

INTERVIEW OF REXFORD C. KOSACK

By Howard P. Willens

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- Willens: Rexford C. Kosack was formerly Attorney General for the Commonwealth and has been in private practice since that time. Rex, thank you very much for making the time available. Could we begin by your providing me with some background information regarding your education and your initial employment?
- Kosack: I graduated from San Diego State University in 1975 with a BA degree in Philosophy. I went to UC Davis and graduated in 1978 with my J.D. degree from the School of Law. I became an attorney licensed in the state of California that same year, 1978. I practiced until in March 1981 in Ventura County as a Deputy District Attorney, where I was a prosecutor. I was also a prosecutor in Napa County, and also worked for the California State for a Senate Committee. I came out to Saipan on March 14, 1981. I was hired as the Chief of the Criminal Division for the Office of the Attorney General. The first Attorney General had been confirmed. It was in the month of February 1981; that was Richard Lassman.
- Willens: Why did it take several years for the first Attorney General to be confirmed?
- Kosack: Pete P. Tenorio was the Senate President at that time. That was the Second Commonwealth Legislature. There had been battles over various different Assistant Attorney Generals who had been nominated as Attorney General. One of them was Mike DeAngelo, another was Jim Sinding, and I think that they might have been appointed by the First Governor, Carlos Camacho, who was a Democrat, who was quite at odds with his own Administration. There was a lot of litigation within the Administration, primarily the personnel lawsuit involving Jess Mafnas comes to mind. And he was at odds with the Legislature whose Senate was Republican and I believe the House was mostly Republican, too. The bottom line is the Attorney General had to be confirmed by a majority of the Senate, and they couldn't get it through the Republican Senate. One of the big problems was Benjamin Manglona from Rota. And I think Herman R. Guerrero was in there from Saipan. And they just wouldn't let any nomination get through. I missed most of these events, and this is all hearsay. I think the feeling was that all these people who had been nominated were hired guns. They were people who would say what the Governor wanted them to say, and they were really only mouthpieces for the Governor. Lassman apparently struck ahem a little differently. Lassman kept people in a certain amount of awe. He had fairly large physical presence, he's a big man, and he had a very deep voice. He had a beard that made him look and sound like Abraham Lincoln. He just instantly created a certain amount of respect among people. But it was a battle on the last day. Pete P. was the swing vote. He voted in favor confirmation, and that was enough to confirm Lassman. Benjamin Manglona with his hands clasped looking down at the table, looks up and he says, "I'm sorry to say that the people of the Commonwealth have been sold out by the Senate President." One of these typical pronouncements that he would make. But that's how they got the first Attorney General. Lassman, feeling that was going to happen in the month of February, went out on a recruiting trip to the States looking for Chief of Civil and a Chief of Criminal. He hired Peter Esser from San Francisco as the Chief of Civil, who became the second confirmed Attorney General; and hired me from the Los Angeles area as the Chief of Criminal, and I became the third confirmed Attorney General.

Willens: What attracted you about the Commonwealth that persuaded you to leave your California position?

Kosack: I had been active in trial practice in Ventura County. It's a county just north of Los Angeles County. I had received some awards for being the most days in jury trial every year, year after year. I had a constant jury trial pressure and had some cases that would go on five and six months in jury trial in Los Angeles County on change of venue. And I simply was seeking to relax a little bit before I turned the ripe old age of thirty. I wanted to come out here with my wife. We didn't have any children, we were unencumbered and we could spend two years just rotating through, get an opportunity to kind of calm down, relax a little bit before I went back to the grind. And I fully intended to return to the job. Of course, none of that happened.

Willens: You intended to return to California?

Kosack: Right.

Willens: How did you find your initial assignment with the Attorney General's Office?

Kosack: Oh, it was great. I was amazed with the amount of responsibility I was given. I had been in an administrative position. The District Attorney's office I had been in had 60 attorneys, and when I left I was Chief of the Misdemeanor Prosecution Division. It was the fourth highest administrative job. I was surprised when I came out here as head of prosecution, and there were only three of us. There was myself, Alex Castro and Bill Peterson. Very small but the sky was the limit. I had all the responsibility that I wanted to assume, all the freedom I dared to take. And I really enjoyed that. I enjoyed the opportunity to be able to make my own calls in prosecuting cases and to develop policies. I very much got interested in education. We set up the first criminal justice academy. We required every peace officer on the island regardless of the agency they were involved with, whether it was Customs, Trust Territory government, to go through a two-week period of training. We ran that in two cycles, just the three of us.

Willens: How large was the Attorney General's Office when you joined it?

Kosack: At that time we had, I would say, six attorneys probably at max.

Willens: And approximately how many attorneys are in the AG's Office today, if you know.

Kosack: I'm guessing thirty-five? Something like that. It's increased substantially.

Willens: When were you designated as Attorney General?

Kosack: After about a year of being a prosecutor, we changed governments. Carlos Camacho lost the election to Pete P. Tenorio. When a Republican went in, we all thought we'd lose our jobs immediately. As it turned out no one did with the exception of the Attorney General, Rich Lassman. That's an appointed position. Governor Tenorio nominated Peter Esser as the Attorney General, Peter was confirmed, and then Peter made me the Chief Deputy, a position that had not previously existed before. That was the beginning of what they now call the Solicitor's Division. My job was solely to give advice to the Executive Branch agencies, the fifteen or fourteen principal departments of the Executive Branch. He remained as Attorney General for probably a year, maybe less than that, maybe nine months. He incurred some political disfavor. He became very active in politics and played what they call both sides street because at that time the Governor's office was on one side of the street and the Legislature was across the street. He left in September 1982. At that time, the Governor asked me if I would become Attorney General, and so I think I was nominated probably in October and was confirmed probably just about the last one

or two weeks of December. It just came right down to the wire. That was by the Third Legislature.

Willens: Then you served in that capacity till sometime in 1986?

Kosack: Yes. Governor Tenorio started his second term in January 1986, and I served until about March or so. I did not want to repeat my role as Attorney General. He'd asked me to, and I had been serving in that capacity for the beginning of that term and decided that it was just a case of diminishing returns and so I turned in my resignation.

Willens: I've heard it stated by many people who were here in the 1978 to 1981 time frame that the First Administration under Governor Camacho suffered a good deal from this political competition between the two branches of government. Do you have any sense as to the importance of that particular conflict and whether it's left any legacy?

Kosack: I probably can't shed too much light on that because I came in March 1981, so I was only here for nine months at the end of Governor Camacho's term. And at that time, at least somewhat, the hatchet had been buried since they had confirmed his attorney general. It seems that the judgment in the years since then—my association in those years has been with Republicans—has been more harsh on Governor Camacho as being a very difficult person to get along with. And you probably know that his nickname was "King Carlos," and that's about all I can really tell you. I just really can't give a good judgment on that since I wasn't here.

Willens: I have heard it said that former Governor Pete P. Tenorio was a more adept politician in the best sense of the word and made an effort in his administration to overcome some of the difficulties that had previously existed. On the other hand I've heard it said that he had less of a problem because the Legislature was still Republican, I believe.

Kosack: Well, I think both of those statements are fair. Pete Tenorio clearly is the most statesmanlike Governor we've ever had. Obviously, you got to consider my bias, he appointed me as his Attorney General. But he was very statesmanlike in dealing with all sorts of people, and he managed to always calm people down. He had his difficulties with the Legislature. As Attorney General, that was a constant issue on a daily basis with us, how to handle the Legislature. But there was a real romance between him and the Third Commonwealth Legislature, which was the first legislature during his term, as the most productive Legislature we've ever had in our history. I would guess they passed somewhere around 165 different laws which is a phenomenal number considering that this current Legislature is probably in the teens after the end of a year. And it's not just that they passed a lot of laws, but among the laws they passed were the UCC, new criminal code, and probate laws. They took on some really tough topics. Those first two years of his administration I thought went real smoothly because he did have a very cooperative Legislature. And you've got to consider the personalities; I think that's really important. Ben Fitial was the Speaker of the House. Very Republican, also himself a real good statesman who knew how to work with people and politicians. The Senate President was Ponce Rasa. And then in the Attorney General's Office, I was there. On the Senate staff was Jim Doherty and Don Woodworth. And on the House staff was Joel Bergsma. So it was a fairly good working group; and we had the ability to sit down and hash things out real well. I really think those were some very, very productive years. The Fourth Legislature was also productive, but not quite as productive. So I think it's a combination of having a very favorable Legislature but more so in just the personality and the leadership that they had at that time.. It was also that Governor Tenorio was a person who could calm down fires, he could keep people rational, he could work with them real well. I am proud of two things out of being

Attorney General during my tenure. One was that I was on the only Attorney General that basically served nearly a full term at that point. I think it was about three and a third years when I finished out my term. That, I thought, was a fairly good accomplishment. I was very young. I was appointed as Attorney General before I was thirty, so it wasn't that I was really sage, it was probably more that I had a good Governor and a fairly smooth government. But the other thing that happened I think that was really good is that during those years we never had a single inter-governmental law suit. There was not a single lawsuit between the Executive Branch agencies or between the Executive Branch and the Legislative Branch whereas the years of the Camacho Administration there was constant warfare going on even within a single branch like the Executive Branch.

Willens: Well, one of the questions that is raised regularly is whether the Northern Marianas people were adequately prepared for the measure of self-government that was provided under the Covenant and the CNMI Constitution. There was a good deal of effort that went into a transitional planning program to equip the first Administration with some of the tools necessary to exercise the prerogatives of self-government. From what you recall, particularly regarding the accomplishments under Governor Tenorio in the 1982 to 1986 period, it sounds as though if the right people were in the right spots, government could function here at an acceptable level of competence.

Kosack: I don't think that there's any question that the CNMI was ready for self-government. I think that it was largely a matter of personality. I can only imagine what it was like in 1978 when government began. To some extent it had to be a little bit like horses and the gates opening. Ambition drives people, and it's not all that surprising that people's ambitions are going to conflict with one another and you're going to have some problems. I think that's part of it. I think part of it is the personality of the actual individuals that got in there. Now the years that I was directly involved in the experience in the second and third gubernatorial terms, there's just no question that government was ready to function. I thought, as I mentioned a moment ago, the Legislature was very effective, passed a lot of laws, a lot of good laws that are on the books today. In fact they got rid of a lot of the old Trust Territory law and replaced it with responsible law.

