

INTERVIEW OF THEODORE R. MITCHELL

by Howard P. Willens

December 21, 1993

- Willens: Theodore R. Mitchell is a prominent lawyer in Saipan who has been an important contributor to legal services and the jurisprudence of the Marianas for at least 20 years. Ted, thank you for being available and agreeing to help with our oral history project. I would like to begin the interview by asking you to give me a brief summary of your educational background.
- Mitchell: I grew up in Phoenix, Arizona. I went to elementary school in Phoenix, then to Phoenix Union High School, where I graduated in 1954. I attended Phoenix College for a year then went to Brigham Young University, where I graduated in 1960 after dropping in and dropping out. From there, I went to Cambridge, Massachusetts to attend Harvard Law School, where I graduated in 1964.
- Willens: After you graduated from Harvard Law School, where were you first employed?
- Mitchell: Well, actually, I was first employed on a construction job. I decided not to be a lawyer after all and went back to work on construction. I was a journeyman carpenter by that time. Then one day I had a call from a classmate of mine whom I had met at Harvard Law School named Woodrow Sneed, a Cherokee Indian whose wife was a Navajo. He had gone back to her reservation in Windowrock, Arizona, and was working in the Navajo Legal Aid Service, a tiny little two-lawyer Legal Aid Office for the entire Navajo tribe.
- Willens: By whom was that funded?
- Mitchell: It was funded by the tribe. This is before the office of Economic Opportunity Legal Services Program had even come into existence. Woodie persuaded me to come out. I'd grown up in Phoenix, but I'd never been on the Navajo reservation in my life, which is located in the northern part of the state. So I thought, well, that would be an interesting thing to take look at. I'd been down to Wall Street and had interview process. I had several offers and decided I didn't want to program my whole life with one decision. So I went back to work on construction. I took Woodie up on the offer to come out and take a look and got to the Navajo reservation. He took me out to Windowrock, Arizona, and took me with him the next morning to the Legal Aid Office. I guess he knew me better than I knew myself. He put me at a desk and started sending clients at me. He said, just talk to these people; find out what the problem is; help me out. There were 25-30 people standing outside the door when we got there at 7:30 in the morning. And I was hooked. I stayed and worked there.
- Willens: How long did you stay with that program?
- Mitchell: I graduated in the spring of 1964. The winter of 1965, I went to Windowrock and stayed there. I think it was November 1965 when Clinton Bamberger and Earl Johnson, who were the two people to head up the OEO Legal Services Program, attended the annual convention of the National Legal Aid and Defender Association in Scottsdale. I went down there to attend that and heard Bamberger give a speech. The entire convocation booed and hissed and howled. This is socialization of the legal profession, of the legal aid industry. If they had eggs or rotten apples to throw at him, they would have. But I was thrilled. I thought that was the greatest thing I'd ever heard, and so I caught him afterwards and talked to him. By that time, Woodie Sneed had left. He had taken a huge salary at a job in Salt Lake City, Utah, and just disappeared. I didn't even know what happened to

him for several months. I was the only Legal Aid lawyer on the Navajo Indian reservation. So I was telling Bamberger and Earl Johnson about this. I said we need offices in Crown Point, Chiprock, Windowrock, Chinlee, Tuba City, we need an airplane, we need about a dozen lawyers, maybe more, plus translators and all the rest. And they said, write us an application and we'll fund it. They were as excited about it as I was. So I went back to the reservation and got together with a bunch of people that I knew, Navajos, and we put together an application and submitted it and got I think it was close to \$1 million.

Willens: For a year?

Mitchell: Yes, for a year. The initial grant to set up a program along the lines that I just described with offices all over the reservation. We didn't get the airplane, but lawyers, counselors we called them, and interpreters, and got that program set Then I left.

Willens: What were the circumstances then that led to your coming to Micronesia?

Mitchell: I left the Navajo reservation after we got the program funded and went to work in Austin, Texas. Bamberger asked me to work for him to open up the regional office for the five-state region that was headquartered in Austin, Texas. The Navajos who were running the program, the Board of Directors, couldn't find anybody they wanted to run the program, so after I was in Austin for a year, they called and asked if I would apply. I hadn't had enough experience I thought, administratively or in the law practice, to run a program of that magnitude.

