

INTERVIEW OF JOSE S. DELA CRUZ

by Howard P. Willens and Deanne C. Siemer

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- Willens: Jose S. Dela Cruz, Chief Justice of the Commonwealth Supreme Court, has agreed to be interviewed in connection with our effort to write a history of the Commonwealth of the Northern Mariana Islands. Mr. Chief Justice, thank you very much for agreeing to be interviewed. Could you begin by giving us some background regarding your family?
- Dela Cruz: I'm married to Rita Sablan who is from Saipan. I have three children. I was married in 1977, about three years after finishing law school. After law school I was considering going someplace else.
- Willens: What happened?
- Dela Cruz: After law school I was thinking that perhaps I should go to some different place and practice law. Then I met my future wife Rita here and decided to stay in Saipan. I have been here ever since. We have three children, all girls, and they are all going to high school in Honolulu at this time.
- Willens: Were you born on Saipan?
- Dela Cruz: I was born and raised here in Saipan. I went to Mt. Carmel School here up until 1963. After finishing 8th grade, I enrolled at the Father Duenas Memorial School for boys in Guam. I was thinking then of entering the priesthood. I was in the seminary and attended Father Duenas high school for four years. I graduated in 1967 and attended college in Hawaii for about two to two and one-half years, where I was still in the seminary. After I left the seminary I continued my studies at the University of Guam and graduated in 1971. I was trying to figure out what to do with my life and decided that I should go to law school. I applied and was accepted at Boalt Hall.
- Willens: Boalt Hall at Berkeley?
- Dela Cruz: Yes, at the University of California at Berkeley. I was in law school from 1971 to 1974 and then came back to Saipan. I worked here in Saipan for Micronesia Legal Services for about four and one-half years — up to 1979.
- Willens: Doing what?
- Dela Cruz: I was with the Marianas office for only about two weeks when I went to court to seek a temporary restraining order and move for a preliminary injunction after that. The case arose during the rainy season in August. The paved lot next to my client's property was accumulating water at such a rate that it was pouring into my client's property and flooding his house. He came rushing to my office during one of these very heavy rains and asked whether I could do something about it. I said we should go over to the High Court, where Judge Harold Burnett was the Chief Justice of the Trust Territory High Court and in charge of the Saipan district. His court was where the present Superior Court facility is. I ran over and filed the complaint and Judge Burnett asked whether I had served a copy to the opposing side. I said that I did, but that I didn't think the opposing counsel had seen it. I think the judge denied the TRO because he felt that the flooding was just one of those things that happened because of the heavy rain.
- Willens: Was that your first case that you remember with Micronesia Legal Services?

- Dela Cruz: That was my first case and it is in the Trust Territory reports. We later had a hearing on the merits of the motion for a preliminary injunction. Judge Burnett said he didn't think he could give me a judgment against the contractor. I was suing a corporation from Hawaii, which was doing work in Micronesia. When I asked the judge about his position, he said that I would have to establish a pattern of knowledge to the effect that, if the contractor paved this, they did it knowing that it would flood my client's premises. I told the judge that I thought we had proved that already. He said that he did not think so. So I appealed that portion of his decision to the Appellate Division of the High Court and they reversed him on that. They thought that I was right. The case is titled Sablan v. Dillingham.
- Willens: Have you cited it from time to time in your opinions later on?
- Dela Cruz: We haven't really run into many paving cases in Micronesia. That case happened right after law school and then I moved onto a number of other cases.
- Willens: Let me ask you a few questions about your mother and your father. Could you tell us what their family names were and a little bit about their history in the Northern Marianas?
- Dela Cruz: My father was one of several children. I think he was the second or third to the youngest and all of his siblings have died except one, who lives in Guam.
- Willens: Was your father born in Guam?
- Dela Cruz: His sister was. The family was originally from Agana in Guam, but they moved over to Saipan.
- Willens: When did they move to Saipan?
- Dela Cruz: I think they moved over in the early 1900's. He was born in 1915.
- Willens: So he was born just when the Japanese Administration began during World War I?
- Dela Cruz: Yes, just about the time the Japanese Administration began. He passed away when he was 65 years old. He worked for the government as a tool room clerk for a number of years and then he was transferred to the Agriculture Department here.
- Willens: What did he tell you about his experiences under the Japanese Administration?
- Dela Cruz: Well, he went to Japanese school here and then he also went to school in Japan.
- Willens: How was he selected to go to school in Japan?
- Dela Cruz: He never told me that. A lot of people were impressed with him because of his facility with the Japanese language. He was able to write in addition to speaking it fluently. He was teaching some of the younger students when he was in school. So he went beyond the normal five years of Japanese schooling here.
- Willens: After he returned to Saipan, did he have an opportunity for higher level employment because he had these additional skills acquired in Japan?
- Dela Cruz: No, I don't think so. He worked for either the sugar company or the tapioca industry here. I think it was the tapioca industry. I don't know if you know the late Antonio R. Guerrero.
- Willens: No, I don't think so.
- Dela Cruz: He was J.M. Guerrero's father. They knew each other quite well. My father was a quiet person. We didn't really talk too much about what happened during the Japanese times. It was really more my father-in-law. After I got married my father-in-law would spend time with me. He would take out his can of beer at about 5 o'clock in the afternoon, walk over

to my house, and we would sit down. He would talk to me to death just literally until about 12 o'clock midnight. I would try to shake Rita next to me and encourage her to listen to her dad because I was having difficulty keeping up with him. He'd tell us things about the Japanese times and their different industries. He thought that the Japanese could do just about anything with any type of product. For example, the dried fish that you shave off and put on rice. He was very impressed with the Japanese Administration because they were able to do so many things with local products. He told me that during Japanese times they were able to mine so many things in the Northern Marianas from sea beds and elsewhere. I couldn't really verify how true his recollections were. I wondered how true this was. But he would keep talking, drinking perhaps five cans of beer, so as time passed I needed help.