Willens: Why should politics have interfered with the obvious task of getting rid of inapplicable or outmoded TTPI laws and regulations and substituting for them laws and regulations better suited to the Commonwealth?

Kosack: Two responses to that. First, I'm not sure how many laws were actually passed during the First and Second Legislatures. It could be that they were productive. So, you know, there's an assumption there that I'm not sure is correct. The second response is that from my experience here I've seen that when the Governor and the Legislature don't get along, everyone gets distracted. It devolves into petty politics and you don't have a productive Legislature. You have a productive Legislature when the Governor and the Legislature get along and they can work smoothly, a budget is passed, and things just roll forward. And that was the case in the Third Legislature and the Fourth Legislature, though my recollection is that during the term I was Attorney General I never had a budget. I was under a continuing resolution for all those years. So there wasn't a budget necessarily in those years. I think there was during the first year of Teno's Administration and I suspect that for the remainder of this first term he never got a budget; I think it was all continuing resolution. So that tells you a little bit about his relationship with the Legislature. There was some tension. I remember, constantly on a yearly basis we were worried about payless paydays. On the other hand, we never had a deficit. But these were concerns; concern that employees were going to march over to the Governor's office as happened previously. The

Legislature had sent everyone to the Governor's office to collect their money on a Friday. That didn't happen. The Third and Fourth Legislatures were very productive. Again, I don't know how productive the First and Second were. There had been, of course, a District Legislature before that. It's not like they'd gone in cold turkey.

Willens: The leadership during the [Covenant] negotiations was, very skeptical of executive power generally because it had always been wielded by TTPI administrators who were appointed.

Kosack: It may be Carlos Camacho was in a tough position in that First Administration, having to be the first person to occupy that role. He had to define the role of a Governor. There'd never been a Governor. And I remember him driving around in his car with a driver, having a little guard house out in the front of his place, these were all of these sort of trappings of power that people later used against him to call him "King Carlos." But then again who's to say? He was defining the role, setting up what this Governor should be like, and he maybe just chose the wrong role for the Commonwealth.

Willens: Were there any major issues other than his style that you recall from the 1981 election?

Kosack: My memory is just not that good. The thing I primarily remember is that there was a lot of frustration over these inter-governmental lawsuits, this divisiveness within government. I don't know. I remember, of course, his bid for the third gubernatorial term very well because I got called in to investigate him and that was his whole Loma Linda thing, if you recall that.

Willens: Well, I'm not familiar with what happened at that point. That would have been in 1985?

Kosack: It was in 1985. At the end of the second term or towards the end of the second gubernatorial term, Pete P. Tenorio decided to run again. And the Democratic Party chose, as their representative for the gubernatorial race, Carlos Camacho. There's a very historic event that occurred—their debate up at the present Convention Center. Quite honestly, Carlos Camacho was more articulate, more prepared and was pretty well pointing, to the extent there was sparring going on, which was to a great extent, was pointing Governor Tenorio about quite a bit. Part way through he basically pulled one of these show stoppers and said, "I have evidence Governor Tenorio has been taking bribes from an oil company that does business with the Commonwealth government and that he is taking this money and it is being placed in a secret bank account in Bank of America in Loma Linda, California." And he says, "And is the Attorney General in the audience?" I raised my hand. Cameras roll around. He says, "Mr. Kosack, I want you to investigate this. I don't want you to be his lackey. I want you to prosecute him to the full extent of the law, and I'll provide you with anything you need." I said, "Fine." Governor Tenorio got up and just sputtered for two minutes and said, "I don't know what he's talking about. I have no idea. I have a house in San Diego, California. I don't even know where Loma Linda, California is. This is not true. It is not true. It's not true. And besides when he was Governor he took pigs from the Natural Resources Department and would use them for roasts, and I want that investigated!" But of course it captured everyone's fancy, and really got into the newspapers. So, the Attorney General's office did investigate. And we investigated both incidents. I gave Steve Andrade, one of my prosecutors, the pig incident to investigate on his own. I took the Loma Linda bank account.

Willens: Were you able to ascertain whether there was such a bank account?

Kosack: Yes. I found the bank account. Actually, it was quite an interesting investigation. We turned out a full report on it which I've not kept. But there must be one somewhere around. But basically there was a bank account in Loma Linda, California. Loma Linda is where Loma Linda University is. It's a Seventh Day Adventist medical center and college. If I remember right it's out towards the Palm Springs area, out in the eastern part of L.A. County towards Riverside or San Bernadino, a long way from San Diego. The leak that had gone to Carlos Camacho had come from Sid Blair. I don't know if you remember Sid Blair who's an old cow hand who was responsible for the foundation of Cow Town. He was real close to Jack Lane and to Larry Hillblom. Sid Blair worked at Bank of Saipan. He had come across these records and saw these money transfers being made by this fellow from an oil company here which was trying to get into the Commonwealth and do business, trying to bid for the prime contract to supply the generators. He had moved here to Saipan and was constantly putting money (in the bank) and transferring it over to Loma Linda. Well, what it turned out is that his daughter was a student at Loma Linda College and he wired her monthly. He would wire her money into her bank account from which she would draw the money to buy books and pay tuition and that sort of thing. And that's all there was ever to it.

Willens: Was your report completed before the elections?

Kosack: Yes. What happened was very interesting. Carlos Camacho refused to be interviewed by us. He refused to cooperate. Immediately, within days afterwards, he refused to be interviewed, he refused to cooperate the slightest at all with us. But we were able on our own to investigate this, and come up with the bank account. The FBI office over in Guam took a look at our investigation and actually, very rare thing, gave it their blessing and said this appears to be done thoroughly. And we turned out this report on Thursday before the election. For some reason in those days the election wasn't on Saturday. I think it was on a Tuesday. On Friday I was hit with an injunction. Jim Sirok had been hired by Carlos Camacho to sue me to enjoin me from releasing the report to the public. And a brand new judge hearing his first or second case was assigned to hear it. Joe Dela Cruz, of course, now is the Chief Justice. And so I went in and we argued. Obviously, it was a prior restraint and all of that under the First Amendment. But what Camacho did was horrible. He put the whole issue of thoroughness and credibility and whether the report was one-sided in front of the judge. The judge just came out and said, "I reviewed it and it's very thorough and it's very believable, credible. It's not one-sided. And furthermore, the public has a right to know." So, it went like hotcakes and everyone was picking it up. I remember that weekend very well because my wife and I would drive around on the island and everywhere you were on the island—they used to use, you know, the bullhorns at the rallies—and you'd hear, people speaking in vernacular. At that point I didn't understand Chamorro very well, but you'd hear the words "Loma Linda" in the Republican camp over here, and over here on the other side, on the Democrat side, you'd hear, "Rex Kosack" or "Attorney General's Office." And all weekend long this thing was going back and forth. Camacho was severely defeated when the election came about on Tuesday. And one wonders how he would have done if he hadn't pulled that stunt because in the debate he was quite good. Now, I know more about politics and your ability to debate determines very little about your chances of being elected, but anyway, it was a bad call. And it turned out that, as we investigated this, we found out certain close advisers to him said, "Absolutely don't use this." It had not gone from Sid Blair directly to him. There's another fellow who had an axe to grind against Tenorio. He was a prospective investor in the Commonwealth who was trying to set up an immigration scheme of selling immigration permits here. I can't think of the guy's name because he left here and went and did it in Palau and he got shut down. He was close to

the late Cisco Uladong. He was the one who got it from Sid Blair and then provided it to Camacho in an attempt to curry favor and set himself up favorably in business should Camacho be elected. But Camacho's advisers said, "Don't use it." And they even said they were shocked that he pulled this out. It must have been a snap judgment during the debate. But anyway, it's an interesting story.

Willens: That was an interesting story. I never heard that before. How would you describe generally the nature of your private practice over the last approximately nine years.

Kosack: When I left the Attorney General's Office, there was a step in between. I became Trade Counsel for the government. It was created specially for me. I resigned as Attorney General because I wasn't happy with some of the political things that were happening that were supposed to have changed and weren't going to change. I resigned on a Friday, and on Monday they called me in said we want you to remain on board, what can we do? They created a position of an attorney in government who worked in the Governor's office who was specifically there to kind of do three things. One, market the CNMI as a place to invest for businesses. Two, handle investment questions from investors who were coming in and asking the Governor questions (because that was about two thirds of what he did time-wise), and help those same investors when they do invest get through the reefs and shoals of CRM permitting, DEQ, and all the other agencies that I'd written regulations for. And then, lastly, there was this new garment industry which, when I was Attorney General, was something that took up quite a bit of my time. A garment industry had been created and within about a year or year and a half of being created they instantly ran into trouble with the federal government and new regulations which changed the sourcing rules for country-of-origin of products. The first three factories, which were sweater factories, were shut down overnight with these new regulations that came out saying that the item basically had to be knit here opposed to being only assembled here from pre-knit panels. A typical sweater would have five or six panels. They would be knit maybe in China or Korea. That's where they would save their money. They would send the panels here and they would be linked together into a completed sweater with a tag on it and it would be pressed, steamed, folded, and shipped to the United States. That had previously qualified as a substantial enough transformation to be country of origin/Northern Marianas which then would entitle it to duty-free treatment under Headnote 3a and would entitle it to evade or avoid any restrictions on quotas because there are no quotas on the Northern Mariana Islands. The United States government, through the Department of Commerce had come out and actively encouraged the Commonwealth to get into this business.

Willens: Well, could you help me a little bit in placing in time and circumstances the origin of the garment industry.

Kosack: Okay. Let me go off record and walk out to the library.

Willens: We're back on the record now and Mr. Kosack made available to me for review a document that he prepared in approximately 1990 in Governor Guerrero's Administration.

Kosack: This document was prepared in 1990 because the United States government was going to change the country-of-origin rule with respect to cut-and-sew garments for the Northern Marianas. I had been brought back by people in the garment industry to educate our government, because we had a new governor there after eight years of a predecessor governor, and to basically to educate them on what this background is. In fact I was asked to also go to Washington, D.C. and make a presentation to the U.S. government which fell on completely deaf ears. I mean it was incredible, resounding defeat.

Willens: What is the title of the document?

Kosack: The title, if I can remember, is called TD90-17: The United States Customs Change of the Country-of-Origin Rule for Duty and Marketing Purposes and Its Effect on the Commonwealth's Sweater Assembly Industry, A Briefing Paper.

Willens: And this was prepared by you on behalf of your clients in the garment industry?