Willens: Which program was it that they wanted you to run?

Mitchell: The Navajo Legal Services Program. For the whole Navajo reservation, which is the size of West Virginia. So I went back to Windowrock and was interviewed by the Board of Directors. They'd had a nationwide search, and there was nobody else that they wanted to deal with. So I agreed to do it. I took that job, and by 1970, we had the program running well and fully staffed. It was time then for me to step out and let the two Navajos that I had hired as Deputy Director and Assistant Director move up. I stepped out, and they moved up a notch, each of them, and they would be able to run the program. And it just happened that I noticed a small ad in a Legal Aid publication for a job here in Micronesia. They were looking for an executive director for a Micronesian Legal Services Corporation.

Willens: Was the Micronesian Legal Services Corporation in existence at the time?

Mitchell: The corporation was in existence, and they had a small grant of, as I recall, some \$300,000.

Willens: But they were not operational?

Mitchell: They had only a board, and they were in the process of employing the executive director. I called some people in San Francisco, the regional office of OEO to get some details. Micronesia was under their jurisdiction. The way the program was described, it was in some ways similar to the Navajo challenge, and also to me very exotic. I'd never been to Micronesia. I had to go buy a map, an atlas, to try to find it. I needed to leave the reservation. I had to get out and get clearly and cleanly and all the way out so that the two Navajos could run the program. So I sent an application to San Francisco. They had thousands of applications by that time, and a screening committee in San Francisco made up of lawyers and bureaucrats and what have you to narrow the field. They narrowed it to some seven, and I was in the seven. Then they invited us to San Francisco where they had this incredibly long interview process. Three people came from Micronesia, the three members of the Board of Directors who had been constituted as a personnel committee;

Herman R. Guerrero, later a senator, then the head of the Community Action Agency in the Northern Marianas; the late Mamora Nakamura, who was then Deputy Attorney General of the Trust Territory government, later became Chief Justice of the Palau Supreme Court and passed away a couple of years ago; the third was Edward Pangelinan, who at that time, may have been in private law practice on Saipan. I'm not sure. This would have been in late 1970. There were Board members from all of the islands, from throughout Micronesia, but those three came to San Francisco.

Willens: The Micronesian Legal Services Program was also funded by OEO, is that correct?

Mitchell: That's right.

Willens: Did you then have a recommendation supporting you coming in from Bamberger and others who were familiar with your work?

Mitchell: No. Shriver was the OEO Director. Bamberger was chosen for the job because he was an American Bar Association type, orthodox, sound sort of fellow, and among other things, he bent over backwards to be sure that applications were submitted, they were reviewed, funding decisions made, and then after that, the programs had their independence to run the organization and provide the legal services so as to emphasize the independence of the lawyer's judgment and scope of activity for the client. So, no, the program by that time was being run by the Board of Directors. It had a grant. They had some assistance from the bureaucrats in the OEO office in San Francisco to help them advertise, take applications and screen. But then the Board of Directors sent the Personnel Committee to make a decision.

Willens: The end result of that was that you were selected.

Mitchell: Yes. It was a very interesting experience. The memory is very, very clear. I met these three people for the first time who were Micronesians. I had no idea what a Micronesian was. And at the end, or near the end, of the interview, they asked me if I wanted to go to Micronesia. And I had to tell them, I honestly don't know if I do or not. I've read everything I could get out of the library on Micronesia, but that wasn't too informative—National Geographic and that sort of thing. I had found a piece in Foreign Affairs about a Peace Corps lawyer's experience here. This was an old Foreign Affairs article that described the Peace Corps lawyers who had come here. The Peace Corps program was instituted here early on, and this was one of the few places where they sent lawyers. Peace Corps lawyers were assigned to work with the local District Legislatures, and they commenced to talk to Micronesians about self-government and individual rights and that sort of thing. With the help of these Peace Corps lawyers, most of whom were very bright, very dedicated, young, I'm sure somewhat naive lawyers, the Micronesian governments as they then existed began asserting themselves vis a vis the Trust Territory government. And so in no time at all, they were kicked out. The Peace Corps lawyers were withdrawn. That was the kernel, that thought, that experience was the reason that the Micronesians wanted to get this Legal Services Program. They perceived it as an institution, an institutionalized way of getting the same kind of help and advice and assistance of lawyers that they had gotten but lost with the Peace Corps program.

