in some Republican races, but he never did get elected.

Rubens: Then you have one more election that you go through—

Jensen: The next election is in ’78, and nobody runs against me.

Rubens: So you don’t have to do all this.

Jensen: By then it’s the same thing—back to ’70. I didn’t spend anything or get involved at all.

MLJ: But you had a bank account that was a political campaign fund at that point?

Jensen: In ’78, I think what we did was—in the fall of the year before—I think we had a big fund-raiser where we had a dinner anticipating a campaign. It’s sort of a preemptive strike, in effect. They do that all the time, because you have a big, not necessarily public event, but the public knows about it in the sense that it’s all open, but we have a big fund-raiser. And if you have a big successful fund-raiser, and all these people come from different kinds of backgrounds, different kinds of areas of the community are there, then it leads one who thinks about running against you to think again.

MLJ: What about non-political power brokers in Alameda County, or philanthropists that came in and—Lisa and I were talking, for example, about Irene Sargent. How did you get to know the Sargents, and were they monetary backers?

Jensen: They were through Barbara, I think, in the Children’s Hospital. I think that Barbara was involved with Irene in that.

MLJ: Did she know Pat Golde?

Jensen: Yes, I think so; but Irene Sargent had a clothing store in Oakland—a really very, very fine clothing store, the best one in Oakland.
Rubens: Yes; high-end.

Jensen: We got to know them and her family. One of her cousins worked for the DA’s Office; so she knew people, and we got to know both of them.

MLJ: She was a fund-raiser, wasn’t she? Didn’t they put on the Arts and the Cultural—?

Jensen: Yes, she was a very, very good fund-raiser, and she did a lot for the City of Oakland.

Rubens: Really?

Jensen: Yes; she was a big community force. For a long time there she’d have a Christmas party—for all the Oakland folk, and that would be at the time Lionel Wilson was the Mayor. He’d go, so there would be all kinds of movers and shakers at Irene’s Christmas Party.

MLJ: Wasn’t she also fund-raising for Oakland culture, such that the Oakland Ballet was at her Christmas party?

Jensen: I think so, yes; she did a lot for the Arts in the city.

MLJ: What about other business people or movers and shakers that were involved with your campaigns? Didn’t you know the Kaisers, or the cement people?

Jensen: I’m trying to remember whether Trefethen was involved—let’s see—he was one of the guys, and he had been the one who the SLA had targeted, so I think he was one of my backers. And people in Safeway. Safeway was a big Oakland operation, I think, and so the developers and—

Rubens: Was your father’s business gone by then? Not that he had worked for Safeway, but—

Jensen: Yes; his restaurant—

Rubens: No, not the restaurant; the one he had worked for before—Fleischmann’s Yeast, when he was a salesman for that?
Jensen: No; that’s a long time—that had been gone for a long time.

MLJ: What about the Longs?

Jensen: The Longs, I don’t think they were involved.

MLJ: Well, I guess they were in Contra Costa County.

Jensen: They’re located in Contra Costa County but—I forget if anybody lived in Alameda County. I don’t think so.

MLJ: Were there people that eventually became involved in the Oakland Museum who were financial backers?

Jensen: I don’t remember whether some of them were endorsers, because we—in the next one we did—you got endorsers for ‘78, and if you had a list of endorsers sufficiently long you didn’t have to put up a filing fee, so that’s what we’d do—we’d go around and get endorsements.

Rubens: Oh really?

Jensen: Yes; you’d get an endorsement list that was sufficiently lengthy—and they would go and get people who were really representing parts of different areas of the community to be your endorsers.

MLJ: You said that in ‘74 the only people that knew you were lawyers. Now obviously in ’78, you got enough signatures, so where did those people come from?

Jensen: Well, a lot of this comes from the ‘74 campaign because you get more visible, and you go out and you become a part of the politics of the County. I’d go around to luncheon groups, the Rotary, and all that sort of thing, so you become known by doing that, which is, I think, a very good thing. Actually, I had done some of that between ‘70 and ‘74. I had been on the rubber-chicken circuit where you’d go out and speak at lunches and stuff like that; I did quite a bit of that. So you had already built some sort of reputation—and that lesson really comes from Earl Warren, because that’s what he did. He had done this in his elections.
Rubens: Coakley must have done it too, right?

Jensen: Coakley—but now, Coakley didn’t have anybody run against him either.

Rubens: Yes; but—

Jensen: No; one time I think he had somebody run against him.

MLJ: I’m interested in the role of the political wife. You said that you knew Irene Sargent from the Children’s Hospital. They had some power in Oakland. What about other people you may have met through the involvement of your wife with the Oakland Museum or other Boards?

Jensen: I think this was before any real involvement. I forget when Barbara became—she got on the Women’s Board of the Oakland Museum at some point, but I don’t think it was in ‘74; I think it was after that.

Rubens: Did the Oakland Museum open in the ‘70s?

Jensen: I think so, because we were watching it being built when I was a Deputy DA, and my office was over on that side and I could watch it being built.

Rubens: Yes; there was a lot of controversy over the museum, and I understand that the Women’s Board finally wants to do something about its history. I didn’t realize Barbara had been on the Board.

Jensen: She had been on the Board, and actually, I think she was an important part of that, in the sense that she helped move participation in the Museum out into South County. We were pretty well established in South County, and Barbara had gotten some friends of hers to come into the Board who are now really stalwarts of the Board. So in terms of the history of the Board, I think she played an important role for it, frankly.

Rubens: She was involved with Children’s Hospital as well?

Jensen: Yes; then she moved over to the Women’s Board and she didn’t do as much at Children’s Hospital after that.
Rubens: I wanted to ask you about your extended family—this is a little window to open right here. You know, it’s pretty impressive to have their son become DA of the County. I don’t know when your parents died or if they—

Jensen: Not until after we came back. They were alive through the whole time when I was DA, and then when I got back to Washington, and when we came back here they were still alive.

Rubens: In ‘86? Oh.

Jensen: They died after that.

Rubens: They must have been very proud.

Jensen: Yes; they were.

Rubens: Were they involved in any political activities?

Jensen: No; they were not involved.

Rubens: Your mom wasn’t also?

Jensen: No; she didn’t really do anything like that—they were not directly involved.

Rubens: Here’s the question; were people ever coming to you? I mean you have brothers; were people ever saying—?

Jensen: Saying I need some help?

Rubens: Yes; can you fix my traffic ticket?

Jensen: No, no; I was pretty clear that I wasn’t going to do that.

Rubens: You’re pretty above-board; I know that. But surely would have tried to say—

Jensen: No; I don’t think so. No—nobody in the family.
Rubens: Did the family come out though for the ‘74 election?

Jensen: Oh sure; they were all in favor of it. Sure, they did some stuff.

MLJ: I didn’t think they lived in Alameda County then.

Jensen: “Volunteers” like Marcia. The extended family didn’t live in Alameda County.

Rubens: Where did your parents end up?

Jensen: They were in—I think they were maybe in Hayward in ‘74.

Rubens: They had left Alameda and gone to—?

Jensen: Yes; they left Alameda and had gone to live out in Hayward for a while, then they lived in San Mateo County, and then they came back and lived in Rossmoor.

Rubens: And your brothers, you said, just to follow out—?

Jensen: My brother—where would he be? I think he lived in Venice at the time.

Rubens: LA Venice?

Jensen: No, no—Venice.

Rubens: You mean Venice, Italy?

Jensen: He was married and his wife had spent a lot of time there. His wife—her father was the architect who did the San Francisco City Hall—incredibly talented—his name is Brown. He was an amazing architect. My brother was—he went to—

MLJ: And Coit Tower, and the Opera House.

Rubens: The Brown?
Jensen: Yes.

Rubens: Arthur Brown?

Jensen: Yes. His daughter married my brother.

Rubens: Arthur Brown is just a lion, yes.

Jensen: Oh, he’s fabulous.

Rubens: He dies in the ‘30s because he was supposed to do the Golden Gate International Exhibition, and I think he dies.

MLJ: And Rollin was—is the concert pianist who’s artistic, and actually did line drawings of buildings and things like that?

Jensen: Right; and he did an exhibition at one time, I think it was of the San Francisco City Hall. He got all the old drawings that had been done—all these magnificent drawings that had been done by Brown, and they had an exhibit that they did in San Francisco. See, my brother had been an architect—he got a degree in architecture and art.

Rubens: Where?

Jensen: From Berkeley.

Rubens: He did? But they somehow end up in Italy?

Jensen: Because he had gone over there—he played as an accompanist for a soprano and they had gone through Italy. When they went through Venice, I think he met his wife there.

Rubens: Brown lived in San Francisco, of course.

Jensen: Yes; but his daughter lived in Venice for a long time.
Rubens: I know you had very little time while you’re prosecuting all these cases. Did you ever get over there to visit?

Jensen: No, no—never did. [laughs]

Rubens: Wasn’t there one other brother?

Jensen: No; I had two sisters.

Rubens: Two sisters, and so where did they end up?

Jensen: My two sisters are in the area. Marlene is still in Alameda County and she, I think at that time and for many years, was an elementary school teacher in Berkeley. She had a whole career in that.

Rubens: What’s her last name?

Jensen: Her last name was Jensen; but it’s Eastwood—John Eastwood.

MLJ: Eastman.

Jensen: Eastman, excuse me—Eastman—Eastwood I think is Clint, that’s right. My youngest sister, Sharon, married a man, Ron Plomgren, who grew up in the Longs operation. He worked in Alameda and then became Vice President for Real Estate.

Rubens: Yes; so that’s why you’re asking about endorsement? All right; so everyone was very proud and happy for you, but didn’t turn to you for—

Jensen: No.

Rubens: And I think it’s worth saying before I turn the tape and move to other issues—it wasn’t easy raising kids in this period. I mean, here you are prosecuting kids who are just at the wildest end of—and drug use is coming up—

Jensen: Well, it wasn’t easy and basically I think Barbara was the rock for all of us to my way of thinking.
Editorial Insert: The discussion continues with an exploration of the reasons that major events seemed to occur in Alameda County more so than in other areas.

Jensen: Chowchilla—where do they go? They go to Alameda County.

Rubens: Yes; did we talk about the Hell’s Angels?

Jensen: No; we didn’t. The Hell’s Angels were organized and heavy-duty here in Oakland. Sonny Barger lived in Oakland and was prosecuted by us on occasion.

Rubens: On occasion? Just for “drunk and disorderly,” or was there more?

Jensen: Well, once for murder. He was acquitted.

Rubens: Oh really; did you literally prosecute him?

Jensen: I didn’t try him, no.

But the Hell’s Angels had a place up on McArthur, I think, in Oakland. They had a clubhouse up there and they had a huge wire fence around it with dogs all over the place, so if you wanted to search that place you couldn’t go up and knock on the door. You had to go through the gate where the dogs were and everything, and I think—I forget what police agency—had a search warrant for that place, so they went up and staged an automobile accident right out in front of their place. So when the Hell’s Angels came out to see what happened—it was no accident [laughs] and then they went in and searched the place.

Rubens: [laughs] What was it called—their annual—?

Jensen: The Runs.

Rubens: The annual Runs would be done in Hollister.

Jensen: They didn’t do it here; yes, they went down there.
MLJ: Didn’t they have things where they went and pulled their bikes out in the street on McArthur?

Jensen: Yes; they did that on occasion. They’d have weekends and take a little ride and pull all their bikes out.

Rubens: The only other time I hear of the Hell’s Angels is when they turned back a march in Berkeley.

Jensen: Well they were there—nobody invited them—but they were there.

Rubens: Yes; they were, the Patriots and—

MLJ: Oh, do you mean the Altamont concert?

Jensen: Yes; they had the Altamont, what was the—?

MLJ: The Rolling Stones?

Jensen: The Rolling Stones were there and they had this huge gathering of people out there, and somebody got killed.

Rubens: Was this under your—?

Jensen: Yes; I was the DA at the time.

Rubens: Oh God.

Jensen: We had the murder charge against some people out there who were guards. They were self-appointed guards, and they killed this kid; it was a self-defense sort of thing which turned out—that was the verdict. We had a murder prosecution for one of the people at the Altamont Concert, and he was acquitted.

MLJ: Who tried that?

Jensen: I forget. I didn’t try it.
Rubens: So no particular issues of law?

Jensen: It was just another event.

MLJ: Do you have a theory on why this stuff happened in Alameda County?

Jensen: No.

Rubens: What comes next?

Jensen: Well, here are some of the things—when I was DA, one of the things I mentioned before is that Frank Coakley had been a part of the organization of the National District Attorneys Association, and so I went to all of the meetings. You could argue about whether you should do that or not, and I always thought it was a good idea. One of the meetings I went to in about ‘74 I think it was, there was a discussion about a grant from the LEAA to the National District Attorneys Association to develop Victim Witness Programs. Nothing existed at that time. So at this conference, which I think was at the Lake of the Ozarks, various people volunteered and they accepted my offer to participate—they had DA’s Offices across the country do this, and I think the only one on the West Coast was ours, Alameda County; there was one in Denver and there was one in Chicago, and one in New Orleans, in Philadelphia, and I think in Long Island—something like that; those DA’s Offices were commissioned to do this. So we had various meetings and each of us started out to see if we could create anything for Victims and Witnesses. I had a couple of people in the office, Howard Janssen was a lawyer and Harold Boscowich was an investigator, and basically we sat down and brainstormed what we might do to start the Victim Witness Program.

MLJ: Had there been any direction on this—the form this grant should take?

Jensen: The Commission didn’t have anything; you got to define what the problem was.

Rubens: I was going to ask; what was the problem?

Jensen: The problem was that victims and witnesses were ignored. I mean, nobody paid any attention to them. After you look at it a little bit, you realize what you’ve been doing and you’ve been doing terrible things. We did a survey to find out sort of what was the depth of the problem in terms of what did people
think about—what did the DA do for victims? And then we got this—at either end, we had people say “I thought you were wonderful;” “I thought you were terrible,” and in the middle they said, “I don’t know what you people did.” So there’s a huge gap in the middle where they said “I don’t even know what happened.” We found out that when people were the victim of a crime; they would be called to come to a hearing as a witness—a preliminary examination for a felony—the felony would go off to the trial court, and the next thing they would know—they read about it in the papers that the case was over. They didn’t have any idea about what had happened to the case. So they’d look and they’d see a story, and they might look and see that the guy didn’t get anything. They’d say “What are they doing?” Or they would be half-satisfied with it. But the point was they didn’t know anything; and if they had been victimized through a loss of property, nobody paid any attention to that. The police sort of lobbed it down and said “go get your insurance” or whatever, but nobody did anything.

Rubens: The Women’s Movement is really starting to push right now.

Jensen: The Women’s Movement is pushing, too.

Rubens: About rape victims?

Jensen: Yes, right around the same time. But the idea is that we did some surveys and found out that really, we weren’t doing anything to contact these people. So one of the first things we did was to set up a system where we would notify the victims of their case, notify them of all the steps that were taking place in the case, and notify them about proposed dispositions. We would have contact with people.

MLJ: Was this for victims in every case? Because it’s a huge volume of people you’re talking about—

Jensen: This is a lot of people; we’re trying to reach all those that have some injury. Like I said—we want to make sure that if somebody had suffered property losses that we would contact them. So we would make it clear as a part of the sentencing process that restitution could be made—that kind of thing, because we hadn’t done any of that before. So we set up contact, in essence, and we set up a unit within the DA’s Office to accomplish that.

Rubens: I was going to say, you must have had to hire people.
Jensen: We did hire someone to be a Victim-Witness coordinator; well, we assigned them. We assigned a lawyer and an investigator, and then we found that we had to get some staff people, so we got a couple people for that. But this was all on the grant money; we could use the grant money.

And then we actually did some films that talked about the problem to, in effect, sensitize the rest of the System to the fact that victims and witnesses were being mistreated, and—the point is that you got victimized again through the charging and trial process.

Rubens: Who is seeing this?

Jensen: Our own lawyers. We wanted them to know what we should do, because this was about how victims and witnesses were typically treated by the DAs. They’d come in and the DAs would not talk to them, or they would just treat them as a piece of evidence and talk to them in lingo they—nobody could understand. So we did movies about that to train our people that we are dealing with real people out there. We just got started in on the process of setting up a system, and over the years the system has developed so that it’s embedded now.

MLJ: Well, it’s now statutory.

Jensen: It’s now statutory; we’ve gotten California to pass some laws that aided victims in terms of what happened to them both during and after the prosecution of the offense.

Rubens: You’re talking about the DA’s Office, or the DA’s Association, taking the leadership?

Jensen: The DA’s Office leadership. Our Office did it in the State because we had the money coming from the DA’s Association. We got it started, and I think we did a really good job in terms of making it a part of what should be done.

Rubens: So no other county is doing this at the time?

Jensen: To recognize victims and witnesses? No.

MLJ: In the unit in Alameda County, what types of programs were established in addition to notification? I know that there were several.
Jensen: We had the property tracking system; we had specific contact that was made with families in homicide cases. We had people make contact with the family in terms of the prosecution of homicides, and particularly we had people who were more skilled in terms of sex offenses to establish contact with the people and families that were involved.

Rubens: Is the percentage of rapes going up?

Jensen: Yes, it is—along with all the rest.

Rubens: Just everything is going up, yes.

Jensen: Everything is going up, including rapes and that comes about because of different factors, but it gets back to the fact that people are actually reporting rapes when they didn’t do it before.

But there is an increase, and then you have BAWAR and these other organizations, so our role is to recognize that and to be of some assistance to them, and I think that’s what we were doing.

MLJ: The DA’s Office hired people who were advocates who put victims in touch with counseling and economic programs available through the State; was that something developed in Alameda County?

Jensen: Yes; it was, and then a state law was enacted to create a Victim Fund that would pay people who had suffered losses from crimes through this statewide Victim Fund. Now it’s national; and actually, we got it started—I say “we,” but part of what happened was when we went back in the Reagan times one of the things that got put in was a National Victim Program. The leader there was Lois Haight, she’s now a Judge in Contra Costa County, but she was a Deputy DA in Alameda County. They went back to Washington—

Rubens: Did you bring her back?

Jensen: Yes, well, she and her husband. Her husband was the Personnel Director for the Reagan White House.

Rubens: Oh okay.
MLJ: But she had been very involved in the Victim Witness Program in Alameda County?

Jensen: And she was involved nationally. But we weren’t the only ones doing these types of programs; six other offices were doing these, and as you’re doing it you’re stimulating a lot of awareness, because as you tell people “What kind of system are you running where the victim is victimized more by the system than by the criminal?” So I think we did a lot to, in effect, sensitize people to what the circumstances were, and now I think it’s just a part of—it’s just accepted as something that you do. But it got started really through the DA’s Association, and I think we did a lot in Alameda County to actually give it some “on-the-ground” kind of functioning—a systematic way of being of assistance to victims.

MLJ: Now that you see where it’s come, what is your position on what these programs are now—with people, for example, Senator Feinstein, advocating a Victim’s Bill of Rights in the Constitution?

Jensen: I don’t think you need that. I think you’ve already got enough, and I don’t think you want to put it into the Constitution, in that you don’t know what you’ve done. I mean, you could read all kinds of things into it now that it’s in the Constitution. I think that we do enough in terms of the State and National legislation—and I don’t think that there’s any need for a Constitutional Amendment.

MLJ: As a segue into the crime charging that we’re going to talk about, do you think that there’s been any danger of the victim now being given too much of a role in the prosecution—given that the prosecutor is exercising his or her discretion in a trained manner?

Jensen: Well, there has to be a recognition ultimately that the prosecution is for the State; it’s not a prosecution that’s run by the victim. So you have to have the sense that it is the State’s responsibility to do this, and that’s the whole trade-off for not having anarchy – that the State is going to do this. We’ve always traded off the notion that the individual citizen doesn’t have a right to use the criminal process. You have to go through the DA—and when you go through the DA, the DA has a responsibility to run it properly, not only for the victim but for everybody else—for the defendant. So you can’t turn it over to the victim, but they obviously need to know what you’re doing, and they have to be a part of it.
MLJ: But how do you reconcile that with the current requirement that the victim be consulted on a plea agreement, or a negotiation, or a sentence, or having a right to speak at sentencing?

Jensen: Well, I think that there ought to be contact made and that there are circumstances where people should be allowed to do those things. As to the so-called allocution that goes on, there’s a right to it for the defense and there isn’t any reason why the victim shouldn’t be able to do that as well. But I don’t think you have to do that in every case; as you point out. It’s impossible to do that; you couldn’t have a circumstance where the case couldn’t go forward until the victim was there. I mean you—so you have to have a level of contact, but you should allow for it when those cases are such that the victims ought to participate, and that’s sort of self-generated from the victims. But I don’t think you could now say to the victim—if say, they don’t agree with a plea disposition—I mean, you’re still going to have to go forward with it under many circumstances. You certainly can’t say “Well, we’re going to go ahead and have a trial because the victim hasn’t agreed to this,” but it’s a very sensitive area, and one that at least needs to be discussed and be open, so the victim knows what’s happening. You may ultimately get to the position where you tell the victim, “We’re going to have to go forward this way, but you should know what we’re doing.”

Rubens: So this is happening in ’74?

Jensen: Yes; it started in ’74, but it will take years to get there.

MLJ: Now it’s at the point where most, if not all, prosecutorial offices around the country, local and federal, have employed a Victim Witness Advocate or Coordinator.

Jensen: That’s right; and they didn’t exist before. So I think the National DA’s Association was an actual pioneer in this whole thing.

MLJ: Back to the segue, then; you talked briefly about this is in one of our sessions—but would you talk about the crime charging standards?

Jensen: Yes; that also came out of the LEAA, the grant process. I think I was on one of these Committees for the State, and I was in the DA’s Association, and I could see the grants that were coming through. One of them addressed the concept that we ought to have uniform charging standards throughout the State, because people had different ways of approaching the task of deciding which cases should be charged and which should not. That idea came up, so I
got involved in it and was part of the process. We had to come over to the California DA’s Association to get its participation in taking on the responsibility to do this—this was in the ’70s also.

So the DA’s Association got a grant to run a program to develop charging standards. It was run out of Los Angeles, and I think Joe Busch was the DA down there. He was the Chair of the Commission, or of the Committee of DAs throughout the State, and they had a staff that was put together in Los Angeles. There were a whole bunch of meetings at which we came up with drafts and ultimately produced an agreed-upon standard that should be used by every prosecutor for charging cases. Previously, there had been nothing—maybe there had been some done in individual DA’s Offices—but there had been nothing done on a statewide level at all in the United States until then.

Rubens: Really?

Jensen: Yes.

Rubens: It’s kind of hard to believe. It just seems so logical.

Jensen: Yes; I know. It is logical, and it was very simple in a sense. The standard developed was that you don’t charge a case unless you are, upon review of the evidence, satisfied as the prosecutor who is going to do the charging, that there is proof of guilt; in the sense that there is proof of the crime being committed and proof of who did it. The standard was that you had to have a subjective view that there was guilt, and that you had to have available admissible evidence that could show every element of the offense; and available and admissible evidence to show the identity of the offender. And the standard also basically required that the prosecutor reach an assessment that the weight of the evidence was enough for a reasonable jury to make a finding of guilt beyond a reasonable doubt—and that’s just the legal standard. Then we had rules for dealing with specifics that arose in all kinds of different cases, and we published that. It was published in the ’70s and went out to all the DAs, so it became a part of the charging process for the DA’s Offices throughout the state.

The Federal system didn’t adopt anything until the end of the ’70s; they were several years behind us, but I think we were the first ones to do it.

Rubens: Are you going to have a hand in the development of the federal standards?

Jensen: It was already done by the time I got there.
Rubens: At the Federal level?

Jensen: Yes.

MLJ: Dick Haugner was very involved in that as well, wasn’t he?

Jensen: Dick Haugner was our representative on the working committee that developed the standards, and we had one big session I remember down in Santa Cruz, where we signed off on the final drafts of all this.

MLJ: It’s now known as the Uniform Crime Charging Manual?

Jensen: Crime Charging Standard, right; so it is being used, and I think it was just a philosophically good thing to do. I’m glad that we did it.

MLJ: We’ve talked about the volume of cases in terms of victims, and how to decide what to charge. In managing those issues, did you develop a system you’d like to discuss?

Jensen: Well, some of these things come about by technology. As the computer comes along, you start in on a process, and we started very early—we also got another grant—we did well on grants.

Rubens: It was the era where they said “While you’re up, get me a grant.” Grants were all over the place.

Jensen: Yes, that’s exactly right. We got a grant to develop a case management system by using some of the new technology. So we got ourselves a computer where you used these cards. Remember the computers where you had the cards?

Rubens: You had to punch the punch cards?

Jensen: Yes, we had punch cards; that was our first system.

Rubens: When are we talking about now?

Jensen: We’re talking in the ‘70s.
MLJ: For just Alameda County?

Jensen: Just for Alameda County, and we called this thing DALITE; “District Attorneys Litigation System,” or something.

Rubens: Who had introduced the idea?

Jensen: Well, it was kind of LEAA. I don’t know; it wasn’t my idea. There were things that were being developed, and we talked about them at District Attorneys’ Conferences, the National DA’s, and in groups like that, where we got the chance to get the money. We did get some money, and hired somebody to start designing forms on which we could capture information from all the Complaints that we filed and all that sort of thing, and we would put them on these punch cards and then put it into a computer. We could then print out the batch file reports, so we had that. Then along came, I think, Singer started in with online stuff where you could actually put it in online. So—

Rubens: Hmm; Singer means?

Jensen: Well, instead of putting it on a punch card you could type it in, and so we—

Rubens: Is Singer the name though of someone who—?

Jensen: Singer was—you know, Singer Sewing Machines; they had a big plant in Hayward, and they made computers, so we got some of that early on. We developed a case management system using this technology which was tracking all the charging, and the progress of the case, so that we were tracking the results of the original charging decision. When a case was charged, you made out this big form that went into the system and then you kept track of it thereafter all the way through. This was the first time we ever had done that on a machine basis; there had been levels of that which were done by hand before, but this was the first machine kind of system.

Rubens: What were these machines? Were these Uni—what are they called?

Jensen: Uni-Vac? That was out there sort of, but what was it—Burroughs? I think Burroughs was the first computer we had, and then Singer, and then other things started coming out—Hewlett Packard maybe; I don’t know where we finally ended up.
MLJ: I know they started printing them on the—remember the green and white computer paper with the holes in it?

Jensen: Yes, yes; we had those. We had those reports, and we finally built a—one of the rooms on the 9th Floor was converted to a data room—you had to have them with air-conditioning and stuff, and we had to fix the room all up, so we put a couple machines in there and ran the system.

Rubens: Are you having to solicit bids for which company is going to come in, and create disclosures, and—?

Jensen: Yes; we had to do that. There are all kinds of controls over that through the grant process. The grant process said if you’re going to be using this money for any of that, you have to go through the system to do it.

Rubens: Because I’m thinking ahead—you’re going to have to face the INSLAW...

Jensen: Ultimately, we have to be able to show the County that it should add this to our budget.

Rubens: Yes; so there were no claims of favoritism or inside dealing or anything?

Jensen: No; I don’t think so. Well, they could come up later.

Rubens: Yes; that’s why I’m asking you now.

Jensen: No; we didn’t have any locally; and we developed a system that was only for Alameda County.

Rubens: Are the police developing this at the same time?

Jensen: The police have their own systems.

MLJ: Did other DA’s Offices adopt the system?

Jensen: Other DA’s Offices are coming along and doing this about the same time—I remember at least one time the National DA’s Association had a conference in New Orleans I think it was, and we went down there and I took the staff
people who ran our system with me—the idea was to have Offices who had systems show them to the rest of the DAs in the country. So we demonstrated our system, and I think there was one that was done by the Bronx DA, and there was one called the PROMIS System, which was done out of Washington.

Rubens: PROMIS?

Jensen: PROMIS—“Prosecutors....” P-R-O-M-I-S—yes. It comes up later, but we showed this to the other DAs. It was just an exhibition of how these systems work.

MLJ: Did it expand from a case management system to doing rap sheets and keeping track of defendants?

Jensen: No; we didn’t do that. Ours was just case management. About the same time, the County is expanding these things, so police are doing this, and there are local consortiums where the police are putting all of their warrants. They’re putting them into a system that allows specific people and agencies to get information back. I think nine of the area Counties had a system where you did that. So at the same time we are developing a case management system, the police are doing the same for their own functions because they want to be able to use this information to get it out on the street. So they’re developing systems where there are warrants input into computers, and they ultimately become very, very sophisticated. Now you have machines in police cars which allow officers to inquire and ask for the national information. But back in those days the only way you knew that there was a warrant was by putting out APBs and things like that on teletypes and other systems.

Rubens: “APBs” were All Points Bulletins?

Jensen: Yes, yes.

Rubens: The one over the radio system?

Jensen: Yes, but then systems were developed where all of the warrants in the State were on a system, and now all of the warrants in the Country are on the national system.

MLJ: Was the DALITE system the one that used the “PIN” number?”
Jensen: No; there was a system being developed in Alameda County for managing the Court system, and they called it “CORPUS,” C-O-R-P-U-S, I think. It is an acronym for something, but it was an identification system for the Courts and it had a number—like you’d get with your own accounts – you know, your PIN number?—it was one of these numbers that now identified you through your fingerprints. So knowing your PIN number meant that we knew who you were; and it wasn’t just the same name—we knew parts of the identifier.

MLJ: Wasn’t that unique to, or first started in Alameda County?

Jensen: I don’t think that it was. I think that it was being developed about the same time elsewhere, but these were things that were emerging all around.

Rubens: Well, I imagine they had to be feeding off of each other.

Jensen: Yes, they feed off of the technology as it goes along; then the systems you first develop are—just like all the rest of these technology systems – they become obsolete, so you’ve got to move on to the new technology. I’d say we moved from punch cards to online input relatively early.

Rubens: By the time you left—?

Jensen: By the time I left it was running that way. You could get a report, and they could tell you exactly what cases were on throughout the whole County and what their status was at the time. We would use it do things like seeing what cases had fallen behind. We called them Lag Systems; they could give you a report when the case had gone more than the period of time we wanted it to. So you’d get automatic reports through the system.

Rubens: I had some data here which seemed to indicate that lag time was really shrinking, that you had a high rate of conviction.

Jensen: Oh yes; we had a relatively high conviction rate. I think that was true at most prosecution offices—the rate of conviction runs around 75 to 85 or 90 percent. But statistically, a “conviction” is counted no matter how a person is convicted – it includes trials and pleas. Most of the cases are pled out so the real rate, when you come down to it, is based on those cases that go to trial, and what are the jury verdicts. What’s the percentage of cases where they’re found guilty at a jury trial? That’s what I mean. If you count that way and you get 75 percent, that’s a pretty good rating. And we used to have that at least, I think. But anyway—I thought DALITE was an important kind of thing, and I
wanted to start it out because you’ll probably get to it later when we get back to Washington.

So that’s the way that started—through the LEAA—and we were the only ones who were doing it. We still do it in the DA’s Office.

Rubens: And I was referring to a couple of crime reports last time, I think the LEAA did one in ’74, ’77, and ’79. And the FBI also kept track?

Jensen: The FBI kept crime reports. They had traditionally done the measure of where the crimes are committed— but they’d get those from reports from local agencies, so the FBI was wholly dependent upon the reports coming from the whole country—so if they’re saying the crime rate for burglaries in 1992 is X, it’s because they’ve gotten reports from local agencies.

Rubens: Yes; I think that was the basis on which I was saying that the crime and murder rates were up.

Jensen: Well, murder was one of those things where the statistics are more accurate, because there’s an objective crime. There’s a body; there’s a homicide, so you know that. There are other things you don’t know—if you’re going to measure things like assaults—they’re reported. There’s no independent confirmation of the event—they’re not reported through a hospital; they’re reported by people—or, for example, rapes are reported by the victims; the same thing is true of burglary, so you always have a problem when you only have the police report. The FBI reports depend on the people telling the police; so they do surveys. There are two different ways of getting statistics; one is by looking at the data itself generated by local law enforcement, and the other is looking at data that’s generated by surveys of victims. So they come out with different numbers from time to time.

MLJ: Anything other innovations at the DA’s Office that you’d like to discuss?

Jensen: Those are the ones that I remember most as being really important developments.

MLJ: What about the concept, which I think was new at the time, of in-house training?

Jensen: There had always been training. Remember I was telling you about the weekly meetings?
Rubens: Yes, did you keep that up?

Jensen: Oh yes, then we had one more LEAA grant where we got video stuff. We used the money to buy television equipment and to hire people as videographers, and to do training films by using video.

Rubens: Where are these films?

Jensen: They’re at the Alameda County DA’s Office. There’s a whole history down there; they’re still doing them and they have some great some great training stuff. We had a lawyer assigned to this who was a genius—a great playwright basically, and the guy who was the videographer was really tremendous, so we made great films.

Rubens: Do you remember his name?

Jensen: Don Ingraham was the lawyer. They still do this. Remember we talked about the guys who read the cases, then reported on the cases that had happened in the last week? Then what we did was make a video of the guy doing that down by the lake at the Oakland Courthouse; then we’d take the video and we’d send it out to our outlying offices so they could show it. They would play it at their meetings, because the Office was getting too big for everybody to come into the Courthouse. So we used it for that function, but for a lot of other things as well. We used it for training throughout the State. The State had us do some training—this is another subject matter, but we had—the State asked us to do a training film when determinate sentencing first became a part of California law. When it first came in, we did a training film for them and the guy, as I said, who wrote this stuff—he started it out by showing a Courtroom, and there was a Court Clerk, or the Crier, saying “Order in the Court; Order in the Court.” Then you see a door for the Court, and you’re waiting for the Judge to come out; the door opens, and out comes R2D2, [laughs] to show you what had happened to the sentencing process—so that was our film.

Rubens: That’s funny, yes. We talked a little bit about issues and your position on indeterminate sentence earlier, but that’s a big story.

Jensen: Yes, that was a big story. But the video stuff was important—the unit is still there, they still do this stuff; and they support trials, too. They will do videos when it will be helpful to be put on at trial. They did videos, say, when we had the explosive stuff; they did videos of the bombs blowing up to show what would be the effect of a bomb.
Rubens: We haven’t anchored anything other than ‘77 with the election and then you have ‘78 and ‘79; and ‘81 you go to Washington. So you have another three years as DA. Are those the three years that you’re in law school?

MLJ: Seventy-eight to eighty-one.

Rubens: Yes; that’s exactly it. So did you have some kind of influence in your daughter’s—or I should turn to you and ask how did you decide to go to law school?

MLJ: I would be interested to see what he says.

Rubens: Let’s hear his version first.

Jensen: Well it’s a good thing to do; it’s a good thing to do.

Rubens: Were you urging her to do it?

Jensen: Well, I didn’t urge her but I didn’t object to it at all. I thought it was a good idea and she was a good actress, so that—

MLJ: I was an English Major in college, and basically, the only thing I was trained for was to go to law school.

Rubens: Where had you gone to college?

MLJ: Cal. It might have been Howard Janssen, or you, who said “Go and volunteer at the Victim Witness Program for the DA’s Office."

Rubens: While you were still in college?

MLJ: Yes, so when I was in college I volunteered and worked in that Office.

Rubens: What did you literally do?

MLJ: I worked on getting people in touch with services, counseling; I was the advocate for people that were rape victims, and I followed a couple of trials. I
think one Howard Janssen did; I followed a murder trial that Carol Corrigan did, whose name you may recall as now being potentially up for the California Supreme Court. I watched that and decided that it looked like it was a pretty fun thing to do. So I decided to go to law school.

Rubens: You went to law school straight out of—?

MLJ: College; yes.

Rubens: Where did you go to law school?

MLJ: Santa Clara; I was rejected by Boalt.

Rubens: Okay; all right so pull didn’t help there.

MLJ: Might have been a detriment.

Jensen: Yes; I think that’s right—I think the Dean was Sandy Kadish, and I think that at some point along the line there I had been President of the Alumni Association.

Rubens: You had been?

Jensen: Yes; I told them “You don’t have any nepotism at the school but you sure are stupid.” [laughs]

Rubens: While you were in law school did you also have summer internships?

MLJ: I clerked for the Feds, the US Attorney’s Office in San Francisco, while they were doing a Hell’s Angels trial. I sort of worked on that. I clerked for a Judge in Santa Clara County as an intern and then the DA’s Office. I was talking about the training because the DA’s Office at that point had—what I call a farm system, where you could interview to be a law clerk for the summer after your second year of law school, then the presumption was that if you were okay and passed the Bar, you would be hired.

Jensen: See, if you had done your clerkship—so we had seen the quality of the work that was done by then—we could then hire people for the next year and let
them wait until the Bar results came in. Then they could be made Deputies once they became members of the Bar.

MLJ: So the good thing was that you—you had a letter and an offer for a job during your third year of law school or about halfway through your third year of law school. But you can address this better—I interviewed for it, and I was interviewed by a number of people at the law school and then at the DA’s Office in Oakland; my father was never involved in it. There were people that I knew interviewing me, and I’m convinced that they treated me no differently and, if anything, made it harder on me. I don’t think they asked me any question that was any different from other candidates.

Jensen: No; I don’t think. They wanted to make sure that they weren’t doing something wrong, so they were tough, that’s right.

MLJ: When I came to clerk, I went to where I was assigned with my group and Dad was still the DA but I didn’t see you that much, except in the Courthouse.

Jensen: She was out in the boondocks.

MLJ: The people I was working with—the lawyers did not treat me differently, and the people I was clerking with did not treat me any differently.

Rubens: You were working as Marcia Jensen; I mean, that was your name?

MLJ: Yes; that was my name.

Rubens: Then you finished law school?

MLJ: Everything he says about the DA’s Office is right; it’s a wonderful place to work and the people were fabulous mentors. You get great training. The people that were your class were your best buddies and—.

Rubens: So are we speaking about when you began after—?

MLJ: Well, you develop that during the summer and then you go back to school and take the Bar Exam. You could start working before you got the results of the Bar Exam, because the presumption was that you were going to pass and then all of my class—all seven of us passed, which I think was unusual.
Jensen: Not unusual, but there were circumstances where people didn’t pass.

Rubens: Sure yes.

MLJ: But there was a tradition that you could take it what—two times? One time definitely, and two times if you were really good—.

Rubens: I think three times. [laughs]

MLJ: No, no; I mean the DA’s Office.

Jensen: We would let you do that and—it was when Frank Coakley was there and we had a guy who didn’t pass; and took it the second time and didn’t pass; and took it the third time and didn’t pass—passed it on the fourth time and came to work, worked for one week, and left and went to work in private practice.

Rubens: So that was it—two times.

Jensen: So that sort of gave you an idea about what you should do with this.

MLJ: You definitely got to take it again; the question was how much they like you whether you got to take it after that.

Rubens: But your class passed and—and how many of your class then went onto work in the—?

MLJ: All of us. After we passed, we were all there, and I think we stayed together for quite some time actually—there are still people that are there.

Jensen: Yes; who were in that class.

Rubens: So you were literally working in the DA’s Office your Dad’s last year?

MLJ: A couple months, yes. Because you went to Washington in—?

Jensen: In April—but I knew I was going to leave before that time.
Rubens: April of ‘81?

Jensen: Yes.

MLJ: You were gone by the time I officially became a Deputy DA. You were there when I was a clerk, but when I came back officially as a DA, it was in September—and it was June of ‘81 when Jack Meehan became the DA.

Rubens: Are you thinking about doing anything else when you get the call to come back to Washington? Were you active in the election?

Jensen: No; I was not active, but I was called and asked to be a part of a committee of prosecutors in support of Ronald Reagan; which I agreed to do.
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Rubens: There we go; excellent; I’m ready to go. I had asked you as we walked out—I just didn’t know if it should be on the record—if you had gone to Earl Warren’s funeral. He died in 1974; he had been off the Bench for five years.

Jensen: Yes; five years. No, I didn’t go to the funeral. I had seen him, as I said, at the end of ’73. He had come out and made a presentation to a group of lawyers at a civic event on the evening that Marcus Foster was killed.

Rubens: Right.

Jensen: Yes; the Police came up and told me about the murder, and I left. But he was here in Oakland.

Rubens: So he basically retired here?

Jensen: Well, I don’t think he retired. I think he was still in Washington, and he had just come out here.

Rubens: I see; but that was ’73, and then he died the next year?

Jensen: Yes.

Rubens: Was there anything particular here to honor him?

Jensen: Just in the Courts—I’m sure just about every Court in the whole area stopped its proceedings in honor of and in recognition of his passing.

Rubens: Now this is—I’m not sure why I’m asking this question – but I want to ask about alcoholism in your office, amongst Police, and in the whole world of the legal profession. And didn’t Coakley do something for—or support an alcoholic center after he retired? I saw something like that and thought “Oh, I should ask that question.”

Jensen: I don’t know that he did.
We had some problems in the sense that there were some employees in the District Attorney’s Office who were alcoholics.

Rubens: Let me preface by saying this—I’m not asking for any other reason than it was a widespread issue in the ‘50s and the ‘60s, whether it was dock workers, Union officials-

Jensen: Correct.

Rubens: -bus drivers, and certainly among the professional class; it had become a problem and programs were starting. And I’m sorry that I can’t give you the piece I’m referring to, but there was something that Coakley had pointed to, so I wanted to ask you about it.

Jensen: It may have been part of some programs that were developed, but he—it’s just civic-minded kind of assistance that would make him be involved in that.

Rubens: Was that a particular problem?

Jensen: It was not a big problem, but we did have a couple—an inspector who was an alcoholic, and I think one of the lawyers—it happened. We had some people who were alcoholics that we had to deal with. We just said that’s the employee who—human relations.

Rubens: Yes; I never asked this question, but the Police belonged to the Police Officers Guild, isn’t it? They’re not Union; they’re—?

Jensen: They have an Association—various Police Officers’ Associations, yes.

Rubens: Was there any issue that ever came up regarding that?

Jensen: There were talks once in a while about joining Public Service Unions and other Unions. I think the Teamsters wanted to do something once upon a time, but by and large it never took hold.

Rubens: It wasn’t within your Office?

Jensen: People had talked about it, and I think that the County had three groups of lawyers, basically; the DA’s Office, the Public Defender’s Office, and the
County Counsel’s Office, so you really had to treat all those people essentially the same. But none of those people were organized—not during my time. It doesn’t mean that it hasn’t been done. In Santa Clara County, I think, they got into it and have organizations down there where there are Unions of all the lawyers who work for the County.

Rubens: Is that right?

MLJ: Yes; not federally—locally, the District Attorney’s Office is unionized. But it’s been fairly recent; I think in the last five years.

Jensen: Yes; it’s relatively recent down there, but it hasn’t taken place in Alameda County.

Rubens: Okay; this is kind of a silly personal question, so I’m just going to ask it—.

Jensen: Okay.

Rubens: We were joking—we were pointing out when we talked about the article on your wife that she said you liked to eat. Did you like to eat out?

Jensen: Sure.

Rubens: I mean, the reason I’m asking is that one of the things that people like to joke about in Berkeley is that it moved from being identified as the locus of the Social Revolution to the Food Revolution.

Jensen: Yes; I’ve heard it said that there are two kinds of people in Berkeley, the people who are joined together to have some political activity; and the other people who are looking for a perfect croissant.

Rubens: Yes. Well coming from a family where you had to bake—

Jensen: Yes; I had to do that—that’s right.

Rubens: Five hundred rolls-

Jensen: No; two dozen—we went out on occasion if we could afford to do it.
Rubens: I just wondered if you had any particular observations about that. I mean, it certainly changed; Oakland was not especially considered a place you would go for fine cuisine.

Jensen: No; we used to go down to Jack London Square. They had some decent restaurants down there, but it wasn’t fine cuisine. And there wasn’t anything around here for a long time—probably not until Chez Panisse changed the whole world and then we got into that kind of eating experience.

Rubens: Even Oakland was a little late to that.

Jensen: Yes it was; but San Francisco always had good restaurants, but that was an adventure—to get to San Francisco to go to dinner.

Rubens: Were there restaurants that you particularly liked, or were there watering holes where people hung out more than others? Did the DAs hang out at a certain bar?

Jensen: Most of the people were at places down in the Produce District in Oakland—we used to go to the Produce Inn, I think that was one we went to. We went out to Trader Vic’s, and that kind of stuff, but there was nothing that was where everybody went after work.

MLJ: What about Ratto’s?

Jensen: Ratto’s—we used to go to Ratto’s for lunch all the time. That sort of thing, yes.

Rubens: I interviewed Dave Jenkins, who was a kind of union boss in the City and involved with the Redevelopment Agency and really had a lot of political clout for a while, and if you went to a restaurant with him—it was either Star’s or Moose’s and it was like dining with a political Godfather. People would come up, and it was—

Jensen: Well, some people live their lives that way—no question, yes.

Rubens: In reviewing last week, you pointed out that Sonny Barger was based here—but I asked just a couple of people about what they knew about it and they said it had always been rumored that the Hell’s Angels were involved in drugs, but they didn’t think there were ever convictions—
Jensen: Rumors have—well, over time the Hell’s Angels have gotten to the point where they were heavily involved in drugs.

Rubens: The rumors were that they were?

Jensen: There were rumors, yes; but it is a fact that they are, and have been, heavily involved in drugs—methamphetamine.

Rubens: Beyond your period?

Jensen: Yes.

Rubens: So there were no significant prosecutions while you were the DA?

Jensen: No, no. I forget; but there were a lot of guns and things like that—yes.

Rubens: Guns, is what you said—

MLJ: The Hell’s Angels eventually were prosecuted for drug involvement on a RICO theory federally.

Jensen: In the Federal system there was a big drug prosecution.

Rubens: Is that going to come under your period?

Jensen: It was afterwards. We did have drug cases, but I don’t remember any huge, high-profile drug cases.

MLJ: You did say, however, that Sonny Barger was tried a couple times?

Jensen: He was tried for some violent stuff.

MLJ: Was he tried for murder?

Jensen: I think he was tried for murder, as I recall. I didn’t try it personally.
MLJ: Was he convicted? Because that may be one of the things that was part of the RICO prosecution.

Jensen: It may have been; that’s right.

Rubens: When you mentioned that Don Perata had been your Campaign Director, I was thinking, “Now he’s the most powerful man in the State Legislature.” But then was he just a school teacher in Alameda?

Jensen: He was active politically. He was active and worked in politics, but I think teaching was his daytime job.

Rubens: Did you know him from Alameda?

Jensen: Yes. I met him through that.

Rubens: Have you stayed friends with him?

Jensen: Yes.

Rubens: He’s someone you know and talk to?

Jensen: Oh absolutely; sure.

MLJ: How did he come to your attention to be your campaign manager?

Jensen: I think maybe through some of the Alameda people I knew.

Rubens: Let me ask about a different topic. Did you ever personally prosecute, or did you ever oversee a prosecution of cops who were charged with a wrongful killing?

Jensen: On several occasions we had police shootings that we investigated, but we never had a charge that was tried.

Rubens: The case I want to jump to is one that occurred—apparently in ‘73 in Emeryville there was a 14 year-old boy who was shot?
Jensen: That’s the one I mentioned before; that’s Guyton. Lew Warden brought it up in his campaign.

Rubens: Okay; they then end up suing 11 defendants, including the Oakland Sheriffs, the City, and two of your detectives. It went all the way up to the Supreme Court. I couldn’t find out why the Supreme Court would take it.

Jensen: It may have been on immunity issues, or it may—I don’t know.

Rubens: It looked to me like they were making an argument that there was a conspiracy. Oh, here – “11 defendants were charged with conspiring to cover up the misconduct of three Emeryville Police,” that’s what it is. And the Court said no; there was no evidence of that.

Jensen: That’s right.

Rubens: It seems that there is often a conspiracy-type claim—maybe it’s the nature of—

Jensen: Well, it’s the nature of the business. Because what happens is that any police shooting raises public issues—more than virtually any other kind of case. We established some of the early protocols in terms of the DA’s Office doing investigations of police shootings.

And I think most DA’s Offices have arrangements in terms of how they have people assigned to this, and they carry out full-time investigations in cases where there’s been a police shooting—particularly where there’s been a homicide. That has developed over a period of time, and it comes up all the time.

Rubens: I couldn’t remember seeing in my notes, what happened with the Alameda Sheriff who was alleged to have killed Rector?

Jensen: There was nothing that established any criminal conduct there.

Rubens: The other side wanted a name given. They wanted someone to prosecute, but the evidence couldn’t be found?

Jensen: Right.
Rubens: One more thing about Emeryville; there was a flamboyant Police Chief, John LaCoste?

Jensen: Yes.

Rubens: He drove a DeLorean, [laughs] and he was rumored to be involved with drugs. But more importantly, a friend of mine said that he had taken a walk with him once and he was saying that the Port of Oakland is a sieve; that the City leaders don’t have a clue about what’s going on. I had asked you before if there had ever been a problem at the port.

Jensen: Once—when John LaCoste was the Chief of Police in Emeryville.

Rubens: And his father, I think, had been the-

Jensen: His father had been the Mayor. And there were problems in terms of handling drugs out there. It was significant enough that we in the DA’s Office, we got Court orders and we seized the Police Department.

Rubens: Ah-ha, All right.

Jensen: We investigated what happened and checked it out in terms of the handling of drugs.

MLJ: Drugs that were seized on drug arrests for evidence?

Jensen: Yes; to check and see what had been done in the handling of drugs.

MLJ: Were there drugs that were missing after the arrests?

Jensen: That was the report, but we didn’t find anything. We found some poor handling and poor records—but we didn’t find any criminal conduct.

Rubens: How does that arise?

Jensen: Well, people make complaints.
Rubens: Okay; and then you’re charged with having to investigate it?

Jensen: That’s right.

Rubens: I had an article on that and I just wanted to ask about it—that’s kind of unusual?

Jensen: Yes; it is—very unusual. That’s the only time we ever did that.

MLJ: How big is the Emeryville Police Department?

Jensen: It was a very small Police Department. There were a dozen people, maybe, at that time.

Rubens: Okay; and Tom Houchins is involved with this too?

Jensen: He’s the Sheriff.

Rubens: So they’re given 60 days to take corrective action. There were missing records and there was some lax production of evidence, and—.

Jensen: The records regarding seized evidence, yes.

Rubens: This is ‘76. So, literally, you go in and have a staff that sei—

Jensen: Yes, we did. We just took it over. Actually, it isn’t a big deal. I mean, you don’t go down with guns and all this kind of stuff. You just take it over administratively and take a look at their records, and don’t let them take any records out. We got the records to see what we could find out. That was the whole point. We didn’t want to go in and say, “Well, we’re going to come back in about an hour and check out your records on these things.” We went down and showed up and just seized all the records to see what was happening.

Rubens: So theoretically, it’s—
Jensen: To see whether or not there had been some unlawful handling of the drugs that would affect cases, or some kind of criminal conduct in terms of how it was handled by the Police Department.

Rubens: Do you remember the outcome of that?

Jensen: It was an administrative problem that had to be worked out through the City Government—but we didn’t find anything that led to any criminal charges.

Rubens: All right. I should have started with this earlier, but in ’68 there was the issue of Tom Truax, a young assistant who worked for ABAG who stole a half a million dollars. I wondered if that would have fallen—

Jensen: Yes; and I knew that case. That was our case.

Tom Truax; he was the head of ABAG and he got into gambling. He started gambling in Emeryville and did pretty well, then he went to Reno and he gambled in Reno, and then he moved down to Las Vegas and didn’t do so well. His theory was that he would be able to make all the money back and pay back the money that he took from ABAG, but of course, that doesn’t always work. Ultimately, he was turned in by people at Caesar’s Palace—he went down there, and they wondered what he was, and—

Rubens: What a shame, yes.

Jensen: So he was prosecuted for stealing money from ABAG that he used for gambling. I handled the Grand Jury, I think, on that.

Rubens: And all of these things, alcoholism and gambling and similar things were all going to become medical issues; there’s going to be a “medicalization” of this kind of crime.

Jensen: Well, it’s sort of doing it the other way. See, once upon a time there was the medical model of crime, which said it’s a disease and we need to cure you.

And that’s what rehabilitation is about. So the big change was moving away from the notion that crime was simply a medical problem. Crime is a criminal problem. That’s a part of the whole bit about determinate sentences.

MLJ: The author of the medical model books was who? Was that Szasz?
Jensen: Well, Thomas Szasz was a writer who had a skeptical approach toward psychiatric testimony in criminal cases.

Rubens: When are we talking about?

Jensen: This is back in the ‘70s.

Rubens: It seemed to me that it became a trend that people who had an alcohol problem or a gambling problem were given lesser sentences and went off to rehab programs. That’s why I was asking you about—

MLJ: Why don’t you explain how it’s been handled under determinate sentencing?

Jensen: In effect, there was this notion that the purpose of intervention in the criminal system—you find somebody guilty and then what you do? You put them into rehabilitation on the basis that you’re curing them of the disease. And then you went—

Rubens: That’s from the mid-19th Century, that’s—

Jensen: Yes; that was one of the problems, and that’s the ‘70s. You got to the realization, through a lot of scholars, that this notion of rehabilitation in prison didn’t work because you didn’t know how to rehabilitate people and even more importantly, you didn’t know how to recognize when they were rehabilitated. So you have them in prison and you don’t let them go until you decide that they’ve been rehabilitated. So how long do they stay? It’s, in effect, a subjective decision by an Executive Branch person as to how long you’re going to stay, which is one of the problems with indeterminate sentencing.

Rubens: Right; which we did talk about earlier.

MLJ: In determinate sentencing, what’s the scheme for handling sentencing where there’s a crime committed in connection with alcohol or gambling?

Jensen: There, you prosecute the crime and you take whatever sanctions come out of the criminal context, and you recognize that if programs are available to help them with that problem, they get help, but it doesn’t replace the criminal sanction.
Rubens: I understand that, but it just seemed to me there was a lot more social consciousness that came into play about the need to rehabilitate.

Jensen: That’s correct.

Rubens: To both deal with the crime and with the issues of alcoholism, and gambling, and wife-beating, whatever it may be. I mean, all of these will unfold—.

Jensen: Yes; that’s right, but you don’t use rehabilitation in a medical kind of approach as the way of imposing sanctions.

MLJ: Maybe what Lisa is getting at—or you could explain just to straighten it out for the record—is whether as sociology or psychology came in with counseling or classes or something for say, domestic abuse, and became an option in the sentencing process, did it replace other sentencing options?

Jensen: Well, the idea was that instead of treating the offender on the theory that you’re curing a disease, you impose punishment on the offender for the crime, and so let the punishment fit the crime. It’s going back to the old kind of way of approaching it rather than the medical model. And there was medical modeling in, for example, domestic abuse. We had a lot of programs which were supposed to intervene whenever there was any case of domestic abuse and it—the one thing you didn’t want to do was arrest anybody. The Police were supposed to go out and mediate and take care of these situations and try to intervene in some fashion. That didn’t work very well, and over a long period of time you switched totally, until now the way in which all domestic abuse is approached is you arrest. We went away from that for a period of time when the idea was “don’t arrest anybody,” and then it got to be that that’s the only thing that works.

MLJ: Such that now in California a domestic abuse case can be prosecuted without the victim?

Jensen: Well that’s something else. I’ve never understood how they do that.

MLJ: I don’t either, [laughs] but it is the case that you can now prosecute domestic abuse without the cooperation of the victim.

Jensen: Well, I doubt if you could do that anymore—the idea once upon a time was that you’d get a report from a domestic abuse victim; a woman, and you
would have an arrest, and then what would happen not so uncommonly was
the woman would say, “I don’t want to prosecute; I don’t want to testify;” so
the case would go away. Now, if you could use the statement that she made to
the police originally to prosecute the case, then you could prosecute without
the woman. But the problem with that is—where is the confrontation as far as
the Constitution is concerned? I mean, she was never sworn, she was never
cross-examined, the whole thing. A couple years ago, the Crawford case by
the US Supreme Court made it very clear that you can’t use hearsay to
prosecute in that kind of way. So, if you did have ideas that you could use
statements of victims to prosecute without the victim coming in and
testifying—you can’t really do that.

Rubens: Did your Office—?

Jensen: We never did that.

Rubens: No; but would you have an interest in establishing policy?

Jensen: Yes; we wanted to get to the point where you could do something about the
underlying problems of domestic abuse, except we—the criminal justice
system—is not really well-geared to do that, and sending a Policeman out
with the idea that the Policeman is going to be the social-intervening kind of
mechanism—that’s not really what Police do. They’re not trained for that.
They don’t know how to do that.

Rubens: Nor should they, probably.

Jensen: And so you go back to what people really do, and there’s an immediate thing
that has to be done—to stop what’s going on. And in effect, the way you do
that is by arresting somebody. Then you get to this problem of how you’re
going to deal with the question after that. And the idea that you could
prosecute without the victim is something I don’t know that we ever got to. I
never saw any program like that.

MLJ: In Alameda County and in other DA’s Offices—I think Alameda County was
late to come to this model—certain people in the Office were allowed to
develop an expertise, for example, in sexual abuse or domestic abuse, and
then would handle those cases in a particular way.

Jensen: Yes; there really is something that comes out of what was called “vertical
prosecution.” If you looked at the system then and now, you have this
problem about—say a case is developed by an arrest that’s made in Oakland.
The District Attorney’s Office in Oakland does the original charging, the original processing; they put on a preliminary examination, and then the case is passed on to other attorneys, and in effect, the victim is switched through from person to person to person, and sometimes gets lost in the shuffle. One of the answers to that was to assign the person who is going to handle the case all the way through at the beginning, so you have to now take the person who is the expert and put that person in at the time of arrest, and at the preliminary examinations, the Grand Jury—whatever that might be; and the vertical prosecution model was what came in. We were doing that in terms of having special units that would be trained to do this sort of thing. And they still do—and the virtue of that system is that you have the ability to have trained people handle the case all the way through, rather than a sequential passing on of the case from person to person.

Rubens: Where’s the impetus for that organization coming from?

Jensen: It’s a more effective prosecution—it’s better for the victim, it’s a better way of prosecuting a case; you get more expertise. Your problem is it’s a very luxurious way to prosecute. You have to assign people to do this and that special assignment takes them out of the regular course of assignments. You have to have a lot of people to do that. If you have enough money, you can do it all the time.

Rubens: Now, you’re leaving the DA’s office in ‘81?

Jensen: Right.

Rubens: You must have seen some kind of rise in the number of reported rapes and domestic abuse.

Jensen: Oh absolutely; and that’s why, as Marcia is saying, you got to the notion that you wanted to do a better job of prosecuting these. You train people and you get them available early on to make the most effective prosecution.

Rubens: I guess the other thing I’m trying to ask specifically is, was it within the domain of the DA’s Association or any of the criminal task forces—these different entities that you were working on—to develop these programs that are emerging?

Jensen: Definitely; one of the things that happened is you got special funding for these. There were units set up.
Rubens: Just like we were talking about LEAA—

Jensen: Absolutely; you had State funding for what are called “Career Criminal Units,” the old notion that you give special attention to the people who are “career criminals,” because of a whole history of recidivist crimes. It’s always been the case that those people are responsible for a highly disproportionate number of crimes.

Rubens: Yes; I meant to use that term recidivism earlier. Wasn’t that something that came to be talked about a lot by the ‘70s and the ‘80s?

Jensen: Absolutely; yes—there were Units put together to focus on specifically that kind of prosecution. That means you had to take the lawyers assigned to them out of the rest of the world and put them into special units.

MLJ: Is that the first special unit that was created at the DA’s Office?

Jensen: I think it was the first special unit.

Rubens: Recidivism?

Jensen: Yes, for violent crimes.

Rubens: I’m going to ask you about an organization—okay; so this is Emeryville. Let’s get rid of Emeryville. I think I’m almost through. By the way—that Supreme Court conspiracy to conceal—’73 was the crime and ‘80 was the Supreme Court decision. It takes a long time to wend its way.

Jensen: It did take a long time.

Rubens: I bet you weren’t too afraid of that one, though.

Jensen: Well I don’t know. This is what I told you; this is what Lew Warden, who ran against me—that was an event that he used as a part of his campaign.

Rubens: I see. Just to back up a little earlier, there is a ruling—maybe I should just show it to you. Maybe you know it—from the 9th Circuit. Take a look at that. It was regarding alleged culturally biased tests for—.
Jensen: Right; didn’t we talk about that? This is where the Bar Association and the Court had developed a test for jurors, and this is what this case is about. This test was given to jurors and it became a ground for an attack on the basis that it worked discrimination, so the challenge was that any jury that had been assembled using this test would have been unconstitutional if they had been involved in a discriminatory selection. So this is the business about if the Federal Courts said that this test is a discriminatory test and had affected the selection of the jury, it could reverse the conviction.

Rubens: Yes; and it covered a 10 year period.

Jensen: Right.

Rubens: So in the end, they ruled that it was not discriminatory?

Jensen: They said that there wasn’t a showing that it was discriminatory.

Rubens: All right; we did talk about it.

Jensen: Yes; we did.

Rubens: Of course, it’s one of the biggest issues of the Newton trial, but I didn’t realize that it was a ruling that came out of the 9th Circuit.

MLJ: I thought we actually did talk about it, and that when it became an issue the DA’s Office stopped using the test.

Jensen: Well, we didn’t use the test; it was done by the Clerk’s Office. See, it was a test that was—when you come in for jury duty, and they tell you what it’s all going to be about, and the Clerk gives you some sort of instructions in terms of what your service is going to be—at that time they had everybody sit down and they gave them this little test that had been developed by the Bar Association and by the Judges. The test was sort of a basic kind of—can you read and write test—and they used it. That was the problem in terms of the assessment as to whether or not that test discriminated against persons who took the test, particularly African Americans. I don’t think it ever did, but that was—

Rubens: Yes; you said that and we talked about alternatives.
Jensen: Yes. But the problem was that if it had actually been found to be an unconstitutional assembly of the jury, then it could reverse cases for years.

Rubens: Right, right; I got to looking back into that when I was thinking about the decision that affected Little.

Jensen: Yes; retroactivity.

Rubens: I was looking through the Oakland Tribune just trying to see what kinds of stories there were about the Office. One was about Douglas Dunning, a 22-year veteran of the DA’s Office; he retired and he’s named the Oakland Chamber of Commerce Man of the Year. Were you ever named—

Jensen: I got an Award—I got a Paul Harris Award from Rotary. They gave awards for public service, but Doug Dunning was in the Civil Department. He was involved in schools and County Government. And that was before the County Counsel’s Office was created, so he went with the County Counsel when they split off. He was a veteran, obviously, and he was a wonderful guy and a very good lawyer, but that was his history. He had been in the civil side of the Office.

Rubens: My next point is that I see an article that says that Jerry Brown is considering you for the California Supreme Court. Now we’re moving into ’77 and ’78 and—I’m just wondering, are you starting to find yourself nominated for things?

Jensen: Yes.

Rubens: Not necessarily jobs, but for awards and—?

Jensen: Well, I guess so.

Rubens: When did you get the Rotary Award?

Jensen: The Rotary Award was in the ‘70s.

Rubens: I didn’t see it on your bio. Okay; were you the Chamber of Commerce Man of the Year?
Jensen: I think I won that; I thought it was a good recognition. I was also asked to become a member of the American College of Trial Lawyers, which is a distinguished group of which you are invited to become a member—and the interesting thing was that they don’t really invite many prosecutors because it’s basically a group of civil lawyers.

MLJ: They don’t really invite criminal lawyers, do they?

Jensen: Well, now they’re doing it more than they did. Back in the old days you didn’t have any criminal, or any prosecutors, so it was very unusual. I got invited, and I think that basically came out of the trial of Marcus Foster. But they did invite me, and I became a Fellow of the American College of Trial Lawyers.

Rubens: When is that; is that ’74 or ’75?

Jensen: Seventy-six.

MLJ: ’76 I think.

Rubens: Okay; how come you remember it so well?

MLJ: Because we went to Montreal.

Jensen: We went to Montreal, where I was inducted. We went up and we drove down from Montreal to DC and this was just before—I think it was ’75, because it was just a year before the Bicentennial. So we took a trip back through all this and it was wonderful, but I also got to go to Montreal and got inducted into the College of Trial Lawyers.

Rubens: Very nice; I’m so glad I asked this. This might not have come up. So Jerry Brown, what do you know about this potential appointment?

Jensen: After I got back to Washington, they were appointing Judges and they asked me if I wanted to do it and I talked to them. That was when Frank Newman was appointed; he was the Dean of Boalt Hall.

MLJ: This was after you were in Washington?
Jensen: This was after I’m in Washington. They were talking about it before, but they never got to anything. Actually, we did talk about it later on in the ‘80s.

Rubens: This is ‘77; “Brown is reported to be considering—.”

Jensen: But nobody ever talked to me about it.

Rubens: I was wondering if this had any legs to it. Is this being leaked—not by you, but by—?

Jensen: I don’t know; this was just talk. There may have been some sort of preliminary observations, but I really was working in the DA’s Office.

Rubens: They’re now saying Bird is virtually certain to be named. Were you particularly looking for anything at this point?

Jensen: No; I wasn’t. Well, I was sort of getting at the—I had been there for some time, see, and this sort of is leading up to ‘80 when there will be another election—so it’s getting to the point where you have to start thinking about what you’re going to do. I could have stayed being the DA, I suppose, or do I want to see if there are other things to do? I think that by the time the ‘80s came, I had been in the Office for 25 years. And I’ve been the DA for 12 years, so there’s a point where you start thinking about what—

Rubens: Right; but this is just 1977?

Jensen: Yes.

Rubens: I just wondered if you had talks with anyone. Were you looking around?

Jensen: I didn’t offer myself to anybody. They may have talked about it, and they may have had some people talking about it, and then later on in the ‘80s, I did directly talk to them about it.

Rubens: The other thing about Jerry Brown is that he’s very interested in his anti-crime image and he talks—here’s another article that says that he was supporting tougher laws on sentencing. This is a story about how some of the DAs, including you, are turning out for his appearance. Freitas then gives his
support for Bird, but it says that neither Van de Kamp nor Jensen would express an opinion on Bird. That’s at the very end.

MLJ: Is this the Bird recall?

Rubens: No; this is right when she’s appointed. The article says that only eight of the State’s fifty-eight District Attorneys appeared at press conferences with the Governor, but they represented the largest Counties—so then it’s you, and Freitas, and—

Jensen: I remember being up in Sacramento doing the DA’s appearances for the Police officers, when Jerry Brown comes in as the Governor. One of the major bills was determinate sentencing, so I went to Sacramento on several occasions and talked with the people who were processing the bill; and I talked with him about various things in the bill, so there was a good deal of discussion leading up to determinate sentencing becoming law in California.

Rubens: I see.

Jensen: Brown was interested in that, and so were we. This is one of those areas where you sort of joined and that’s what that article is about, I guess—is that here’s Jerry Brown as the law and order guy. He did have an interest in good law enforcement, including good sentencing, and that’s what the determinate sentencing concept was.

MLJ: In your discussions with him, did you have any opinion as to whether he was actually interested in good sentencing, or whether he was interested in it as a political—

Jensen: Oh he was—absolutely; no, he was. He was interested in it on its substance. It wasn’t a political thing for him. I mean, everything is political in a sense, so you do it because it appeals to some sort of political base, but he didn’t look upon being tough on law and order as being good for him politically, as opposed to looking at determinate sentencing as a good thing for the system. And his interest in it was as a good thing for the system.

Rubens: I think almost everyone now was for that. I mean just the cost of keeping people in jail...
Jensen: Everybody is involved. The Prisoners Union at that time was in favor of this; the ACLU was in favor of it, so it wasn’t as though it was just a law and order right-wing kind of thing at all.

Rubens: Exactly; so this was the year after you’re first rumored to go onto the Court. Is there anything to say about if you had a particular opinion about Bird, or—

Jensen: No. She was in Santa Clara County. I didn’t know much about Santa Clara.

Rubens: You have spoken about how you really saw yourself as non-partisan, and didn’t take positions publicly, and—

Jensen: Yes; we didn’t get involved in political races or in endorsing people for office, including membership in the Supreme Court.

But then it did get to the point that the DA’s Association talked about this and about what they would do, and I think over a period of time they finally came to a point where they opposed Rose Bird after she had been on the Court for a while.

Rubens: That led to the recall?

Jensen: Yes.

Rubens: And I assume you didn’t take a position on that?

Jensen: Well, I was in the DA’s Association. But I don’t think that I personally took a position on the recall. I was gone by then, I think. When was the recall?

Rubens: Mid 1980s? [1986].

Jensen: I’m assuming it was in the ‘80s.

Rubens: Yes; I think it was. She was on the Court at least ten years.

MLJ: It had to be in the ‘80s. It was probably ’82, because Cruz Reynoso was part of the recall and he spoke at my law school graduation in ‘81, when he was still on the Court.
Rubens: Since we’re talking about your professional contributions—here’s a story about when you are the choice for top crime fighter—it says “White Collar crooks won’t be overlooked;” this is when you go to the Justice Department.

Jensen: In Washington?

Rubens: Yes; but they’re saying here—I just want to review this article. I’ll put the date in later. I think we’ve talked about these things. We’ve talked about the California Council on Criminal Justice.

Jensen: Right.

Rubens: The Sentencing Practices Advisory Committee to the California Judicial Council, and the National Crime Information Center—I don’t recall talking about that.