Kosack: That's right. And it was provided to the to the government, to brief the Commonwealth government and then it was also provided to the U.S. government as a sort of a statement—that was not its original intent—but our government provided it to the U.S. government to basically to give them the history because there hadn't been that much continuity at the United States Trade Representative Office or at Commerce, or Customs.

Willens: It sounds as though the dispute had been festering for several years and that the Commonwealth had been unsuccessful in getting the necessary clarification from Customs.

Kosack: In 1983, the sweater industry began, which is called an assembly industry because you were assembling parts of sweaters as I mentioned before. Three factories were formed on Saipan within that first year: the first was Commonwealth Garment down in Chalan Piao; the second was AIKC, American International Knitters Corporation, which was really Tan's company; and the third was Saipan Manufacturers which is the one that's closing this week.

Willens: Did the Commonwealth provide any specific incentives to encourage these companies to come here and establish operations in the Northern Marianas?

Kosack: Headnote 3a was legislated in 1954 to apply to the United States territories or insular possessions. It sets up a rule for duty purposes, it's at the head of the United States Tariff Schedule as a headnote for interpretation, it used to be. This has all been changed with the Harmonized Rule. But this rule basically said that a product of the Territories may enter the United States Customs Zone. We're outside the United States Customs Zone. The only territory that's inside is Puerto Rico. These goods may cross that boundary without being subject to any duty as long as they are the growth or product of that insular area. Of course, the question is what is a growth or product? The reason, by the way, for that rule is it was calculated to stimulate the development of industry in the possessions; and something we in the Northern Marianas could greatly benefit from.

Willens: What development preceded the garment industry?

Kosack: In the early 1970s you could see some of the economic development taking place in form of hotels. When you look at this island, where it's located and you look at its natural resources, you recognize that this is going to be a tourism destination. That destiny was fulfilled in the 1970s. Those were the years when hotels were set up. You started with the Royal Taga and you eventually went to the Continental which is now the Hyatt Regency, and the Intercontinental next door which was Pan Am. All these hotels started building up. Meanwhile, tourism from Japan only began in 1965. As a country Japan did not send tourists out into the world until 1965; so this is the 30th anniversary this year. In the 1970s, tourism was still young. Saipan was a close destination, but it didn't have well-developed facilities. So tourism from the primary point of origin, which is Japan, and the growth of the infrastructure of this island were going hand-in-hand: And so you had Japan Travel Bureau came down from Tasi Tours. The world's largest tour company, Kintetsu KNT (Kinki Nippon Tours), came down. They formed PDI (Pacific Development Incorporated), another tourism company. These companies between them bring down

90 percent of the tourists that come to this island. So that infrastructure developed. Then ground transportation came in.

Willens: Did those major Japanese travel companies come down and establish themselves before you arrived?

Kosack: Yes, absolutely, both of them were formed in the 1870's and formed as keen competitors. Kinki Nippon Tours associated itself with the Hafa Adai Hotel which they own. PDI were the ones who got the first concession ever on Managaha Island and started developing that as a tourism location. At the same time, Tasi Tours, which is JTB (Japan Travel Bureau), associated itself with Intercontinental Hotel and actually bought the hotel. Then they set up ground transportation, buses. Hotels were being built, optional tours were being put into place. It's not enough to deliver people to the beach, you had to then have a way to get them up to the war memorials up on the north end of the island. You had to get a way to get them out to Managaha Island. So these are all optional tours that required ground or water transportation. You had to have airlines, of course, bringing the people in and the airlines don't come in until there's a demand. When I came here in 1981, the Hyatt Regency Hotel and the Intercontinental (now the Dai Ichi), the Hafa Adai Hotel, and the Saipan Grand were already in place. Those are the major hotels I remember. One on the far end of the island which used to be the White Sands had already been shut down at that point in time. All the other hotels cropped up in the 1980s—Nikko, Aqua Resort, Plumeria Resort. The Intercontinental changed and became the Dai Ichi. Hyatt changed ownership but is still operated by the Hyatt. Hafa Adai expanded. All the existing hotels expanded substantially, built new wings, put in generators, put in reverse osmosis water for their own water supply because the infrastructure of the island in the 1980s couldn't keep up with the demand in the hotels. Several small hotels were created, like Summer Holiday and the Pacific Gardenia. The Diamond was built.

Willens: Well, were these developments related to the tourist industry generally welcomed by the Commonwealth government and the people?

Kosack: Probably, like development everywhere, there's a mixed reaction. The Commonwealth government did welcome it, especially during the early 1980s when this just started to get rolling. They welcomed investment, very much so. And then, probably by the late 1980s, they still verbally welcomed investment but the permitting processes became more bogged down. The Legislature was constantly studying infrastructure fees that they were going to charge, different ways to tax this and make the infrastructure grow at the same time. The government ran into two problems, I think. One there's a political problem from some factions of the community saying, "We're growing too fast." Ken Govenda, who's an attorney here and married to a local woman, was one of the voices saying we're growing too fast. Cisco Uladong was also a voice of we're growing too fast. So there was that feeling that maybe this thing is getting a little out of control. That was politically one thing the government was having to deal with. Another big reality was we couldn't keep pace infrastructure-wise. Our roads were in horrible condition. We were having constant blackouts during the summer time when everyone started turning on the air conditioners. We couldn't provide electricity to new developments, to new hotels; they'd have to be on their own generators. And we couldn't deliver the water; we were going on water rationing. Water was a real problem. So hotels and all the other investments that came in learned to be self-sufficient. They put in their own generator plants. They put in their own RO systems on their own wells. It used to be in the late 1980s people want to stay at the Hyatt Regency because when you showered there it was salt water. I mean it was as salty as the lagoon; it was that horrible sticky feeling afterward. So they had to put in a

well. One of the big issues that's going on right now in our government is the attempt of the Commonwealth Utilities Corporation to get them off their independent generators. There's a battle going on right now between CUC and the La Fiesta San Roque Mall because La Fiesta San Roque which was built by JAL, across the street from the Nikko Hotel, is completely on generators because they were built at a time when power wasn't available. Of course, they put in all that investment for generators and they spend about 12 cents an hour to run a generator. It costs about 15 cents or 16 cents an hour to go on public utilities with CUC power. So there's not a big incentive to get off the generators and certainly not to become dependent on the government which may not actually be able to provide power. So there's a struggle on right now because CUC wants everyone to be on island power. If they get that growth they'll be able to get better funding and they'll get more return for their investment. This is kind of our mid-1990s legacy from what happened in the 1980s when we were developing too fast. Towards the late 1980s, there was some fear that we were getting a little out of control. Private residential owners and lessees, people who lived in the community, were losing their utility service to garment factories or hotels, they couldn't really tell who. But they knew they were suddenly going on rationing that they had never gone on before. This was developing a little bit of resentment.

Willens: Well let me focus for a moment on the infrastructure problem that you identified. A considerable effort had been devoted in the 1970s to trying to anticipate infrastructure needs and to meet the pent-up demand that had been left significantly unfulfilled by the Trust Territory Administration. Is it your sense that there was inadequate funding available for the infrastructure that was needed on the island or was it a failure of the Commonwealth government to make efficient use of the available funds?

Kosack: Probably both. When I moved in in 1981 power blackouts were common. Phone service was horrible, I mean just unimaginable. And water service was consistent; we had good water service. The phone service franchise had been given to MTC years before, and they were able to get an REA loan when I was AG. It was one of the projects we worked on. They upgraded and the phone service overnight went from the world's worst to what they touted as the world's best; it was certainly good phone service. So that cleared up mid-1980s. The power problem cleared up, too. I'm trying to remember exactly how it came about. You know I don't recall. It was under the Department of Public Works. CUC was not created until, I believe, after I had left the office as AG. So the Department of Public Works handled water, power, sewer, and roads. It was under John Pangelinan, who's now passed away. They were putting new Mitsubishi generators on line. They were building up fairly quickly and the power was catching up, but it just couldn't keep pace with the hotel development and other development. You'd drive down the road anywhere in 1985 and 1986 and there was construction going on at every block on the island. I think they just couldn't keep pace with that. Part of it was just a landslide of development that was unanticipated. To be honest with you, our leadership wasn't focused enough on utilities. It was sometimes frustrating. It seemed like the biggest problem we had and it wasn't getting dealt with. I felt that the money was available but I don't know the details about it; but I felt that we could have been developing at a quicker pace than we were. It seemed to me like it would have been a natural project for the Lt. Governor with his background in engineering although he's more in the hydrology area.

Willens: Did he play an active role in Governor Tenorio's Administration?

Kosack: Well it's like all governors' lieutenant governors. He's a little bit of a third wheel. But he found his niche in the Commonwealth Health Center which was built during the

first administration of Governor Tenorio. When we first came here in 1981, Dr. Torres Hospital was the only hospital on the island. It's where the college is now and it was abysmal. Then the money became available from the U.S. government to build the Commonwealth Health Center facility and the Lt. Governor took this as his project. It was perfect. He brought Tony Tenorio in, who's his cousin, as the project manager and they built the Health Center. That was just when the Chinese came in. That's a whole other movement that went on when PRC [People's Republic of China] companies first became interested in the Commonwealth. How do we handle immigration problems, relationships with the PRC? Guangdong Engineers & Architects was very involved in the building of the hospital project and that had all sorts of problems involved with it. So that was what he was doing. The hospital got built. It was very successful. But, meanwhile, this water problem, that he was also very well-suited to handle, was out there and was just getting worse. The water problem's real complex; I'm sure you've heard. Something like 80 percent of the water that gets into the reservoirs doesn't make it to the ultimate user because it's leaked out of lines that are pre-war lines. They have an active program where guys go all over the island with these earphones on trying to find these little pipe leaks. I guess this goes back to your comment. Did the TT set them up with good infrastructure? No, hell, no. With respect to the water system, this was a time bomb just waiting to go off because they were relying on a pre-war system and it could go at any time. And parts of it did go at various different times that had never been handled by the TT. And today still plagues us. I mean I have water hours at my home. I'm up on Capitol Hill and I don't have water from 6:00 p.m. until about 4 a.m. And I'm building a home in another area of the island that only has water four hours a day. So this is a real problem we still have. I'm not really qualified to say whether the power was adequate at the time, but certainly with the boom that we went through it quickly became inadequate.

Willens: You said that there were no particular new incentives offered by the Commonwealth government to diversify the economy here through the introduction of the garment industries.