Willens: Which Sablan was it?

Dela Cruz: His name was Manual Sablan. He worked for Land Management as a land specialist.

Willens: Which Manual Sablan?

Dela Cruz: Manual B. Sablan. There are so many Manual Sablans. You know Manual A. Sablan, Manual T. Sablan, Manual D. Sablan.

Willens: Right. I know Manual A. Sablan.

Dela Cruz: He's a B. Sablan. He's about the age of my father so he's probably mentioned quite a bit.

Willens: How about your mother and her family?

Dela Cruz: My mother's folks also were from Guam. They came here just at the beginning of the German Administration, 1898 I think. I think they came over to Saipan because the Germans made land on Saipan available to people from Guam. In fact, we still have relatives over in Guam from my mother's side. They are the Santos family, and my maternal grandmother's side was Sablan Reyes. Those are a huge conglomerate here in Saipan as well as in Guam. They are spread all over. My father's is Castro Dela Cruz, my mother is Sablan Santos.

Willens: You mentioned that your first job with the Micronesian Legal Services was in 1971, which was just before you began law school.

Dela Cruz: Yes, that was a summer job. I was looking for a summer job and they hired me for one month or two months before I went to law school.

Willens: Did you come back during your law school years and work during the summer here on Saipan?

Dela Cruz: I came back. After the first year I worked for Micronesian Legal Services again. They sent me to Chuuk and I spent about six weeks there. I was with Dan McMeekin. I don't know if you know him.

Willens: Yes, I do.

Dela Cruz: He's in Washington now. I worked with Dan in the Chuuk office. He and his wife were operating that office there.

Willens: While you were in school in Guam during the late 1960s, were you aware that the political leaders in the Northern Marianas wanted to reintegrate with Guam?

Dela Cruz: I was very much aware of that. It was the 1960s or perhaps earlier that the political parties here started forming. I remember my father was in the Democratic group, that was the Popular Party. He ran for one office, but he didn't like it and left politics after that. It was

about that time we had the people like the late Joe R. Cruz, Dr. Palacios, and Oly Borja . Afterwards they started to change parties so it got to be confusing whether they were still in the same group or not. But they were all good people. It was about that time that they were trying to reintegrate Guam. The Territorial Party was against it. I think they just wanted direct unification with the United States rather than joining Guam. Why should we go to Guam when we could just go directly with the United States? That's the way the Territorials put it, and they probably thought it would be a lot easier than go through and join up with Guam.

Willens: Did you have any personal view at the time as to which was preferable?

Dela Cruz: No, I didn't really have any thoughts about it one way or the other. I was too young then to be able to appreciate the difference.

Siemer: Were there college student views at the time about which way was preferable?

Dela Cruz: There were not too many college students then, Deanne. They were mostly in high school, and generally did not go to college after that. They came back here and worked. There were a few, of course, but there were not that many and I wasn't aware of what their views were on whether to join up directly with Guam. I think it all had to do with which political party your parents were affiliated with rather than any independent expression on the part of the students themselves.

Willens: Cisco Uludong was a student at the University of Hawaii and, along with other students there, questioned whether the United States decision to agree to negotiate separately with the Northern Marianas was an effort to fragment Micronesia. Many of the students who spoke out on the subject were critical of the United States. Do you recall any debate on that subject within the student community?

Dela Cruz: Not personally. I was not really into the political thing at that time. I do recall Cisco back in the late 1960s when this thing was happening. I remember he was a fairly vocal student in expressing himself. But I don't really know personally any details of those events.

Willens: During your time with the Micronesian Legal Services, the Marianas Political Status Commission began negotiating with the U.S. delegation. The negotiations began in December of 1972 and lasted until the signing of the Covenant in February of 1975. Did the Micronesian Legal Services staff ever discuss whether some of them should get involved on behalf of clients on issues that related to the negotiations?

Dela Cruz: I don't personally recall whether there were any strong feelings one way or the other. One of the things about my involvement with Micronesian Legal Services is that the regulations would not permit legal services corporations to get involved in politics. The organization took this regulation to stay out of politics quite seriously. We never ran for office or expressed any ideas one way or the other. The closest case in terms of any political expression was probably when we started representing a number of Filipino non-resident workers. We were criticized for that because some people thought that our job at Micronesian Legal Services was to assist local people here rather than outsiders. We found that quite strange. I remember talking to some people every now and then at parties or at some function who asked why we were representing Filipino workers, for example, who were being deported. At that time there were not many lawyers on the island. And, of course, we had the deportation laws under which the High Commissioner could deport people that he thought had overstayed or engaged in some other offense. I remember representing a number of those people. I thought that everybody, including non-residents, had a right to be heard as part of due process of law. For some reason I got caught up in

this matter. Once again, we asked Judge Burnett for a restraining order and asked that they be accorded a due process hearing. He agreed with me. He said that the government could not just chase people out of the airport who often are entitled to a hearing. I don't know who was attorney general at that time or who authorized this conduct. One of the more illustrious cases of this kind involved Luis Arce, a Filipino citizen. His mother was Chamorro. I think he got involved in a situation where he started criticizing the High Commissioner about something. A week later or so there was a deportation order. He came running into the offices of Micronesian Legal Services. I remember that case because Ed King and I teamed up and succeeded in having his deportation stayed. Again, of course, we more or less created this cause of action. There were not too many law firms at the time. I recall that Mike White opened up his office in about 1975 or 1976. In addition, there was Bill Nabors. But other than these there were not too many lawyers in practice in the sense that Micronesian Legal Services and the Public Defenders office were. Of course, there was also the Attorney General's office, with whom we would have a confrontation every now and then. The adversarial process was alive and well in that respect.