Willens: Were the people who interviewed you turned off by your reservation about coming to Micronesia?

Mitchell: Well, I said, "I have no idea whether I want to go there. What do you think? Do you think I'd be worthwhile? Do you think it's a good idea or not?" And they laughed, all three of them at once. I said, "Tell me something, will you, about Micronesia, about yourself,

and what you hope for for this program, because you're the first Micronesians I've ever seen. I don't know enough." And they commenced talking. And they had an awful lot to say about the program and what they hoped for it, and they mentioned the Peace Corps experience. They described problems they were having with the Trust Territory government.

Willens: What was your first impression of Ed Pangelinan?

Mitchell: My impression of all three of the men was just thoroughly positive. I mean, they inspired in me an incredible enthusiasm. At the end of their description and our discussion that ensued, I said, "If you ask me the question again, the answer is yes, I'd love to go. If you want me, I'm yours." All three of these gentlemen were very well informed, they were articulate, they struck me as being totally dedicated to the interests of their people. They convinced me that the Legal Services Program could be of use.

Willens: When did you come out here to begin your work as Director?

Mitchell: They asked me if I could start right away. I said, "I got to go back to Windowrock for a day or two." I went back to Windowrock, a blizzard hit, and the snow was about three feet deep when I left there in December 1970 to come to Saipan. I landed here on December 14, 1970, and I stayed. I left the Micronesian Legal Services Program in December 1981.

Willens: For the first several years, you were living here on Saipan, is that right?

Mitchell: Well, I lived here really all of that time, the last four or so years, we established a small office, a room, a desk and secretary station in Washington, D.C. in order to be able to on a consistent basis do work there, lobbying for some of our clients. We had carried on some litigation for our clients involving the Micronesian war claims, and I would go back and forth during that period of time between Saipan and Washington. Otherwise, I was living here.

Willens: For approximately a decade then, beginning in 1971 to 1981 approximately.

Mitchell: That's right.

Willens: Can you give me an overview of the work of the Micronesian Legal Services Program, especially the first four or five years, including the principal successes and any particular disappointments that you experienced.

Mitchell: That's a topic that deserves a lot more than I would be able to say off the top of my head. Let me give a short answer, as a kind of overview with the caveat that there's a lot more to it. Someday I ought to do a book on it, I suppose. A small book at least. First of all, the \$300,000 was not enough, and after I took the job, I told them, the funding people and Bamberger, Bamberger was still in the Legal Services Program at that time, and Tom Mack, the Regional Director of the Legal Services Program in San Francisco, and the people in Washington, that can't be enough money. Just can't be. But I'll go take a look and see. So I got out here and took a look. The low dollar amount of the grant resulted from the fact that the then High Commissioner of the Trust Territory, Edward E. Johnston, Jr., did not like the whole idea. And under the statute that governed that funding, he had a veto power. The governor of every state did, and he was generically the same thing here. So he had a gubernatorial veto power over the grant. In the preparation of the grant application, there had been negotiations in which he insisted that salaries for secretaries had to be like \$1,000 a year and for Micronesian staff, \$3,000; for lawyers, \$4,000; some obviously ridiculously low figure that would have made it impossible for the program to even function.

Willens: So his views were largely shaped because of his concern that this was going to replicate the Peace Corps lawyer experience?