Kosack: No.

Willens: But it seems to have happened in or about 1983. Can you give me some sense of what happened?

Kosack: When I came here in 1981, the sole industry on the island really was tourism. And we had all the baseline facilities in, but the hotels were growing. With the boom of the Japanese economy, more people went abroad. So more people came to Saipan and tourist statistics went up. At the same time that more people came here, there was also another thing happening in Japan which was that more Japanese companies were going overseas and building, investing. Money was available in Japanese banks and probably the last thing that was really important was that a lot of Japanese companies were becoming interested in diversifying their own investments. They were getting wealthy and they needed to diversify their own investments. For example, you look right behind me here is Anaks. That's a large condo development here. The KS on Anaks is KOS Steel, which was diversifying by investing money here. Ricoh, the business machine company, has a development here. All these different companies were looking for ways to invest in tourism, which was a great area to invest in here, because it was a real boom area. So a lot of money was being pumped in this economy to build tourism related things such the larger DFS store with the downtown store, the Galleria; the new Hakubotan store down in Oleai. You have expansions of hotels by adding new wings on existing hotels; new hotels being built. All of that was going on. A lot of optional tours are going in. Theme

hotels and destinations like the PIC [Pacific Islands Club] hotel. Managaha was blooming. All of this was going on. Not much incentive needed to be provided to encourage it. Our immigration laws were oriented towards providing business entry permits so business people could come in and operate their businesses. When news about Hong Kong first came out in 1982 that Hong Kong would be returned to China, we came up with the foreign investor visa regulations to encourage people to come here and invest and be able to stay here. There were other things that we did; to be honest with you none of them were real starters in attracting investment. Mostly what we saw was worldwide economic conditions affecting this little island that just happened to be off the shore of Japan, and that's what really drove our economy. But there was a fear everyone had, and we still have today, that it's really dangerous to put all your eggs in one basket and have everything be related to tourism. The United States Department of Interior recognized that, recognized it here. It was no big surprise. In the first years that Montoya was at OTA [Office of Territorial Affairs], he brought in a little investment tour. I remember this very well. It was a kind of dog and pony show where he had people from U.S. Department of Commerce, Customs Service, Treasury, various different federal heads came in here and said, "You know, you guys ought to be looking at all these other industries that are available." He brought two tours that I recall. The first tour was in 1982. One of the great brainstorms they had was the garment industry. The garment industry is constantly subject to pressures and they're the Marco Polos of manufacturing. They're always looking for a better place to manufacture. And they would come here very quickly. They said, "Look what you've got going for you, your labor. You're not subject to U.S. minimum wage laws, so you've got cheap labor. Second, you're not subject to U.S. immigration laws, so you have the ability to draft your own immigration law so people can bring in their own labor force here." A factory in Tientsin or in Seoul could move themselves completely here with their labor force intact. They'd raise their labor wage up to \$2.15 an hour but that's still pretty cheap. They'd have all the same workers who are already skilled, and people they know, who could come here and could work. The goods that they make here are not subject to duty. They were subject to an excise tax; but we took care of that real quickly. When they shipped their goods out of the Northern Marianas and into the U.S., because of Headnote 3a, they entered in duty-free. They entered in quota-free. What else did we have going for us? Under the Jones Act we didn't have to use U.S. shipping; and most garment industries haul by ship. The garment industry would provide an incredible benefit to the Northern Marianas because our biggest problem was getting U.S. goods out here. Joeten, as you know, was the big retailer. U.S. goods cost a lot of bucks. They're real expensive. Well the problem was that they were sending containers this way but they were going back empty. In fact a lot of them were just sitting out here in a yard waiting for something to carry so they wouldn't go back empty. And so they said, "You'll develop shipping in that direction and that'll lower your shipping costs all around." That would be a real benefit to the local economy, as well as the construction of these buildings, as well as insurance that has to be sold, automobiles that have to be sold to them that they're going to use, buses that have to be sold to them to move their people around, food to feed their people. All of this stuff would be great for our local economy and for the manufacturers who come in. Shipping is going to be cheap because of the Jones Act exemption, minimum wage is going to make labor cheap, immigration is going to allow them to pick and choose whomever they want worldwide as labor, they would have the benefits of no quota, no duty—I don't remember all the benefits. Those are the ones that jump to my mind. It looked like a pretty good package. Instantly, within six months, we had the first garment industry being built down in Chalan Piao. An American citizen of Korean ancestry funded Commonwealth Garment Manufacturing Incorporated, San Ho Kim, building up a factory in an old existing

building down there across the street from Hopwood Junior High School. Immediately, Willie Tan came and built American International Knitters Corporation down in Lower Base. And the third one, also down in Lower Base, was Saipan Manufacturers Incorporated. At that time, Richard Pierce ran that. These three companies all were in the sweater industry; and the reason why is that sweaters had the highest duty on them. It's all driven by duties. The duty on sweaters was about 35 or 36 percent, whereas, for example, shirts might be at somewhere between 5 and 10 percent. Sweaters' were hit the hardest in the garment industry. So you take what's hit hardest on duties and you put it in here, a place where you can manufacture it duty-free and quota-free. What you've got to understand about quotas is that quotas in some countries are completely sewn up. It's just simply these companies have them and no one else is going to get them. Different countries have different ways of allotting their quotas. In other countries like Hong Kong, quota is actually traded on a stock exchange. You buy and sell quota daily and they go up and they go down. The closer you get to the end of the quota year the more expensive the quotas go. Some people couldn't even start their company because there's no quota available to ship their sweaters into the United States. In other places, anybody could get a quota to go into the U.S. but they had to buy it at great cost like in Hong Kong. This quota was a real driving factor. Then, on top of that, regardless if you got a quota you're also paying a third of your value of the goods in duty. So, all of this drives up the price of garments, makes U.S. importers, retailers and wholesalers, less interested in buying from these places. China is in competition with Korea; Korea's in competition with other places. American companies are putting in factories in Bangladesh, Nepal, and Sri Lanka. Of course, they have to deal with political instability; they have to deal with uncertain laws. We had a great situation here. When I used to be a salesman for the Commonwealth as its Trade Rep, I used to say, "Come here. You're under the U.S. Constitution. You're under the Commonwealth Constitution. We've got a federal court on this island. We've got the FBI here. We've got all sorts of security. They can't nationalize this industry. This is a safe investment." In addition to those facts, I used to say, "It's the best of both worlds and in between both, the best of Asia and the best of the United States and right in between them." We had the labor force of Asia which was trained and skilled and at a relatively inexpensive price located here and yet you had the security of the United States because you had the U.S. Constitution protecting your investment, you had the stability of the U.S. government behind you. It was a great sales pitch and we didn't have much problem attracting them. These first three formed sweater factories. They did quite well in their first year. I think they went into production in October 1983, and by July 1984 a multi-agency group headed up by the Customs Service came out with new regulations changing the Country-of-Origin Rule to what they would now call Substantial Transformation. They specifically said, with us in mind, that linking processes and assembly processes do not constitute substantial transformation. This was an emergency reg, and overnight our sweater industry just collapsed. Now some of these people were a little bit protected because they had had Customs rulings, and you get a certain degree of protection from that. I was the Attorney General and the government turned to me and said, "Look, we're trying to diversity and we want to encourage this industry. We think our government should support these people and go pitch their cause in D.C. So I went to Washington, DC with Lt. Governor Pete A. Tenorio on our first trip. This is one of the things he got involved with. We went to each of the agencies in that group: Labor, Treasury, Commerce, USTR (U.S. Trade Representative), and State. We said, "Look, here's the material you gave on our island suggesting doing this here, and within a year of doing this you shut us down. This is just not fair. It's not fair to us, it's not fair to the people who came in, and you're going to leave us with a helluva of a

black eye for investment. We're trying to sell the stability of investments here because we're part of the U.S. and we got the U.S. pulling the rug out from underneath us." We couldn't get the time of day from anybody with the exception of USTR; and I think USTR just saw us as small peanuts. We just weren't that big a thing. At that time, it was under Reagan, the head for textiles was Ambassador Richard Ames. He saved us. He basically came in and said, "This is unfair; I'm the lead of another group which is a cabinet-level group called TPG (Trade Policy Group). And we're at a higher level and I can take up the lead for you and try to save you guys. But what I'll do is this: we'll save these companies that are there to the extent that they're set up right now to do business with an annual growth rate." So we had Customs come in and look at the number of machines, and we tried to figure out what is our present capacity. I think it was 150,000 pieces a year; and then we put in like a 10 percent growth rate. We got the regulations amended to put that in, and we had an agreement that set that up. And every year we had to come back and renegotiate the growth rate; and so for three or four years in a row I'd go to Washington, D.C. and we'd renegotiate growth rate. And, of course, it was a great club they'd use to pound us over the head. We saved these guys, but it was the end of the sweater industry. Meanwhile, over here is a new industry starting up which is cut-and-sew. Cut-and-sew is making shirts, pants, dresses. And the substantial transformation rules required you to basically send in a bolt of cloth, you put the pattern onto it, you cut it out here, and you'd sew it into a final good. So there was much more labor involved here. Other factories were setting up in the cut-and-sew area. Meanwhile, when I'm going back and negotiating, there's an emergency issue every year. The first year the issue was trans-shipment. Are completed goods being shipped in here which are then being moved on to the States? We had to go through a whole big thing on that. We got involved in setting up a detailed Customs Service inspection here, our own Customs Service. A set of forms went to the U.S. that had Headnote 3a certification and that's how our Headnote 3a/3 percent certification fee came about, the user fee. It is one of our important taxes now. It was set up to cover the cost of Customs and later became a tax. The second year was use of infrastructure and I turned out a report where we analyzed the extent to which the garment industry contributed to the community and the extent to which they took from the community. We looked at sales of automobiles and insurance, and sales of produce, and construction—all the various ways they contributed to the community—and we balanced that against their use of electricity, their use of water, their use of the roadways and the port. And then we also compared it against other industries. compared it against the tourism industry. We compared them to a hotel: what does a hotel use and what does a garment industry use and what's the return on each? And then I tried to do a projection.

Willens: Can you remember what the overall conclusions were of that assessment of the garment industry?