Willens: Do you recall any other controversies that the Micronesian Legal Services program got involved with?

Dela Cruz: Well the Saipan Continental Hotel case. I was in law school and not involved in that case. Ted Mitchell and Dan McMeekin worked with Herman Q. Guerrero on that matter.

Willens: Looking back at the Micronesian Legal Services program in the 1970's, what is your overall assessment of the contribution that the organization made to the Marianas?

Dela Cruz: I am a little bit biased in that respect, because I worked for them and I enjoyed it. I thought it gave me a lot of good experience. I thought they contributed quite a bit to the understanding of the legal process. Among the attorneys working for the Micronesian Legal Services there were a number of colorful characters and individuals in the good sense of the word. Some of them were very bright people. They came here to work because they wanted to do something good and worthwhile. I don't think they were out to do bad or anything else. Some of them were a bit aggressive in some respects, but overall I think that probably was good. This still true to this day, but I don't think it has been as colorful as it was before when so many things were going on.

Willens: Did the program often find itself in an adversarial position with respect to the TTPI officials?

Dela Cruz: That was the impression—that the organization would always find itself opposed to the government. I don't know what to say about that. In litigation you always find yourself representing one side. Here the government is the other side. You do not have other practitioners to litigate that you find in any jurisdiction in the United States. You do not always want to be fighting against the government, I think. But here the opposing side is always the government—for example, in the area of land and land exchange problems that developed after the war, including the forced sales during the Japanese Administration.

Willens: Was that practice directed specifically at the Carolinians or was it a more pervasive policy with respect to forced sale of lands?

Dela Cruz: I'm not really sure. I was doing some of the land exchange problems, but the [current] Lieutenant Governor [Jesus Borja] who was then working in the same office was doing a lot of the forced sales cases. I was trying to argue the so-called policy letter (P-1) was similar to a statute and therefore should be accorded full force and effect. He did not

convince the court on that one. We also failed to convince the court with our argument that the six year statute of limitations should not be applied in cases seeking to readdress grievances in the area of land exchanges. We contended that where there is a fiduciary relationship, the statute of limitations should not be a bar to the relief being sought. Years later, I understand that the U.S. District Court for the Northern Marianas bought that argument. I argued that the trustee cannot assert the statute of limitations as a defense and found support for this position in the Indian cases in the United States.

Siemer: Was there a problem with the operation of the statutes of limitations here in the Marianas in the sense that people didn't understand how statutes of limitations could operate and, therefore, might lose their land?

Dela Cruz: Yes, but that's just one aspect of the overall problem. I think the entire legal system was not understood by the people. I don't think they were familiar with the American legal system introduced here after the war. Immediately after the war, as I understand it, it was really a military court here as part of the civil administration. There were no lawyers present to actively advocate for individual rights here. You had the Public Defenders office, but it was primarily engaged in defending criminals. I can't really say one way or the other how many attorneys were on the staff in the Public Defenders office. But the fact of that matter is that the system was new; and the people were not aware of their rights. The statute of limitations is a law that the people are not familiar with. We were arguing among others that people should not really be held accountable if the time has passed. We were trying to argue that maybe the longer 20 year recovery involving interests in land should be the appropriate statute of limitations. But in many situations even that is not long enough to allow a person to assert rights in court regarding a particular piece of property. The government some how has felt that the land is within the public domain.

Siemer: The government thought this land was public land?

Dela Cruz: Yes, Japanese land or land that belonged to NKK, for example. Therefore, because you failed to claim it during the claiming process, right after the war and I believe up to the mid 1950's or thereabouts, you've given up your rights to the land and it is presumed to be within the public domain. There were people that took their time claiming ownership to a particular piece of land because some of the original owners died and the heirs did not have any direct knowledge of just where this particular piece of property was. When I was in the Legal Services there was a family for whom we had to dig up and do some research with some of the governmental land documents. We found out that in the Marpi area there was a piece of property that somehow people thought was part of the public domain. But I ended up convincing the land management office that this land really belonged to the family. There's no reason why we should be fighting in court. If we were to go into court, for example, I would have lost that case because the statute of limitations would have already run. I came back right after law school in 1974. This client came to the office in 1975 or 1976. The 20 year recovery of an interest in land statute was enacted in 1951 and had run in 1971. So I couldn't botch it one way or the other. The only way to do it was to convince these officials that this land is still owned by the family although they didn't claim it within the 20 years. Just because the family didn't claim it should not mean that somehow it now belongs to the government. I convinced them, and asked them to come up with a disclaimer or sort of quit-claim deed or something that we don't challenge any interest the government may have to this property at least for purposes of clarification. The clients got their land back and this was while Marpi was still within the so-called retention area.

Siemer: There was a difficult issue at the Constitutional Convention in 1976 about the statute of

limitations. Some delegates thought that the statute of limitations should be extended so that claims could be made with respect to land such as you described.

Dela Cruz: It's probably because of the experience that some have had running into that stumbling block. Every time they go in there, the government puts up the statute of limitation defense. After the Crisostomo case and other land exchange cases we thought that this may be one way of removing that barrier and allowing the party to come into court and put up testimony or proof that the land is theirs. If they don't prove it, they lose.

Siemer: Crisostomo was a land case where the landowner lost?