Jensen: The National Crime Information Center (“NCIC”) is a federal activity—basically it’s the FBI—and it was an early computer system, early data system, where the idea was to get warrants that had been issued for persons who were fugitives and put them into some database so that Police could use them. There was one that was developed in the nine Bay Area Counties for that purpose, and NCIC was developed for the whole country. So, ultimately, NCIC is the organization that allows Police to tap into the computer and get information as to any warrant that exists in the country.

MLJ: Which is the system for the nine Bay Area Counties?

Jensen: There was a system and I forget what it was called right now, but it was developed—

MLJ: That’s not DALITE?

Jensen: No, no; that was our own. DALITE was our own system internally for the DA’s Office, but there was a system where the—I think it was the nine Bay Area Counties had a joint powers agreement between the Counties and the Cities, and they all submitted their active warrants to this system and made them available to everybody else. It was an early system that used—what now is the computer. In those days you would call into the Police Department when you’re in your police car and you’d give them information as to who the person was, or the license numbers, and they would look it up in their
databases and tell you. But then it shifted out so the information came directly to the police cars.

Rubens: But, serving with the NCIC—

Jensen: I was appointed to NCIC through the DA’s Association; that is—I got asked to be a member of that, essentially, as a representative of local prosecutors and their interests, in the system.

Rubens: I would think that would be interesting to you. It must have been—

Jensen: Absolutely; it was very interesting.

Rubens: It must have been relevant in some way to the Patty Hearst case, or that had already happened—

Jensen: That had happened. But it is the central mechanism to find fugitives—when the police make a stop, or make an arrest, they don’t really know who they have; then through fingerprints you can find out who you have, and then you check the databases and it turns out you’ve got somebody who is wanted for murder in Iowa or whatever. That is one of the principal ways in which fugitive arrests are being made.

Rubens: How long did you serve on that?

Jensen: A couple of years, I think.

Rubens: You’re trying to ask something Marcia?

MLJ: Well I was just going to go for a bigger picture. What you’ve talked about is an early way of information sharing between different jurisdictions in law enforcement—local police, federal law enforcement, local prosecutors, federal prosecutors—how have you been involved in trying to increase information sharing or relationships between these agencies, and how have you seen that change?

Jensen: I think that it was growing as the ability to share information became technically possible. It became obvious that this is what you wanted to do and you used all of the technology that you had available. In the old days you used phones and early data processing systems to do this, and now you get it so it’s
instantaneous. NCIC is a very good example of a federal service being provided to local law enforcement, because local law enforcement provides the warrants. They go in and put information into this database, which manages it and sends it back out to the police agencies. Then they’re distributed through state or local systems so that you can tap in and find out the information.

MLJ: But aside from the technology, did you find when you were in the role of liaison both as a State prosecutor to federal people and as a federal prosecutor back to state people, that for political or other reasons information was not being shared, regardless of the technological ability to share it?

Jensen: I think there was a long time where you didn’t have much sharing. It was difficult to share, and this is the age old turf stuff when the sharing of information was not necessarily free and open, so the whole idea about people cooperating together and sharing is something that took a lot of work. When we get to the federal level, one of the first things we did in the federal system was try to improve the sharing of responsibilities between local and federals.

Rubens: Here’s a ‘78 article about streamlining and sharing information—it’s related to the Patty Hearst case. It discusses the fact that the FBI is no longer investigating thefts, in this case, from the waterfront. The FBI will no longer look at thefts of amounts under $1,000. I think there is a piece missing in this article, but this is in 1978; is there anything important here? The article says “Two Bay Area District Attorneys, Jensen and Freitas, said they discussed Hunter’s plan. . .”

Jensen: Billy Hunter was the US Attorney in San Francisco.

Rubens: Yes. Okay; you know him?

Jensen: Oh yes; because Billy Hunter had been a Deputy DA in Alameda County. Early on.

MLJ: Did you have anything to do with him becoming US Attorney in San Francisco?

Jensen: Yes, in a way; I supported him.

MLJ: Did you recommend him?
Jensen: He had already entered the race as I recall. But he became—he left Alameda County and went to San Francisco County.

Rubens: As a DA?

Jensen: Yes; he went to work for Joe Freitas. When Joe Freitas became the DA, he wanted to get somebody who was an African American who could be in a high position, and the only place he could find anybody was in Alameda County.

Rubens: Yes; well it seems to me there is a history of raiding Alameda County.

Jensen: Well, they did. So Billy Hunter went over and worked for Joe Freitas in one of his top positions, then he became the US Attorney.

Rubens: How do you become US Attorney?

Jensen: The President appoints you. It’s a Presidential appointment and it’s political in that sense. I think his principal opponent, in terms of who was also being considered for US Attorney, I think, was Chuck Breyer. Chuck Breyer had been in the San Francisco DA’s Office and active in all this stuff, and he was interested in it. And Hunter got the appointment.

Rubens: So what’s going on in this article?

Jensen: Hunter is tasked by the Attorney General to talk to various people out there about how we can share things together. So we had meetings; he asked us to go to meetings and he talked about how we would share bank robbery prosecutions, and [laughs]—as far as I could understand it—it was “how many of the bank robberies will you take?” We always used to do it on the basis that the federal people had a particular interest in banks, and the federal interest was being vindicated by their prosecution, but then they were the ones who would define what the federal interest was. So, some bank robberies they were interested in, and some they were not. And theoretically it would be big things that interested them—maybe interstate activities or stuff like that.

But we always thought—from the standpoint of the local prosecutors, we thought the federal interest was based upon the fact that if the bank robbery was a case where there were photographs of the person, where funny money had been recovered from the person, and there were fingerprints and a
confession, then there was a federal interest. But if you didn’t have all that, then it was a matter of interest for the state. So we’re the prosecutors—

Rubens: That had to do the hard work?

Jensen: Yes; well they took the good stuff—but the point is that the local prosecutor is a prosecutor of last resort. You can’t say, “I have no interest in this case.” The federals can say that there’s no federal interest, but you’re the local prosecutor and you can’t do that. You do them all. So it turns out that when we had the meetings with Hunter and we talked about this it’s the same idea that we ultimately pursued when Reagan came in. The Administration did many of the same things—trying to set up organizations between local prosecutors and local US Attorneys, local police, federal prosecutors, and federal investigators. That’s a sensible thing to do. But it comes from a whole background of where the concept of “sharing,” from the local standpoint, was always that we shared with you and we don’t get anything back from you.

Rubens: What’s kind of interesting to me is this is going on independent of the Carter Administration.

Jensen: Oh yes; it’s not a political thing; it’s practical issue.

Rubens: It’s an administrative—?

Jensen: Absolutely; good government.

Rubens: Another association and I meant to ask you about. You were Chairman of the California Peace Officers Association’s Law and Legislative Committee?

Jensen: Right.

Rubens: You’re considered a Peace Officer because you’re a—?

Jensen: Well no; I’m not a Peace Officer, but we had agreements to work together, since our interests were much the same. You recall, we had the Deputy DA from Alameda County in Sacramento. That person could also represent the Peace Officers, and it would be to their advantage to have that person up there.

Rubens: I see; so they didn’t have to send one of their—
Jensen: I am the boss of that person, so I get involved in this, and I’m also Chair of the Committee. It’s really because of shared interest and efficiency.

Rubens: So this is starting at a local level?

Jensen: Yes.

Rubens: What did that require of you?

Jensen: Well, as a member of the Law and Legislative Committee you would be involved in the legislative program every year, and interested in getting new laws enacted that would help law enforcement, and in stopping laws that would hurt law enforcement. So we would have sessions where we’d take positions on bills, or we would sponsor bills. Most of it was taking positions on bills and working out ways in which our representative in Sacramento could appear at the Committee Hearings to present our position so that legislators would know what our position was.

We did a lot of it, and that’s one of the reasons I got involved in determinate sentencing, because that was my role with respect to the DA’s Association. We pushed the bills that we wanted, and the DA’s Association was in favor of the determinate sentencing law.

Rubens: I keep asking you about the nitty-gritty that’s constantly nagging at you. We talked about the increase in prostitution, the “meat market” on MacArthur Boulevard. I saw a couple articles on that. We talked about the double voting list. Another reference I noted was that you filed charges against massage parlors in Berkeley. Does that mean someone brought a complaint? How does that work?

Jensen: We don’t generate that. The DA doesn’t—the Berkeley Police Department did.

Rubens: What’s your interest?

Jensen: The Berkeley Police Department would bring it to us and we would file it. That’s the way the system worked. The Police do the investigations and we file them.
Rubens: Is this just one of the ebb and flow of the underside of human life in a major metropolitan—?

Jensen: Sure; it’s what the police do—it’s really driven by what a Police Department decides it thinks are its major responsibilities. I’m not sure what the cases you’re referring to are, but that’s—

Rubens: I also see an article about a complaint that you have to deal with that came out of the events surrounding The People’s Temple with residential searches. Berkeley police searched for a murder clue. This is March of 1980—right before you’re about to leave. What is this—“inspectors are frustrated with their inability to find a weapon where two former People’s Temple members live,” and you call the Chronicle. I can barely read this; “this is not a search to clean up the neighborhood.” Jensen said that if police are legally searching an area with an owner’s consent, any contraband found there can be used as evidence. So maybe what happened is they found something—

Jensen: There may have been some question about why there had been a search.

Rubens: I see, yes; do you remember that?

Jensen: Yes; because that really wasn’t an Alameda County issue. The People’s Temple was more—

Rubens: San Francisco?

Jensen: —San Francisco, yes.

Rubens: So this happened to be one incident and it just came up in a search.

Jensen: It could have been some search that was in our County.

Rubens: All right; so I think we’re really about to leave Oakland. But here’s another milestone—we were talking about 1977 being a watershed with Lionel Wilson coming into power. 1978 is another watershed in California with the passage of Prop 13. It really fundamentally changes the amount of money that’s available to do stuff.

Jensen: Absolutely.
Rubens: ABAG gets caught up; we talked about ABAG earlier. They’re really hamstrung for quite a while. They’re about to build a new office.

MLJ: Is there lobbying by the District Attorney’s Association on Proposition 13?

Jensen: I don’t think so. I don’t recall us getting involved and taking a political position on that, but it impacted things because it changed the amount of monies that are available locally.

Rubens: Yes; and there’s a quote from Paul Cobb, who says just when the African Americans get into power that’s when the money goes away. He says the white folks leave us to figure out what to do—something like that; I don’t have the exact quote but—

Jensen: Well, the ramifications of Prop 13 are still with us.

Rubens: Yes; absolutely. There was a lot of opposition to the Welfare State and to the use of State and Federal monies. Did you see anything immediately?

Jensen: Well, it made budgets harder because you had a great deal more attention in terms of the competition for money; in terms of what’s available in the County to take care of all its responsibilities. It is really demanding, and I don’t know whether it’s the City or the County that gets hurt most, but the political enemies get hurt by this more than anything.

Then the State would come in and—their position was they would order that the Cities and Counties take on Task X—which would save the State money, but then they wouldn’t fund it. So you had this problem over and over and over again with State-mandated programs that were not funded.

Rubens: Any particular program that comes to mind?

Jensen: No; I can’t give a specific, but that was a recurrent theme.

Rubens: Yes; so 1980—

MLJ: Was that an election year?

Jensen: Yes.
MLJ: Obviously for the Presidency, but for DAs as well?

Jensen: No; because I had run in ’78. I did not have to run in ‘80. I was in the middle of the term because I ran in ‘70, ‘74, and ‘78.

Rubens: Had you been a particular admirer of Reagan when he was Governor?

Jensen: I had been up in Sacramento a lot, so I met him. And through the DA’s Association we had some meetings where—for example, he invited us all in when we created the California DA’s Association and split off from the County Counsels—we had photo opportunities and that sort of thing and it was fun. Then of course Ed Meese is working for him. Ed Meese comes out of Alameda County and said, “Keep in touch.” So I knew of the Administration and—sure; I admired him.

Rubens: I think I asked you about this earlier, but let’s just revisit it for a minute. While Reagan was Governor had there been any thought that you would play some role at the State level or—?

Jensen: As I said, I think I did get offered a position with the Court of Appeal.

Rubens: Right; and you said that it was like being in permanent law school. [laughs]

Jensen: Yes; I turned it down.

Rubens: I love that phrase, but did it ever cross your mind to run for Attorney General?

Jensen: No; it didn’t. No; I really didn’t want to do that.

Rubens: You said you liked being a DA.

Jensen: Yes; I liked being a DA and I didn’t want to get involved in State-level politics—that’s for sure, I had seen enough of that.

MLJ: Isn’t that when John Van de Kamp was running for Attorney General as well?

Jensen: He ran later on. He wasn’t running back in those days.
Jensen: But it was a sort of a traditional path for DAs; Earl Warren went from DA, and other people did. Pat Brown did, so it wasn’t as though this didn’t happen. And it happened in LA; Evelle Younger—so a lot of this happened, but I just didn’t want to run for Attorney General. It was a job that didn’t appeal to me particularly.

MLJ: Because you didn’t like the job or you didn’t like the process of running?

Jensen: I didn’t like the job, I didn’t like the idea of running for a State Office, and the one campaign we had when I ran in ’74 was unpleasant enough.

Rubens: I don’t know the State structure. Would there have been an Administrative job—?

Jensen: Oh, you can get administrative jobs, and I think I was offered the job of being the Head of the Department of Corrections or something like that, but I didn’t want to do that, so there were jobs like that every once in a while.

Rubens: I assume—I shouldn’t pose a question this way—that you were not particularly involved in the election in 1980, but maybe you were. Did you—?

Jensen: I was not involved in the election particularly. As I think I said, I was asked to be on a Committee of Law Enforcement people in favor of Reagan.

Rubens: No.

Jensen: Oh I didn’t? Well, I did get asked to be—just give my name as a prosecutor who did this.

MLJ: Who asked you?

Jensen: I think it was Herb Ellingwood, who was one of the Assistants for Ed Meese, and I said, “I can do that;” so I was involved to that extent. I was getting more into that sort of thing. I said before that I didn’t get into that very often, but I was getting more and more into that.

Rubens: But here you were willing to endorse?
Jensen: Well, DAs were getting more and more involved in that sort of thing.

MLJ: Were you doing it with a view toward the idea that you would get a job in the Administration?

Jensen: I was not, but—

MLJ: Because you were still a Democrat at the time?

Jensen: Yes, right; and that was a good thing. They liked that.

MLJ: When you put your name in for the Reagan administration, you were a Democrat?

Jensen: Right.

Rubens: So the question is—to what extent are you thinking if Reagan gets in, there might be a place for me? The only little evidence that speaks to that is—where do I have the article? It says either you were offered or you were nominated for the position of the Head of the DA’s Association and you didn’t take it.

Jensen: Well, I had been the President of the DA’s Association as the DA, but then when we went into an Association where we had just the DAs, we made it into a professional organization and we hired a person to be the Executive Director. I was never offered that and I never would have done it.

Rubens: The reference wasn’t to the Executive Directorship; it was to being the Head of the—.

Jensen: Well, I was the Head; I had been the President on one occasion—I had already done that.

Rubens: Would that be for only one term?

Jensen: Yes; you can do it for a year, or maybe two years, and then that was it.

Rubens: So the implication was that you were anticipating Reagan’s election and that there would be a place for you.
Jensen: I don’t know what I anticipated, but along the way it occurred to me that this would be a good idea. I don’t know whether that was at the same time when the Committee came up or not—but it certainly was not something that was a part of my thinking—not something where I said to myself that I am doing this, and I have a set pattern of what I want to do and I’m going to do this, and I am going to get ready to do this. It’s just in the back of my mind.

Rubens: Right; well certainly it seems to me that all these Task Forces you were on—

Jensen: I enjoyed that, yes.

Rubens: You must have been dealing with the Feds.

Jensen: Oh absolutely.

Rubens: And saw the Justice Department as a place where maybe—

Jensen: That’s true.

MLJ: But were you doing that as a political stepping stone or were you just doing that because of your position?

Jensen: I was doing that because of the position, and because I thought it was a good thing to do as a public prosecutor, that that’s part of the role—to be a part of the development of policy and the development of overall support for the function.

Rubens: In the news coverage of how this appointment comes about—“Jensen May Get Top Post”—there’s a little dispute between whether you’re talked to first, or whether you go back and look for what’s possible.

Jensen: What happens is after the election, and Reagan is elected, then they had various meetings of people, and one of the meetings they had was of this Committee.

MLJ: What Committee?
Jensen: The one that I talked about—the Law Enforcement Committee in support of Ronald Reagan. The Reagan Administration had a meeting down in Los Angeles where they wanted to talk to various people about what positions the Administration should take that would be consistent with good law enforcement. And that’s what this Committee was supposed to do.

MLJ: Who from the Reagan Administration was there?

Jensen: Meese was there and other people were there and we talked about what they would do. And it got to the point where we talked about “Well, what about being a member of the Department of Justice?” So we talked about it—I don’t know whether—I think I probably said, “What about being able to move back to Washington and get involved in the Department of Justice in the Criminal Division?” That’s basically all I knew. That was about all I knew about the structure back there—that there was a Criminal Division, and that it was a significant part of the Department of Justice. And criminal is my business.

Rubens: And by the way, we knew that Meese was going to be Attorney General if Reagan was elected?

Jensen: No, no, not the Attorney General; that he was going to be a part of the staff. Remember when they started, Reagan’s staff was split into the so-called “Troika,” with Meese and Baker and Deaver. But Meese was in a policy position from the beginning of the Administration. He was also basically the guy in charge of the Transition.

Rubens: Of Transition, that’s how I understood it, yes.

Jensen: Well see, that’s a very big significant part of this and he’s looking for staff, and who are you going to get to go into these positions? And I think he thought that I would be a good person to get to go into the Department of Justice.

MLJ: But also just to clarify, Meese was not the first Attorney General in the Reagan Administration?

Jensen: No, no; William French Smith was the Attorney General. Meese was on the President’s staff. He was in a staff position. So I would not be going in working for Meese; I’d be going in working for William French Smith, because he was designated early on—right away – as the person who was going to be the Attorney General.
MLJ: When you talked to Meese at this meeting, had William French Smith already been named as the Attorney General?

Jensen: I think he was. I think it was known that he would be—I don’t know whether he had been officially named.

Rubens: Was he at that meeting?

Jensen: I don’t believe so.

MLJ: He wasn’t a prosecutor?

Jensen: No; he was not involved in law enforcement. He had been at Gibson, Dunn and Crutcher—the big, big law firm.

MLJ: Did you know him at all, or know of him?

Jensen: I think I had met him. He was a Regent of the University of California, too, at one point I think. I may have mixed that up, but I didn’t know him in my business as a prosecutor. He was not involved in that at all. I met him along the way after the Reagan election.

MLJ: So when you brought this idea up with Meese, what was his reaction?

Jensen: His reaction was “Good idea.”

MLJ: Had he thought about it prior to that?

Jensen: He had thought about it because, as I say, this was an area in which he would be expected to be a leader in the transition, in that he had been involved as a liaison with criminal justice officials and law enforcement agencies in California for Reagan, when Reagan was Governor. So it’s a natural sort of thing when Meese is involved in the transition that one of his principal duties is making sure that you get a good Department of Justice and a good law enforcement kind of perspective.

MLJ: When you went to this meeting, did you have in mind that you were going to talk to Meese about this?
Jensen: I think so; at the time the meeting was set up. I don’t know that I thought about it before they invited me to the meeting.

Rubens: Well, you certainly couldn’t Google the—

Jensen: I couldn’t Google anything.

Rubens: Because you couldn’t have known the structure of the—

Jensen: I couldn’t have Googled it now. [laughs]

MLJ: What discussions or, if you will, permission did you have to go and have this discussion with Meese from your home front?

Jensen: Barbara knew.

MLJ: What was her reaction to going to Washington?

Jensen: Her reaction was “yes, okay;” she was interested, but I don’t think we had thought it all the way through because when you talk about these things you talk about them in grand steps. This is a big move—and then after that you start talking about the details. As I say, that was the idea, so I think we’re talking about—what about leaving the DA’s Office? What about where do you go? And asking whether it is a good idea to do that—to go into something like that? I think we were of the same mind that this would be a good thing.

MLJ: When you mentioned this to Meese, what’s the process until you end up with a position?

Jensen: I mentioned it to Meese, and he said “get your name put in now.” They have lists—huge lists of names of people that are interested in a position like that. So I got put onto the list of names, and the way it works is I get invited to go back to Washington and talk to William French Smith, who is now—he’s setting up the Department. They’re interviewing people to run all the various Divisions. So I got invited to go back to Washington and talk to him.

MLJ: At some point Rudy Giuliani comes into the picture as another possible—
Jensen: He also wants to be in the Criminal Division; so it got down to where Rudy and I, I guess, were the major contestants to be appointed to be Head of the Criminal Division. The structure is that there are all kinds of positions in the Department, but the significant ones are the Presidentially-appointed ones. And it goes—the Attorney General, the Deputy Attorney General, and then there was a position called Associate.

MLJ: But that wasn’t created yet, was it?

Jensen: Well, there had been an Associate—we’re going to get to that, but there is an Associate position that’s sort of over various parts of the Department. Then there are litigating Divisions; Criminal, Civil, Anti-Trust, Tax and—

Rubens: Those are Civil Service, right?

Jensen: No; those are litigating Divisions that have those different areas of responsibility and law; and there is a person in charge of each of those called an “Assistant.” That is a Presidential appointment. So, to be the Assistant in charge of the Criminal Division, you must be appointed by the President and confirmed by the Senate. So that’s an important position, and in the Washington world, the difference between a Presidential appointment position and a position underneath that is rather significant.

Rubens: Significant in terms of status, money, process—?

Jensen: The whole thing. I was interested in getting the position as Head of the Criminal Division, and I don’t know that I knew that much about all the structure. I was clear that it was a position where I would want to go. I think it got down to the point where they said “Well okay; Rudy Giuliani would be the Head of the Criminal Division and you could work for him as one of his principal Deputies, okay?” And I said I didn’t want to do that because that would not be a Presidential appointment.

Rubens: If you’re a Deputy?

Jensen: Yes.

Rubens: What was Giuliani at that point?
Jensen: He was in practice in DC—no, excuse me, in New York. He had been in the US Attorney’s Office there and had been a Federal prosecutor—and he had been very, very good. I think he had been involved in organized crime stuff and he had been involved in ABSCAM, I think. And he had been in the Justice Department early on in a lower position.

Rubens: Oh, and then gone out?

Jensen: Right; back into private practice, which is one of the ways in which the world works—is that big law firms have 27 Democrats and 36 Republicans, and vice versa, and they go into government at lower positions. A new Administration comes along and they go back at bigger positions. That goes on a lot. Giuliani had been through that process, and it was looked upon as being a very good idea to put him in as Head of the Criminal Division.

Rubens: Who is literally telling you that he will be number one and that you can work for him?

Jensen: I don’t know; somebody in the Justice Department.

Rubens: And you say “I don’t want that?”

Jensen: Yes; then what they decided to do was to put Rudy into a position called Associate Attorney General, in charge of all the criminal functions of the Department.

MLJ: And you’re saying that that was not a newly created position?

Jensen: It was a position that had been in the legal policy area and in some analytic areas—they had a position they called Associate, but it hadn’t been a position which oversaw the criminal functions of the Department before. So they put him in, and he, in effect, was then in a position between the Deputy Attorney General and the litigating divisions and the Criminal Division; so the FBI, the prisons, all the DEA—all that sort of thing would report back through him to the Deputy Attorney General. As the Head of the Criminal Division, I would be working for him in the sense that the Associate Attorney General had oversight of all the criminal functions in the Department. But that was okay by me, so—

Rubens: Okay; and who came up with that idea?
Jensen: That was actually their response. They came up with that. They wanted him, and if it came down to where they had to choose—I’m sure what would have happened if they had concluded that we can’t do two positions—is that he would have been the Head of Criminal. I don’t think I would have been there. But the way it worked out is that he was appointed to this higher position that was set up just to handle the criminal affairs in the Department.

Rubens: Because if you didn’t get a Presidential appointment—?

Jensen: Then I’m not going to go back.

Rubens: Because?

Jensen: It’s not worth all the movement and everything else; because it’s not a significant part of the management of the Department.

Rubens: Policy making and—

Jensen: You’re just a part of the management of the Criminal Division, you’re not a part of managing the whole Department and developing policy.

Rubens: How long did that negotiation go on?

Jensen: Over a week? I don’t know; it was quick. They had to do these things relatively quickly because they want everything in line. I think this was all done by January before the Inauguration.

Rubens: So now what’s going on—“meanwhile, back at the ranch” [laughs]—because I had never heard the term before—the anoint and appoint process—had you decided who you were going to appoint?

Jensen: No, no.

Rubens: You’re waiting to get the offer and to say I’m going to do this.

Jensen: I’m not in the position to do that.

MLJ: You hadn’t given any thought to it whatsoever?
Jensen: Well, I’m thinking about it. If I go back there, what am I supposed to do? And I don’t really know enough about it, I guess, to—.

Rubens: Oh, I don’t mean there, no—I mean in the DA’s Office?

Jensen: Oh, in the DA’s Office—oh excuse me.

Rubens: How are you going to anoint and appoint?

Jensen: Yes—if I leave, what’s going to happen? Then it becomes a question of who I am going to say I’d like to see as the successor, and then tell that to the Board of Supervisors.

Begin Audio file 14

Rubens: We were asking, had you been thinking about—

Jensen: Successors?

MLJ: Was there a rumor that was getting started at the DA’s Office?

Jensen: Yes; because I had gone back to DC.

Rubens: Twice, according to this article.

Jensen: I went back to be interviewed and as soon as anything like that happens obviously, everybody is talking.

MLJ: Was there a competition that was going to develop for who your successor would be, and did you start getting—?

Jensen: Well I didn’t get—

Rubens: Pressure within the Office?

Jensen: No; I didn’t get any pressure in the Office. They basically left that up to me to decide.
Rubens: So it’s Iglehart.

Jensen: He isn’t really high up and hasn’t been in the Office long enough.

MLJ: Who was under consideration—not what the paper says, but—?

Jensen: Meehan and—and see, Howard Janssen.

Rubens: Howard Janssen, it says here, and then Tom Orloff.

Jensen: Yes; and Meehan had been there much longer than either of those because—

Rubens: What is Meehan’s first name?

Jensen: Jack Meehan; he had been there in the Coakley time—since the ‘60s, I think.

MLJ: He was responsible for the meetings with the tapes that we’ve talked about?

Jensen: Right.

MLJ: Appellate updates?

Jensen: Right; and he was in one of the senior positions.

MLJ: But he didn’t really give day-to-day advice?

Jensen: No; he tried cases and he did the training sorts of things. And he had administrative positions that involved running parts of the Office. He was the most senior of the people who would be considered. And I had Iglehart, and I had hired Orloff, and I had hired Janssen; so all of those people had been in the Office since the ‘70s. Meehan had been there since the ‘60s and a good deal of time before that, so when it got down to it, my final decision was based on the fact that he had been there and had more experience and had been in more leadership positions, so he would be the person that I would support to be the successor DA.

Rubens: You felt he was going to carry on in the traditional direction of the Office?
Jensen: Right; yes.

Rubens: Of sharing and professionalizing and—?

Jensen: As I said, this is inside the Office and he would be a person who would represent the traditions of the Office.

MLJ: So was it a seniority decision versus a talent decision?

Jensen: No; it wasn’t seniority. There were other senior people who were much senior to Janssen and Orloff, but they were people who just didn’t have the leadership qualities as far as I was concerned.

Rubens: So he had it; he wasn’t too old?

Jensen: No; he had a good background and he was well-respected in the Office, and he would do fine as far as I was concerned.

Rubens: So you discussed it with him and—

Jensen: Ultimately, yes.

MLJ: Did you discuss with Orloff, who is now the DA, and with Howard Janssen why you weren't selecting either one of them?

Jensen: Not as much with them—I think I mostly made up my mind and said what I would do, and then I talked to Meehan. So Meehan would then go to the Board of Supervisors—

Rubens: You had to resign?

Jensen: Yes; and he is appointed.

MLJ: Had you been confirmed when you resigned or not?

Jensen: I had not been confirmed, but I had been appointed.
MLJ: But you hadn't gone through any of your Senate confirmations?

Jensen: I hadn't gone through the Senate, I don't think. I'm trying to remember what the timing was because I don’t think I really went to the Senate until about April and I was back there—well, what happened was I got the word from William French Smith that he wanted me to be the Head of the Criminal Division, and I had accepted that. All right; so now you have to start in on all the process. I have to get out of the DA’s Office and resign from the County, and then move back to Washington and find out what’s happening there. And then part of the process was who would I support to be the successor, and I decided in the mix of all that that I would support Jack Meehan; and we were getting ready to move. This is about March or so, and I think that I had anticipated resigning as of April 1, or something like that, from the County. Right about the time we were getting everything put together—see, I had to go back to Washington and find a place to live, too, which was—and there was a good friend who had been in the Office at the time I had been the DA—a lawyer named Roger Olsen. Roger was a friend, and he was good enough to let me stay with him—him and his wife, Joanne—let me stay with them when I came back to Washington. He had been in the Department of Justice, and he knew about the Department and about Washington, and he was a good source of advice.

Rubens: Just what I was going to ask you; did you know anybody that you could talk to about—?

Jensen: Sure; Roger. Roger had been in the Tax Division and had tried a lot of cases, and then he had gone into a private firm and was a tax lawyer in DC at the time, so he knew about DC and about what was going on, and he knew something about the Department, so he was very helpful.

MLJ: His wife, Joanne had also worked in the Administration.

Jensen: She had worked for the Nixon Administration in the White House, so they were knowledgeable about what’s going on.

Rubens: They were savvy?

Jensen: Yes; absolutely.

Rubens: Who was your predecessor then in that position?
Jensen: In the Criminal Division?

Rubens: Yes.

Jensen: Phil Heymann was the Head of the Criminal Division for the Carter Administration and he was a Professor of Criminal Law at Harvard. He was still there when I went back there.

Rubens: Is there a real handoff to you?

Jensen: There was a real handoff; he was marvelous. He lived out in the same area. I found a place to live in Arlington and he lived out there. I went to his house and met with him and went to the office, and he was terrific in giving you a background in terms of where everything was and what you should be thinking about. He was very helpful.

MLJ: I don’t know if this is the time, but was there any controversy with your Senate Confirmation? Were you held up at all?

Jensen: Nothing at all.

Rubens: Do they do it in the order of—? Do they do French Smith and then—

Jensen: They have several hearings, yes. They had already had the hearings for William French Smith, Ed Schmults, Rudy Giuliani and I think, Rex Lee, who is the Solicitor General. Next they were doing various Divisions, and I think Ted Olson, who was the Head of the Office of Legal Counsel, and some other people who were in higher positions—there were several positions being done at the same time—about three or four people in the Justice Department. We went up and had a hearing before the Senate Judiciary Committee. Strom Thurmond was the Chair at that point, and I think Pete Wilson, was the California Senator. I knew Senator Wilson and he was very kind; he introduced me and put me up there. One of the members of the Committee was Arlen Specter, and Arlen Specter had been the District Attorney in Philadelphia. I had met him and done some things with him when he was the District Attorney when we had gone to the National DA’s Association session in Philadelphia, and he was terrific. He knew me, so it was no problem at all. I mean, I think I was put in and nice things were said.

MLJ: Was Lois Herrington coming at the same time?
Jensen: She came later. She came back into one of the positions in Justice Programs, I think it was called. She was an Assistant Attorney General in charge of those programs, so she was also a Presidential appointment.

MLJ: I mention her because she was in the DA’s Office, and her husband was very influential in Republican politics—John Herrington.

Jensen: She was in the DA’s Office. She’s a lawyer who had come to work in the Alameda County DA’s Office and she—

Rubens: Someone you had hired?

Jensen: I hired her. And her husband, John Herrington, was involved in Presidential Personnel and worked out of the White House. So he was in the White House and was there first, then she came back later into this position of Justice Programs; but that was a couple months after my hearing.

Rubens: Did you pick her? You wanted her for that?

Jensen: I didn’t pick her; no, I think they talked to me about her, but she was picked by the Attorney General.

Rubens: Really?

Jensen: Yes; these are people who work for the Attorney General. They go through the White House and you talk to them about it; so when you go over with Lois Herrington as the person you’d like to pick, it’s not a bad idea because John Herrington is at the White House. But she’s very, very good. She became Head of these Programs and we talked about this before; she’s the one who basically pushed through the first legislation nationally on Victim Witness. She did a wonderful job of getting national legislation on Victim Witness.

Rubens: I’m just trying to see where she fits in the organization chart.

Jensen: Well, she works for the Attorney General but she’s not one of the litigating divisions; she’s over at the side in the box over here. What they call “Justice Programs;” it had to do with statistics and research and grant monies, and a lot of things.
MLJ: It wasn’t a bad thing that she had come from the Alameda DA’s Office then.

Jensen: No; it didn’t hurt at all. [Laughs] Because she was—the good part was we knew she was terribly competent and incredibly good. She was very, very good.

Rubens: So, this must be a pretty heady time, there’s just a lot going on.

Jensen: Yes; it is.

Rubens: And such a dramatic re-tooling of Washington.

Jensen: Correct.

Rubens: Did you go to the Inaugural, by the way?

Jensen: Not the first one, no. We were still out here, but what had happened is that we’re getting ready to move, and we had to sell the house and we have to get all this stuff done, and I get a call saying “Okay.”

Rubens: You decided to sell the house?

Jensen: Oh; well, we didn’t sell the house. That was one of our decisions—was to rent it, which is what we did; but we’re getting everything done with the movers and all this kind of stuff, and then I get a call and they say “Get on the next plane and get back here. The President has just been shot.”

Rubens: Oh! [Emphasis Added]

Jensen: Hinckley; and so this is—.

Rubens: You start with a bang?

Jensen: So I—and here’s Barbara, so she’s got the movers and everything else, and I’m going back to the Criminal Division. And I got back and I met people along the way before, so—.
Rubens: Were you literally the one who picked out the house in Washington?

Jensen: I got the house in Washington.

Rubens: She didn’t come back over that?

Jensen: No; she trusted me, and actually it’s been pretty good. [Laughs] Just lucky; I was very lucky. But anyway, I went right back and we’re involved in the Hinckley thing and that’s all-consuming. In the meantime, Barbara has got to get everything done here and then come across the country with the car and other stuff. She was fortunate enough that one of her good friends, Rita Haugner—Dick Haugner had been my Chief Assistant, and his wife, Rita—they’re good friends. So Barbara was fortunate enough that Rita drove back with her to Washington—which was really very generous. And they had a good time as far as that’s concerned. So they get back to Washington and we’re all going, and it’s—.

Rubens: Right; 18-hour, 20-hour days?

Jensen: Yes; that’s right.

MLJ: Back to the transition for a moment—you mentioned that Phil Heymann was nice. There are also certain “lifers” on the staff at the Department of Justice and one of those is Jack Keeney—who is he, and how did he fit into helping you figure out what was going on?

Jensen: I think I mentioned before that there is a major distinction in Washington as far as the people who are working to staff these places. There’s the policy level – that’s the political appointment level of people who would come in Administration by Administration – then there are the career people who stay there all the time, and they’re the career service in all of these different Departments. In the Criminal Division there was one of the Assistants, he’s a Deputy Assistant; the terms get very interesting—for example, since I’m the Assistant in charge of the Criminal Division, then the persons who work for me are Deputy Assistants. Now when you switch over later and I become the Deputy Attorney General, the people who work for me then are Assistants, so you have Assistant Deputies and you have Deputy Assistants, and you have to know the lingo. But Jack Keeney was a career prosecutor who had been in the Criminal Division for years.

Rubens: How do you spell his name?
Jensen: K-e-e-n-e-y, and he was looked upon as the—in fact, he was the guy who ran the Department as Interim Assistant in charge of the Criminal Division when everybody left until the politics settled down. I think over the years he’s been the Assistant in charge of the Criminal Division more than any other person in history, because of these interim sorts of things that happen. So when I come back, he’s in charge and I’m introduced to him and we talk about the whole structure of the Criminal Division; what Divisions there are, what positions there are, and I’ve got to find people to work for me, because what you have are staff people who work directly for you and then you have the line people who run the Divisions like Jack Keeney. He ran things like Organized Crime, or other parts of Fraud—all kinds of different sections of the Criminal Division reported to him. There were other Deputy Assistants who had different roles who had other Sections reporting to them—but Jack Keeney was the one who was looked upon by the Department and by the people in the Criminal Division as the Head, so he’s the way I learned about the whole business. He basically trained me in what I would do—what I had to do.

And he would tell you, “This is what you have to do,” and “This is what you should do,” so he was wonderful.

Rubens: Just parenthetically, why doesn’t a guy like him aspire to—

Jensen: He doesn’t want to be in the political arena. He wants to be a prosecutor; that’s what he had done, and he is very happy. He’s still there. He’s been in the Department almost 50 years.

He is absolutely incredible. He is one of the few people who is a career person who has a building in DC named after him at the Justice Department because he’s such an institution. He’s just remarkable. I had actually met him before on the phone because he’s the guy who called me up and said, “We’ve got Eldridge Cleaver for you.” That was my introduction to Jack Keeney.

Rubens: Oh really? Oh that’s great.

Jensen: Yes; he was terrific. He’s the guy who basically got me into position. See, everybody is sort of waiting for the new people to come in and see what’s going to happen, and I think there’s a sort of hesitancy about what’s going to happen, particularly when somebody like me comes in who has never been in a Federal Court. I mean, the only time I had been in a Federal Court was when I was a Defendant—you know, in these lawsuits against me—so that’s about the only time.

Rubens: Had there been others?
Jensen: I had been sued by various people for various things as DA, yes.

Rubens: Should we have talked about that?

Jensen: Not particularly; they’re all the same. And they all come out the same way because you have immunity if you’re just doing your job. But in any event, the federal prosecutors have somewhat of a wary kind of look at you when you’re coming from a position like mine. What do you know about the federal role? Maybe you know something about State prosecution, but what do you know about this? So they wait a little while to see what’s going to happen.

Rubens: To see how you’re going to take hold and—?

Jensen: To see if you’re going to be able to really understand or be involved with them. And I think both—the other major entrant from state prosecution who came in about the same time was Steve Trott, who later became the US Attorney in Los Angeles—he was a state prosecutor also, so we were question marks for the federal world until we could prove ourselves.

Rubens: What’s his position?

Jensen: Right now he’s a Judge of the 9th Circuit.

Rubens: No; when he came in.

Jensen: When he came in he had been in the DA’s Office in LA and then he came in as the US Attorney for Los Angeles in the federal world—so he shifted over from—I think he was the number two person in the DA’s Office in LA.

Later when I shifted from Head of the Criminal Division, he came and took over Criminal when I left.

MLJ: You said you were getting people to come and work for you. Did you have positions to which you could appoint people?

Jensen: You could name staff people.

Rubens: Was there a secretary that came with the job?
Jensen: There was a secretary there who had been the secretary for Phil Heymann, but you don’t stay with that very often. You wait, because the Administration turns over, and the new Administration does not really want you to be in the position where you have people who have worked in other Administrations working for you.

Rubens: They want a clean house?

Jensen: Yes; particularly in high levels. And a secretary is a very high level position back there—very important in terms of the whole way in which everything functions. So early on I got a new secretary.

Rubens: From—?

Jensen: From within the office; someone who got brought in through the Administration. I interviewed some people and hired her. She came over and became my secretary, and ultimately she came to be my secretary here in Oakland.

Rubens: What was her name?

Jensen: Marilyn Jacobs. Marilyn was my secretary in all the years I was in Washington, then she came out when I was a Judge here, and she retired relatively recently.

MLJ: What about the legal positions; there were a certain number of people who you could just hand-pick?

Jensen: It was sort of up to you. There had been something like six people, I think, who were there before, but I only got two because I didn’t really know too many people there. I got them from recommendations; I got one person who—

Rubens: So the litigators are going to be cleaned out, too?

Jensen: No; they’re staying there. All the court people are staying there.

Rubens: What are you talking about then—six versus two; who had—?
Jensen: Oh, the staff people, the staff people who worked for Phil Heymann. They leave, and so now I’m going to get staff people who work for me.

Rubens: He had six; you wanted two, and didn’t know too many and—

Jensen: Yes. Jay Stephens was the first one I hired. He had been a prosecutor in the US Attorney’s Office in DC and was recommended highly to me. He came over and worked for me all the way through.

MLJ: Wasn’t there a point when you wanted to bring Howard Janssen back to Washington?

Jensen: Well, I was thinking about that; but he’s a Democrat.

MLJ: He was rejected because he’s a Democrat?

Jensen: Yes; I couldn’t bring back people who don’t have some sort of bona fides as Republicans, and Howard didn’t. But he would have been great.

MLJ: Weren’t you a Democrat at the time?

Jensen: I was a Democrat, but they didn’t want me to have any Democrats working for me.

MLJ: Was that the first time you ran up against a party kind of affiliation?

Jensen: Well, it didn’t occur to me that I wouldn’t basically have some oversight in terms of people I would bring in there. Howard would have been great, but he was not politically okay. So I got somebody who was politically okay, and then another one, Rosemary Hart. So the two of them—Jay Stephens and Rosemary Hart—worked for me as staff people.

Rubens: And Jacobs was your secretary, as opposed to a staff person.

Jensen: Yes. But then later on when I got to higher positions—I got more staff people. By the time I was the Deputy, I think I had about five staff. As things go up your span of contacts goes up—gets higher.
Rubens: Sure, but you’re saying that Heymann had six—?

Jensen: Well, you can hire them for different things; you can appoint someone to do research, or to do everything; but I really wanted staff to help me in terms of contact with the working people.

Rubens: You’ve got the Hinckley case right away, so you probably are not even—

Jensen: I don’t have it; it’s in the US Attorney’s Office in DC, because he’s charged with a crime under DC law. So it is being tried by lawyers who are in the DC office. Now, they relate back to the Criminal Division, in that all of all the US Attorneys out there relate back to the Criminal Division. There are various things that relate them; US Attorneys have to come back for approvals, and in a sense therefore, they work under the Head of the Criminal Division because they’re all involved in the same kind of business. So I had kind of a nominal control over the Hinckley thing, but it was run out of the US Attorney’s Office in DC.

MLJ: So you were called back to Washington because—what are you supposed to do?

Jensen: They’re bringing back people who were the top people in the office because they don’t want to be in a position where if something is going on with Hinckley and the Head of the Criminal Division is out in California, what the hell are you doing that for?

MLJ: It’s a political thing?

Jensen: You just do it because it’s—you get together your top people when you have a critical kind of case like that.

Rubens: That’s what I wanted to ask you—are you literally having meetings daily with Smith, with Giuliani, and others—how many are at your level?

Jensen: There are six litigating divisions.

MLJ: How would you give a thumbnail description of your job duties?
Jensen: Well, I couldn’t remember. It’s like William French Smith once said, is that what you do is you come to work and you make a really very important decision, and it affects everybody in the office, and it affects the whole world, and then 15 minutes later they ask you what it was—and you say, “I don’t remember what that was.”

But there is an overall plan that gets put in place, and I’m part of the thinking about it. But what they did as far as Criminal was concerned is—that the Department of Justice can do that will be of the greatest assistance to local law enforcement? So they created this committee to look at it, and they got Griffin Bell, who had been the Attorney General; and Jim Thompson, the Governor of Illinois, who had been in the US Attorney’s Office. They were the head of this big commission, and they had big meetings, and they turned out a report about what could be done, and it was a very good report.

Rubens: Okay; and is this report done within a year?

Jensen: Yes.

Rubens: When you say “they” created a committee, do you mean French Smith and—?

Jensen: The Department of Justice, yes—through the Attorney General, and Ed Schmults, the Deputy Attorney General, and Rudy Giuliani, who is responsible for that sort of thing. Then I testified on various occasions before that committee, for just basic functional kinds of things that were available through the Criminal Division, and that kind of thing; so—

MLJ: What are you doing on a daily basis with policy decisions or cases?

Jensen: I’m meeting with—it’s a series of meetings. You meet with everybody. I’m meeting with Jack Keeney and with, let’s say, Mark Richard, who was one of the other career people who had been there a long time—they run all of the major parts of the Criminal Division in terms of what’s going on—and I get reports as to what the big cases are that are happening out there. I have things I have to sign off on; I had the responsibility, for example, of signing off on every wiretap; they all run through the Criminal Division.

Rubens: Really?

Jensen: You have to sign off for every one that goes up in the country.
MLJ: Given that you’re doing that, what kind of relationship do you have with the FBI?

Jensen: I have a close relationship with the FBI. I met with William Webster on a continuous basis; he’s the Director of the FBI, and I meet their—you learn a lot about who the people are, so I’m getting to the point where I know the players.

Rubens: Do you have a mind that just holds that, or do you also have an organizational chart?

Jensen: There’s an organizational chart that does it, but you get to know who the people are who really run all this. So I meet with various people—we have things like that that are going on. Right at the beginning, we had this commission that was looking into organizations that the Department could join with local law enforcement. There were also internal things; for example, when we got there the FBI did not do any investigation of drugs. J. Edgar Hoover had opted out of that.

Rubens: Hard to believe.

Jensen: He opted out of doing drugs because he didn’t think that it was a good idea for them to do it, so the FBI did not do any drug investigations.

Rubens: Because I see that’s one of the first things that—

Jensen: So what we did was we said, “You know, that doesn’t sound very good,” and Webster said, “Well okay; you have to figure out what it is.” So we had a paper done on it in terms of good administration as to whether it would be a good idea to move them into drugs. And it was a good idea; so the order—

Rubens: So not under Nixon and not under Carter?

Jensen: No; they had never been in drugs. We changed it and put them into drug investigations. So that sort of thing was going on.

MLJ: How happy was the DEA about that?
Jensen: The DEA wasn’t that happy about it because they—the Drug Enforcement Administration—also works for the Department of Justice, and that’s their baby, but now, in effect, the FBI comes in somewhat as a competitor, and we thought that would not be a bad idea at all; it would increase our resources. They see it as sort of—getting into their territory.

MLJ: Did you learn that there was a hierarchy, if you will, among federal law enforcement agencies—either perceived by them or—?

Jensen: There is; the top agency is the FBI and they have been that way for a long time, both in terms of reputation and in terms of reality—they have a bigger jurisdiction, bigger resources, bigger history—

Rubens: The FBI did organized crime, but—

Jensen: Yes; they did; but not drugs—well, they did after we got there.

Rubens: Yes.

MLJ: Did you get placed on any committees or organizations in your new role as head of Criminal—like you did as the DA?

Jensen: Yes; I did. One of them was interesting in the sense that I came back to it, and that is that as head of the Criminal Division you’re an ex officio member of the Federal Criminal Rules Committee. With respect to all of the Federal Rules, there’s a whole structure that’s run through the Courts; basically from the Chief Justice on down—there are committees.

Rubens: But what are the rules?

Jensen: They are the rules of criminal procedure. And there is a committee that looks into what those rules should be, and amends them, and keeps track of them; and as the head of Criminal you are an ex officio member. So I went to those meetings.

Rubens: How regular are those meetings?

Jensen: They’re every couple months—three or four months.
MLJ: Who are you meeting with in that context?

Jensen: Meeting the committee.

MLJ: So that’s Rehnquist?

Jensen: I’m not meeting with Rehnquist, but I’m meeting with the people who are on the committee. There was a Judge from San Diego, I think, who was the Chair at the time—Earl Gilliam.

Rubens: How does one get on the Federal Rules Committee?

Jensen: You get appointed by the Chief Justice.

MLJ: But at that time it was just your position that made you—?

Jensen: My position got me there. That’s why I was on it, and then there’s a guy in the Criminal Division who goes to those meetings all the time who knows what’s going on who helps you out. In effect, he’s your Delegate to the Rules Committee from the Criminal Division. There was a guy who had been doing that for years, and he still did it when I was there. I would go as Head of Criminal, but the guy who really worked with them all the time, he was also there. But I can participate in the meetings, so I did.

Rubens: How big is that?

Jensen: It’s about, oh, eight people. They are Federal Judges, Federal Magistrates, there is the Criminal Division, there is an appointment from the Federal Public Defenders Association, and there are lawyers who are criminal defense lawyers generally.

Rubens: And prosecutors, or is that you?

Jensen: Well, the prosecutor is me because the Rules relate to federal prosecution; then there are professors, and people who are interested in the criminal justice world, so it’s a prestigious committee.

MLJ: Are you developing policy at the Department of Justice?
Rubens: And also, what’s required of you politically? Do you have to attend functions? Do you have to go stumping?

Jensen: Well, I don’t as a politician but I do as a member of the Department of Justice. I went to give speeches all over the country.

Rubens: On policy issues?

Jensen: Oh yes.

Rubens: I stumbled on this; let me ask again why Howard Janssen could not come?

Jensen: Because he’s a Democrat.

Rubens: You would have appointed him to what, if you—?

Jensen: As a staff guy to work for me.

Rubens: Those are also political appointments?

Jensen: Yes; well, they’re politically approved appointments. They’re not a presidential appointment; they just work for you. But the Administration doesn’t want democrats. See, what I didn’t understand is that this is a totally different world. This is a partisan world; it is partisan back there. It’s not here, but it is back there.

Rubens: Right; and you learn that?

Jensen: Yes, absolutely. That becomes a part of your life. So it makes a difference.
Rubens: I noticed that you didn’t change your registration—your political party affiliation until ’86 when you returned to California.

Jensen: When we went back to DC you could register as an Independent, I think it is, so I registered as an Independent.

Rubens: And you voted back there?

Jensen: Yes; right.

Rubens: And then when you return?

Jensen: When we came back to California I changed the registration.

Rubens: Several news articles about your appointment to the Department of Justice noted you as a Democrat.

Jensen: Right, right.

Rubens: I thought that was kind of interesting. Also I hadn't realized that William French-Smith was one of Reagan’s “Kitchen Cabinet” people.

Jensen: Yes.

Rubens: I think I asked you, but just let me ask you again; had you met him before in any capacity?

Jensen: I think I might have met him at a California Bar event or something like that, but I don’t really recall exactly any circumstance. My recollection goes back to when I met him when I was interviewed by him and Ed Schmults when I first went back to the Department, but that’s really the first time I have some recollection.

Rubens: He also had been offered the position under Nixon, but declined it?
Jensen: Yes.

Rubens: What does the term California Mafia refer to? When is that used? I see it in your notes.

Jensen: The California Mafia was basically created by Reagan coming to Washington and those who come with him; you’ve got guys like Meese, who is on his high-level staff, you’ve got Weinberger—

Rubens: Is Deaver?

Jensen: Deaver is a Californian. He worked for Reagan in the Governor’s Office.

So they’re all Californian, and then in lower levels you have people like me, so there are a lot of people from California; and when all the people from California come, they’re called the California Mafia.

Rubens: They were using that term?

Jensen: Yes; now it’s the Texas Mafia, and before that it was Georgia Mafia, and so—.

Rubens: Any observations about Ken Starr in terms of his role on the transition team? Then he also shows up in this organization chart—.

Jensen: I don’t think he was on the transition team.

Rubens: Well, he’s on French-Smith’s transition team.

Jensen: Yes, because when the Attorney General comes in you’re going to have these line positions—people who are in the hierarchy of the structure. You’re going to have the Deputy Attorney General, you’re going to have Associates, you’re going to have the Assistants, and the Attorney General is going to have a staff which works directly for him. The AG has a Chief of Staff, and his Chief of Staff was Kenny Starr, who basically came out of Gibson, Dunn & Crutcher, which was French-Smith’s firm.
Rubens: I was just happy to see this organizational chart because I remember being shocked that the drug enforcement department had never been a part of the FBI.

Jensen: Yes; that’s right.

Rubens: I had asked you if there is an agenda in the Justice Department. French-Smith writes “I believe in the conservative agenda” and says we [the Administration] wanted smaller Government, and streamlining, and to be tough on crime, but he said “Did I talk about it every day? No.”

Jensen: It was just sort of implicit as part of what you accepted when you were there as part of the leadership. And that was all consistent with my own thinking about things, so there was no problem for me. I told you about how the Associate Attorney General—you saw the way the structure—?

Rubens: Yes; the way it was created—we did talk about that, yes.

Jensen: That was because Rudy Giuliani was put into that position.

Rubens: William French-Smith calls for the Task Force, and the first part of it’s done in 60 days and the second part is done in another three months, so he wants to hit the ground running and really has ideas about how to streamline—

Jensen: This wasn’t the only idea in the Department; there all kinds of different areas we’re looking at. This is the area for Criminal, and they had ideas they wanted to do in Anti-Trust that were really large ideas and—you know in Anti-Trust they settled the AT&T suit—it had been long running; but those were sort of the basic areas. But he spent a lot of time in getting the Task Force started; he paid a lot of attention to that. But it got done relatively quickly, as you say, and then it becomes a problem of now implementing what they’re saying.

The biggest implementation, and the one that I really agreed with, was the structural way of having the Federal people and the local people be together and work together—this is not a new idea; they’ve been doing these sorts of things in different kinds of ways. We talked about working with Billy Hunter before, but this had never really been done systematically; they had just done it on an ad-hoc basis. I remember a meeting of the National DA’s Association when I was the District Attorney; I went back and watched a presentation—I forget who it was that came from the Department of Justice, but he had a chart there, and he talked about how these are connections with different groups of people; and this is our connection, say, with District Attorneys, and here is the
connection with the District Attorney in Brooklyn; and the guy from Brooklyn who is the District Attorney says “How come I don’t know about that?” Well, and it wasn’t really very impressive. [Laughs] But this was set up very systematically, and monitored very systematically.

Rubens: It seems like what was distinctive also was that the US Attorney in the District had the role—

Jensen: Who was given the task of getting started with it, because the point is these things don’t start by themselves.

Rubens: Right; but it seemed to me that the point was also that this was in keeping with the philosophy of William French-Smith and Reagan, that it wasn’t going to come out of the Criminal Division; it was going to be done at the local level.

Jensen: Yes.

MLJ: What were the US Attorneys supposed to be doing?

Jensen: They were asked to make contact with the local prosecutors and the local law enforcement people—sheriffs, chiefs of police, and then have an organizational meeting where they would form—

Rubens: Coordinating committees?

Jensen: —a Law Enforcement Coordinating Committee; and that would be something that would be put in place in every District. The US Attorney in the District was given the responsibility to do it, and they had to report back that they had done it or hadn't done it.

MLJ: What was the goal? Were the Feds going to come and take cases that were appropriate for Federal prosecution?

Jensen: Right; and that came—

MLJ: Were they going to monitor things; or were they going to form joint law enforcement Task Forces?
Jensen: Basically the latter, because one of the ideas that had come out of the Task Force was to find out what is it that the Federal people can do that’s going to help you as much as we can? The big problem was drug enforcement, and you could help there because the Federals have a great deal more resources and mechanisms to deal with this than the State people do; so in just about every Task Force, there was an immediate kind of joint effort to do major drug cases.

Rubens: Hmm; now let me just ask you one thing that I just couldn’t find out. How many US Attorneys are there?

Jensen: There are 94 Districts.

Rubens: All right, and the District corresponds to—?

Jensen: It’s either a State or a portion of a State; like California has four Districts, so they have four US Attorneys—and then a lot of States only have one. The smaller States—some of the States, even though they’re small, have been broken up because there’s a political kind of a dimension to this—because every City gets its own kind of definition—its own Courthouse, and its own US Attorney, but there are 94 out there, and the idea was to have 94 coordinating committees.

Rubens: Okay; because I saw that it’s a line item, right across the Criminal Division and—.

Jensen: Well, we spent a lot of time doing this because what happened is the US Attorneys would set up an organizing meeting and then they would let us know—and generally either Rudy or I would go to the meeting, so we went to all kinds of meetings all over the country.

Rubens: Really?

Jensen: Yes; we went to almost all of them.

Rubens: Now William French-Smith says when they survey—these committees are set up and then the US Attorney is talking to the DAs, and he says all but one DA ranked drug trafficking and its attendant involvement with organized crime as the number one priority.
Jensen: Right.

Rubens: So I immediately said, well, is that Oakland?

Jensen: No—

Rubens: It was Salt Lake City.

Jensen: Yes; because they had a lot of—

Rubens: So were you talking about—

Jensen: Fraud.

Rubens: —their concern was about—yes, “white-collar crime” is what he said, but they’re saying these DAs are ranking drug trafficking as their number one issue vis-à-vis Federal—?

Jensen: These are local DAs.

Rubens: I’m thinking about you; I kept asking you—

Jensen: Oh no, no; that was one of the reasons why we did get the FBI into Drug Enforcement, because of the high level of—the importance of making sure that all of the Federal resources were being marshaled at their most effective level.

Rubens: So drug trafficking—

Jensen: Was a big thing—very big.

Rubens: —expands; it’s not a big thing under your tenure as DA, but it—

Jensen: Yes; it is. It expands in a different way after this. At the National level there is a big effort to now structure these things in a different way, in a more expansive way, and to then set up what’s called the “Organized Crime Drug Enforcement Task Force” [OCDETF].
MLJ: Was that part of a political agenda? Because, of course, Reagan came in and Nancy had her Just Say No campaign, so there were always drug issues—did Drug Enforcement—?

Jensen: But that—Just Say No followed, because this was the start of it, the LECC and the Task Force, and everyone saying “let’s get going;” so we were now out getting people organized to do this, but organizing them District by District doesn’t necessarily make sense—

Rubens: No.

Jensen: —because the drug traffickers just don’t organize themselves that way, so you want to set it up in a way it’s more effective; so we had the idea of the Task Forces. And the President came over to the Justice Department and gave a big speech, and part of the speech was we’re now going to set up these Task Forces for Drug Enforcement, and we’re going to have a Commission on Organized Crime, and that’s going to be done on the basis that we set up ourselves in terms of how we regionally break up the country. Then we’re going to set up Task Forces in these regions, and the Task Forces are going to follow this model of having Federal agencies and local agencies work together on the drug problem in that area.

MLJ: To follow-up on what Lisa was getting at—did drug problems suddenly become overriding when Reagan came into the DOJ to set up the Task Forces, or were drug problems uniquely suited to federal assistance and therefore when you went to the DAs and said what can we do for you—they said you can help with drugs, whereas you can’t help with, say, homicide, which is a uniquely local crime?

Jensen: No; it’s both. You’re right; it’s both things. The drug trafficking was a very big problem, and that was affecting Enforcement efforts at local and national levels.

Rubens: Let me just interject for a minute; was it a big problem in Oakland?

Jensen: Oh absolutely, sure.

Rubens: Because I thought I asked you that several times and—
Jensen: It’s growing; it’s getting bigger as you go along and as you mentioned, ultimately there are some very, very big organizations in Oakland that are local organizations, and they are running big cocaine and heroin trafficking operations; and they are bigger than Oakland because you have sales going on around this whole area in Northern California, and ultimately there are sales in other areas of the country, so the Enforcement efforts are difficult when you’re saying “in Oakland,” because in Oakland, you only have Oakland jurisdiction. And most of these organizations are dealing in much broader terms than just a city. So that’s why—

MLJ: For example, we talked about Felix Mitchell running gangs in Oakland and being basically head of drug trafficking in Oakland for a time, and didn’t he end up being prosecuted federally?

Jensen: Yes; he did.

MLJ: Was that a result of these Task Forces?

Jensen: That was a result of the Task Forces, because the Task Forces could do some things that local people couldn’t do. One of them is that you have Federal laws on wire-tapping that you don’t—they’re not replicated in the States mostly, and you have Federal laws at higher levels and “RICO” charges, they call them; the organized crime conspiratorial levels, and you have high level penalties for big, big traffic dealers; so you have that, plus you have the Federal Grand Jury, and you can bring people in and have them testify before the Grand Jury as part of the investigative process. You don’t really do that in a State system.

And the Federal people had over the years developed investigative procedures where they would go in and take off the participant in the overall ring at a lower level and then prosecute that person, then cut a deal with them so that they have to testify against the people above them, and supposedly work up the chain. So that was a practice that was done at the Federal level and not done at the State level, because you really couldn’t follow up; and then you really have to move out from one city to another. And it becomes difficult. So in come the Federals to work with the Locals, because the Locals know what’s going on in the street; the Federal people really don’t know that. So they’re going to get information about what’s happening in Oakland—you go to the Oakland Police Department, and then you work with and use the assets of the Federal Government like wire-tapping and like the Grand Jury process, and that can be set up through these organized crime Task Forces, and that’s what happened. That’s what happened with Felix Mitchell because he got indicted by the Task Force and prosecuted federally.
MLJ: There was also a system for cross-designating DAs to work on the Federal prosecution, so weren't some Alameda County Deputy DAs designated to work as Federal prosecutors on these trials, because they were more experienced?

Jensen: That’s correct.

Rubens: Who designates them?

Jensen: The Federal people do; they can designate them. There is a system where the Federal Government can agree with the State Government in some different kinds of ways, and we can deputize people to work as US Attorneys. So we did deputize some Alameda County prosecutors to try Federal cases here in the Federal Court.

Rubens: So what were these kinds of policies and procedures—are they being shaped into the 84 Comprehensive Crime Control Act?

Jensen: They’re in place by that time, because the Organized Crime Drug Enforcement Task Force is started in ’82, I believe, and it took about a year to get it ready to go in terms of deciding who is going to participate in all this, and how the manpower is going to be—I mean, all the details of these things, you know—who is going to be assigned? Are you going to take people out of the Criminal Division? Are you going to take them out of the local DA’s offices? What are you going to do? So, basically it was done by taking people out of the local US Attorney’s Offices, and then we took a local US Attorney and made that person the head of the Region for drug cases.

MLJ: Was it also a budgeting issue?

Jensen: Yes; a big budgeting issue. You looked at it and—and I remember looking at it one time and saying “Well, maybe we could do this for maybe $25-million or something like that,’ you know, whatever. And I think the answer is, no; you’ve got to do it for at least $100-million, or Congress won't pay attention. So you’ve got to do something on a bigger scale and you have to move it up, and actually it’s a good idea to move it up because you get more effective. So the whole idea was—it turns out that drugs are a big problem; it turns out that cooperation is going to be the best way you can make these cases at higher levels; so that’s what the Task Forces were for.
Rubens: There also seems to be a kind of parallel development of laws that are allowing the military to be used to some extent—

Jensen: That’s a Posse Comitatus sort of thing, and the ultimate—

MLJ: That’s a big issue, wasn’t it?

Jensen: Yes; it was. The resolution was basically that you can’t get the military involved.

Rubens: Okay; they were limited. Did they use military equipment and intelligence gathering facilities?

Jensen: On a very limited basis, yes.

Rubens: —Limited, specific; okay.

Jensen: They did some over-flights in terms of AWACs, I think; surveillance planes and that kind of stuff, but you couldn’t ask the Navy to send a ship to intercept somebody coming up with drugs.

MLJ: Where did the idea to even explore that come from?

Jensen: That was part of people thinking out of the box; I mean, what can you use? Why can’t you use the vast resources of the military, because they’re—?

MLJ: And why can't you use them?

Jensen: Because they’re running the wars; you know, they’re running the military business, and you can’t order the Secretary of the Navy to deploy an aircraft carrier to Colombia.

MLJ: Isn't there also a problem with the Constitution, and the concept of a Police State?

Jensen: Absolutely yes; and you’re talking about using these outside the US. I mean, you’re not going to use the military to do local law enforcement. And that’s not only because the military has to do their duty, but that’s the wrong thing to
do in terms of any governmental way of—of living. You really don’t want to have the Army running the State, and that’s been a tradition in this country from the word go. So the idea that you would turn to the military to actually take care of local law enforcement responsibilities is antithetical to the principles of government in the United States.

MLJ: How long was that idea out there?

Jensen: It wasn’t out there very long. There’s nothing much you could do with it; the military didn’t want to do it and it wasn’t—

Rubens: The military didn’t want to do it, okay.

Jensen: They didn’t want to do it, and it wouldn’t be much help anyway; because you have to run enforcement efforts on the streets, ultimately.

Rubens: There were things like the National Narcotics Border Interdiction System?

Jensen: Yes; there was a lot of talk about that. See, you know how they’re talking now about building a fence for immigration purposes? Well, there was talk in those days of having a fence done by balloons—know having dirigibles all the way along the line of the border—the idea was that they could look out and see what was going on. And then, the cost was ridiculous. For example, today the cost of building a fence is incredible, and it’s not going to work; so—.

Rubens: So there obviously were hard-liners somewhere who were—?

Jensen: Yes; some people who said they had ideas—these are people who had a silver-bullet approach to this sort of thing. “Here is the thing that’s going to take care of this. We’ll just seal off the border.”

Rubens: Did any one person represent that more than another in the—?

Jensen: No; it was—these were just sort of ideas, and I think most of them would come from outside the Department. The Department is more of a law enforcement agency, and you sort of have an idea of what you can and can't do; these other ideas are sort of pie in the sky stuff, so—

MLJ: Would they come from Congress, or constituents, or Administration, or—?
Jensen: Yes, all of those. People who have an interest in the whole process—scholars would tell us what to do.

Rubens: A lot of things are congregating around ’83.

Jensen: Well, let me tell you about ’84. You can start on that. This comes from sort of a different genesis. In the ‘80s there was a Commission, I think appointed by Carter, and they were to do reform of the entire Federal Criminal Justice Codes. See, there is a hodgepodge of things in the criminal world. There are criminal laws spread through all kinds of different Codes and different kinds of Titles. There’s Title 18; there’s Title 21; there’s Title 26, and all these things create crimes. They’re all out there, and each one has a different structural way of defining a crime. For example, the whole penalty system is just whatever Congress assigns to a particular crime at the time they pass it; so they may be passing it in the tax world, they may be passing it in the drug world, they may be passing it in some other world, and all these things come in and they’re just a hodgepodge.

Then you have the problem of definitions. In the Federal world, you have to also have federal jurisdiction—so how do you get it? The drug crimes were done on the basis that drugs are truly international—or you have guns-

MLJ: Why don’t you stop and explain how you get federal jurisdiction.

Jensen: You get federal jurisdiction, in essence, by going across State lines; or it comes from—

MLJ: Or interstate commerce, which comes in later on in some of the judicial decisions.

Jensen: Interstate commerce, yes. There are different definitions of how you get to this—the idea of interstate relationships being the basis for jurisdiction; so there were different things in different statutes, and there were different levels of culpability that were set up in terms of the frame of mind that goes along with being a criminal, and there were a hodgepodge of these in terms of intent, willfulness, knowledge—whatever they meant; and they didn’t make sense.

All right; so the idea was to reform all this, and this high-level Commission was appointed, and the Chair of the Commission was Pat Brown. You had a very high-level of people in politics, and in law enforcement, and in the academic world on this Commission to reform—on an overall basis, the criminal law federally. And that had been reduced to a Bill—to Bill-
form—before Reagan came in, and I think the year before it was S-1, or something like that when it came in, but anyway, that was pending and it had gone through Congress and not succeeded in the year before Reagan came in. Then when the Reagan Administration comes in, one of the questions is—are you going to back this reform? So we did a big study of it in the Criminal Division. One of the guys in the Criminal Division had been on the Commission that was developing the reforms as a representative of the Department.

MLJ: Who was that?

Jensen: That was Ron Gainer, who is a very, very bright, very good lawyer. He was there, so we had a full study of the Reform Bill to see whether or not the Reagan Administration would back it. And after we had gone through it all we said “yes, we will.” It reforms a whole bunch of areas in the criminal law, and it would be a good Bill to do. So it gets put in, I guess, in ’81—’82 probably is when there’s a full bore press on it, and it doesn’t go anywhere; it has the problem of any major comprehensive Bill, and that is that it covers too much—it covers things on the left end, and it covers things on the right end—so you’ve got people who have their own specific areas of discontent. And they say, “We won't back the Bill;” and so they won't back the entire Bill because of this particular provision, whatever it may be. These people over here, they back that provision, but they won't back this provision. So you just get gridlock, and the idea was you couldn’t move the Bill as a whole. So the idea changed to let’s break it apart, and break it into several different pieces, then have them move separately. And so that’s what was in place by ’84.

Rubens: William French-Smith says “we decided to put together a Bill that would consist of just substantive badly needed reforms,” not procedural.

Jensen: That’s right.

MLJ: What did it lead into?

Jensen: Basically different areas; French Smith is talking about different areas of the Criminal Justice role; some of them were in a sense procedural; for example, one of the pieces of the Bill had to do with pre-trial detention. Under the existing law, you got bail as a matter of right, so in the drug world the bail was just—you pay it and get out. So you indict a big criminal case against the top-level drug organizer, trafficker, and he goes to Court- and the bail is set at $1,000,000. So he gets in his wallet and he puts $1,000,000 on the table and he walks out; and so what was happening is that kind of structure allowed
everybody to get out on bail, because they’d put up any money you’d want, and judges wouldn’t set bails for $50,000,000, or whatever, so part of the—

Rubens: Does that mean they’re fleeing and—

Jensen: They take off; sure.

Rubens: Yes; okay.

Jensen: They take off and they’re gone, and so the problem was—what are you going to do about this? Part of the solution was pretrial detention, so that was part of the substantive law—procedural law—and it was one package that dealt with reforming the whole business of bail, and setting up a system where you could hold people pretrial if you met high level criteria. So that was a part of the package.

Another part of the package was the definitions of insanity; because the definition of insanity in the Federal Courts had strayed an awful long way conceptually from the old McNaughton Rule, which required a knowledge of the difference between right and wrong, and there had been different things that had come up as tests that were being adopted in Federal Courts. So along comes the Hinckley thing, and you’re now going to have pressure to—“Let’s reform the area of insanity and let’s go back to McNaughton.” So one of the pieces of the Bill was in effect to make sure insanity was still defined under the McNaughton Rule in the Federal Courts.