Kosack: Well, the overall conclusion was that at that point the garment industry was helping us because we were getting good taxes from it. It was taxed fairly heavily and although we had worked an exemption to the excise tax, we hit them with this user fee. They really helped shipping because of the fact that they had all these containers going out. The quality of life here was getting better because better foods were available in our stores. The hotels were able to get the foods they need for their restaurants. That was a big factor. There was a lot of money being made in automobile sales and insurance. A lot of money was being made on construction, but the problem with construction is, of course, it's a one shot deal. So you had to look at the fact that that was tapering off. Overall, at that point, when we had about twenty factories, things were pretty well-balanced.

- Willens: Was this in 1986?
- Kosack: That would have been about 1985 or 1986.
- Willens: It was still while you were Attorney General?
- Kosack: It was later when I was Trade Representative which would have been 1986.
- Willens: How long did you serve in that capacity?
- Kosack: One year. Just a 12-month term. And it was one of the things I delivered during that 12-month term.
- Willens: Was the assessment of the industry initiated by the Commonwealth government?
- Kosack: Commonwealth government.
- Willens: It was not required by the federal government as a condition of some kind?
- Kosack: It really was a very apparent lobbying strategy. And this didn't affect its objectivity, believe it or not. But it was real clear that one of the problems that I was having in negotiating every year with the federal government is I didn't have a very good handle on what was going on, what was really happening—numbers. On the other side we had the MFA (Multi-Fiber Arrangement) and the ATMI (American Textile Manufacturing Institute). These are lobbying groups that affect Congress for domestic manufacturers. We were fighting bills like the Jenkins Bill and the Hollings Bill which were going to set worldwide quotas on goods coming into the U.S. I testified on behalf of the Commonwealth twice in the U.S. Senate and the Senate Finance Committee in front of Danforth on these bills. The first time we testified on behalf of the CNMI government as to the importance and why we should not be treated as a foreign country. We were classified as a foreign country under both of these bills. The second time the PBDC (Pacific Basin Development Council), which is a council of the four governors of the Pacific, hired me to represent Hawaii, American Samoa, Guam and the Northern Marianas. And I testified on behalf of all four: of those with John Waiheia, who at that time was Lt. Governor of Hawaii, before he became Governor. The two of us went to D.C. and lobbied for two weeks on this bill and then we both testified in front of the Senate on the bill. Hawaii was very supportive of us.
- Willens: As part of your study, you made a confidential survey of the garment industry?
- Kosack: A confidential survey of the industry and how much they expected to expand. ATMI was saying these people have got a complete open door. All of Asia's going to pour through Saipan into the U.S. And, of course, they said, "And they've got Communist Chinese working there." So, I had to see if this was really true. Are we going to be headed for some real problems here? And I did find statistics that were pretty startling of what their plans were. Now, of course, some people artificially lowered it because they could see where we're coming from, and others artificially pumped it up because they think they're going to grandfather themselves in. I kind of had it figured that maybe it will balance itself out. I broke it down into 640, 641, 340, 341, these are different classes of garments, knit, non-knit shirts, for example, and said these are where we're having our problems. We identified some areas where I suddenly said, "You know, we're going to have some substantial problems. We're going to be the tenth largest manufacturer of shirts in the world in three years." We were looking at some pretty scary statistics. I said, "You know, we're going to really have problems with the U.S. government unless we engage in self-restraint." And the point of my report was we better engage in some self-restraint. I took two positions in it. I said, one, we ought to set up a voluntary restraint system. And two,

we better clamp down on labor abuses because this is going to be a pot that's going to boil over soon. And as a result of that report, a voluntary self-restraint system was set up. It was not exactly the system that I had devised. I left government in March and in June the Attorney General's Office decided on a multi-agency approach using Commerce and Labor, Immigration, which is the Attorney General's Office, and the Customs Service, which is Finance. The three agencies combined together came up with: emergency regulations on June 19, 1987 which set up a moratorium for the garment industry. No more business licenses for garment manufacturing. No more labor permits and no more immigration permits for garment workers. Business licenses were frozen. They'd issued something like 66 outstanding business licenses. There were 20 factories in existence but 66 licenses outstanding. So they said only those who were engaged in manufacturing would be allowed to bring in workers. And I think it was roughly at a limit of about 150 workers a factory with some of them having been grandfathered at a higher level because they had more than that number of existing workers. And so there's all this litigation and administrative hearings as to who qualified as engaged in manufacturing. If you're a half-way built factory, are you engaged in manufacturing? So all of that occurred. But it was a real revolution. It really brought the industry to a halt, and it guaranteed to the United States government—which is what it's purpose was—that there would not be a flood of garments coming into the United States because the number of workers was limited. One can turn out only so many garments. I don't remember what the cap was. It was like 2000 workers was all that was going to remember what the cap was, among all the factories; that be allowed.

Willens: These workers are, of course, primarily alien laborers.

Kosack: Those were all alien laborers.

Willens: And I'm interested in your assessment about this point in time, 1986 or 1987, as to the impact on the community of the number of alien laborers that were brought in to help staff the tourist industry on the one hand and the garment industry on the other hand.

Kosack: Well, the garment industry received a lot of attention for the number of alien workers they brought in. Now in truth there were more alien workers in the construction industry. I don't recall whether there were as many in the travel industry, there might have been, but it was very close. But the garment industry was controversial because it was the only factory setting so it was quite different. In the construction industry, everyone benefited because the cost of your housing went down with the more construction companies out there competing for your dollar. With the garment industry, people couldn't see the benefit as readily. Some of the first garment factories built themselves quite in public view. The Commonwealth Garment Factory was on Beach Road. The Linsong Garment Factory built itself right on Middle Road. We had no zoning laws, so there was a garment factory, Gold Baron, that was on Middle Road virtually in Garapan Village, two blocks from a school. Not real good locations. But the government had done nothing to try to site these factories until later.

Willens: The number of laborers that was established as a ceiling was about 2000?

Kosack: That's my recollection. Now, remember this was 1987. This is the point in time where all the hotel construction had gone on, building construction, condos, everything else was happening, and suddenly there's water rationing, power blackouts in the summers. People are looking around trying to figure out what's this coming from?

Willens: Did there come a time in the middle and late 1980s when the community' began to reach

some level of concern about the number of alien laborers and the impact on not only infrastructure but perhaps the integrity of the local community?

Kosack: Yes. There was a real fast pace of development in the Northern Marianas, really basically in Saipan. We saw all this construction going on with respect to hotels. We saw land buying going on at a very active pace. We saw the garment industries coming in and factories being built. All of these things were happening and it had a lot of different effects. Let me give you an example. These are rough statistics, be a little careful with them. If my memory serves me correctly, in 1981 the population of this island was about 16,000 people of which about 12,000 were residents and U.S. citizens and about 4,000 were alien workers. Today, we're roughly at about the number of 42,000 of which, I think, about 16,000 are residents and about 26,000 are non-resident workers.

Willens: This did not happen all of a sudden, of course, and I wonder what it was that began to precipitate concern in the community?

Kosack: It was the mid 1980s when the boom occurred economically. Business picked up here and, with all these new businesses coming in, a lot more non-resident workers came in. This whole area is pretty complex. It's hard to be real superficial and yet be accurate. A lot of non-resident workers came in here because they simply wanted to leave their country. And so, for example, one area that we saw a huge influx was from Korea. They didn't come in as employees of Korean companies, but mostly they would come in and establish a corporation for a thousand bucks and then they'd turn around and have the corporation hire themselves and their families. They'd bring themselves in and they'd bring in all their dependents. One person might come in on a business entry permit and all his dependents were allowed to come in. Our immigration laws have undergone a substantial change trying to fill one by one all these little loopholes. But we had hundreds of small Korean companies that were really mom-and-pop companies. It was questionable whether they were even trying to turn a profit, but it was their reason for being here, or the reason that permitted them to be here in the Commonwealth.

Willens: There was no duration fixed as to the number of years that they were able to stay here?

Kosack: There was no max. It was a one-year permit and it was annually renewable. So it was an open door. Korean entrepreneurs who'd come in the beginning, guys who I remember were driving around on bicycles with their wives, very soon became these Taipans who were making huge bucks off of, among other things, bringing Koreans in, and setting up Korean businesses, and being kind of local fixers. And the Korean community very soon had its own newspaper published in Korean. Another thing that occurred, but at a much slower rate, was in the Chinese community. PRC workers started to come in because with the garment industry a real common problem is where do you find workers? Filipino workers were just totally unsuitable. They found that as alien laborers they were playing all the angles so that they would remain permanently on Saipan and there were lots and lots of labor suits brought about by Filipino workers. So they were not used for the garment industry. Korean workers were the primary source. They were very skilled. I don't want to say they were subservient, but they didn't cause problems to the business management, and they worked out very well. Then after the Olympics in Seoul, the dollar was down and the won went way up. Manufacturers here couldn't keep pace with dollars to what they had promised in their contracts which were written in won. And so, suddenly now they really had a problem because they couldn't use the Korean workers. They had to look around, and where would they go? They looked at China. One company in particular, MGM, the one in Chalan Kanoa, was owned by the Chinese government in what used to be called Manchuria. They would bring workers in from Harbin which

is in the north of China. They tried workers from Guangzhou for many years and from Guangdong Province in the south. They tend to fit in very well with the climate here but they aren't as efficient. The ones from the north are much more efficient. They also tried bringing workers in from Tientsin. This company was in the business of bringing workers in, supplying them, supervising them in the sense of making sure there are no problems and, as people had to leave, finding replacements. The Chinese government, in effect, had set up a labor agency here on this island. So you had an influx of Chinese workers going on. One of the companies used Thai workers. The one furthest down in San Antonio, James Lin, brought in Thai workers. And then Onwell brought in Thai workers. Now, what's the effect of all of this? Well, first of all, bringing all these workers in brought some familiarity among entrepreneurs who were labor suppliers that there was a place called Saipan. They came out here, got interested, and started businesses here. You saw Chinese businesses cropping up. You saw Thai businesses. You definitely saw a great deal of Korean business starting up here on the island. Another thing that occurred was that you saw Chamorro and Carolinian men dating Thai workers on Sundays. The Thai workers would leave the factory Sunday, they'd go over to the beach, and local Chamorro guys found out there's all these great looking women down there at the beach and they're a lot of fun, so, they start showing up there. And you start seeing guys getting married; and you saw these interracial marriages occurring. That caused a ripple in the community, that caused some concern.

Willens: But at that point, then, I assume the workers who were alien qualified as immediate relatives and could both stay on the island and be entitled, if they were married, to U.S. citizenship?