Dela Cruz: It was a land exchange case. The land was where the present hospital is. That whole area was so-called red-zoned, red-lined for possible military use. People who owned land within the red-lined area, (so-called because it was marked in red on the map), could not go back to their property. If the owner was willing, the government would give him other land in exchange for it. Most of the people thought that the land would never be returned to them, so they might as well just exchange it. But this guy said, "I never agreed to that. It was my brother who is the oldest and signed up for the whole family on that one, but I didn't sign for it. There is no reason why I should be bound by that." That's another regulation that was promulgated by the Land Management Office, Land Management Regulation Number One. It allows for the appointment of a land trustee and the government will deal with that person only. The reason for that is because they don't have a full fledged type of probate process where you review all the years and the available records. The government figured that we didn't have all the time to sit down and figure out all the years, so we'll appoint a land trustee who will read through this exchange and then we exchange the land, and you can then work it out with your brothers and sisters. That's exactly what happened. So, Luis Crisostomo came to the office and said, "My older brother Ken signed off on this and I don't agree to it. I want that land back. This government is not using it anymore." That was true; the Navy had moved out of that area already.

Willens: Who did the redlining? Was it done by the U.S. officials during the Navy days or during the Interior days?

Dela Cruz: I don't know exactly who did the redlining. If the individual's properties were in the part of the map marked red, the government would ask why don't you exchange it. It was probably true for some that they agreed to exchange it. There are always people who would change their mind afterwards, of course, but there were some I think that had valid claims. Like Luis who probably thought that, "I never knew about this and my brother told me that he had exchanged the land." I thought he had a valid claim, so we took it to court and we lost it on the statute of limitations, because six years had passed since the exchange took place.

Willens: I gather that you were on the island during the campaigning that preceded the vote on the Covenant in June of 1975?

Dela Cruz: Yes.

Willens: Did you have any active role in that political campaigning effort?

Dela Cruz: No. I was no longer employed with Micronesia Legal Services at the time. But I stayed out of politics completely. I stayed out of politics after that also because I was appointed to the Board of Elections in 1977 to prepare for the first general election year under the new Constitution. As I became a member, I couldn't be actively involved in politics. I remained that way since then. But there was a lot of campaigning going on. I would go in and listen

to the speeches. But with respect to the Covenant, I felt that most of the people were in favor of the relationship with the United States.

Willens: One issue that has developed in retrospect is whether the four months between the signing of the Covenant and the plebiscite itself provided sufficient time for the people to become sufficiently informed before they voted. Did you have any impression at the time whether there was sufficient information for the public?

Dela Cruz: No, I don't really have any impression one way or the other. The bottom line really is the question whether to join the United States or not. I think that the overwhelming majority was in favor of that. There were people who thought that we should not become a part of the United States. I know some felt that we should set up our own government. But after the election, even those felt that the public had spoken and were ready to respect the wishes of the majority. There were people who were not in favor of the Covenant but after it was approved they thought that they were a part of the process and that's the way it is. So they accepted it, and I thought some even liked it afterwards.

Willens: What did you do after you left the Micronesian Legal Services Program? Did you go into private practice?

Dela Cruz: No. I left Micronesian Legal Services because I was offered a job with the Marianas Public Land Corporation. At that time they were looking for a staff to support the public lands office. They offered me a salary that was much higher than what I was getting, so I thought it was time to make a move. I was in Micronesian Legal Services for about four and one-half years and I was thinking of making a move anyway. So I joined up and worked as counsel for that agency for about two years. I left because I thought we had accomplished the establishment of the office and the mechanics of operating the program. And then at that point, Dan MacMeekin was joining the Commission on Federal Laws that was being set up, and he asked whether I would work with him and be the representative for the Commission in the Northern Marianas. I said that sounded like an interesting job and joined up with him after I left the Land Corporation. I worked with him for about two years.

Willens: That was a full time job?

Dela Cruz: Yes, that was a full time job here, as the representative for the Commission in the Northern Marianas. I was responsible for touching base with the people on some of the Commission recommendations regarding the application of federal laws.

Willens: To what extent were those recommendations implemented?

Dela Cruz: Well, quite a few of them were implemented. We made some interim recommendations at the time and most of them were passed. I don't know exactly after that. When I left the Commission I joined up with Jesse [Borja] in private practice and worked with him for two years before I got on the trial court.

Siemer: What years were those?

Dela Cruz: Okay. Let me backtrack. I left MLS in 1979, joined up with the Land Corporation right after that, and stayed at the Land Corporation until 1981. From 1981 to 1983 I worked for the Commission of Federal Laws. Then around May of 1983 I left the Commission because it was winding down its work. Jesse had been in private practice for about six months. I went to join up with him because it was too much for a one man office. So I was with him for two years. I had intended to remain in private practice. Two years later, while I was in court on a case, I was walking through the Civic Center complex when Governor Pete Tenorio was walking out of his office and saw me. He grabbed my hand

and said he wanted to talk to you. He asked whether I would consider being a judge if he were to appoint me. I said, "Well, I just started practice with Jesse and we want to make it a good law firm." He said there was a vacancy in the court. It was about the time that Robert Moore, I don't know if you know Judge Moore

Willens: No, I've seen his name but I did not know him.

Dela Cruz: He retired and there was no replacement for him. The Governor was looking for a replacement. I thought Ramon [Villagomez] was being offered the position. I looked at him and said that Ray was interested in that job. The Governor looked at me and said he was not yet ready. Ray did not want to come on board until the next year. I said, "Well, so you want me?" He said, "Yes." I said that I had to talk to Jesse first because I don't want to leave him stranded, and went back and talked to Jesse. Of course, I wanted also to talk to my wife Rita. When I talked to Jesse, Jesse said, "It's amazing." I said, "What do you mean amazing, I'm leaving you if I do that." And he said, "Well, I mean if someone made me an offer like that, I'd also leave." And I said, "Oh, do you think I should take it?" He said, "Yes, take it." I thought further about it and talked to Rita. She said, "Well, don't look at me; it's your life, not mine. You're the one doing that kind of work. If you like it, go ahead and do it." I came back a few days later and told Governor Tenorio that I would accept the appointment.