The other piece was sentencing, because the original study that was done for this big Bill had looked at the sentencing issue—because this hodgepodge of cases would come out where you had sentences that didn’t make any kind of consistent sense in that you would have one to forty; two to fifty; seven to life; zero to fifty; zero to—there’s something like, at least forty different levels, of ranges of minimum/maximum—and they’re all in the indeterminate sentence structure. So you had this business of having no sentencing structure that—

Rubens: Consistency.

Jensen: —was consistent; and we talked a little bit before, I think, in terms of the arguments against indeterminate sentencing—that you didn’t know what you were doing in terms of rehabilitation, you didn’t know how to rehabilitate—and people were going into Federal prisons as well as State prisons on the basis of an indeterminate sentence, and then they would be let out in the Federal world by the Parole Commission, and they would have their own systems of deciding when you could get out. But again, you had the
problem of an Executive Agency deciding upon your sentence, and having
criteria—in terms of what it is as far as any notion that I decide you have been
rehabilitated or you have not been rehabilitated, and that kind of thing. There
were factors that had been developed by the Parole Commission that they
used, but the piece of the sentencing package in the overall criminal reform
was a big one, and it had been presented before ’84 as a separate package. It
had gone through the Senate 99 to 1, and the House didn’t even talk about it
and didn’t even let it go; so then it came in ’84 as one of the pieces of the
overall criminal package.

MLJ: So this was the Federal Sentencing Guidelines?

Jensen: Yes; this is the Guidelines.

MLJ: Was that also the advent of mandatory minimum sentences?

Jensen: No; that’s different. They came in separately.

MLJ: Before or after determinate sentencing?

Jensen: After. It had been before in the State systems, but I think the first mandatory
minimums in the Federal world were after. Maybe there’s—

MLJ: Well, I recall, for example, litigating mandatory minimums in drug cases prior
to guideline sentencing, so I’m just wondering if you recall the
timeline—whether the mandatory minimums are reactions to lesser sentences?

Jensen: The big mandatory minimum was in ’86 when the basketball player from the
University of Maryland, Lenny Bias—Lenny Bias was a basketball player
from the University of Maryland and a tremendous, tremendous ballplayer,
and this was during the time—when I was back there, I saw him play at the
high school level and he was incredible. He was drafted by the Celtics, and he
was going to be one of their really tremendous ballplayers. He died of a
cocaine overdose; and he dies in the District, so it’s the home territory for
Congress. I think everybody said “What are we going to do? We’ve got to do
something about drugs, right?” So the Bill gets passed by Congress that puts
in mandatory minimums. And the mandatory minimum structure we’ve got
now is based on the amount of drugs: a certain amount gets you five to forty;
or a different amount will get you ten to life—those sentences came out of the
Reform Bill in ’86, which is after the indeterminate sentence Bill had been
passed in ’84. So basically it overlapped, in the sense that the Guidelines had
not been developed until ’87, because you had to appoint the [Sentencing]
Commission, and they had to work it all up and all that sort of thing, so at the same time they’re doing that, in comes Congress with the drug Guidelines. So the Commission just took the drug Guidelines and folded them into the entire Guideline structure, but that made the drug Guidelines higher than they would have been otherwise, and the mandatory minimums kicked everything up. So one of the real problems with the Guideline sentence structure has been in the drug area, the penalties are so high in that they are dependent upon such arbitrary things as the weight of the drugs and basically, that comes out of the ’86 legislation—not out of the ’84 Sentencing Reform Act.

MLJ: This may be too esoteric for this topic, but doesn’t this eventually end up being one of the factors that result in the Guidelines being declared unconstitutional?

Jensen: Absolutely—absolutely it does.

Rubens: When are they declared unconstitutional?

Jensen: They were found unconstitutional last year. But what happened with the criminal reforms is—1984 then is an election year, and so the people in the Department who manage the legislative agenda of the Administration and the Justice Department are pushing to get the sentencing, the format, and all these other Bills passed, and they were not getting very far. They were going fine in the Senate; the Senate had already signed off on most of this stuff, but the House was opposed to most of it—and there are books that have been written about the final push on all this—it was at a time when they had the final appropriations legislation, and there were amendments and that sort of thing. I guess it was Dan Lundgren, who was a Congressman back then and came back out to California after that—he and some other people worked out a deal where they got to the floor somehow or other on the bill that was being considered, and they got the whole crime package of the Administration put on the floor in such a fashion that the House had to vote up or down on the Bill; because all the action that had gone on before was to have people be able to say “Well, we didn’t vote for anything, but that doesn’t mean that establishes my position on the Bill. It just means that it didn’t get up to a position where we would ever let it go through.” So it got maneuvered such that the House had to vote up or down, and they had to vote for it because lenience on crime was not good, and so the Bill got passed. That’s in ’84 when the Bill is passed, and all this stuff comes into existence.

MLJ: What was your role in getting it through?

Rubens: I was going to say; did you spend a lot of time—?
Jensen: I testified in Congress on the Bill, on various aspects of the Bill, and—

MLJ: Who would you testify before?

Jensen: Before Senate Judiciary, and House Judiciary, and—

MLJ: What Senators or Congressmen would you primarily be dealing with?

Jensen: Well, you deal with—the Senate was the one, basically. I guess we did most of our presentations with them, and that would be Strom Thurmond was the Chair at that point, but Teddy Kennedy was a big voice. Joseph Biden was; Orrin Hatch, and the people on Senate Judiciary. I testified before them on the package, including sentencing, and then in the House Judiciary would be Rodino, and Conyers, and—.

Rubens: Are you doing more than testifying in these formal situations? Are you going knocking on doors and doing—

Jensen: No; we gave speeches. We’d go around and give speeches to people in terms of what we were trying to do from the Administration’s standpoint, and I would be—

MLJ: Who would you be talking to?

Jensen: We’d talk to civic groups, to Bar Association groups; I went to Mississippi to talk to the Bar Association. I went to Ohio to talk to the Bar groups—and we basically explained the program—what the problems are, and what our position is, and tried to get ground support for the legislation.

MLJ: Were you the main person on this or was Giuliani on it as well?

Jensen: No; Giuliani did a great deal—I did too, and I guess—

MLJ: When it came up for passage in ’84, was that the time that Giuliani was going back to New York?

Jensen: Right.
MLJ: So where was the transition there with Giuliani—?

Jensen: I think he went back in ’83.

Rubens: Right before that—’83 is also a pivotal year, because is this when you’re moved up?

Jensen: Yes; see the chart? That’s from ’81 when they start the Associate Attorney General – at that time it is Giuliani, and you see the lines—the hierarchy goes down to Criminal Division and other law enforcement stuff?

Rubens: Right; Bureau of Prisons and—

Jensen: All right; Giuliani leaves—

MLJ: Is that so he could campaign for Mayor of New York, or is he going back to be the US Attorney?

Jensen: He went back to being the US Attorney. He went back to be the US Attorney in the Southern District of New York.

Rubens: Why would that be more appealing to him?

Jensen: That’s where he came from, and because it’s a great place for people to know who you are, if you’re the most successful prosecutor around—and he was a great prosecutor and he tried some very big organized crime cases and did very well—so that didn’t hurt him at all. Right; so he went back to Manhattan and I moved from the Head of the Criminal Division to being the Associate Attorney General.

MLJ: While these Bills were pending?

Jensen: Yes.

Rubens: Well my point is that while this is going on, Senator Steve Simms of Idaho decides that he’s going to hold up your appointment.

Jensen: Right.
Rubens: There’s a wonderful editorial in the Sac Bee that says “Sit down Senator Simms.”

Jensen: No; that comes out of the Washington Post. That’s where they got it.

Rubens: Is that right? Oh okay.

Jensen: Yes; that’s Meg Greenfield—does it say below it?

Rubens: It doesn’t say who wrote it—no.

Jensen: She was one of the people at the Washington Post.

Rubens: Okay; so I’m wondering if we just take one second to talk about that, because 84 is not the first time you’ve testified before—

Jensen: Oh no; well, what had happened is there is a—you know these mandatory financial disclosures you have to do? Everybody has to do them, and part of what was sold at the time was that you have to do these right because you could be charged criminally with a violation of false statements—there’s a generic false statement law in the Federal world 18 USC § 1001—and the notion was that you could prosecute these. Well, it had never been done before but when I’m in the Criminal Division we have a case against a Congressman from Idaho—

Rubens: A Congressman?

Jensen: —named Hanson, I think it was, and so we prosecuted Hanson—

Rubens: Yes, yes; George Hanson.

Jensen: We prosecuted him for a 1001 violation, and this was—it’s the first time that it had been done and it sort of upsets the relationships between Congress and the Department, and Simms didn’t like that. The idea is that if you do a financial disclosure statement and you make a mistake on it, that shouldn’t be a crime. Well, obviously that shouldn’t be a crime; and it’s not a crime under 1001 because it has to be intentional and material, and the proof for Hanson was very clear—that it was an intentional and a material false statement. So he was prosecuted for it and he was convicted. And by the time I come up for
Associate, Simms, the Senator from Idaho—he knows Hanson, and so he holds up my appointment.

Rubens: He’s also angry with the Immigration and Naturalization Service cracking down on undocumented alien labor.

Jensen: Well, whatever.

MLJ: In Idaho?

Jensen: Okay; well then—

Rubens: And of course, he’s a Democrat; so—

Jensen: It got held up for several months.

MLJ: What’s the mechanism for holding it up?

Jensen: Simms says to—the Senate operates on unanimity to allow anything to go to the floor, and since he says it’s not going, it doesn’t go. And I think they still do that; you have to have every Senator agree. So he says no; so it doesn’t go. Then there was all kinds of stuff trying to get him to change his mind; people were talking to him and he wasn’t changing his mind at all. So we’re just sitting there, and I’m the Acting Associate Attorney General since I already have an appointment as the Head of the Criminal Division. See, I already have a Presidential appointment so I can be “Acting” in other places, even those that are higher than mine, and so I was the Acting Associate Attorney General but it wasn’t until this editorial in the Post says “Get off it,” and he did.

Rubens: About how long are you dangling?

Jensen: A couple months—three months—something like that.

Rubens: Are you particularly worried, or are you—?

Jensen: I didn’t know; what am I supposed to do? I mean, I could go home, but—

Rubens: What were people telling you? You must have—
Jensen: I wanted to stay. I was doing fine; it was interesting—what we’re doing—having that time in DC, and so I was going to stay.

Rubens: Does William French-Smith take the lead in this, or—?

Jensen: Oh yes; and the people who run the contact with Congress, and the—

Rubens: And the Immigration and Naturalization—?

Jensen: Yes; everybody is saying “don’t do this.” It doesn’t make sense, so Simms finally let me go.

Rubens: Were you the only one? Were there—

Jensen: Yes, I was the only one because I was the one who—

Rubens: Congratulations.

Jensen: —well at that time—there’s been a lot of this stuff, and it goes on every once in a while—but at that time and for this position, obviously I was the only one because of what I had done in the Criminal Division.

MLJ: Weren’t you all also held up with questionnaires later by Howard Metzenbaum?

Jensen: Later on, yes.

MLJ: That was in connection with a different appointment?

Jensen: Yes.

Rubens: Yes; you’re going to have one more right? You’re going to have to go one more time?

Jensen: Two more; I got two more—that’s the second appointment.

Rubens: This is the second; that’s ’83 to ’85?
Jensen: Right; and then in ’85 I’m appointed to the Deputy position, and then ’86 to the Judgeship.

Rubens: The Judgeship, yes okay; but the occasion for ’83 is that Giuliani leaves?

Jensen: Yes.

Rubens: And they decide to move you up?

Jensen: That’s why I get moved up, yes.

Rubens: Who replaces you?

Jensen: Steve Trott comes in from Los Angeles and becomes the Head of the Criminal Division.

Rubens: Yes; now there’s going to be a problem with him.

MLJ: Just to follow famous people that ended up in this Department of Justice; where was Ken Starr at that time?

Jensen: Ken was the—he was the Chief of Staff for William French-Smith, so he stayed with William French-Smith until William French-Smith left.

Rubens: He’s called Counselor to the—?

Jensen: Yes; and he stayed through—maybe he left a little bit before William French-Smith, because it got held up because Ed Meese was supposed to come over to be the Attorney General and then we had the investigation of Ed Meese, the Independent Prosecutor investigation, and it held everything up. So William French Smith stayed on as Attorney General for a period of time waiting for that to be cleared up.

Rubens: Let’s just take an overview for one minute. William French-Smith says—there’s no secret reason why he leaves. He just wants to go back to private—?
Jensen: It just was time to go. It isn't unusual at all that people at these levels don't stay there for the whole time. The turnover—

Rubens: He said out of—I have the figure somewhere—hundreds and hundreds of his predecessors, that only seven had stayed longer than he, so this was common.

Jensen: Yes; and that was not unusual. It’s not unusual in all of the positions, not just the top one—that people are moving.

Rubens: Even Giuliani and—

Jensen: Giuliani moved, and I could have moved out too—I had been there two years, and it’s not unusual that people stay for two years and then move on. But a lot of that is the sequence of the appointment process in terms of what goes on in Washington—is that if you’re in one of the lower positions down here, you probably had been in the Department of Justice before as—say you worked in the US Attorney’s Office or something like that, and maybe even had a chance to work in the Department of Justice in some fashion—then you go back to the law firm and that’s when the Administration changes, and some of the law firms have a cadre of Democrats and a cadre of Republicans, so when the Administration changes they shift—the cadres go into operation and you move up—see, the next Administration comes in and you’re the right party, and you go into these Presidential appointments at higher levels. So there is a reason for the turnover, in that it sort of keeps the lifeblood of the policy level of Government going.

Rubens: It would seem natural that you would move up to that position for—?

Jensen: No; it’s not natural. It just—

MLJ: Who would be the other people that would be available to take that spot when Giuliani leaves?

Rubens: Well it had been created right? Wasn’t that the point—?

Jensen: Well no, it had been created, as I said, basically to allow Giuliani to—

Rubens: To come in.
Jensen: —to be at the top position.

Rubens: Right; so it could have been eliminated as a position?

Jensen: It could have been eliminated; and it was eliminated in essence, in terms of Criminal when I moved up to Deputy. So the chart changes; when I become the Deputy, all the Criminal places and—see this chart under the Associate Attorney General—?

They go directly under the Deputy, and the Associate switches over to the civil side, and runs the civil side.

Rubens: I see; okay.

Jensen: The reason that was done is because of people; when Giuliani was there it made sense to have him be in charge of the Criminal—and then when I’m there, it makes similar sense. When I become the Deputy, then Meese wants me to have that same role, so we move all of the Criminal part of this table of organization under the Deputy rather than the Associate, and move the Associate over to the other side and have the Associate be in charge of Civil.

MLJ: When you became Associate, were there other candidates or did Smith want you to be Associate?

Jensen: Smith wanted me in that position—there very well may have been other candidates, and whatever they felt about them, they decided to ask me to do it.

It wasn’t a big campaign or anything; it was just sort of—it was decided when Giuliani left who was going to be there next, and they said “Well okay, get Jensen.”

Rubens: A couple of other things that are going on in ’83—we did mention last week the Office for Victims of Crime. And that was something you had really initiated in Alameda and could see put in place at the Federal level. That’s mid 1983.

Jensen: And I said that’s when Lois Herringten was there. She came back and was the point person, and she’s really who did it all.
Rubens: Right; she’s the one who heads up the President’s Task Force on Victims of Crime. The other thing that happens in ’83 is that there is an Economic Crime Council that’s established, and you Chair it. It’s a prosecution of white-collar crime?

Jensen: Yes; well, there are different names for different initiatives that go on, and this happens all the time. It depends upon what is current and what is a priority of the Department. You need to set up ways of managing the Department, and there is a big difficulty in terms of the Department, because you’re back in Washington and now you’re supposed to be managing 94 US Attorneys’ Offices and that is not an easy thing to do. So things like an Economic Council help you, because then you get US Attorneys to come in to be on the Council. They buy into the national program and they influence other people to do the same thing.

Rubens: What is that national program, though? You’re directing it?

Jensen: The national program is designed to increase the level of resources committed, and the level of attention paid to economic crime.

Rubens: But who are you going after; are there—?

Jensen: White collar crimes; this is before Enron, but it’s the same sort of thing.

Rubens: It’s Defense contract cheaters?

Jensen: A lot of them are in defense industries where they’re getting contracts.

MLJ: But wasn’t the Savings and Loan crisis going on at the time, so there were Federal statutes and—

Jensen: Savings and Loan, and there was E F Hutton, and there were some prosecutions for white collar crimes that were going on, but that was—

MLJ: Because there was legislation related to the Savings and Loan—the Recovery and Reform Act.

Jensen: Yes; I think that was later.
MLJ: The changing of the statute of limitations for economic crimes and bank fraud.

Jensen: That was later; I don’t think that was when I was there.

Rubens: Yes; so did anything take a lot of your attention in terms of white collar crime; that you had a particular interest in?

Jensen: No; this was a Department of Justice initiative, and I was involved because of that.

MLJ: In addition to speeches to US Attorneys and Congressional testimony, did you also do Cabinet presentations where you’re trying to get the Administration onboard for any particular idea?

Jensen: I did a Cabinet presentation on the Organized Crime Drug Enforcement Task Forces, after we established them around ’83 and ’84. We had had a year or so running them—then they wanted a report to be made to the President’s Cabinet, and I did that because I was the one who was supposed to be in charge of the Washington level of that program.

Rubens: Yes; now there is somewhere, I can't find the data, but you said that you were really beginning to go after organized drug traffickers and—?

Jensen: We did and we—

Rubens: There was some figure quoted—35 big convictions out of—?

Jensen: Well, we had a report; we had to do a report for Congress. When the whole program was set up they wanted a report; which is typical, and rational, so we did a big report after about—maybe about the second year, because the first year you’re just getting into these. These investigations can run as long as a year, so that by the time you get to where you’re actually leading into the point where there are indictments and arrests and trials and convictions—it takes years to do that, but by the end of about two years or so we had enough information to have a report that outlined individual prosecutions and what had happened.

Rubens: Yes; I think there was something like 1,000 indictments and close to 500 convictions.
Jensen: There were really quite a bit.

Rubens: It seemed like you were really moving.

MLJ: I don’t know if this is appropriate to ask, but in generating the reports I take it you’re using computer systems? When do you start developing a computer data system for the Department of Justice?

Jensen: Well, at various levels; they already have—

MLJ: It’s going to be an issue later.

Rubens: Not too much later right? ‘84 is going—

Jensen: They already have various levels of data systems, and part of it is moving along with the technology in terms of what kind of level you get to. I was not-

MLJ: Were you pushing this?

Jensen: In a sense—insofar as the Department itself was moving into higher levels of data support; we were pushing programs to get there. And there were programs that were going to the US Attorneys’ Offices; there were programs going to the FBI, and to all of the agencies in the Department of Justice to, in effect, get management information. And the idea was to now use the magic computer to do this—so we’re just learning about all this, and it’s just getting there. But we can get into that later because it becomes important, but we’re just learning about it—and you’re doing it for everybody.

Rubens: Are you thinking about just jogging ahead and doing it?

MLJ: No, no; I just wanted to know if there was any management effort, or consciousness paid to data collection in the sense that was going to lead to the later issues, given that you had to do these reports to support the program.

Jensen: Well—but you’re saying “what are you doing?” and see, the aspect of what you’re doing is not limited to all this.

I mean, in Washington things happen all the time; and one of the first big prosecution initiatives in Washington was air traffic controllers—remember
this whole business about the strike of air traffic controllers, and whether or not it’s criminal? Ultimately, we prosecuted people for going on strike. And one of the interesting parts about that from my perspective was—when the whole idea comes up, you have to get ready; the Criminal Division has to be ready to do this, and so you have various people who know all these things and you give assignments to people so they become expert in all these areas. One of the things that developed through that is apparently it was known to some of our senior people in the Criminal Division that when the law had been passed which said it’s a crime to strike if you’re an air traffic controller, the Department of Justice had written a letter to the Union saying “We’re going to look at this as a Civil matter if there’s a strike that ever comes along, and we’re not going to use the Criminal laws.” Well, I didn’t know that. Then they told me, and so I had to write a letter to the Union to say that the previous letter is withdrawn, and if there is a strike you’re going to get prosecuted, but it would have been—

Rubens: When is the legislation passed?

Jensen: A couple years before that, I think, but it would have been not a good idea for sure.

Rubens: Had you not known.

Jensen: If the President had come and said “All right, let’s get these going;” you’d say “Well, we already promised we’re not going to do it.”

MLJ: But that wouldn’t be a technical bar to the prosecution, but it would be a political bar?

Jensen: Yes; it would be a political bar, and that’s even worse.

Rubens: Yes; egg on your face.

Jensen: So we withdrew the letter, and then we had prosecutions all around the country.

Rubens: The Criminal prosecution was because of legislation that had been passed about endangering—

Jensen: That’s right; safety.
MLJ: Were people actually convicted?

Jensen: Yes; they were. I don’t think anybody was ever prosecuted in San Francisco, but they were prosecuted in other areas.

Rubens: I don’t think the air controllers ever came back either.

Jensen: They didn’t come back as a union—but they came back, because it’s obviously critical. We can't run the country without that; there is no question about that. Then the other thing that happened, and you’re probably going to get there, but they were a little bit wary of me as a Democrat, and wondering what’s going to happen in the Criminal world, and so—

Rubens: Who is—they?

Jensen: The political world out there. I mean, one day the press guy for the Attorney General; see each person—I had a press guy who worked for me in the Criminal Division, and we had press people at all these different levels—and the guy who was the head of the whole thing calls me up one morning late and says “Do you censor movies in the Criminal Division? Are you a censor?” And I—I don’t know. [Laughs] So let’s find out. And so I find out that yeah, we do. I get back to him and it’s a little late, and the whole story is gone; they said we have censored a movie done by the Canadian Government on Acid Rain and labeled it as propaganda and ask “What in the world is going on?” We got beat up in the press something—

Rubens: Who is—we? What Division is this?

Jensen: Well what happened was that—see; I didn’t know this, but there is a law that requires lobbyists for foreign Governments to register, and then the Department of Justice is supposed to look at your product—including movies and films—and if they are advocacy pieces on policy issues then you have to label them as propaganda, so that’s what we were doing. We have this function, and it’s buried in the Criminal Division someplace.

Rubens: Oh, in the Criminal Division; I see what you’re saying.

Jensen: Yes; so that’s why the guy calls me up and says “What are you doing to movies?” So we find out what was happening, but by the time we can get back to the gentleman—and this is because I don’t know all this stuff and I’m
trying to find out, and you’ve got to find out—and it would be very helpful if
the call had been to somebody who knew—but they don’t know, and I don’t
know, but we find it out and by the time we get back to them—the press cycle
has gone—and we’re too late. So we get bashed in the papers for doing this.
Congress had a hearing; the House Judiciary Committee had a hearing on this
thing, and I went to testify.

Rubens: What year are we talking about?

Jensen: ’83. No; it’s ’82, I think.

It had a lot of press coverage, though it was a local sort of thing. So I testified,
and basically my testimony was that the reason we did this was because the
law requires us to do it; that there is a law that was passed by Congress that
says if you have this sort of activity, this is what you’re supposed to do and
that’s why we were doing it.

But William French-Smith called me and we got the movie, because the
review had been done in the Criminal Division and then the movie was sent
back to the Canadians; so I had to go over there and get it, and bring it back in
case we wanted to take a look at it and see if we agreed that it was
propaganda. And French-Smith asked me—“Who actually does this review?”
And I said, “The paralegal,” because that’s who it turned out to be.

Rubens: Someone way down in the—

Jensen: Yes; he called me down and his reaction was a little—“Oh boy, let’s take a
look at the movie.” So we all sat down and looked at a movie, and it’s
propaganda. In terms of the legislation, and in terms of what’s covered; there
wasn’t any question about it. It was clearly propaganda—we were actually
doing the right thing. So I go to the House and testify and tell them that at that
point, basically the issue is “Well, if you’re so upset about this, then change
the law.” It isn’t that we weren’t doing what the law requires, we were.

And there was another interesting little tidbit. The big thing that happened
politically was that one of the Op-Ed pieces that had been done about this
originally was written by one of Carter’s people staff people – Jody Powell.
Jody Powell did a piece on this where he castigated the Department and the
Administration for doing this sort of thing. Then after the testimony, he was
great; he wrote this piece in which he said “I was wrong. I went too fast on it.”
So he wrote a piece in the Washington Post saying “I was wrong on this;
they’re doing what they’re supposed to do.” So we came out looking good,
and I came out looking good, because I’m the one who has to show up there.
It’s totally fortuitous, but after that I was sort of looked upon as—you’re part of the operation and the team.

Rubens: I think you also did a survey of what’s really going on in your office; what other areas might—?

Jensen: You can survey it forever and not find out everything, because there’s an enormous amount of things that go on there.

Rubens: You said this and I can't remember. How many people were in the Criminal Division? It expanded while you were there?

Jensen: There were about 200 or 300.

Rubens: Really?

Jensen: Yes; but you’ve got to look at the entire Department—you’re in charge of all of the lawyers in the Criminal Division, the US Attorneys’ Offices; that’s 4,000 or 5,000—it’s a lot of people.

Rubens: I would have never known about the Canadian movie—it’s a nice case.

Jensen: It was an interesting thing for me, and it was a Washington learning experience because it makes all the difference in the world to get there on the first press cycle.

MLJ: Did you have a person following up on the press, as did the Attorney General, and everyone above you?

Jensen: Yes; right.

MLJ: Does the Associate Attorney General and do all the Assistants have press people?

Jensen: Yes.

MLJ: There is a press office in the Department of Justice?
Jensen: Yes; a big press office.

MLJ: One of the things that you mentioned happened at the Department – in order to keep you informed about what was in the press—was that every morning you got something on your desk—?

Jensen: Oh, you got clips. For the entire Department back then—every morning you had a sheaf of clips; overnight there would be a little operation in the Justice Department where they would look through all the papers and pick out the things that had to do with the Justice Department, and they would copy them and put them in this clip file. Basically, what you got was the New York Times and the Washington Post and the Wall Street Journal, and every once in a while, other papers from around the country. And that kept you going; you’d have to see what was in the clips every morning to see what you were going to be doing that day.

Rubens: Sure; was this specific to Criminal?

Jensen: No; it was for everything. The clips would cover anything that happened in the Criminal world, they’d cover anti-trust, civil rights, tax—all that sort of thing—anything that had to do with the—

Rubens: General administration—okay. But as an undercurrent, isn’t there a lot that is going on with Iran Contra?

Jensen: Yes.

Rubens: That’s a whole different story, but I imagine you’re not aware of any of that at this point.

Jensen: No, not at all.

Rubens: I wanted to ask you one other thing. I was a little shocked at this; it could be wrong, but I wondered if you had any knowledge of a story that in fact, Reagan’s recuperation from the attempted assassination was really lengthy, and that staff began to notice a lack of attention when he came back. There was the implication that he just never was the same again after that—?

Jensen: I think—
Rubens: Then by ’84, he’s battling cancer; I had forgotten that.

Jensen: Well, when you say staff—that’s White House; I don’t have anything to do with that at my level—

Rubens: No one is gossiping about this?

Jensen: I would tend to see that as being just another one of the little hit pieces.

MLJ: How much contact do you have with the President in your position?

Jensen: Very little; we were invited over to the White House once in a while for ceremonial kinds of things—when he’d sign something—like when we had the Commission on Organized Crime. The Chair of the Commission who was appointed was Irving Kaufman; he was a Judge from the Second Circuit. He came to Washington and they have the big Rose Garden ceremony, so the people who are going to be involved in this thing are surrounding him there, and I’m there because I’m going to be involved, but that’s the kind of thing that would happen.

MLJ: You don’t get in any kind of policy discussions with the President?

Jensen: I don’t get in any policy discussions.

Rubens: Are you having any contact with Meese—?

Jensen: Yes; but on those kinds of things. We would talk about business—yes; and I also had contact with him socially, but I wouldn’t have with these other people. Meese was an old friend, though.

Rubens: So you were seeing him?

Jensen: Yes.

Rubens: Is there anything more on ’83 or ’84 that you’d like to talk about?

Begin Audio file 16
Jensen: One of the things that was happening—again growing out of the Criminal and Drug Enforcement initiatives—is an effort to develop agreements with people who were overseas, particularly the Italian Government, because of the Mafia and the drug trade that is associated with that. The idea was to enter into joint agreements with them about enforcement areas. So I was sent to Italy to meet with the Minister of the Interior to get ready to talk about agreements in terms of Criminal Enforcement, and I remember the first time—I asked Barbara, “do you want to go to Rome?” and she said “sure.” I said there is only one thing; we’re only going to be there one day—one night and then we’re coming back. She said, “I’ll wait.” So I went over and came home.

Rubens: You couldn’t extend it a little?

Jensen: I couldn’t, no.

MLJ: Didn’t you go again in connection with Interpol?

Jensen: That’s later; yes.

MLJ: Was that separate from this agreement?

Jensen: No, there are various treaties—and this is unilateral in the sense that this is the Italian Government and the US Government, and we’re reaching agreements regarding sharing law enforcement activities. It was an important thing.

Rubens: Do you have State Department people with you?

Jensen: The State Department would always watch what you were doing, but they didn’t go with us. But they always monitored everything that was going on, such that it would be done in a way that it was not inconsistent with what was happening with State Department initiatives and policies.

MLJ: Do you meet with an equivalent of a Justice Department-type official in Italy?

Jensen: Yes. Actually, I met with the person who was the Minister of the Interior in Italy, so he would be the equivalent of William French Smith, but he had various minions with him. We would talk, and after that there was a big meeting with William French Smith and various people and they signed all these treaties.
Rubens: This was new?

Jensen: Well, no, the idea is not; there are all kinds of international accords, but this one was for law enforcement information sharing, and for setting up joint operations.

MLJ: Did you do that with other Governments?

Jensen: No; we had only the one—

MLJ: You say that as though you were trying to do it with other Governments.

Jensen: Well, we did some, maybe, through the British—I think in reference to the Cayman Islands, we had one. The Cayman Islands was a big offshore tax shelter thing. And so we negotiated a treaty with reference to financial disclosures.

Rubens: Were you doing that as—

Jensen: Done through Great Britain.

Rubens: You’re getting some of that out of your white collar crime era too, I think.

Jensen: In terms of tracing things through the financial tracks, yes.

Rubens: I wanted to ask you then, why Italy?

Jensen: Because Italy is—the basic idea is organized crime. You have the Colombo family and—

Rubens: Still?

Jensen: At that time yes, absolutely; and they’re still in existence. Some of what Rudy [Giuliani] is going to be doing is prosecuting the high levels of these organized crime outfits. So it ties back in that what you’re trying to do is build criminal cases against the high level people in the Mafia in the US by getting information from the Italian Enforcement people. So the agreement helped—yes, it did. And there were a lot of relationships with the Italian
Magistrates who did this. In Italy, the Magistrates have a judicial investigative role to create the cases, which is different than here, so the investigations would include some contact with the people who were involved in the Magistrate investigations in Italy.

MLJ: These were all things you were doing as Assistant in charge of the Criminal Division?

Jensen: Right; but these are a lot of differences compared with what was going on before.

Rubens: You must have been shocked when you learned about some of the deals that were going on in connection with Iran-Contra.

Jensen: I don’t get into that.

Rubens: I know you don’t, but I’m talking about when you learn about it later—

Jensen: Well, it’s all the things—you don’t know what is going on in the Government. The Government is a very big thing, so there are all kinds of things that are going on that sometimes you’re involved in, and sometimes you’re not.

MLJ: You had been in elections in Alameda County which were non-partisan, but nonetheless, you had to run against someone. In our interviews, you’ve indicated that you were not necessarily apolitical—but certainly not political as it is in Washington. Did you find yourself becoming very political, or at least politically knowledgeable?

Jensen: Well, you have to be—there’s a partisan definition to things. You have to understand that. But still, law enforcement is actually apolitical—and it still is, even though there is a political eye that’s watching it all. But you have to make apolitical decisions all the way along the line, and that happens, but there are areas where you’re doing something the Administration has directed—like the Administration says “We want the 1984 Sentencing Reform Act passed.” So you are in a political context then because now you’re trying to get Congress to do this. That’s partisan and you do it as a part of the Administration’s agenda.

Rubens: Yes; and William French Smith’s agenda.
Jensen: Yes; that’s right, but he wouldn’t be doing it—he wouldn’t have an agenda that is inconsistent with the President.

Rubens: No; and he was supremely political. There are a couple of other areas that he says he was interested in pursuing; a streamlining Task Force, affirmative action questions—that was Civil Rights, right?

Jensen: That was Civil Rights, right.

Rubens: Yes; how to fight crime and cut spending at the same time—that was a kind of an oxymoron in a way.

Jensen: It still is; it always has been and it always will be. I mean, where do the dollars go? There’s a finite number of dollars; where does it go when all of the agencies want it and all have good reasons for wanting it?

MLJ: What was the rise in spending on enforcement when these Acts were put in place?

Jensen: There was an increase—as I said—$100,000,000 for the Task Forces; that’s a lot of money, and that money is for new Agents. The manpower in both the DEA and the FBI had gone down, and part of it was to get it back, and part of it was to increase it. That’s part of the spending that was involved.

MLJ: What about with the minimum mandatories in place—did that cause increased spending for Federal prisons?

Jensen: Yes; I mean, all these things lead to more people, and after the Guidelines come in there are more people that are going to go to prison and that means there are going to be more prisoners. So there was more money spent on prisons.

Rubens: I keep bringing up Iran-Contra, and I don’t mean to be beating up broken drums, but I’m raising it now because here you’re trying to stop narcotics trade—and at some point cocaine was being used as a barter; a political chip.

But here’s another note I got out of French Smith’s autobiography; he says that one of the things he’s concerned with is Judges involving themselves in the Executive function—apparently Judge Stanley Weigel directed him to determine if activity in Nicaragua violated the Neutrality Act—?
Jensen: Stanley Weigel is a Judge in San Francisco—he was; he’s deceased now.

Rubens: Yes; what level was he?

Jensen: He’s a Federal District Judge, and he orders something to be done by the Attorney General.

Rubens: Some political case, it must be.

Jensen: So the Attorney General is saying “I run this office and you don’t.”

MLJ: Now that you are sitting as a Federal Judge, do you believe you have the power to tell the Attorney General to do something?

Jensen: I don’t think so; I think I have the power to say “you did this wrong and the remedy is this.” If it’s within an area under my jurisdiction; for example, if there is a case that I’m trying—a criminal case—and the US Attorney has done something that’s against the law, I can throw out the case.

MLJ: It’s not really the same thing, but jumping into the judicial fold for a minute, your colleagues in the Northern District of California, for example, have stepped in and taken over the San Francisco Fire Department, have stepped in and run some California prisons—

Jensen: Yes; I don’t think—

MLJ: How do you distinguish?

Jensen: Well, it depends upon what laws you’re enforcing, and if you’re enforcing the Civil Rights laws, then you have all kinds of powers—injunctive powers and remedy powers that grow out of that—that’s how you get into prisons and how you get into the fire department; because you have to decide whether there’s discrimination going on that’s in violation of the Federal law. Stanley Weigel may have had something that got him going that allowed him to order Executive people to do that. So in the abstract it’s true that he doesn’t run the Justice Department, and the it’s also true that he has the power as a Federal Judge to enforce Federal law, and if it comes into an area where it conflicts with what’s being done by the Attorney General, he can order the Attorney General to stop violating the law, or whatever other remedies are involved.
So when people get into things like running prisons or running fire departments, I think that it has to be done, as I say, judiciously, and I would think it’s a huge step to take, and that it’s a very difficult thing to do because it’s hard from your position sitting in one of these Courtrooms, or one of these Chambers, to know everything that’s going on that you’re making decisions about.

Rubens: Yes; well clearly this was some kind of political case—I mean, this harkened back to the old Vietnam kinds of strategies which I just wanted to bring up. I also see that there is a case that comes up when you first take office that involves whether the Republicans stole information from the Democrats. What is this? And you’re going to look into it—papers that prepared them for debates?

Jensen: Yes; for debates—Debate-Gate, I think.

Rubens: Debate-Gate, that’s right.

Jensen: Everything is a Gate.

Rubens: Since Watergate, yes.

Jensen: The question is whether or not you’re going to get an Independent Counsel.

Rubens: Yes; what does that mean?

Jensen: When you appoint somebody to be the prosecutor.

Rubens: Who appoints them?

Jensen: The President appoints; but the investigation regarding whether that ought to be done is conducted by the Justice Department. And that’s where you get into this, where there is a possible violation of law and the person who violates the law falls within the list of people who would trigger an Independent Counsel investigation.

Rubens: Right; and there is some reform of that Act in 1982.
Jensen: That’s gone now. There are a lot of things that have happened along the line, but there has been a long history of all this. The Act was in existence at the time, and I think we took the position that we would not ask Congress to do away with the Act, although it was taken reluctantly.

MLJ: Was that the heyday of the Independent Counsel?

Jensen: In one way it was, yes. Meese, as I mentioned before, was investigated by an Independent Counsel, and the Independent Counsel was recommended by the President after an investigation by our Department recommending that that’s what they should do.

Rubens: What was he investigated for?

Jensen: For financial problems in terms of loans, or—something in the area of financial.

Rubens: That’s not the INSLAW case?

Jensen: Oh no; it’s some areas of investigation with reference to some loans or some financial transactions.

Rubens: Who brings this?

Jensen: What happens is—it can get started in terms of public notice about a problem saying that here’s a person who is a “covered person”—it can start with that; and Meese—his position with the President would make him a “covered person”—which meant that it shouldn’t be investigated by the Justice Department, because it’s too close. So when that happens, then the President can ask a panel of Judges to appoint an Independent Prosecutor who then takes over in the stead of the Justice Department to run an investigation of that individual.

With Meese, when we look at it and see what it is, we’re looking at it to see whether there is a threshold that says there is some level of evidence or some other things showing that a crime was committed, or that there may have been a crime, and that there’s a connection to a “covered person.” If that is the conclusion, then there should be an investigation. You’re not charging anybody—these are just what are called “initiating investigations.” And in this case, after we look at it, we say it should be initiated. Actually Meese came out and said there should be an appointment, and I welcome having somebody
look at this—so there was a person appointed to investigate him. That was right at the same time when I was saying that William French Smith is about to leave and Meese is to come over as Attorney General, and then everything stops while this goes on.

MLJ: Who was the Independent Counsel for Meese; do you recall?

Jensen: A lawyer in DC, and I’ll probably remember it. This is the time when a friend of Barbara’s used to say “When you’re asked a question like that you say—how soon do you need to know?”

Rubens: [Laughs] That’s great.

Jensen: But he was a very good lawyer in DC whose practice included criminal—and he did a whole investigation and a big report about the whole thing.

Rubens: And the upshot was—?

Jensen: That there was nothing there.

Rubens: Okay; well one other little one, the Dan White case; there is an article that first mentions Arlo Smith, who was the DA—that he had been a classmate of yours.

Jensen: Yes.

Rubens: So the issue is whether—the assassination was in ’78; White is in jail, and it’s an issue of whether there is going to be a Federal indictment. Why is there an issue of Federal jurisdiction? According to this article, you’re going to look into it, but I don’t see any resolution here.

Jensen: Who is going to look into it—me?

Rubens: Yes; “. . . the District Attorney said yesterday. . .”—this is ’83—“. . . that Jensen has not responded to a phone call and. . .”—but if White is not indicted on federal charges by November 27th—that’s five years after he had been sentenced; the five-year statute of limitations will have run out and he must be freed. So I can't find what happened—
Jensen: My guess is what is going on with the federal jurisdiction—I don’t know what the thesis is; I don’t remember that—but it could be that he was prosecuted by the State and they didn’t get what they wanted. They didn’t get a murder conviction.

Rubens: You’re right; it’s manslaughter and the “Twinkie defense.”

Jensen: Yes; and see, the Federal sovereign for a Federal offense can come in and charge even though he’s been tried in the State, so maybe they were trying to figure out a way in which they could get a Federal prosecution and get a higher level punishment for him, and then we never did it.

Rubens: And how would that be Federal?

Jensen: I have no idea.

Rubens: That was not here.

Jensen: That’s what I’m talking about—where is the hook?

Rubens: Yes; so nothing that you remember. Oh, here is an article on a different case—“Jensen said 425 gangs targeted by the Task Forces represent a good portion of the major traffickers in this country. . . “

Jensen: That’s when we’re first getting started with the Task Forces here.

MLJ: That’s an example of the Federal world calling a press conference to declare the success of one of their programs.

Jensen: To declare war; and to declare that the federal program succeeded, sure. That’s not an unusual thing for the Federal Government, the State Government, the Local Government, or for private industry.

Rubens: So should we go to when Meese comes in?

MLJ: How does your job change when you’re waiting for Meese to come in; you’re the Associate Attorney General prior to Meese coming in, right?
Jensen: Yes; and then I became the Deputy—I’m the Acting Deputy because everybody is gone. When William French Smith leaves, everybody left. Ed Schmults left; he had been the Deputy before, and then for a while there I think Carol Dinkins was appointed as the Deputy Attorney General, and then I was the Deputy Attorney General the other times.

MLJ: Were you the official Associate Attorney General when all these people left?

Jensen: Yes.

MLJ: So your appointment had taken place, and you were working in that job?

Jensen: That’s right; by that time—

MLJ: How long are you in that job before everybody else leaves?

Jensen: Well there’s another six months or so, maybe.

Rubens: While you’re waiting for Meese?

Jensen: Yes; but see, William French Smith stayed on all that time. He had said “I’m leaving,” and then when all this happened, he said “No, I will stay.” He wasn’t very happy about that, but he stayed until it got resolved and Meese could come over as the Attorney General.

Rubens: So that’s by ’85?

MLJ: Is there any change substantively in what you did day-to-day as Associate Attorney General versus Assistant in charge of the Criminal Division?

Jensen: Yes; because as Associate you were now involved in a lot of other things that I wasn’t involved in before. For example, I became involved with Immigration stuff—the Criminal Division didn’t have anything to do with that. And I’d be involved, in effect, with the management of the other agencies, the DEA, the FBI—being the liaison between the Attorney General and them—so I’d get involved in that. And this is where I think you mentioned before, Interpol comes in.
Interpol has an American office as a result of an international agreement—one of these agreements where everybody agrees to be a part of this organization and there are offices or bureaus, I think they call them, in all of the different countries. At the time I first got involved, the office was changed—every year it was switched back and forth between Justice and Treasury, and we got into problems with that. So you got into the business of who is running what, and since Interpol is sort of a perk in a sense, you’d have the Department becoming involved in it. We ultimately got to the point where we worked out some deals where we would run the whole thing—the Department of Justice would run it—but we got the Head of the Secret Service appointed to be the President of Interpol. And he’s from Treasury, so we worked it out.

Rubens: The Secret Service is under Treasury?

Jensen: Yes; so that was part of the Interpol experience, but it was a very interesting experience. We’d go to international conferences and that kind of thing.

Rubens: How are you dividing up your time? How are you literally managing—?

Jensen: You’re scheduling your time. You know, this is Washington. You have 15-minute segments of the world; you do this for 15 minutes and that for 30, and that one for 45, and then whatever. It’s all scheduled.

MLJ: Was the Director of the FBI involved in Interpol as well?

Jensen: Right.

MLJ: When you first came into DOJ, who was head of the FBI?

Jensen: Webster was. He had been held over; he had been appointed by Carter.

Rubens: And they kept him.

Jensen: Theoretically, I guess, the President could replace him, but he has a 10-year term. I think he offered to resign—

Rubens: Yes; he did, and then Reagan appointed him.
Jensen: So he stayed on, and he was wonderful. I had a lot to do with the FBI in all these different roles. I’d be dealing with the FBI all the time, so I spent a lot of time over there. He was still there, I guess, when I left.

Rubens: He was there when you left, because in about ’86—’87 they’re thinking about you—?

Jensen: Replacing him, yes, right.

Rubens: Because he goes to CIA?

Jensen: Yes, after a while. He was in private practice for a while. He had been a District Judge before in St. Louis, and when he was appointed at the FBI he had to give up his Judgeship, which is one of the negative features about being head of the FBI—you lose your status as a life-tenured Judge.

Rubens: Yes; so that’s an example of a real public servant.

Jensen: Oh absolutely, yes.

Rubens: What was William French Smith’s personality like? I don’t have a sense of him—.

Jensen: Very quiet, very, very interested in things. He would always work, but he was able to do lots of things effortlessly. He was very, very bright and a very decent man.

Rubens: But not flamboyant or—?

Jensen: Oh not at all; he was very low-key, and he ran everything that way. He gave people responsibilities and he did a very, very good job. And he got good people around him. His Deputy Attorney General, Ed Schmults, was a very, very good guy.

Rubens: And Webster the same way? I wanted just a comment.
Jensen: No; he was really good, and it was pretty clear that he didn’t want to replace him. He had been already identified as being an outstanding leader, but he didn’t really want to replace him.

Rubens: All right; let me see if there is any other—so when Meese finally comes in is there any change of atmosphere or—?

Jensen: Well, I had not really planned—Barbara and I had not really planned to stay there that long. I don’t know that we had a specific plan in mind, but we recognized that people moved out during the first term, so if it hadn't been for moving up to Associate Attorney General, we probably would have gone home—well, we would have. I could have stayed at Criminal—being Head of Criminal, but I don’t know. But they asked me to stay and be Associate, and I said okay; then I’m there, and when Meese comes over, he said “Please stay on and be the Deputy Attorney General.” That was not part of the plan, but I said “Okay.”

MLJ: When you had to plan and you say, “Well, I could go home,” were you thinking “I can go home with a Federal Judgeship?” Or were you thinking “I can go home and do something?” What were you thinking you were going to do?

Jensen: Just anything; I wasn’t thinking about anything—just going.

MLJ: Were you thinking about going into private practice?

Jensen: Sure. There is the old Heafey firm, Crosby Heafey—they basically offered me a position to come back to, and that would have been a good position—a good thing to do. But that’s—

MLJ: Would you have been a lobbyist—?

Jensen: No; I wouldn’t be a lobbyist. I would be Of Counsel, or—

MLJ: Would you actually do something?

Jensen: Yes; I would work for them and do things.
MLJ: I say this with a surprised tone in my voice, because you’re somebody who has never been in private practice. You’ve never done a civil case, you’ve never done probably a deposition—you’ve obviously managed people, but where would you fit in private practice?

Rubens: Well, with Heafey, you wouldn’t be prosecuting white-collar crime I don’t think, so would you be defending—

Jensen: I think they thought so.

Rubens: Oh they did?

Jensen: No, no; they thought I’d be defending them. I would do a corporate defense kind of work, and that was one of the reasons I didn’t want to do it, because I didn’t want to do that kind of work.

MLJ: I was going to say, the traditional question to prosecutors is “Would you ever be a defense attorney?”

Jensen: I would; I guess it’s possible. There would have been some set of circumstances—I said “Yes, I’ll go ahead and do that,” but the circumstances didn’t come out that way.

Rubens: But you’re working 18-20 hour days. These are—?

Jensen: The hope was for more like 16.

Rubens: Yes; but it’s a big demand.

Jensen: It’s a lot of work; there is no question about that.

Rubens: So you had not been thinking about spending the second term of the Administration—?

Jensen: No; I didn’t want to do that. I definitely didn’t want to stay there, and I didn’t get the—you’ve become a Washingtonian or whatever, and you get bitten by the bug—that never happened, because we always wanted to come back home. But we stayed because of the sequence of positions, really.
MLJ: To do a little social study—what was your wife doing to acclimate herself to Washington, and was she lobbying to come home?

Jensen: Yes; she said fine to go, but when you look at it, she goes and she leaves a job, she leaves all of the friends she had, all the organizations she—

Rubens: Where had she been working?

Jensen: She worked for a developer in South County. She did all the work for him, and she enjoyed that. She did accounting. She had gone back to school to learn some accounting so she could do the books and that sort of thing, and she could do all the clerical stuff. She was doing that, and she had a lot of friends, and then the family is all there—her family and her mother.

Rubens: I didn’t ask where the boys were by then?

Jensen: Her mother is there, so when we leave she leaves friends, family, and job and comes back with me; and sits down and then I’m gone all day. So it’s not really very pleasant, and it’s a tough kind of thing, but she ultimately got into a couple things that were good. She went to aerobics classes that were across the street and she really liked that, and then she looked at some ads in the Post, and they were advertising to get people to sign up as docents at the National Archives, so she went and took training there and became a docent at the National Archives. So she developed a lot of good friends there and kept busy doing stuff.

Rubens: She found a place for herself, yes.

Jensen: She was offered a job commercially as soon as she got back there and said no, because I’m going to be running around and she’s going to be going with me, and it really wouldn’t work very well. So she didn’t want to do that, but she could have—she did those things, as I say. She enjoyed being a docent and she enjoyed the friends that she developed there—and also around the house and the aerobics class. We also met some good people in the area where we lived, so we had some relationships with those people.

Rubens: Did you also bring some people back to work for you in Washington that she had known from California?
Jensen: Well, I was thinking about that and this is where Howard Janssen, who was the guy who ran all the Victim Witness—.

Rubens: Who was, by that time, at Crosby Heafey, or had not been there yet?

Jensen: No, he was not there yet. He was still in the Office, but I was thinking he’d be a good person to take. But he couldn’t go because he didn’t have a history of working for the President. And so—

Rubens: And he was a Democrat, you said?

Jensen: Yes; so that didn’t work, you had to get people there—

MLJ: There was Roger Olsen—

Jensen: Roger was already there. He was working in private practice, but he ultimately came to work at the Department.

MLJ: Did you bring him into DOJ?

Rubens: Well, he had been in DOJ. When he went back from the—

MLJ: When you came back?

Jensen: Yes; in the DA’s Office he had been—I knew him in the DA’s Office as a Deputy—and then he left and went back to Washington and worked as a Trial Lawyer in the Tax Division going around the country and trying tax cases. And then he got out into private practice and ran a tax practice, so when I got back there he was doing that.

Rubens: He was also sort of showing you around and—?

Jensen: Yes, he did; then he came to work as one of the Deputies in the Criminal Division, so he worked there and—

MLJ: Tax Division—did you bring him in?
Jensen: Yes; I brought him into the Criminal Division, and when I left he was still there, and he was appointed to be the Head of the Tax Division by Meese. So he ended up as the Head of the Tax—he was the Assistant in charge of this block down here on the chart; there’s a Tax Division. He was in charge of that.

MLJ: Who else did you bring back, or know from Alameda County, who was there?

Jensen: When I got back there—I mentioned the staff people I got, but then some people that came back were Bill McGinnis was one—he came back to work for Lois Haight; he had been in the DA’s Office. I had him come over to be one of my staff people as Deputy Attorney General, so he worked for me when I was a Deputy.

MLJ: Was Sandy Brown-Armstrong, who is now a Federal Judge, in the DA’s Office—?

Jensen: Sandy Armstrong was in the DA’s Office, then she went back and was in the Criminal Division when I was there, and she—

MLJ: Did you bring here there or did somebody else—?

Jensen: She came back by herself—I didn’t do the hiring directly. That was done through the whole process in the Division, but she came through that process and she went to work for the Criminal Division. She worked for the Public Integrity section for a while. And Marty Jenkins came back and was in the Civil Rights Division.

MLJ: We had talked about social ramifications of the move, and I knew that there were a lot of people from Alameda County who eventually landed in Washington that you may have had social contacts with, and I just wanted to see if you had a role in bringing all those people back, or that was through Meese?

Jensen: Some of them, but Meese had a role also; when you look at that, you had Meese and myself, and then Roger, and then we had Lois, and I think there was a guy who worked for John Herrington in the White House who had been a Deputy DA in Alameda County, and Bob Mackichan, was his name, and then Joe Salgado. Joe Salgado had worked in the DA’s Office, and he went to work for another Alameda County Deputy DA named Alan Nelson, who ran the Immigration Department, and Salgado worked for him as Head of the
Border Patrol, so there were any number of Alameda County people back there.

Rubens: Are you facing issues in the Justice Department in general, or maybe your Division particularly, any affirmative action or women’s issues, and—?

Jensen: We do, yes; I don’t in the Criminal Division—obviously, they do in the Civil Rights Division, but—

MLJ: Internal hiring?

Jensen: No; I don’t do internal hiring. I’m divorced from that; that’s a really big difference. In Alameda County, I had been involved in hiring everybody and then I get back there, and I don’t have anything to do with anybody’s hiring. It’s already done through their Civil Service operations. I may be involved in the sense that if I can find somebody and recommend them, then they can go through it, but I don’t have any involvement other than that. But I can get involved at higher levels—as I said, Roger Olsen is above that, because he comes in politically from the White House to go to work in one of these positions as a Deputy Assistant Attorney General.

Rubens: I was thinking about you saying that the FBI never had been involved in drug enforcement and—the goal here is going to be some streamlining and efficiency. I was thinking about the Civil Rights Division of the Justice Department, because when I went to Washington in the early ’70s, I worked for the Civil Rights Commission, but the Civil Rights Division—?

Jensen: Is in the Justice Department.

Rubens: And the Justice Department really had quite a history, and so—

Jensen: This goes all the way back—

Rubens: I never understood the split between the—

Jensen: Well, these are direct enforcement things—the Civil Rights Division does direct enforcement, and they got involved, historically, in all of the school cases.
Rubens: Yes; where did the Civil Rights Commission come from? It came out of the—?

Jensen: That’s an Executive development—.

Rubens: Well, I guess it was out of the Brown decision—it was around then—

Jensen: I think it was done—it’s a Commission that’s appointed by the President.

Rubens: Oh, absolutely yes; the Head of Notre Dame was the Head at the time that I was there.

Jensen: Yes; right.

Rubens: So—All right; social life—I wanted to know if there is a way of characterizing the difference between Meese’s administration, his style or goals, versus William French Smith?

Jensen: Well, the biggest difference was when William French Smith was the Attorney General, he had staff meetings at 9 o’clock at the morning. When Meese came in, we had staff meetings at 7 o’clock in the morning; so that was a big difference.

Rubens: Yes; he was a big worker.

Jensen: Yes; he was. [Laughs]

Rubens: Just a hard-working guy?

Jensen: Yes; he worked very hard.

MLJ: How did policy initiatives change?

Jensen: Policy didn’t change.

MLJ: What about the famous obscenity initiative?
Jensen: Well, that was stuff that they had been involved in earlier. Meese had been involved with that from the beginning. There were people who were in the——say, the right side of the spectrum—who thought we should be doing a good deal more about obscenity, and there were efforts made to set prosecution of obscenity cases as a priority.

Rubens: When Meese comes in now—we haven’t talked about going before the Senate for your approval. How did that go, in ’85?

Jensen: Right; no problem.

MLJ: Is that when Metzenbaum sent you the questionnaires?

Jensen: No; what happened was everybody back there knew that Meese had been going through all this stuff, so you had this whole new eye on the Attorney General’s Office—and William French Smith is there, and finally Meese is cleared, and now the whole thing comes to a head. Meese comes over, and now he wants to have a Deputy Attorney General. Well, they’re not really going to get in the way; and most of the people knew me by then, so that hearing was nothing—just Boom! “Nice to see you; you can go back and be the Deputy.”

Rubens: But how long did you think—I know you had been Acting Deputy, but now you’re the formal, and you’re—

Jensen: I told Ed that I would stay there for a while, but I want to go home; so I would stay until it seemed time to go home.

Rubens: So let’s just get to that, and then maybe we’ll fill in a little. How does it come to an end?

Jensen: It comes to an end when it turns out that there are some positions out here in Judgeships, and that I can go back and do that. And so I said—

MLJ: Do you figure that out? Were you following that to watch if positions became available in Northern California?

Jensen: No, not particularly. I just said “Let me know if there is a vacancy.” I didn’t have a chart in terms of catching who is going to do what. The first one that came up was in the 9th Circuit, and I said I don’t want that.
Rubens: Why?

Jensen: Because I don’t want to be in the 9th Circuit.

MLJ: The 9th Circuit, again, that is Appellate—

Jensen: I didn’t want to be on the Appellate Court. I wanted to be in the Trial Court, so we waited. Then Bill Orrick retired, and when that vacancy became open and I could fill that vacancy, that’s when we talked about doing it; and Meese said okay.

Rubens: Who stipulates how many Judges there are; how—?

Jensen: There is legislation, and the legislation says you have X-number of Judges, and I forget—I think maybe it was about 10 or 12 at that time. Then when a Judge becomes “Senior,” what they do is they retire formally from the position, so the position is now vacant. But now they can stay on as a “Senior Judge”—that’s what I am—so you can have another Judge appointed and, in effect, you get a Judge-and-a-half now because you have an Active Judge and a Senior Judge. So when Bill Orrick went Senior, I took that position; when I went Senior, Chuck Breyer took my position.

Rubens: So you’re not particularly looking, but you’re—?

Jensen: I’m not looking, but I’m waiting to see if it happens, and it turns out. . .

Rubens: Yes; but presumably with the 9th Circuit then—you must have said “No, I don’t want that, but I’ll wait for the—?”

Jensen: Right.

Rubens: So Orrick retires, and you say to whom?

Jensen: To Meese.

Rubens: I’m ready to go?

Jensen: Right.
Rubens: Then who nominates you—?

Jensen: The President.

Rubens: Okay, but Meese says to Reagan—

Jensen: “Do this;” yes. And I talked with Pete Wilson. He’s the State Senator involved in that process, and so—.

MLJ: Who was the other Senator? Was it Diane Feinstein at that point, or—?

Jensen: No; I don’t think so. Talking about ’86. That’s one I’ll have to look up.

Rubens: Yes; well what’s his name?

MLJ: Cranston.

Jensen: Maybe it is Cranston; I think it is Cranston. But in any event, there’s no problem and I didn’t have anybody who was against me; so—

Rubens: And Meese says, “I can find somebody?”

Jensen: Meese says “Okay.”

MLJ: Before you go back to California again, how does your job change, if at all, when you suddenly become Deputy?

Jensen: Well, when I become Deputy, I move up here on the chart, and see, now you are—everything in the Department is flowing through you to the AG. So you become active—you run the Department, and as they always say, “Day-to-day operations of the Department run through the Deputy Attorney General.” Now you have to structure your help in such a way that you cover this, so I had five staff people, and each was responsible to create a liaison with different parts of the Department of Justice. They would then report back to me all the time about what’s going on in those areas. So then I can report to the Attorney General—but I have five staff people who work for me, and they’re assigned to different areas.
Rubens: Was this more administration than you wanted to do?

Jensen: No; it was fine.

Rubens: Did you have certain goals; did you say to yourself—?

Jensen: No; I didn’t expect to be in a position like that where you had that much authority, with a role to play in developing policy and managing the Justice Department. At that point, I was in charge of all of its lawyers, and all its investigators; they would all report back through me, and every once in a while, I would be the Attorney General, because Meese would travel and I would stay there. So I would go over to the White House to Cabinet meetings and be the Attorney General.

It’s a very big job, but it’s a very interesting job. Everything in the Justice Department has to go through you, and the Justice Department has something going on every day; it’s constant.

Rubens: Yes, just an extraordinary crossroads of—.

Jensen: Yes, it is when you look at all the functions. Everything that is going on in this country runs through the Department in some way.

MLJ: Was there anything that got a lot of press attention, or that was particularly significant that came up during that time?

Jensen: No; there wasn’t.

Rubens: But things are going to show up later on—this, Terwilliger? George Terwilliger is going to show up as a Federal—he comes before you, but he had been under Meese; he was a Deputy—?

Jensen: Yes; I don’t—you have to give me some clues.

Rubens: Okay, it’s this case where they’re going to—I wanted to ask you about this. George Terwilliger is the former Deputy Attorney General under Meese who has been described as acting as the “Political Liability Suppression Officer for the Department of Justice in the post-Iran-Contra environment.” According to this account, he, in concert with you, “acted to suppress or manipulate Iran-Contra prosecutions in sensitive jurisdictions.”
MLJ: Says who?

Rubens: “Particularly in Miami—“

Jensen: This is a—this is a statement of fact by somebody?—who said that?

Rubens: “To insure that no Government connection would be mentioned.” I don’t know where I got this.

MLJ: I suspect you would say there is no such Office.

Jensen: If there was one, they didn’t tell me about it.

Rubens: Yes; okay [Laughs]—and this name Terwilliger is not—?

Jensen: Well, I know who that is.

Rubens: Yes; was he under you? Was he there when you—?

Jensen: No; I don’t remember him. He may have been in the Department.

Rubens: I have to find—this is a summary of some other pieces I have, so I have go through some of this and find out where this was. Boy, I feel at sea a little bit just not knowing what other things are going on during this time—key things. Let me just look at my William French Smith page and see if there was anything else. But we can revisit this—

Jensen: Sure, absolutely; yes.

Rubens: Do you feel we have covered the things that you thought were significant?

Jensen: Well, there is one more thing. I think that the Interpol thing was interesting in that, as I said, we changed the management of it and I think rationalized it—it had gotten into sort of a turf problem. So we installed a person as the day-by-day Director of Interpol who basically reported to me, but he was the Head of the Bureau in the United States. He came out of the Treasury Department, and he was very good. Then we would go to conferences—that’s when we went to Cannes to one of the conferences; and one was in Luxembourg.
Rubens: So now you could stay more than one day.

Jensen: Yes; you’d stay for a while, and we did. Those were some very interesting times, and we found that Interpol needed a lot of help in that it had struggled along for a while. When I went to Interpol Headquarters in Paris and saw the operations, this was '83 I think—and you were talking about computers and stuff; well, they had five by eight cards. That is the way they ran their office. So all of these Interpol investigations were going on, and all the song and story—it’s all based on some five by eight cards.

And their fiscal management was not very good. One of the things we did when we got more involved in it is to get some fiscal managers in; we brought in more people to upgrade. That’s when we brought in the Head of the Secret Service as the President, and had him elected. He was a good administrator and brought a lot of new administrative capacity to Interpol.

Rubens: Now, is terrorism a—?

Jensen: It’s going along.

Rubens: Yes; there is an initiative.

Jensen: Very interesting story; here’s the kind of thing involved—one of them was the Achille Lauro, remember that?—the ship, and an American had been killed.

Rubens: Yes; is that the guy who is thrown overboard?

Jensen: Yes. So this is at the time that we have sort of been upgrading all along the way our relationship with Italy, and we had sent one of our Deputies—well not a Deputy, but what do you call it?—Assistant US Attorney—to Rome amid discussions with the State Department, in order to help out with law enforcement activities. There has always been an FBI man assigned to all of the Embassies, they call it the LEGAT, and there was—

Rubens: They call it the what?

Jensen: LEGAT—L-E-G-A-T, Legal Attaché. There was LEGAT in Rome, and then we had one of our people from the Criminal Division in Rome; and the Achille Lauro incident happens, and the Intelligence Services, I think, find out who did it and they alert the Americans. And it turns out that the people who
did it are going to fly to Libya, I think. So I think the Navy then flies up and forces the plane down into a base in Italy. So now we’ve got the people who are accused of being the people who carried off the Achille Lauro hijacking and murder in Italy, so we had our LEGAT and our people from the Criminal Division go down to the airbase and run an American-style line-up – because the people from the ship were there, so the people on the ship identified these guys as being involved. So that night, we sent criminal charges back and had them held on the basis of our charges due to the fact that we had investigated, and we had now issued a Complaint and could file the case; we had the case. So we sent back notice to Interpol to get ready to extradite them.

MLJ: Do you think this occurred as a result of the agreement you had in place with the Italians?

Jensen: Not directly, but collaterally; in the sense that everybody knew everybody and we had no trouble in getting it all done, except we didn’t know the President. And ultimately what happened is that the two guys who had been arrested were released by the President of Italy and took off.

MLJ: Who was the President of Italy at that time?

Jensen: So that’s terrorism. Bettino Craxi, I think. He did it because he felt that was the thing to do, but we had gone through all that, so we thought “That’s great.” We got them charged, and overnight we got the charges there, and we get a criminal case right away, and then they let them go.

Rubens: I was surprised to hear that. There’s a note here that said terrorism in this whole period—’83—had been elevated to one of the FBI’s four national enforcement priorities.

Jensen: That’s exactly what it was, and that’s what we’re talking about.

MLJ: I thought you told us earlier you were on a Task Force with George Bush, the elder.

Jensen: Yes, in terms of trying to get some level of inter-agency cooperation, including at the level of the White House, and that’s what that was.

MLJ: Was that terrorism as we understand it today, or was it—?
Jensen: Well, it includes things like this; it included things like the Achille Lauro.

Rubens: Were these Libyans, or were they—?

Jensen: They were not, but they were going to go to Libya.

Rubens: That was where they were going to be received—yes. It’s funny; you always thought the world was going to be—

Jensen: Those are the kinds of terrorist events that are involved.

MLJ: But terrorism can encompass all kinds of things. It doesn’t have to be a Middle Eastern person.

Jensen: Absolutely, sure.

MLJ: I think you talked to us about terrorism, but not in the way lots of Americans think of terrorism today.

Jensen: Well, I think that everybody in America would think that the capture of the Achille Lauro passengers was an act of terrorism. I don’t think—that’s classic terrorism.

Rubens: Gadhafi was already being talked about as—

Jensen: It was classic terrorism.

Rubens: Yes; the hijacking, right? There are 39 hostages—

Jensen: Who have been taken, and see, they were taken to Italy. That’s where they were when the people who had done it were forced down into that airbase.

Rubens: Right; the hijackers are protesting the sale of US missiles to Iran.

Jensen: No; that’s not it. That was something else.
Rubens: “Hijacked 39 hostages; the sale of US missiles to Iran in exchange”—oh, I guess the sale is one of the negotiating things.

Jensen: That’s different; that’s part of the Iran-Contra thing, yes. The Achille Lauro was before that, and this article has nothing to do with it.

Rubens: Yes; the other one was when Reagan’s coming into office and the release of the hostages—that’s what you’re talking about happens on Reagan’s watch and—

Jensen: That’s a different one; that’s not Iran-Contra. That’s the original—in Iran when they took over the Embassy.

Rubens: TWA Flight 847 is what I’m talking about, after the ’85 Inaugural; that’s Iran-Contra. But you weren’t involved in that?

Jensen: I wasn’t—what happened is the American Embassy had been taken over in Iran, and that had been before the election.

Rubens: Yes; I’m not talking about that one.

Jensen: Okay; so that’s all done.

Rubens: Right; that’s all done. No, I’m talking about three months after the Inaugural, there are another 39 hostages who are hijacked, but I don’t know who—I can't keep it in my mind, and my notes don’t tell me who it is, so I’ll look that one up and—

Jensen: I think that might be the second Inaugural.

Rubens: It is; oh, definitely—definitely ’84. So you’re still there, but—when I was listening to you talk about Interpol, did it cross your mind that you might be involved with an international agency?

Jensen: No, no.

MLJ: Is there anything that we haven't covered in your DOJ tenure that you’d like to talk about before we leave that—
Jensen: I think we covered most of the stuff. I don’t know that I can think of anything.

MLJ: Just planning ahead, did INSLAW break while you were still at DOJ, or after you came back to California?

Jensen: No; while I was there. That was a part of the confirmation process.

Rubens: But not part of the Meese investigation?

Jensen: No.

Rubens: Okay; because I saw something that said the Department of Justice signed a $10 million contract in ‘82.

Jensen: Yes; but that was with INSLAW. They were to develop data systems or computer systems for the US Attorneys’ Offices.

Rubens: Right; and how does it come to you?

Jensen: Well, ultimately it comes to me because there is a time when I become the Associate Attorney General, and there is a contract issue in terms of whether there has been performance on the contract; and I sign off as the Associate Attorney General canceling the contract as to portions of it. And thereafter that develops into INSLAW, which is—those are the people who ran the programs, and that’s the name of the organization; and they were developing, as I say, data systems for US Attorneys. When portions of the contract were canceled, there was litigation that came out of that, and it became a part of the confirmation process later.

Rubens: Okay; meaning your’85 confirmation?

Jensen: ’86.

Rubens: ’86, oh—your Judgeship?

Jensen: Judgeship, yes.
Rubens: Okay; so maybe just a little bit of backup about other things going on in the Department of Justice.

Jensen: Well, there’s one more scandal that is currently in court, and I will tell you about that one, too.

Rubens: Okay; what’s the—

Jensen: That I am supposed to have done something improper with reference to a prosecution—

MLJ: At DOJ?

Jensen: Yes, at DOJ. There was a CIA Agent—

Rubens: Yes; here it is—this is the one?


Rubens: Yes; that’s the other one I have. ’83 is when he’s convicted?

Jensen: Right; and see, I was in the Criminal Division.

Rubens: Okay; most of the literature, and I haven’t reviewed it recently, but it absolves you of INSLAW. It’s only things like this little piece that I don’t have—

Jensen: I’ve never been absolved in INSLAW.

Rubens: You haven’t?

Jensen: Except for about 27 times, maybe, but you have to—

Rubens: Yes.

Jensen: And we can go through it all.
Rubens: Yes; you’ll make your case.
Rubens: This mini-digital recording device has caused problems. Court reporters have their own kind of equipment and—

Jensen: They generally have their own stuff. And, yes, they have problems every once in a while. It’s something we’ve got to work on. But I remember going out in the days when you took statements of homicide suspects, and the first time we ever had to take a statement we came back and plugged the tape recorder in, and didn’t get anything. So [Laughs] they don’t always work.