Kosack: They became immediate relatives, got a green card and then went through the green card process to become U.S. citizens. There are a lot of restaurants on the island with husband and wife teams where the wife was an alien. Bob Rudolph married Miles, a Filipina. Herb Soll married Elena. She was a musician at one of the nightclubs.

Willens: Putting the marriage option aside for the moment, did the alien laborers employed by the garment industry, as a rule, stay for a limited period of time and then return to their country of origin?

Kosack: Usually they'd stay about two or three years.

Willens: And then be replaced by someone just like them?

Kosack: That's right. And so there were people rotating in and out.

Willens: So it was not an instance like the Korean experience that you summarized of people coming here under the liberality of the immigration laws and the permitting laws, and establishing a residence here in the community.

Kosack: That's right. Part of the friction with the community came about because on Sundays there were these large hordes of workers, we're talking again in the thousands, who were turned loose on the island with not a whole lot to do. Eurotex, located out in San Vicente, would turn loose two hundred workers who'd go down to Laulau Bay and walk along the beach on a Sunday because it was the only thing they had to do. Garment factories, all of them, soon acquired buses and then would bring the workers over to Townhouse, and it was great for the retailers. They were selling things like mad, but at the same time you had all these workers sort of hanging around at places where people are doing their shopping. They were going to beaches like Paupau Beach, the beaches down the southern end of the island. The population was increasing, and some of it was also a clash because of dating.

Also some of it's a clash because lot of the workers being brought in are real country people. The people being brought in from China are not from areas where they've got cars. The only thing they drive around on are tractors. So, you find these Chinese workers walking at night down the roads, in the middle of the road. So we've had many, many people who have been killed at nighttime because they're walking with dark clothing on down the middle of the road and someone comes along and ploughs into them. Lot of things like this that were causing friction with the community. The taotao tano [local people] have watched this alien population grow to the point that I believe it's larger than them now. There's an identity problem to start with, with all the different administrations that they've gone through. An increasing identity problem as more and more foreigners are leasing land. Increasing identity problem as there's more intermarriages occurring. And there's a little bit of a circling of the wagons when all of this is going on around them. A feeling like we better make sure who we are, and that we hold together, and we're not sure that we want all these people in here.

- Willens: Does some of that sentiment extend to statesiders, namely U.S. citizens who come from the mainland and who commit themselves to working and living here?
- Kosack: Yes. It does. There are many different categories of statesiders here. The experience of statesiders who've only been here four years is different from the experience of someone who's been here for fourteen years. You have to build your acceptance into the community; and you build the respect for you. I'm working on my fifteenth year now and I'm very comfortable. This is home for me. I'm building my house. My children were born here; one was born on Ponape, one was born here. I'm since remarried. My wife and I got married here. My wife's been here eighteen or nineteen years. So, for us this is home. I don't ever plan to go back to the states. I'm very happy here. I think one of the things I'm most happy about is the people. The climate's beautiful and there's great recreational facilities. But to be honest with you, the sort of business that I run, I don't get out and play so much anymore. I'm trying to think what is it that attracts me. I think it's just the friends. The friends, the strong values held in the community. These are really good things. But I do encounter anti-statesider sentiment, some of which I take personally and some of which I don't take personally. Some of it I understand, from that sociological basis, that the circling the wagons. I feel that I have an attachment here to the community that's different than Glenn who's been here four years. I understand it better. I'm more part of it. I've shaped many of the things that are here in the community. And so, I have the feeling like I'm a little bit special. Well, I can imagine what it's like to a person who was born here and raised here, or whose parents were born and raised here or grandparents. When you look at that you say, they must have a feeling. They see all these changes going on, and they say: "Wait, I should be somehow special. I am an islander. I'm a taotao tano. I am something here." When you look around you've got to say, what is that identifies a Chamorro and a Carolinian and makes them different? Probably the number one thing is that they speak their own language. And there aren't so many statesiders who speak it or understand it. There's a real attempt here to hold onto the language. So this is a real mark that identifies someone who's an islander. What else is there? Not much else. In fact, really when you come down to it, Article 12 and the things that are associated with it such as receiving homesteads and other things related to land are the only special privilege that a person receives from having originally been from this community, from being a part of the core of the community. That's really the only thing. When I look at all the things that have happened relating to Article 12 and the strength of the feelings, I don't understand all that. I've been very involved with this whole process. It doesn't make sense to me. But I think it has to do with a feeling of being threatened. If you tell someone who strongly feels that

they're part of this community and their personal history goes back in this community—but they're seeing the community grow and they're feeling like they've lost a lot of control over what's going on, government's gotten very big, lots of foreigners moving in, beaches that they used to have exclusively to themselves are now covered with other people—when you suddenly tell them I might do something that affects your only privilege, there's a real feeling of being threatened. And this is a very important sociological thing that has resulted. I don't take that personally. Sometimes it can get pretty intense because of some of the clients I'm handling in this area affecting Article 12. After all the years I've been here and all the things I've done, it's very sad to hear people, and sometimes your good friends, get in an “us and you” situation. In the Constitutional Convention I've had delegates who we represented telling us, “Well, no outsiders,” which means statesiders. No outsiders are going to be elected. Everyone's saying, “Don't vote for any outsiders because it's not their constitution.” And good friends are telling this to me, people who are the godparents of my children. They feel I can accept this, but, of course, what they're really saying is that I'm still an outsider. That's a very tough situation, to know you'll always be confronted with that. I don't think you'd ever get past that. So that does go on. It's fed to a large extent by the huge increase of the number of alien workers. Also, tensions because of the labor abuses that are harming the reputation of the Commonwealth are a factor. Everybody takes this personally, which does not make them feel good about alien workers. We went through a real xenophobic period, in the early years of the Guerrero Administration, 1992 and 1993, when all our Legislature seemed to turn out was legislation that prohibited aliens from doing this, that and the other thing. We still have some of these laws on the books. Aliens can't drive taxicabs. They can't be barbers. They can't be clerks. They can't be secretaries. All there because aliens would come here, work for two years, and then learn about the business entry permit. The alien would then get himself a corporation, set up a business next door, and take the customers. That was a real problem. Now, those are the ones that passed. The ones that didn't pass were just unbelievable. And it seemed to me that for the first four years of my private practice, I spent a large amount of time trying to deal with these laws and make sure they didn't get passed, and that people saw that foreign investment was favorable, that you could control it, you can restrict it without slitting its throat. But there was real over-reaction to two primary things: the large influx of non-resident workers, and the huge impact that all of this was having on the infrastructure.

Willens: Did you see some growing consensus as to how to accommodate the desire for economic growth on the one hand which requires significant reliance on alien laborers and at the same time protecting the integrity of the community from some of the social consequences that you addressed?

Kosack: We never solved the problem. The problem with infrastructure has to some extent been solved by throwing money at it. They formed the CUC (Commonwealth Utilities Corporation), and Ray Guerrero became the head of it. I don't know whether they did good job or bad job. I don't think the verdict's ever come in. But just by throwing a lot of money at the problem we put new generators on line and we've got more power. We increased the capacity of our sewer treatment plant and we're nip and tuck on that race as to whether we're able to process our sewage. Two months ago we spent an entire month of just sending raw sewage out into the lagoon and bypassing the plant because it broke down. The water problem doesn't appear to have solved itself very much. The labor problem never solved itself. We engaged in patchwork. We went in and fixed immigration laws here and there. We restricted aliens from working in certain areas. We passed a law that said that our government cannot hire alien workers, with a couple limited exceptions. We tightened up the business entry permits so that it was available only if you were a

high ranking official and a majority shareholder. I mean they really tightened that up. We tightened up immigration enforcement. But the bottom line is immigration's continued to grow. The number of alien laborers continues to grow. And labor enforcement never got better. Immigration enforcement's gone up and down. I was head of immigration for three years. And during the time that I was head I fired the former head of immigration, who'd been in the position for over 20 years, for corruption. I did that the first year I was Attorney General. I put in a statesider which is not a great political move; but he was a really tough guy. We required everyone from Immigration to go through two weeks of training and if they didn't pass we would fire them. And we wrote completely new immigration laws and new immigration regulations. And I think for a period of several years we had really good immigration enforcement. And then, after I left this fellow was eventually switched out of that department, and things started falling apart. Today, Immigration's okay, not great, but it's okay. Labor has never been good. Our labor enforcement has always been shameful. It's a case of turning blind eyes toward everything that goes [on]. There are a lot of labor abuses in this community; everyone knows it. That doesn't mean everyone does it. A lot of people here treat workers as though they're members of their family; but there are other people who don't and nothing is done about it. There are a lot of laborers who run away and no attempt is made to find them and deport them. Labor problems have always been bad and there is no sign that I can see, up to today, that it's going to get any better. So that's a huge problem. It would seem that things should be worse now than ever with respect to the public's feeling towards foreign investment. Actually it isn't true. About four years ago, the bubble burst in Japan. Money was no longer available for investment in the Northern Marianas. Leases defaulted. At the same time these Article 12 lawsuits came up involving leases, so land was called into uncertainty. Major investors were being sued. And people began to think, if could happen to them then I'm not immune from it. So there was a real lack of investor confidence. Both of these things occurred at the same time. As a result of it, investment just tapered off. To give you an idea, in 1988 I did on the average three 55-year leases a day. Those were a high profit area for my business. If someone could not wait for a week, because that's how long it took me to turn them out, I could do it that night but they were paying overtime. The lease business was incredible. I was probably churning out four corporations a week. These are to me the indicators of new business starts, new corporations, new leases. Today, I do one lease every four months. Maybe one corporation every three months. I'm just out of business in that area.

Willens: Well, do you see any sign of a pickup of that?

Kosack: No. Lot of talk, but not really any action. Those to me are the indicators and in those areas there's absolutely no sign.

Willens: Well, don't those indicators suggest that maybe there's a leveling off of at least the rate of economic growth and alien laborers may decline gradually in numbers?