Siemer: Were there any other lawyers in your firm at the time?

Dela Cruz: It was just the two of us. That's the reason why I wanted to talk to Jesse. If I left him, I thought he'd be stranded. He said if he were offered the position, he'd take it. So I said, my goodness, he would have left me stranded too.

Siemer: What kind of practice did you have?

Dela Cruz: General civil practice. We never really took on any criminal defense work. The irony of the whole thing is that when I got on the court, they assigned me the criminal docket and I ended up trying my first jury trial in a criminal case, a homicide case. About three or four months after I joined the court, Herb Soll finished his term and went back to Alaska. We were waiting for another judge, but nobody had come in yet. So for a while it was only me and Bob Hefner. Bob said, "Well, Joe, criminal cases go to the other judges." He said that I might as well get my feet wet anyway, so I took the cases.

Siemer: Did you have many land cases when you were in private practice?

Dela Cruz: Not too many. There were a number of business type arrangements and litigation and a couple here and there. Not too many land cases.

Willens: Under the Covenant and the Marianas Constitution, the court system provided for limited jurisdiction for the Commonwealth courts and more general jurisdiction in the federal court. What was your assessment during the early years of the Commonwealth as to the functioning of the judicial system?

Dela Cruz: I thought it worked well. One reason being that I thought the judges did their work professionally. One of the things that I always wondered about was why the Commonwealth trial court was given such limited jurisdiction. I could understand the appellate function of the court being given to the U.S. District Court, which would act as an appellate court for the trial court. But I never really figured out why the trial court was a court of limited jurisdiction. Subsequently they changed the statute to allow for general jurisdiction of the Commonwealth trial court in all the cases. I thought that that was a good idea. But that of course is history.

Willens: Was it your judgment then in 1978 and for the next few years that the Commonwealth trial court could have functioned satisfactorily with general jurisdiction?

Dela Cruz: I thought so. I just don't see why it would have been any different.

Willens: One of the concerns was the recognition that there were not locally trained lawyers who would assume judicial positions. There also was some skepticism about the TTPI High Court. Did you have any sense at the time that there were these apprehensions about non-local people assuming judicial responsibilities under the new Commonwealth?

Dela Cruz: No. I never really thought about it that way. I thought that there were people around that could be appointed as judges. Not necessarily me at that time, because I may not have had the experience. But there were others who could fulfill the job of being general jurisdiction judges. I thought that would have been something that could have been done. But I don't know what was the sentiment of the policy makers—the people who thought that's the way to work yourself up to a progressive level. I just thought it was unusual.

Willens: What factors led to the revision of the Judiciary Act and the creation of the Commonwealth's Supreme Court?

Dela Cruz: I don't know. Article 12 has been identified as one reason. This of course is rumor. There is also the sentiment expressed that the Commonwealth Judicial Reorganization Act means that the people are ready to assume the full workload of the judiciary. I choose to believe that. There was also the sense that under the Covenant after about ten years the local court system would be fully established. I thought that was wise. I never did have any problem also with the federal courts here, even when they acted as the appellate court for the Commonwealth. They were gracious and were doing a job that I thought was sensitive to the people of the Commonwealth. I still think that we appreciate the work that they have done. I don't mean to be critical when I said that we should have a full general jurisdiction court. There were some good people on the federal bench—Judge Laureta previously and now Alex Munson.

Willens: Within the last week you have turned over a shovel full of dirt to start building the new judiciary complex. Could you tell us what is contemplated?

Dela Cruz: We need a new court building and that's the simple truth. The old building has been here for 30 years. It was built for the Trust Territory High Court. I remember when I was still in law school, walking in and seeing Judge Burnett. And before him Judge Shoecraft. When it was built, it was not planned that a new court system for the Commonwealth would come to be. The current facility has expanded so much within the last ten years that it is cramped and outdated. I had thought that it should have been planned some 20 years ago when the Commonwealth court was first established. I decided to attack the problem head-on when the municipal court was established. I said there is just no way this court system is going to function well without the needed physical facilities. You need a court with all the adequate facilities and space necessary to carry on your work effectively. We cannot go into the 21st century in that building. Initially I planned for just the Supreme Court. Then Bob Hefner asked how about us? I said, you're right. So we looked at it from a comprehensive point of view. We hired planners from firms that work on court facilities. This was done in a very professional manner to a point where they had people from LA in space programming; from Nevada. A combination of people did the architecture and engineering design work together with Juan Tenorio Associates from Guam. They came together and I hope to see a new court facility in two years. It's going to be a state-of-the-art facility. I promised the bar here we would have a law library that would be a state-of-the-art law library. We'll have a bar association permanent office for the first time within

the court facility, where the bar will be able to keep their records on a permanent basis. We are working on five trial court rooms. You cannot have any more than one jury trial in the present facility because only one court room is equipped or large enough to be able to conduct a jury trial. When the new facility is completed, we'll have five court rooms that can accommodate 90 spectators. We'll have separate jury selection rooms that could be utilized also for other functions, such as bar examinations, meetings, and CLE type of programs. Whenever the bar brings in speakers and instructors, they could use that new facility without having to conduct their training program in a hotel. The Supreme Court will also have its own court room. For six years we are pretty close to being out of an actual courtroom. We have to utilize space down in Superior Court for that purpose. We had intended to expand the space here, but we found that we could probably save the government some money by not using the courtroom every day. When we do need it, it's probably once a month or once every two months to hear oral arguments or conduct hearings on motions. If it is not available or closed, we go to the U.S. District Court courtroom for that purpose. We established the Commonwealth Federal Judicial Council where we share ideas and information and with the federal court here as well as the Ninth Circuit in San Francisco.