Rubens: Well, and you see I always take a lot of notes. Well we’ll start now—one more time.

We’ve talked about when Meese came to Justice—there were 72,000 employees, a $3.6 billion budget; you remember it going up to $4 billion?

Jensen: Over $4 billion, and there was an increase. I know there was an increase of at least 5000 Assistant US Attorneys by the time we left.

Rubens: Which had to do with what?

Jensen: The Organized Crime thing, and other kinds of initiatives, and normal growth that went on just because of population increases; so you have an incremental growth that goes on all the time where the budget gets larger.

Rubens: One of the things that we have been talking about, primarily in terms of your administration, your work at the DOJ—is that it really had a national domestic focus, although there was the—

Jensen: International—

Rubens: —and particularly the Interpol connection with Italy, and the attempts to—

Jensen: Interpol is separate from Italy. The international relationship with Italy was on the basis of individually negotiated treaties and alliances, so that was done with the Italian Government, and had nothing to do with Interpol.
Rubens: I see. Who runs Interpol?

Jensen: It’s run by an agreement of nations—

Rubens: —not through the UN though?

Jensen: It’s not run through the UN. It exists separately from the UN. It is its own organization and it has people who belong to the organization, and the organization itself decides who can be a member, then you pay dues and it funds itself that way.

Rubens: And so it’s coordinating—

Jensen: -coordinating the flow of, basically, warrants for fugitives all around the world, so that if there is a fugitive who leaves Europe and ends up in the United States; they know, or they can find out, that this person is wanted in Europe and they can arrest him for the offense committed there, then they can start proceedings to have extradition accomplished, and it will be separate. But Interpol simply identifies who the people are—you can get a warrant based upon Interpol information, so you can start the process of extradition.

Rubens: Were you assigning people within your Division to specifically work with—

Jensen: We had people that worked on Interpol, yes.

Rubens: How much did you accomplish with Interpol? When you look back at it, was that a—?

Jensen: I don’t know day-by-day. The trouble is that when you’re at these higher levels you’re dealing with abstracts; so we didn’t get a monthly report, say, of the accomplishments of Interpol.

Rubens: Was it beefed up—in terms of what the Department of Justice did with Interpol?

Jensen: Yes, in the sense that we committed resources and we put more management into Interpol. We committed resources to it in terms of managing its finances, for example; so we actually added some money and had contract people that looked at their programs and improved them. So it’s really people and money
that goes into Interpol that’s committed by this country. The US makes dollar commitments and manpower commitments to help them.

Rubens: Do you have to make decisions about how much? Do you review—?

Jensen: That’s part of the budget, sure; every little piece of what the Department does is run through a meticulous budget kind of structure, and that runs through Congress, and Congress looks at it very carefully.

Rubens: Of course, there’s someone under you who—

Jensen: Right. When you’re at this level—say at the Deputy level—all this stuff comes through, and I would have to go testify on the budget, see, and make appearances, and there’s—we have a department in the table of organization you can see, it’s called the Justice Management Division (JMD). That division is under the Deputy and the Attorney General; they’re the people who actually get the appropriated money and actually parcel it out within the Department and keep account of it. So JMD would be the money-handler.

Each of the Litigating Divisions has its own appropriation problem and they go back up through the overall Departmental budget, so in the Criminal Division we had people who worked up the budget for the Criminal Division and that would ultimately go to people like JMD, who would be looking at whether or not we would be seeking some increase in funds, say, for some endeavor—so when we put in the Organized Crime Drug Enforcement Task Forces we asked for money, and that means it translates into a request for specific funds to come back into the Department. Then that money would get parcelled out through—it went to the Criminal Division, and it went to the US Attorney’s Offices.

Rubens: So it’s looked at quite a bit?

Jensen: Oh absolutely.

Rubens: And then I imagine there are particular press people who are watching—?

Jensen: They watch to see what you can do, because if you watch the budget hearings you get an idea about what the policy—

Rubens: -the direction of policy, exactly.
Jensen: Absolutely yes, sure.

Rubens: Yes; follow the money—that’s just what they’re saying.

Jensen: Yes; and they do. The press people really are very good. They are very thorough and insightful in the way they look at the way the Department is run back there.

Rubens: One thing that I don’t think we talked about was the expansion of prisons, and I’m wondering if that actually took place while you were there, or whether a commitment to it began—

Jensen: Yes.

Rubens: —certainly this is the get tough on crime era.

Jensen: It follows directly that if you’re now going to get involved more in the, kind of, street enforcement that goes on day-by-day, and if you’re going to, say, takeover that enforcement—in some instances by having federal programs where you get people who are charged with gun crimes, most of whom are “ex-cons with a gun,” that is, they’ve had a prior felony conviction—that’s both a State crime and a Federal crime most of the time, you can prosecute either way; but we were going to take over the prosecution in many instances and put them in the Federal system. And that meant—

Rubens: The theory was?

Jensen: Well, that we’re helping the States, in that we’re taking off career criminals. See, the idea would be that you have people who—what you’ve got is a gun crime, but they really are career criminals—then the idea is to get them prosecuted federally. That means you have to have a place for them to go. There was a move of those prosecutions to the federal system, so there were budget kinds of expansions. The Bureau of Prisons is a part of the Department of Justice. It’s a big part. So their budget also comes back up through—

Rubens: Now in this organizational chart you’re showing me, it appears as if it’s parallel with you, but it’s—

Jensen: Well, yes. Here’s the Associate Attorney General—or Attorney General—then it comes down, and then the hierarchy would be that it comes
down to the Associate Attorney General, who has responsibility for each of these. That would include the Bureau of Prisons and the Executive Office for US Attorneys.

That’s an important one, because what happens is you’ve got 94 US Attorneys—well, suppose each District has a US Attorney and they have big, big management problems and a lot of it relates back to what’s going on in Washington. If a local US Attorney’s Office wants to increase its manpower in some fashion, they’ve got a justification for it. They don’t go to Congress; they have to go through the Departmental Budget, and they have to come through an office that has been there for a long time, and created for that purpose, among others, called the Executive Office for US Attorneys. They’re the ones who, in effect, relate to the US Attorneys out there as far as the flow of money and support. They provide all kinds of administrative services to them; they have meetings which let the US Attorneys get to know one another, and they have an Executive Group that’s appointed by the Attorney General, and they come back to Washington and meet with the Executive Office and find out what’s going on in the Department. It provides a chance for the Departmental people to meet the US Attorneys and talk to them. I would go to all the meetings of the Executive Office for US Attorneys when the Executive Group met. There would be one from East Coast, Midwest, West Coast—people who represented mostly the big offices in the Department.

Rubens: How often would those meetings occur?

Jensen: They would be every three months or so, then there’d be one big annual meeting where everybody would come. The Attorney General would go to that meeting, I’d go to that meeting, and that would be on an annual basis.

Rubens: We’ve talked at different points about your workload and how you managed your work, but just one more time—would you meet regularly with the executives from the Criminal Division or, for example, from the Bureau of Prisons—?

Jensen: What I would do is, I would have one of the people who worked for me as a staff person be responsible for, say, Bureau of Prisons. One would have Immigration; one would have Criminal Division; one would have—in other words—I would break it up in terms of the responsibilities I had overall. My staff would handle it on a day-by-day basis.

Rubens: Keep track of what was going on?
Jensen: They would keep track of what was going on, and I would meet with them every day; then when and if something significant happened, I would meet with the Commissioner on Immigration, or I’d meet with the US Attorney in some particular area. So there was a structure where you would have a day-by-day kind of gathering of information, and then an ad-hoc response to that. But I had it set up so that I had five people who worked for me on staff and they each had their own areas of responsibility.

Rubens: How often did you meet with the Attorney General?

Jensen: Oh, on a daily basis as a Deputy.

Rubens: Yes; just a quick check in?

Jensen: Absolutely, yes every day.

Rubens: Yes; I loved your distinction—I asked, how do you characterize the difference—

Jensen: Yes right. [Laughs]

Rubens: You met at seven in the morning with Meese, and William French Smith met at nine. We began to talk about the expansion of the federal prison system during your administration.

Jensen: Yes; I went—on at least two or three occasions, I went and made a dedication speech at a new prison.

Rubens: I didn’t look into this—but was California particularly a beneficiary of that?

Jensen: I don’t think so.

Rubens: When is all that growth happening, in the late ‘80s and early ‘90s?

Jensen: It’s in the late ‘80s, and early ‘90s, in terms of our effect on it.

Rubens: Those are Federal prisons?
Jensen: State prisons are separate. And the California State expansion has come about a lot because—you could measure it back to the determinate sentence structure. Determinate sentencing comes into California in 1974, so they have the same impetus for prison construction that arises in the Federal world in the ‘80s.

Rubens: Was there a charge or claim that the California Mafia was now sending—?

Jensen: No; I don’t think so.

Rubens: You talked earlier about the change in judicial philosophy—an administrative philosophy of saying that prisons were not intended to rehabilitate people, but to protect the citizenry; what was the difference between the rehabilitation model of penology and the punishment model for purposes of prison construction?

Jensen: Well, it’s not different, but there is a way of saying it that comes out differently. One of the problems with rehabilitation as a model was in using the determination of whether rehabilitation had occurred as the means to decide how long you stayed in prison. In other words, if the idea is we get you into prison and then we keep you until you’re rehabilitated, then that is what is the error—

Rubens: Indeterminate.

Jensen: —see, you don’t know how to do that; and it inevitably becomes a subjective decision. That doesn’t mean that when you go to prison there can't be efforts to rehabilitate. Yes; so it’s different.

Rubens: Okay; that’s important that you pointed that out, because you were talking about how there’s an emphasis on tougher and more effective sentencing—

Jensen: Yes.

Rubens: —but that doesn’t preclude some effort at rehabilitation.

Jensen: If there’s a problem—you have to be aware of that problem. If you lose the goal of rehabilitation as an integral part of your system, and if that’s not what you’re doing, you may not keep up the rehabilitative efforts because those are now not decisive in terms of time and management; but they have to be
undertaken, because people are there and it makes sense to do this. But it wasn’t a problem in the Federal world because there is a Bureau of Prisons model of “Prison Industries” that has been there for a long time, and they have a really very, very comprehensive and in-depth kind of education—

Rubens: -training, yes.

Jensen: —both academic and vocational—mostly vocational training—is quite good in the federal prison system.

Rubens: Really? So what was happening in terms of—the crime rate didn’t go down particularly dramatically though, did it?

Jensen: No; crime rates have their way of finding themselves. I think that this is one of the things that you learn quickly; that if you’re in office and the crime rate goes down, you don’t take credit for it because you’ve got to take credit for it the next year when it goes up. And then you get the blame, too; so you really don’t have that—well, there are great studies that try to say why the crime rate changes, and what can be done by governments to affect it, but that’s a matter of an enormous amount of study, and maybe some part of the answer is just not trying to figure out what’s going on.

Rubens: So federal determinate sentencing, and the move of criminals to federal jails, this is being tried out. Is there much opposition to this at this point, or is this going to come on a little bit later when you—?

Jensen: I didn’t think there was much opposition to the notion that the Federal people would take more of an active role in—what might otherwise be seen as simply State crime. Some of these are areas where for a long period of time there has been, in effect, dual jurisdiction. For example, the drug world has always had dual jurisdiction. There’s always been an area where the white collar kinds of prosecutions have dual jurisdiction in the sense that, at bottom, what you’re talking about is thefts, which are traditionally State crimes. But when you start in on things like mail fraud and wire fraud, they’re basically schemes to steal, and they’re just using interstate kinds of facilities to do that, which gives them a Federal dimension. So, you get dual jurisdiction of these things just by the nature of the crime, so that’s always existed; but you can have greater or lesser degrees of emphasis in it.

Jensen: It didn’t become a major player like the Drug Force Task Forces. In effect, what we were doing there was arranging our existing resources in a way that theoretically got you more information at the top-level of management and it—there’s always a problem of finding out what’s happening in the US Attorney’s Offices, from the standpoint of the Attorney General—and that’s affecting policies both ways. In other words, there would have to be communication both ways, and if you have situations where US Attorneys out there are having problems with economic crime, and have insufficient resources to deal with it, unless there’s a mechanism to get that back to the top, you don’t necessarily get usable information about it. That’s why those Councils get set up; in order to have a flow of information coming from the US Attorneys, and a flow of management decisions coming from the top back to the US Attorneys. If you don’t have those sorts of things, it’s harder to have management come out of Washington.

Rubens: Yes.

Jensen: Some people think it’s a good idea not to have management come out of Washington, but you do need to do that because the Attorney General is the one who is responsible for it.

Rubens: So this was not as major an initiative as—?

Jensen: It was not just a throwaway, but it did not develop the way the Drug Task Forces did.

Rubens: What you just said about how you affect a communicative relationship and a reciprocal relationship between the Local and the Federal—isn't one way that that can be impacted is by the fact that the President does appoint the US Attorneys?

Jensen: It does.

Rubens: Are they turned over, by the way, each Administration?

Jensen: Each Administration basically turns it over.

Rubens: So you do get the kind of people—
Jensen: You do have the kind of people that you want to be calling the shots, yes. And almost all of the US Attorneys changed when the Reagan Administration came in. There were exceptions; New York, I think, and as I said, I think there were three or four others where people who had been there a long time stayed there—but the rest of them, you just sort of turn in your resignation; then stay there until you’re replaced. What happens is that the President makes the appointments, but you go through and are confirmed by the Senate, then you go out to the US Attorney’s Office. There’s somewhat of a sense among US Attorneys where they say, “Well, I was confirmed by the Senate just like the Attorney General, so I’m on the same level as the Attorney General. I don’t work for him.” But there are a level of management issues that come up, and you’re trying to build an effective way of managing in a system where you have these far-flung outposts of people who do have very real responsibilities delegated to them, and they take them on and they’ll have different priorities in different areas of the country; so it’s hard to now impose a kind of one-dimensional system from a national basis. So you have to leave the US Attorneys in the position where they can put their resources where they are most needed, but also have them available to do what the Attorney General wants.

Rubens: But somehow, this drug policy did seem to—

Jensen: It did, because it involved a lot heavier management in Washington. We had specific Washington management; we had staff people who kept in touch with them every day, and we had contact with people going constantly back and forth; so one of the guys who worked for me—his only assignment was to deal with the drug stuff. He was, in effect, the Washington liaison with all of this, so he would be in contact with everybody all the time, and we had relatively frequent meetings with the Regional Directors of these Task Forces.

Rubens: Here is a figure—during the Reagan Administration, 370 of the Federal Court appointments were made out of a total of 760. What’s this referring to?

Jensen: Well, you’re appointed for life so as far as judicial appointments are concerned, and Reagan was there for eight years, so over a period of time you’re going to have—just by the aging factor, as people get older and older and they leave—and new people come in, and every once in a while Congress will create new positions, and then you have an opportunity to make a whole bunch of new appointments that didn’t exist before.

Rubens: Were you folks pushing for new appointments?
Jensen: Sure.

Rubens: Do you know how many—? I don’t mean appointments—but new positions.

Jensen: There were new positions created in the District Courts and in the Circuit Courts during that time.

Rubens: Does every Administration try to do that?

Jensen: Yes; absolutely.

Rubens: Do you think there is anything more to say about prisons, particularly?

Jensen: I don’t think so; it’s a well-run thing. I mean, this is one of those areas where the history had been, for years and over different Administrations, there had been very solid, skilled, expert leadership in the Bureau of Prisons, so you didn’t want to touch it because it was running well, and it’s still running well. I think most people look at the Bureau of Prisons and its management and its leadership as being just about as good as the world does in terms of running correctional institutions or incarcerating people.

Rubens: I don’t know when it starts, but it’s the same thing that you face in Oakland when you’re the DA—the numbers start to add up showing that there is a disproportionate number of African Americans and Hispanics in prison, and being in prison for longer periods, and having had inadequate representation—this is—

Jensen: And that’s still a troubling aspect of all this. They do experience disproportionate consequences of criminal activity -and over and over there are studies being done to try to find out what the source is of this, directly? What is it in the system that does this? Generally, the conclusion of all these studies at the Court level has been that there isn't any kind of discriminatory animus that gets into the sentencing at Trial Court levels. At the time the Trial Courts are sentencing people, they’re sentencing people for what they have done and what they have been convicted of—they are not sentencing because of any kind of racial characteristics.

You do have more people who have been convicted of robbery who are African Americans, but then they are sentenced as a result of the robbery conviction—not because they’re African American; so the problem is much deeper than that. And it can get down to areas in the criminal justice system
such as: How do you get into the system? How easily do you get in? Is there a level of enforcement that might affect this? Does local law enforcement make more of an enforcement effort in an African American neighborhood than in a white neighborhood? I mean, there are all kinds of issues that are there that have constantly been looked at, but I don’t think there is anybody who would say that the problem does not exist, because it does, and the quest for a solution still goes on.

Rubens: We were talking about Court appointments, and one of the big things that happens under Reagan, of course, is the appointment of Sandra Day O’Connor in 1981 and then, what, two years later? The elevation of Rehnquist to the—

Jensen: Yes; when Burger left.

Rubens: When Burger left; yes. Do you have anything to do with this?

Jensen: Oh yes. I was not part of the management levels in the office that had anything to do with Sandra Day O’Connor. I knew a lot of people who did. I mean, Ken Starr did a lot of that stuff, and there was Bob McConnell.

Rubens: At this point Ken Starr was- 

Jensen: Ken Starr was the Chief of Staff for Attorney General William French Smith, so he’s running everything for him; and then there’s a legislative liaison, a person who is responsible for the relationship with Congress, and that was Bob McConnell in the first days of the Reagan Administration. He’s a lawyer from Arizona and he knew Sandra O’Connor. Some linkages go back to their both being from Arizona. Then people were sent from Washington to interview her because Reagan wanted to appoint a woman as a Justice, and the problem was to find someone, and we found her and that was a wonderfully done search. It turned out to be an incredibly great appointment.

Rubens: Yes; and it’s timely to be talking about this because she has just resigned from the Supreme Court, and it’s set in motion—

Jensen: Right; I was aware of what was happening with judicial appointments, but I wasn’t part of the actual mechanisms in doing it and getting its structure together; I just watched with admiration from afar. But then I when I got to the next level—the Associate or Deputy levels—and when the appointment of Rehnquist to be Chief Justice, and Antonin Scalia to the Associate’s position were considered, then that was something I was involved in.
Rubens: How so?

Jensen: Just because I’m with Ed Meese and the people who were then working at the top levels. This is where you get into the business of lists and who the people are that are being considered, and that is part of the process of making decisions, or participating in them, as to who we should appoint and who we should not appoint. It was clear cut that Scalia was the frontrunner in terms of who should be appointed. That was really not a hard call at all.

Rubens: Then Rehnquist was elevated?

Jensen: Yes. Yes.

Rubens: So you were gone by the time Robert Bork was nominated?

Jensen: I think so; Bork, I think, was about a year after I left.


Jensen: Right; that’s what I thought, yes.

Rubens: Then there are Ginsburg and Kennedy, and it’s really quite—

Jensen: Yes; I remember because I knew Doug Ginsburg because he had been in the Department when I was there, and—

Rubens: He had been in the Department of Justice?

Jensen: Yes.

Rubens: What was his position?

Jensen: He was in OLC, I think.

Rubens: Which is?
Jensen: The Office of Legal Counsel—or maybe he was in Anti-Trust—I’m not sure, but he was in one of the management positions in Justice when he was appointed, and then they had run into the bit—

Rubens: And this poor guy has to withdraw because he admits that he tried marijuana?

Jensen: Yes. I mean, that was—times have changed a little bit I guess. But he went out very quickly, and then Kennedy came in, and Kennedy was pretty well thought of—

Rubens: Was there anyone on your list that you would have—?

Jensen: No; I think I wanted to see Kennedy appointed.

Rubens: Okay. I mentioned this earlier as to William French Smith that he thought of the Government, the Reagan Government, as a watershed. He wrote that his legacy will reside in having changed thinking and attitudes regarding the “right,” “conservative,” ambience of Government and the people it served, rather than having immediately altered direction of policy. Yet he says, “I didn’t discuss conservatism during my daily meetings in the Department of Justice.”

Jensen: Well, it was a given.

Rubens: Yes?

Jensen: It was; when you operate it there are certain things—the Administration changes, and what happens when the Administration changes? When you change the party, you change the core belief systems, and I don’t think there’s any question that the Republican Party is more conservative than the Democratic Party; and that was seen as a reason to move people in who were acceptable to a Republican President, and a Republican Attorney General—it’s a given that they’re going to be more conservative.

Rubens: But I don’t know that it translates into the kinds of policies that you were promoting or—?

Jensen: It doesn’t translate—
Rubens: Would you then stay liberal or conservative or—?

Jensen: I don’t really think there is such a thing as a liberal sentence or a conservative sentence. Maybe once upon a time the idea was that since you had disparity in sentencing that you ought to look to the individual who is doing the sentencing—and when they did these studies and found that there was a significant disparity in making decisions, they also sort of came up with the idea that the only thing that explains the differences is idiosyncratic decision-making by the Judges – so if you have a Judge who looks upon the prison system as one you ought not to put people in then, okay, maybe that Judge doesn’t send people to prison; but that’s the way that that particular Judge thinks, and other Judges may think that they should go to prison.

Rubens: We’re going to talk about Federal sentencing more systematically when you sit on the Bench, isn't that right?

Jensen: Okay; sure.

Rubens: Because that becomes a big issue. Are Judges restricted? Are they put into—do you have to check off certain things, and does it really allow for—not a liberal or conservative, but—?

Jensen: It is more of a “punishment fit the crime” sort of thing—it’s a more uniform way of approaching the business of sentencing and eliminating disparities, and having sentences that—no matter who it is—if they’re similar offenders with similar backgrounds, they ought to get similar sentences.

Rubens: All right; and that’s what the liberal interpretation, at least, will say is a problem—that you can't look at these backgrounds as similar, that there’s—

Jensen: Well, you can; you do that all the way, but it depends on what background you think is appropriate. Mostly the background that is appropriate is prior criminal history; for example, every sentencing system has said your prior criminal history is an appropriate thing to look at. It may be that when you get into things like your family history, or economic history, and all that sort of thing—

Rubens: Socialization?
Jensen: Yes; whether that should have an effect on who gets sent to prison for a robbery. But for people who are committing the same kind of robbery with the same kind of criminal history—whether you should treat them differently is another issue.

Rubens: Any Comment on Alito?

Jensen: Alito—I didn’t know Alito because he came into the Department of Justice right about the same time Roberts did. When William French Smith came, there were a number of bright young people who came into the Department of Justice. Roberts was one of them. He worked as a staff member for Attorney General Smith, and worked for Kenny Starr, I guess. Then Alito came in and he worked in the Solicitor General’s Office. He worked for Rex Lee, I believe. I didn’t know him.

Rubens: You didn’t know him—I just wanted to make sure.

Jensen: Yes; there isn’t that much connection between the work of the Solicitor General and the day-by-day business of the Department. So I didn’t know him.

Rubens: Are there things that you accomplished while you were at the Criminal Justice Department that you’re proud of that you’d like to discuss?

Jensen: Well, I think that we accomplished a significant kind of shift in terms of the relationship of Federal and State Governments. It had always been true, but I think we made it much more systematic than it had been before and really pushed it from the top level, making sure that everybody was onboard—it’s one thing to send out a directive to the FBI saying “You will talk to your local law enforcement people,” and it’s another thing in working it up and putting systems in place which require them to talk to people—you account for it, and you now make sure that the relationships are going on. So I think that our effect on Federal and local enforcement cooperation was significant.

Rubens: Good; and do you feel that that, in the main, stayed in place?

Jensen: I think that it was good, and I think that it has stayed in place. I think it’s part of the thinking now that if we have some information, that it goes to the local people. I mean, there is some case specific information where you ought not to share because it affects an investigation, but just the idea that we’re going
to hold onto this because we’re the Feds and they’re the Locals, I don’t think that exists anymore.

Rubens: So that’s not going to be overturned by the time Clinton comes in?

Jensen: No; I don’t think so. Again, I think that they pushed it, too. I mean, Janet Reno was a local prosecutor; she wasn’t a Federal prosecutor, so she’s particularly aware of the issue. I remember there was a point during the time that I was there when we were doing things to send Federal prosecutors down to help Miami try homicides; we were cross-designating people to go down there, and they got the benefit of some of our really good trial lawyers going down to help them at a time when they had a real push that they had to do—so we did that to help Miami.

Rubens: Did you go down there yourself?

Jensen: No; I didn’t go down because when you’re Policy, you can't go to Court.

Rubens: Did you miss it?

Jensen: Oh yes; sure—absolutely.

Rubens: Is there anything else you want to point to in summary?

Jensen: No; I think those are the major thing as far as I can see.

Rubens: You enjoyed it?

Jensen: I did; it was something that I came into with a feeling that it needed improvement, in that it—not that it didn’t exist at all, but that it just didn’t exist at a systemic enough and coordinated enough level, and so I think we did pretty well in establishing the need for and the acceptance of the idea that you work together. I’m not sure we were as good at establishing that among the federal agencies—we got Federal and State people to talk together, but we never really got all the Federal people to talk to one another. We continued to have a big problem, for example, in getting Treasury to talk to the Department of Justice, to talk to the IRS, to talk to Customs, all this sort of thing.

Rubens: The Criminal Division has a role in all of these?
Jensen: Yes; and they’re big, big players—

Rubens: Treasury would go after alcohol, wouldn’t it?

Jensen: Oh yes. ATF is in Treasury—you know, Alcohol, Tobacco, Firearms—they do explosives and all this stuff; so what was the FBI doing? And you have Immigration at the border, and you have Customs at the border—one is Treasury, and one is Justice—and theoretically, the new Homeland Security puts that all together. Well, okay; let’s see—it’s a trial.

I don’t know that I would have done it that way, but I think that the idea of making sure that you have the same policy being put in place by Customs and by the Immigration people is an absolute necessity.

Rubens: I don’t know if now is the time to ask, but what would you point to specifically that you would do differently?

Jensen: I would think—well, say we tried to get them together—my direct relationship in its most immediate sense is with the drug things—we made sure that there was participation by Customs and by IRS in drug prosecutions, because tracking the money and tracking the flow across the international borders was absolutely essential. And obviously, they know as much about it as anybody else does, so you should make sure that all that information comes together. So we made sure that we had Joint Task Forces set up where all of the agencies were working together on the same Task Force. I remember we got to the point where we actually got Customs to agree to have some of their people sworn in as US Marshals in order to be able to carry out the Marshal’s function in terms of actions undertaken by Customs—that was a real effort to get done, but we did.

So cooperative efforts were the ones that I thought were the best.

Rubens: Conversely, are there some things you would have liked to have accomplished that you didn’t? You are saying you wish there was a little stronger level of federal coordination and cooperation—anything else?

Jensen: I don’t know that we succeeded in improving the relationship of the US Attorney’s Offices and Main Justice in Washington—whether we solved the management problem of that; I think that still exists.

Rubens: It must be an ongoing—
Jensen: Well it is, and a lot of it is driven by the fact that there are differences—there
are real differences in terms of what you should be doing in Miami and what
you should be doing in Detroit, or in Salt Lake City. These are very different
places, and you have different kinds of responsibilities; you can't have a one-
size fits all—

Rubens: You were talking about District meetings, so there was an apparatus that did
set up these—

Jensen: For the Drug Task Forces, yes; we had Regional Directors, and that cut across
the regular system. You had a Director in San Francisco; you had one in Los
Angeles; you had one in San Diego—really big places. We had them in
Houston and Chicago—

Rubens: Well, I assume Detroit and Miami and—

Jensen: Yes, sure; so you had these big regions and those Directors would be brought
together.

Rubens: But you’re saying that still, enough of the management just wasn’t sufficient
or—?

Jensen: Well, it’s necessary, but I don’t know that it’s the only way you can do things,
or you have to do it, but the question is whether or not you can do more that’s
going to help these agencies be effective. I think that’s a good question.

Rubens: Right; and so that’s what I’m asking you—did you have a few ideas about
things you would have—

Jensen: One of the things is to have direct contact almost on a day-by-day basis,
instead of periodic kinds of reports where you meet every month or so—that’s
good, but it doesn’t keep you up with the day-by-day activities. That’s what
I’m saying—I wanted somebody in Washington who did that.

Rubens: And it just didn’t come about?

Jensen: Well, I had a person who made the contacts, so I had much more of a
relationship with the day-to-day activities than you might otherwise have.
Rubens: Day-by-day with the Regional, or even—?

Jensen: With the Regions—not much below that. You would have multiple US Attorneys in the Regions. That raises a management problem of who is running what, because ultimately any charge you bring is going to have to be brought through a specific US Attorney in a specific District.

Rubens: Okay, right.

Jensen: So, say you have a big investigation that involves one of the regions and it’s done mostly in—let’s say Ohio, but they’re in a region with Chicago, and you bring the cases maybe in Ohio, maybe in Chicago—but there’s no direct flow that follows the way the District Courts are structured, or the US Attorneys are structured.

Rubens: Yes; so I can see where Regional isn't necessarily the way of doing it. Maybe it’s cities over 100,000, or between—.

Jensen: Yes; well it’s just sort of what seemed to be a reasonable way of having people talk to one another.

Rubens: Right; so did you have someone that you were meeting with?

Jensen: Oh yes.

Rubens: Are there any other people we should particularly name, or who you want to name in these positions who were important?

Jensen: I don’t know. I think the prominent Judge who started as our Regional Director in Chicago was Annie [Ann] Williams; she went onto the District Court and now she’s on the 7th Circuit. That’s basically Illinois, and Chicago is the home base.

Rubens: Is there anything you’d like to say about your relationship with Meese, particularly?

Jensen: Well, it was five very intense years, and we’re good friends. Barbara knew Ursula well, so we went to dinner back and forth. We would go to each other’s houses, so we knew them quite well. The only hiatus was when I had
to call up Meese and say “I can't talk to you anymore because you're being investigated” during the time of the Independent Counsel investigation that’s going on. That lasted about a year—it was a long time. Oh, Jacob Stein was the name of the Independent Prosecutor – a very good lawyer.

Rubens: Meese doesn’t mention this in his—.

Jensen: Yes; I can understand that.

Rubens: He was exonerated, though, right?

Jensen: Yes; but you couldn't talk to him while he was under investigation, so I didn’t have anything to do with him during that period.

Rubens: And then he walks into the office.

Jensen: Yes; and he says “Come on and go to work.”

Rubens: Yes; and you’re all meeting at 7. Anything particularly to say about working with him—did you gain more respect? Had you ever seen him on that kind of day-to-day level?

Jensen: Well, sort of in the office in the DA’s Office. We tried cases together and we spent a lot of time together, so it was a continuing personal relationship.

Rubens: I was just thinking about how people have different skills and different abilities and different interests. I mean, this guy was all over the place; he had his hand into everything, right?

Jensen: That’s right.

Rubens: I didn’t realize before preparing for this interview that during the ‘70s he was at the University of San Diego. He was a Professor of Law at the University of San Diego—Director of the Center of Criminal Justice.

Jensen: And he went out into private practice.

Rubens: Yes; I had seen that he worked for some corporation.
Jensen: Some law firm down there and was doing well. He told me, “You should go out and make some money.”

Rubens: Then he’s also on many Boards of Directors; it made me think—did you ever get on a Board?

Jensen: I didn’t do that because I never went out into private practice, basically.

Rubens: You’re public, of course.

Jensen: Yes; when I’m DA I don’t get on a Board, and when I’m in the Department of Justice I don’t get on a Board, and I don’t get on when I’m a Judge.

Rubens: So when Meese is Attorney General he has to—

Jensen: He’s out—yes; but when he was in private practice he could be on all kinds of things.

Rubens: Did you ever have any connection with Bud McFarland?

Jensen: Yes; he was in the White House and I knew him. I would go to the White House when I was Deputy—that was one of the things that the Deputy did. Almost all Administrations have a back and forth with the White House, it’s something that everybody is aware of, and you don’t want to have lower level people over at the White House talking about what is going on and then come back and people at the higher level aren’t aware of those discussions. So that is a pretty well-controlled process, and the Deputy is really supposed to be the channel for those communications. There is really a significant flow of information both from the Department to the White House, and from the White House to the Department—so that you know that that information is going to be recognized and it’s going to be dealt with. If you have different people with different responsibilities participating in that, it sometimes slips through; so I would go over to the White House frequently.

Rubens: Who are you reporting to?

Jensen: I’m reporting to the Attorney General. I’m working for the Attorney General, and I’m there for the Department of Justice.
Rubens: Where is the Attorney General’s office?

Jensen: There is a huge complex that is the Department of Justice. When the country first started there was an Attorney General, but no Department. Years later they created the Department, and it grew and grew, so that now the Attorney General and the Justice Department building, is down in between the White House and Congress on Pennsylvania—that’s where the Attorney General holds forth. So if you’re going to meetings, you go back and forth. If it’s a meeting with the White House, then you go meet in the White House.

Rubens: Okay; but when I said who did you largely report to at the White House, it’s the AG?

Jensen: Well, I didn’t report to anybody at the White House; I reported to the AG. I was at the White House as a representative of the AG—both to get information and to give information. I would deal with those people, so I would deal with the various figures like Poindexter, and Ollie North, and people like that.

. See, I knew those people and I would have relationships with them because I’m going over to the White House as a DOJ representative.

Rubens: Yes—actually the word report wasn’t what I meant, but who did you converse with—

Jensen: I’m talking to people about issues that either they are interested in getting the Department of Justice’s reaction to—interested in getting the Department to work on. They want the Department to do something with reference to a position that they have, or vice versa. We want them to know what we’re doing, so it’s a flow of—keeping the communications going, and keeping them in a system where you know that they’re being dealt with at a high enough level so that they’re—as I said before, things don’t slip through; because you have a whole bunch of people working on the same topic.

Rubens: Right. On a different topic, do you remember, particularly after the election in ’84, if there was a really buoyant feeling? It was just such a landslide.

Jensen: Oh yes; it was a big landslide.

Rubens: And you were already established.
Jensen: I was there; so now I could go to the Balls and things like that.

Rubens: Yes; and did you?

Jensen: Yes; we went to the Ball. Although it was so cold that it was—it was freezing in Washington during that time—that I remember. It was so cold they couldn’t have the parade; those kids couldn’t play their instruments.

Rubens: I don’t remember that; but I do recall that Reagan had the viewing station set on the west side; he wanted to be facing west rather than east.

Jensen: [Laughs] Right.

Rubens: So you’re saying you felt comfortable in the White House. You were going regularly and—

Jensen: Oh yes, absolutely.

Rubens: —you thought these were pretty top-notch people?

Jensen: Absolutely; I was on committees with George Bush when he was the Vice President. And on occasion I went as the Attorney General to Cabinet meetings. This was when Meese was out of town.

Rubens: Bush was the Vice President, of course, who then runs afterward and becomes President.

Jensen: Yes; right. But he was very much involved in the drug stuff, because the Administration had one of the people on the staff who paid a lot of attention to drug issues.

Rubens: Regarding Ollie North, later on when the Iran-Contra stuff breaks open, you must have had some opinion about these people, or must have been surprised that—

Jensen: Well no; you can get at that, but, I think there were things done that would surprise me—yes; that I would not have expected.
Rubens: Yes; or sanctions, I would think.

Jensen: Yes; well—if you’re in that position, you don’t do that.

Rubens: Unfortunately, you’ll have your own problem with INSLAW. But maybe we just ought to tell the whole story.

Jensen: I’ll start it out a little bit and then you can see where we go. When the Reagan Administration came in, one of the things they wanted to do was improve management systems in the US Attorneys Offices and in Main Justice; because you’re now at the stage when the recognition is that the world is going to be run on computers, and that you’re going to have to do this. It’s just being introduced at about this time, so early on the Department decided to get a contractor to develop management systems for the US Attorneys. They contracted with INSLAW, which was a company that produced these kinds of systems, and their particular system was called PROMIS—the Prosecutors—I forget—Research Office—whatever it is, the PROMIS system.

Rubens: Had it already been in 42 US Attorney’s Offices?

Jensen: It was starting to be developed, but there was a contract the Department of Justice had with them to develop the PROMIS system, which is a way of gathering management statistics and data and making it available for management to make decisions on.

Rubens: This is under the new William French Smith administration—

Jensen: Yes; he wanted to do that and to take advantage of the changes that were coming along in technology and to improve Department management systems and information systems, and so they entered into a contract with INSLAW to develop these for US Attorneys through the use of the PROMIS system. There was one for large offices and one for small offices. So they entered a contract, and this is where Justice Management Division gets into it, and that happened when I was in the Criminal Division.

Rubens: So, about 1982?

Jensen: Yes. All right; now I had known about PROMIS before because when we started with DALITE, PROMIS was coming up around the same time. I remember being at National District Attorneys Conferences where they talked
about this stuff, and then I think some people from PROMIS were at one of
these sessions in Detroit; and I thought it was impressive stuff. It was one of
the reasons why I thought we should have something in Alameda
County—because I had seen that there were efforts being made along that
line, and that’s when we got DALITE. We didn’t develop it on the basis of
PROMIS or anything like that, it was just another system.

Then there was one National DA’s Conference after that where we were
invited—that is, Alameda County was invited—to come and do a presentation
of what we did in DALITE, I mean, how did we develop it, and what were we
doing? And at the same time there was a presentation on a PROMIS system
that was running in some other DA’s Office—I forget which one it was;
maybe it was Los Angeles, because they got started in some of those. So
PROMIS was already being developed in local systems, and was being
developed, I think, in Washington, DC. See, Washington, DC is a crossover in
that the US Attorney in Washington, DC has both a Federal and a Local
Court. In DC you have a local system that is being run by the US Attorney,
but it’s the equivalent of a local prosecutor’s office. All local crime in DC is
run through the US Attorney’s Office, but so is Federal—they have separate
sections. But one US Attorney’s Office runs both the local prosecutor’s office
and the Federal prosecutor’s office, and they’re the only one that does that.
And they were developing PROMIS, and it was a good system. At the DA’s
Conference, I think we put on a demonstration of our system, and I think the
same system was being developed in the Bronx or something like that. So
people could look at them and see what was going on. It wasn’t something
where we were trying to outdo anybody—at least I didn’t think that. It was
just a demonstration to other prosecutors as to what kinds of systems were
being developed, and how you could do this if you wanted to—to improve
management.

Well, around ’83 I got moved to be Associate Attorney General and they have
different kinds of responsibilities, and one of them sort of relates back through
Justice Management—because I hadn't had anything to do with that in
Criminal. I hadn't had anything to do with PROMIS and the contracts or
anything else before that time. But around ’83 after I get into the Associates
position, it turns out that I’m supposed to sign off on a cancellation of a part
of the INSLAW contract because the JMD and their people have contract
officers who pay attention to all the contracts that are being run through the
Department. And their decision was that they should terminate a part of the
PROMIS contract because it hadn't been carried out. So in effect, I have to
sign off on that since I’m the Associate Attorney General, and I don’t see any
reason why I don’t do that. I mean, it was a decision made by the people who
are responsible for monitoring systems like that, and they made the
determination that it was in the interest of the Department to do that. So—I
do. Then—
Rubens: But it’s only for a part of it?

Jensen: It’s only part of it, right; but it may have been significant. I don’t know exactly what causes it, but not long after that INSLAW goes into bankruptcy. Now, we’re talking ’83—’84—I’m not sure when they went into bankruptcy.

Rubens: I probably have it in my notes here somewhere.

Jensen: But I don’t really have much to do with this until the confirmation hearings—in ’86 when I’m going up for the confirmation hearings for the Judgeship.

Rubens: For the Judgeship, not Deputy, okay.

Jensen: There hadn't been anything about it when I went up to be confirmed as Deputy. That was—’84, I guess, or ’85? This was after the decisions had been made about INSLAW, and there wasn’t anything said about it at all. Then when the confirmation hearing comes up, I go that morning and the guy tells me, he says there’s a big lawsuit now where the Justice Department is being charged with misconduct in the way it handled this contract with INSLAW.

It turns out that INSLAW had brought some action in the Bankruptcy Court to find the Department liable for misconduct in its handling of the contract. So now we go back to ’83, when the decision had been made. There had been another decision, I guess, that I would be involved in, in that one of the people who worked for the Executive Office for the US Attorneys was a guy named Brewer. Brewer, I guess, had been fired by INSLAW, or had left under circumstances that were described that way; and then he was hired to go to work for the Executive Office, and he worked on the INSLAW contract in some areas. Now, I didn’t hire him; I didn’t have anything to do with all that. But then when it came to the point that INSLAW was trying to get us to not terminate that portion of the contract, they brought up the thing about Brewer working for the Executive Office, and said he shouldn’t be. So I suppose it could be that I could have affected that; I’m not running the Human Relations Department or that sort of thing, and Justice then is separate, but I have the power to institute action to determine whether somebody could be terminated for this. But I didn’t think that there was anything that I knew of that would indicate that Brewer should be terminated because of that. And so he wasn’t terminated.

And that was one of those things where—you weren't supposed to do that—he should have been terminated. But then at the confirmation hearing, I had been told that there may be questions about INSLAW, and that they had provided
some information to Senate Judiciary to ask me some questions. So they did, and I think Senator Simon made—I guess somebody gets the duty to ask questions like this—and I think there were three, maybe four, candidates that had gone up already, because this was right at the end. I think this was in the—maybe the penultimate week of the session. And here we were having a confirmation hearing, and you have to try to get out before Congress goes out on recess. So I think there was only a week left, so you have to have your hearing and go through the process of—

Rubens: This is the Judiciary Committee?

Jensen: Senate Judiciary Committee; you have to be voted out of Senate Judiciary to go to the full Senate. You have to have your hearing and get voted out of Senate Judiciary and then get on to the Senate floor, and be—

Rubens: Confirmed; yes.

Jensen: So it all had to be done on a relatively shortened timeframe because things had lagged behind for all kinds of different reasons.

Rubens: And there were a lot of people who were nominated at the same time you were.

Jensen: Yes; but then I think that the way the hearings were scheduled was that there were three or four other people that were going up at the same time as I was. But then Senator Simon (Democrat) asked me some questions about INSLAW, and I started to answer them—and he said “We want to submit some questions to you in writing.” And I said “No, I’d be happy to answer them now.” And he said “Well, I think we’re going to have to do them in writing.” See, because if you do it in writing—

Rubens: You know you’re not going to—

Jensen: It means you’re going to have trouble because that’s postponing things. All right; so I tried to get them to ask me questions, and he wouldn’t really ask me very many questions. It got left that “You’re going to get written questions.” Somehow or other, the people up there that run this stuff got them to give us the questions that night, and we answered all the questions, so the next day they had all the answers back on all their written questions. So then, in the same cycle of review, they had my testimony and they also had the written responses to their questions. That became good enough, because there were enough people on the Senate Judiciary who said “Okay; pass him out.”
Rubens: So what’s going on here? Is this a political play? I mean, you are a representative of the Republican Party—

Jensen: Yes. It’s some kind of a payback, I guess. I don’t know whether that was the motivation or what, but certainly they waited until my confirmation came up to submit this to the Senate Judiciary, and then started in on it.

Rubens: How do you find out that this is coming? Is there someone on the—?

Jensen: The people who are the—

Rubens: Your champions on the committee?

Jensen: No; staff people run Senate Judiciary, and they say we’ve received some information and it’s about this thing, so we may be asking you questions about it.

Rubens: They’re volunteering this, as opposed to you asking “Is there anything I should be preparing for?”

Jensen: Well, it’s part of the process. You meet with them before—everybody meets with them beforehand.

Rubens: Oh, you do?

Jensen: Yes; to say—if there is anything they have to tell you about what you should expect. You couldn’t get asked questions about what they know, because this was part of the Republican staff, so you have—

Rubens: Sure, yes.

Jensen: So the same sort of thing—what happens is that the staff is just making sure that you could be responsive—and maybe help out in the sense of getting you to recall areas you otherwise might not. But that’s the first time I heard about it.

Rubens: Yes, one night—
Jensen: No; it wasn’t one night. It was just that morning when I got there—they told me about it.

Rubens: But you have one night to—

Jensen: Oh, yes, after they had—

Rubens: Did you have to answer questions right there?

Jensen: Yes; sure—I had to answer questions; and I said “Ask me any questions you want.” And he didn’t really want to do that because they don’t know much about it either, and they’re not quite sure what they’re dealing with, I suppose. But he didn’t want to ask me any more questions orally at the hearing. I had already answered some questions, and I said “I’d be happy to answer any more if you want.” Because I didn’t want to have any written questions submitted given the timeframe.

Rubens: Sure; now I can see your part.

Jensen: He said “I don’t want to—“

Rubens: Does someone prevail on Simon then to say he should get the questions to you?

Jensen: I don’t know; this was just—

Rubens: You were able to get the questions, you said, that night?

Jensen: That’s because given the written questions they were going to be submitting, it would not have made sense if they said, “Well, we’ll get the questions to you next Monday.”

Rubens: I understand that.

Jensen: I say, “All right.” But getting the questions to me right away is a function of our people in the Justice Department who work up on The Hill and try to take care of problems like this; so whoever was running the Legal Affairs Office would get—
Rubens: Would be lobbying Simon’s office to—

Jensen: Yes; as a matter of fact, I remember, I think that was John Bolton—you know the guy who was just appointed to the United Nations? He was the legislative guy at that time. So he got the questions, and I got the questions, and answered them; then I sent back the written response.

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Rubens: Is this just kind of the nature of politics, that if we can find something we’ll use it?

Jensen: Well, what happens after that—

Rubens: Ten million bucks—a ten million buck contract doesn’t seem that—

Jensen: Yes; but it was—anything where the Department of Justice is alleged to have engaged in misconduct, and uses people—it’s a big deal.

Rubens: Sure, of course.

Jensen: And the way it worked out is that—I got out of Senate Judiciary and got to the floor the next week, and got passed out.

Rubens: Were there a lot of questions on INSLAW?

Jensen: There were a couple pages of questions. But that was done, and apparently the answers were sufficient to have people with Judiciary who knew me well enough say, “Okay.” But some of the Senators at this confirmation hearing—Senator Metzenbaum, for example, said “I’m not going to vote for you. You’re qualified, but I don’t like your judgment,” or something like that.

Rubens: “Don’t like your judgment”? 

Jensen: Yes, because I had decided that there was not enough evidence to indict somebody that he thought should be indicted. So—okay; that’s the way things are.

Rubens: That’s how things work.
Jensen: That’s the way things are. You do what you want, but it turned out that there were enough votes to get me to the floor.

Rubens: Was it a close vote?

Jensen: I don’t know what the vote was. Once it gets to the floor I don’t care, and I don’t remember what the vote was on the floor. I’m sure there were people who voted no, I guess Metzenbaum did. He said he was going to; so I don’t know. Anyway, I’m through, and now I come back home. Then the Bankruptcy Judge makes a finding that the Department of Justice is liable to INSLAW for misconduct, and that it is liable to them with reference to this contract that they had, and he finds that there had been a vendetta in the Justice Department, including me, against INSLAW.

Rubens: The Bankruptcy Judge ruled this?

Jensen: The Bankruptcy Judge is making rulings, yes. Then it becomes a story; there are stories being carried in the Post and the New York Times about how there are allegations that the Justice Department was biased against INSLAW, and that’s why this whole thing happened. And it is reported that one of the high officials, it turns out, who was biased is Lowell Jensen, so I’m identified as a person who has a vendetta against INSLAW. They carry stories like—“he was an unsuccessful competitor in marketing a competition management system called DALITE”. So, they had me marketing DALITE, and therefore being angry when we lost to INSLAW and then taking it out on INSLAW. I told you about DALITE earlier; I don’t know, DALITE—they don’t do anything commercially, but in the papers I am a commercial investor in DALITE, and I am against INSLAW. So that’s where it all got started.

Rubens: You were not a commercial investor then—

Jensen: No; there weren’t any. There was no commercialization. It’s a system that the County owns, and I wasn’t selling it. But I had—

Rubens: This is poor reporting or—

Jensen: In a way, but there were stories about how I had not been very favorable to INSLAW; and there had been one event when I first came back to the Criminal Division—one of the things I got invited to do was to go participate in a conference that INSLAW was running for various people in the District. They were showing some of the systems that they had done, and they had a
report about taking submissions made by Federal agencies to the US Attorneys and tracking the decision that is made on them by the US Attorney. Were they charged as criminal offenses? Were they not charged? What was the difference between different kinds of units of the Department, and different kinds of US Attorney’s Offices? They had done a relatively big study.

I said I’d give a speech, and I don’t know whether I talked about this particularly, but at least later I did – I said that I didn’t think the INSLAW study was a good one because they had been sort of mixing apples and oranges, in that some of the agencies that sent their materials to the US Attorney’s Offices were just using them to clear off their cases; so it’s an administrative way of having the case resolved. But some agencies didn’t send these things on the thesis that they were going to be charged; they said “It’s an investigation, send it to them, and we understand they’re not going to be charged.” Other agencies only send those cases that have been worked up to the point where they think there ought to be a charge. That’s a big difference, so if you’re comparing those two, your comparison ought to at least make that recognition.

I think at one point that we were talking in the Criminal Division about that, and it became known that I had said that, and I think maybe there was even communication with INSLAW about it. It’s not INSLAW’s fault that they were just using whatever statistics they had, but they have to now understand what the differences are, in the sense that the statistics are going to have to include the fact that there is a difference of input, in that the same kind of input decision is not being made by every component. So now in order to measure how many of these came out with criminal charges—because some of them were never destined to be criminal charges and others were—that’s the comparison that should be made. But I don’t think INSLAW had enough data to do that, which means they did their study but—. Anyway, that was supposed to be evidence later on that I didn’t like INSLAW—part of my motivation to get back at INSLAW.

Rubens: This is what the Bankruptcy Judge is—

Jensen: The Bankruptcy Judge is saying that I’m involved in discriminating against them, and engaging in misconduct with reference to the handling of the contract.

Rubens: And this is some of the basis which—

Jensen: The Bankruptcy Judge says these are the bases for it. All right, so I’m back in California now. And various things happen then—
Rubens: You’re a sitting District Judge—

Jensen: Right; and I think that the sequence is that the Bankruptcy Judge’s decision goes up and is reversed by the DC Circuit on the basis that he didn’t have jurisdiction to even decide what he did; so that case is vacated. But in the meantime, INSLAW had—their attorney was Elliott Richardson, who was very well respected, and people listened whenever he had anything to say—he was basically saying that his client had been abused by the Department of Justice. So that’s an audience that people listened to, and then for a while you had the Bankruptcy Judge saying it—that the Department had done that—and so it looked not very good. But the Judge’s decision was vacated, as I say, on jurisdictional grounds.

Then the House Judiciary had a hearing and sent—I’m not sure if it was a formal request to have an Independent Prosecutor—but it was at least a request to have an investigation done in the Justice Department of what I had done, and what anybody else who had been involved with INSLAW had done. And it got to, I think it was [Richard] Thornburg who was there at the time; I think the case had been reversed, but by then William Barr had become the Attorney General. He came over from House Judiciary and he decided not to invoke the Independent Counsel procedure, but said that he would get an investigator from outside of the Department to do this; so he appointed—the Department has the ability to have somebody be appointed as an investigator—a Judge, a retired Judge from Illinois named Bua, and I didn’t know him. So he did an investigation, and it took about a year or so. He did a very, very thorough investigation of the whole thing, and he wrote a report and submitted it back to the Justice Department. It said I hadn't done anything, and the Justice Department hadn't done anything that was wrong, and that—nothing had happened.

Now somehow or other along the line, in terms of the things that were said about PROMIS, and what was being done, it got into complete fantasy. I mean, it was just absolutely incredible. There were allegations that the reason we wanted to take PROMIS away from INSLAW was because we were going to use it as part of our undercover espionage system that was being run in favor of the Israeli Government through one of the programs in the Criminal Division; and that we were using it as a “trap door system” to give to other countries so that we could then monitor what they were doing on their computer systems, because PROMIS would allow us to do something like that. And there were things about how—there’s an allegation that there’s a connection with the hostages; then the original allegation about how there had been some kind of connection with PROMIS and it had been—that there were some commercial aspects of it that were somehow benefiting friends of Ed Meese and Ronald Reagan in Sacramento—
Rubens: Yes.

Jensen: —so that these people were supposedly taking it so we could reap the commercial benefit. So it got shifted a little bit from me, to friends of the Administration. And it even got to—another thing that happened was some investigative journalist—Independent—was hot on the trail of all these things, and it got to be very far out as to what was going on—PROMIS had everything. And that this was what was behind all of this, in terms of the Department taking the system—there were all kinds of reasons for it. This guy was supposed to be hot on the trail, and he was found dead at his motel. And the question is whether he committed suicide or not, and that hadn’t even been part of the reference as to why I should be investigated—my relationship to anything that happened to this guy who committed suicide. So it got bizarre.

Rubens: Yes.

Jensen: Really bizarre.

Rubens: Yes; I didn’t see all that.

Jensen: So now the Bua Report gets there, okay, and by the time the Bua Report comes in there’s been a change of Administration, and now the Clinton Administration is there. The Bua Report comes to the Clinton Administration, and remember, the investigation had been done by the Department of Justice for the Department of Justice—the appointment of the Judge to do this—so they circulated it to Congress, and they circulated it to everybody else. And the reaction was, “Well, that investigation was done by somebody who was appointed by a Republican Attorney General.” So Janet Reno’s Department of Justice decided to investigate it independently.

Rubens: Wow.

Jensen: So they did, and they did a very, very thorough job. They went back and looked at everything. There was—one of the allegations, for example, was that PROMIS was stolen and then used by the FBI in the development of its systems; and that I had worked with the FBI when I was there in the development of its systems— the one I knew of was one that was called—the acronym is FOIMS—FOIMS. I think it’s something like Field Office Information or something like that. Anyway, that system was developed about the time I was there, and the question was whether PROMIS had been used—stolen—in order to have that system developed; and the investigation by the Attorney General, that is by Janet Reno’s office, actually had experts
compare those systems to see whether there was any kind of crossover in the systems, and they found there was nothing there.

But this gets to be kind of significant, in the sense that this has something to do with why I didn’t go to the FBI—is that I was pretty sure that something like this would happen—and if I’m the Director of the FBI at a time when they’re looking to see whether or not I’ve been involved in stealing a system from somebody as a contractor to help the FBI, it really is a terrible, terribly big problem. So I’m glad I wasn’t there—but anyway, that’s one of the things it did.

In any event, the investigation by the Reno Department of Justice came out, and it also said there is nothing here at all. There was nothing done improperly with respect to the contract; there was nothing done improperly by any of the people in the Department of Justice in terms of the way it was handled. So I’m cleared, right?

Well, then there’s another thing: it turns out that the Senate can ask the Federal Court of Claims to hold hearings on whether or not the Government owes money to a citizen. So the Senate passed a Bill sending the whole INSLAW thing to the Court of Claims to see whether or not the Department of Justice owed them any money.

Rubens: This is a Federal Court of Claims?

Jensen: Yes. So they had a hearing. And a Hearing Officer spent weeks hearing whether or not there was any reason that the Department of Justice would be liable to INSLAW. They said “no,” and it went to the Court of Claims Appellate people, and they said “no,” and that’s the end of it. But that went on until—

Rubens: So, from the early eighties—

Jensen: This begins in ’83, when I was first involved in the contract; INSLAW was involved with the Department of Justice before that. They were involved around ’82—’83, and then they—

Rubens: The whole Bush Administration?

Jensen: The whole Reagan Administration, Bush Administration—and then into the Clinton Administration. It’s still going.
Rubens: Is it still going?

Jensen: Well, no—I don’t know anything that is still going on now. The last thing I heard was that the Court of Claims said there is no basis at all to show that there had been anything done by the Department of Justice that was wrong; and said that there was no liability of the Department of Justice for what they had done with the INSLAW contract.

Rubens: So the thing gets really blown up—

Jensen: Oh, absolutely.

Rubens: Who is driving this? Is this being driven by sharp lawyers on the part of INSLAW trying to get some money?

Jensen: No; I think it’s the Director of INSLAW, who felt that he had been mistreated and he wanted to get back into a position—

Rubens: Well he loses—he loses a big contract, I guess, ultimately—

Jensen: Yes.

Rubens: —because you only cut off—

Jensen: Well, we cut off part of the contract, and I don’t know to what extent it affected anything. He may have seen this as being the reason they had to go into bankruptcy, and how the whole operation had been undone; and since it was a good system and we had undone it, that that must have been improper, and that they should do something about it.

Rubens: So, two things that seem sort of bizarre to me; why would you steal it to give it to the FBI? The FBI is part of your Department; why can't they just come and use it? Okay; that’s obvious.

Jensen: Yes.

Rubens: But it does tarnish you and influences your decision whether to consider heading the FBI. The second thing is how it gets converted, because what I
thought as a result of my research was that there was some possible conflict of interest that was—it wasn’t Meese, but a friend of his, who had a controlling interest in the software.

Jensen: Yes; well that’s what I said—that’s the notion that it was of interest from a commercial standpoint to other people. I think there was a guy—that’s his name?—I think it was a person who had worked for the Reagan Administration—

Rubens: Was this Earl Brian?

Jensen: This is Earl Brian—that’s the name. Earl Brian had worked as the head of some agency in the State of California for Ronald Reagan when he was Governor, and he was involved in some sort of businesses that were management information, I guess it was. So he was developed as a reason for our conduct with reference to INSLAW, and it turned out that I had even met him.

Rubens: You had met him?

Jensen: Yes; I met him in Sacramento one day when I went up for something. He was there and I met him.

Rubens: Why wouldn’t it go the other way? Why wouldn’t it be that you had then made a contract with INSLAW so that the whole Department of Justice—

Jensen: I don’t think that there was—

Rubens: -a rational—

Jensen: —a lot of attention paid to what’s logical and what’s not logical. It got to be—as I said—it’s one thing to go out and say you have a vendetta because you were disappointed—angry about them becoming a successful competitor and you lost. I mean that’s All right; I guess you can do that. It’s not true, but so what. But then the rest of it—it got to be just—

Rubens: Just crazy.

Jensen: —crazy.
Rubens: Yes; it was kind of crazy times, too, but it’s true; I mean, it just seems to me that there are certain of these kinds of dogged attorneys, if you’ll forgive me, who are just going to look for ways to hold on and—

Jensen: Well, it never died; it kept going for a long, long time. We thought it was through. See, the original kinds of complaints about the whole thing went—after my confirmation—there had been an investigation by the Office of Professional Responsibility in the Department of Justice. The Department has an office that is the equivalent of—sort of an Internal Affairs in any police department, where they investigate misconduct by officers—there’s a similar thing in the Department of Justice. They did an investigation, and they deposed me, and all that sort of stuff. And they said I didn’t do anything.

Rubens: Do you have legal representation during this time?

Jensen: I didn’t have any. But you could have; I didn’t—

Rubens: You just knew you were clear and—

Jensen: Well I did have something, sort of—I was deposed by OPR and I was deposed by the Bankruptcy Court in their case, so I went to depositions, but I didn’t have counsel; so—.

Rubens: Did this hound you? How did you feel?

Jensen: No; in a way the DA’s Office helps you out because you get sued as the DA all the time; I always had suits against me when I was a DA. So you—I don’t know that you get inured to it, but it is part of the—

Rubens: It comes with the territory.

Jensen: —territory, and so I didn’t—it isn’t that surprising. But this one, in terms of its longevity and its ability to pop up continually, was different.

Rubens: Was Richardson the man all the way along?

Jensen: Yes; he was their counsel all the way through.
Rubens: And in the end, who is paying him?

Jensen: INSLAW, I guess.

Rubens: There is something there; he’s going to get—

Jensen: I guess so.

Rubens: There’s a bankruptcy, but is there money left?

Jensen: I don’t know.

Rubens: What a strange case. Okay; now is there any relationship of this to the CIA? I have an article that says “Justice Department officials gave the software to Earl Brian who then used CIA Contract Agent Michael Riconosciuto to alter the program”—I don’t know, “at the Cabazon Indian Reservation near Indio, California.”

Jensen: See it got—this is pretty far out stuff. There’s no way you can answer that—when you get talking about it.

Rubens: I have some other names I wanted to ask you about. Leigh Ratiner, with a big DC firm, at some point represented INSLAW against the Justice Department. I’m not sure—

Jensen: Leigh Ratiner, don’t know that I knew that name.

Rubens: Does Ed Wilson figure in here?

Jensen: No; that’s a different case.

Rubens: So you were dogged by this more than Meese was by his—

Jensen: Not really, because I think it’s much different to be the target of an Independent Counsel investigation—

Rubens: All right; because it didn’t quite get to that.
Jensen: It didn’t get to that. It’s somewhat like that, but when you get to the Independent Counsel investigation, then the media attention is even greater.

Rubens: I have a Wikipedia article about George Terwilliger, the former Deputy Attorney under Meese who was the “Political Liability Suppression Officer.” Now this is different; this has to do with Iran-Contra, but the author is claiming that you’re in concert with Meese and his crew to suppress—

Jensen: Terwilliger is saying that?

Rubens: Yes.

Jensen: I don’t—he came along after I did, and he was at higher levels. I guess he was Deputy Attorney General at one point, but—

Rubens: Well, the entry claims he acted as “Political Liability Suppression” agent—was there such a thing as that?

Jensen: No. No. They have press officers; maybe that’s what they are—“Political Liability Suppression—.” [Laughs]

Rubens: So that was it. It just kept going, though. So was it going to be a matter of, “Oh what now?”

Jensen: Yes; and you don’t know what’s going to happen.

Rubens: And Janet Reno felt there was enough there that she—

Jensen: That she should do it, because of the nature of the investigation.

Rubens: Did she ever talk to you about it, literally?

Jensen: No; she never did. It was done very professionally; but Bua had also done a very professional job on it. OPR had done that—and there had been nothing there. So they did it again and it came back—and that’s when the Court of Claims came out—that just sort of came out of the blue, because at that point, I just don’t know—I was represented by the Department of Justice there. This was on the issue of the liability of the Justice Department to INSLAW.
Rubens: Right; and who was the attorney then?

Jensen: Well, that was the Civil Department handling it—the Civil Department of the Department of Justice handled it.

Rubens: By the way, had you had met Richardson?

Jensen: Oh yes; I met Richardson. I had met him before I got into the Department. He had been in the Department, and he had done marvelous things. He was very well-respected; he was a fine attorney. I just don’t know what he had in mind with all this kind of stuff, because he was part of the delivery system of some of the wild accusations.

Rubens: Was there anything discovered about how this journalist was—?

Jensen: He committed suicide. They did a thorough review of that when the Janet Reno Report was done.

Rubens: Do you have both of those reports? The Bua, and the—?

Jensen: I think I’ve got the Bua Report someplace. I don’t know if I have the Reno Report.

Rubens: Next time we’ll talk about settling into the Federal District Court and being back in the Bay Area.

Jensen: Right, right.

Rubens: All right; thank you so much.

(Conversation re scheduling omitted)
Rubens: I understand that you’re just back from sitting as a judge in Guam; how was that?

Jensen: Yes. It was all right. They have a need for a judge, because there is a vacancy. They have an Article I Judge for Guam and Saipan. But they haven’t appointed anybody. So they need people to go over and fill in. They have a Magistrate Judge, but—I was there for two weeks and tried cases and sentenced people and stuff like that. It’s kind of a little adventure.

MLJ: Thirteen days too long?

Jensen: Well, it’s tropical and muggy and hot. So it’s hot all day long. It never goes away. Then you go into the courtrooms and the chambers and it’s freezing, because they’re air conditioned. I don’t like that anyway. So I got a cold. I still have it, practically. But it was okay. It was interesting.

Rubens: Then someone else will rotate in?

Jensen: Yes. People keep going in to volunteer just to do something—because some of them really like it. Like Judge Alsup, he’s an adventurer, kind of. He likes to go. He’s been there twice, I think. He may go back again. But I’m not going back.

Rubens: Today is our tenth interview. We discussed last time the beginning of the federal period, but it was not very detailed. I have kept a log, so you can just see where we are. We had ended with the INSLAW case.

Jensen: We finished up INSLAW?

Rubens: Basically. It was almost cloak and dagger. It was a nice story.

Jensen: Yes, it was, it was an interesting story.

Rubens: Including a suicide, right? Or murder?

Jensen: It was suicide. One of the investigative reporters claimed it may have been a murder.
MLJ: Well, the conspiracy theorists would say it’s a murder.

Rubens: I thought we’d start your federal appointment with acknowledging that [Supreme Court Justice Samuel] Alito has just been confirmed as a Supreme Court Justice. And of course, he came into the Justice Department when you were—

Jensen: At the same time. He came in when William French Smith came in as the Attorney General. He came in with this sort of wave of bright young people who came into the office, as well as the middle range and the top people that come in when you change the Administration. He came in as a young lawyer in the Solicitor General’s Office.

Rubens: The Enron case is starting today in Houston before the Federal Court, as well. Regarding the hearing for your appointment, [Senator Howard M] Metzenbaum criticizes you for—

Jensen: -not bringing charges against somebody. I forget what it was, a medical—

Rubens: I think it’s a food and drug company issue. Oh, just to go back to Alito for a minute, were you particularly interested in the hearings regarding his appointment?

Jensen: Oh yes.

Rubens: Did you watch them?

Jensen: I didn’t get a chance to watch much. I did get a chance to watch John Roberts all the way through. See, I knew John Roberts, because he had worked for Kenny Starr, who was the Chief of Staff for William French Smith. So he was there in the Department, and I would meet people like that. And he was a young man who, I think the agreement among all the rest of the people, was that this young man is going to go very far.

Rubens: It was that clear.

Jensen: Roberts was very, very bright and very, very good. But I didn’t know Alito, because he was in the Solicitor General’s Office. I didn’t have any direct contact with them.

Rubens: I remember you saying that. The questioning period is brutal; long. I’ve read that some argue that it would be better to hire—or to get a group of volunteers, for instance four sharp constitutional lawyers, with a range of political positions—and have them question the nominee.
Jensen: Well, obviously, something ought to be done to fix that. But that’s part of the way the questioning process goes on in congressional hearings—is that the questioner makes a statement—it isn’t really a question; it’s stating a position. So you haven’t really moved the ball, as far as questioning’s concerned, because you can sit there when you’re in the hearing and listen to the statement, and the answer is “So, what’s next?”

MLJ: Did you find that to be true in your confirmations hearings?

Jensen: Yes, I did.

MLJ: —even through the Justice Department, or for District Judge? I’m wondering whether you found a difference between the process in the Justice Department confirmations and then the judicial confirmation.

Jensen: I didn’t think there was any difference. But they vary. Because the first one, when I was at the hearing with reference to the Criminal Division, it was just a celebration, because you had the California Senator, Pete Wilson, making a very nice introduction about my service as District Attorney in Alameda County, and the history of the DA’s Office in California. Then Arlen Specter was there, and I knew him from the national DA’s Association. I had been to a conference with him. So it really was nothing. They just asked me some questions, but they weren’t really substantive questions, and so it wasn’t much of a hearing.

Then when I was appointed to be the Associate Attorney General, it was sort of the same thing, except that that was the one that got hung up because Senator Simms wanted to make sure that I understood that we’re not supposed to charge people for making false declarations.

And the hearing for Deputy Attorney General was also no problem. I think one of the reasons for that was that there had been various, oh, problems, with Ed Meese coming through, and everything had been hung up. And I’d been getting things together. I think there’s kind of a sense that it’s really not fair to now put a person in office without letting him have the people who are going to work for him come in too. So I think there was a sense of, “Let’s lighten up on this a little bit.” And then I had been through the process before, so I don’t think anybody had any problems with it. So they let me go throughout without any difficulty. And then comes the judicial appointment hearing, and that one becomes more of a problem.

Rubens: There are a couple of things that seem to be going on. How would you describe what the problem was?
Jensen: Well, the problem was, one; INSLAW, because they had now come in and they’d filed an action and a bankruptcy, and they’d given all these materials to the Senate Judiciary Committee to ask me questions about. So I explained that Senator [Paul] Simon was asking me questions, but he wouldn’t finish them up. They wanted to send written questions. We had to finish the written questions overnight and get them back to them, because if you don’t get out of the Senate Judiciary, you can’t be on the floor of the Senate. And I only had a week to get through all this. So that got done.

And then Senator Metzenbaum was unhappy because he had been told in some other hearing that in an investigation of this company by the Food and Drug Administration—

Rubens: It was Eli Lilly, wasn’t it?

Jensen: No, it wasn’t Eli Lilly. That’s another issue. It was for some other company. And in part of the hearings on that, they had said—“Well, the question of whether we should charge the people who were involved in this criminally was cut down by people higher up.” That was me. I had said, “Don’t charge them.” And so Metzenbaum said, “You should charge them.” The reason we didn’t charge them was because we didn’t have a case.

MLJ: What did you understand his political purpose in pursuing that was?

Jensen: Well, part of his status was being interested in these kinds of areas and being tough on them. And he was being tough on the Department of Justice for not being tough on the area that he believed was in need of that. So he wanted us to charge things criminally. I had said the reason we didn’t charge is because we didn’t have sufficient evidence to bring a criminal case. And he said something to the effect that, “Well, I won’t vote for you. You don’t have good judgment.”

MLJ: At the Judicial Confirmation hearings, do think it was a matter of them getting to know you better? Or that they had a platform to promote things? Or because it was a lifetime appointment?