Kosack: I don't think that'll happen. I think the boom was an anomaly. It was just a rare situation. As a result of all this loss of business, people are now beginning to understand what it contributed to the economy. With the loss of leases, we don't have gross revenue tax receipts anymore. The GRT was fueling our government. During Larry Guerrero's Administration we were pulling in phenomenal bucks on GRT because it was hitting people with 5 percent on every lease. If you got a ten million dollar lease and the government's pulling 5 percent out on that, the government was doing very well. The size of government just increased and increased. It's good politics to hire people and bring them into government. It's also good politics to raise wages. So suddenly for a secretary in the Attorney General's office, the entry rate would be at between 18 and 20 thousand dollars, whereas in private

practice it was between 14 and 16 thousand. Government was suddenly outpacing private industry. A lot of the large employers on the island were losing their management people to government because the hours were better, the money was better, and the benefits were better. Government was suddenly becoming the big employer. Meanwhile our dependency on U.S. dollars was decreasing and we were becoming more independent. Because of all these GRT bucks, we're able to pay for our own government. That was a real beneficial thing. Of course, the bottom fell out on that. Suddenly no more leases were being signed because of Article 12 litigation and because of the slow down in the economy. The GRT's not coming in, and that was our largest area of tax. And when the GRT's not coming in, suddenly we got all these government employees, and we're looking at election years coming up and you can't lay anyone off. And so in the third year of Guerrero's term we had our first deficit ever in our Commonwealth government. In his fourth year, that deficit only increased. This Governor came on and in nine months raised a higher deficit than the previous two years. I've lost track of where it is, maybe it's \$40 million right now. But the deficit's really grown. That's what all this tax stuff is about. Instead of cutting away the number of government workers out there, we haven't. In fact we did an across-the-board raise a few months ago that was done silently that no one knows about. We really hit an economic halt. We can't pay for the size of our government any longer. We can't afford this government. So there's three ways of going about it. One is to raise taxes and that's what's being done right now; phenomenal increases overnight. And, of course, that's very unpopular and they're already talking about repealing it. I don't know where that's going to end up. The second way to handle it is to encourage more investment to get back where we were. People are starting to pick that up and they're realizing that we've got to get more investment to get things going. This Governor has really pushed that. He seems to have taken the position that investment in Japan is dead and so he's going to Korea and we're ending up with companies like World Corporation. It's desperate times, desperate measures. Let's just do anything for investment. We're trying to get rid of the Coastal Resource Management program because it's a hurdle to investment. All of our permitting and environmental quality agencies are either being stripped or actually just disappearing. The ones that were independent agencies have been collapsed into the central government. I'm very pro- investment. I support some of these ideas. But the way we're doing it is kind of reckless right now. It really doesn't address the concerns of quality investors. So, there's been an evolution in thought from the view that the island's growing let's get in while the getting's good in the mid-1980s to this place is growing too fast and look at all these strangers here and we're losing our infrastructure in the late 1980s. A number of things came together at the same time to bring about a halt. The halt happened, and suddenly we went for two years unable to support our government. We're in our third year being unable to support our government. We're going to have a substantial shortfall this year. Everyone knows that. As a result, the most current step in this evolution of thought is we never realized how good investment was when we had it. We can control it now. We've learned our lessons, we know how to control it.

Willens: Is it your sense that the Covenant has proved on the whole to be a satisfactory basis for the Commonwealth?

Kosack: In general terms I'd say, yes. There are specific instances where there have been problems, but in general terms, yes. We got a lot better deal than Guam. Guam, with its close association with the United States since 1898, is jealous of what we have and would be very happy to have a Covenant. We've received a lot of benefit through, I think, historic happenstance. That's one side of the equation. The other side of the equation is it's frustrating to see how misguided, unguided, unthinking the United States has been so

frequently towards the Northern Marianas. Poorly informed, almost always. Reactionary, quite frequently. Part of it's understandable, I mean we're way out here. We don't represent a constituency. There's nobody there that responds to us. I remember meeting with the Congressman from North Carolina, James Broyhill, one time and we were talking about the garment industry. I was explaining to him about the Chamorros and Carolinians. And he had a great line. He said, "You know, I understand where you're coming from but from where I'm at, my constituents, the only Carolinians they know are North Carolinians and South Carolinians. They don't know about these western Carolinians." We've gotten screwed by the United States so many times, and it's so unfortunate. Guys like Richard Montoya are totally misguided. Gallegly has some fundamental misunderstandings about our immigration laws and our labor situation. He loves being the bad guy because to him it's almost like a hobby, I think. And so he's just kind of jerking our strings. I think there's always going to be some resentment out here because of the amount of money that's been poured in here. There's always resentment to someone that pays you those sums of money and to whom you're dependent on. That's always been the case.

Willens: There was an effort in the middle 1980s to reexamine the Covenant. And there was a revisionist perspective offered that suggested that the Covenant really described the Marianas as a freely associated state. Did you have any role in that?

Kosack: No. Benjamin Manglona was the head of it. There were two issues. One was the [Section] 902 talks and the other was the Covenant funding talks. He and Pete A. Tenorio were the chief wranglers on both of those. Eric Smith was involved in the later years and I think Bill Mount was involved in the earlier years. The [Section] 702 discussions went on when I was Attorney General. Unfortunately, as Attorney General, I found I was more dealing with the everyday nuts and bolts of government and I didn't get to do the more glamorous things like get involved in discussions with the feds. I've never been involved with federal relations other than in the trade area. With respect to interpreting the Covenant, I've been an observer. I've not been a person who's in there negotiating it.

Willens: There has always been controversy about the role that the Covenant and subsequently the Commonwealth Constitution gave to Rota and Tinian in the upper house of the required bicameral legislature. Is it your judgment that the substantial measure of political power given to those two islands has disserved the Commonwealth?

Kosack: Well, it certainly disserves Saipan. There'd be no argument about that. Obviously two-thirds of the Senate are represented by Rota and Tinian and that's usually the hang-up for budgets. And anything that does get through the Senate always has a heavy tax levied on it to swing a good portion of the budget to Rota and Tinian. That's a fact, that's not even an issue of opinion.

Willens: Has Saipan suffered economically or in terms of infrastructure because of the so-called political tax exacted by Rota and Tinian in the Senate?

Kosack: No, I don't think it's fair to say it suffered so far as infrastructure goes or that those islands have an unfair infrastructure. One would expect if they'd received an unfair amount of infrastructure that you'd go into Rota and Tinian they'd have great infrastructure and we'd have worse infrastructure. It just isn't the case. It has hurt Saipan in the sense that it has left our government for many, many years without a budget, without the ability to pass an appropriations act.

Willens: And you attribute that failure as much to the role of Rota and Tinian in the upper house than you do to any partisanship that might be involved in the process?

Kosack: I think that in the majority of the cases it is due to Rota-Tinian partisanship and not political partisanship. It's focused around Amendment 25. I was involved in drafting Amendment 25. I was counsel for that Con-Con. But, yes, it's really been tough on the Commonwealth to have Rota and Tinian to have so much power.

Willens: Do you see any basis for the three islands sharing political power in a more constructive way?

Kosack: I don't think so. I don't even think in a burst of optimism I could feel that to be true. I think that we're just all learning to live with it. There's a real natural tension between Tinian and Rota and Saipan that I think is always going to be there. People on Rota do not speak the same Chamorro that people on Saipan speak. There are distinctions. And, of course, they look at Saipan and they see all this economic development and all the benefits that Saipan has. They see what they pay for groceries in their store. They see what it's offered for over in Saipan. There's a lot of resentment of that. And they feel that they've got to do what they can to get their share. They really expect their politicians to deliver that. Politicians from Rota have always been quite strong politicians and they have been strong because they've done that. Tinian is desperately trying to do something. They've hitched themselves to casino gambling and that's not panning out yet. It doesn't look all that optimistic. It would take a burst of optimism to think that their future's going to change much. So I think that things are going to continue to be rough in the Senate. And I think the outcome is going to depend on the alignment of the Senate with the Governor in most instances. When everything lines up, and it's, for example, all Republican and they've got open channels of communication, if they make it work out, it happens. When it's split, like it is right now, where you've got a Democratic Governor, you've got a majority Republican House by just one or two votes, and you've got a Senate which can swing either way, they line themselves up for a stalemate. I know the people in Saipan are real frustrated about it. When I surveyed people before the Con-Con as to the most crucial concerns to them with this upcoming Con-Con, they felt that they were being hijacked by Rota and Tinian. That was the number one issue.

Willens: Do you have any views as to whether the litigation with respect to Article 12 is more or less in a state of repose that offers some desired level of certainty for the community?

Kosack: It certainly has gone through a lot of change. This is as much a state of repose as we've had in years. The litigation's been going on since 1986 so we're in our ninth year right now. We've gone full circle. I got involved because I represented a company that had been sued under Article 12. I had been very concerned about not Article 12 but the bad effect the litigation was bringing about in the community so far as investment went. I saw investor after investor get scared off. I saw attorneys unable to give legal opinions with regard to land. Title insurance companies were saying, "Forget it, we're going out of business." Construction companies were shutting down. Everything was just stopping. I didn't want to get involved because the litigation was really contentious. Life's too short to put up with that. I had a fine practice without getting involved in all of that. But I had a lunch one day with Mary Beth Herald who was handling much of the appellate work in that area. She said to me, "If you don't get involved in the solution right now, you're going to have a client five years from now who's going to get sued and all the law will have been created and there'll be very little you can do." She said, "Much of what's happening right now is because there's really only one law firm handling it and there's not a variety of attorneys out there using different approaches." And I think she's right, in retrospect. After about a year or two of thinking about it, I decided that she was right and I was trying to figure out how to get involved. Ted Mitchell was handling almost all of the plaintiffs' litigation.

Ted did a masterful job of creating a court for favorable review. He had been just getting beaten repeatedly in the Commonwealth Trial Court and in the Federal District Court.

Willens: That was when the District Court was serving as the Appellate Court for the Commonwealth?