Willens: It sounds terrific.

Dela Cruz: It's something whose time has come. I just hope to see it happen.

Willens: Are there any particular problems with the judiciary that you think need to be addressed either by a constitutional amendment or separate legislation?

Dela Cruz: I don't know if anybody given you a copy of the proposed legislative initiative that we sent to the Pre-Con committee. My fear is that the Supreme Court was established actually by legislation and I am scared that one of these days somebody's going to seek to abolish that court and set up a new one or something. It's not going to happen, I think, but I want it established constitutionally. There is a provision already in the constitution that provides for the appellate court, but I would like to strengthen that language and make sure that the Supreme Court is there permanently. There are other aspects of that Constitutional Convention initiative that I would like to see done. When they enacted the statute, we had an existing court, the Trial Court, which served as the local court of the Commonwealth. The Trial Court had always been the court that promulgates rules and regulations. Of course, we sent rules up to the legislature for their 60 day review. When the legislature established the Supreme Court, they divided the function of rulemaking between the Supreme Court and the Trial Court. They are responsible for the rules of procedure, rules of civil procedure, and rules of evidence. They gave us the responsibility of the admission rules, disciplinary rules, the Code of Judicial Conduct, and fees and things like that. This is the only jurisdiction where you have that kind of set up. I would like also to have the constitution provide for a court administrator's office, because I think the administrative aspect of the court system is something that is going to be very important in the long run.

Siemer: Court administrator for all the courts?

Dela Cruz: For all the courts. But later on it would not preclude the Superior Court from appointing its own commissioner. But it should be under one umbrella so that we have a unified court system. We don't have such a complex judicial system like New York or California, but we do have a system that could be patterned after any of the smaller jurisdictions, such as Wyoming or Montana. It's a two-tiered system involving a trial court and appellate court, with not much else, but it's all unified and works cohesively. We have a study by the

National Center for State Courts that was done a few years back. We thought that would be something that the court could use to guide itself on the issues that face us.

Willens: Have the ideas that you just summarized for us been collected in a proposal or memorandum of some kind?

Dela Cruz: Yes. It has been introduced in the present Legislature as another new legislative initiative.

Willens: I see.

Dela Cruz: But it's something that could be addressed directly by the Convention. As to term of office, I would like to see the Missouri plan here. I'm retired from office. As for those judges who want to stay on, there's no reason why they should be subjected to the political process again, appointment and all of that. Whoever is the governor, it doesn't really matter whether you are Democrat or Republican, the Missouri plan is something that I think would work well here. You leave it to the people and go on a retention system about every seven years or so, and let the people decide whether they want to keep you or not. But you don't have to run or be subjected to political pressures. It's a cross between the federal system and other systems, but I think it works well.

Siemer: There were a number of areas in the Constitution that were not dealt with by the Second Constitutional Convention that may have become outdated. The First Constitutional Convention was trying to anticipate and set up things, but in some areas, like the judiciary for example, wanted to leave a great deal of leeway because it was not clear how things would develop. So one of the legitimate functions of this [the Third] Constitutional Convention is to think about things that need to be deleted, things that need to be updated, and things that need to be changed, not because of a political philosophy or something like that, but just because they're not current and don't serve well now after 20 years.

Dela Cruz: Those are all the different perspectives. My main concern about the independence of the judiciary is that it should not be seen as susceptible to change or pressure from the other two branches of government.

Willens: I hope that can be presented to the Convention.

Dela Cruz: I'll provide you a copy of the legislative initiative.

Willens: That would be helpful. Let me conclude by asking a few questions that draw on your nearly 25 years of active work here in the Commonwealth. To some extent these questions are asking for generalizations about how well the system here has worked. For example, do you think that the Covenant and its definition of a relationship between the Commonwealth and the United States has by and large worked well?

Dela Cruz: I think so. I think the Commonwealth has worked quite well. There may be areas where the parties disagree as to how it should work or where it could be improved and things of that nature, but generally I think the Commonwealth has worked quite well.

Willens: Are there specific deficiencies or lack of clarity in areas that you think are important enough to be addressed at some point in the future?

Dela Cruz: Well, I don't know how it should be addressed, in what forum or what form. The notion of self-government is one thing that keeps cropping up. This notion of delineation between the federal function and the local government function. It's been a sticking point in the past. I don't know whether it's a sticking point as a matter of politics, or it's a sticking point because people just don't see it the way it should be seen. A lot of times I think it should be explored in the [Section] 902-type of talks rather than in the courts. This is really a

political question as I see it, rather than asking the court to decide this kind of issue by way of judicial decision. That's my own personal thinking on it. The other thing that is part of the current scene is this notion that being a part of the [American] family—this notion of working your way in and merging and all of that—is a very tricky process sometimes. It has to do with people's perception and thinking of whether they are really part of that family. Other people think it's like being an adopted child. Have they really accepted you fully or are they still not treating you the same way? Are they giving you the keys to the car? That's the way they see it, and people have different perceptions. It's not because the parents are not treating them right or are treating them differently. It's just because you're thinking that it could be for one reason or another that you're none of that, and it's a very tricky thing. What makes it more complex is that as administrations change, these notions change also. But it seems to me that over time, this thing will merge itself into one entity and this notion of what is self-government and what is not self-government will be laid to rest with time.

Willens: We were in a classroom recently where some students raised a question as to why many people out here regard themselves as Chamorros rather than Americans and they think that ethnicity denotes nationality. Do you have some sense that people here will gradually come to think of themselves as Americans?