Jensen: I don’t think it was really directed at me personally, particularly. As I said, Senator Metzenbaum had a kind of a status as being one of the figures who made sure that there was effective and vigorous enforcement in this area. And he felt that the Justice Department should not have given up on this, and that therefore, whoever gave up was to be criticized. So I was the person. So he used that venue.
Rubens: I see my notes aren’t adequate. It says it’s a matter of handling cases about food and drug companies that market potentially dangerous drugs.

Jensen: I think that’s probably right. I think that’s right.

Rubens: But that’s not Eli Lilly, okay. Metzenbaum came from-

Jensen: He’s from Ohio.

Rubens: And you passed.

Jensen: Well, I got out. I got out of Senate Judiciary. Once I got to the floor of the senate, there wasn’t any problem.

Rubens: No opposition?

Jensen: It was voted up. I don’t know if there was opposition. I can’t even remember. I think probably Metzenbaum voted against me. That’s fine. I just don’t remember what the final vote was.

MLJ: To go back to more of a general commentary that Lisa was starting out with on the Supreme Court hearings, do you find when you watch them on TV that they’re different than what you experienced, because they’ve become more of an opportunity for political grandstanding?

Jensen: I think they’re more political.

MLJ: Do you think it’s possible to actually get an answer out of the people being questioned?

Jensen: Well, I think the hearings are more political and that there is a level of - oh, theater about it—that’s a partisan theater. And they use that for that purpose. And probably, most people attribute this back to the hearings with reference to Bork; because his appointment was the first one that had this kind of a dimension to it. And it’s been true thereafter—

Rubens: Right, that was the next year.

Jensen: —with both sides blaming the other side for what happened with Bork.

MLJ: Some of the Congress-people or pundits say, “We never got an answer from Roberts or Alito about what they would do on thus-and-such.” Now, having gone through the process of becoming a judge and thinking about
qualifications for a judge, do you think that these candidates should have to answer those kinds of questions?

Jensen: I don’t think so. And I don’t think that it’s going to be perhaps as vigorously pursued as it was in the last couple hearings. Because the reality is that the last several appointments, when you ask the questions like, “What would your position be on a case in the future?” they say, “No, I can’t answer that question.” That was done by Justice [Ruth Bader] Ginsburg, it was done by John Roberts, and it was done by Alito; and they’re all on the court. So I think that the message is that you’re not supposed to answer those questions. And if you think about it a little bit, if you answered the question, then how do you sit on the case, if you’ve already decided? So what are you going to have, recusals coming out of this?

Rubens: I think Roberts was very clear about this.

Jensen: Yes. I don’t see how you can possibly answer those questions. If your position is that “If you don’t answer my questions I won’t vote for you,” that’s not a reasonable position because you have to now assess the answer in the sense of what is the effect upon the future judicial decision-making by this particular judge. And you can’t expect a judge to prejudge cases.

Rubens: Right. Prejudge is the word. Do you think there’ll be some reform—?

Jensen: I don’t think there’ll be any reform; I think that there’ll be a slackening of the intensity. A lot of it depends upon what it’s all about, in terms of who’s getting appointed, who you’re replacing, all this sort of thing. Because it may be that if, for example, the next appointment comes up and the current president has the opportunity to replace, say, [Supreme Court Justice John Paul] Stevens, that may be a very intense thing. Because if Stevens is replaced with a so-called conservative, it does affect the balance in a perhaps different way, and it makes the stakes higher. So it may be that you still have that sort of thing, but I still don’t think anybody is going to get up there and say, “Well, let me tell you, this is the way I’ll vote.”

Rubens: Right, right. Nor will the senator forgo this opportunity to grandstand or showcase—

Jensen: No, because they’re making a political point.

Rubens: Yes, okay. So the other point regarding your appointment was that I saw in one article that you were chosen over six others, and that Wilson announced your appointment before there was actually a vacancy—This was a senate confirmation, but that was unusual. What was going on?
Jensen: What happened is Wilson had a California committee that vetted appointments. And I think that when I talked with him and he said, “Well, you’d make a good appointment,” then I didn’t have anything to do with it after that. Then it got to a sort of typical Washington kind of thing—the deal was sort of there, in the sense that I would be able to get an appointment. Then there was some kind of a leak from inside the Justice Department to the effect that “They’re considering appointing Lowell Jensen to a judgeship.” And immediately, the reporters go back out and get the head of the vetting committee, who basically says, “Well, I’m not quite sure that I know anything about that.” So then we had to go back through the whole process. That’s what they’re talking about—is that they considered me through the vetting process, and then after they’d done that they came back and said “Okay.”

MLJ: They have to do that, correct, as part of the political process? Even though the president basically says—

Jensen: You don’t have to have—each senator can make recommendations without going through a committee that considers their appointments. Some senators don’t do that at all. But some senators do. And if they make that a part of what is known—that we have this committee, then I should go through it.

Rubens: Wilson says in the news report that, quote, “There’s been so much speculation” on who would get the post that he decided to go ahead and announce the recommendation publicly, before the full—

MLJ: Isn’t Wilson told by the administration that you’re getting the appointment?

Jensen: No, he’s not told. No, no, no, no. He was—

MLJ: No; well, then I have a misconception about how it works. My conception is—correct me if I’m wrong here—is that you’re working at the Justice Department, you express an interest in going back to California and leaving Justice, and they say, “We can get you a judgeship.” And then you have a deal to get a judgeship.

Jensen: Well, but they can’t. They can’t guarantee anything like that. They have to go through a political process.

MLJ: Right, but don’t they go and say to Senator Wilson—
Jensen: But it’s important. No, sure. They say, “There’s a vacancy, and here’s somebody who would be good for the appointment.” And since it’s me, I know Pete Wilson. And I know him from California. And I don’t think there was a problem with that. And so he recommends me.

Rubens: Who was the other senator from California at that time?

Jensen: I’m not certain.

MLJ: Alan Cranston?

Jensen: Cranston, I think.

Rubens: Yes, so he’s a Democrat, and he gets to weigh in on this.

Jensen: Well, not necessarily. He doesn’t get to weigh in on the nomination process. He can say what he wants, but he’s not consulted by the Administration in terms of who he thinks should be appointed. If you have—

Rubens: I thought that the two senators had to agree or work it out.

Jensen: Well, the two senators have to do it, in that the way the senate works is that once you get nominated and go to the senate, then either senator, any of the senators, can in effect put in a slip that stops it. At least that was the process. So unless Cranston was willing to let this go, he could affect it.

Rubens: Sure. Do you know who the six others were? Or who else was in contention?

Jensen: I don’t know that there were six. I have no idea.

MLJ: I suspect that there weren’t six others.

Jensen: Twelve, perhaps.

Rubens: Marcia, what are you suspecting?

MLJ: You know better than I, but suspect that somebody in your position, who said they wanted to go back to California—traditionally, the Administration will make sure they get a job. So for example, Steve Trott came back as a judge. Who else came back as a judge? Bill McGuiness, but in Alameda County; it’s not unusual for the Administration to make—
Jensen: It’s not unusual at all that Administration people who are known to the Administration are pushed by the Administration into the nomination process. But the nomination process includes, as far as District Judgeships are concerned, the senators in the state. So they need to now talk with the senators. And I’ve seen plenty of situations where the Justice Department said, “We want so-and-so,” and the senator says” No.” So it gets stopped—I’ve seen people get stopped because the senator was opposed to that. So you have to have, in essence, a concurrence process it goes through. If they’re willing to say, “That’s a good appointment,” and it is suggested by the Administration, okay, fine. But if they say, “I don’t what that,” they can say, “No, I do not agree.” And basically, they’re given at least some significant level of ability to affect the appointment process by saying “I don’t want them.” If that happens, the Administration backs off.

Rubens: All right, I just wanted to be clear if you were aware of anybody else who really wanted that position and whether there was any jockeying.

Jensen: I don’t know about that.

Rubens: Okay. The oral history I read of Thelton Henderson states that there was just no question that there were other people who were contending for his position, and that he was surprised he was the one who got through. The Republican and the Democrat had to agree, and there was some other-

Jensen: Well, I think that’s true. I think that you have to have, as I said, is that political process which includes the ability of each senator to make something—

Rubens: To stop it.

Jensen: To basically stop it, at some point. So unless you have concurrence going through, you don’t make it.

Rubens: So you do make it. And most news articles are just very lauding of it. When you come out, you start in San Francisco. The Federal Building doesn’t open here in Oakland—

Jensen: Until 1994. I was in San Francisco from ’86 to ’94.

MLJ: Whose position were you taking?

Jensen: Bill (William) Orrick. He had become a Senior Judge, so it became vacant. And then Orrick continued on as a Senior Judge. But I was the appointment to
supplant him—when he goes Senior, then it becomes open. And so I got that position.

Rubens: So you have to buy a robe and—[laughs]

Jensen: Sure.

Rubens: And are you schooled in how to work in the court system? I mean, your experience with federal law was extraordinary.

Jensen: I’d been in courtrooms, and I knew something about federal law. I didn’t know much about civil law. I knew about criminal law.

MLJ: In federal criminal law, there are different rules of evidence, there are different rules of criminal procedure; especially in comparison with California rules. Did you have to go back and learn those?

Jensen: I had become more familiar with those through the Department of Justice, because my need to know federal criminal law began when I became the head of the Criminal Division. You can’t come over and not learn about federal criminal law. It just doesn’t work. So I knew a good deal about federal criminal law. But I didn’t know about civil process. They do have training, so that when you’re appointed, at some point there’s a baby judge’s school that they put on in Washington. The Federal Judicial Center puts on a school. They have judges from around the country and experts from around the country, come in and give you lectures on both procedural and substantive issues.

Rubens: You went to that?

Jensen: I went to that, right.

Rubens: There are other people attending who are new appointments?

Jensen: New appointments were there. There are about twenty people there. You have a couple weeks of learning about this.

Rubens: Bar review, kind of.

Jensen: Yes. Then they have a week, in terms of criminal law, they set up a deal where we went down to one of the prisons and had a session down there, looking at the whole criminal justice system, from a judge’s perspective.

Rubens: To a federal prison?
Jensen: Right; so that there was a week of training for that. That’s basically about three weeks of training, which is the way the American system runs. Most countries train their judges before they get appointed. In this country, the appointment process is distinct from the training process, and so in you come.

Rubens: The assumption is you’re just going to be reading all the time.

Jensen: Well, you come in. And I don’t know of anybody who could’ve had a background that covers the whole range of judicial and federal jurisdiction. It just doesn’t happen. So you have to come in. And some things you know, and some things you don’t know. You have a very sharp learning curve.

Rubens: But with your background-

Jensen: I had a good background because—one of the things that happen is that some people come into these positions where they haven’t had any courtroom experience. And you’re going to be a courtroom judge. I didn’t have that problem, because I had been in a courtroom for a long time. Other people may have to learn about the process of judging; but I had that experience. But the substantive law is something I didn’t know at all. The first jury trial I had was a patent case. What did I know about patent cases? Nothing. I had not been in contact with patent law at all during my time. The first time I ever saw a jury trial in the federal court was a patent case, and I was the judge. So the learning curve is very sharp. And so you do, you learn.

Rubens: How many aides do you have?

Jensen: I had two law clerks.

MLJ: Had you hired them ahead of time? They were they in place?

Jensen: I had not. When I came out to California, I had to find law clerks.

MLJ: Did you have a staff in place before you came out and arrived at the courthouse?

Jensen: No. When you get out, there are a couple of things. One is managed by the Clerk’s Office, in terms of who’s going to be my Courtroom Deputy, who’s going to be in court. But each judge has a secretary. So the judge can hire a secretary, and the judge can hire law clerks. There are three positions that you can hire for when you come in as a judge initially. So I hired, as a secretary, the secretary that I had in Washington, Marilyn Jacobs. She had not been in California previously, but she thought it’d be a good idea to come out. So she
did; and she was my secretary. Then you had to find law clerks. And you’re sort of in the middle of this process, because law clerks are generally hired a year before, or six months before, the time that I arrived. So I come in in July, and I need law clerks to start. And the law clerks that were starting had been hired the year before. So I had to find law clerks through a different process. I got recommendations from people and I was able to find some very good people. It was not a big problem.

MLJ: What did you do logistically to come out to California, personally? Did you take time off? Did you go to work right away? What house did you come back to?

Jensen: As soon as I was sworn in—and I think it was June 26th or something like that—we left.

MLJ: Were you sworn in immediately after the senate voted?

Jensen: I was sworn in immediately after the senate vote.

MLJ: Who swore you in?

Jensen: The next day. I was sworn in by—this is one of those things.

MLJ: Ed Meese?

Jensen: No, it wasn’t Ed Meese; it was a judge from the D.C. Circuit.

Rubens: It’ll come back.

Jensen: But as soon as that happened, we went and cleaned up the house and got in the car and drove home.

MLJ: Had you rented out or sold the house already, in anticipation moving to Washington?

Jensen: We’d already notified the renters that we were going to leave. We were renting that place. So all we had to do was terminate our rent. We had a lease. That had all been worked out. That was not a problem.

MLJ: So you kept your house in California?

Jensen: Kept the house in California; so we had a house to come to when we came back home.
Rubens: When did you literally go over to San Francisco and—

Jensen: Well, as soon as I got here.

Rubens: The “baby school” must’ve been—

Jensen: What happened is we drove back home; and we took a couple weeks to get back to California. When we got here, we settled in for a weekend. Then I went over to San Francisco and saw Judge Peckham, who was the Chief Judge at that time, and got it set up as to where I was going to go, and what I was going to do. I’d already been sworn in, which is the typical thing. But then we set up a formal process where we had a formal Swearing-In ceremony at the ceremonial courtroom in San Francisco the next month. I was already on the job at that point.

MLJ: Do you already have a caseload when you come in?

Jensen: I got a caseload when I came in.

MLJ: How many cases did you get?

Jensen: I had about three-hundred or so cases that were given to me. And most of them had come from Spencer Williams, who was a judge—I guess he was Senior then—and there were a bunch of cases that he transferred over.

Rubens: How many judges in the Northern District?

Jensen: At that time, I think it was twelve.

Rubens: Okay; and now?

Jensen: Now it’s fourteen. I think it was twelve then. There’s been a change.

Rubens: Does twelve include Senior Judges?

Jensen: Senior Judges, no, no. That’s the number of Active Judges. So right now, there are fourteen Active Judges, and I think four or five Senior Judges.

Rubens: Of which you are now.

Jensen: Yes, I’m one of those.
Rubens: Okay. So Orrick became one.

Jensen: He did then.

Rubens: How many were there then—

Jensen: Well, there were about five Senior Judges at that time, and there still are.

Rubens: Who’s head of the court now? How do you become head of the court?

Jensen: It’s a matter of seniority. So the Senior Judges are ineligible—you have to be less than sixty-five. That’s about the way it happens is, if the position becomes vacant, and you’re under sixty-five, and you’re the judge with the most seniority, you’re the Chief Judge.

Rubens: Did you know any of the judges particularly well when you came in?

Jensen: No, I didn’t. I knew, say, Lloyd Burke. He was a District Judge, and he had been in the Alameda County District Attorney’s Office way back. He’d also been the US Attorney for a while. I knew him; he was one of the judges. I really didn’t know any of the other judges.

MLJ: You didn’t know Marilyn Patel?

Jensen: I knew Marilyn Patel because she had been a judge in Alameda County when I was the District Attorney. I knew her from that relationship, in the sense that she’d been in the Court and I’d seen her in the corridors of the Courthouse when she had been in her courtroom. I knew who she was, but I didn’t know her personally. Lloyd Burke I did know; I’d met him in personal kind of circumstances. I didn’t know Thelton Henderson. I knew who he was. I knew of all the people, but didn’t know them personally; I had not had cases that overlapped with them.

Rubens: Henderson mentions that he was assigned to Cecil Poole’s [first African American federal judge in Northern California] courtroom. Was it significant at all what courtroom to which you were assigned?

Jensen: No. I was going to get Sam Conti’s courtroom. It took me about six months to get Sam Conti to move out. [Rubens laughs] He finally did.

MLJ: Was the Oakland Federal Building in process when you came out to California?
Jensen: No, it was not.

MLJ: Was something that was decided on and funded after you came out? Did you have something to do with that?

Jensen: Yes, later on. But I have to tell you, the cases that I got—the cases I got from Spencer Williams? So, I come in, and I’m in this office they gave me. And on this table there’s a stack of case files. It’s about a foot high, at least. And on top of this stack of cases is a can of dog food. So that was my contribution from Spencer Williams.

Rubens: This means?

MLJ: They are dogs.

Jensen: —bad cases. [laughs]

MLJ: It’s somewhat traditional to dump your bad cases onto the new guy, right?

Jensen: Well, we try very hard not to do that now. I think some of that is—

MLJ: Didn’t the Spencer Williams cases—some of those that you got from him, end up being some of the oldest living cases in the District?

Jensen: They were. Some were old cases, and some were actually in a state of suspension. We had one case that had to do with the taxation of railroads that had gone through. And Spencer had ruled on it, then it had been sent—it’d been, in effect stayed—because it was supposed to go back to the state courts. But then it came back into the federal court. And then I got it. I had it for about the next ten years before it was finally decided.

Rubens: Did you have a segregation case, or some discrimination case?

Jensen: No, I don’t remember that.

Rubens: It was one of the longest-lived cases.

Jensen: Oh, there have been very long cases, yes.

Rubens: Well, I’ll get to that one. By the way, would just identify Spencer Williams?
Jensen: Spencer Williams is a Senior Judge. He’s been a Senior Judge for some time. He was in San Jose, in the San Jose Division. He had been active in politics. He was the County Counsel for Santa Clara County. I had known him personally through the DA’s Association and the County Counsel’s Association.

Rubens: He was a Republican?

Jensen: Yes. He worked for Ronald Reagan in the state government. And then he became a District Judge, and he’s been a District Judge for some time.

Rubens: There is one more issue I want to ask about, and it has to do with the rumors, which are then published, that you’re being considered for the head of the FBI. And this article—I don’t know who the author is, Ross Larsen?—says that you’re in your office, “Gaunt, soft spoken.” I thought, “gaunt?”

Jensen: Okay, that’s All right.

MLJ: Were you often described as being gaunt?

Jensen: I was gaunt. I don’t care.

Rubens: Yes? All right; but the Associated Press reported a list of candidates, which include five men—you, two other judges, a private lawyer, a federal administrator. Were you aware of this? This reporter comes and interviews you, but the appointment hasn’t been made. Had you heard rumors before this guy comes to you?

Jensen: Oh, I think so. I think the rumors started in terms of what they were thinking about when Bill Webster left.

Rubens: He had not been confirmed as CIA Chief. That’s what’s waiting to—

MLJ: When was all of this in relation to when you were appointed?

Jensen: This is about the year after I got here. I had been here since July of ’86.

Rubens: Okay. I don’t know why I’m hung up on this. When did you have the “baby court?” Before you moved back out to California?

Jensen: No, after.

Rubens: You must’ve gone back for three weeks.
Jensen: Yes, I went back there; it was in ’86 sometime. Fall of ’86.

Rubens: Fall, fine. You’re already—

MLJ: You start working before you get the training?

Jensen: You start working first. That’s part of the expectations.

Rubens: Had anyone spoken to you about this consideration to be Director of the FBI?

Jensen: No, not with me. It came out. Then I was spoken to, and talked with people about it. I specifically talked with Ed Meese about it. It got to the point where I guess I was the candidate. Then, given the opportunity, I decided not to do that.

MLJ: Did you decide that on your own, or was that a mutual decision?

Jensen: No; I decided that on my own. Barbara would not have wanted to go back to Washington. She would have, if that had been the decision to do it. And for a variety of reasons, I decided not to go back there. I’d now settled. And you’re going to give up a judgeship to do that, to go into a—? I’d watched all these things happen. Bill Webster had spent almost ten years. The term is ten years. They, in effect, reformed the whole process after Hoover. The Director of the FBI is appointed to a term of ten years. So it overlaps administrations – that was one of the ideas involved. That’s still true.

MLJ: That’s a reaction to J. Edgar Hoover?

Jensen: That’s federal law—that it should be a term appointment. It shouldn’t be somebody who becomes so powerful that you can’t do anything about it. So Webster had been there—and when I’d left, I just go back all of a sudden? Where are you? You’re just starting over. You have an awful lot of background. And a person like Bill Webster had done such a wonderful job that there are no problems, in terms of where you go. But you have now, in effect, switched over from a lifetime appointment to the District Court into private practice again, and into the whole world of politics and things like that. And I didn’t particularly want to do that.

Rubens: Did Meese lean on you heavily? He would’ve liked to have you his man?

Jensen: Well, probably. Yes, I would think so. But he didn’t do anything other than talk to me about it.
MLJ: How many conversations did you have with him?

Jensen: We had several conversations. And one of the reasons that I didn’t want to pursue this was because of INSLAW. I didn’t want to do get into that. Because my perception of INSLAW was that it wasn’t going away and that it would, in effect, not be good for the FBI. If you have someone who is the Director, who is under investigation as the head of the FBI, it creates very, very big problems. I could not see how INSLAW was going to go away. And I turned out to be right. If you look at this, the House Judiciary, as a part of the INSLAW thing, the whole experience—at one point sent a request to the Department of Justice to have an Independent Counsel appointed for me. All right; I would’ve been the Director of the FBI at that time. That’s not a good thing. So I think I was right about that. But for a variety of reasons, I said that I did not want to do it.

MLJ: How much of the legs, if you will, of INSLAW do you attribute to the fact that Elliot Richardson was the lawyer for the company?

Jensen: Well, I think that it made a lot of difference that he was a very well-respected lawyer. And the other thing was, the Bankruptcy Judge had made a finding that the Department of Justice had committed misconduct along the line. See, that had happened. When INSLAW went into bankruptcy, the Bankruptcy Judge made a finding that there had been misconduct. Ultimately, that finding was reversed by the D.C. Circuit, because he didn’t have jurisdiction. I mean, he reached out to do this. But at one point, it had a lot of legs, as you said, because you have a Bankruptcy Court finding, you have Elliot Richardson as their lawyer.

MLJ: What are the other reasons that you decided not to go to the FBI?

Jensen: I don’t know that there were any other others.

MLJ: You said you didn’t basically want to give up your lifetime appointment—

Jensen: I think those are the basics.

Rubens: I was going to ask you what was attractive. What part of you said, “Perhaps-“

Jensen: Actually, I would have done it at another time. If I had not come back to California, and it had happened at a time when we were still in Washington; we would’ve stayed there. Although we hadn’t figured on staying in Washington, if that had been an opportunity that came up at a different time, then I think I would have taken it.
Rubens: History is not “What if?” On the other hand, it’s very interesting to think about “what if” you had taken that position—do you ever think about that?

Jensen: Oh, sure. Well, there are various things that you go through. I think about, “What if I’d done that?” And my sense at this point is that it’s better to have stayed here and become a part of the court than it would’ve been to go back into the FBI.

Rubens: Who did become Director?

Jensen: Judge Sessions from Texas, Bill Sessions became the appointment.

Rubens: He didn’t serve ten years.

Jensen: No, he went through—

MLJ: What did he end up doing?

Jensen: He went back, I think, into a law firm, ultimately. I think he stayed until President Clinton came in.

Rubens: Did you ever look at directions the FBI took, or how things went and thought, “Had I been there, I would’ve—”? 

Jensen: Maybe, I would’ve done this; or I would not have done that. But you really can’t say that, because when you leave, you’re outside of what’s actually happening. And things happen so fast and are so significant, in terms of the players and in terms of the issues, that you really don’t know. When new decisions come along, you’re not really sure what the whole context is. So it’s sort of unfair to sit outside and say, “Well, I would’ve done this,” and criticize what they did. I sort of take the position that I could not see why they did it, but I would give them the benefit of the doubt that that’s a good idea.

Rubens: I had asked you the question if when you left the Department of Justice, there were things you wish you had accomplished. We certainly reviewed things that you did. Might it have been that in the position of Director of the FBI, a certain stance on crime might’ve been—you could’ve used that as a platform? Or maybe more so here as a judge, because you then went on to deal with federal procedures?

Jensen: I think that this whole area of the cooperative effort between federal law enforcement and local law enforcement was one of the themes I’d been involved in at the Justice Department. And as the head of the FBI, that
would’ve been one of the major issues that I would’ve looked at. So I would’ve been involved in that, I’m sure. But things change. Look at what happens—you come into the FBI, and all of a sudden there’s 9/11. The world changed.

But I’m saying that as things go on, the context is incredibly different. You don’t have anything as visible and as high, in terms of the intensity and the significance, as something like 9/11. You have similar sorts of things going on all the time that you have to respond to.

MLJ: Just to pick up on what you were saying a little bit, one of the “findings,” after the various hearings on 9/11, is that if there had been actual cooperation, perhaps there would have been more intelligence. Not that you could have prevented anything, but that there—

Jensen: I don’t know that I think that’s true. As I say, that would’ve been one of the things that I would have been directly involved in and very much interested in, as being a shortcoming as far as law enforcement is concerned. But I don’t know that I would’ve been able to accomplish a lot of things, because you could see things that would be good ideas—I would see things like, as you watched this, I always thought, let’s say, the way they split up responsibilities created turf problems, we created all these problems—you just undo those. Like the ATF was an agency I didn’t think belonged in the Treasury Department. It should’ve been moved over and absorbed into the FBI. But you can’t do that, even if you think it’s a good idea.

MLJ: Haven’t you found in your tenure as a federal judge, and in the federal law enforcement arena, that the turf wars are so entrenched that almost—

Jensen: It’s almost impossible to change things.

MLJ: —nothing is going to fix it?

Jensen: Well, you’d hope that years down the line, you’re going to get there. But you can’t change some things. I think the whole area of interagency cooperation, and federal, state, local kinds of adventures together, endeavors together, is much better than it was.

Rubens: Well, certainly; but isn’t that what the whole Homeland Security—

Jensen: Absolutely.

Rubens: —administration was about, and the Patriot Act, and—
Jensen: Yes, and the problem is, how do you pick? What portions do you pick and then put into a new agency? But your problem is that if you don’t take the whole agency and put it into the new operation; you’ve now created some level of turf battle. Because you have these other agencies still in existence back there. And they still have something to do. So they’re protecting what they have to do. And the new agency, to the extent it overlaps, will create a problem in terms of who’s really responsible. I think that’s a problem. I think that’s a problem with Homeland Security now.

Rubens: Regarding this particular issue about surveillance and criminal procedure, has that been a theme in the last ten years—

Jensen: Well, it’s always a theme—and when you in positions in the Justice Department or in the FBI and you are at a high level, you have to be awfully careful about what you say you are going to do, because that has an impact that filters down.

Rubens: I just meant as a federal judge, if you kept—

Jensen: Well, the only thing I did that went back into the stuff that I’d been doing before, in a way, was I went back for a while and served on the NCIC board. The NCIC is the crime information data base. It’s the FBI network that allows, in effect, electronic retrieval of things like search warrants and parole histories and that sort of thing. That had been growing over years and years, where you had agencies getting together to share information about—for example, if you had a warrant that existed in Alameda County, and you’re in San Francisco County, does San Francisco County know about it? There was a point in time when they didn’t. So you had to build ways in which you put databases together where people could share in that information.

Rubens: Sure. This was your strongpoint.

Jensen: The biggest database was the NCIC, which is—the Federal Bureau of Investigation has this, and now this is an integral part of law enforcement—in that now a policeman in a car, using this technology, when he stops somebody he can ask who this person is, whether there are warrants, what the history is. And they can get instantaneous responses.

Rubens: Federal, state.

Jensen: That’s right.

Rubens: Yes. So when did you join the NCIC?
Jensen: I had been there when I was the DA. I was on the board for a couple years. Then when I became a Judge, they asked me to go back on it, and I did for a couple years.

Rubens: I have something in my notes about a literacy task force, in 1986 and 1987?

MLJ: Well, didn’t you serve on a committee where you were rewriting or reviewing Rules of Criminal Procedure?

Jensen: Yes; that’s later. We can get to that later.

Rubens: So you’ve got to give me a little guidance. Do you want to point to specific cases as I move along?

Jensen: Well, when you come and you take on the responsibility of being a District Judge, and as a trial court judge in the federal system, you’ve got a lot to learn. And that now takes you out of the rest of the things you might be a part of. So you don’t really have time to do—all your time is spent on now getting up to speed, in terms of the way the process works and in terms of the substantive law. You do that through the cases—you learn this through the cases. And when you get a new case, such as a patent case, you have to have a very quick course in what are the basic rules about patents? So you go back in and you get your law clerks to help you; you go through texts and treatises and learn something about the process; and then use the case that you have to learn about it, because each time something comes up in that case, you now have to put it into its whole context in the substantive law. So you’re learning on the job is what you’re doing.

Rubens: When you first start in the legal profession, do you have electronic databases? Are your clerks using computers?

Jensen: No, when you first start out, you’re still in the world of typewriters.

Rubens: Right, and the case books.

Jensen: And casebooks. We’re just barely getting started. I can’t even remember when we first got a computer. In the first years, we just had electric typewriters and that sort of thing.

But now I’m getting assignments across the whole range of federal jurisdiction. The way the assignment process works is that there are specific areas. Federal jurisdiction is broken into different areas. And you may have things like ERISA cases, cases about civil rights, cases about prisoner rights, about intellectual property, patents, trademarks, copyrights. And all of those
areas—as these cases come in and are filed, they’re assigned to one of the active judges. That assignment process is somewhat mysterious, but it is done randomly. It’s done randomly, in order to distribute all these cases out so that everybody has a balanced caseload. So that when you come in, in comes a new patent case. And what judge does it go to? It’s a random selection, but it also includes the idea that eight of the judges already have a complete caseload of patent cases, and this judge doesn’t. So that judge comes up as the “random selection.” So you ultimately get a balanced caseload of all the areas of federal jurisdiction.

Rubens: Why balance? Why not specialization?

Jensen: That’s an age-old kind of problem in every judicial system—whether or not we’re going to convert it to specialization or to generalist. And by and large, the federal world has always treasured being a generalist system, so each of the judges has a complete understanding of what’s happening in the development of the law. The theory is that you become too narrow if the only cases you hear are in a specific area. You do have some levels of specialization when you look at things like the Federal Circuit, which was created just for intellectual property cases. So you do specialize with those judges. You have specialized Tax Courts, you have specialized Courts in Bankruptcy—which I think is a very good thing because I wouldn’t want to be a specialist who could only do Bankruptcy.

MLJ: But the “generalist” system you’re talking about, when the cases come in, they’re assigned not only by random to the judges who are available, but also by geography. They split case assignments in the Northern District of California by geography, correct?

Jensen: There’s a civil split in—when I came in, you had two Divisions; San Jose and San Francisco. So if a case arose—which is the way they describe it—if your case arose in Santa Clara County, you were assigned to the San Jose Division. If it arose in San Francisco, you were assigned to San Francisco. So the district was split at—what is it—San Mateo—?

Rubens: The South Bay.

Jensen: Yes, but Santa Clara—well, Santa Clara, Monterey, San Benito, all those cases are in the San Jose Division, and the others are in San Francisco, the northern Division.

MLJ: And then by default, didn’t there arise some specialization in the San Jose division for patent and intellectual property cases, because of Silicon Valley?
Jensen: It came about because of the volume of workload, because you had so many of those cases being filed in the San Jose Division, you were in effect, overloading the San Jose judges with this type of case. And since those cases generally have a lot more work associated with them—they talk about case weights and the weight of the case. One case is going to require a great deal more judicial resources than another. So just counting cases one, two, three isn’t going to tell you what workload a judge has. If you look at a patent case, say, the workload generally that goes with it is greater than many other kinds of cases. San Jose cases were being overloaded in that area, and the judges there were getting, in effect, overwhelmed. So the notion that you would have them stay in San Jose, because that’s where they arose, that got eroded because it didn’t work. That was changed and those types of cases got spread out to all the judges. So if you filed your case in San Jose, it could be assigned to a judge in San Francisco.

MLJ: And is that the only type of case where they go across Divisions?

Jensen: That’s basically about the only one where you have much of a difference in terms of geography.

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Jensen: You have to have a way of assigning cases when they come in. I think they do their very best to divide them up equally and to use a random system, so that you’re not—

Rubens: But it’s under the Chief Judge’s administration. He has a secretary, clerk, who handles this—?

Jensen: Well, the Chief Judge has huge administration problems. This is a part of the administrative tasks of the Chief Judge, to see that you have a good Court Clerk, that you have competent people doing this, and that you have—

Rubens: Did you come to that position?

Jensen: No, I never became Chief Judge.

Rubens: All right, so you’re talking about the—

MLJ: Wasn’t the Chief Judge position rather convoluted when you first entered the Northern District—because of the indictment of Judge Aguilar?
Jensen: Yes; that created a problem, in that Judge Aguilar would have been the Senior Judge.

Rubens: I don’t know the story.

Jensen: Well, there was a judge in San Jose who was indicted. And he could have been in line to be the Chief Judge. I think he declined that.

Rubens: When is this, about?

Jensen: This is way back in the eighties.

MLJ: ’89?

Jensen: Yes, the late eighties.

MLJ: It got mixed up because I think Judge Aguilar was in line to do it, then Judge Ingram, from San Jose, agreed to do it for a year—

Jensen: He would have been the next one.

MLJ: —until Judge Patel came in.

Jensen: No, Judge Henderson was the Chief Judge in between them. He served a full term. I think it’s generally a term of seven years, as I understand it. The idea is that once you’re appointed Chief Judge, you stay there for seven years. That would be if you’re appointed at age sixty-four, you’d spend seven years. So the fact that you turn sixty-five after becoming Chief Judge does not remove you from serving. But by and large, the idea is that they turn over when a Chief Judge leaves, and then the senior person who is not sixty-five years of age becomes the Chief.

Rubens: Okay. And by the way, the Chief is for the whole Northern District, which is San Francisco, San Jose and—

Jensen: And Oakland.

Rubens: So you’re coming up to speed on bankruptcy and patent and—

Jensen: Right; and all of the areas. And as I say, it’s on the job. There’s no guarantee that you’re going to have these cases come through. It’s just a function of the random assignment process. But you get your share; and you get cases and
you become familiar with and learn the law, say, of securities class actions, and you get into class action, and you get all these different areas of both administrative and substantive law that become a part of your caseload.

In the federal system, the idea that you have individualized judges and generalists is very, very true; in that once the case is assigned to you it stays with you. So what you have is this individualized calendaring system, which means that once I get the case, as I said, it stays with me all the way through. So as the motions practice goes on, as you’re making decisions about this, it’s still your case. You’re learning about the case all the way through.

Most state court systems don’t do that. There, you have the case come into the court and it runs through a master calendar, and it gets sent out to different judges, then it gets sent out for trial, or for motions, or for whatever it may be. The state can’t afford to have an individualized system, because they have so many cases that if you had individualized systems, the system would come to a halt.

Rubens: I was going to ask that.

Jensen: It seems to work in the federal system because you don’t have the mass of cases coming through—the mass of cases that the state systems have. In the state court system, they cannot do individualized calendars because if you have an individualized calendar, and you find yourself with a criminal case that’s going to take six weeks to try, or a patent case that’s going to take you six weeks to try, how do you keep the rest of the cases moving?

That’s what you can do once you learn how to manage a caseload. But it can’t work if you have sequential long-term cases where you’re tied up in such a way that you can’t take care of things. Most judges will do—for example, I have a calendar day. I have the calendar day on Fridays. So on Fridays I hear all the pre-trial motions and status conferences, and I do all the criminal cases. That way, I can have a jury trial on Monday, Tuesday, Wednesday, and Thursday. Now, if I didn’t have that day, that calendar day—I couldn’t keep my caseload moving if I had just five days of jury trial. So people do that. You split up your workload so that you can keep the whole thing moving.

MLJ: Is one of the reasons that works is that there are selective filings in federal court? You talked about the mass of cases that are in state courts. So for example, in a criminal case in state court, there’s some selection of what actually goes to court, but not much.

Jensen: That’s right.

MLJ: For the most part, if there’s a crime that’s occurring, it’s coming through the state court.
Jensen: Yes, as I have said, the local prosecutor is the prosecutor of last resort. So they have to pick up everything. They don’t have the luxury of the federal system where they can say, “There’s no federal interest in this case, and so we’re not going to get into it.”

Rubens: But obviously, it did get impacted enough that they put on two more judges.

Jensen: Well, that’s the way you do it; you add judges because your caseload’s growing. And the way in which you manage the caseloads is by having sufficient judicial manpower. That’s the genius of the Senior Judge system—is that the federal system would not work at all, in terms of individualized calendaring, if you didn’t have Senior Judges. With Senior Judges and with the level of caseload that’s there, you can still do it. I think it’s a very, very real value to be maintained—it gives you a better handle on the case, a very historical basis. And as a litigant, you know who your judge is, you know what’s happening, and you know how the case is going to be processed.

MLJ: Let me ask about a technical issue with respect to calendaring and moving your cases for a minute, just to see what your opinion is. When a criminal case comes through, theoretically, the defendant has a right to have a trial within seventy days of the time he first appears in court under the Speedy Trial Act. Yet there are a lot of exceptions to let you extend that out. And lots of litigators and judges engage in creative fictions to get within an exception to the Speedy Trial Act in order to get their case continued so that it fits into the calendar. Do you have any opinion or view on that?

Jensen: I think that I would describe my approach to that as being creative, but not fictitious.

MLJ: All right; I would describe my view as being that as well. However, some prosecutors want to come in and say, “We demand that we’re going to have a trial within 70 days, and our cases are going to move.” Would you accept that, if they came in with that position?

Jensen: I would say “That’s fine, as long as we can do it—if we can do it.” But see, I realize that they can’t do it either. They think they can do it, but they really can’t. So I haven’t seen a situation where I can say, force the US attorney to put the cases on in a way that corresponds with my calendar. They want to keep their own calendars. And when they want to keep their own calendars, it means you can’t use the Speedy Trial Act to force a judge to do that.

MLJ: Do you make your own findings for Speedy Trial Orders, or do you have the prosecutor do it?
Jensen: I do it myself. But I do it at the time we’re in court. Basically, the rules are that you should not continue the case without having a reason, and without making a finding as to whether or not the time is excludable or not.

MLJ: Some of the rationales and bases for the exceptions can be more artful than others. I’m wondering whether you create those yourself or whether your law clerks create them, in order to make sure they stand up on appeal.

Jensen: No, I don’t have Orders being written; I just put it on the record when we continue the case. So I will make a record that when a case is continued from today for two weeks; then I issue an Order that it’s excludable or it’s not. And I don’t say anything about it, if it’s going to be—

Rubens: Excludable means?

Jensen: Excludable means you can eliminate it from the calculation of the seventy days. You’re supposed to have seventy days from the day the case was filed until trial. And if you don’t try it within that time, then it gets dismissed. But there are allowable reasons for exclusion under the statute. Let’s say I have a motion that’s filed by the defendant to suppress evidence, and I now say we’re going to have that motion heard three weeks from now. The period of time from the time I’ve been informed about the motion until it’s heard is excludable time. You can’t do anything until you get that motion resolved. So you have reasons for excludable time, and you put those on the record at the time it happens.

Rubens: A fictitious reason would be?

MLJ: I shouldn’t have said “fictitious.” I think “creative” is a better way to say it, because some of the terms in the Speedy Trial Act are broader than others. So you could make your facts, probably, fit into one of the exceptions if you wanted to be creative about it. But I guess my question is—do you think that your caseload could be managed with a full criminal caseload if you adopted a strict application of the Speedy Trial Act?

Jensen: I don’t think so. I think you’d probably end up inevitably dismissing some of those cases—you wouldn’t be able to keep all the cases moving on a seventy day trial schedule. But the interesting problem is—

MLJ: And still maintaining individualized calendaring.

Rubens: When is the Speedy Trial established?
Jensen: The Speedy Trial Act says you have to try the case within seventy days. It was years ago. It was in existence for all the time I’ve—

MLJ: It’s just a technical question, but the calendaring came up so—and different people take different positions.

Rubens: And dismiss means that—?

Jensen: Dismiss means that it’s dismissed, but it doesn’t mean you can’t recharge. See, that’s one of the interesting areas here. There’s a whole body of law that deals with that in terms of – if a case has been dismissed because of a Speedy Trial Act violation; can you recharge it? Most of the time you can.

Rubens: Your first case was-. 

Jensen: As I say, the first case I had was a patent case. And actually, I enjoyed that. The lawyers were very good. The jury was very attentive. See, I found that this notion that juries can’t make sense out of all these complicated things is not true; juries are as good as lawyers at doing that. If the lawyers can explain it, the juries can handle it. They don’t have any difficulty with it. And good lawyers can present all this material so an average person can understand what it is.

So I’ve found that to be true of patent cases. I just haven’t seen cases where they’re so technically complex that a jury cannot get their hands around it. And it takes a lot of lawyering to do that; it takes good lawyering. And my experience has been that there are very good lawyers who do these cases.

MLJ: Did you find in your first jury experience with the patent law that you hadn’t dealt with before, that your regular old jury experience and evidence experience apply equally to patent cases, or not?

Jensen: It really helped. I had no trouble in distinguishing what was hearsay and what was not hearsay, what was argumentative and what was not, what was expert and what was not. The whole business of opinions is something that I’ve dealt with all the way along. That’s much of what happens in these technical, scientific cases. You have questions of what the experts do and how the experts fit in. But I’d had a lot of background in that, so I didn’t have any trouble in terms of getting to the point where I could permit expert testimony and have ideas about its limitations. So knowing about the rules of evidence and how you evaluate this is very helpful, because if you don’t have that experience and knowledge, you have trouble running trials.
MLJ: Did you find that your learning curve was higher in just learning particular areas of federal law for motions purposes; like securities law or patent law, as opposed to trials?

Jensen: Right. That was what you really had to learn. I think that my background is such that I was not afraid of trials, and I was not afraid of ruling as the case went along. And I found, say, in the patent case, that I had no trouble in distinguishing, as I said, hearsay from non-hearsay; the testimony. So if we’re talking about questioning a witness about this subject matter of “obviousness,” I didn’t know what “obviousness” was at all until I got to the patent cases and had to learn what it is. It’s basically a simple concept, that you can’t get a patent for an invention of something that’s not new. If it’s already been invented, you don’t have an invention, right? So that’s obvious.

That’s what “obviousness” is. So you learn these sorts of things as you go along. But I didn’t have any problem in terms of how the witnesses presented that, because I had been through that. But you did have to learn what it is that they’re getting at. But when you get to the instructions, and what you’re going to be telling the jury, then that’s another question. So you have a learning curve there, in terms of, as I said, the substantive law and how you’re going to explain it to the jury.

MLJ: While you were going through your learning curve, did you find that you tried to do more trials because you were comfortable in that setting, as opposed to—

Jensen: No, you have plenty of trials. There are going to be trials there anyway. When you have a big calendar like that, you’ve got enough trials to keep you busy.

MLJ: Some people have observed that some judges who come into the federal system don’t have trial experience, or they come from a background that lacks that experience, such that it seems that they avoid trials—that they work their calendar in a way to avoid a trial.

Jensen: Well, I would think that there’s a problem, which is if you come into the system without having had any experience in trial practice, it’s a pretty formidable thing as you come to it. And I’ve heard stories like this, is that—on occasion, I think this is a good idea—you get appointed to the Circuit Court; you’re an appellate judge, and you should go try a case if you haven’t done it. Because you’ve got to learn something about how trials work. It gives you a better idea about how to assess what’s going on in a trial setting.

So the Circuit Judge comes down and starts to try the case, right? The witness now is on the stand and somebody asks a question, and the other side says, “I object, your Honor.” And you don’t know what the objection is, or what the
rule of evidence is. Okay. So what do you do? If you’re appellate court, you say, “Let’s take a recess,” right? But you can’t try cases if you’re going to take a recess every time there’s a question. So that’s the problem. You have to do this sort of on your feet. And if you’ve been in a courtroom setting and you understand this, you are much more prepared to do it, and are more comfortable with it. I can see judges being very uncomfortable with this and not wanting to stay in the trial system.

Rubens: Didn’t you say that if you’d gotten appointed to an appellate court, you would’ve been in law school permanently?

Jensen: It would’ve been as if I’d been sentenced to law school for the rest of my life.

Rubens: In terms of your work process, I bet you did a lot of reading.

Jensen: An awful lot of reading, an awful lot of writing. The idea that you don’t do writing in the district court is not true. In the federal system, everything is written, and you have Orders all the time. In contrast to everything in the state system, where if you have a continuance, they come in and say, “We’ve got to continue the case.” And the judge says, “Continued.” Well, in the federal system, you may have to issue an Order now that reflects that. Why did you want to continue this? Particularly if you are dealing with things like the Speedy Trial Act—why are we going to continue this case? The rationale needs to be in writing.

Rubens: So this wasn’t permanent law school to you, too?

Jensen: No.

MLJ: But you’re stating that there is a big contrast in the amount of reading and writing that goes on in the federal system versus the state system. Is that—?

Jensen: I don’t think there’s any question about that.

MLJ: —due also in part to just the volume of cases that are heard in the state system versus the federal system?

Jensen: I think so. I think that you can only do that if you have enough time to do that. If you have a mass of cases that you have to keep moving – for example, if you look at a state system and you say that we’re going to have one day where we’re just going to sentence people, it makes an awful lot of difference—like on my next calendar day, Friday, I’m going to sentence, I think, four people. It’s calendared right now to have four sentences. In a state system, you may have twenty-five on that day. Now, can you spend more time on each one and
write an Order for each? No, you can’t. All right; so you have to have a way of adapting to that. The state system adapts to it by moving the cases along and making rulings orally and getting everything done. As we used to say in the state system, we’d ask the judge to rule, and then we’d say, “Judge, just rule; don’t explain it. If you explain anything, we’ll all get in trouble.”

Rubens: So did this suit your temperament?

Jensen: It’s a good system. The system is great when you have enough time to think about it and not just react. You are getting prepared for each case and you can do a better job, because you have more time to do it. And you have more assistance. In the state systems, nobody has the luxury of having law clerks.

Rubens: I was also thinking how it contrasted to how you described your job at the criminal justice department—everything broken into fifteen minute segments.

Jensen: Right, yes; because of the volume.

MLJ: You talked about doing a lot of reading and writing—getting back to technology for a moment—as you continued in your judgeship, obviously, technology came along and everyone had their own computers and word processors and access to databases. Have you used any of those personally?

Jensen: Yes, in the sense that I ask somebody to do it.

MLJ: Do you write anything on a word processor? Do you type?

Jensen: I do not write anything on a word processor.

MLJ: Do you look up anything on a database?

Jensen: I don’t look up anything on a database.

MLJ: Do you write all of your things on a yellow notepad?

Jensen: But I have people who do this – no; white notepad. I handwrite things.

MLJ: Still?

Jensen: And I can edit things in handwriting. I don’t use a keyboard or a word processor. And obviously, I recognize that, as I said, I’m one of the Court’s Luddites. I don’t really get into the system. Everybody now understands this. Every lawyer is completely computer literate. And I’m not. I know what
computers do, and I know their capabilities, and I have people who work—fortunately—for me, who can do all this.

Rubens: But you’ve handed me things from—

Jensen: Yes, well, it’s done. I can get it done for me, but I don’t do it myself.

MLJ: And your staff prints out your emails, don’t they?

Jensen: Yes, I don’t like emails.

Rubens: An early case you heard was Forti vs. Suarez Mason. This had to do with—

Jensen: Yes; that was an extradition case.

MLJ: When did you get it?

Jensen: It was the first year, it was in ’86. Suarez Mason was a general in the Argentine military who had been the head of the military in Buenos Aires, and had been deeply involved in the Dirty War. He was being indicted—or he had been indicted in Argentina—and was being sought by way of extradition for a whole series of events, including murder. And they had—

Rubens: Including murder?

Jensen: Yes, the “Disappearances.” So when you contest an extradition, you have a hearing before the court. We had a hearing, in terms of identifying what was being sought, making sure the papers were there, were complete, and that they comported with the extradition treaties; and then determining that this was the person involved, and whether or not there should be an extradition. We had a big hearing with reference to whether or not he should be extradited. And I decided he should be. We wrote a big Order on it, setting out what the proof was that had been presented which showed he was complicit in multiple murders. That was part of the extradition process and part of the treaty. So I ordered his extradition.

MLJ: Did it involve any of the human rights laws, the federal human rights laws that are in place now? Or did that come up subsequently?

Jensen: That’s later on. It came up separately, in the sense that my original relationship to it was the criminal extradition. We went through that process. And one of the interesting things I found was that when I ordered the
extradition, the person who is extradited has a right to go to the Circuit and appeal.

So they asked me to stay the extradition so that they would have an opportunity to go to the Circuit; which I denied. But then they did have an opportunity to go to the Circuit—you could get to the Circuit really pretty easily. And the Circuit also denied any Stay. So Suarez Mason was extradited, and left within forty-eight hours. Just gone. Ordinarily, that might not happen, but under the circumstances here, given the kind of a case it was, and what the proof was and everything else, there was really no reason why he should stay.

Then along with this, there were some civil cases that were brought. People filed civil cases against him for what had happened. And since he was here in the United States, they could serve him with the law suits. So you had cases that involved this whole Alien Tort kind of concept. So I had some cases where I had to decide whether or not I had jurisdiction, and whether I could act upon the civil suits that had been brought against him under the circumstances. I decided we could, and wrote an Order to that effect. This was quite a while ago. And I think that just last year or the year before, the Supreme Court dealt with some of the same things, and we agreed.

MLJ: There have been increasing amounts of these kinds of cases that are brought in the United States, because there’s—

Jensen: There are, yes. When people get here and you have jurisdiction such that you can actually start a civil case with jurisdiction here, then the question is whether or not the Alien Tort Statute can be used.

Rubens: I’m just trying to think this out. Forgive me for not being quicker. Who’s bringing the civil action?

Jensen: The families, for the wrongful death and that kind of thing.

Rubens: And what’s their standing to bring it?

Jensen: They have standing because they’re a part of the family, and there has been a wrongful death or harm.

Rubens: Even if they live in Argentina, they can bring it?

Jensen: Right.

Rubens: Because he’s taken refuge—
Jensen: He’s here, so they can bring it. And the question is whether or not the US court would have jurisdiction over the extra-territorial act.

MLJ: There’s the Alien Tort Claims Act, and then there’s another Act that’s more recent that’s not coming to my mind right now—

Jensen: But I think we were dealing then with the Alien Tort Claims Act.

MLJ: —I think the new law was passed in response to the Achille Lauro.

Jensen: Yes, it may be.

MLJ: I can’t recall what it is; but were the family members that were bringing civil suits in the United States living here?

Jensen: They were in the United States; yes. They were citizens, as I recall.

Rubens: But they didn’t have to be.

Jensen: This whole area of the law is still not that well defined. There’s not a bright line in terms of how all these things work; except that it obviously is a growing area, where the federal courts are assuming jurisdiction. This is a big area, because the civil aspects of these things are tremendous. So that’s what happened with Suarez Mason. We granted, I think, default judgments against him.

Rubens: In ’89, there’s a story that says there’s a factual correction – that there is a Motion for Reconsideration filed by the Center for Constitutional Rights, accompanied by an amicus curiae brief filed on behalf of Amnesty International written by a number of distinguished professors of international law—and that you reversed yourself, making this first case—

Jensen: No, no, no, no. There was an area where there was a question about what kinds of conduct would fall within the statute. In other words, how will you define these things? Would you use things like the definitions contained in the criminal law of kidnapping and murder? Or would you use “disappearance?” Or would you use different kinds of—and I think torture was one of the concepts at issue. I think that I found that with respect to some of the areas, jurisdiction did not exist, that you didn’t have a right to bring a suit in the United States. But in other areas, you did.

It was a question of defining how jurisdiction was to be extended, based upon what the allegations were. It wasn’t that you could just say, “I’ve been
harmed,” you have to say what the harm is. It has to comport with some notions of what are considered to be harms under international law, or what is the concept of human rights internationally and how is that translated into something that is actionable within federal jurisdiction?

Rubens: So this is over the concept of “disappearance,” or the right not to be “disappeared?”

Jensen: Yes, right; and disappearance is, in and of itself, not a word that gives you an idea about what it actually is and was, unless you reduce it to something like “forcible removal and detention,” which is kidnapping. And if you want to change “disappearance” to kidnapping, that was fine by me. But if you didn’t have some kind of notion that it fit within the traditional definition of kidnapping, then the idea of “disappearance,” I didn’t think, had a sufficient history, in the context of recognized human rights violations that would support its inclusion as a basis for jurisdiction.

MLJ: This kind of came early in your federal law career. Now as we—

Jensen: It’s come back.

MLJ: -after 9/11, and now that Pinochet has gone back to Chile, and this has type of suit has really come to the forefront—do you find that as the law develops, that you pay attention to it – for example, in considering the detentions at Guantanamo or similar situations?

Jensen: Yes; I think that this case was one that is being replicated now, and is the basis of several similar cases now going through the federal courts. And as I say, I think the Supreme Court dealt with the jurisdictional aspects of this just recently; and that essentially, they did the same thing that I relied upon back in those days.

MLJ: I thought there was—and I don’t know if you’ve seen this, or maybe Lisa has it in her research—an argument being made by the Bush administration for a stricter reading of some of the human rights laws, because those laws could be now turned back onto some of the actions being taken by the United States in the name of the “War on Terror.”

Jensen: Well, I think that’s true. I think that there should be more attention paid than sometimes is—and one of the basic rules of international relations is that—you learn this when you deal with the State Department and you deal with these international things, as we did at Justice—is the rule of reciprocity. It is the case that everything you do is going to come back. Because every
country as to which you take a particular position on, where you say, “We can
do this to you,” then that says they can do the same thing back to you.

So if you have very, very wide ranging kinds of notions as to your jurisdiction
and the kinds of definitions of your jurisdiction, why can’t those countries use
their courts to do the same thing as far as Americans are concerned? So if you
get very, very broad in your definitions, you will find that in other countries
you’ll have indictments returned against generals or State Department people
who are now within the definition that you’ve created yourself. So you have to
be careful about that.

MLJ: I have no idea if you know anything about this, but it came to mind while you
were talking. You said that one of the first things you did when you at the
Justice Department was to sign a treaty with Italy. And the Italian government
is, I think, conducting an investigation in which it has subpoenaed various
CIA officers in connection with the shooting of an Italian journalist and her
bodyguard when they came out of Iraq. Do you think that this “rule of
reciprocity” is now going to apply in the Italian situation?

Jensen: Exactly. This is reciprocity, see? Because I don’t think there’s any question
that if you turned that around, we would assert jurisdiction over them.

Rubens: This is the woman journalist.

Jensen: Yes. So that if we would assert jurisdiction over that type of event because it
was done by some other nation, and involved conduct against one of our
citizens, wouldn’t we assert jurisdiction? Probably, we would. So that if we
say, “You should not be able to bring a lawsuit against one of our soldiers for
doing that, it’s hard to now argue that we’re not asserting the same kind of
jurisdiction.

Rubens: Yes, the cases that seem to be more politically charged now are the Iraqi and
Afghanistan people who’re being held under some other—Oh, there’s a huge
thing about jurisdiction just in the time since we’ve seen each other, an issue
regarding whether it should go to the federal court or go to an international
court?

Jensen: Military Court; or to the International Court of law? There’s an international
criminal court that I don’t think the US has signed off on. We have not signed
the treaties. We’re saying that we’re not signing because it would, in effect,
make all of our judgmental actors liable to jurisdiction of that court.

MLJ: Are there cases that you have in mind that we can research and talk to you
about next time? George Franklin is one, I think, that we should talk about.
Jensen: Well, we could do that, sure. Franklin’s a repressed memory case.

Rubens: There are the federal rules on discovery in criminal litigation, and then repressed memory.

MLJ: Are there cases that come to your mind?

Jensen: Well, just in general, it seems to me you get these—there’s a saying, “The wheel develops these cases.” It seemed to me that somehow or other, I had been assigned to all of the cases that involved the Chief of Police in San Francisco.

MLJ: And the sheriff, [Richard] Hongisto.

Jensen: And the sheriff, yes. Well, he was the Police Chief when I had the case. I had a case when the Chief was Tony Ribera—there was a sexual harassment case that was brought with reference to promotions among the people who worked for him. And I had a jury trial on that. Then Hongisto was the Chief of Police; and he directed that there be—that people actually steal newspapers. There was a free newspaper that had published a picture, basically, an unflattering picture of Hongisto on the front page. And he sent all these people out to take the papers.

I had the civil rights case that followed. Then when Frank Jordan, who had been the Chief, became the mayor, he started this” Matrix” program on the homeless. I had the case, in which I had to decide whether there should be an injunction of the program. I had a couple of civil rights cases that involved mass arrests by the San Francisco Police Department; and one where they had gone out in reference to a nuisance violation and shot and killed a homeowner. So we had that trial. I had a trial where there was a request to enjoin the activities of the Juvenile Department in San Francisco. And recently, I just finished about a ten year-old case that had to do with the hotel ordinances in San Francisco—when hotel owners switched from residential hotels to tourist hotels. And there are fees that are imposed. That was litigated, and it finally went all the way to the US Supreme Court—last year or the year before, they decided my case.

MLJ: And?

Jensen: And they affirmed me.

MLJ: There you go.

Rubens: There’s a fishing rights case too, that has to do with gill nets.
Jensen: Gill nets, yes; I had that.

Rubens: We talked about discovery. Then there is your work—who would you call it your professional work or your extracurricular work—with regard to the Federal Rules of Criminal procedure?

Jensen: The idea is that when you get to be a part of the judiciary, there are aspects of being a judge that are administrative and are related to the whole business of judicial efforts that are not case-driven. And you have this whole structure of committees that deal with issues for the federal courts. You have a Judicial Conference that has the Chief Justice as its head, and it has the heads of every Circuit and a representative of the district courts in every Circuit. It is the basic administrative body that does everything for the courts and decides how the courts are going to be run. In this case—back to this whole business about bringing in technology, about how you’re going to do this—ultimately, it’s going to run back up to the Judicial Conference—

Rubens: Is this on a regional level?

Jensen: This is on the national level. You could be appointed to that, but you have to be a Chief Judge, that sort of thing. But then they have a whole series of committees that do things under the Judicial Conference. One of the committees that I was on was the one that dealt with Criminal Rules. I was on that committee. You get appointed by the Chief Justice. And once upon a time, you got appointed and just stayed there, sort of, until they decided to change the composition of the committee. And Chief Justice Rehnquist basically changed all that and instituted terms for everybody, so that you were on the committee for a term or you were the Chair for a term. So for Criminal Rules, I was on the committee for a couple years, then I was appointed as the Chair for a three-year term. So I was the Chair of that committee.

The committee would deal with the Criminal Rules, in terms of any changes that we thought should be made, and some that must be made. Sometimes congress will pass a law that affects the Rules, and then you have to change them. Or a case comes in that changes the rules. You have to pay attention to the whole development of the law. So that’s kind of extracurricular work, but it’s work that’s absolutely essential to the judiciary. It’s wonderful work. There is a great opportunity to do sort of things like that as a Judge. And I did have the chance to be on the Criminal Rules committee.

MLJ: Not every federal judge gets on those committees. How did you come to the attention of the—
Jensen: No, they ask you to volunteer. They send out a list every year and say, “What committees would you like to be on?” and tell us what is available. Then when you get there, they start looking through the names they’ve got and perform whatever investigation they want to do as to who should be on a particular committee—and so I think that I was okay for Criminal Rules, because of my experience in the Department of Justice. I had done this. I’d done a lot of criminal stuff, so I would be a sort of natural selection.

MLJ: Was your name, do you think, familiar to anyone on the court because you’d been back in Washington? Or were you a novice?

Jensen: No, I knew people in Washington.

Rubens: Well, you’d been before the Supreme Court a couple of times.

Jensen: Yes, I’d been before the Supreme Court, and I had met Chief Justice Rehnquist. So I was not unknown.

Rubens: I think that we should end for today. Thank you both so much.
Jensen: I did remember the judge’s name who swore me in—Larry Silberman, he’s on the D.C. Circuit; and he was a former Deputy Attorney General.

Rubens: Well, Judge Jensen, you had some significant cases which we’ll talk about. But one of the things that came up in my research is that people tried to pigeonhole you, to say that you were tough on crime and light on corporate and—

Jensen: Correct.

Rubens: The record doesn’t show that. [laughs]

Jensen: I don’t think so. [laughs]

MLJ: Maybe we can talk about Franklin, because that is a good segue to how people want to pigeonhole an ex-prosecutor. Here’s a case where a person is appealing his conviction for killing a young girl, and it comes before you in federal court; and you’re the ex-prosecutor, yet you overturn it. So how did you feel about that?

Rubens: Give me the date, roughly. We call this the “repressed memory case,” yes?

Jensen: Yes. This is Franklin, and this is in the nineties. He had been convicted of murder in San Mateo County, and the testimony had been from his daughter, who indicated that she had recovered her memory about the fact that she was a witness to the murder. And so she—

MLJ: Some twenty years ago or so prior?

Jensen: Yes, this is twenty years before. And so she was the basic witness against him. He was convicted after jury trial in San Mateo County. And it was not a capital case, so it went on appeal to the Court of Appeals in California. And they affirmed it. Then it came, on habeas corpus, to me. So I guess the pigeonhole would be I would be on the side of the prosecution, because I’m a former prosecutor – the idea being that you wouldn’t get a defense perspective or a fair perspective on it. But I don’t think that anybody really thought that way. I don’t think they pigeonholed me as being always on the side of the prosecutor.
Rubens: That’s a news bite or the popular culture—

Jensen: Sure, the news zinger would be “Ex-prosecutor gets case challenging prosecution.” But see, what had happened is, in the court of appeals, they had actually recognized the fact there’d been a constitutional violation in the trial, but they said it was harmless error. What happened is that at trial the daughter testified as to her memory of what had taken place, and testified that her father had killed this young girl.

Rubens: It was a friend of hers, right?

Jensen: Yes. And one of the bits of evidence had to do with—after he was arrested, she went to the jail and talked to him. She asked him a question like “Why did you kill her?” And he said nothing, but he pointed to a sign that was in the room warning that conversations are monitored, or in effect, that this would be part of a record. He didn’t say anything at all in response to her question. Well, that was deemed to be silence in the face of an accusation, such that it was, in effect, an admission. That was allowed into evidence, and the jury was actually instructed that it could use the fact that he had said nothing when she accused him as evidence of his guilt. That’s a constitutional violation.

Rubens: How is that—It sounds wrong, but—

Jensen: It’s based on the Fifth Amendment and its whole background—what you’re required to say, and what you’re not required to say. Franklin had been told that he had a right to remain silent, and here he remains silent, and they use it against him. The California Court of Appeals said that was harmless error. My take on that was that in every case, you have a question of recollection. Everybody has to remember things, and some people’s memories are better than others. I didn’t rule that you could never have a recovered memory. There was some debate about that, and there still is. But that was not my ruling. My ruling dealt with the issue that since she has been allowed to testify, what is her recollection? How valid is the recollection? So from my perspective, this is like other cases where you corroborate people. And the corroboraton becomes incredibly significant. When you have recovered memory, it is probably more significant than in the regular case. So you look at corroboraton to see how the case is, in effect, buttressed by corroboraton, and by the testimony against him. So when you otherwise have a lack of corroboraton, and then you use his silence as a corroboraton of the fact that he did it, it becomes incredibly significant. As far as I was concerned, I didn’t see how that could be harmless. And so I said so.

Another aspect of the case was the argument that only somebody who had been there could tell you what had happened, because these are the things that
actually happened on the scene. We know things that happened at the scene due to the investigation. The daughter testified to that. And the theory was that it must have been the case that she was there, because only someone who was there could have known these things. Except that there were newspaper articles that had been written about the event. The defense wanted to put those into evidence, but the judge didn’t allow the newspaper articles to come in. And the newspaper articles covered the subject matter that was the prosecution argued that only a person present at the scene could have known. These things were covered in the papers, but the articles were not allowed into evidence to show that there was another source of information. So you had an exclusion of evidence that was an error by the judge that affected due process, in that the defense was not allowed to put on evidence that would challenge the evidence of the prosecution, in a very substantial way. Because when you argue that she could not have known what she was testifying to except if she were present—well, she could have known it by reading the newspapers. And that was excluded. I thought that was an error. Those were the major errors. And I said those errors were enough, in a case where the conviction depended almost solely on corroborating recovered testimony, to conclude that the conviction should be overturned. So I granted the habeas corpus petition, and sent it back to San Mateo County for retrial.

They never retried it. Basically, they found other things about the daughter’s testimony that would create real serious doubts about her credibility. And by that time they said, “Okay, we’re not going to retry it.” So the effect of the decision was to let him go, to free him. And I think the case was decided correctly. I think that this was one of these things where this is what the writ of habeas corpus is all about. I thought it was appropriately applied here. So that’s what I did.

MLJ: In your explanation, you’re focusing on the evidentiary issues, and you probably did that in your ruling; but I think that the press might have been more interested in the recovered memory.

Jensen: They were. They call it a recovered memory case. And it was, in the way it was tried; but it wasn’t the basis of my ruling. The basis of my ruling is a straight line, a straight line trial, and how one tries cases. I think that in a way, that might be helpful, if you’ve had experience in trying a lot of cases, then you realize how important the corroborative evidence is. And it’s always true in criminal cases, that the corroboration is really the significant part of trial.

Rubens: And your experience can allow you to sort out what you’re going to focus on—rather than become an expert on repressed memory, because this wasn’t the—
Jensen: That’s right. That wasn’t the issue in terms of my ruling on the case. It was an issue in the overall sense of the case; it was very high profile, in terms of repressed memory, but that wasn’t the basis of my decision.

MLJ: We were talking about various political issues in connection with Alito and John Roberts, and how Congress and the media approach judges now. Did you get any fallout like you might get today from, say, Fox News? You know, “Judge Lets Killer Go.”

Jensen: There was a certain amount of that. The stories would include the fact that the judge is a former prosecutor. Something like that. That was a little unusual because that wouldn’t generally be in these news stories. If you look at stories about what happens in courts, they leave out the judge. They tell the story; and they generally will tell the story in a criminal case about the defendant and the prosecution, and sometimes they’ll identify the defense lawyer and sometimes they’ll identify the prosecutor. But rarely do they identify the judge. But here, they did identify the judge because it had a kind of newsworthy angle, as far as this pigeonhole concept is concerned.

Rubens: Well, and then certainly at the Ninth Circuit Court of Appeals—

Jensen: The Ninth Circuit, they just took—actually, I think that’s the only one where they just took my opinion and adopted it, and just printed it. They didn’t change anything. That was their Order. [Rubens laughs]

MLJ: First and last.

Rubens: There’s going to be the issue of how few of your cases were reversed.

Jensen: Well, they were reversed. I don’t think my record on appeal is 100%.

Rubens: You think that’s a news kind of story, as well?

Jensen: Yes, I think they write it when they feel like it. It differs at any given point in time. Nothing was reversed last year, okay?

Rubens: What about the politics of San Francisco? When does this Hongisto trial come up?

Jensen: One way you can break it down is that I came to Oakland in ’94, All right? And I tried (Richard) Hongisto in San Francisco, but I tried Ribera in Oakland.
Rubens: Okay. Let’s go to the Hongisto case, and—I know you’re separating your judge’s purview and judgment, but had you followed any of this while you were away in Washington, or have some sense of what was happening in the Bay Area?

Jensen: Yes, some news filters West to East; but not a lot.

Rubens: Hongisto was Sheriff during the period you were DA.

Jensen: And I knew him. I had met him. His reputation was as the reigning liberal professional in law enforcement. He had a reputation of being a liberal-thinking kind of law enforcement person. That was a part of the mold—you were put in pigeonholes where you’re the “liberal,” and that you have all these strange ideas about how law enforcement should be carried out. And the traditionalists are unhappy with you. So he had that title for awhile. And before that, when Charlie Gain had been the Chief of Police in Oakland; he had that kind of a title. I guess Joe McNamara in San Jose did also. So this happens in law enforcement.

Rubens: These sort of swings?

Jensen: Yes. People, because of their approach to the business, are tagged that way. I don’t think it means much. But that had been the tag for Hongisto.

Rubens: I think it was Frank Jordan who appoints him Chief of Police.

Jensen: I don’t know. It was the San Francisco Board of Supervisors which appointed him as the Sheriff. After that, he left for a while, as I recall; then he came back and became Chief of Police.

What happened is there had been a demonstration in San Francisco, and there’d been a series of arrests. It associated with the Rodney King police brutality trial in Los Angeles, (1992) I think; I’m not sure.

The San Francisco Police had been very heavy-handed in the way they handled the whole business—the way they’d handled the arrests. This comes up from time to time in looking at demonstrations and the police response. And Hongisto, who was normally looked upon as being liberal, was now being looked upon as being one of the traditional, hard-headed, brutal kinds of cops. That was sort of a theme of the commentary printed in this paper—I forget, The Guardian, maybe? I’m not sure.

So the front page had a picture of him. And he didn’t like it; so he just took all the papers off the racks. They basically stole free papers. It has its
implications, I guess, in terms of straight line theft; but on the other hand, it’s clearly a civil rights violation, in terms of the free speech aspects of it. And so the lawsuit was for his violation of civil rights. So it was a civil lawsuit. He was not charged criminally, but there was a Complaint filed against him and other police officers alleging that they were “state actors” who had violated the civil rights of people, with reference to the publication of the paper. So that’s what it was.