Kosack: Right! And Ted just wasn't getting anywhere. Then what occurred is that we had local judges get onto the Commonwealth Trial Court who'd previously been associated with him and he had a more favorable forum. In June 1988, Joe Dela Cruz gave his opinion in the Seventh Day Adventist case. The plaintiff's attorney was Jesse Borja. And that was the first ray of hope. And then in September 1988, couple months later, Ramon Villagomez delivered his opinion in Ferrera v. Borja, the Trial Court opinion which was really the first sounding of trumpets. Attorneys didn't get too involved in the SDA case, but when Ferrera v. Borja was announced, I remember phone calls went everywhere around island. And people were just saying, "What's happened?" But the SDA case was going on appeal to Appellate Division of the District Court which had Hefner, Laureta, and I don't remember who the third judge was assigned to hear the case. That's when the lawsuit was filed against Hefner, and then couple days later filed against Laureta. They were both conflicted out. And they were only able to come up with, if I remember right, two judges instead of three who at, heard the case, and, I believe, they reversed Joe Dela Cruz' opinion. In August, the month before the Ferrera decision came out, the Commonwealth Judicial Reorganization Act was drafted. It was introduced by Benjamin Manglona in the Senate. Tim Bruce was Senate Counsel then and he enjoys a good relationship with Ted Mitchell. Ted did a very, very good job while everyone else was asleep at the switch. Ted lobbied that through, and it became law on May 1, 1989. Then his fortune turned around. Hefner was knocked out for the rest of his term. Laureta was replaced only about two months later by Munson. Hefner had two judges sitting with him who, at that point, were Joe Dela Cruz and Ramon Villagomez. Both had announced favorable decisions in the trial court. Then the appellate court was created and Joe Dela Cruz went up, Ramon Villagomez went up, and Jesse Borja, the plaintiff's attorney in the first case, was appointed. So it was really a great lineup. The cases that came were no real surprise. I was against the formation of a Supreme Court even though I later became a special judge. I was against it because we're doing it to help this one guy in this litigation. We were just definitely bested by Ted Mitchell on all of that. The law went through. When those two cases came out and I saw that we've really got a huge problem here, I decided I would get involved. My attack has never been on Article 12. I actually think Article 12 has been incredibly beneficial. One wonders what this island would have been like during the boom if we didn't have Article 12 because a lot of the companies that have leases on land out here have since gone bankrupt. I know because I represent them. And that land is just tied up and no one has taken the interest. Imagine if those companies had owned the land. It would have been the equivalent of carving off a little piece of the island, putting it on a barge and sending it somewhere else. It would have been a green belt, I guess, a permanent green belt. Article 12 has really served a real beneficial purpose. But the extreme to which Ted took it, the liberal construction that he sought of Article 12, the liberal construction that the court was willing to engage in, particularly when we've got void ab initio in there which results in a forfeiture, that's a deadly combination in my mind. I think that given the remedy in Section 6 of void ab initio, the court should have looked at that and said, "Well, we should be strict constructionist on this so that we aren't unjustly depriving people of their property interest based on new rules that we're announcing 9, 10 years later after a transaction's been carried out." If someone comes into my office today and says, "I'd like a lease. And I saw, by the way, some of these provisions

in another lease and I really like them—change of law, repurchase of improvements, subordination of the fee to a mortgage— can I have those in mine?” I can’t really give an opinion. I’m very conservative by nature, so I don’t have any leases out there that I am sweating out as an attorney. My own leases that I hold are very conservative; they don’t have these provisions in them. But, I can understand why attorneys put in repurchase of improvements. You got special Judge King, former chief justice of the FSM Supreme Court saying repurchase of improvements should be legal. I myself think that they should be illegal under Article 12. So reasonable minds can differ. You’ve got the Supreme Court’s recent opinion on change of law being in violation of Article 12. I can’t understand that for the life of me; it doesn’t make sense. To me that’s a clear call. So, I think reasonable minds can differ on all these things. As long as reasonable minds can differ, then we sure shouldn’t be engaging in liberal construction where we get out there and a court can announce a new rule and say repurchase of improvements is illegal and every lease that’s out there is void ab initio because of it. Luckily their view on severability has side-stepped that whole issue. That’s what I’ve been concerned about. There is injustice brought about when you punish someone retroactively. You punish someone for something that was really intended to be paternalistic and not punitive by announcing a new rule years later. I don’t think it’s good for the community to have that instability out there in land title. The land title system right now is quite a bit in a mess. My approach was not to litigate it but to get socially active in the community and develop groups like SMART and some consciousness towards this and to lobby for the passage of Public Law 8-32. Since the passage of 8-32, it seems that there should be some certainty out there but the problem we all know, of course, is the Supreme Court has yet to rule on 8-32; so, we don’t really know what status it’s in. It’s been applied by three judges in the Superior Court to resolve issues. We don’t know what the Supreme Court’s going to do and they pretty clearly sidestepped 8-32 in the Diamond Hotel case and in the rededication of Ferrera. What’s happened luckily since then is that the Ninth Circuit has vacated and reversed. The Supreme Court rededicated Ferrera. I think there may be some certainty in the area of resulting trust theory now. There’s where there’s some repose. But that’s only one of four theories that are being urged in these 35 lawsuits that are out there. One is resulting trust. I feel comfortable about that right now, even though it’s on appeal. But the other one is lease term provisions. Lease term provisions is the most active area of litigation in Article 12 now—attacking various different provisions of leases. It took eight years to decide resulting trust. Is it going to take eight years to decide each one of these lease terms and their different flavors? Repurchase of improvement with a lien? Repurchase of improvement without a lien? Repurchase of improvement at fair market value? There’s all different flavors on all these. It could take us decades to litigate this. When the new statute of limitations went in to effect last April, a year ago, there were 10 new cases filed and they were almost all of them lease provision cases. The other area is the piercing of the corporate veil cases. Those are mostly the realty trusts, you know the Jack Lane type easements. The court has yet to decide whether you can pierce the corporate veil there. It’s an equitable call. Normally to pierce the corporate veil there has to have been a wrong, something usually amounting to a fraud. Does assuming control of a corporation by a minority shareholder who is not of NMI descent constitute such a wrong that it rises to the level that you would engage in this extraordinary remedy of piercing the veil? There’s absolutely no repose there. No certainty. And then lastly the bona fide purchaser cases. As long as we’ve got void ab initio, there will be bona fide purchaser cases like the Bonita Vista case where we’ve got some 18 or 20 defendants both NMI descent and non-NMI descent who are all being sued because two corporations back was Realty Trust Corporation whose veil they’re trying to pierce. They’re saying it didn’t qualify as an NMI descent and if it didn’t, their

subsequent purchase of the property was invalid, hence when it went to Bonita Vista they had nothing to pass, and when Bonita Vista sold it to Mary Lou Sirok or Lucy Nielsen both of whom were of NMI descent, they didn't have anything to receive. So these are the bona fide purchasers for value cases. As long as you've got void ab initio, we can't really trust what's happening so we can't rely on record title. So as to the BFP [bona fide purchaser] cases, the lease provision cases, and the corporation cases (the piercing the veil cases), I don't think there's any repose. Resulting trust? That's in repose. There are a lot of people who think that the Article 12 crisis is over because of the resulting trust having gone full circle. I don't know how that's going to play out, but whatever happens, it's very clear that the public will not allow Article 12 to be unwound. I don't really know of anyone who's trying to undo it. The concern is trying to ensure to the extent possible that the judiciary is bound to respond in a responsible manner to this litigation and that we not repeat the mistakes of the resulting trust decisions. That's kind of it in a large nutshell.

Willens: You've been here 15 years. What is your sense of the improvement in the provision of educational training, health services, and other aspects of the quality of life?

Kosack: Good question. The quality of life in my opinion, for me and my family, is better here than I enjoyed in Marin County, California, where I came from, otherwise I wouldn't be here. I like the quality of work that I'm able to deal with, the quality of the people I deal with, the values of the community. These are all things that really attract me here and have kept me on all these years. Initially I was appointed Attorney General and my plans to go back had to be extended. And then I became Trade Counsel and they extended again. And then I was getting ready to go into a law firm in San Francisco and the typhoon hit and then those plans went out the door and I couldn't get back in time. And I suddenly looked around and said I think I'll stay; and I've always been happy that I've stayed. I think a lot of the quality of the life comes about because of the way people deal with each other. People are less aggressive. They're more friendly, they're more open, they're more caring. There's a very large value placed on children in this community. These are all things that are really important. Now going to the social institutions. Education is not good. The government-provided education is not very good at all. My son goes to school in Boston. My daughter at least for the last six years has gone to private school, an excellent private school, one that I would rate better than what I probably could get in my former home community back in the states. I'm not the only person who's copped out on the public school system. Most of us who hold the value of education high have pulled their kids out of public schools. And we have made the very, very hard decision of sending kids away to school. Schooling is not a good situation. Health. The Commonwealth Health Center is much better than what we had with Dr. Torres Hospital. The facility is good. We seem to have attracted pretty good doctors. On a small island you have small staff and everything turns on personalities, but basically it seems to be pretty good. The nursing staff seems to be pretty good. I haven't heard that many complaints. The major complaint that I've really heard is just it's inability to be self-sufficient economically, just very poor business management. It is the biggest millstone around the neck of the government financially. We've got a library now. It's a pretty darn good little library. It doesn't get all the support it should get, because it is not a high priority, but it's a pretty good library and it really has enhanced the quality of life.

Willens: Well I appreciate those reactions. In conclusion, are there any things that you'd like to say just for the record.

Kosack: I've been trying to be fair by my comments. This is an opinion, as maybe some of the others are, but I'd have to say this is probably the bleakest point in the history of the Commonwealth since I've been here. This seems to be the lowest point we've ever been at insofar as our government goes. I mean we just really have huge problems confronting us and I don't know if we're up to meeting them. I'm rather concerned. The issues are big. They involve government spending. They involve responding to the United States and their government has always worked on the carrot-and-stick with us. They've always held out a carrot of some money and a stick pounding us that they'll pull the money away. And some years it's stronger than other years. During the years that we were financially doing real well, it seemed like they pulled back a little bit. Now all of a sudden it seems like we're back into problems again and I don't know whether it's the labor problems or because we got problems in Congress or whether it is our economic problems. But these are some real tough times. Part of what makes them tough is that the problems are sophisticated and the solutions aren't as apparent. I've learned that it really takes quite a while for the community to get educated and to understand problems and when they do they respond very well, but it takes quite a while. It seems a little bit to me that we may have run out of some leadership. The people that were real stars in the 1980s when I was in government have gone on to private business. Ben Fitial, Dave Sablan, Eloy Inos, Pete A. Tenorio, Pete P. Tenorio, Elizabeth Rechebei. There hasn't been anyone to fill that vacuum. The quality of our legislators, in particular, has not been as good as it should be. We do have some people that are excellent, but not many. But I'm starting to see now the young group coming forward probably most epitomized by Diego Benavente. Diego is a new style coming in. He's really having to cut his teeth at tough times and he's up against guys like Jess Mafnas. Old guard vs. new guard. A lot of this is going on. So, we are in some tough times not, but I've seen tough times here before. We have come out of them so I'm optimistic about this community.

Willens: That concludes our questions. Thank you very much, Rex.

Kosack: You're welcome.