Mitchell: I'm not sure. I never was close to the man. Conflicts developed early on. I didn't like him right off, either. I found him pretty much thoroughly offensive right from the start. He was some kind of insurance executive from Honolulu. Then this was the plum. He got this plum job. But his perceptions were negative. He feared the program. That much I'm sure of. His Attorney General was a fellow by the name of Robert A. Hefner, the same Hefner who later became a Trust Territory judge and then a Commonwealth judge. too was very, very antagonistic toward the whole idea. When I first got here, one of the first visits I made was to Hefner's office, and he told me in no uncertain terms that if we ever filed a lawsuit against the Trust Territory government, we were finished. He'd see to it that we were run out of town. They controlled immigration then. This place was sealed to the outside world for all practical purposes. No American could get in here without a permit issued by the Trust Territory government. And the Trust Territory government had vast, sweeping powers. It was totalitarian power. They could effectively exercise total power in any way they saw fit. There was no recourse to any courts other than the ones that they controlled, namely, the High Court. We prepared a new application. I made a tour of the islands. I went to each and every island. I went into Yap in a DC6 and visited each and every one of the places. When I came back, we had a meeting of the Board of Directors, and I said, this is incredible. \$300,000 is not enough. That would have funded a tiny little program, if any at all, and what we need is adequate offices in every place—Northern Marianas, Yap, Palau, Truk, Ponape, and the Marshalls. They were then called District Centers, Districts of the Trust Territory. So we put together a new application, and I took it back to San Francisco. At that time, there was hardly enough money left. Frank Carlucci was then running the OEO office. There was very little money, but we managed to squeeze it out of them anyway. I forget what that next grant was. It was \$700,000 or \$800,000.

Willens: Did the High Commissioner have the opportunity to review that revised application?

Mitchell: I think it was that one or the next one he vetoed at one point. He vetoed one of our grants. I don't remember for sure. I remember we got the money, and then devoted our efforts to hiring local staff, finding office space, setting up the accounting system, ordering the books. We ordered books through Lake Book Store in San Francisco to economize and bought a lot of used books at half price. Then they were shipped out, and it took forever and ever and ever to get here. I think it was more than a year, maybe a year to a year and a half, before we finally had all of the offices set up. I decided to recruit lawyers on the young side. I went to law schools in the States, advertised in some of the orthodox publications and others like New Yorker magazine and others to try to attract people who were not just looking for an escape from what they were doing. I traveled to the States, interviewed lawyers, hired some people from the Navajo Legal Services Program who had worked with me there—Daniel MacMeekin, Eric Treesman, and a few others.

Willens: By the time you were organized then, in approximately a year, 18 months, how many lawyers did you end up having in the Northern Marianas?

Mitchell: In each office, basically the staffing pattern was two lawyers and two what we called counselors. At that time, antedating our activities, there were a fair number of what they called trial assistants, Micronesians who were affiliated with the Public Defender Office or the Attorney General's Office or otherwise just practicing law. They were licensed by the High Court to practice law. So there was something of a Micronesian Bar in existence when we got here. We hired some people who had zero experience to be what we called

counselors. Some of them were people who had been engaged in a law practice of that sort as trial assistants. There was a central office established here [in Saipan] which contained myself, a Deputy Director, another litigation specialist as we called them, and two or three secretaries. That was a central office. And then there was a Marianas office, which was intentionally physically separate from us.

Willens: Who staffed that in the early 1970s?

Mitchell: Two lawyers, two counselors, two secretaries.

Willens: Was Ed King in the office at some point?

Mitchell: Ed King came later, a bit later. Robert Hanna of Albuquerque came initially as a Deputy Director. Daniel MacMeekin came fairly soon. He went to Truk and worked there for a year or so to set that office up and then joined us in Saipan. Danny Akeno and Felix Fitial were the first counselors. The secretaries who were there now I think were the original ones—Miriam Muna and the other woman who's working there have been there all this time.

Willens: What were the principal issues that the lawyers turned their attention to here in the Northern Marianas?

Mitchell: In the Northern Marianas, one of the things we expected never occurred. Commonly, the Legal Services Programs in the United States have a fair number of commercial transactions, consumer problems. We had very few of those. Joeten Enterprise was the big commercial enterprise here at the time. We had no cases ever against Joeten. People didn't have complaints. And even when we sort of wondered out loud with clients whether there were any problems, there weren't any. The earliest cases were the ones against the Trust Territory government.

Willens: I've seen some reference in the materials to lawsuits that were filed with respect to the homesteading program and delays in that program in the 1972-1974 timeframe.

Mitchell: I was going to mention that *Cruz v. Edward Johnston* case. The whole case was prompted by a woman I was by that time married to, Bernie Reyes, who just died a few weeks ago of cancer. She brought her uncle to see me. Her uncle had applied for homesteads some many, many years ago.

Willens: On Saipan or Tinian?