MLJ: Was it a jury trial?

Jensen: It was a jury trial. The jury found him liable for violation of civil rights. And his colleagues were found liable.

MLJ: Did his tenure as Chief of Police survive that or not?

Jensen: I’m not sure, exactly. I think he left before the trial. But that was a separate kind of thing. The trial was not the central factor in terms of him staying on.

Rubens: Do you remember who represented him?

Jensen: Turner? I’m not sure; it was a very fine lawyer who does this sort of thing, had done civil rights cases.

Rubens: —and the jury—

Jensen: Found him liable. They didn’t award an awful lot; there aren’t a lot of damages that you can tie back into. We had a hearing to decide whether punitive damages should be awarded, and Hongisto testified, “I don’t have any money.” So the damage award was nominal.

Rubens: Hongisto had rather a “cowboy” character to him, a kind of wild man, sort of. He died recently. (2004) Then there was the Matrix issue—

Jensen: Matrix was an issue when Jordan was the mayor. Frank Jordan was the Mayor of San Francisco, and he wanted to institute an overall program to deal with homelessness. It had a big emphasis on criminal enforcement, particularly with respect to enforcement of laws dealing with “quality of life” kinds of issues. And there was a lawsuit brought to enjoin the city from carrying out the Matrix program, alleging that it was an unconstitutional endeavor with reference to the homeless, because of their status, and due to the proposed use of the criminal law with reference to them. So we had a hearing on that.

MLJ: This is for an injunction?
Jensen: Yes. It was a civil case requesting an injunction. I certified a “class” in order to hear it, and then—

Rubens: The “class” being—

Jensen: The homeless—because classes in areas where you’re dealing with public policy issues are perhaps different than classes where individual damages of the complainant are the focus. If you’re in a securities class action, it’s because you lost money. If you’re in a homeless class action, it’s because you’re homeless. These are totally different kinds of concepts. When you have a class being certified on behalf of a group such as the homeless, you’re dealing with public policy issues, and there is a lot of precedent that says that class should be certified. Although it may be somewhat questionable about how tightly it fits the definition of a “class” for purposes of a lawsuit. But then I decided that an injunction was not warranted because I didn’t think the city had done anything wrong.

MLJ: Was that because you thought that the city was essentially enforcing various laws that are already in place?

Jensen: They were simply enforcing laws that were in place. And I didn’t think that there was anything about the fact of “being homeless” that meant the laws couldn’t be enforced. So if you did in fact have a violation of a local law—say, if there was in fact a trespass violation, or you had “sleeping on the sidewalk,” or you had “using the sidewalk as a restroom,”—that was not an issue, since everybody understood you could enforce that. But then you got into other areas of criminal enforcement; and I didn’t see any reason why there couldn’t be an enforcement of existing law, as long as there was an actual violation established—then you could enforce it.

MLJ: What about the question of selective enforcement? Did you reach that at all? I mean, if enforcement was specifically targeted towards homeless, such that even though the laws were pre-existing, they weren’t going to be enforced across the board, but were going to be enforced only against homeless people—

Jensen: Yes, but there really wasn’t anything to suggest that they weren’t enforced equally. I don’t recall that as being one of the major issues. I think it was an issue, but I don’t recall it as being a major issue.

MLJ: I guess that must be true, because if there is a request for an injunction preventing the program from being started at all, there wouldn’t be any data or evidence to support a claim of selective prosecution.
Jensen: Or comparative enforcement, yes. So I don’t know that that was an issue.

But then it went up on appeal, but they never did rule on it on appeal. I would like them to have done that, frankly. But I think on appeal they said it was moot, because a new mayor came in and took the program out.

MLJ: Is this the context in which you were talking about the person that was shot by the SFPD? Or was that completely different?

Jensen: No; that was a very specific case. There was a man—very strange, who lived in a residential area of San Francisco. He let the garbage accumulate inside his house. It got so bad that fluids would run out of his garage onto the sidewalk. So people complained, and the city enforcement people came out—the civil enforcement people responsible for housing issues.

What happened was that they gave him notices and all kinds of warnings—nothing ever happened. So the enforcement people finally wanted to go out and go into his house and do an examination. And they got an Order that allowed them to enter. There’d been a Civil Order issued based upon the health and safety violations. And he was a strange guy.

The civil enforcement people who were going to execute the Order wanted the police to go with them. And so a police unit went out with them when they went out there. When they got to the house, he sort of had it all boarded up. They came up and knocked on the door; he was there at a window, and he had a gun in his hands. So they went back to decide what they were going to do. They decided to knock on the door and when there was no response, they forced open the door. When the police officers came in the door, he was standing there. He had no clothes on, and the place was a wild mess. He had a gun and he shot at a police officer; but the gun misfired. The officers shot back in the same exchange, and killed him.

All right; now we had a lawsuit based upon wrongful death. It obviously was not focused on the officer who did the actual shooting, because he could do this; but the question was whether or not they could go into the house in the first place, and the validity of the Order allowing entry into the house. It got into a notion as to whether they should’ve gone back to get a warrant allowing them to go in to arrest him, because he had the gun—when they already had a warrant to go in that had been issued based on the health and safety complaint. So the argument was that if the purpose of entering the house was to go in and arrest him, then they didn’t have a warrant for that specifically; and therefore the people who ordered the entry may have violated his civil rights. That was the theory. So we had a jury trial. After it was sent back by the Court of Appeal—because I’d ruled that there was no civil rights violation. And it was sent back to me.
MLJ: This went to the Ninth Circuit and you were overturned?

Jensen: Yes. The Ninth Circuit said “Overturned.” They ordered me to have a jury trial in order to determine the question “What was the purpose of going back into the house?” So we had a jury trial, and the jury said the police are not liable. But that was a somewhat different case.

Rubens: And these take a couple years, right?

Jensen: Oh, yes, sure, it was years down the line after what had actually happened.

MLJ: When you moved to Oakland, did you have any cases that involved Oakland politics at all?

Jensen: I really haven’t. I really haven’t had any. I’ve had criminal cases, where BART directors were charged and that kind of thing.

Rubens: But just one second. Where did the name Ribera fit in? Was that back with the Hongisto case?

Jensen: That was different.

Rubens: Okay. I had written that down, and I don’t—

MLJ: You were doing a timeline where you said that you were in San Francisco for one of the cases, and then you moved to Oakland. It gives us a chance to talk about how you ended up in Oakland, and how this building was built.

Rubens: How does the building come about?

Jensen: Well, an Oakland Division of the Northern District opened up when I was the District Attorney in Alameda County.

MLJ: Where did it meet?

Jensen: They gave them a courtroom in the new County Administrative building.

MLJ: One courtroom?

Jensen: Yes. What happened is you had the County Courthouse, and then they built a brand new administrative building. They had courts in there. And they had sort of a surplus of courts, based upon the workloads at that time. So there’d been some discussions, and the federal people wanted to come over and open
up a branch of the District Court in Oakland. Then there had been congressional actions—you have to have congressional permission to do this—there has to be a law that allows you to create Divisions of a federal court. Our federal District Court was established in San Francisco, so that’s where you sit. If you’re going to sit someplace else, you have to have a clear cut congressional enactment to let you do that. There were enactments that allowed the Northern District to open a Division in San Jose, and also a Division in Oakland. Alight; so it was opened in—I don’t know when it was, in the seventies, I guess.

There was a ceremony and all this kind of stuff, and they cut ribbons, and had a party. I went there as the DA. And the judge was Lloyd Burke. I think I mentioned him before. He’d been the judge from Alameda County. He’d been in the District Attorney’s Office in Alameda County, and he’d been a US attorney. He was the judge who was going to come over to Oakland and sit in Oakland with this branch of the federal court. But it was never structured the way you would structure a Division; it was just a courtroom where you’d come over and sit every once in a while.

MLJ: Did he ever actually sit there?

Jensen: He came over and he sat. And I think the first case they had was a patent case. But he never came back.

Rubens: What do you mean?

Jensen: We just didn’t sit there anymore. They didn’t have a Clerk’s Office; they didn’t have anything over here. You just had a courtroom. So you could come over and sit, but you have to bring everything over with you. You have to bring the whole panoply—the Courtroom Deputies, the Court Reporters, and all this kind of stuff. It was really never structured to be much of a permanent outpost, so it just faded away. But finally the County said, “We need the courtroom. Give us back the courtroom, if you’re not going to use it.” And the federal District Court in San Francisco said, “Okay, we’re not going to use it.” So the first venture of the federal courts into Oakland didn’t work.

MLJ: Was that well prior to establishing the Division in San Jose?

Jensen: It was about the same time they were starting to do things in San Jose—no, I think maybe it was earlier than San Jose, because San Jose opened in the late eighties, because the first—

MLJ: You came out for the opening of the federal courthouse in San Jose, but prior to that—
Jensen: I came out. Yes, there was a federal courthouse. I represented the Department of Justice in speaking when they opened up the San Jose courthouse. So I was there.

MLJ: Prior to that, though, the San Jose Division sounds like it was a little bit more elaborate than Oakland. At least they had a trailer, which the litigants appeared in.

Jensen: See, that’s the same thing. That was when, I think, Judge Peckham, who came from this area, came from the San Jose area—he was interested in having a Court down there. They did the same thing that Oakland had done, essentially, in saying, “We’re going to have a court in San Jose, but it’s just going to be one courtroom.”

MLJ: It was a trailer.

Jensen: That’s right. So then they built a building—see, then you build a whole courthouse. And that’s totally different than what had happened in Oakland. When you build a courthouse and dedicate it, then you have a full-going, actually functioning US Attorney’s Office; and you have the Clerk, the Public Defender, the Marshals, and everybody else are there. So that’s what you had in San Jose by the late eighties. But you didn’t have that in Oakland.

What happened in Oakland was that there was a decision to build what was to be a “federal building,” quote/unquote. There was no—not any real federal presence in Oakland before that. In the Oakland Post Office they had, I think, a Bankruptcy Court and a partial magistrate function, and they had some levels of federal buildings; but you needed a lot more space. You needed a lot more space in both San Francisco and Oakland for federal agencies. So—

Rubens: When you talk about having a Bankruptcy Court and the Magistrate—this is the one that’s near 14th, near the library?

Jensen: Yes, that’s right. There’d been some federal functions in Oakland, but you now had this whole new building being built, which would be a federal building; and it would be a big, permanent structure.

Rubens: Was Dellums—, did he initiate that?

Jensen: He was a part of that. It was one of these bipartisan sort of things. Dellums was interested, and so was Ed Meese; because they are from this area. They worked on getting it put in Oakland, and actually—

MLJ: What about Pete Stark, was he—
Jensen: Well, the Oakland people were all in favor of it.

Rubens: Of course they were. How could they not be?

Jensen: But they somehow got it done without the San Francisco people being alerted to the fact that suddenly there was going to be this big building in Oakland taking away some agencies from San Francisco—but by the time they found out, it was too late.

Rubens: So it had to start in the mid-eighties?

Jensen: Yes. It was done before Reagan was through—the deal was struck.

MLJ: Was it’s done under the radar because there would’ve been opposition from San Francisco?

Jensen: Oh, I think so; yes. I think if San Francisco actually knew that they were going to be moving agencies out of San Francisco to Oakland, they would’ve been more active, shall we say, in making sure that it didn’t happen.

MLJ: When the Oakland building actually opened up with courts, what was the reaction of the judges in their desire, or lack thereof, to go to Oakland?

Jensen: Well, the court system came along later, in that the Federal Building itself was not the Courts, the building itself was administrative. But then some people—some of the people like myself and John Vukasin, who was from Oakland, knew some of the people in the Administration. And we were interested in getting a court over here. So there’s now a push to get a federal court established in Oakland. This was because you had a new federal building and you actually have a physical site to do this. So then we had to go through the judicial structure to see if we could now get the money and get the permission to actually build a Courthouse in Oakland.

There was some level of opposition to establishing a federal court in Oakland from the judges in San Francisco who didn’t think that anything should go out of San Francisco. But there was enough push in Oakland to now say, “We’re going to build something here.” And there was a question about whether we were going to put the bankruptcy courts in here, too. There was some question about how the courthouse would be structured—were there going to be bankruptcy courts as well as magistrate and district courts? I think then that the bankruptcy courts figured this out; they said, “If we’re in that building, and if there is a push from the district judges to move over here, we’re going to get moved out.” So they moved out right away. So now they’re across the street; in rented space. They’ve been there all the time. But they have a good
space and good courtrooms and the whole thing – it’s just not in the federal building.

So this building then went through various iterations, in terms of what you’re going to build for. Finally we got it so we’re going to have three district courts and one magistrate judge, so there’d be four judges over here all together. There’s actually space to build out two more district courts. The building was built in such a fashion that all you have to do is knock the walls out, basically, and put in courtrooms on the second floor.

Rubens: You mean courtrooms?

Jensen: Courtrooms, yes; so that three District Judges for the Northern District of California could sit here in Oakland in their own courtroom.

Rubens: Right. And three of you did move over.

Jensen: Yes. And the way that works is seniority. You just offer those courtrooms that become available to the most senior judges.

Rubens: But wasn’t it also the case that there were three judges who came from Oakland?

MLJ: But don’t the more senior judges have a right of refusal?

Jensen: There were more than three who were from Oakland, but you didn’t have to go there. The most senior judges are allowed to make the decision. And if you looked at it, at the time the building was being planned, one of the active planners was John Vukasin, who was a District Judge, and he was from Oakland. So he was definitely going to come to Oakland—and he was involved in planning the building, and so was I.

In order to get this whole project put together, in designing the courtrooms and making sure they meet the criteria—nationally, there are criteria as to what you have to have in a District Court; what you have to have in a Magistrate’s Court – then after that you meet those, you can design them so that they function. So we were involved heavily in that, in terms of how the Courtrooms would actually be designed, how you position things. And while that was going on, unfortunately, John Vukasin died. He was one of the movers and shakers in getting things going here, but then he was not here when the building finally got done. That meant that in terms of coming over here then, there were at least three judges who could come here if they wanted to: Marilyn Patel lives in Oakland, and she was on the Court, and she obviously had seniority to me; and so did Thelton Henderson. Thelton lives in Oakland, so he could come over here also. One of the other judges was Chuck
Legge. Chuck Legge lives out in Contra Costa County, and had lived there for years and years. So if he wanted to come over here, he could’ve come to Oakland as well. All three of those judges did not want to come over.

That left me as the senior judge who could come over here, and I wanted to. So I’m here; but it could’ve been those other judges, if they had decided to move—but all of them, for good and solid reasons, didn’t want to do that. So they didn’t move to Oakland when the Oakland Courthouse opened up. That meant that I was basically the senior judge in Oakland. Then going down in seniority, Saundra Armstrong lived over here, and so did Claudia Wilken; and they were the senior judges who came after that. They both moved over at the same time I did.

Rubens: How much time did this committee—

Jensen: Oh, years. The planning, and all of the infrastructure in terms of getting the building started, and all that sort of stuff when on for years. We had planning committees in our Court, then the Ninth Circuit was involved in the Administrative Office, and GSA. So there was an awful lot of work that went into finally getting it done.

MLJ: Just to go off on a tangent for a moment into one of my interests—the Oakland Federal Building and Courthouse, some would say, is interesting architecturally and sort of fits into the Oakland public scene; whereas if you look at the San Francisco courthouse, it’s a monolithic federal building. And you see increasingly that the federal buildings that are built—for example, Las Vegas—have a distinct architectural style and some individuality to them. I was wondering if you as a planner had any input into the architectural design of the building?

Jensen: We became a part of an existing plan for a federal building. See, the twin towers here? That’s really the reason why this building is so revered. This is a great building. It’s became an icon for Oakland. It was very, very good design; but the reason for the design was that a “twin towers” concept had been developed for the federal agencies. It had nothing to do with this Court. So our little Court, it really did not drive the design. But I think you’re exactly right, that this design is a wonderful design. I think it’s much better than San Francisco, and also San Jose. Those are not good designs.

But that basically is a function of style—at the time the San Francisco building was built, that was the style. You built these big monolithic things. If you go around the whole country, you can see buildings built during that timeframe that are the same sort of way. Then the style changed, and you started building buildings that would fit into the city, and that had some kind of individuality to them, and some kind of distinction. We were very lucky in
Oakland, because this is a lovely building. And as far as I can see, it just came about because of this change in style for government buildings.

MLJ: So there wasn’t any advocacy board? I’m sort of surprised that GSA would come up with this on its own.

Jensen: I think GSA was critical to it, but I think that they probably are pushed by the political people—the senators, and the congress-people, and the executive people who are looking at this when these buildings get built. There’s an awful lot of effort put in at the federal level to site nice government buildings back home. This is a “serving your constituency” sort of thing. The people who do this are concerned with improving their town. That’s what happened in Oakland.

This building did a lot for this city. If you look at this, this was the first major building that came over on the west side of Broadway. And now, there is enormous development over here. And one of the reasons for that is, I think, the lead that was provided by the Federal Building in Oakland. The whole thing has been a very, very positive development for Oakland, and as I see it, for our courts.

Rubens: So the legislation and the move is happening even when you’re still in the Justice Department?

Jensen: Right.

Rubens: Did you have any knowledge of that?

Jensen: I think I knew that there was some talk about doing it, but I was not involved in the process at all. Ed Meese was—very significantly.

Rubens: This Courthouse building then is essentially a wing of the twin towers that is the federal building?

Jensen: Yes; but if you look at the building, there are actually four buildings. There’s the two tall, seventeen-story towers in the middle; and then on each side, there’s a five-story building. If you look at the other side, it mirrors this one. And this one, we took these five stories and made them into a Court. In order to do that, however, we also had to go back into the big towers, because if you look at our Clerks’ Office, say, it’s all over in the twin towers. So we had to spread out a little bit, and that had to be arranged with GSA. The tower directly across from us is basically a training area. They have a lot of seminar rooms, and a big auditorium over there. It’s a very nice auditorium. That’s where we had our ceremonies to dedicate the building.
MLJ: As you were talking about the criteria you had to meet for certain courtrooms, I was thinking about San Jose, which is also a twin structure, if you will. There’s an administrative building which is connected by a walkway to a court building. Do the court buildings have to be separate?

Jensen: No, they don’t have to be separate. But the criteria I’m talking about are basically for the interior—the size of the courtroom, the number of available jury seats, an available jury room; all that has to have a given size. And they’re different as between a district court and a magistrate court, for example, because a magistrate court doesn’t necessarily have to have a jury room.

Rubens: Would you just tell me what a magistrate court is?

Jensen: A Magistrate Judge is a position that aids the Article III judges; and they don’t have Article III status. They are appointed by selection of the judges in the Circuit. They have the power to handle the preliminary aspects of trials. At the criminal level, say, they have the ability to do misdemeanors, or to do arraignments, but they can’t take pleas or do sentencing. There’s some level where they’re taking pleas now in some areas, I think. But they can’t impose a sentence; that has to be done by an Article III judge.

MLJ: So they’re not a presidential appointment, they don’t have life tenure. They’re appointed by the judges in the district who do have life tenure?

Jensen: That’s right.

MLJ: To a term of years?

Jensen: They do everything. They do all civil.

Rubens: So it’s not that they’re a clearinghouse for some of your cases. Because you were talking about you get a case, you stay with it the whole way.

Jensen: That’s right. Magistrates would work—if I get a case, for example, if I have a patent case—I would ask a Magistrate Judge to help with preliminary matters in that case. One of the things that happens in patent cases is there is enormous discovery activity. And some of them are very contentious. You can assign a Magistrate the duty of taking care of the discovery aspects of the case. I do that; some judges don’t do that. So if you file a patent case and it gets to my court, I would assign it to a Magistrate. And then the Chief Magistrate Judge of the District would assign it to a particular Magistrate, who then would be the judge assigned for preliminary matters such as discovery. So if you’re the lawyers handling the case, I’m assigned as the
District Judge, and I’m going to be making all of the decisions with reference to the case, in terms of motion practice or litigation.

But the Magistrate would be handling all the discovery. And you can have motions in discovery, too. So they’d be handling a whole—these get to be very, very heavy duty kinds of assignments.

MLJ: In civil cases, the parties can now agree to use the Magistrate for trial, isn’t that right?

Jensen: Yes, they can. They can consent to it. If both parties consent, you can have a trial before a Magistrate.

Rubens: So is this a sort of function of streamlining, or an attempt to—?

Jensen: It’s workload, precisely; because the judges really have only X number of hours to do it—you put it in this funnel and all this work has got to go through here. You’ve got to have enough room to move the cases. Without the magistrates, we would have a great deal of trouble in moving our cases. They’re extremely important in this District. They will take cases and hold settlement conferences. So that you can assign—anybody can do this—Magistrate Judges are assigned to civil cases, and they hold settlement conferences, and settle cases. That becomes a very big part of what they do, and it’s a big part of what happens in this District—the settlements that are accomplished by Magistrate Judges are really quite remarkable. And I think that the reputation of the Magistrate Judges in our District is extremely high for their ability to do this.

Rubens: How long do they serve?

Jensen: They serve—what is it—eight years? I think. And then they can be reappointed. But they’re appointed to a term of years.

MLJ: They apply; and they’re appointed by the District Judges. But if they get reappointed, they have to go through a committee evaluation—a geographical political committee evaluation, almost like a nominating evaluation process.

Jensen: Yes, the committee can then come back and recommend to the judges that there be a reappointment. So you don’t have to go through the whole business of advertising the position or going through the search kind of activities that go on.

Rubens: Do they have juries, as well?
Jensen: They don’t try jury trials. They rule by consent. In criminal cases, they can try misdemeanors.

MLJ: By consent.

Jensen: By consent, correct. They do supplemental work, in effect. They do an awful lot of work that is supportive of the District.

Rubens: This is throughout the whole—

Jensen: Yes, through the whole system. There are Magistrate Judges in San Francisco, San Jose, and one in Oakland. That’s an issue here – the workload on the Magistrate Judge in Oakland is higher than the workload on Magistrate Judges in other areas, simply because he’s the only Magistrate here. There’s only one Magistrate Judge, but there’s enough work here for at least two.

MLJ: An increase has to be authorized by statute, doesn’t it?

Jensen: It has to be authorized by statute, but it also has to be supported with a courtroom. We only have four courtrooms; so we have three district judges and one magistrate judge. They occupy all four of the courtrooms. If we’re going to expand, we’re going to have to have another courtroom.

Rubens: You said there’s room on the second floor, so is this being discussed now?

Jensen: It is being discussed. It’s been discussed at least a couple of times, in terms of moving down there. We had it very, very close, I think last year or the year before that, they were going to build out. And they had everything—the plans and everything were done. Then they put it out to bid and the bids came in so high the GSA pulled it.

But it’s a much cheaper way of expanding the Northern District than any other. See, if you’re going to need more judges in the District, it’s cheaper to build out these two floors than to build a whole new building. I think San Francisco is basically full now.

Rubens: That was long range planning.

Jensen: Yes. Yes, I think so.

MLJ: When the court opened here, given that it had the caseload to support it, did it still have to establish a presence and credibility to attract filings?
Jensen: That’s right, because we had the history of—Well, I don’t think anybody—The Bar, as of 1994, didn’t even know the history of Oakland and Alameda County in the seventies. There’s only a few of the old people like me. So it did have to have a new structure, and the law firms and the legal practices had changed over a period of time. And it may very well have been in the seventies you didn’t have very many Oakland firms that did a lot of federal cases. But by the time we got here in the nineties, there were lots of firms that had a federal practice. There was a lot of federal stuff being done by Oakland firms.

MLJ: Do you think that you—your presence and your history and stature in the Oakland community, gave some instant credibility to the court at all, or helped built the court and how people use it?

Jensen: I don’t think so.

MLJ: No?

Jensen: I don’t think so. I don’t think so. I think it would’ve happened whoever was there.

Rubens: But why is credibility an issue? It’s a federal—

Jensen: Well, it’s the use of the courthouse. See, in the seventies, there was only a single courtroom; the judge wasn’t there, there was no pressure.

Rubens: Ok, I understand, yes.

Jensen: But there is pressure from the legal practice that says, “We would like to have the ability to have a courthouse in our own area.” There’s pressure to provide service to the legal practices that need a federal court. And there was much more pressure in the nineties than there was in the seventies, in terms of the practices in Oakland. So you had Oakland lawyers going to San Francisco to do federal cases—they’d rather do them in Oakland.

MLJ: But you also have to remember that federal court is selective. You don’t have to go there.

Rubens: San Francisco, though, is the lead court?

Jensen: Oh, sure, it is.

Rubens: And it’s the one still making the assignments of what comes to you and to—
Jensen: They do, except for one area, and that is the question of how you divvy up the jurisdiction. See, we already had made the decision that cases that came out of Santa Clara County would stay in San Jose. Now, when the Oakland court came in the question is, are you going to do the same thing? So the decision was that as to criminal, there would be an Oakland venue, but not for civil. So there’s a difference for criminal. If a criminal case comes out of Contra Costa County or Alameda County, it’s tried here. And so the—

Rubens: And why was the decision not the same, is this part of—

Jensen: That was the question when you open up the Oakland court—do you say that we’re still going to have the same civil venue? So that if you file a case in Oakland and you assign it to San Francisco, will there be dissent from the local Bar saying, “What happened?” The Court was somewhat concerned about how you do that. They did various studies and had meetings with the Bar. Generally, the leaders of the Bar in Oakland said, “We don’t care. As long as there’s a court here, we don’t care whether it’s assigned here or San Francisco.” But that means there’s a corollary. See, if you’re an Oakland lawyer and you file a case, you can be assigned to San Francisco. But if you’re a San Francisco lawyer and you file in San Francisco, you can be sent to Oakland. So there’s a flow back and forth. I think the Oakland people were more interested in seeing the flow established than the San Francisco people were. So what’s happened is we have a civil venue that means that any case that arises in either the San Francisco area or the Oakland area is venued in either court.

Rubens: Can that be appealed?

Jensen: No. It’s still in the same District. So the same general jurisdiction exists. This is only Rule of Court, in terms of where the case is going to be assigned to be heard in a particular physical location.

Rubens: Yes, what I’m thinking about is—referring back to where we started today—is there some kind of assessment that goes on where the Court says “Oh, we have a former prosecutor here; we don’t want to take the chance of having judge-shopping.”

Jensen: Well, they can’t do that. They can’t do judge-shopping because if they file a case in the Clerk’s Office in Oakland—if it’s civil, it can go to any one of the civil judges. If they file a criminal case, the lawyers don’t have any control over that.

Rubens: Was that a decision that the Northern District Court made?
Jensen: Well, we made the decision to—

Rubens: Regarding the separation of—?

Jensen: Yes; we concluded that we should have a split as far as criminal cases were concerned. Because there’s going to be a US Attorney’s Office in Oakland, there will also be a grand jury in Oakland. The whole subset of agencies that deal with this are going to be in Oakland as well. And you have enough of a workload that’s going to be coming out of Oakland and Contra Costa County to support a criminal venue here. That was pretty clear from the outset. But the civil venue, we did some thinking about it, as far as the Court is concerned, and then decided to leave the civil venue so that you could go either way.

Rubens: I keep thinking about why you’re saying “to establish the credibility of the Court,” or to—?

MLJ: Wasn’t there a tradition that San Francisco was the leader, not only as the physical center of the Court, but that there are a lot of personnel on the Court who had no interest in associating themselves with Oakland or San Jose?

Jensen: Oh, I think that’s true. But things change over time.

Rubens: You mean living here, as opposed to San Francisco?

Jensen: Even just being here, or practicing here. For example, I said that some of the judges didn’t want to come here. The judges who lived over here practice in San Francisco, right? So San Francisco is still the center of the whole area; and the building over there has most of the judges. As I said, we had fourteen active judges in the District Court. Eight of them are in San Francisco, three in San Jose, and three in Oakland. So the Divisions, in effect, mirror the kind of workload that exists there. We have one Magistrate Judge here in Oakland, and I think four or five in San Francisco, and two or three in San Jose.

There’s a Federal Grand Jury that sits in San Jose, and one in Oakland, and one in San Francisco. They’re separate grand juries. And so they hear the cases that are developed in—

Rubens: Is there not a separate Oakland grand jury?

Jensen: No; not before we came here.

Rubens: Okay, I didn’t think about that.
MLJ: For criminal venue then, aside from political issues or practicing lawyers, you’re going to pull jury pools from the different geographic areas served – is that also important?

Jensen: Well, this is another aspect. This was an area that was discussed. The jury pool was left alone, in the sense that no separate Oakland Division jury pool created. So jurors who come to sit in Oakland come from all over the Northern District, except from the San Jose Division. So you can be sitting as a juror here in Oakland, but come out of San Francisco, or San Mateo, or Marin County. And you come to Oakland to hear cases that are being heard in Oakland. Likewise, jurors from Contra Costa and Alameda County go to San Francisco, if that’s the way it happens.

That was the decision made by the Court. Now, you don’t have to do that. You could have a jury pool that matches the venue. In other words, you could have a jury pool, for example, for criminal cases, that draws jurors only from Alameda and Contra Costa Counties, rather than from the whole District. We still discuss this from time to time, and I, frankly, think that’s what we should do. But that has not been what the Court as a whole has decided.

Rubens: Why do you think that?

Jensen: Because I don’t see any reason why you don’t. I don’t see any reason for a juror in Fremont to get in the car in the early morning and drive across the bridge to San Francisco to sit on a criminal case; or for a juror from San Mateo County to drive across the same bridge and come to Oakland, when they could’ve gone to the places where they live. Why should they have to go over the bridge? I don’t think that they should have to—and we may come to come to that sometime, but so far—

Rubens: The argument that prevails is?

Jensen: The argument that prevails is we should have the whole pool, so that we get a jury pool that’s—

Rubens: A more diverse—

Jensen: —more—we draw from this. I don’t think there’s any real significant demographic kind of difference between Oakland and San Francisco. And if you look at the demographics for all of the Counties that feed into the San Francisco Division as well as the Oakland, it comes out roughly the same.
Rubens: This is a recurring theme throughout your career, when we think about the charges relating to representative juries in some of the early cases that you had.

Jensen: Yes; right.

Rubens: And I want to put that next to what you said about finding these juries to be terrific, in terms of patent stuff.

Jensen: Oh, yes. I think they are able to get through the terribly difficult technologies and that sort of thing with not a great deal of trouble, as long as the lawyering’s good.

Rubens: So let me ask you this question. Are the jury pools for each level of Court, whether it’s Superior Court or—

Jensen: Well, they are in the Counties. In that Alameda County has been, for example, when I first started in as the District Attorney, there were differences between the Superior Court and Municipal Courts. They were totally separate. So if you were in Municipal Court, and you had a case in Oakland, you had an Oakland jury pool. If you had a case in Berkeley, you had a Berkeley jury pool. Fremont, San Leandro, Livermore—they were all different. But that entire group would be on the panels for felony cases that were in Superior Court. So you had a county-wide pool for the felony cases in the Oakland Superior Court; but you had a Municipal Court definition, in terms of geography, for all the rest of them.

So we had Municipal Court districts. They weren’t exactly the same as cities. Berkeley and Albany was a pool. Oakland, with Piedmont, was a pool; and Emeryville; and also the city of Alameda. Then Fremont and Newark was also a pool—but in the very early days, they were all together. And San Leandro and Hayward were together as well. But that’s all changed. Now the word has changed totally, since they melded the Municipal Courts into the Superior Court. How they draw their juries now, I’m not totally sure. I think they have some level of drawing from geographic areas differently from Municipal than they do for Superior, but I don’t know exactly what it is.

Rubens: But any one of those areas can also then, a federal—

Jensen: Yes, but everybody feeds into the federal. There’s no distinction, in terms of the counties or the cities.

MLJ: Except for the stepchild of San Jose.
Jensen: San Jose has its own jury pool. The jury pool in San Jose is drawn from the four counties that are down there.

MLJ: Santa Clara County, Monterey County, San Benito. That’s only three.

Rubens: Is there as much contention about representative juries as during your heyday in Oakland as DA?

Jensen: I haven’t seen any. We haven’t had any challenges at the federal level. One of the things that happened is there was an old approach that drew juries just from voter lists, voter registration. That got to the point where it was less diverse than other databases—for example, driver’s licenses. So the courts shifted into that. They shifted into getting the potential jury pool expanded so that it would be drawn from a database that is really diverse.

Rubens: Similarly, is it true that people are not let off so easily because they’re a professor or a doctor?

Jensen: That’s right. But once upon a time, there were all kinds of exemptions. We had to change the law in California, because it was so bad that the District Attorneys Associations and the State Public Defender said, “Let’s not do this.” So you don’t get exempted anymore. It used to be that everybody and their brother and sister had an exemption.

Rubens: Yes, exactly. So in terms of the concern about having a jury available for the—

Jensen: I don’t think there’s any concern in terms of the diversity of the jury—

Rubens: I don’t even mean diversity, I mean numbers of people.

Jensen: It works. I think that there are levels of discontent. I think, as I say, that there could be greater numbers if people sort of realized that if they’re in Fremont and they have to go to San Francisco, that that isn’t something that’s writ in stone. It could be changed.

MLJ: You’ve sort of talked about this, but I’d like to clarify your position—many people advocate, in technology cases or patent cases, that really what is needed is a professional jury because they’re really the only people capable of understanding these issues. What’s your opinion about that?
Jensen: I don’t agree with that.

MLJ: Why, exactly?

Jensen: I don’t agree with that, because I think the jury system is the central part of our whole justice delivery. And I see no reason why it shouldn’t apply in cases all the way through – in criminal cases and in civil cases. I don’t see any reason why you shouldn’t have jurors making the fact findings that are necessary for a patent case, where they’re not supposed to be able to do that; they do it in other kinds of civil cases. The stakes are just as high in other cases as they are in patents. And I don’t think that the technology is beyond the ability of lawyers to describe or jurors to understand. If I thought the technology was such that you had to go to school for a year to figure out what it was, then maybe that’s something different. But as far as patent cases are concerned, you can understand the necessary components of this at basic levels. And I don’t think that I’ve seen a problem with that. As long as the jury is given time, and the effort’s made to give them instructions about what findings are required; and you give them a demonstration of what it is that is being decided upon—the technology. And that happens. People do great demonstrations of this.

MLJ: You say that the lawyering is important. I assume that’s in the presentation? How the information’s been broken down?

Jensen: It is. One of the things I think that has happened, that I’ve seen over the time, say, in patent cases, is that in the old days if the case went to trial, it was tried by the patent lawyers. In the old days, the patent lawyers were generally engineers or people who’d gone through some sort of engineering training or specific training—chemical, whatever. And they would also try the case. But they’re engineers. They’re not trial lawyers.

So what has happened in the patent law is that you’ve brought in trial lawyers who then, just like jurors, have brought themselves up to speed on the technology. And a trial lawyer will beat an engineer all the time. That’s what’s happened in the patent practices. You find really good trial lawyers now in intellectual property cases and patent cases, that maybe you didn’t see before.

MLJ: Actually, you answered my question, but isn’t, in it the case where there’s a complex issue, be it criminal, be it securities, whatever it is, that the lawyer makes the difference in determining the “skill” of the jury?

Jensen: No question about it. The jury’s only able to do and to assess what they are exposed to. In effect, you tell them, “You don’t know nothing about this
case.” As a juror, you come into court and you sit down and now you’re going to have to be making decisions about some area of technology that you’re not familiar with. And in order to do that, somebody’s going to have to teach you. That’s what the lawyers do, they teach them. And a good lawyer can teach very well.

Rubens: What about the kinds of lawyers that you’re seeing coming before you.

Jensen: You see more trial lawyers in, say, the patent cases than you did before. So that it’s characteristic now that the people who are trying patent cases are also skilled trial lawyers.

Rubens: Yes. You were in court as a prosecutor, and you were in courts as the representative of the Justice Department. You obviously are seeing more women and people of different racial and ethnic backgrounds. But in terms of just the quality of training, and—

Jensen: The quality of the lawyering, I think, is better. The stakes are getting higher. It’s getting more complex. And the technology’s better. You can now explain things in a way that you weren’t able to before. We used to use butcher paper and a crayon. Now they do PowerPoint, whatever. But that means you have to have somebody who can do that. That’s only technical. The skills in terms of relating to the jury and teaching them as part of your trial; those are skills that trial lawyers have.

MLJ: Did you notice that as women came in to be trial lawyers, that basically, their entrée into being trial lawyers was through the criminal justice system – that there were far more women criminal lawyers?

Jensen: I think so. I think what happened is—well, it’s not only the criminal justice system, it’s just public law in general. Such that as women were coming into the profession, I think they found it easier to come into public agencies—say a DA’s Office or a Public Defender’s Office, or the Attorney General’s Office, those kinds of things, the City Attorney. Characteristically, women were in those agencies before they were in civil firms. And they were able to grow in those agencies. They were given more responsibility.

For example, when I first came in, the theory that you would let a women try a rape case was not permitted; women were not supposed to be doing this sort of thing.

Rubens: Sort of unseemly, it’s just not done.
Jensen: Yes; the idea was that they weren’t really capable of detaching themselves, in some sort of way. So you found in the DA’s Office when I first came in, that there weren’t any women trial lawyers—maybe one. And it took a while before it became obvious that there was no reason that there shouldn’t be—and I hired women. We were in the sort of grassroots movement of letting them try everything. There was a point in time where if a woman came into the DA’s Office in, say, Alameda County, they were put in the School Department, which was the Civil Department. But they weren’t put in as a trial lawyer for murders, rapes, robberies, that sort of thing.

MLJ: You were saying that Rose Bird started as a Santa Clara County Public Defender, but Sandra Day O’Connor was also in public law, wasn’t she?

Jensen: First job; I think she went to a civil firm and they wouldn’t hire her.

Rubens: I thought she was offered a secretarial position

Jensen: Yes, that sort of thing. But her first job was with the San Mateo County DA’s Office. When she got out of law school and went to work, I think the first legal job she had was working in San Mateo County for the DA. And I think they had her in the civil side of the Office; because that was the time when you had civil sides and criminal sides. And I think she worked in the civil side.

Rubens: Does this square with the way you’re answering the question, with what you’re seeing?

Jensen: Yes, that’s a good example of it.

MLJ: If I think of very accomplished trial attorneys, and then think of women—like Penny Cooper, or Cris Arguedas, who’s acknowledged, I think, nationally as one of the best trial lawyers out there, each of them started in criminal law. And I think as they came—

Jensen: In the Public Defender’s Office. They got jobs there.

MLJ: That’s how they were able to get into a trial court.

Jensen: Well, I think it was true, is that in the development of the legal profession and in the evolution of the trial lawyer, the first entry of women into criminal law, into high level positions, was through the public agencies—like we had women coming into the Alameda County DA’s Office. The same thing was true in the Public Defender’s Office. They hired women. And they started
trying cases. And it’s ridiculous, in terms of the idea about who’s better, or who’s not better. It’s all individual. It has nothing to do with whether you’re a woman or man. That’s true now. But that wasn’t true when women first started trying cases.

Rubens: Was there a certain change in consciousness simultaneously with the general jury pool and—

Jensen: Well, the whole thing, in terms of the entry into the profession. In the old days, you have to remember also that there were very few women who were law students.

Rubens: Boalt’s first woman graduate was in 1906. And in 1912 when the law building opened, they had women there; but there was no women’s restroom. They had to go to another building.

Jensen: I was in the old building the first two years in law school, and then we moved up to the new building. We only had, I think, three or four women in our class. Now there’s at least 50%—more than 50% are women. Now women are a full operating component in the whole legal profession, at all levels. But it’s been—

Rubens: With Sandra Day O’Connor’s appointment, that was—

Jensen: That’s a pretty good example of that. The idea that Sandra O’Connor could get out of Stanford and not get a job in civil law—that she had to go to San Mateo County—is indicative of how the whole movement, how it changed in the legal profession. And I think the public agencies were leaders.

Rubens: Our discussion of juries reminded me that there was a case here in Oakland that had to do with the smuggling of immigrants, smuggling aliens—let me pull it out; I can’t talk and read at the same time—and how much money was being spent on putting the defendant up at a hotel. Let me just get this. It’s a racketeering trial against a reputed Asian organized crime figure. “Alleged gang figure Raymond “Shrimp Boy” Chow filed proceedings.” Does this ring a bell?

Jensen: Yes.

Rubens: They wanted to recuse you. It was going to come before you, right? And they wanted to recuse you because you had approved a wiretap during the investigation. That had to have been when you were at the Justice Department—is this a case that’s worth talking about? At some point, I guess, then, there is a little thing that happens—
Jensen: It’s a major case. There was a wiretap before they made arrests. And it goes back. I know when it occurred because one of the figures in that case, I am going to sentence on Friday. The case was charged originally in 1992. But the figure who is still there is one of the major figures; he came later because he went to Hong Kong. They had to extradite him from Hong Kong, and that took years. So he came in later, and he’s still in the litigation system, for a variety of reasons. But in any event, they did talk about recusing me because I had been the judge through whom the wiretap had come.

The way wiretaps work is that when they come in, they’re assigned to any judge, generally. You get them as part of your general duty. So I now get a wiretap to decide whether it should be authorized, and I do that. And then I happened to be assigned to the case that arises from that wiretap. And that’s just serendipity. There isn’t anything that says that follows. Because when the indictment comes down, it’s assigned on this wheel. They’re assigned randomly; and I get the random assignment of the case. Then it turns out that I had been the judge who had been randomly involved in approving the wiretap.

Rubens: I didn’t understand that. I thought this went back to when you were in the Department of Justice, and that—

Jensen: Oh, no. No, if I had done it in the Department of Justice—

Rubens: You would’ve recused yourself.

Jensen: —I would’ve recused myself. No question about that. If I had done anything with reference to the case in the Department of Justice, I would recuse myself. But this was when I was a judge; I had authorized the wiretap as a judge.

But you mentioned one before where there is an overlap – it does overlap with the whole business of extradition, the Irish extradition. We could do that one.

Rubens: That was a case in which you had allegedly failed to instruct jurors to consider whether the defendant had criminal intent.

Jensen: That was the question of the instructions for bringing in aliens illegally. They had brought them in down into Monterey Bay. I had a trial, and the question was, “What should the instructions be? I followed sort of basically what the instructions had been before. The appellate court said that those instructions weren’t correct, in terms of the levels of culpability and the definitions of what kind of state of mind was required for a criminal case.

Rubens: I see. It sure seemed like this was criminal intent—they were smuggling in.
Jensen: Yes; well, they did. But I don’t remember exactly what it was, but it was a technicality.

Rubens: This reminds me of two things I meant to ask about earlier. When you were DA, I don’t think issues of homelessness came up, right? It just didn’t seem to be the social phenomenon it is now?

Jensen: No.

Rubens: And similarly, I guess any smuggling of aliens would be federal always, is that right?

Jensen: It’s always been federal, sure. All immigration law is federal.

Rubens: It seemed to me that there are some cases going on, but not on a big scale.

Jensen: Not in the state court.

Rubens: Okay, here’s another one—“Jensen’s approval of expenditure has raised eyebrows.” What is this? It’s a hundred-and-twenty a night being spent—a hundred-and-twenty a night in 1996 doesn’t seem like it’s that—this is a news story. It has to do with Maureen Kallins, and it says “Why is Northern District the most free spending federal court in the US?”

Jensen: She represented Chow. She was a CJA lawyer, that is a lawyer appointed under the Criminal Justice Act. By that time, Chow had gone through about three or four different lawyers. And there’d been one trial already; they’d split it up—we had cases with reference to gun running -and they were tried. Then Chow wanted another lawyer for the remaining cases, and finally Maureen Kallins came in and represented him. We had about a six-week trial and the jury hung up. The question would be, what kind of expenditures were approved by me for her representation? I guess that’s what they’re saying.

MLJ: How was she going to get paid?

Jensen: I approved the money that she submitted in her invoices and bills, in terms of her representation.

Rubens: This is coming out of public funds, by the way?

Jensen: Yes. And I guess they thought it was too high, that she’d spent too much money, or that I’d approved the expenditure of too much money.
Rubens: I didn’t realize that this was an option. Where else are lawyers—where do they get money from the—

Jensen: You start with the whole business of the issue of an “indigent defendant.” If you have somebody who comes in who’s charged criminally, are they entitled to a lawyer to represent them? And that took a long time to finally get to the point where the answer was that you were entitled to representation. The whole development of Public Defenders came about because of the need for indigent representation.

Rubens: Right. I never thought about it at the federal level.

Jensen: But you have the same thing; you have indigent defendants at the federal level. So you have a Federal Public Defender that represents indigents. But in many cases—or in enough cases—the Public Defender can’t represent somebody because there are conflicts. They may have represented the person before, or they may represent another person in the same case; there may be other kinds of areas of conflict. So you have a need to have lawyers appointed to represent these people. In the old days, judges just summoned lawyers and said, “You represent him.” And it was pro bono kind of stuff; “You have to do this.”

Then the Criminal Justice Act was enacted, and established a process where if you have an indigent defendant and the Public Defender can’t represent him, or there’s no Public Defender available, you appoint a lawyer to represent him. So the appointment process is a whole proceeding unto itself. When you appoint the lawyer, you pay him, right? And then the issue is, how much do you pay him?

Rubens: And roughly when is this Criminal Justice Act passed?

Jensen: Oh, that goes back to the seventies, I think.

MLJ: During your tenure, didn’t you sit on the committee that reviewed the processes under the Criminal Justice Act for payment of lawyers?

Jensen: Well, yes. I was on a committee that sort of redid all of the ways in which the Northern District dealt with the CJA attorneys, in terms of paying them, and in terms of the process of appointing them. The Northern District has a Panel. What we do is invite lawyers to apply, and they’re selected by the Court to be on a panel from which lawyers are selected to provide representation. Then they’re appointed to the case to represent the indigent defendant. And they’re appointed on a random sort of basis—as a case comes up, you go to the next lawyer on the Panel list. In the old days, there was no system to these panels at
all. You just sort of had them created by the judges, and then you had a kind of—length of terms were not there, so we spent a long time figuring this out.

Before it was regulated, the old timers were on the Panel and other people were not on the Panel. At one point, for example, in comes Oakland. Okay, now Oakland’s going to have criminal federal cases. It’s never had criminal federal cases before. So the panel for the criminal cases had all been San Francisco lawyers. There’d been almost no Oakland lawyers on that panel. There were some, but not very many. So now you get into the business of you have an Oakland venue, you should have an Oakland representation. So we structured the whole thing with systems, with terms. Then the Court would appoint a given number of lawyers each year. I was on the committee that put that system all together.

Rubens: And the committee is?

Jensen: Is a judge committee. It’s a committee that was appointed by the local judges. Serving on the committee would be a couple of judges, and the Public Defender, and representation from the defense Bar. So we had several lawyers who were criminal defense lawyers on this committee. We drafted the rules and developed the system. That system is in place now, so that a Panel is created for each Division of the Court, and then the lawyers are appointed off that Panel.

Rubens: When are these committees meeting? When is this starting?

Jensen: This is in the eighties.

Rubens: Late eighties?

Jensen: Kind of early eighties.

Rubens: Are all of the judges serving on as many committees as you are?

Jensen: Oh, everybody sits on some committees, yes.

Rubens: Okay, so everyone’s pulling their weight.

Jensen: There are committees at the District level, like this CJA committee; and there are building committees, and all kinds of management committees that are appointed by the Chief Judge of this District. Then there are committees at the national level that are appointed by the Chief Justice of the US Supreme Court.
Rubens: Is that when we will talk about federal guidelines for sentencing—because you’re going to be on—

Jensen: Well, no, no. That’s another thing. I was involved in the original law that created the new determinate sentencing structure, the Sentencing Guidelines. That happened in ’84. That’s when I was back in the Department. That law was passed by congress at a time when I was in Washington. And the Department supported all that. And I testified in congress about that. Congress, and the sentencing law, created a Sentencing Commission, and we made appointments of people to serve on the Commission to draft the Guidelines.

I was involved in that process when I was at the Department, because these people were appointed by the president and confirmed by the senate. The Commission is the Commission that ultimately did all the heavy-duty work to put together the Guidelines that now exist. That was ’84 and thereafter.

Rubens: Okay. And they’re finally approved—

Jensen: They’re approved in ’87. Because it took time to appoint the Commission, and then they had to now come up with the Sentencing Guidelines and Guideline Sentencing Ranges from scratch. There was no common law of sentencing. What you had is different systems in the states, and then you had a pretty sophisticated federal system, but it didn’t have the determinate sentence structure. So the Sentencing Commission had to draft all that. So they drafted it and sent it back to congress, and it ultimately became law in, I think it was September of ’87.

Rubens: So right when you’re starting your—

Jensen: When I’m coming back here, yes. But I was in Washington when it got started. And then I’m here when it gets started with the judges.

Rubens: Right. So you’re familiar with it and you agree with it.

Jensen: Yes; and I had been involved with that in California, remember, because when I was DA—California passed its Determinate Sentence Law in 1970—the late seventies.

Rubens: And you had been on a national task force or committee; we did talk about—

Jensen: There had been one; but I was not on the one for determinate sentencing law in the federal system. That was a separate committee. But I had been on National District Attorney Association committees, yes.
MLJ: We were talking about the learning curve when you came in as a federal judge. Did you participate in teaching guidelines to other judges, since you knew a lot about it, and its background?

Jensen: No. I went to classes. The devil’s in the details. I mean, conceptually, I know where we’re going, but I don’t know what the details are. And the Guidelines have enormous details to them. There was a great deal of learning required, just to grasp what the system was.

Rubens: We should come back to this; but there’s a lot of debate about it, right? People are still complaining.

Jensen: About the Guidelines?

Rubens: The determinate—no, about the—

Jensen: There’s an awful lot that’s happened, as far as that’s concerned. The Supreme Court—when they got the Guidelines cases to consider, then it really changed.

Rubens: Right. Okay, here’s an article from 2003. It says, “Congress appears poised to clamp down even tighter on federal judges’ sentencing discretion.” I think we should come back to that. But I also see articles about an arms deal issue; and a cigarette case—“Judge’s ruling bodes well for big cigarettes in Texas case.” “The city of San Francisco and eleven counties file claims under federal racketeering.”

Jensen: Oh, that is on smoking.

Rubens: Smoking, yes.

Jensen: Yes, this is in the initial stages—when there was all kinds of litigation getting underway against the tobacco industry. I had one where there had been suits filed—

Rubens: It was the first of its kind, right?

Jensen: I don’t know whether it was the first of its kind, but there were suits filed by individuals, and then the city filed, and the states filed, in terms of alleging monies were owed for medical expenses. And health plans sued, on the basis of the expenditures that had been made for people who got cancer, basically, from smoking. I had the beginning stages of some of those cases. There were some motions to dismiss, and several motions that were before me. So pre-trial stages—
MLJ: This was part of the litigation against the tobacco companies?

Jensen: Yes. I had pre-trial stuff on that.

Rubens: It seems to me that there’s a lot of stuff—first of all, studies are coming out of San Francisco Medical Center, and I can’t think of the guy’s name right now—but this is City and County of San Francisco vs. Philip Morris. And you’re denying the defendant’s motion to dismiss the County’s claims for fraud and misrepresentation.

Jensen: Right. Those are the types of pre-trial motions I mean. What basically happened was that we had a series of pre-trial motions—that one, and there were others. Some of them, I granted, some of the defendant’s motions. The plaintiffs were using things like theories under the RICO laws that I didn’t think fit. But ultimately what happened is that those cases were settled; they didn’t go to trial. I had just pre-trial motions.

Rubens: Did you participate in the settlement negotiations?

Jensen: I didn’t settle them. There was a huge—they were part of what was going on nationally. So mine is just a subplot of that.

MLJ: We will definitely come back to this, but was the MDL in existence at that time? Or was tobacco litigation one of the things that prompted the MDL?

Jensen: No, no. No. It was not prompted by that, but it was in existence.

MLJ: Did they use it?

Jensen: They may have in some areas. I don’t think there is much—very little tobacco litigation currently

Rubens: What is the MDL?

Jensen: Multi-District Litigation, which we can get to later on. That’s used in the federal courts when you have multiple suits filed in a number of Districts that are on the same subject matter, then you can put those cases together and assign them to a single court.

Rubens: Okay, yes. I thought that’s what we’d come to. But I’m looking at my notes on the Irish extradition—this is also a case where recusal is being sought. This has to do with Northern Ireland prison escapee Terrence Damien Kirby, who was fighting the British government’s attempt to extradite him.
Jensen: Right. There were two or three people who were arrested in the Northern District who had escaped from a British prison. They were part of the Irish resistance movement—however you want to describe it. I forget what their definitions were right now. But they had escaped, and then they were arrested in California. And the question was whether extradition was proper.

The recusal motion was brought on the basis that I had been a witness in congress when it adopted the extradition treaty that applied to this case. There had been a change in the treaty while I was at Justice. The treaty was changed, basically, with reference to the definitions of what kinds of people would be covered by the extradition treaty—whether they were “combatants,” or—

Rubens: Or terrorists or—

Jensen: Well, they didn’t have the same sort of lingo, but the question is whether you were seeking extradition for just ordinary crimes—ordinary kidnapping, ordinary murder—as opposed to a political crime. There were political exemptions built into treaties, in terms of the ability to extradite. When I was at the Justice Department, those exemptions were being removed. So there was a new treaty adopted when I was there; and I was one of the people who testified for the government, in support of the adoption of the treaty.

The motion to recuse me, therefore, was brought on the basis that since I had done that, I should be recused because I had been involved in the case in that sense. I had been a witness in favor of the adoption of the treaty, and therefore I should be recused.

Rubens: But it’s not specifically these guys.

Jensen: No. No, these guys are later on. But it gets there, in a way, because the case I was considering was part of the first wave of cases under the new treaty, so the theory is I should be recused because I had testified. And I said no, I should not.

Rubens: Oh, it was an ’83 escape; I didn’t realize this. These guys had escaped, okay.

Jensen: Yes. They escaped from a British prison, and then they’d come to the United States. They had been imprisoned in Britain for murder. The British government wanted them back, by way of extradition. And that was the question—whether that was proper under the treaty. So the defense lawyers who represented Kirby wanted me recused because I had been on the—

Rubens: Twice.
Jensen: Yes. I said I didn’t think that that was grounds for recusal. Because the idea that you’d been involved with some sort of litigation or some sort of legislation—if I had been involved in direct litigation with reference to this party, I would be recused. But this was sort of attenuated, in the sense that I had just testified on the treaty. And there had been all kinds of examples in the past where people had testified on a particular issue, and then ruled on it. For example, Hugo Black ruled on his own legislation. When he was on the Supreme Court, he didn’t recuse himself on legislation that he had sponsored in congress. And the same sort of thing was true with Rehnquist, I think, in terms of some issues that he had dealt with when he was in the Justice Department. Parties to those matters said he should be recused; but he was not. So I didn’t think that that was a ground for recusal.

Well then, while the case was still pending, the Ninth Circuit came up with a new decision regarding the scope of recusal with reference to people who had worked in the Justice Department. They basically said that if you were in any kind of position in the chain of command over a particular activity, then you should be recused if you became involved in a case dealing with that same activity. For example, if you’d been the US Attorney at a time when the FBI conducted an investigation in your area, then you should be recused if you’re now involved in a case dealing with that investigation. As far as I was concerned, when I was in the Department of Justice, I was basically in the chain of command over the FBI. And the FBI was now trying to find Kirby because of the arrest warrants issued for his escape from Britain. The FBI was conducting an investigation to find him. And since I had been in a management position in the Department with authority over the FBI, then under the Ninth Circuit’s new rule, I had to be recused. So I was recused.

Rubens: What’s driving the Ninth Circuit? Were there other things?

Jensen: No. They came up with this decision regarding who should be recused simply by looking at your prior relationship to a case.

MLJ: In what context did this come up?

Jensen: Well, it came up—after I had ruled that I should not be recused on the basis of testifying regarding the treaty, then this Ninth Circuit case came down.

MLJ: I’m sorry, I meant, the Ninth Circuit case – in what context did that come up?

Jensen: Oh, it was a case out of Arizona, I think, where the US Attorney was recused. He was now sitting as a judge, and had a case where the investigation leading to the case had been done by the FBI while he was the US Attorney. And they said that that should result in his recusal.
Rubens: Arnpriester, a case—

Jensen: That’s the name of the Judge, yes.

Rubens: Yes; United States v. Arnpriester—federal judge, yes.

Jensen: Yes, the federal judge was recused; and that was a new decision. At the same time, these Irish extradition cases had been going through, and one of them, for example, was already at the Ninth Circuit. Steve Trott, who was on the Ninth Circuit by that time—who had been in the Justice Department when I was there—recused himself based upon the new case, because he had been in the chain of command over these investigations. So I did that too.

Rubens: Did I skip something earlier about discovery? This is ’94. One other thing—this is Court Watch again, “New criminal discovery rules are in works.” This is you and [Michael J.] Yamaguchi, US Attorney, at the center of an emerging national debate over proposed changes in discovery rules for federal prosecutors. Should we—

Jensen: Yes; this goes back. The context is this: I was the Chair of the Advisory Committee for the Federal Rules of Criminal Procedure. This is at the national level. And as I said, you have a structure where you have a Judicial Conference, which is chaired by the Chief Justice, and it is comprised of the Chief Judges of each of the Circuits, and has representatives from the District Courts. It is the managing body for all the court systems—underneath that, they have a committee that’s a committee on Practice and Procedures; and under that committee, there are committees for Civil Rules, for Criminal Rules, for Bankruptcy Rules. And each one of those committees then deals with that set of federal rules. So what those committees do, each is appointed by the Chief Justice, and each member is appointed for a specific term – now that is true, because Rehnquist put in terms where they hadn’t existed before. But I was now Chair of the Criminal Rules Committee; and we could address any issue dealing with the definition of the Criminal Rules.

And one of those issues is discovery. “Discovery” refers to the pre-trial disclosures that the government must make to the defendant with reference to the case. And there are Rules of Criminal Procedure dealing with that issue.

Rubens: This is always an issue in cases. You had to deal with these issues back when you were DA.

Jensen: Yes; when I was DA –at first when I was a Deputy DA, there was no disclosure required at all. That came in through judicial decisions. In
California, you had a long time ago had case law regarding this. California said “You must do pre-trial disclosure.” Then there’s legislation about it.

So in the state system there are rules, basically, that say when a case is filed, then you turn over the police reports about that case to the defense. Not so in the federal criminal world. In the federal criminal law, there are very, very restrictive kinds of disclosure rules. For example, the US Attorney does not have to turn over their police reports, or turn over the statements made by witnesses and that sort of thing. You would be required to turn them over in the state systems. There had been some cases in the federal world that had dealt with this; and then there had been a congressional Act that structured the way in which you disclose witnesses – that is called the Jencks Act. It basically says that if the US attorney is going to put on a witness, they have to tell the other side who those witnesses are at the time they start the trial – the defense has to know that before the jury is selected. However, under the federal law, you don’t have to do any disclosure about who your witnesses are or what they have said, before that time.

For example, if the witness testified before a grand jury or if they had made statements, you don’t have to give those to the defense until the witness testifies. That rule still exists—that you don’t have to turn those statements over to the defense until the witness has actually been on the stand – only then do you have to give the statements to the other side. The Jencks Act had been passed into law because of some sort of argument that “Well, they’re going to kill all the witnesses if you put out who these witnesses are.” Congress believed that it needed to protect the system against this; and the theoretical threats to witnesses and to their testimony from any kind of tampering—Congress said “We want to prevent all that.” And it decided that you do that by—you don’t even get the stuff until you’re in trial.

Rubens: When is this, about? I’ll look it up.

Jensen: This has been there for a long time. Jencks is the seventies again, I think, or sixties when they passed that. All right; now I’m head of the Criminal Rules Committee—I don’t really believe in that.

Rubens: I was going to say, do you believe in this?

Jensen: I don’t believe in that at all. I grew up in the state system, where the idea that you—

Rubens: Right. Didn’t sound like you.

Jensen: The idea is that you turn this over and—it obviously is a critical kind issue to the way in which cases are actually processed—in that the defense has to
know what the case is. The idea that you’re going to resolve this case and you’re going to have plea agreements and that sort of thing are really a function of what the case is. So you really have a push to have disclosure about what you’ll be able to prove and that’s inconsistent with the existing rules. So there had been attempts to change this—aborted attempts—before.

Rubens: I would think so, yes.

MLJ: Didn’t you also find, as a practical matter, that in many US Attorney’s Offices, or individually among Assistant US Attorneys, that they were practicing under the state system regardless of the technical Rule?

Jensen: Absolutely.

MLJ: All except for a very, very few.

Jensen: In almost all cases, it’s simply impractical to now go to trial—and then at the time you turn over the statement, the defense attorney says, “I haven’t even ever read this. I don’t know what this is. It says A, B, C, and I’ve got to check that out.” So what do we do? We have what, a recess for a week, while we have an investigation, and the jury goes home? That’s crazy. You have to get these cases resolved. So the informal practice has always been to do the same thing the state does. It requires disclosure.

In the federal system, you even ran into non-disclosure in cases that were really going to go to trial, where the US attorney would say, “Well, we will make our Jencks disclosures ten days before trial.” Well, that’s terrific. It helps out a little bit. But it’s still a demonstration that it’s really not a good idea to do all that stuff. But the Justice Department doesn’t want to change the rules. They’re formal rules. They like to have the Rule there, in case they really want to use it. So the institutional opposition to this in the Justice Department is huge. It’s gone through everybody – all of the Administrations—doesn’t matter who you are.

The opposition was in existence at the time I was there, in that I could not tell the US Attorneys out in the field what position they should take on this. And the US Attorneys in the field, generally, if you look out through the rest of the country—leaving out California for awhile, where you’ve had this disclosure process – disclosure requirements don’t necessarily exist throughout the entire United States. So the institutional opposition in the Justice Department is very, very heavy. It doesn’t matter whether you’re a Republican Administration or Democratic Administration, it’s the same. So while I was at the Justice Department, we didn’t change anything; although if you got down to it, we would have pressure to make informal agreements to turn over the materials—and to do that pre-trial. So when I was head of the Criminal Rules Committee—
Rubens: When does this start, that you’re head of it? Maybe you’re on it before and then you’re—

Jensen: When am I on and doing this? In the late eighties, I guess, and the early nineties. Somewhere around there, I think.

Anyway, I’m there. And there are a couple of people on the committee who agree with me—so we try to structure a Rule change by which we want to require pre-trial disclosures by the US Attorney. And that’s what that article is talking about.

MLJ: The rules did, in fact, change; you got some changes in there, I think, but no blanket disclosure rule.

Jensen: We got something, but we didn’t get a change that said pre-trial disclosure is a part of the Rule process. There are levels of disclosure that are required; but they’re very specific, and they didn’t include witnesses. For example, they say in the Rules that if you have a statement made by the defendant, then you’re required to make a pre-trial disclosure of that statement – but not of statements made by witnesses.

MLJ: One of the reasons that the federal system is so impractical is that if you think about the difference between the state system and the federal system as being one of selectivity in cases—if you’re going through a federal investigation and the FBI agents are out interviewing ten people over a year and making reports, and now you’re going to go to trial and the defense is going to have six defendants and a year’s worth of statements that they don’t have until the trial takes place, you can’t try the case. It’s fundamentally unfair, aside from being impractical.

Jensen: Yes; it won’t work. So that’s why informally, the Rule isn’t followed so that that there is disclosure. But the Rules are followed in different kinds of ways. I’m sure that there are trials that go on, still, where there are no disclosures. And so we got some changes through.

This process of changing the Rules is really a very, very difficult and time-consuming process. You go through hearings at the Criminal Rules Committee. And these Hearings have specific agendas—

Rubens: These are judge’s committees again?

Jensen: This is a committee of judges. I think there were some Circuit Judges, some District Judges, and some Magistrate Judges. And then we also had Public
Defenders, and a representative from the Justice Department. And we have at-large public criminal defense lawyers, and law professors.

Rubens: Where’s this literally taking place?

Jensen: In Washington, most of the time. We meet in different places for semi-annual meetings. So when you’re going to have a meeting, you may meet in Washington; we might have a meeting in San Francisco, Seattle, Denver, whatever. That’s all programmed beforehand. Then you have an agenda in terms of what you’re going to deal with. Some of the things you deal with are reactive, in the sense that you’re reacting to a decision of a court – for example, an appellate court has decided something that now changes the rules. Or you have legislation that changes the rules, or requires you to change the rules. So you need to do that.

Then there are proactive changes, or just structural changes you think make sense. And at that time, as far as I’m concerned, it would make sense to have a much better system of pre-trial disclosure. And there was a history of people taking that position. So we set up a method of making some disclosures that was really not a full-blown kind of system, but it was a step toward disclosure. And we put that system to the Criminal Rules Committee for consideration. And now you have votes through the Criminal Rules Committee to get to the point where we can ask “What is our position? What do we recommend?”

As I say, the representative from the Justice Department says they’re against any change. But the committee voted to make a change to the Rules that would permit some level of pre-trial disclosure. The next step is to go to the Practice Committee, which sits above all of the Rules committees. Remember I said there are committees for Rules on civil, Rules for bankruptcy, that sort of thing? All of those report to this Practice Committee.

So now you have to go to the Practice Committee. And you have to go from there to the Judicial Conference. And the whole process means that you have to have hearings that result in recommendations that are formally adopted by each one of those bodies. And finally, if the Judicial Conference says there should be a rule change, they submit it to congress. It goes to congress, and it’s there for a period of time—it sort of sits on the table, as they say, for maybe six months. There’s a period set out. And congress can change it, if they wish to, or they can take some action on it. If they don’t take any action, it becomes law.

So if you think about this committee process now, it’s going to take you about two or three years to get this done, by the time you’ve gone through all these committees. So to get it done, you have to start out right away, if you’re the Chair –if I want to get something done; if I’m going to get it during my term. So we started right away, and we got it through. We got it through the
Criminal Rules Committee, and got it through the Practice Committee. And it
got to Judicial Conference committee, and they dumped it. [Rubens laughs]
Didn’t make it.

Rubens: And that’s it? That’s basically it?

Jensen: Yes.

Rubens: Got to go back to the drawing board?

Jensen: Back to the drawing board. And it’s still something that has to be done.

Rubens: How long do you sit as Chair? What is your term?

Jensen: I was Chair for three years.

Rubens: That’s the term?

Jensen: Yes. I was on the committee for a couple years before that. The Justice
Department should look at this. I’m responsible in a sense, in terms of how
much I could do when I’m there in Washington—.because you’ve got enough
to do without doing completely new rule changes, when you’re at the Justice
Department. But one of the things they have to look at is that over and over
again, you see major cases where they are tried through this process, and you
get a conviction, and the case is reversed because of failures of federal
prosecutors to make disclosures. It happens over and over again. And there’s a
level of culture in the federal system that says, “We don’t have to turn things
over, and we can now decide what we should turn over.” And the way you
make those decisions are basically against turning things over. So you have a
culture of nondisclosure; whereas you don’t have that in the state systems.
You can’t.

Rubens: Yet you’re saying you have this phenomenon of hang-up.

Jensen: Yes; you get to a problem where the culture of nondisclosure puts you in a
position where you lose big cases because of what you’ve done. And
ultimately, they’re going to have to change this because it just doesn’t make
sense. But that was what this thing about discovery is—and Yamaguchi would
be very concerned if I am doing something to change the rules to make the
level of pre-trial disclosure greater for prosecutors, because he’s got the
institutional bias.

MLJ: But didn’t the Northern District Court, as a local body, write its own rules?
And don’t they essentially require full disclosure?
Jensen: You can write those, yes; but they can’t write a rule that’s different than the Rules themselves. They can write rules that are consistent with that.

MLJ: They can strongly encourage practice that’s—

Jensen: Yes; they basically do. The rules, the Local Rules, in effect, encourage disclosure. They can even say that you’re required to turn this over. If you wanted to litigate that—the US Attorney could probably litigate that and take it to the Ninth Circuit, and the Ninth Circuit could say, “No, you can’t have a Local Rule that conflicts with the national Rule.” But nobody wants to do that, so it doesn’t make a difference.

But you can, in effect, have an informal system that has a little more formality to it because it’s a part of the Local Rules, which are structured by the judges, as opposed to simply a decision by the US Attorney to behave in a certain way. So that structure exists. And I think there’s basically, in this District, unanimity about the fact that you should not have a practice where you don’t make pre-trial disclosure. I think the US Attorney’s Office adopts that, and we don’t have any problem with that, generally. We can therefore have trials where there have been disclosures along the way in ample time such that there is no disruption of the trial.

MLJ: Although there are still remnants of the notion that the prosecutor doesn’t have to disclose in the federal system; for example, even at the time I was practicing, there were people who were of the opinion that the prosecutor didn’t need to share a list of witnesses with the defense.

Jensen: They said they don’t have to?

MLJ: Yes; and if you think about it from a defense perspective, if people start getting up on the stand and you don’t know who they’re going to be, you can’t really prepare for trial. It’s just an odd way to look at the system.

Jensen: But to me, they can’t do that. The court can order that – I can tell the prosecutor, “I’m not picking a jury until you tell me who your witnesses are, because if I pick a jury—one of the issues is going to be whether a potential juror knows any of the witnesses.” And it’s become significant in some cases. Not generally; but it just makes sense that everyone know what the case is. You can’t take the position as the prosecutor that “I’m not going to tell you.” That’s a part of this culture that I think is ultimately going to go away; but it’s going to take a long time.

Rubens: I think I’m going to have to wrap up today. But I want to just ask you whether you moved along in the committee structure?
Jensen: Well, I went through that, and then I came to the point where my term was over and I left.