Dela Cruz: Yes, I think so. I think the new generation growing up now where they are becoming acculturated. It's just that the present generation is a generation that is going through two processes—the process before becoming American and the process of being American—and it's like having two identities which have not fully merged. I think it relates to this notion, this perception of what am I, am I really a part of the American political family? On one hand you have the passport to go to the United States and all of that. On the other hand, you still have all of this past history. You almost have to be a psychologist to even understand what's going on in the minds of individual people. But with time, I think, with the second or third generation of people. It's similar to the various ethnic groups in Hawaii, for example, that I imagine have initially felt the same way, but after the second or third generation they never look on themselves as anything other than Americans. It seems that way to me. So, it's really time that is the key factor here. This notion of hurt feelings, sensitivities, and all that is something that eventually will resolve itself in time. Like cases in court. I say that sooner or later they will resolve themselves in the courts whether they go up twice or down twice. Another case will sooner or later be finished. It might take two years, four years or even six years. But at some point it's going to end. When it ends, it's all over.

Siemer: Let me just go back and pick up one thing I wanted to ask you about before we finish. You were on the Board of Elections in 1977, the first election under the new Constitution?

Dela Cruz: Yes.

Siemer: Tell me a little bit about how the Board of Elections worked back then and what you did to get ready for that particular election.

Dela Cruz: Yes, we met a couple of times. We met down here, in fact, in the present Civic Center complex to elect the different officers. The first chairman was either Jack Torres or John Diaz. John's been on the Board of Elections since that time.

Siemer: Either Jack Torres or John Diaz?

Dela Cruz: Yes, I think it was Jack who was chairman of the board. It worked well I thought. It was sort of interesting working days and nights.

- Siemer: Was the election machinery already in place at that time?
- Dela Cruz: They had the election law in place and then we hired an attorney from Guam. Jack Rosensweig was a Guam attorney who worked as counsel for the Guam Election Commission. We thought we'd hire him for three months before the election and three months after the election. He was advising us on things like residence, domicile, the conduct of elections, and when and how to accept challenges. He proposed draft regulations which were adopted for the elections. I thought the election went smoothly.
- Siemer: Did the Board appoint people to work at each of the polls?
- Dela Cruz: The two political parties shared in how things were run. We invited the two parties to submit names so they would have representatives. Having one party overseeing the other has always been the system here in the Commonwealth. The overseers, the observers, and the poll workers and supervisors were always part of this process. Each of the two poll workers, two poll supervisors, and two observers would come from one of the two political parties. When we had an independent running, they would ask: "What about me?" I said, "Don't worry, between these two guys your interest will be safeguarded."
- Siemer: What about absentee ballots and things like that. Were those things that the board worried about back then?
- Dela Cruz: We worried, but we figured that the way the statutes were worded, if we did not receive the absentee ballots in five days they were not countable. Nobody has really challenged this. The most difficult part of the election, I thought, were the people who change residence. They move from San Antonio to Garapan and then on the day of the election they refused to say that they no longer live over there. They go back to San Antonio and somebody, of course, challenges them. Meanwhile their house and their kids are all in Garapan, so that challenge is going to be successful. But they thought that somehow, because they have always lived in that place, they don't have to change their voting. But people learned after a while that you have to change.
- Siemer: Were there any legal challenges during that election? Any litigation?
- Dela Cruz: I don't recall that first election. Usually it is on the change in polling places.
- Siemer: How long did you serve on the Board of Elections?
- Dela Cruz: About 10 years, I think. I was chairman near the end. Then after that, I left. That was the first election also where the so-called stateless persons, involving the renunciation issue, came up.
- Willens: We were going to raise that with you because I got involved in defending the Commonwealth a few years later.
- Dela Cruz: Yes, that's right.
- Willens: The Commonwealth tried to reverse judgments made by the Board of Education based on the certificates of identity.
- Dela Cruz: Yes, that's right.
- Willens: As I recall, you were faced with many affidavits by Filipinos who said they had renounced their citizenship within the appropriate time frame, and therefore, were entitled to U.S. citizenship and to vote.
- Dela Cruz: Yes, that was a difficult issue.
- Willens: Do you have any recollection about dealing with the so-called stateless persons?

- Dela Cruz: Not that much. I don't want to say something that may not be correct. I do recall Pat Douglass coming out here. Wasn't she with your law firm?
- Willens: Yes, that's correct.
- Dela Cruz: She was in my class at Boalt. I looked at her and said, "You look familiar."
- Willens: Is that right?
- Dela Cruz: She looked at me and said that I look familiar.
- Willens: What a coincidence.
- Dela Cruz: That was sort of interesting.
- Siemer: One of the issues that was discussed a considerable amount in the First Constitutional Convention was whether the jury trial system was appropriate for the Marianas given the cultural history, the closeness of families, and the possibilities of disqualification and so on. What was your own view of that issue back then?
- Dela Cruz: I thought having a jury system here would not work at that time. I have since changed my mind. The reason why I thought that way then was we had the first jury trial here in the Trust Territory just before the transition. They had a homicide case and I thought it would be difficult to get a conviction in a jury trial case, because people here are related to each other. They know each other and I thought it would not work. But I was wrong. Subsequently, as they learned about the system, people were not afraid to find somebody guilty of something, except in gun cases. Some of the juries here in the Northern Marianas can never vote for conviction. The Attorney General's office would just say, "It's a gun case, forget it, good luck." You can ask Judge Manibusan, who was a prosecutor, and Judge Castro, who was also a prosecutor. They haven't won a gun possession case here. It could be that the jurors were thinking why should anybody be convicted of possessing a gun without a registration when other people do, with a registration. Why should we convict them? For example, somebody forgets to register his firearm, M-410 shotgun or 22 gauge or whatever. It just shows that I don't own a gun because I don't even know what those things refer to. I'll be surprised if I hear that they have since gotten any conviction for illegal gun possession. It is a jury triable offense, which carries a maximum of five years in jail.
- Siemer: One of the other points of discussion during the First Constitutional Convention back in 1976 was that there was some expectation on the part of some delegates that there would not be very much litigation here because litigation was not familiar to the culture, that confrontation was not a part of the culture here and that, therefore, the court system and the litigation system would not be an important way of resolving disputes. What was your own view back then as to whether there would be an increase in the amount of litigation once the court system became available?
- Dela Cruz: At that time we didn't have any impression one way or the other as to whether there would be more litigation in the courts. Since then, of course, we have seen quite a bit of litigation in the Commonwealth, and I don't know what causes it. I'd like to say that people are becoming more aware of their rights and are asserting their rights in a responsible manner. That's the reason why we have more cases.
- Siemer: Actually the statistics here are very similar to the statistics in many states. It may be just an American hobby.
- Dela Cruz: Too many lawyers on the island.