Rubens: Well that, I understand. Then were you appointed to another committee?

Jensen: Not the same one. I wasn’t reappointed. I don’t think they do that. The only significant reappointment I’ve had is to the Multi-District Litigation panel.

Rubens: Okay, which we’ll get to; but in terms of the Practice Committee, did you ever get onto the—

Jensen: I never was appointed to that.

Rubens: That sounds like a good committee to be on.

Jensen: Yes, it is.

Rubens: [laughs] As well as the Judicial Conference.

Jensen: Yes; well, that one, you’ve got to get there by being the Chief Judge of the Circuit, which I’m never going to be; or Chief Judge of one of the Districts, which I’m never going to be.

Rubens: Okay, so Practice, you could’ve—

Jensen: I could’ve been on that; I could’ve been appointed to that.

Rubens: What is your status now? You’re active, but emeritus?

Jensen: I am a Senior Judge. And in theory, I can be appointed to other committees as a Senior Judge, but my sort of sense is that now I’ve done my duty for—

Rubens: Public service.

Jensen: I think you should do that – serve on the committees—it’s a good thing for judges to do. I would highly recommend it to anybody who gets the opportunity. But I think it ought to be something that’s shared, and that other people should get an opportunity to do it.

Rubens: Yes; I just wanted to clarify; you’re saying all of your colleagues are serving on committees?
Jensen: Yes.

Rubens: It’s done. People don’t shirk from their—

MLJ: Well, locally—

Jensen: Oh, no.

MLJ: —not necessarily nationally.

Jensen: We all serve on local committees. And the Chief Judge can tell you that you have to serve on a local committee. In the national, it’s—

Rubens: It’s at the discretion of the—

Jensen: —yes; of the Chief Judge in the District. As to the national committees, you’re drawing from a great big pool, so the question is whether the Chief Justice of the Supreme Court is going to appoint you or not. So those are not at all something that you can either decide to do or not do. You can decide “I’d like to do it,” but you don’t necessarily get to do it.

Rubens: That’s one of the things we were going to talk about, the judicial structure. We didn’t talk about this ten-year case about a hotel ordinance.

Jensen: Yes, that we can talk about later.

Rubens: Ok; and I want to talk to you about sentencing and about wiretapping, and then about your legacy. So we have at least one more session; but for now, is there anything else that came to mind while we were going through this that you’d like to discuss?

Jensen: No, not of any great significance.

Rubens: So we’ll end for today. Oh, did you tell me off tape that you watched the television show Law and Order?

Jensen: I watched Law and Order, and I prefer “Order” to “Law,” because I don’t like the prosecutors on the show.

MLJ: We should ask about the “CSI effect” on juries.

Jensen: Yes, I don’t see much of that, but it’s an interesting problem.
MLJ: Because juries come in with an expectation that—

Jensen: —of what’s going to happen.

MLJ: —the examination of the evidence, or the depth of the information you have about the evidence presented is going to be comparable to what’s on CSI—

Jensen: Yes; “Where’s the DNA?”

MLJ: On CSI, So they go in to a crime scene and they say “I can tell by this speck of dirt that I analyzed”—or “See this bug decomposition: I can tell that this means” – and jurors expect that to happen.

Rubens: That’s interesting.

MLJ: So as a trial lawyer, there’s a set—

Jensen: It’s more of a problem in the state system, because you see, in the state system, you have a whole bunch of cases that are “whodunits.” The defense says, “It wasn’t me.” And in the federal system, you don’t have many of those at all; very rarely do you have a “whodunit” in the federal system. You know who did it; it’s just a question of what they did. But the state system has a whole bunch of cases where you have a robber or somebody charged with rape or whatever, and these are “whodunits.” That’s where you want to exhaust all the avenues of investigation, because whenever you get to “whodunits,” it becomes a tough thing.

MLJ: It’s a matter of setting expectations for the jury. For example, by telling them up front “You’re not going to see this, you’re not going to see this, you’re not going to see this.”

Rubens: Oh, I see; that’s what you’re saying about being prepared.

Jensen: Well, routinely now, whenever you have a situation where there could be fingerprints, like in a gun case—we have a lot of gun cases where you take away the gun, and you don’t have the fingerprints of the defendant on it. So you have to put on a witness that says, “This is why we don’t have fingerprints. Because you don’t get them on guns. they don’t happen.” But the jury expects you to have a fingerprint, or to explain why not.

Rubens: That’s so interesting. I had asked you earlier about Perry Mason and film noir. There’s a long history in the culture of this country of infatuation with criminal law.
MLJ: I used to stand up and say, “Nobody’s going to get up in the back of the courtroom and say they did it. So knock that thinking off now.”

Jensen: Yes, it doesn’t happen.
Rubens: Recently Thelton Henderson was presented with the oral history done by our office. Were you there?

Jensen: Yes. It was nice. It was a nice low-key kind of thing. There were some of the Bar people there, old timers.

Rubens: Who are old timers?

Jensen: Mel Goldman from Morrison Foerster, say, and the guy who’s on the—

Rubens: Henderson mentions that before he was appointed as a Judge, that he had to go before two committees—The two senators at the time were Cranston and [Samuel Ichiye] Hayakawa. It was Cranston who really appoints him, but there has to be a vetting by Hayakawa. And maybe that’s just—

Jensen: Well, that’s political, because—basically, what that is, is that at the time he was appointed, Carter was president. And you had a Democratic senator, who was Cranston, who would be the source for all of this. Then you had a Republican senator. The question then becomes whether the Republican senator wants to veto the Democratic pick. So that’s what you talk about.

Rubens: And then he mentions one other person. I just wondered if you knew him. He mentions Sam Williams.

Jensen: Sam Williams was a lawyer—

Rubens: I think he’s an African American.

Jensen: —in Los Angeles. He was a lawyer, and very well respected. Let me see, was he—?

Rubens: He went to school with Henderson; and he seemed to have some political clout. He seemed to be able to speak to Cranston.

Jensen: I don’t know whether he held an Office down there or not. Maybe he was on the Board of Supervisors or something. But he was a very well-respected figure in Los Angeles. He’d been an athlete.
Rubens: So he had some kind of political clout. I think the biggest clout for Henderson was John Doar, who had been Henderson’s boss in the Department of Justice during the civil rights movement.

Jensen: Sure, sure.

Rubens: All right. We mapped out a few things that we wanted to cover. We talked about your judicial nomination process, and we were talking a little bit about observing the hearings for the—

Jensen: For the Supreme Court appointments?

Rubens: —appointment of the Supreme Court. I wondered, if we were to put you in that spot right now, would you be able to give a summary of your judicial philosophy? Is there—

Jensen: I don’t see how you can. The only judicial philosophy that I think you could articulate is that I will follow the law and be fair; and give everyone a fair opportunity to be heard. This is the old business about “make the law versus follow the law.” I would say I do not make the law, I follow the law. Now, for the Supreme Court, it’s somewhat different; it’s easy for me, in a lesser position, to say I simply follow the law wherever it takes me, because I must. I’m in the Circuit, and the Circuit tells me what to do; the Supreme Court tells me what to do, and I do it.

But at the Supreme Court level, you have another aspect of this, which is that you do make the law, in a sense. Your interpretations become law. So that’s a little different. And I don’t know that I’d be able to articulate any kind of way of putting myself on the spectrum. I think I would be a conservative within the mainstream. [laughs] All right; see, those are the—the way one speaks at this time. And I suppose people understand what that is. I would think that if I say I’m a “conservative within the mainstream,” then that supposedly means something.

MLJ: I don’t know what that means.

Jensen: Well, I don’t know what it means, either.

MLJ: Are you articulating your own judicial philosophy?

Jensen: No, it’s not my own philosophy, that’s—

MLJ: That’s what you think that Alito might have said.
Jensen: I’m thinking that that’s essentially what he was saying.

MLJ: How would you define your judicial philosophy?

Jensen: Well, I am in the mainstream; as far as I understand what it is. I follow the law. I don’t go outside the law, and I don’t make things up. I follow facts and laws as rigorously as I can. And I think that’s mainstream.

Rubens: I thought that’s what you were going to say, because you basically said it for the Supreme Court Justices. But I hadn’t asked it of you. And when one looks at so many of the decision you make—I was looking a little more carefully at the Vietnam fisherman’s decision regarding what laws govern the use of gillnets. You simply say that California’s law prohibiting the use of gillnets only extends to the waters three miles off the coast, I think. Federal law—

Jensen: Goes beyond.

Rubens: —goes beyond, and so this doesn’t apply. You were talking about an evidence case earlier. You’ve gone after corporations, you’ve gone after criminals. It seems to me that that’s the basis on which most of your—

Jensen: I think so, but it may be that if you go back—remember the Matrix case I was talking about? When that case came into the courts, the question was whether you’re going to enjoin this sort of thing. The case gets assigned to me, and then there was some comment in the paper saying, “Well, you’re really not going to get anywhere with him; he’s conservative, a prosecutor,” and all this kind of stuff. And maybe they’re basically right. They didn’t, ultimately. I didn’t grant an injunction. But I don’t know how one defines that. I don’t think there’s any question but what I decided there was in the mainstream. And maybe it was somewhat conservative, in that I gave some credence to the ability of the executive to make decisions to reasonably exercise the police power; but those are the things that I would give credit to.

Rubens: Well, maybe we’ll get to open that up a little bit more with a couple of cases that I want to talk to you about. I think you’ve also ruled on many taproot issues—corporate malfeasance, violent crime, extradition, immigration. But the areas I want to get to have to do with wiretapping and jurisdiction, finally leading up to the Sentencing Guidelines. But I just want to ask you, would there ever be an instance in which you’d rule on abortion? That seems to be such a litmus test today for “strict constructionist” versus “activist.”

Jensen: But see, I go back and look at precedents in making decisions. There may be a case where it’s an application of an existing federal law that implicates the laws dealing with abortion; it may implicate privacy rights, that sort of thing.
And I could rule on it, but it would only be if it’s a case within my level of jurisdiction. I wouldn’t be making policy judgments about it; I’d be making judgments of interpretation about what the law is. But I go back in abortion to when it was illegal. I’ve tried abortion cases.

Rubens: When you were DA?

Jensen: When I was in the DA’s Office as a young prosecutor. I was there actually, when they started changing this. We implemented, I think, some of the first laws that came through the Reagan administration, which outlawed abortion, but for cases of incest, rape or the health of the mother—danger to the mother. And at that time, we would actually “certify” cases. There may be cases involving rape or incest, basically rape, and we would certify whether or not the case fit within an exception that allowed an abortion because this is a rape case. Those cases got sent to the prosecutor’s offices to make findings, and we did that.

MLJ: And you actually tried abortion cases? Were these misdemeanors you were trying in Oakland?

Jensen: No, I tried felony cases, where they’d done them in alleys with crude instruments. It was a really terrible thing.

MLJ: Was there an injury? What was the standard for the exercise of prosecutorial discretion?

Jensen: Yes; the mother was injured. The baby was born, but the mother was injured.

MLJ: So it wouldn’t be a doctor’s office.

Jensen: Not a doctor’s office.

MLJ: Would be some other traditional criminal reason to exercise discretion to charge the case? Because a felony abortion seems harsh.

Jensen: I don’t think so. Well, but this was—it was based on the abortion; the actual abortion. And it was a back alley abortion.

MLJ: But in deciding whether to charge it, did there have to be something else?

Jensen: I think there would have, if you were talking about regular medical people. I don’t know any cases we had where there was a regular medical person. The
real evil here was that the abortion was performed by somebody who was not a medical practitioner.

MLJ: The way I could see you potentially being in a position to make a decision on a social issue like abortion in your capacity as a trial court Judge would be, for example, if a proposition were to be passed in California—which I think has come up with some of your colleagues—and then there’s an injunction or a suit to declare it unconstitutional. I’m trying to remember what the ones were. I think Claudia Wilken had one.

Jensen: Well, Thelton had one, and I think it was 209, when it was passed.

MLJ: Right. So in that context, you could be making a ruling.

Jensen: Yes, I would have those that would be—by the random draw, I could get something like that. But I haven’t had anything like that.

Rubens: That’s why I’m asking you; but just to finish off the judicial philosophy, the other word—“liberal,” “conservative;” Henderson certainly identifies himself as a “liberal”—an “activist.”

Jensen: But see, that’s one of those words where it depends upon who’s being the activist. It could be either liberal activism or conservative activism. Activism, I think, the way I see it, when it’s used in a pejorative sense, is that you didn’t follow the law, you made up the law.

MLJ: Or for example, in the Matrix case, could you define it as conservative versus liberal, not necessarily activism, if one were to make the reach to assume that the police power will not be exercised correctly?

Jensen: Yes, it could be; on the presumption of regularity by the police. And I would approach it from the same point—that I would expect police arrests for quality of life violations to be made on that premise, that they observed a violation, and they didn’t use it as a pretext to just clean people out. Other people may say, “I think the police are just cleaning people out.”

Rubens: Okay. And then there’s a case I want to bring up which raises another area in which the liberal/conservative definitions get blurred by the question of what’s activism. The case discusses the extent to which the Department of Justice might be able to exercise a certain power because there’s a greater national interest. I think it begins in ’93. It has to do alleged illegal arms trading. There is a CIA agent who makes a claim that a key affidavit submitted in the trial said that top Justice Department officials knew something was false about the facts presented. What I don’t understand is that
by then we’re talking about 2000. And in 2000, this article says that there is a trio of judges involved; (Stephen S.) Trott in the Ninth Circuit Court of Appeals, you, and retired District of Columbia Judge Stanley Sporkin, who all have solid reputations. What will the impact of this be? You declared you—

Jensen: Oh. See, the reason the three are in there is because I was head of Criminal Division while this was going on; and then Trott came in to be head of the Criminal Division, and I moved on to be Associate Attorney General; and while this was going on, Stanley Sporkin was general counsel for the CIA.

The affidavit that was introduced at trial was an affidavit by a CIA executive officer that was introduced into evidence by Department of Justice attorneys in a trial in Texas. It was introduced because it was relevant to respond to Wilson’s (the complaining CIA Agent) defense that he was doing what he did because he was acting for the CIA. He was actually an agent. So the question was, was he employed by or did he work for the CIA? And the affidavit said “no,” he wasn’t. But it did set out what kind of contacts he’d had, and what he had done for the CIA—he did have a lot of contacts with CIA people.

So after this affidavit was introduced at the trial in Texas, the CIA – their IG—said it was incorrect. They then tell us at the Department that it’s incorrect. And then the question is—what is the response of the Department?

Ultimately Wilson was convicted at trial, and then he brought an appeal during which there were some disclosures made that were different than the affidavit. But the contention is—and it was adopted by a District Court; they granted habeas corpus on this – that there was inadequate disclosure, and that therefore, there had been a level of deception in the affidavit and in the disclosures by the Department after it found out that somebody in the CIA said that it wasn’t an accurate disclosure. Wilson’s now on trial.

MLJ: He’s being vague deliberately.

Jensen: No—in a way. Well, but it’s hard to tell what is happening. The original trial was an arms trial in federal court in Houston. Wilson, a former CIA operative—he’d worked for the CIA for some time, but he’d also been gone for a long time—is charged with arms delivery to Libya. He puts up a defense that “I did it because I was working for the CIA.” In contravention of that, the Department puts in an affidavit by a CIA person who searched the records and who states what is in the CIA records—which Wilson didn’t work for them. All right, then later on, after the trial, they put in—

Rubens: So this is not true, but you’re head of the Criminal Division, and so you’re culpable, they’re saying—
Jensen: Well, there are meetings conducted where this was concerned. This is a big, high profile case. So you know I have to know what’s happening. There are meetings before me, and meetings which I attend, and which Trott attends, and which Sporkin attends. But if you now say, “What happened at the meetings—?” If it’s written down, maybe, okay. But I don’t remember what happened in 1983. I don’t know that. But the thesis is that there was some sort of, in effect, a deception at the trial by putting in an affidavit that was known to be an inaccurate or incorrect or false affidavit; and further deception thereafter, by failing to disclose this properly. That’s what the issue was.

Rubens: Okay. You’re being named? They’re not going after this—

Jensen: There’s a civil rights suit that’s been filed since then, probably in-

Rubens: 2000, okay.

Jensen: But what happened was a District Court in Texas granted habeas corpus to Wilson on the basis that he had been deprived of due process. So then he files civil suits. They filed civil suits against all those people that were involved, including the trial lawyers, and everybody who was specifically put on the case when it was tried, and the people who handled the case when it was being considered in terms of what happened on appeal. So there’s now—and this is relatively new—a civil rights lawsuit that’s been filed.

Rubens: Have you been called to testify?

Jensen: No, no. It’s all at the preliminary stages right now.

Rubens: Do you anticipate that you will be?

Jensen: I don’t know. I’m sure they’re going to have motions with reference to this, in terms of whether or not it’ll be dismissed.

Rubens: I’m trying to fit this into a liberal/conservative dichotomy. That may be wrong. When I was questioning you about your years at the Department of Justice, one of the big political cases that was going on that concerned liberals was the Iran-Contra sale of arms. So when I came upon this I said, “Oh, okay, is that a wedge back to certain political decisions, certain ways in which policies are operated?”

Jensen: I don’t know how that fits into the whole conservative thing. I don’t know.
MLJ: Maybe I can ask you some specifics to clarify this—the case that involves Mr. Wilson is being tried by a line trial attorney for the Department of Justice who’s in Texas?

Jensen: In Houston. The United States Attorney’s Office—

MLJ: And he’s putting this affidavit in evidence; and because it’s a high profile case and there’s a problem later, you get notified about this affidavit? Do you have anything to do with drawing up the affidavit, or putting it in evidence, or anything like that?

Jensen: That’s done by the CIA. And it’s done by the line attorneys. I know that it’s going on, because I’ve been kept apprised on what’s happening with the trial. But see, it’s not just one trial. There were multiple trials of Wilson. He was tried first, I think, in D.C. or something like that. I think he was acquitted. Then he was tried in Virginia, and he was convicted. Then he was tried in New York. He was tried in New York for arranging to have the prosecutors killed while he was in prison. So he’s tried there, convicted of that. Then the Houston, Texas trial goes on. It’s being tried by prosecutors in Houston, plus one of the prosecutors from Virginia who’d been involved in this whole thing along the way.

MLJ: So you’re not really making political decisions with respect to it, it’s just you’re aware that it’s going on, and that certain evidence is being used, and you are kept apprised?

Jensen: These are not real political trials. We do have meetings at the Department in terms of what’s going to be done regarding putting together an affidavit. I know that there were some meetings—well, I shouldn’t say that I really know—I know there are some records out there where it’s written down that meetings were held.

MLJ: I guess I’m trying to determine whether—I think Lisa’s pursuing a line of questioning where she’s positing that this may be part of a political bias present in the Justice Department when you were there—vis-à-vis arms to Libya, or Iran-Contra, things like that. Could this case be characterized as being part of a political agenda?

Jensen: This is just a criminal case. It doesn’t have political kind of dimensions to it. But it’s high profile.

Rubens: Yes, high profile, that’s a good phrase. Now, let me ask you about two other cases—one has to do with wiretapping, and the other is about jurisdiction. The other day I was talking about jurisdiction over political prisoners in
Guantanamo. And it seemed to me that it was one of the few times that the Supreme Court was ruling against the direction in which the Bush administration was going. The jurisdiction case has to do with when the Senate first bans appeals to the Supreme Court by suspected terrorists detained by the Department of Justice. Am I saying this right? These are detained by American military forces, and transferred to Guantanamo. The question becomes, who has jurisdiction? Is it the military courts, or American civil courts? And the Supreme Court said it’s the military court. It seemed to me that the Bush Administration was trying to get—

Jensen: Well, obviously, I don’t know what the decision-making process is or what had been decided in the present Department. When I was there, we had something, not the same, but similar, in that there was an influx of what were called Marielitos. These people came from Cuba. What happened was that, in effect, Castro emptied the prisons and insane asylums in Cuba and sent those people up to the United States. And so here are all these people who show up—

Rubens: So this is during the Reagan Administration—?

Jensen: It was when I was there. What are you going to do now, when you have these people? They’re here illegally, at some point. So the question is, in housing these people—what are the justifications for it? We decided that there should be a process; and we set up procedural kinds of mechanisms to look at what was the threat they posed, and then hold people on the basis of the overall threat, rather than just because they’re Marielitos. But there were people in custody because of their status.

Rubens: Right. And the United States was unprepared to deal with the influx of these people—my memory was that, again, there was a kind of liberal/conservative dichotomy, and that some said that the US took them, and took so many, because it was part of the whole anti-communist agenda—whereas they were not taking refugees at the same time from Haiti.

Jensen: There was something like that. But that really wasn’t our issue, in terms of what to do—

Rubens: “Yours,” meaning the Department of Justice.

Jensen: Yes. The issue was that we now have Marielito people who had come to the US, and they’re here illegally now. The question is what are we going to do with them? Because Cuba won’t take them back. All right; so we have to decide, “Are they going to be locked up or not?” Okay. And we went through a process and set up a mechanism for performing a review of each case to
make decisions as to whether or not the person would be locked up. But there were people locked up on the basis of them being here illegally.

MLJ: Did those people have the right to challenge their detention through the Immigration Courts?

Jensen: Well, the Immigration Court doesn’t really have any jurisdiction over whether or not they’re detained. It may have, in terms of whether they’re coming through the immigration process; but this process was really outside of that. This is a question of holding the people—

Rubens: Yes. It had to do with the numbers. You didn’t have those numbers of refugees coming, for example, from Haiti.

Jensen: Right. We built facilities for them.

Rubens: Yes. But I’m trying to say that it seemed to bespeak a tendency, a leaning, a political outlook that the Reagan Administration had—whereas a liberal Administration might have been more open to—

Jensen: -saying, “Let them go.”

Rubens: Or been more open to Haiti.

Jensen: The liberal position would be, “Don’t hold them without a specific kind of trial and a charge.” And our position was that we could hold them because of their status. So the distinction would be that the conservative says, “Hold them.” The liberal says, “Don’t hold them without the criminal justice process being involved.”

MLJ: Were they being held across Administrations? Were they held in both Republican and Democratic Administrations? I thought they came in under Carter.

Jensen: I think they originally came in during the Carter Administration. But they’re still here during the Reagan Administration.

MLJ: So they obviously were held by Carter. I’m just wondering if any Marielito challenged their detention, like some of the people in Guantanamo are trying to do.
Jensen: I don’t know if there were any cases in terms of habeas corpus. I don’t remember any specific habeas corpus cases, for example, being based upon that.

Rubens: The Patriot Act and the extent of wiretapping is in the news now. And I don’t think I asked you about how much wiretapping is going on when you’re at Justice—you said you have to give approvals for—

Jensen: I had to approve a regular wiretap, one that is brought to me on the basis of a criminal investigation—let’s say you’re going to investigate a narcotics enterprise – in order to get a wiretap, you have to start with the agency who’s doing the investigation; for example, the FBI. The agency has to put together all the investigative material that satisfies the law in terms of whether or not you can get a wiretap—which basically is to show probable cause that the crime’s being committed; that these people are the ones committing it; that these phones or these communication devices are being used; and they are being used in order to carry out the enterprise.

MLJ: But don’t you also, for a traditional wiretap, have to show that that’s the last possible avenue of investigation available to you?

Jensen: Yes; you have to show that regular or normal investigative proceedings will not be sufficient to make the investigation and make the charges. So there has to be a level of saying, “This is an investigative technique that is warranted because other techniques can’t be used.”

Rubens: So you certainly proved this as a DA.

Jensen: Well, we didn’t have them – they don’t have them in the state systems—there was no wiretapping in California. But I had it when I was at the Department of Justice. It starts with the investigative agency, however, and it goes through an approval process. Let’s say the FBI’s doing it. First it has to go through an internal FBI approval process—it runs through the Director. The Director of the FBI has to approve these things before they come to the Justice Department. When they come to the Justice Department, they’re screened in the Criminal Division by a group of lawyers who are skilled with this. That group goes through the application to see whether or not the wiretap that’s being requested is warranted legally; then it goes to the head of the Criminal Division. Or it is delegated to other people who are specifically delegated to hear these things, or to, in effect, rule upon them. They have to approve it. Then it comes to a judge. The Judge has to go through the same process. So you’ve gone through the agency, the Department of Justice, and a judge, before the wiretap comes into existence. But that’s just for a regular wiretap.
MLJ: Has any part of that process changed under The Patriot Act?

Jensen: As far as the District Courts now, as to issuing wiretaps, there’s no difference at all now from the past, in terms of what kind of approval process you have to go through.

Rubens: How often are you—Is this a feature of your—

Jensen: Doesn’t happen a lot, no. Wiretaps are also spread out among all the judges just as cases are — it’s the same thing. They get assigned randomly to judges. When you’re the general duty judge or that sort of thing, you get it.

MLJ: That’s interesting, because we were talking about the role of the Magistrate Judges last week. And it may be that you don’t see certain things because you’re a District Judge, not a Magistrate; but, for example, there may be a request from another jurisdiction to get limited phone records — say, records of calls; or there may be requests to get email traffic or web addresses that have been visited or something, that could—

Jensen: Go through the magistrate.

MLJ: —they all go through a Magistrate by virtue of The Patriot Act. Whereas previously, maybe, if you wanted to look at somebody’s web address in Colorado—

Jensen: Well, but I don’t think The Patriot Act changes anything with respect to getting a regular wiretap. You cannot get it by doing anything other than the process I’ve just described. That’s only the process to get regular wiretaps, though. There’s foreign intelligence surveillance, however. That’s a separate process. And that has to run through a court that is appointed by the Chief Justice.

Rubens: That’s the FISA, right?

Jensen: That’s the FISA Court. And there, the criteria are different than probable cause. They have all different criteria. But to get a FISA warrant, you also have to have approval. And the approval has to come through the Agency again; and through the Department of Justice; and through either the Attorney General or the Deputy Attorney General. At least that was true when I was there. And only then does it go to the FISA court. Those matters are outside the realm of criminal investigations.

There has been discussion about whether or not the FISA Act said you can’t have any wiretap other than by going through our process. For FISA requests,
the Department uses a process that’s separate than the sort of Title III process, which is the regular process for getting wiretaps approved. But as I understand it, what the Administration is saying is that they don’t have to go through the FISA Court—that they’ve received authorization to bypass FISA through congressional action, in terms of what the president can do. And the president now, as Chief Executive, can now decide that we’re going to listen in to conversations that we think are terrorist-related.

Rubens: Right. That’s exactly the clarification I was looking for.

MLJ: You’re familiar with the FISA Act, and you’ve heard what this Administration has to say. Do you think that they have any authority whatsoever to bypass the FISA process?

Jensen: I don’t know what’s happening. The devil’s in the details in a lot of this stuff. I’m not saying that I think that there’s a constitutional prohibition against presidential orders to overhear, to intercept communications. I think that there are circumstances where you can do that. But I don’t know what they’re doing. I don’t know what the specifics are.

Rubens: Yes, so you would say it’s based on specifics. Now regarding another case—this is taken from a story in The Recorder in ’97 that says you had taken an extremely rare step of throwing out government evidence gleaned by a wiretap. You approved a wiretap in ’93 for a suspected heroin kingpin. Judge Vaughn Walker says the government agents engaged in a deliberate attempt to mislead the court, characterizing the government’s affidavit as deceptive; and its failure to divulge some of its activities, reckless.

Jensen: That’s Vaughn Walker’s decision. I didn’t throw it out, but I think that what happened was that I had authorized that wiretap as the original judge, in terms of going through it.

Rubens: Based on the application?

Jensen: The decision was that the agents had not given me the entire evidence at the time, and that they should have. And that one, I think there was a very lengthy decision written by Magistrate Judge (Wayne D.) Brazil on that; he’d written a recommendation which Judge Walker adopted, saying that—like we’d said before, is that this was a situation where there were other avenues of investigation still available. They shouldn’t have gone into a wiretap. And the decision concluded that I had not been given all the information so that I had not known about that when I approved the wiretap and that therefore, the tap was illegal—because they had not given me all the information they should have.
Rubens: I’m trying to not necessarily link all these things, but these kinds of issues come up – do people in departments strategically withhold information or give misleading information to—

Jensen: Well, I’ll give you an example. Here’s a policy decision that was made when I was back in Washington. It is the case that you have the ability to wiretap. Okay. There are different levels of concern about this. And this is something that should be used as a last resort—it shouldn’t be over-used at all. When we got there, I think there was a basic policy decision that had been made by the previous Administration to issue only so many wiretaps each year; so you had to get within that cap. And if you wanted another wiretap that year, and if it was over the cap, you didn’t get it. We changed that. But that’s a policy decision.

Rubens: Yes, I get it.

MLJ: Were there also policy changes for, say, charging; or arguments that could be made on sentencing; or positions that the prosecutor could take with respect to bail? Any other policy decisions the Department made that affected practice around the country?

Jensen: Well, the sentencing and the bail decisions came about because of the enactment of the Crime Bill in 1984; so those had not existed before. The determinate structure, we went through this before.

It hadn’t been in existence until the Act of 1984. That set up the Sentencing Commission, and ultimately the Guidelines. That was also the Act that allowed pre-trial detention, which hadn’t been permissible before. So that before ’84, there was an absolute right to bail. That was in the practice, and that was basically what was said in Court. But the statutes in ’84 set up criteria where a person could be held pre-trial, and without bail. So that happened in ’84; and it was something that we backed as part of a legislative change. I don’t think the previous Administrations had much chance to focus on this because this whole Criminal Reform Act had only come into existence at about the end of the Carter administration. I think maybe one year before. When we got there, the question was whether or not to support this comprehensive criminal reform. We went through that, and decided that we would. That included sentencing and bail reform.

MLJ: Let me ask about the policy of sentencing. I’m probably jumping ahead a little bit, but let me pose a hypothetical regarding how a Department decision on policy could affect what’s going on in local courts—determinate sentencing comes in—and one of the arguments about the evils of determinate sentencing was that it gave too much power to the prosecutor, because they could determine, based upon the charges in the indictment, what might happen at
sentencing by, for example, charging to assure application of mandatory minimum sentences. So there was a time that the Department of Justice—and I frankly don’t know if you were there or not; I don’t think so—came out with a policy that said the prosecutor must charge every reasonably provable crime; and those crimes could add on a mandatory five years to somebody’s sentence. Whereas a prosecutor formerly had discretion to say, for whatever reason, “I’m going to give this guy a break, and I’m not going to charge this mandatory enhancement.” The Department issued a policy that said, “No, you have to do it, no matter what.” The Thornburg Memo.

Jensen: The Thornburg Memo is after my time. But it’s not as though it didn’t occur before that, in the sense of decisions that are going on out there. The basic rules were you charge who you’ve got to charge; and you charge whatever the evidence supports. And you don’t negotiate things by making something up. If, say, you have an arrest for narcotics and the person was armed with a gun at the time, and that enhances the sentence, you don’t go tell the judge there was no gun. So you don’t say anything that didn’t happen. But then the question is what do you charge? And you charge the maximum available under the facts. Now, there are subtleties underneath this, such that even with the Thornburg Memo, you don’t necessarily see the maximum always charged.

For example, drug case; person has prior convictions for drugs. One prior conviction, for example, can get you from a sentence of from five to forty years in prison, to a sentence of ten to life. But if you do have a prior conviction, it can’t be used by the court unless the prosecutor actually formally charges it separately from the indictment. So you may have an indictment for drugs, and there may be a prior conviction, but unless the prosecutor files that separate document which contains a formal accusation against the defendant alleging the prior conviction, it’s not used by the court for purposes of mandatory minimums. So whether or not you file that is a discretionary call by the prosecutor. That’s separate from the crime itself.

MLJ: But aren’t there policy decisions being made by the Department of Justice whereby it comes out with an edict to everybody around the country that says, for example, “You shall always file that independent charging document on that prior conviction, no matter what”? When you were at the Department, did it ever issue such a policy decision?

Jensen: I don’t think there was any memo that came out that was as clear cut as that. Most of the memos have an escape built into them, in that they recognize that there is such a thing as prosecutorial discretion—which is in fact, legal. I think that everybody assumes a level of value in this, in terms of prosecutors trying to make up their minds about what ought to be charged, and what’s appropriate under any given circumstance. That’s an exercise in discretion.
And so now there isn’t anything that says the prosecutor must file all prior felonies – because it is a fact that they don’t do it all the time.

MLJ: Now sitting as a judge, when you’re now with an indictment that is before you which has got every possible enhancement on there and every mandatory minimum, —now you’re the judge, and you have no discretion—which is the complaint that some judges make about the sentencing guidelines—how do you now feel about that?

Jensen: Well, I think mandatory minimums are too high. I’m not sure that I think that the concept of mandatory minimums is totally out of the picture; but I think it should be done in a much more discrete and appropriate way. The mandatory minimums that exist now in drug cases are arbitrary and high—and they don’t depend upon a whole history of sentencing process. Remember when I talked about the Sentencing Guidelines being based upon the history of what had gone on, in terms of actual service of time? Well, that all got trumped, in effect, by the 1986 Act, I think it was, where you came in with the mandatory minimums. Congress came in with the mandatory minimums over the top.

When Congress decided that the mandatory minimum was going to be five years or ten years, that’s simply an arbitrary decision. It had no basis in terms of existing data. So in effect, it moved up the sentences, as far as drugs are concerned—now, that’s a political decision; a social decision; in terms of how you’re going to approach the problem of crime control. And Congress approached it by having basically very high—I think now the basic word to say is “draconian” kind of sentences for drug cases.

MLJ: I was going to ask you about the political aspects of sentencing because, as you point out, the Sentencing Guidelines are a judicially-implemented kind of system that’s based on experience with sentencing. And mandatory minimum sentences are imposed by Congress, so when the fashion of the day was that we needed to deal with drugs; all of a sudden we had mandatory minimums in drug cases. Then the fashion of the day was to be worried about child pornography; and now there are mandatory minimums in child pornography cases. So where do you see this balance coming out? And doesn’t the imbalance undermine the Guidelines when Congress simply wants to look tough on crime?

Jensen: Well, I think it does undermine or—it trumps the Guidelines, is what it does. In the drug cases, if you had used the process they use for the rest of the crimes, where you used historical data to show what sentences had been imposed under what factual circumstances; you would have a much lower sentencing regime for drugs than you have now - because the mandatory minimums changed that. The mandatory minimums move up the sentence ranges. And the way they did it was to require the Sentencing Commission
follow the law in creating the Guidelines. The law says, “Here’s the mandatory minimum. And you can’t have a Guideline that doesn’t have some sort of relationship to that.” So the Guideline Ranges were moved up based upon the existence of the mandatory minimum statute, right?

So in terms of whether or not you should have a mandatory minimum at all—this is what I was saying before—there may be circumstances where it makes some sense. The first mandatory minimums I can remember that were a part of the criminal justice system were based in California. In California back in the seventies, you had this legislation with reference to robbery. And the legislation was “use a gun, go to prison.” That’s a mandatory minimum. And see, before that judges had discretion to say, “I don’t care whether there was a gun used. I’m going to sentence you to probation whether or not that happened.” That was the legislature then saying that we think the public will is such that there ought to be a higher level of sentence imposed. And I’m not sure that I think that “use a gun, go to prison” is the kind of problem for mandatory minimum that the drug minimums are, because it’s less arbitrary, in a sense. It’s specific. It deals with a kind of conduct that applies to the whole population. With the drug stuff, tying the sentence to the amount of drugs involved was simply an arbitrary decision as to where the cutoff points should be.

Rubens: Do we have this in other domains? Is this a general issue for Federal—

Jensen: Generally, there are not mandatory minimums. It’s only in certain areas. As Marcia was saying, they’re starting to move it into child pornography, which they didn’t apply to before. But it still exists in drugs. So the present sentencing regime for federal courts is that you have discretion to go above or below the guidelines, but you don’t have discretion to affect the mandatory minimums. If there is, in fact, a mandatory minimum, you do not have discretion to go below that simply because you believe that doing so would result in a more appropriate sentence.

Rubens: So there’s a lot of discussion about this now, right, within judicial organizations?

Jensen: Yes. In any of the criminal justice associations, or at the academic level, or criminal defense law, or whatever, they’re taking positions on minimum mandatory sentences.

MLJ: I’d like to discuss the role of Academia. You told us that when determinant sentencing first came into California that different groups were thinking about sentencing, including Academics. Are those groups now thinking about federal sentencing? And secondly, Guideline sentencing has changed now, with the recent Supreme Court decision in Booker and Fanfan, which
converted the Guidelines from mandatory to “advisory.” How has that changed sentencing, if at all?

Jensen: Here’s how it changes. Last year (2005), the Supreme Court decided the cases of United States v. Booker and United States v. Fanfan. In effect, the Court said that the Guidelines are advisory and not mandatory. By doing that, it means that you use the Guideline calculation; Booker contemplated that the Guidelines still exist, in terms of calculating the sentence. But now the Court can decide to sentence above them or below them, based up some articulated reasons as to why it should, in terms of the overall general purposes of sentencing—because there are recognized general purposes of sentencing—it’s the classic concepts of punishment, deterrence, rehabilitation. You can now use all that to change the Guideline sentence. But you can’t do it with the mandatory minimum. You still can’t go below a mandatory minimum because that’s statutory. That’s not the Guidelines, and it’s not Booker. And Booker didn’t say you can’t have mandatory minimums. One of the concerns was that people thought, Congress thought, that now judges are going to use Booker to impose low sentences – so they thought they should make everything a mandatory minimum. But that hasn’t happened – either the low sentences or the new mandatory minimums.

MLJ: I can’t remember if this was part of the child pornography Feeney Amendment, but there was a movement by Congress to make judges report every sentence imposed that was under the Guideline Range. Is that still out there?

Jensen: They can require that if they want. But now it doesn’t make much sense because—back then, in a sense, you’d be saying that the sentence at issue doesn’t fit within the Guidelines because you didn’t have grounds to depart. So if you gave a sentence that did not fit within Guidelines Departure law, then that was a sentence that they were concerned about, and one Congress should be told about; and that the Justice Department, since they knew what the sentences were, should tell Congress. I don’t know what level of communication still goes on.

Rubens: But it seems to me much of this must be in response to some public sensibility that some judges are too lenient, and some are—

Jensen: Well, that’s where you go back to the determinate structure itself, is that the idiosyncratic system of imposing sentences was deemed to be a system that did not make sense in terms of any kind of overall justice; in that you shouldn’t have the same offender, with the same conviction and a similar background, getting a wildly different sentence from one Court to another. So that whole notion of proportionality was behind determinate sentencing.
The problem with that is the political process—once you put this into Congress and say that Congress should make all these decisions about sentencing—one of the notions in the original Sentencing Reform Act was to create a Sentencing Commission which would be expert looking at all this, and that it should be advising Congress rather than having political decisions being made about this; that they should be made by something like a Commission. Well, that got abandoned pretty quickly. And Congress does look at it.

A very good example of this problem that came up along the way is that you had these really draconian laws applicable to crack cocaine. Crack cocaine is punished at enormously higher levels than powder cocaine. And the impact of that is—there’s no question about this—that since crack cocaine is used more in the African American community, you are now having an impact that has, in its effect, a discriminatory effect on the sentences imposed on African Americans. And when that goes up to Congress, say—and the Sentencing Commission has actually asked Congress to ameliorate these differences and to bring them in line, saying that it’s much too high to penalize crack cocaine the way they do now—the political response was, “You’re getting soft on crime.” So it’s gone nowhere. And it’s gone nowhere through different Administrations. It didn’t do anything in Reagan time, it doesn’t do anything in Clinton time, and it hasn’t done anything in Bush time.

MLJ: That was actually my question. When you look at this politically, the problem of the disparate sentences, the problem of proportionality—politically, the problem is always going to be perceived as the lesser sentence, not the greater sentence. For example, if you compare California and Texas, Texas isn’t going to be perceived as a problem if they’re giving everybody the death penalty; whereas California is perceived as a problem if somebody gets probation. So isn’t the whole process skewed toward high—?

Jensen: I think that that’s true.

MLJ: —so they can say, “We’re tough on crime”?

Jensen: Well, that’s one of the problems with the determinate sentencing structure—is that when you do have it, and you have the ability to control the sentence, and you relate it to a political kind of will, it’s always going to be ratcheted up and not down. And that seems to be true. That seems to have a history of occurring. It’s true with the states and it’s true in the federal system. So when people have gone to Congress and said, “Let’s now do something about this terrible difference between crack cocaine and power cocaine,” one of the responses was, “Okay, let’s move powder cocaine up to the levels of crack cocaine.” Which is horrendous! It doesn’t make sense.
Rubens: Why?

Jensen: The punishments are incredibly high.

Rubens: What I would’ve come in and said is, “Isn’t the damage and level of violence and all associated with crack cocaine much higher than powder cocaine?”

Jensen: I don’t know that there’s anything in the data or the history that gives you the ability to say that—is it hundred times more? Certainly—

Rubens: It would have to be a significant times more.

Jensen: Well, that’s the difference between the sentencing ranges for the same amount of cocaine. So are you going to have to have crack cocaine causing one hundred times more trouble for the community, and a hundred times more violence in the community than powder cocaine? And I don’t think that’s true—in terms of powder. And I don’t think there’s anyone who adopts that kind of thing as factual. It’s just not true.

MLJ: I was going to ask you to give an example—and crack cocaine is a really good example of why simply looking at the amount of drugs to determine the penalty, as the mandatory minimums do, isn’t an ideal system. If you’ve got two people that are involved in a crime or have the same amount of drugs, could their circumstances be sufficiently different that they don’t warrant the same sentence?

Jensen: Well, that was true from the word go. For example, if you have a circumstance where there is a drug enterprise, there are different roles in it, as you say—somebody does the financing; somebody does the contacts with the sources, arranges for the source; somebody arranges for street deliveries; and somebody just carries this stuff back and forth. So the recognition was that—let’s say you are the mother of the drug offender—the guy says to you, “Carry this for me, would you, please? It’s some drugs. Would you take it to Los Angeles?” So the mother does. She’s looking at a mandatory minimum of ten to life. What do you do? You get the drug dealer and the mother, who just took it there, and you both have ten to life? That’s what the law said. Even there, they finally came up with some notion of saying that there were—what did they call it? They had a criteria where you could go below the minimum.

MLJ: I’m trying to remember what it was called, too. I can’t think of it right now.

Rubens: The more culpable party?
MLJ: No, no, the—There was an escape hatch, but I can’t remember what it’s called – it’s statutory at this point.

Jensen: It was put there to address that problem, where the penalties being imposed for different levels of participation were absolutely wrong. So that if you were at a lower level and didn’t have a criminal history, you would have an ability to go below the mandatory minimum.

MLJ: But that’s also statutorily constructed, so—

Jensen: Yes, it was. But that was—the “Safety Valve,” they call it. That was to allow you to go below the mandatory minimum.

MLJ: One of the criteria to qualify is, if I recall correctly, cooperating with law enforcement. That means ratting somebody out. So to use your example, if you’re the mother and you don’t know anybody in this organization, what happens now when you’re essentially being coerced into some cooperation, and you have nothing to give?

Jensen: Well, but there’s a difference.

MLJ: And some defense attorneys have a problem with this.

Jensen: Okay, but there’s a difference between the “safety valve” debriefing and the “substantial assistance” debriefing. See, there’s this concept that if you provide “substantial assistance” to the prosecutor, then they can make a motion that allows the judge to depart and go below the mandatory minimum. That was put into the structure at the beginning. That’s an historical kind of thing that’s existed for a long, long time. But in order to get a “substantial assistance” departure, the prosecutor has to be the one who makes the motion. And the information provided must be of actual assistance in some fashion; that’s the notion.

As far as the “safety valve” is concerned, the only thing that’s required is to, in effect, tell truthfully what you know, whether or not it assists anybody. So there wasn’t anything that said you had to provide actual assistance. It just said you had to be debriefed and had to tell the truth about what you knew.

Rubens: Now, here’s a case that I think bears on this. Whether it’s actually germane or not, we’ll see; but let me just raise it because you’re in the news over it and seeming to depart from what at least some part of the public thinks would be your natural position. This has to do with the case in 2003 of former Media Vision CFO Steve Allen. He’s tried and convicted of defrauding investors—okay; the fraud was deliberate; US Probation Department recommends ten
You know what I’m getting to—you sentenced him to three-and-a-half years. And here’s the characterization of you, “Not anyone’s idea of a soft sentencer.” The article says you were “impressed with Allen’s exemplary record in the community.” “I’ve never seen so many letters,” you’re quoted as saying, “And the crime was out of character and is aberrant, in the real sense.”

**Jensen:** There is a concept under the Sentencing Guidelines which allows a “departure,” based upon what they call “aberrant behavior.” And in a way, this goes back to whether this is the first crime you’ve ever committed. The systems have always said, “Is this a first offender?” And the way it got into the Guideline structure was by saying, “If you could show its aberrant behavior, you’d be entitled to a departure.” Then you had to define “aberrant behavior.” And it was generally defined very narrowly, in saying it’s a one-time kind of thing, and that it’s just not something that’s in character, but it’s something that is situational.

**Rubens:** They also used the phrase “more culpable party,” because I guess the CEO had cut a deal with the government in exchange for testimony. So maybe he was the more culpable, but he’s getting—

**Jensen:** He’s getting less. That’s supposed to be just part of the system, is he’s getting less because he provided substantial assistance.

**Rubens:** Do you have a particular opinion on that?

**Jensen:** Oh, I think that that’s part of the structure of the system, and it always will be part of the system.

**MLJ:** But do you think it’s okay?

**Jensen:** I think it’s okay.

**MLJ:** It’s certainly used far more—and some would argue it’s used as a crutch—in the federal investigative system, as opposed to the state. You don’t arrest somebody in the state court and sit them down and get them to tell you something and then base a prosecution on it.

**Jensen:** I think that that’s right. But one of the reasons for that is that in the state system, you don’t have time to do that. You catch Robber One on Tuesday. And Robber One could help you catch Robber Two on Wednesday. On Wednesday, you’ve already got Robbers Ten to Twenty. So you’ve always got cases coming in, whether or not you use this process. So you were quite busy just prosecuting the ones you have; you don’t have very much time in the
state system to do question Robber One for information. Maybe you can, but it’s a rare thing.

In the federal system, you can do this much more often. And the investigations tend to be bigger, and extend over much more time; and give the prosecutor the chance to use the conviction of a lesser figure, let’s say, in a clandestine, covert criminal operation, to get to a higher figure. For example, if you have a criminal conspiracy, in order to penetrate the criminal conspiracy, it’s better to have somebody inside tell you what went down. And if you can get somebody inside to do that by offering them some sort of plea disposition that would be advantageous, which will cause them to give you testimony, then that’s seen as moving up the chain to get to the more culpable people. And it’s used that way. So I don’t think that the concept ought to be eliminated from our jurisprudence. Some countries don’t allow it. In Europe, I don’t think you have very much at all of that kind of process. But we’ve always allowed it.

MLJ: What do you think of it as a policy? For example, one of your colleagues, Steve Trott, has a famous paper and lecture all about informants – the point is to beware of informants, and to be aware that an informant can wreck a prosecution.

Jensen: And he’s absolutely right. It’s one of the biggest decisions you can make – to decide to make a deal with one of the people who’s involved in this enterprise, this conspiratorial thing—it may be that you’re making a deal with somebody in a violent drug ring—and that you just made a deal with somebody who actually killed people. That’s the wrong thing to do; so it involves an enormously important decision as to when or if you’re going to do it. And I think probably the Department allows this to happen more frequently than it should—making deals—

Rubens: The Department?

Jensen: The Department of Justice, in terms of its overall management has basically left this decision at the level of the trial lawyer. I think maybe there should be more supervision over that, because you’re making decisions that are incredibly important. The Department can come out looking extremely foolish. And it does. It’s happened in the past. That’s Steve Trott’s point—you just don’t make this deal because it’s advantageous to you in terms of your prosecution. You have to look at it in terms of the overall meaning of criminal justice itself. So that the idea that you’re going to now “flip” somebody, as they call it, and give them a deal is a very important kind of decision that oftentimes is not given the attention that it should be.
MLJ: Going back to the case that Lisa mentioned involving Media Vision, the CEO had come first; and now somebody in the chain of command under the CEO is on trial. So you run into the concept of “rolling down,” as they call it, on that person, because theoretically—

Jensen: Right. It can happen.

MLJ: —the CEO is more powerful. How does that come into play in your sentencing decision when you’re looking at this guy?

Jensen: Well, when you look at the decisions, the role in the offense is an important concept — generally as it moves from the lesser figures to the more important figures. And if you put it into a corporate kind of criminal conduct, the CEO should be the top figure, and then you move down. And you move down to the CFO, and move down to account manager, to somebody who’s a clerk, right? They may all be caught in this thing, but their roles are different. And in this case, Allen’s role was somewhat less than other figures, although at a high level, in that he was the CFO of the corporation. He was at a high enough level to be responsible. But if I’m quoted in that article as saying that I gave him a lesser sentence than maybe somebody else, it’s because I gave him more credit for his personal history, outside of the criminal conduct.

MLJ: I have one more follow-up on that. You were talking about disparities in mandatory minimums for crack cocaine versus powder cocaine. Let’s take the disparity in what’s essentially going to be an economic crime—between a CFO and a bank robber. The bank robber is not going to have people writing letters; the bank robber doesn’t have a community of people supporting him; or job experience; or education. He has to come in and argue for an “aberrant behavior” departure. He may have robbed a bank only one time, but he’s certainly not going to be in the position of the white collar criminal. How do those factors come into play? Isn’t there going to be a disparate effect?

Jensen: To a certain extent there is.

MLJ: Isn’t the criminal justice system looking at the white collar guy differently than it is the bank robber?

Jensen: There’s a different systemic approach to it. If you steal a hundred dollars from the bank and you come in and put you hand in your pocket, say, “Give me a hundred dollars.” That’s deemed to be higher in the severity chain than somebody who’s a teller cheating someone who’s entitled to the money by taking it out of one account and putting it into another—whatever it may be. So the pencil theft is less, in terms of the severity, than the robbery.
Rubens: Even if the dollar amount might be—

Jensen: Even if the dollar amount’s the same.

MLJ: But for the pencil theft, the dollar amount is often hugely greater than the—

Jensen: Well, one of the things about the Sentencing Guidelines was that they moved up the fraud penalties somewhat because of that. Because the history had been that you were getting really high penalties for the robberies – so a purse snatching situation resulted in a higher sentence than an insider embezzlement, that sort of thing. So one of the things they did was to move up the penalty structures with reference to fraud. I do think the system has that problem. And it definitely has it when you’re talking about taking into consideration a whole lifetime of experiences; and who you have to speak for you; and who can do that sort of thing. It’s much more likely that the middle class embezzler is going to be able to produce that kind of support, as opposed to the bank robber. But one problem with the bank robbery is that you have different kinds of bank robberies. It’s one thing when somebody comes in and puts their hand in their pocket; it’s another thing when they come in with a loaded pistol and shoot at you. You’ve upped the ante with the threat of death. It changes things rather dramatically.

MLJ: But the Guidelines do take that into account. If you threaten somebody with a gun, or if you use a gun—

Jensen: They do.

MLJ: —that’s going to up your sentence. But you did address a little bit the fact that the middle class person’s going to have—letters and lifetime experience, or whatever is cited with respect to the white collar criminal—but the blue collar criminal, if you will, isn’t going to have any of that. Do you believe that causes sentencing disparities in those kinds of crimes?

Jensen: I think there are problems with that. And I think that that’s one of the things that is a part of the Booker kind of sentencing regime now – under the Booker regime, you can take this into consideration; you can look at things like socioeconomic status. Under the Guidelines, it was case that you could only do that if it was “extraordinary,” and it was discouraged. Booker doesn’t do that. Booker allows those types of things to be considered when you think they may affect any or all of the traditional purposes of sentencing. So you have a much broader range, from the standpoint of the judge, to look at these kinds of factors than you did before, because the Guideline structure was such that it was discouraged, and was made very hard to use, whereas Booker doesn’t do that.
Rubens: There’s going to be a lot of focus on the Enron trial, isn’t there?

Jensen: Oh, sure.

Rubens: The criminal intent and—

Jensen: Well, I tend to think that “crime in the suites” and that sort of thing that people are concerned about is correct—we should have specific and tough penalties for that. If we believe in penalties as having an effect upon conduct, and believe that they have a deterrent kind of effect, then we should have the penalties. Then there’s an expectation that you shouldn’t be able to steal a million dollars—and because you did it with a pen—not get punished, but if you stole a hundred dollars and you had your hand in your pocket, and get punished—that doesn’t seem to compute.

MLJ: One of the interesting things in Enron, since you bring it up, ties into the “rolling down” and the use of informants by the Justice Department. One of the defense attorneys has come in and said, basically, “All those guys that pled guilty who are sitting here to say that there were knowing violations and criminal activity going on were so horribly pressured by the prosecutors that they don’t know what they’re saying. The defense position is that the cooperators aren’t guilty. There was no crime. And that the only reason the cooperators are testifying to something different is that they were pressured so badly by the prosecutors, that they finally just gave up and said, ‘Yes, I’m guilty.’”

Jensen: Is that a possibility? Yes. Is that characteristic? No, I don’t think so.

MLJ: I found it an interesting argument, so I was just going to see what you thought of it.

Jensen: Yes, well, that’s what I say.

Rubens: This is what you’re seeing with Enron?

MLJ: They’ve done it.

Rubens: I missed that. All right; so we talked about sentencing discretion. It seems to me that we should talk about the 2000 award, and about the CIA agent, and some of your legacy. And I was going to ask you if you’ve paid particular attention to Oakland politics. We talked a little bit about the—

Jensen: Well, I don’t vote in Oakland, but [laughs] I pay attention to Oakland because—
Rubens: To the County-

Jensen: Sure, sure.

Rubens: And. since you’ve been back in Oakland, do you visit the DA’s Office, as Warren did?

Jensen: Sure. Sure. I see Tom Orloff once in a while, the new DA. He’s been there since I got back. I keep in touch with them. And I go to retirement dinners and all that sort of thing. Nowadays, when you get older, that’s all you do; you go to funerals and retirement dinners.

MLJ: When you first came back, didn’t you regularly go and have lunch with judges who were in the Superior Court in Oakland?

Jensen: Not really. I might’ve had lunch with Stan Golde, who’s my friend, when he was there. But that was more—it was not that I’m visiting the judges, I’m visiting my personal friends.

Rubens: It seemed to me that your engagement was really with this building; getting the court here. That’s what—

Jensen: Yes, well, that’s true.

Rubens: It was named for Ron Dellums.

Jensen: Yes.

Rubens: But the irony of him running for mayor now—[laughs]

Jensen: I don’t think it’s irony, but it’s reality. It’s the new reality.

Rubens: Jerry Brown, leaving as mayor, will run for-

Jensen: He’s going to run for Attorney General, I believe.

Rubens: Of course his father was Attorney General of California.

Jensen: Yes, that’s correct. And they were both governors.

MLJ: Jerry’s sister, Kathleen Brown, was State Treasurer and ran for Governor.
Rubens: Did Jerry run for US Senate?

Jensen: He never ran for that, and never looked at Attorney General at all. But I think he’s, as he says now—coming back as mayor, you realize that there are jobs here that are perhaps more important than the Governor’s job—because the Governor sets policy, and we’re doing reality, in terms of the city. He may see Attorney General as being more real than the policy jobs.

Rubens: Do you have an opinion—well, this is just not appropriate, [laughs] this speculation about how he might be as Attorney General?

Jensen: I don’t know about Attorney General. I think he’s been a very fine mayor.

Rubens: Bill Lockyer, was he someone you knew? Did we talk about him?

Jensen: I knew Lockyer before. He’s been Attorney General, and he’s done fine.

Rubens: Where might he go?

Jensen: I have no idea. I think he was going to run for Governor at some point. I think that there’s a question about that now. I don’t know.

MLJ: What other Oakland politicians have you had any—Elihu Harris used to be around quite a bit—

Jensen: Well, I knew Elihu, but I didn’t have much to do with him. I guess the closest and most direct dealing I ever had with Oakland politics was indicting the mayor.

Rubens: Which we talked about, yes. So you’re visiting friends, you were keeping abreast with what’s going on in the County.

Jensen: Yes, sure. Well, I keep track—I’m obviously interested in this, like any other citizen. But from an area of expertise, I’m interested in the Department; I mean, the District Attorney’s Office, because it’s an Office which I feel a great deal about. I’m very concerned with it; that it maintains its excellence and its ethical standards, and all that. And I watch it to see if that happens. And I’m totally satisfied that that’s what happens.

Rubens: Well, maybe that’s a better place to go, to just talk a little bit about all the people who’ve passed through that Office who are now in incredible positions. I just wanted to say, just parenthetically, because I remember asking you during the DA years, what else was going on in the rest of the County? So
much was focused on Oakland and the big cases. Of course, you had the cattle rustling and then the strange, strange case of Chowchilla. That was just one of those—

Jensen: That is very strange.

Rubens: So has there been anything like that in the County since—any big things that you’ve paid attention to? I don’t know whether they would be relevant to your career—

Jensen: Well, I pay attention. I paid attention to the Riders controversy over police brutality for example, at the Oakland Police Department. (2000) That’s a very, very important and difficult problem, watching how the District Attorney’s Office handled that. I think they did what they were supposed to do. But I don’t know if anything matches Chowchilla. I don’t know of anything that matches Chowchilla.

Rubens: Well, let’s look at your legacy, and begin with the (D. Lowell and Barbara Jensen) Award-

MLJ: Before we get to the Award, when you returned to California, did you participate in founding an “Inn of Court?”

Jensen: Yes, right.

Rubens: Tell me what that organization is.

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Jensen: Inns of Court, it is a non-governmental organization, as they say. In the legal profession, it’s a voluntary gathering of lawyers who have educational sessions, and have dinners together in order to have an opportunity to interact. This started maybe twenty years ago or so. I think one of the chief persons involved in developing it was Chief Justice Burger, along with some other federal judges. Their impression was that the Inns of Court system in Britain was able to transmit ethical values and civility better than our system. And there are real problems in imbuing practitioners with values that reflect ethical behavior; there continues to be a problem with respect to civility in courtrooms and in the dealings between lawyers; and the thought was that maybe there’s something that could help ameliorate these problems. So they came up with something that’s fashioned on court structure. It contemplates—for example, seventy-two lawyers, in eight teams of nine apiece. Each of the teams has three lawyers who have been in the practice for a long time. Twenty years.
Rubens: Are we talking nationally?

Jensen: This is national. Those three lawyers I mentioned act as mentors to others in the Inn. These people supposedly have the values implicit in their careers, as professionals, that enable them to do this. Then there is a group made up of practitioners who have been practicing for, maybe five to twenty years, who are in the middle of getting themselves started. Then there are young lawyers who are just entering the profession. So there’s three, three, and three—you have different levels of lawyers in each team—the older lawyer, the middle range practitioner, and the incoming lawyer.

Each team is given an assignment once a month to put on a program that they make up. They take a legal theme, and they then come up with a program that, in effect, entertains the organization, but teaches them something at the same time. The overall value is to pass along the traditions of excellence, and the traditions of ethical behavior throughout the entire profession. That got started back in D.C., and on the East Coast. These Inns are chartered by this organization, so it’s rather formal. Once you become a chartered Inn, then you participate in the national group and locally in this same sort of fashion. The national organization sends out suggestions as to how you should run the Inn and what kind of programs you should have; then you go ahead and do this. And it took off. It developed—

MLJ: Did you come up with the idea to have it in Oakland?

Jensen: Well, yes, what happened is—the whole idea got started – and as I said, Burger and several other people were involved in starting the program—and it took hold. And then, depending on the group’s particular “passion,” it would give itself a name. There’s the Inn of Court of New York for maybe a specific thing. It may be Bankruptcy; it may be some other field of law. And you started having Inns developed around the country that carried out these kinds of roles. It has spread out here, and so there were—

Rubens: Around the courts at the federal level?

Jensen: It didn’t have to be federal; it could be at any level. And it could be any kind of structure that you wanted. It didn’t have to be a specified kind of practice area, it could be just a general area that the lawyers in a particular geographic region getting together to do this were interested in. It got to California, and there were Inns created in San Francisco, and in LA, San Diego, and Sacramento. These were all up and running, but there was nothing in Oakland.

Traditionally, judges had been a part of the formation process for the Inns. When you do this, you have to get some people together and start doing the basic work of identifying people who might be interested, and then getting it
put together in a formal fashion so that you can make an application to become an Inn in your area. I knew of some Inns that existed here, and they were in San Francisco, basically. A couple of the judges on the court were quite active in them. One was Thelton Henderson—Thelton was quite active in this. So was Chuck Legge. They were fine judges, and they thought a great deal of the program. And I knew other judges at the national level, who knew me, and said, “How about you starting something in Oakland?”

Rubens: Judges at the national level, such as?

Jensen: Well, Judge Cliff Wallace was the presiding Chief Judge of the Ninth Circuit—he was on the Ninth Circuit for years. He had been one of the judges who was sort of peripherally involved in getting the whole movement started; and he was interested in having it move along. So he talked to me and said, “Why don’t you do this?” He would call me once in a while and encourage it. So that, plus the idea of watching what was being done here in these other groups, and seeing that Oakland didn’t have anything like that, I said, “Okay. I think maybe it’s a good idea to try to start this.” So I got a couple of people—Stan Golde, chiefly, my good friend—and some lawyers from private practice—Crosby Heafey lawyers, like Ed Heafey.

Rubens: From the civil field.

Jensen: From the civil field.

MLJ: Didn’t you get Howard Janssen, who was in—

Jensen: Howard Janssen was one of the lawyers who’d been in the DA’s Office and was out in private practice now. And we got other lawyers in civil areas, and some criminal defense lawyers, such as Jules Bonjour, who was a very, very fine criminal defense lawyer. We all sat down and just talked about this and said, “How can we do this?” So we also got Julia Spain, who was the Executive Director of the Alameda County Bar Association—she knew the Bar better than most of us. The idea was to get a charter, get an Inn, invite people to a meeting, and actually start an organization. And start it under the structure I described, with different teams consisting of different levels of practitioners—experienced lawyers, a middle range, and young people.

Rubens: When are we talking about?

Jensen: We’re talking about ten years ago. We sent out invitations to people, and did the sort of paperwork that’s necessary, and we started it. We didn’t start it on the basis any specific practice area, but on everybody’s interests. We wanted to make it inclusive. A lot of these Inns don’t have anybody that has anything
to do with criminal law. But with my background, we’re going to do this; so we got people in from the DA’s Office and from the Public Defender’s Office, and from the criminal defense Bar. And we had civil practitioners, litigators, and transactional lawyers.

Rubens: You’re inviting people to join.

Jensen: We invite people to join. And you’ve got to pay money to join, and you’ve got to do some work on it once you join. So we got started; and we called it the Earl Warren American Inn—obviously, because of Earl Warren. How could you do anything better in this area than to have an Inn based upon Earl Warren? So we sent in our application, we were chartered, and we got started. It’s turned out to be magnificent, and a wonderful experience. Everybody worked very hard at getting it started. The programs were well thought-out and well received.

The important part was that over a period of time—like any organization—you have to have successive infusions of people. You can’t have the same old people doing it; it dies off. We were able to be successful by getting new people in. We did that by instituting “term limits.” You could only be in for a period of time; you couldn’t stay in for more than three years, then you had to be replaced. That’s how we got new people coming through. We said I was the president for a couple of years, and then we passed on the presidency. I was president for two years.

As I said, Julia Spain was very helpful, because she was the Executive Director of the Bar association. She did a lot of work, she knew a lot of people, and she had a lot of good ideas, in terms of recruiting people to come in. The initial group that I had assembled was not totally comprehensive, with reference to the whole practice in Alameda County, and we did limit it to Alameda County. We didn’t say that there could not be a lawyer who came from Contra Costa or something like that, but it was basically an Alameda County operation. And we met in my courtroom. We held our meetings once a month in the courtroom, and we put on programs there.

Rubens: How can you do that?

Jensen: “Just come in, folks, turn the lights on, and put on your program.” But people have helped out, in the sense that the building has to be opened, and somebody helps in getting that done. So we used the courtroom; it’s still used now for that purpose. And there has been an infusion of new people who’ve come through who are now running it. So we now have an ongoing operation that’s very successful.

There is also a national competition for these programs. You would send your program in to the national organization and describe it, and they have a
competition among all of Inns. We’ve won two first place awards, and I think three other awards at different levels, for the programs we’ve had. We would develop programs that were based upon TV shows or operettas or whatever, in terms of different areas of the law; or on very, very serious kinds of topics.

One program we had that got an award was a program with reference to Japanese internment. We went through the whole process; and our program included lawyers reading parts which were the actual words that had been said by the players at the time. We had different members of the Inn play those different parts. They read them, and we identified them as we went along. We also used pictures, and some graphics that went along with them. We ended the program by inviting Judge Marilyn Patel to come over and read portions of her opinion in which she granted a writ that undid the conviction of Fred Korematsu. That program got an award—first place—for the work that was done to put it together, and for the presentation. That’s the kind of thing that we did. Other programs were not quite as in-depth as that or as dramatic. There were others that were totally different. But the Japanese Internment program won an award. As I said, the Inn now has gone to maybe a whole new definition. I think all of the players are different now than they were then. But it’s being run by—

Rubens: All the players?

Jensen: All the players. I don’t know that there’s anybody who was in the Inn when it started who is still there now. I go to the meetings because I’m an emeritus. We had a level of emeritus allowance, so I get to go. It’s my courtroom, so I get to go anyway. I go most of the time.

Rubens: But the idea’s really to flush out the old and bring in the new.

Jensen: Exactly; and to provide mentoring, role-modeling, provide some kind of balance, and to include different levels of practice. There’s a team of nine people, consisting of three lawyers from each level of practice. They meet, they come up with the ideas for the program, put the program together and put it on. Then you have dinner after that; and you do that eight times a year.

Rubens: It’s a lot of work; because there are a lot of other things going on, right? The Bar Association meeting—

Jensen: Oh, yes; but some people are just adapted to this sort of thing. One of the lawyers who has served as the president and who is still very active is Alice Beasley, who’s an Oakland lawyer. She is incredibly creative, and she loves to put programs together. She does a wonderful job in putting programs together. So we’ve had a history in our Inn that it’s been really quite good. They’re still going strong now.
Rubens: Was this a special designation, this award?

Jensen: Well, that’s another thing. There’s the American Inn, at a national level, which gives awards each year. They have a Board of Directors, and an Executive Director, and people who keep all of this going. They have one award for, basically, achievements in professionalism. They call it the Lewis Powell Award. It’s named for the former justice of the Supreme Court, and is awarded to one recipient each year.

MLJ: Well, it’s not just professional achievements. Aren’t you supposed to exemplify certain ethical values that were exemplified by Powell?

Jensen: By the Inn itself. What the Inn stands for, in terms of passing on the values that our system needs to maintain itself, and particularly the values of ethics and civil behavior. The award takes into account your participation in the entire practice, in the profession itself; but also has something to do with what you’ve done in the American Inns. So since I had formed this Inn, had been one of the founders of the Inn, that’s an important part of the award.

Rubens: So you go back—

Jensen: I go back to D.C., and they have a formal ceremony, a big dinner, and they make a presentation. It was presented in the Supreme Court. Thelton Henderson got this award, also. And unfortunately, they couldn’t use the Supreme Court when he won it, because they were working on it. [laughs] But we were in the Supreme Court when it was presented to me—and by tradition, one of the Justices of the Supreme Court comes to the thing. [Justice David H.] Souter was there when I got the award. So a Justice comes, and they have a great recognition of the Inn. The Inn now has a great deal of respect, in terms of what it’s done at the national level and local.

Rubens: And what about participation at the national level in the national organization?

Jensen: People go onto the Board of Directors. I didn’t. One of the members of the Board of Directors now is the president, or the last year’s president of the Inn, a Deputy District Attorney from Alameda County named Kim Hunter. And Kim is just a ball of fire. An enormous amount of energy, and she does things and she does them very well. She was the president here, and she went onto the national Board of Directors. She went to some of the national conventions—they wanted her to do it in the worst way. So she’s done that.

Rubens: So you’re not participating in it at that level now.

Jensen: I’m not in that, no. I haven’t done that.
Rubens: Now you’ve also been named a Fellow of the-

Jensen: American College—Fellow of the American College of Trial Lawyers.

MLJ: What is that?

Jensen: That’s another honorary organization. It’s supposed to be composed of people who are actual litigators, who practice. They nominate you themselves—you don’t apply or anything else, they just decide and then invite you to come in. You get invited, and you go. I got invited to become a Fellow in the seventies.

MLJ: But it’s a fairly exclusive organization, isn’t it?

Jensen: It’s a fairly exclusive organization – but not as much as all that. There’s a cast of thousands who are in it.

MLJ: At the time that you were invited to become an American Fellow, you were a DA?

Jensen: Yes.

MLJ: Was it typical for a criminal lawyer or a public lawyer—

Jensen: It was very—it was atypical.

MLJ: Do you know of any other public lawyer or prosecutor in it?

Jensen: Frank Coakley was a member of the American College. And there are others, but not very many. I think there are more now—they’re branching out and getting some of the criminal defense Bar in that they didn’t have before. But it’s unusual to get there. They make their own decisions about this. I guess basically, they had watched when I tried the Remiro-Little case. And that was a trial; I was being a trial lawyer, so they—

Rubens: So that’s something you put on your record, it’s an honor?