- Willens: Well some of the litigation here has been between the various branches of government and there is some criticism about the extent to which the different branches have sought to resolve their difficulties in court rather than through mediation or negotiation. The Covenant and the Constitution implement a political compromise that gave Rota and Tinian considerable power in the upper house with the mandatory bicameral legislature. Do you have any sense as to whether that decision has redounded to the disadvantage of the Commonwealth?
- Dela Cruz: I'm not really sure on that. That's one of the main issues in this litigation now before the court.
- Willens: No, you're right. There was one case raising the one man, one vote issue.
- Dela Cruz: That's Sablan versus the governor. Sablan was the former president of the Senate and then, of course, he was ousted by the new coalition. He filed a lawsuit. One of the challenges you are speaking of has to do with that, I think. The argument, of course, is based on the rule in the States that both houses of a state legislature should be based on equal representation.
- Willens: All right, let's pass on that one.
- Dela Cruz: We could talk about another case that I litigated and was the first reapportionment case here during the days of Judge Laureta.
- Siemer: What year was that?
- Dela Cruz: It was about 1983. I remember that I represented the Board of Elections at that time. The first question was whether it was going to be a three-judge U.S. District Court hearing the case. It was a three-judge panel of the Appellate Division, which was not composed of the U.S. District Court. Of course one of them was Judge Laureta. We had a trial on that. At that time the Board was the defendant and the present Governor was the plaintiff, together with Juan Guerrero and former Congressman Greg Sablan. It just shows you how interesting this place is. That was the first reapportionment redistricting case that was presented in the court. The result of the loss of the lawsuit was that they were not redistricted. I'm not really sure whether "gerrymandered" is a good word to use, but the Republicans somehow redistricted in a way that gave them the opportunity to win the next election again. We went into court and tried to argue that you can't really base districts on equal representation because you have to make some deviations. We had a professor of statistics from the Utah State University as our expert and the other side did not have any experts. It's in the Commonwealth case reports. It was an interesting case.
- Siemer: Was there much litigation about redistricting when you were on the Board of Elections?
- Dela Cruz: No. There was not, except for that one. Every ten years you have the census and then of course you have to redistrict. I thought that with that new plan someone would be challenging in court, but nobody raised a challenge. So the reapportionment was implemented.
- Willens: What do you remember being the issues in that 1977 campaign between Dr. Camacho on the one hand and Joeten on the other?
- Dela Cruz: I don't recall. I'm not sure whether there was much difference in terms of how to run the government or things of that nature. It was just a question of who was going to be able to do a better job as the first elected governor of the Commonwealth.
- Willens: We have heard from some interviewees that Dr. Camacho was faced with a Legislative Branch in the control of the other party and a good deal of time was spent in disputes

between the two branches of government. Do you have any recollection as to what happened in those first few years?

Dela Cruz: For me at least, it seems like a matter of personality. When some people run, they do so with their heart and soul and anybody who is not with them is an enemy of sorts. I don't know why that has to be the case really. It seems to me that it doesn't matter which party you are with; you should be able to sit down and work out your differences. We still have the problem presently, between the present Governor and the present Legislature. I don't know why they can't sit down and try to talk about their differences in a peaceful setting, for example at lunch, dinner, or breakfast. The judges here tried this approach. When the present Administration began, we thought that the three branches should have lunch together at least once a month. The leadership—the governor, lieutenant governor, House speaker, the president of the Senate, and the three judges of the Supreme Court—would go eat at some restaurant and discuss government affairs in general. Not talk about cases or anything of that sort, but brainstorm about matters that affect the Commonwealth in a general way. After two lunches you discover that's it not working because it appears that some of them are gearing up for litigation. I said, "Let's stay away from this." I told the other judges that I did not think it was a good idea to continue these luncheons. If somebody's going to file a lawsuit, we'll have to recuse ourselves in the middle of the whole thing. So we stopped the lunches. We never have had such lunches since. Our basic idea was to meet the other two sides, sit down and talk, and we could be like referees. The point was to be able to get together. We thought we could serve as a buffer. It didn't work.

Willens: It was obviously a good idea.

Dela Cruz: Yes, but it didn't work. There was so much money that was being spent, so much effort, so much energy, so much emotion was being spent on this thing. The differences seemed to me to be just personal. I wish it were otherwise. I wish that people were wrong on that. It really is sad in that respect because so much more could have been accomplished by having people sit down and iron out their problems. I tried in my State of the Commonwealth address to hint along these lines to the other two branches. As big as the political branches are, they are equipped with this extra capacity called compromise—the ability to compromise, to iron out their differences. The Court cannot compromise on political issues, but they could. In my State of the Commonwealth address I wanted to see whether they'd catch onto that. I don't think they did. I hope still that this approach will some day be followed. In the long run it's been a lot of litigation.

Willens: That really completes my questions. Thank you very much, Mr. Chief Justice.