Jensen: Well, that’s an achievement; it’s an honor in that it’s a prestigious organization, it’s a high level organization.

Rubens: They have a convention every year, don’t they? Do they put on programs and—?
Jensen: Yes, they do. They do very, very high level things. They have committees that provide things for Congress and for other people—they do a lot of work. It’s a good organization.

MLJ: What other honors or awards have you received?

Jensen: Well, another one that I feel good about and was honored to receive was the Citation Award which is given by Boalt Hall. Each year, Boalt Hall honors one of its alumni. So I was privileged to be honored. The same year that I was honored, Bob Raven was. He was a very fine lawyer. He’s the guru for Morrison Foerster. He put the organization together. He was in my law school class, and he was a former president of the American Bar Association. He and I were grouped together, and we both got the Citation Award in the same year—in the eighties. It’s just an award given by the Boalt School of Law; the Dean and whoever else makes these selections—each year they decide who’s going to get this award.

Rubens: What do you mean, “The guru of MoFo?” Do you mean a money maker or a rainmaker or—?

MLJ: That would be Mel Goldman.

Jensen: That may be true, but Raven defined the sort of respect and the admiration that was given to a very fine law firm. He really built up and developed the firm.

MLJ: Morrison and Foerster is known as a trial firm, isn’t it?

Jensen: Yes, it is.

Rubens: Morrison is an old, venerable firm. There’s the Morrison Reading Room, in the main University of California library.

Jensen: Right. Right, well, those are the original founders. But then Bob came in, and he was really incredibly important and fundamental in growing it into what’s now an international law firm.

MLJ: When you talk about the respect that is enjoyed by Morrison Foerster, it’s interesting to me because—have you ever heard the phrase “The MoFo difference?”

Jensen: Well, I don’t know that I think there’s a difference.
MLJ: I’ve heard that phrase used to refer to a notion that Morrison Foerster is more ethical, more trial-oriented, and more politically conscious than other big law firms. Have you heard that?

Jensen: Well, I do think that its culture is a culture to be admired by the legal profession, because it does embody all those values. I do think that they do that, but I don’t think they’re the only firm that does. But it’s fine to now build that as a culture, in terms of your own self-worth.

MLJ: I’m trying to determine whether you think that Bob Raven was one of the people—when you say “the guru of Morrison Foerster,” is that one of the things you think he might have contributed?

Jensen: Well, yes. In a way, he functioned as an individual American Inn within that firm, because he represented that kind of lesson that people should get, and the values you should strive for—and you should get it in your firm. People in the firm look to role models; and he’s a role model.

MLJ: What were you being “cited for when you were recognized by Boalt?

Jensen: Just for being a graduate of renown. What they’re doing is selecting people who have done something in the profession; who they think have made a contribution to the profession.

Rubens: I don’t have a date for this award—it was in the 80s?

Jensen: Yes, well, I was in the Department of Justice then.

MLJ: Is there any other award or recognition that you’re particularly proud of?

Rubens: Well, there’s the Barbara and D. Lowell Jensen—

Jensen: That was started by some other people at Boalt—by Roger Olsen, who was a lawyer back in D.C., and who’d also been in the DA’s Office here. He was both a very good friend and also worked in the Department of Justice when I was there. He was, I think, the central person who got this started.

Rubens: He’s a Boalt graduate, as well?

Jensen: Yes. It’s a fund, a public service-oriented fund. There are two things that happen in connection with the Award each year. Two Boalt students who are going to work in a public service agency during the summer are given stipends—because so often when you work in public agencies, they don’t pay
you—so there are two positions each year that are awarded by our fund. The students are given a stipend, and they compete for it—so two people get that. Then there is a separate award given each year to a Boalt graduate who has distinguished themselves in public service.

MLJ: So who was the first award winner?

Jensen: First award winner was Stan Golde. [laughter]

MLJ: And Thelton Henderson recently received—

Jensen: Yes.

Rubens: When was this established?

MLJ: It had to be ’98.

Jensen: The professional who receives the Award has to be a graduate of Boalt, and has to be someone who’s done something significant in public service. When it started, it was the Lowell Jensen Public Service Award, and it’s now it’s the Lowell Jensen and Barbara Jensen Award—you know, she worked at Boalt.

Rubens: And she was alive to see this?

Jensen: Oh, yes. She went to the events.

Rubens: You just had an award luncheon in Las Vegas?

Jensen: Yes, we had a luncheon in Las Vegas, for Judge Lloyd George, who’d been active in public service his whole life, and who lives in Las Vegas, which is a good place to go take old people to see—

Rubens: Where did the money come from for the award?

Jensen: The money comes from donations. It’s all donated money—it’s nothing that comes out of anything other than people feeling like it’s a good thing to do.

Rubens: What an honor.

Jensen: It’s a very real honor to have something in your name that’s doing something that, from my standpoint, is of very real value; because getting people into public service, I think, is of value to me. And if you can do this—and you know that almost all the summer public service jobs are not going to be
paid—if you can provide funds, it encourages people to get into it. So it has happened that way.

Rubens: Despite the lure of large corporate salaries and the need to pay back college loans, there is still a pretty impressive number of law school graduates who go into—

Jensen: There is.

Rubens: —legal defense and whatever, non-corporate. And of course some go into the Public Defender’s or DA’s Office to get trial experience.

Jensen: Often times that is the case. But if you can provide a public service, it’s helpful to you. It improves your ability to function as a lawyer.

MLJ: I was actually going to bring up, in the context of the American College of Trial Lawyers that increasingly, the American College of Trial Lawyers trial lawyers haven’t tried cases, because they’re not in the public sector. It’s sort of interesting.

Jensen: See, what is being said is that most of the trial litigation that goes on in state and federal courts now is done in criminal cases. We spend more time in juries, there’s more jury trial time in criminal cases than there is in civil cases. And so that’s what we’re talking about when we think of being a trial lawyer. You’re opportunity to try cases is much higher if you’re in a public service agency. If you’re in the DA’s Office or the Public Defender’s Office, you get a lot more trial practice, because that’s what you do.

In civil practice, it’s getting harder and harder to get a person into a courtroom and have that person become an experienced trial lawyer. One of the problems is that it’s too expensive. The trials are so expensive that you don’t do them anymore. So more and more, the development of the trial lawyer in the civil law is a bigger problem than it’s ever been. That’s why organizations like the American College have to recognize that there’s some level of concern to make sure that there’s a space in the judicial system for the civil trial lawyer.

MLJ: Did you ever see me try a case?

Jensen: No.

Rubens: Well, you were working, I bet.

MLJ: Vice-versa. He had all his colleagues watching to make sure I—
Jensen: Well, I get a lot of information—my sources are good.

MLJ: I don’t even know what they said.

Rubens: Would you talk about people you’ve mentored and brought along?

Jensen: Well, this has been one of the best parts of being a lawyer, being in the profession—is the jobs I’ve had that have responsibilities that go along with them to identify young lawyers, and to get them started. In the DA’s Office, it’s one of the central roles of the DA. Whenever you talk about an organization or an institution like that, its excellence is a function of its people. So the point is that you want to get fine people to keep coming into the Office. That had always been true, that that happened. But it’s peculiarly the responsibility of the DA to make sure that it does. In that system, there’s no Civil Service. When you come in, you’re hired by the DA personally, basically. That had happened for years.

Rubens: You’re talking about the tradition—Warren, Coakley?

Jensen: It was Earl Warren who said, “Don’t ever undo that.” So one of the biggest problems I had when I came in, in terms of responsibility, was now I’m going to have to be the one who has the direct responsibility to bring in fine lawyers. It’s not a problem of having the numbers of lawyers you need; there are lots and lots of applications. It’s a question of finding the people who you believe are going to be the best. I had that job.

I think it turns out that I’m pretty good at that. I could recognize people that were going to do well. So I was able to hire people for the District Attorney’s Office that I think are really incredibly good people. Among the first couple of people I hired were a lawyer named Jim Anderson and a lawyer named Tom Orloff. Anderson worked there for thirty years, and was known as one of the best trial lawyers in the DA’s Office that’s ever been around. Tom Orloff speaks for himself. He’s a marvelous lawyer, and he’s now the DA. I hired him. So I felt good about the ability to hire good people. That’s been, as I say, both a responsibility and a great satisfaction.

MLJ: You hired two people that are now sitting on the California Supreme Court—who are they?

Jensen: Ming Chin and Carol Corrigan.

MLJ: And you hired both of them, correct?
Jensen: I hired them, yes. Well, actually, Ming was a little bit different, in that he had talked with Frank Coakley when he first got out of law school about coming into the Office. And Coakley had said, “Well, there’ll be a spot for you.” Ming was in the war and he went to Vietnam. He was an Officer, and when he came back, Coakley was no longer the DA. I’m the DA – so with respect to the deal, what do we do now? I said, “I’ll hire you.” So I did. But he’d had prior contact with Frank Coakley. But I had the opportunity to hire him, and ultimately, it turns out it was a great hire. [laughs] So he worked in the DA’s Office for me for several years before he went out into private practice, and then went onto the bench.

MLJ: It’s interesting too, that when we talk about these people, and about some of the other people that you’re hiring, that significantly—you have an Asian American and a woman—

Jensen: Right, that’s fair.

MLJ: —that have now gone on to the California Supreme Court. Did you look for diversity in your hiring?

Jensen: Yes, yes. I thought that the way the District Attorney looked at the time I came in was it was white male. And that had been true for years and years. There had been people who’d come through from time to time who were different—Marie Collins, for example.

Rubens: I’ve tried to contact her for a background interview, but with no luck so far.

Jensen: Marie was there. And there had been—

Rubens: She went into civil law, didn’t she?

Jensen: Yes. And Don McCullum had been in the Office. He’d been hired by Frank Coakley. He was a very fine African American lawyer. So I wanted to hire a diverse group of people, but I also wanted to make sure that the people I hired were going to be able to cut it as Deputy DAs. And that’s not an easy thing to do. You’re going to have to have some personal kinds of attributes that allow you to be put into a trial court and handle it. Some people can’t do that.

Rubens: Can you speak to those a bit?

Jensen: Well, it’s a level of self-confidence, a competitive nature, and an ability to think on your feet. You have to have a high work ethic, and it doesn’t hurt if you’re very smart.
Rubens: [laughs] Well, and what about basketball playing?

Jensen: Basketball playing, yes; but that doesn’t cover all the people. But we still have a basketball team.

MLJ: Well, basketball playing is key, in that doesn’t that speak to competitiveness?

Jensen: Sure. Athletes are competitive. The two great professions out there that help trial lawyers are athletics and the theater. Because that’s what you’re doing—it’s competitive and you’re on stage.

Rubens: Were there other sports teams? I never asked Marcia, when you were there was there any of that?

MLJ: We played baseball.

Jensen: We had great softball teams.

MLJ: There was the tennis ringer.

Jensen: Yes, we had good tennis players.

MLJ: Would you talk a bit about what you set up—I don’t know if it was you; I think it was you—for education of young lawyers that were just coming into the DA’s Office?

Jensen: There had always been levels of education—we had internal education. But we made it a bigger system, and put more emphasis on it, I think. Then we got the advantage of the technology that was coming along that we could use. We used video, and we could use all kinds of things like that for training purposes.

MLJ: I don’t know if these were innovations that you put in or not, but speaking from my experience as a young lawyer in the DA’s Office, I thought the training for young lawyers—I don’t know what you get other places—versus civil firms, for example; but we had an assigned mentor for our group who would watch all of us in court. We had sessions with more senior DAs who would teach us trial technique. We’d go to courtrooms and we’d learn trial tactics. We had mock presentations of examinations that were all carried out as part of the DA’s Office training program. Did you institute any of those practices?

Jensen: On an informal basis, there were things like that that had happened along the way. I think we formalized them. We put them into more of a system, and
made sure that everybody went through them, and made sure that they were structured. So there were assignments to do this. Before, it was just sort of it happened—you learned how to be a lawyer in the Office by osmosis, which is not bad. But by putting that into a system, I think that helps. That’s what we did.

Rubens: You talked about watching cases.

Jensen: My experience was that the Alameda County DA’s training was much better than the Department of Justice—by far; much better.

MLJ: As young Deputy DAs learning to try cases, we had a mentor assigned. Mine was Bill McGuiness, who is now a Judge on the California District Court of Appeal.

Rubens: Was he hired under—

Jensen: I hired him.

MLJ: His job—aside from other things—one of his jobs was to watch this group of brand new Deputy District Attorneys who were working in Oakland. He would be in his office if you wanted to talk to him, or he would wander in and watch your trial and ask you what you were doing, or what you were thinking, or give you tips, whatever. And it was invaluable to have this person that you could go and talk to.

Jensen: See, the difference I think, is that we made that a fixture. Previously, it had happened sort of on mutual agreements, but there was nothing that guaranteed it. By making it a system, I think it took advantage of what I think is a very valuable thing – our experienced lawyers. So I think our training was good; I think it is. I think it’s still good. And as I say, I had a chance to compare it to the training offered by the biggest law firm in the country – the Department of Justice. And it was better.

MLJ: Talking about people you hired who are now—

Jensen: I’m giving you an overview.

MLJ: Have you got any idea how many are judges?

Jensen: Yes, I think so. Orloff likes to keep track of this, too. He watches and sees what’s happening. We talk about it once in a while. But there are two on the Supreme Court, Ming Chin and Carol Corrigan.
Rubens: The California.

Jensen: California Supreme Court. There are two members of my Court who are alumni of the District Attorney’s Office that I hired, Saundra Armstrong and Martin Jenkins. Then I think there are three lawyers on the Court of Appeal. Bill McGuinesss is one you mentioned, and then there are two others. I think—

MLJ: Joanne Parilli?

Jensen: Parilli, and Sandy {Sandra} Margulies. They’re on the California Court of Appeal. Then there are Superior Court judges in Alameda County. And I think that there are—

MLJ: Contra Costa County?

Jensen: —fifteen former DAs that I hired that are on the Alameda County Court. And there’s at least one who’s on—well, a couple of them who—unfortunately, Dick Iglehart passed away.

There are five of my lawyers on the Contra Costa County Court; one in San Francisco; one in Merced; and one was in Santa Cruz, but he passed away also. So I think there’s a total of something like thirty lawyers that I hired who are now, or have in the past, been judges in California or on the federal courts.

Rubens: I have a few more names: Patricia Sepulveda; Jerold Ladar, who had been with the US District Court; Lois Haight.

Jensen: Lois Haight was in the Office, and she’s a judge in Contra Costa County.

MLJ: We talked about her because she was in the Reagan administration.

Rubens: Yes, and we talked about Armstrong.

Jensen: That’s Sandy Armstrong, here in this building.

Rubens: Yes. So three sitting federal judges; three on the Court of Appeal—

Jensen: Right. And they’re still there; and now Carol is on the Supreme Court.

MLJ: What about other people you’ve hired who have gone on to do something significant—for example, John Burris or Billy Hunter?
Jensen: John Burris. Yes, Billy Hunter was in the Office. And see, Billy Hunter is a person who went on in the Department of Justice. He was US Attorney in San Francisco for the Northern District.

MLJ: And now he’s counsel for the National Basketball Players Association. So that was a good move.

Rubens: Do you get some tickets once in a while, at least?

Jensen: No.

MLJ: And John Burris has become quite prominent.

Jensen: John Burris is a very, very prominent civil rights lawyer.

Rubens: Is he African American?

Jensen: Yes. He’d been a DA in Cook County, in Chicago. And when he came out here, I hired him to come to work in the DA’s Office.

Rubens: And of course your first campaign manager was Don Perata.

Jensen: Well, as I say, you have a chance to do this. And when it turns out that these people are every bit as good as you hoped they would be, it’s a wonderful feeling to watch them as they perform.

MLJ: So you continue that mentoring and hiring now with your law clerks.

Jensen: Oh, yes. My law clerks, that’s another area where—

MLJ: What are they doing?

Jensen: —see, I’ve had law clerks for twenty years; three of them are now Deputy DAs in Alameda County. And three of them are—

MLJ: And have you possibly encouraged that?

Jensen: Yes, I have. And three of them are presently Assistant US attorneys working for the Department of Justice—one in D.C.; one in San Diego; and one in San Francisco. Then I think I’ve had five others who were Assistant US Attorneys who are now in other areas of practice. So there have been a number of them [chuckles] in public service.
MLJ: Haven’t there also been law clerks you hired who’ve been very successful in private practice?

Jensen: Absolutely, yes. Louise Francis was one of the first I hired, and she’s a managing partner for Heller Ehrman. And Dana Welch, who’s another that I hired, was very successful in private practice. Now she runs a multi-disciplinary kind of group at Boalt Hall. She works at Boalt. She is the Director of a group—well, essentially, it’s related to law and economics. They have a relationship with the Haas School of Business. Dana Welch was a very successful private practitioner, and now she works at Boalt with that kind of a responsibility, which has been a pretty big one as far as the school’s concerned. It’s a real plum.

MLJ: So how is your continuing relationship with the people that you’ve hired? Do you keep—?

Jensen: Yes. Well, they keep me informed of what they’re doing. And I have pretty good relationships with people in terms—

Rubens: But not on email, it’s a phone call—

Jensen: I don’t do email. But they can call. I’d rather talk to them than have some sterile email.

Rubens: They come to some of these luncheons and—?

Jensen: Yes, we have a luncheon every year, and most people try to get there. Dana Welch, for example, has become a big contributor to the Lowell and Barbara Jensen Fund. We have a Christmas party every year for the law clerks. And then we’ve had other gatherings along the way.

Rubens: Where do you have that, in your court?

Jensen: In the chambers.

MLJ: There are some wrap-up questions that I wanted to ask you. When you came to become a judge—since we’re doing this as part of an oral history for the Northern District—were there assumptions that you made that you found to be completely incorrect? Or vice-versa? Or things that you found out were different than what you expected?

Jensen: It generally comports with what I thought it would be. It’s a good deal more lonely than I thought it would be. I came from a job where the phone was on;
everything was going; you had people all day long. So you almost had too much contact. Then you become a judge, you don’t have any contact. It used to be you got called every minute, and now nobody calls you. And you’re basically tied into whatever your calendar is, that comes in.

The jury trial, for example – and I think jury trials are magnificent and I love them; but they also tie you down. What you’re doing when you’re in a jury trial is taking care of the jury, among other things. You’re trying the case, but you also have real people there who are jurors who deserve to have an experience that is productive. For example, you should have a trial day where we actually have trial, where we spend time with witnesses on the stand, and we don’t spend time talking to the lawyers. In some situations, the jury comes in and they sit down and they don’t get called out to Court for an hour, because the judge and the lawyers are talking. I don’t do that. If the judge and the lawyers are going to talk, we’ll talk some other time, before the jury gets there. But if the jury’s there; if the jury’s in; they’re listening to the trial. I think that’s what you have to do. And that means that you’re constrained by the fact that the jury’s there. I think that’s true—that you have calendars, you have responsibilities like that—

Rubens: You talked about the enormous amount of reading you had to do to—

Jensen: Yes, but the point is it narrows everything down. It used to be that my experiences were really very, very broad. But in the judgeship, you have a family that is a secretary, law clerks, and a courtroom deputy—that’s your family. It gets very narrow. It’s great, and the people are wonderful; but it’s a much narrower universe than you were used to being in before. It’s narrower than I thought it would be.

MLJ: Were there things that you thought, coming into the job, would be easy that turned out to be hard, and vice-versa?

Jensen: I think it’s hard to learn new substantive areas of the law and get so that you’re comfortable with them. Your prior area of practice obviously is going to make a difference. I could pick up a raw piece of paper that described a criminal case, and I could read it and have a good understanding of what it is. But I couldn’t pick up a piece of paper that described a contract dispute and do the same thing.

Rubens: You kept talking about patent law.

Jensen: Yes; patent law—I think you have to learn that. And it’s a lot harder than I think people appreciate. This is one of the things that is part of the judge’s responsibility, is to learn everything that you’re assigned. And it’s a lot of learning. There’s no question. But there’s a good and a bad to that. You ought
to keep learning for your whole life. That’s a good idea. But this is—in terms of time pressures—I’ve got to learn it by next Monday, that’s something else.

MLJ: Did you develop interests in areas that you thought you wouldn’t have? And what I think about in that context is that now that you’re a Senior Judge, you can choose to do exactly what you want to do, and nothing more. And it’s my understanding that you’re doing criminal law and intellectual property and patent. Is that correct?

Jensen: No.

MLJ: Okay, so what are you doing?

Jensen: Perhaps even narrower, in that when I became a Senior Judge in the court here, in the Northern District four or five years ago—I had 350 cases or so in the criminal calendar. I just kept those. I didn’t return any of those; I worked on all of them. But these cases that come in randomly assigned to you, the only new ones I took were intellectual property cases and criminal cases. I wanted to do criminal because that’s home base.

I wanted to do intellectual property because that was something I had become interested in. And this is a big cutting edge area, so you’re paying attention to what’s happening. Then over the years, now that I’m getting older, I’ve gotten to the situation where the only cases I take that are new are criminal. So I’ve come full circle, all the way around. The only thing I’m dealing with now is criminal. I don’t take any patent. But I still have some of the cases left that I took over a period of time; so I’ve still got a couple of patent cases. And I still have some cases that are on my calendar that, say, the Supreme Court reversed, or the Ninth Circuit reversed—I’ve still got them.

MLJ: When you look back on your judicial career, in particular, is there anything you’re particularly proud of, or an accomplishment that you look at and say—

Jensen: Well, I think that I’ve become able to handle these other areas. I was always able to handle criminal cases because of my background. But I think I learned enough so that I could handle, with some sense of understanding and some contribution to the resolution of the case that was productive, cases in virtually any of the areas. So I think I became a good judge.

Rubens: But you talked about the capacity of the juries to follow and understand instructions—

Jensen: Yes, well, I think I’m everyman, and so are they.
Rubens: You are cited as having one of the lowest reversal rates in the Northern District.

Jensen: Well, I don’t think a lot of those statistics. I think those things are affected by misconstruing things. You can pick out a time period and say, “In the last two years, he hasn’t been reversed. Three years ago, he got reversed three times.” I don’t think I am significantly different than other judges on this Court. I think our overall reversal rate evens out for everybody. Everybody does a good job, I think.

MLJ: Then I wanted you to comment on your view—you spent your career in law, and criminal justice, and justice system, and in making policy decisions. As you look out at the legal system you see in the United States today—and I think about Guantanamo and people that are held without representation, and I think about wiretapping without any kind of judicial oversight or authority—how do you assess the state of the criminal justice system in America?

Jensen: I think there have been some major improvements. I think the sentencing process is much better. And I’m relatively satisfied that I had some sort of role to play to shift the sentencing system to a much more rational system.

I’m not sure that the law has changed that much. I think in a basic sense, you have much the same thing that was happening before. But there’s a great deal more attention paid to it. And I think it’s probably a good thing that the whole business of the law and the criminal law is more transparent than it was; it should be, because I think there were a lot of things that happened in the past that are just sort of buried and forgotten. And I don’t think that should happen.

On the other hand, it sometimes gets to a level of artificial criticism that is based on things that don’t really mean a lot. For example, these new rules, or so many rules that you’re going to run across—I think perhaps we have become far too rule-happy in the law, and we think we can regulate everything. I’m not sure. There’s a saying—I’ve used a saying that was—Samuel Johnson, I think, it’s attributed to, that “Of all that human hearts endure, how small that part that laws or kings can cause or cure.” So that’s my philosophy.

Rubens: Very good. Well we’ll have one more interview to finish up. Thank you.
Interview 13: November 8, 2006 (Videotaped Interview)

Begin Audio File 25

Rubens: I’d like to ask you two things: one, here are the names of the FBI agents that were in charge of the COINTEL program that came to be headquartered in San Francisco vis-à-vis the Black Panthers. A guy named McCoy, and a guy named Erdelatz. Ed Erdelatz

Jensen: Erdelatz. He was a San Francisco police officer. He was a homicide investigator in the San Francisco Police Department.

Rubens: Yes, he was there forever. Okay. You’re not particularly convinced he was in the FBI.

Jensen: No.

Rubens: He may have been loaned to—

Jensen: He may have been. He may have worked joint investigations or things like that. They may have worked together in the end, but I don’t think he was ever an FBI agent—unless there was another Erdelatz. It’s possible. But that’s a pretty unusual name. I don’t think so.

Rubens: And the name McCoy doesn’t particularly—

Jensen: I’m not sure.

Rubens: I suppose conflict of jurisdiction and competing interest is inevitable.

Jensen: Well, yes, there’s always a problem with potential confrontations. Or the old basic problem was the one-way street problem—the FBI expected the local police to give them all the information they had, and then they would give them no information back. So the FBI did its own thing. But they didn’t do street crime, so in order to find out anything about street crime, they had to go to the local police. Erdelatz was doing homicide investigations. They would be going to him if they got involved in this stuff. I think Erdelatz, did things like the Zebra case; remember that?

Oral History Association in Oakland a few weeks ago. I asked him, “Do you know anything about Lowell Jensen?” I’ll show you his source.

Jensen: He’s talking about the voir dire process which, of course, I found so frustrating at times. And I guess that’s not true. There was a black man on the jury.

Rubens: There was a guy from the Bank of America.

Jensen: Yes, yes, he was a juror.

Rubens: Okay. But now, he’s saying the alternates [reading from the book] “He’s not allowed the customary challenges or anything.” Isn’t it absolutely untrue?

Jensen: Yes.

Rubens: Let me just show you his sources, because I thought the whole thing was about voir dire. And so here are his—Okay, on page 113. 113-1.

Jensen: I never heard that.

Rubens: Okay—

Jensen: So it’s got two writers who wrote something about this. They had nothing to do with the cases.

Rubens: Okay, “Huey Newton: Revolution”—I hadn’t looked at these sources. “Newton writes”—so this must’ve been his dissertation.

Jensen: Yes.

Rubens: Okay. Well, I don’t want to spend time on this.

Jensen: Well, people make up “factual” stuff that’s wrong; that happens. But see, if he sources these to another writer, you’ve got the same problem.

Rubens: Yes. That’s exactly right. Well, this is what happened. And I thought that at least in our interview, what’s good about our interview is that you talk about the fact that there was a black juror. There are some questions on that that I did want to ask you. You were telling me that Charlie Garry was more successful than you were in using certain challenges during the Newton voir dire—
Jensen: Yes; challenges for cause.

Rubens: What I’m struck with in reviewing the interviews we’ve done, is what a remarkable time period this was—the incredible succession of events while you were DA.

Jensen: Yes, it was remarkable. I think that’s one of the things that is unusual about that time—the things that happened. We used to think about Alameda County; How come Alameda County? I mean, why did they bury the bus in Alameda County? What is this? I couldn’t believe that.

Rubens: Do you just get a phone call that says, “We’ve found a bus”?

Jensen: Bus, yes. [laughs] And where did it come from? It comes from the Central Valley.

Rubens: And you had talked about the father’s property.

Jensen: Yes, that’s why; but why Alameda County? That property could be in any other county around. So we got more than our share of the high profile stuff.

Start of Video

Rubens: I thought maybe we should just start with an overview of the Huey Newton cases. You are an Assistant DA when they begin.

Jensen: Yes, I am. It was definitely before I became the DA.

Rubens: Absolutely. October of ’67 is when the shooting occurs.

Jensen: But the trial was in ’68; because I was not the District Attorney when I tried it. I became the District Attorney in July of ’69.

Rubens: There probably was no question that you would handle the trial. How come Coakley—

Jensen: I was head of the trial staff at that time, and it was sort of logical. But that’s Coakley’s choice. He could’ve tried it if he wanted to, but I don’t think he wanted to.

Rubens: One thing I didn’t ask you about the Black Panthers in general is, do you remember hearing about their visit—
Jensen: To Sacramento? Sure. That was all public.

Rubens: I’m just wondering if you had any particular reaction; what you’re thinking about; who are these people? What’s this about?

Jensen: Well, sure. You do, because it’s a part of Alameda County again. They’re there in Oakland. So what are they doing in Sacramento means what are they doing in Oakland?

Rubens: Okay, yes. So they’re on the horizon. In earlier interviews, we spoke about the voir dire process in the Newton trial, and how Charles Garry, whom you had known and who you have a good opinion of, basically, really was able to exercise his—

Jensen: Well, he’s a good lawyer. That’s the point.

Rubens: And that there were just a lot of challenges.

Jensen: Yes, right. Well, when people realized that they were there to potentially serve as jurors at the trial of Huey Newton, it was a normal reaction—people are not necessarily going to volunteer to serve. After you listen to the voir dire process for a while, part of the educational process is that the jurors now realize what they should say to stay in, what they should say to go. And if they don’t want to serve, they sort of skew their answers.

Rubens: Is that still the case? They’re not brought in one by one?

Jensen: Well, now they do it one by one in California in death penalty cases, but they don’t do it anyplace else. In the federal world, we don’t do it. You could if you wanted to, but it takes a lot of time. That whole process is just a process time. And it’s much different than just having them there and talking to them all together. You can say things to the whole jury pool. If you ask all the questions one at a time, it’s completely redundant.

Rubens: All right. But as you say, you ended up with one African American. One of the subtexts of the political landscape of Oakland was how much representation was there in the elections and the jury pools, on the police and fire, of African Americans. And that’s one of the things that grows dramatically in the District Attorney’s Office under your administration. But returning to the Newton trial, I don’t even know, do you remember if there were alternates who were African American?
Jensen: No. No, I don’t think there were. I think there was only the one man on the whole—

Rubens: So, the first trial—you wanted a murder conviction—

Jensen: Murder, yes; and he was convicted of manslaughter.

Rubens: And very quickly, it goes to appeal, is that right?

Jensen: They have a right to appeal, so it goes promptly on what is called “direct appeal.” It goes directly to the Court of Appeals and they hear the appeal.

Rubens: And he remains in jail.

Jensen: He stays in jail while that’s going on, and then they reversed and remanded it. So it comes back.

Rubens: It was remanded due to what the Court of Appeals found to be an error in the instructions to the jury?

Jensen: Yes, it did.

Rubens: That is still one part that I’m just not completely clear on. Are you able to help me out here? There is a problem with instructions to the jury that has to do with-

Jensen: Unconsciousness Yes. There was an instruction on whether being unconscious was a defense. Being unconscious of your conduct—of what your conduct really meant. This was really not very well developed in California law, but the idea was that if you’re unconscious, you can’t be responsible for a culpable state of mind, or for whether there was any criminal intent in connection with that conduct. So you’re always looking at conduct and the state of mind that goes with it. And if you’re unconscious as a state of mind, then even if you carried out the conduct, you didn’t intend to do it. That’s the argument.

MLJ: What was the evidence to indicate that he might’ve been unconscious?

Jensen: Just that he had to go to the hospital and he was wounded. The other is, there’s an interesting bit is that the policeman who was shot—one of the policemen was killed, the other one was shot—he testified. And he testified that he basically had been unconscious at periods of time while this was going on.
Rubens: That was—that’s Dell Ross?

Jensen: No, no, it was one of the police officers. I think it was Heanes, I think his name is; because I don’t remember the other guy’s name right now—it was John—

MLJ: Frey?

Jensen: —Frey was killed. And Heanes was his partner. Heanes lived, but he was shot. And he testified in such a way that you could say that he said he was unconscious and couldn’t tell you exactly what was going on. So when you argue about Newton, you can say, “He’s just like Heanes.

MLJ: So they were extrapolating from Heanes’s testimony?

Jensen: Yes, that Huey got shot also. And since Heanes got shot and this is what happened to him, the same sort of thing could have happened to Huey Newton.

MLJ: Was there testimony to that effect? Was that Bernard Diamond who was testifying?

Jensen: Yes, I think he did testify.

There was some testimony about state of mind, and that you could make a comparison from the standpoint of just weighing reaction to this; such that if you have a shooting where two people are shot and one of them tells you what the effect on his state of mind was, you could say that the other person must have been affected in the same way.

MLJ: How can you possibly say that?

Jensen: You can just say it, because everybody’s a human being.

Rubens: Have there been changes in—

Jensen: Oh, there’ve been changes all over the place in terms of the whole business of diminished capacity and unconsciousness—
Jensen: —and unconsciousness and state of mind. There have been changes made by judges, and changes made by initiatives that have been passed in California. So the whole state of law is different now.

Rubens: You told us in an earlier interview that you do your own instructions now; but I’m curious whether at the time you are somehow being reprimanded because your instructions to the jury were later determined to be in error.

Jensen: Well, they’re not my instructions. The judge is the one who decides what the instructions are ultimately going to be. And as a judge, I do my own instructions. Then I discuss those instructions with the lawyers and I basically tell them how I decide what we’re going to do; and they give their input. That’s what happened in Newton, too. I would give input to the trial judge, and so would Charles Garry. And then the Judge would decide what instructions he would give. Those are the instructions that were said to be in error.

Rubens: I see; so therefore, it’s thrown back to the trial court. You believe that you have enough evidence—

Jensen: To try it again.

Rubens: You try him again on manslaughter, is that right, and not on murder?

Jensen: Yes, you can’t try him on what he’s been acquitted of, in essence. See, once he comes back, he comes back on what he’s been convicted of, and you’re going to have to do that.

Rubens: So there’s a second trial, and now you’re DA. And as DA, you assign somebody else—

Jensen: The major trial lawyer we had in the office, who was Don Whyte.

Rubens: Why don’t you try it? Are you thinking about Coakley?

Jensen: Well, you try one big case. I tried one big case; but you don’t try all of them. And I thought, having gone through all of this; that it probably would make sense to have the head of the trial staff do it, and to have a fresh look at it, whatever that may be. And he’s a very fine trial lawyer, so there was no reason why he shouldn’t try it.
Rubens: Were you pleased with how he handled it?

Jensen: Oh, yes. He did fine.

Rubens: You must’ve talked to him pretty regularly about how it was going.

Jensen: Oh, yes; we talked about it all the way, sure.

Rubens: Is there anything particularly to say about the jury selection in the second trial?

Jensen: I don’t think so. Maybe it was just more regular—it seemed to be more routine, and not as—

Rubens: —not as charged. There was a story about someone putting a hand onto—

Jensen: Yes; the drama involves the witness who put his hand on Huey Newton’s shoulder.

Rubens: Because the judge says—

Jensen: “You go down and touch him.” Charlie Garry said—the witness testifies, and the witness identifies Newton in the courtroom as the person he saw at the scene of the shooting. All right; then Garry says, “Well, I object to him just saying that. You should ask him—he has to go down and touch the person, as to who he means.” And the judge said, “All right, you go down and touch him.” This is very unusual, and very tense—because the courtroom generally is very tense. And the witness gets up and walks down, walks around and comes by Newton, and there’s this moment of sort of, what is this? Everybody’s fixed on this. Then he reaches out and puts his hand on Newton’s shoulder. So he touched him; that was the identification. There was a kind of audible gasp in the courtroom.

Rubens: Did Newton say anything?

Jensen: My reaction was, “Let’s take a recess.” So we did.

Rubens: For example, in Perry Mason, the person may have to stand up and point, but I’ve never seen—

Jensen: Yes; but I haven’t seen this bit about touching. That doesn’t happen. It’s the only time—How many jury trials have I seen? Thousands? Something like that. I’ve never seen it otherwise. That’s the only time it ever happened.
Rubens: And just to continue with the drama and the tenseness in general. Were you concerned about yourself, about your family, about Oakland?

Jensen: Well, you have to be concerned. You don’t really know. This is a group of people who have an agenda, and you’re not quite sure what’s going to happen. So you just pay attention. And it’s a heightened attention, is what it is, you pay attention to everything that’s going on.

Rubens: You had a great answer for me, and I’m looking for it. Didn’t the Black Panther Party newspaper have a particular edition—?

Jensen: Oh, yes. They had a paper. And one of the papers about the trial—the back page was a circular target and my face was in the middle of the target. So this is just—people make expressive things, just graphic sort of things. All right; but sure, that can be a concern.

Rubens: I think you said you had some patrol coverage for awhile. But in fact, the city was quiet when—

Jensen: The city was basically quiet, that’s right. Not much happened.

Rubens: And one other thing about behavior—Newton didn’t do anything when he was touched?

Jensen: No. He just sat there.

Rubens: Someone told me a story. Again, the amount of material that’s coming out about the Black Panther Party in books—

Jensen: There seems to be a resurgence. But you do have the people who were arrested in San Francisco, recently—they were Panthers. That’s one of the reasons. After all that time, you now have people being charged over there. So you’re back into the courtroom setting.

Rubens: Yes. It had to do with the murder of policemen.

Jensen: That’s right.

Rubens: Okay. I have the quote, but it’s just not right here. It must be the first trial, because they say at some point that Newton started making chicken noises. He started [laughs] flapping his wings and making noises like a chicken. And you stood there—do you recall that?
Jensen: I was there, but I don’t know about that. [laughs] No, I don’t recall that at all.

Rubens: All right. I was wondering if there was any particular behavior on his part that you—

Jensen: I don’t recall any antics at all—nothing that would be unusual behavior; nothing out of the ordinary at all. He was just there.

Rubens: Okay. The second trial results in a hung jury. And the issue is basically the same as what it had been in the first trial; did we actually see—

Jensen: Well, the jurors don’t tell you why they didn’t reach a verdict. All we know is that they didn’t reach a verdict. So we have a hung jury.

Rubens: It was very close, as I recall.

Jensen: I forget what the count was, but it was a majority for conviction; but certainly not enough for it. It was not unanimous. It has to be unanimous; it wasn’t.

Rubens: Here I have a note, on the second trial, Don Whyte was the prosecutor; John Keker represented Newton? Does that name ring a bell? I forgot to look that up. Maybe he was the lead—

Jensen: No, these things get morphed. John Keker is an attorney in San Francisco. He represented Eldridge Cleaver when Eldridge Cleaver came back from his flight. But I don’t think he had anything to do with Newton.

Rubens: No? Okay. I will look that up. I want to ask you about the jury pool and clear up one other thing – would you look at this and explain it? This goes back to the first trial.

Jensen: Well, it says, “We talked about the instructions,” and as I was saying, the trial judge is the person who decides on this. Some judges write up instructions. That’s what I do. But some judges don’t. And you have attorneys submit instructions. And basically, instructions can be basic boilerplate that’s given in every trial, or there are those that apply specifically to the facts and charges in a particular case. The discussions we had in the Newton trial had to do with those that apply specifically when you’re talking about state of mind. So the lawyers on each side suggested to the judge what we should give. There were different positions on that. Then the judge decided what he was going to do. So that’s the “it” in the document you asked me to look at. That’s what the judge decides is going to be the instruction, after you’ve had the session and he’s listened to the lawyers.
Rubens: “It” refers to what he instructed?

Jensen: What he’s going to instruct to the jury.

Rubens: And what he instructed is then what—

Jensen: That’s what got reversed.

Rubens: Okay, now I understand that, but I don’t know what you mean when you say—

Jensen: That wasn’t reported. After the instructions have been determined, the “it” refers to the session in the judge’s chambers, where we discussed the instructions. That’s not recorded. So after “it;” that is, that session, got all done, then the judge comes back and tells us exactly what he’s going to give as instructions to the jury.

Rubens: Look at this next “it.” It’s that line right there.

Jensen: Oh, I see. Well, I think we’re talking about whether it would be better if the chambers discussion had been recorded.

We have this reference here. The appellate court is reading into what must have happened at that session—that’s the session that wasn’t recorded. So I’m saying it would be better if the discussion about the instructions had been on the record.

Rubens: Has there been a change in law there, too? Do they have to be—?

Jensen: No, there’s nothing that says you have to do it. I generally do it on the record. We have a session in court where we discuss exactly what I have proposed that the instructions should be. The attorneys then make their position clear on what they think they should be. Then I state what we’re going to do. I think that a good many judges do that. But I don’t think there’s anything that requires that you have the give and take by the judge and the lawyers about the instructions being recorded, as long as you memorialize it. And people will do that. But the way I do it now is I write up the instructions, and then we discuss what the lawyers suggest should be changed about them.

Rubens: Why wouldn’t a judge want it recorded?

Jensen: I don’t know. I don’t know.
Rubens: Okay. I don’t know if they’re trying to go for wiggle room or—

MLJ: Do you have the entire discussion on the record in court? Because many judges that I’ve worked with will have an informal sit-down session with the lawyers after they hand out the proposed instructions, where you can be very open about what you think ought to be done, and you can basically work through the instructions, reach decisions on what’s going to happen; then have an in-court session where the judge says, “Here’s the instructions I’m going to give.” Then if a lawyer has an objection, they can put it on the record, but everyone knows what’s going to happen based on the previous discussion. But the informal session doesn’t go on the record, only the—

Jensen: The final. That’s the memorialization. But the point is, you want to have a record that goes up on appeal that says what positions were taken by the parties. Such that if the record goes up, and the defense now is complaining about instructions that they didn’t complain about it at all before, then it changes the way in which it’s reviewed. So that’s the point, that in this particular case, we didn’t have the positions that the attorneys took in this session in chambers on the record.

Rubens: Because you were young enough, you weren’t established enough that you would ask for it to be recorded?

Jensen: Well, that’s the judge. I don’t decide that. I don’t say, “Judge, this is what you’re going to do.”

Rubens: Well, no. But I could see someone today saying, “I want this recorded.”

Jensen: Yes, well, more of it is recorded now. It seems to be simpler and easier to do. Because then, you didn’t have tape recorders, basically; you’d have a court reporter. So if you’re going to be in chambers and discuss this, you’ve got to have a court reporter there.

Rubens: More expense, more—

Jensen: Just the whole infrastructure, the whole way in which things were done was different.

Rubens: Yes. Regarding the second trial, you said it was essentially the same case, except that they found Dell Ross again.

Jensen: He was the guy who was at the scene of the confrontation between Newton and the police when the shooting and murders took place. When Newton left there, he’d been shot and he needed to go to the hospital. So they
commandeered a car to take him to the hospital. And Dell Ross was the driver of the car. So he had been—

Rubens:  Kidnapped.

Jensen:  Originally, kidnapped. And we had charged that, through the grand jury. And he testified at the grand jury. But then he didn’t testify at the trial.

Rubens:  Right; at the first trial.

Jensen:  Then we found him for the second trial. At that point, he said what had happened—testified that he’d been kidnapped.

Rubens:  Do you have anything to say about what happened between the first and second trial?

Jensen:  I don’t know what happened. I don’t know. There’s something to the effect that Ross had been pressured or whatever, in terms of his testimony. He was around at the time of the first trial, but he didn’t testify. I think he said that, “I don’t recall what happened.”

Rubens:  That’s what he said at the first trial.

Jensen:  Yes, right.

Rubens:  But at the second trial, he said?

Jensen:  He testified as to what happened, in terms he did recall.

Rubens:  But that didn’t make any difference.

Jensen:  No; that didn’t make a difference. Well, one of the big differences is that the kidnap was charged as an offense in the first trial. And since he didn’t testify, he was found not guilty on that. Newton was found not guilty. So you can’t retry it. So when Ross testifies, he’s just testifying to the background of things. But you can’t retry the kidnap, because he’s already been acquitted on that.

Rubens:  Wouldn’t you consider that new evidence?

Jensen:  It is new evidence, but that doesn’t make any difference. Once you’ve been in jeopardy before a jury and you’re acquitted, that’s it.
Rubens: All right. And that’s part of the instructions to the jury?

Jensen: Well, the jury doesn’t get any instructions regarding how it should consider the testimony of Ross related to the kidnap at the second trial, because there’s no kidnap issue for them to decide.

Rubens: All right. So it’s hung up.

Jensen: Yes. And it hung up in the sense where we thought that it hung up in favor of a prosecution verdict. So that’s why we said, “Try it again.” And then it hung up again, so we said, “That’s it.”

It wasn’t that much later, but we tried it a third time. And the same thing happened, the jury hung. The jury would not reach a verdict; and it became apparent that that’s where we were, so there was no point in proceeding. That’s when we dismissed it.

Rubens: Right. And then he gets into his own problems and leaves the country.

Jensen: All kinds of new circumstances.

Rubens: And you’re already into enough hot water with all the other things that you’re—

Jensen: Yes, we’ve got lots to do. Lot’s to do.

Rubens: There’s someone I’ve been meaning to ask you about. Saundra Armstrong. She ends up starting a civil rights center. Is Saundra Armstrong someone you have stayed in touch with?

Jensen: She started out working for the police department; Oakland Police. Then she went to law school. She went to USF [University of San Francisco], and after she graduated, I hired her as a Deputy District Attorney. She worked for a period of time as a Deputy District Attorney – but then I don’t know what you’re talking about with a civil rights center.

Rubens: Well, you made a significant effort to bring African Americans into the Office. And in Oakland in general, John Burris worked in the DA’s Office, Billy Hunter, Jerry Curtis.

Jensen: There are also—judges particularly—Saundra Armstrong is one—she’s now a District Court judge downstairs, on the third floor. She started working for me as a Deputy District Attorney; she’s now a US District Judge. Also, Marty
Jenkins is a US District Judge. He started working for me. He’s in San Francisco. Then there are other African American judges—Joan Cartwright’s on the Superior Court; Henry Needham, and Gloria Rhynes; these are all African American judges who worked for me.

Rubens: I want to ask you some more about federal monitoring. By ’75, there is a House Select Committee on intelligence gathering. I think it’s the Church Committee. And there is a statement that the FBI had overreached its—what?—legal—

Jensen: Well, they were getting involved in investigations where there’s no crime, where they’re monitoring people because of their political positions. And the point is, the FBI is an investigative agency; they’re not supposed to monitor citizens. You’re supposed to be left alone; you’re not supposed to be subject to investigations because the FBI decides to do it.

Rubens: And it’s out of that that the FISA court system gets established. Is that right?

Jensen: Well, it’s not a direct kind of relationship.

Rubens: No? Okay. Let me just get my notes. Church Committee is ’75. And Phil Hart, the Senator from Michigan, makes a blistering statement about, “the FBI’s doing to us what terrorist groups supposedly are doing to us.” And then I thought that FISA was a recommendation—

Jensen: Well, it may’ve come out of some consideration in connection with that—it may have very well been.

Rubens: It was a recommendation.

Jensen: Yes, but FISA was for foreign intelligence, not—that’s the name of the court. And it was directed at intelligence gathering in foreign circumstances, not national circumstances. So FISA doesn’t cover activities by the FBI, in terms of investigating US citizens in the United States.

Rubens: I guess I didn’t say at the beginning the name of the Senate committee. It was called the Senate Select Committee to Study Governmental Operations, with respect to intelligence activities. So it had to do with—

Jensen: Well, it could very well be, if they look at the overall thing. They come out with a mechanism having to do with what’s being done overseas.

Rubens: Right. It’s sort of an awkward segue, but there has been quite a bit in the news recently about whether these FISA courts are being—
Jensen: See, FISA is a way of authorizing wiretaps, for example. All right; now, if you’re wiretapping without FISA authorization in areas where it should go to FISA, that’s what you’re talking about.

Rubens: That’s right, that’s exactly what I’m talking about.

Jensen: Because in effect, you’re going around FISA to monitor and overhear conversations. That’s the issue that sort of is out there.

Rubens: And wasn’t it the main issue of why [Attorney General Alberto] Gonzales was forced to resign?

Jensen: I guess so. It was part of the issue.

Rubens: And also the alleged—

Jensen: This is the Patriot Act and all these sort of things. There are ongoing discussions about that. I think they’re talking about that now, whether they’re going to renew it.

Rubens: Yes, exactly. The other thing that brought Gonzales down, I think, was the alleged political removal of US attorneys. And this is putting a judge in an awkward position, but I wondered if you had a particular opinion about that.

Jensen: Well, I don’t think you should remove US attorneys because of a political consideration. I don’t think you should make any decisions in the Justice Department on a political basis. But you do have the situation where people get removed, because they serve at the pleasure of the president. So the president can say, “You’re removed.” And then the question is, “What’s your motive for doing this?” We removed a US attorney when I was there.

Yes, I’m in the Justice Department. Did we remove US attorneys? Yes.

MLJ: Why did you remove the US attorney?

Jensen: Because we indicted him the same day. He’d leaked some wiretap stuff, and so he was removed as a US attorney. But see, that’s totally different. But you have the power to do this; the president has the power to do it. And the question is, why is it done? What are the circumstances? And are you, in effect, abusing the power?

Rubens: So that’s exactly what I wanted to ask you, if you removed many, or is that one of the—
Jensen: Well, there was just one. I can’t remember any other than that, where the Department actually told the US attorney “You’re now removed.” I mean, speaking for the president—that is, the president tells them, but they know they’re removed through the Department’s activities.

Rubens: I just wanted to get clear about that. So you make recommendations about who should be the US attorney. But you do serve at the—

Jensen: That’s right. The president appoints US attorneys, and you serve at the pleasure of the president. But there’s a term. I think it’s a four-year term. When you come to the end of the term, then you can stay in. And the only thing that removes you is by the president appointing somebody else. Though it’s a term, you don’t go out of office and get to have somebody else come in. You have US attorneys serving now who are beyond their so-called term, but no one has said anything about what’s going to happen. They could be removed at any time, just because the president wishes to replace them with somebody else—that’s because their term is up. But if you have a removal that isn’t in the regular course of business and it’s for a political purpose, that’s when you have the issue.

Rubens: It looked to me like some of those recently—particularly the San Diego woman—it was political.

Jensen: Well, part of that is because the Department does operate publicly. It is a public trust, basically. So you ought to have—the appearance of propriety is important, and if you have appearances that look as though you are abusing it, then that’s as much of an issue as what you’re actually doing. I tend to think that what you’re actually doing is the important part; but appearances are something that has to be borne in mind.

MLJ: Have you developed any opinion on the operation of the Justice Department now, versus when you were there?

Jensen: I wouldn’t do that. The Justice Department appears in my court every day.

Rubens: Meaning?

Jensen: I mean, I deal with the Justice Department every day. The lawyers from the Justice Department are in my court, and they do fine. I don’t see any difference between what they’re doing as opposed to before—that’s the whole business about the business goes on, regardless of what’s happening at the time. There are people who have their individual responsibilities, and they do them.
Rubens: You’ve made that clear throughout your interview. I can’t remember his name, but you told us that there was a fellow who was just the backbone of the Criminal—

Jensen: Yes; in terms of the Justice Department—career lawyers—that’s exactly right. Those people serve as public servants, and what happens is that the political people come in and out as the political leadership changes, and they still do their job as professional prosecutors. That’s what’s happening, as far as I can see, in the cases that I have.

Rubens: But is this just for appearances? Don’t you think the nominee for the Attorney General of the United States could say whether he thinks that waterboarding is torture?

Jensen: Well, that’s for sure. That’s beyond me.

Rubens: Okay. I don’t want to put you in an awkward position, and now I’ve gone far from our original discussion.

MLJ: I was curious, while you were talking about why you didn’t try the second Huey Newton case—when you were District Attorney, you decided to try the [Joseph] Remiro, [Russell] Little, SLA [Symbionese Liberation Army] case. I wondered what was different about that that made you decide to try it.

Rubens: And in Sacramento.

Jensen: Well, that assumes that I know. [laughs] I don’t know why you do these things—one of the things that happened was that when the first Newton retrial came up, I’d only been District Attorney for a very short period of time. I’m trying to figure out what I’m doing to run this Office—this is a big institution. Your management responsibilities are why you can’t try cases; because you’ve got other things to do, rather than spending two months in trial. If you’re in trial, that means nobody’s running the Office. Or you’re not. So when the first Newton retrial comes up, that’s one of the considerations—that I’m just barely getting to the point where I’ve got my feet on the ground as being the District Attorney.

Rubens: Well, I would think also, that there was such a lens on Oakland, too—

Jensen: Sure.

Rubens: That that intensifies your need to stay as a manager and—
Jensen: I think that that’s right. When you get started, there are all the rest of the obligations and responsibilities you have. And I was much more comfortable with those by the time Remiro-Little came around.

Rubens: I don’t think I ever asked you directly whether you met with the FBI during that second trial. Was that office asking—?

Jensen: They didn’t have any role in Newton for one, two, or three.

Rubens: Okay. They’re not asking you what’s going on, or saying “We want you to do this?”

Jensen: No, they’re not. No, they don’t come in and we don’t brief them or debrief or whatever. They don’t come and ask for that. They get their own sources. Most of it’s public, anyway, what’s happening. But we didn’t have any direct relationship, in terms of the effect upon the case.

Rubens: You also were very clear that you didn’t hire anyone or consult with anyone about how to manage the PR, or the image, or the spin.

Jensen: Yes, well, the Office did its own public relations, in the sense that the people who are actually doing these things are the ones who talked to the press. I felt it was better to do that, rather than—

Rubens: Well, you must’ve felt confidence in your own Office.

Jensen: Oh, well, certainly.

Rubens: Because you’d talked about weekly meetings and training.

Jensen: Yes. I don’t think you have any problem about saying that when something happens in the Oakland Office, talk to the Oakland Office. We didn’t have a spokesperson that would represent the Office, and speak for the Office. I don’t think they do now, either. They don’t. Historically, they haven’t done that.

Rubens: Do you think that informally, people consult with—everyone pays attention to what makes good media—

Jensen: I don’t think they have much back and forth. It’s certainly not the same as the Washington sort of thing, where the media pays much closer attention to what’s going on and builds relationships with people in the offices. That really
doesn’t happen here. It didn’t happen then. I don’t know if that happens now, but I don’t think so.

Rubens: Are there any cases that you’re sitting on now that you think are particularly interesting or—

Jensen: Well, as a Senior Judge, you can sort of control the flow of cases again. So I’m not getting any new cases that are other than criminal—the only cases I’m taking now are criminal. I don’t have any more civil cases. I may have a couple things that are left, but my work load now is just criminal cases.

Rubens: You played such a key role in changing sentencing and advising on criminal procedure, is that continuing? Are you engaged?

Jensen: Well, that’s part of my background. I’ve been through all that, so it’s easier, in a sense, and more comfortable, to be dealing with areas of law that you know quite well.

Rubens: But is there anything major afoot, or new?

Jensen: There’s nothing new. These go over and over.

MLJ: Well, there’s the MDL.

Jensen: Well, yes, I’m almost finishing up with the MDL, the—

MLJ: Multi-District Litigation Panel.

Jensen: This is a panel that comes out of, I guess about the sixties. There were a series of cases—antitrust cases—that were essentially the same kind of case being filed in different District Courts around the country. So the same case, in a sense, was being heard in multiple courts. And judges then worked out ways of cooperating and removing this problem—let’s say you have one defendant and you now have discovery going on in six different places around the country; doesn’t make sense. You should do it only once.

So they worked out ways of doing that. Then there was legislation passed which now makes that a function of the courts, so the courts can require this. There’s a judicial panel that hears these cases and decides whether or not they should be made into an MDL, as they call it, and centralize the case. And if the decision is to put it into the MDL process, then all the other federal cases are sent to a single judge who handles the pre-trial procedures. My panel decides on whether or not that’s going to happen, and if so; where the case goes.
The Panel is appointed by the Chief Justice. It is composed of just seven judges, and they go around the country. We have sessions every two months and deal with these cases. For example, if you have a disaster—an airplane or whatever goes down—you have lots of cases filed different places. We centralize them, so they’re all at one place. Or you have securities class actions that are going on all around the country; we’ll centralize that. Or if you have Vioxx, for example, and you have products and you have mass torts that, in effect, come out of product liability, we centralize them and send them to a specific court. We have the power to order that. The parties can say what they want, but it’s our power to either decide to centralize it or not. I’ve been on that panel now for about the last seven years, and it’s just coming to a conclusion now, for me.

Rubens: Your service.

Jensen: My service is just about over.

Rubens: And when was this centralization, this—

Jensen: It started in about the sixties. The law has been there for some time, so the Panel has been in existence for a long time. There are thousands of cases that are centralized in the country now.

Rubens: When were you put on the Panel?

Jensen: About seven years ago.

Rubens: At the discretion of the Chief Justice?

Jensen: The Chief Justice makes the appointments.

Rubens: Do people sign up for a second term?

Jensen: Well, they put you on for one term, and then people go off. When I came on, I was the junior judge; now I’m the next to the senior judge. I’m the senior judge, other than the new Chair. The Chair, who was the Chair when I first came on, has since finished his term and gone back to the District Court. A new Chair is there now.

Rubens: Do you make recommendations as to who should serve?
Jensen: No; I don’t—the process where the decisions about what panels you’re going to be on or what committees you’re going to be on, it’s done in Washington, through the Chief Justice.

Rubens: There’s a special arm, administrative?

Jensen: There’s an Administrative Office for the Courts that provides information. But ultimately, it’s the responsibility of the Chief Justice to make the appointments.

MLJ: Do you get contacted by the Courts, or the Department of Justice, or other people to make recommendations—not to put you on something, but to put other people on MDL or other things?

Jensen: Every once in a while, yes. I get requests. I get calls asking “What do you think about it?” From people who are considering different appointments; or judgeships. I’ll get calls once in a while from—the state courts will ask you for your opinion. I don’t write letters suggesting people to people, but if the name comes up and they want to refer me—I can serve as a referral for people. And that happens from time to time.

Rubens: I would assume, because of your—

Jensen: Well, that happens with lots of people, because that’s what the idea is. That’s why you have a referral mechanism—to find out something about backgrounds. So to the extent I know, that’s fine, I’ll tell them.

Rubens: Did you know the new Supreme Court—

Jensen: Yes.

Rubens: How did you know him?

Jensen: I knew him because when William French Smith became the Attorney General, when the Reagan Administration first came in, he was a young lawyer who was hired to go work on the staff of the Attorney General—a brilliant young lawyer. Absolutely; there was no question that he was a brilliant, brilliant lawyer.

Rubens: Just stood out.
Jensen: Yes. There was no question about it. So I knew him. I didn’t work directly
with him. He worked on the staff of the Attorney General. But I knew he was
there, I knew what his reputation was. It was solid gold. And Alito, the other
appointment, he was working for the Solicitor General, but I didn’t know him.

Rubens: We did discuss that.

Jensen: I knew of him, but not as much as I knew of Roberts.

MLJ: You’re obviously still in your career, but as you look back for purposes of our
interview, is there anything that you’re particularly proud of?

Jensen: Well, I am proud of serving as District Attorney, and having had an effect
upon what is a very, very fine institution. I think it was a good institution
when I got there, and it was still a good institution when I left. I may have
contributed to that; I think I did. So I feel very good about that. You can’t
have the same kind of effect upon the Department of Justice. That’s
impossible. So I think I did well—

Rubens: Well, it’s shorter.

Jensen: It’s a shorter time. But I did things that I think were constructive. But that’s
not the same as being the District Attorney, because in that position, you’re
the whole business. You are the—they say, independent prosecutor, special
prosecutor, whatever it is, you are it. You’re hired by the people to be the
prosecutor. That’s a different kind of role you have than some of these other
things. I think as a judge, I don’t know there’s—you just do your job.

Rubens: I thought you were particularly proud of—or I think you should be—the
Sentencing Guidelines.

Jensen: Well, I think that was a contribution. Yes, I think I did contribute, because of
the positions I had at the state level as a DA, and I would represent the
legislative people for the DA’s Association, I had a chance to go up and be a
part of the process of developing determinate sentencing here. Then the same
thing happened in Washington, because I got a chance to go and testify. So I
think that that’s a much better thing—I think the system has been improved
and is now a much better system than when I was first practicing. I think that I
did have something to do with bringing it in.

MLJ: A companion question, of course is, is there anything that you’re disappointed
with, that you wish you might have done differently?
Jensen: I think I’ve suppressed all that. I don’t really know of anything.

MLJ: How do you feel about the various people you talk about—Marty Jenkins and Saundra Armstrong—?

Jensen: I’m very proud of those people. It’s a great feeling to know that you have been a part of the young lawyer who comes into the profession, and you’re a part of the way they learn the business of being a lawyer, being in a courtroom, the ethical sort of structure for how they behave. I feel very good about the people who I had a chance to deal with, to hire them and to train them, and to then see how marvelous they are. You feel awfully good about that.

MLJ: Two of your hires are now on the California Supreme Court.

Jensen: That’s right. Ming Chin and Carol Corrigan. They’re wonderful judges. And that makes you feel very proud of the fact that you had something to do with a part of their training and a part of their background. I think everybody recognizes what fine people they are; and I think that having a role in that at some level is a thing that makes you very satisfied.

Rubens: And having an East Bay branch of the federal District Court.

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Rubens: Anything more about the role of jury consultants?

Jensen: They have come into the picture. In the old days, you didn’t have jury consultants. The jury consultant, in effect, analyzes the answers they’re receiving, and the juror who is now being interviewed as a prospective juror as a person. And in effect, tells the lawyer what the lawyer should do.

MLJ: But they also do that previous to picking a jury because they develop a profile of what they think the juror should look like.

Jensen: Yes: where they should come [from]; what their educational background [should be]; what their work background is; what maybe their ethnic background is. But obviously, you can’t use those kinds of things. You can’t use race or ethnicity in making your decisions. You want to get to the point where you have people who will be fair to your perspective. Some people will be unfair to defendants, just because that’s the way their mental set is. And that’s up to the—somebody should excuse those people. If it’s bad enough, they get excused for cause. But you’re making judgments about how people are going to react—the prosecutor’s looking to see, “Well, they’ll give me a fair trial.” That’s what you’re looking for.
Rubens: But I guess the jury consultant, my thought was that they specialize in—it’s not exactly scientific; it’s social science. But if 20% of—

Jensen: Well, they may be thinking about things that you haven’t thought about. They may say, “Here are things that you should think about.” And it may very well be that the lawyer who’s going to have to make the decisions, and make the peremptory challenge, didn’t think about things they should have. The jury consultant can tell them that; all right. But ultimately, it’s like you telling the judge what the instructions should be—it’s up to the judge. And it’s up to the lawyer to decide who’s going to be excused or not.

Rubens: I see your point. And you have felt, perhaps, there’s been too much—?

Jensen: I don’t know that I think that the jury consultant’s going to tell me something that I didn’t think about before. That’s just a question of whether you’re satisfied that you have, in your own way of approaching this, brought to bear all the information that’s going to be processed through your head if you do that. But I think you can do that as a lawyer, I don’t think you have to have jury consultants.

MLJ: Don’t you also find that in doing voir dire and selecting jurors as a trial lawyer, that at least a portion of it is determining what your personal connection with that juror is—whether you can convince them?

Jensen: That’s right. You have to project, in terms of what’s going to happen. You know what the trial’s going to be about. And ultimately, you’re going to have to have them listen to you and believe in what you do. They may like you, they may not like you. You have to sort of project how this is all going to work out. You don’t want to get to someplace where you say, “I’ve decided that this juror really doesn’t like me. I don’t want to have that juror sitting on my trial for the next two weeks while I’m thinking, ‘Why didn’t I excuse that juror?’”

Rubens: Have any new awards come to you?

Jensen: No new awards. [laughs]

Rubens: You still have your Barbara and—

Jensen: Yes, we just had, last month, an award down in LA. The recipient this time was Pete Wilson, the former Governor, and Senator—because he went to Boalt. This is an award for people who’ve done public service, who are Boalt graduates.
Rubens: What is Pete Wilson doing now?

Jensen: He’s works in a law firm and does various consulting for people, legal business.

But you go through all this. He went through just about everything. He was a great mayor of San Diego. San Diego’s a better place because he was there. And he was a fine Senator, and he was a good Governor. So he’s done this. He’s a remarkable public servant. The idea behind the award is public service; and that’s what he’s done—public service in public positions. He’s been marvelous.

Rubens: By the way, we talked at one point about Tom Berkeley, who used—

Jensen: Tom Berkeley is a lawyer who brought containers to the Port of Oakland, or was very, very responsible. He was a lawyer, but he didn’t practice law, particularly. He would never be in criminal courts. He didn’t have a practice where he appeared in criminal courts. But he published a paper, The Post. And he was active in the community. I think he was a tremendously productive person.

Rubens: I’m asking you because ROHO has a contract to study the decommissioning of the Oakland Army Base. I wonder if he’s around, or is there anyone that you—?

Jensen: That’d be outside, because that’s really the feds. We didn’t have anything to do with the federal stuff. He did all local community stuff for Oakland, the Bay Area.

Rubens: By the time the Base closure came about, there were not that many people working on it. What it looks like to me is that there was more opportunity for developing the land and breaking it up, it seemed to me.

Jensen: It was more important to the community than it was to the national government, in terms of its utility to the national government, by the end. Earlier, it provided a source of jobs for people, that’s for sure. Other than that, I don’t know.

I remember going through the Army Base when I shipped out. We came into the Estuary, we were really at the Oakland Army Base.

Rubens: Do you have a specific memory of—
Jensen: I remember being shipped out, yes. After I got out of law school, I got drafted. Okay, they waited – during those times, that’s what they did. And in order to report to the Army, you’d go to the Oakland—they had the place that was "Stop the Draft." They didn’t stop the draft when I was there. I went through the draft. I went out; and you went to Camp Stoneman, out in the Pittsburgh area.

Rubens: How, literally?

Jensen: We went out, reported out there, and then we’re processed through. I was originally processed through Fort Ord. They took you down to Fort Ord and you went in. But now I’m going to get shipped overseas, so I go and I report to Stoneman. And they put you on a barge and they bring you down the Oakland Estuary. Then you get on a ship that is basically at the Oakland Army Base, or in that area. And then you turn around and go out the Bay.

I went to Japan on a ship. And the interesting part about the journey was that as soon as we started to go out of the estuary—they have different decks—one, two, three, four—and they keep on going down. Well, from the deck right above me, a guy dives overboard. He jumps off the ship, and he dives [laughs] into the estuary and swims to shore. He was taken off, All right. But what he did, he swam ashore where? To the Oakland Army Base. [laughs] So he didn’t go very far. We waited until they picked him up, and they brought him back and put him on the ship, and he went to Japan in the brig.

Rubens: In the brig.

Jensen: Yes, right. But that’s what I remember about being shipped out.

Rubens: So you never actually spent the night at the Oakland Army Base? You were taken right to the ship?

Jensen: Yes, right; taken from Camp Stoneman to the ship and out. But that was a great adventure. [laughs] If you’re jumping off—it’s unfair that he came up in the wrong place.

Rubens: And when you came back?

Jensen: I came back; again down to Fort Ord. They processed you out at Fort Ord.

Rubens: But did you land at Oakland Army Base?
Jensen: Well, we landed over in San Francisco. We landed at Fort Mason. When I came back, that’s where we came in; and we got off and then they took us down to Fort Ord.

Rubens: Did you ever do anything on the Oakland Army Base for any reason?

Jensen: No.

Rubens: No PX? You didn’t go buy anything at the PX or—

Jensen: No, no, never did. Because when I was here, I was stationed over in the Presidio in San Francisco. That was my home base over there, so I didn’t have anything to do with Oakland.

Rubens: So instead of sort of waving to parents or to this beautiful sight at the Oakland Army Base, it’s watching this guy swim?

Jensen: That’s right. [laughs]

Rubens: What was the story? Did he just freak out?

Jensen: He just decided he didn’t want to go. He realized this was his last chance—didn’t work out well.

Rubens: Then did he remain in the brig?

Jensen: Well, I don’t know. I knew they brought him back. And they said, “You know the guy that jumped overboard? He’s downstairs in the brig.” So he went overseas, and his history after that, I don’t know.

Rubens: Your parents’ restaurant, was it particularly a draw for the military people in Alameda?

Jensen: No, it wasn’t at all. It was completely local merchants and people from Alameda who would go to that restaurant.

Rubens: Right. I just remember you talking about biscuits. Did you say he still makes the biscuits?

Jensen: Yes, yes, we made biscuits.

MLJ: No, he wasn’t allowed to make biscuits, because he made too many.
Jensen: Well, I once asked if I could make biscuits for our dinner for Barbara and I—and that was fine. Except for the fact I only knew the recipe for four dozen.

[End of Interview]
Appendix: Photographs

The Jensen family in Alameda, August 1955. Left to right:
D. Lowell Jensen, father Wendell, sister Marlene Jensen Eastman, mother Elnora Hatch Jensen,
sister Sharon Jensen Plomgren
The Jensen family, 1981. Left to right: D. Lowell Jensen, wife Barbara, and their children Peter, Marcia, and Tom
Left to right: President Ronald Reagan, FBI Director William Webster, D. Lowell Jensen
Swearing-in ceremony as Associate Attorney General, 1992. Left to right: Justice Sandra Day O’Connor, Barbara Jensen, D. Lowell Jensen
**Lisa Rubens** is an historian with the Regional Oral History Office. She directs projects on California Culture and the Arts, Architecture and Land Use development, University History and the History of Social Movements. Dr. Rubens earned her Ph.D in History, as well as a Masters in City Planning, at UC Berkeley. She has published monographs on women in California and on international exhibitions and is currently completing a book on San Francisco's 1939 Worlds Fair. Dr. Rubens created and directs ROHO's Advanced Oral History Summer Institute.

**Marcia Jensen** graduated from the University of California at Berkeley with a degree in English, and obtained her J.D. from the University of Santa Clara. She served as both a law clerk and Deputy District Attorney in Alameda County, then moved to a brief stint in private practice before becoming an Assistant United States Attorney in the Northern District of California, where she worked in the San Jose Branch office for 16 years. She is currently involved in land use planning, serving as a Planning Commissioner in her home town of Los Gatos and volunteering with the non-profit organization Greenbelt Alliance to evaluate new Transit-Oriented Developments proposed for construction throughout the Bay Area.