Mitchell: Saipan. Many years before, he had complied with the statute. There was a three-year period during which you had to prove up your homestead, in this case an agricultural homestead, by satisfying the government that you were developing it. He had done that, and he had been waiting for many years for his deed. We took a look at that and found out that not only he, but many others, were in a similar situation. Then when we contacted the government. There was absolutely no explanation why they hadn't given these people their deeds.

Willens: Was the TTPI government basically opposed to the homesteading program that had been established?

Mitchell: It's difficult to say whether it was sheer incompetence, indifference, or a policy, hidden or otherwise.

Willens: I've seen some references in the material to the effect that they felt that they weren't required to issue deeds or title at a particular point. It was within their discretion, and that was one of the issues that ultimately got litigated, and your lawyers prevailed.

- Mitchell: As I recall, the requirements of the statute had been met by the permittee, the homestead permittee. And many, many years had gone by, and still no deed had been issued. We brought the lawsuit, and it turned out to be a fairly easy win. I got a mandamus to compel the High Commissioner to issue the deeds, and then he issued I think over 200, something on the order of 200 or more. Once we got that case filed and won it, there was a blazing hostility on the part of the High Commissioner. His reaction was extreme. They hokeyed up a deed that was so totally unacceptable in its terms that we rejected it and had to go back to court a second time and get a second mandamus to force him to give us proper deeds for our clients. I thought at the time, and over the years my opinion hasn't changed, that that case had a great symbolic significance to the Trust Territory.
- Willens: Was that one of the first cases you recall bringing?
- Mitchell: It was. It was one of the first cases that caught any attention or that had any significance—a significance that we didn't appreciate until we were into it and won it, and then the High Commissioner was apoplectic, and his Attorney General was hostile. This was an encroachment. In loose terms, we were encroaching upon their power, their free and unfettered use of power which they had enjoyed I guess since the U.S. military secured the island in 1944. And to make it all the worse from their perspective, and this was made very clear to us, this wound had been inflicted by their own countrymen with U.S. money. These were federal dollars hiring a bunch of young lawyers who had come out from the States who had breached the faith. We thought that was a great victory, and I still feel that way to this day. It so rattled the Trust Territory government that there was then open hostility between the Trust Territory government and our program from that day forward.
- Willens: What were some of the other issues that your office directed its attention to in the early 1976 here in the Northern Marianas?
- Mitchell: The best source of that information would be Jesse Borja and Joe Dela Cruz. When the Micronesian program was established, Jesse Borja was the first employee of the organization.
- Willens: He hadn't been to law school yet.
- Mitchell: He had just finished college somewhere in Kansas, Washburn University or something of that sort. came to my office, which was then one dusty room down in Chalan Kanoa in the old Japanese infirmary. I had borrowed a metal desk from Herman Guerrero. And this young man came in one day and said that he was looking for a job and he'd heard I was employing people. And I told him, yes, that's true. What sort of job are you looking for? I don't know if Jesse will remember it in this way or not. He said, "Well, I'm looking for a job that pays me as much money as possible." I said, "Why is that?" "Well, I just finished college and I'm going to go to law school in the fall, and I've got a family already. I need all the money I can get." I said, "Well, how much money do you want?" And that set him back, and he paused, and I said, "Well, where are you going to law school?" "I'm going to Catholic University in Washington, D.C., but I've applied to Georgetown. I haven't heard from them, but Catholic said they'll take me, so I'm going to take it." "Well, if you have a chance," I said, "you should go to Georgetown. Why don't you wait a little while?" "Well, I don't want to take any chances. I've got an opportunity, I want to be a lawyer more than anything, and I'm going to take it." "Well, suppose I call Clinton Bamberger and ask him to hold your seat at Catholic until you hear from Georgetown?" He nearly fell off his chair at that point. And I said, "I'm pretty sure Clinton would be willing to do it because he went to Georgetown, and if he had a choice, I'm sure he'd do it again, even

though he's Dean at Catholic." And by this time, this young man was wondering what was going on, whether I was conning him, or whether this was some rare coincidence or what. As a matter of fact, of course, I knew Clint Bamberger. He had by that time left the Legal Services Program and had run for Lt. Governor of Maryland or something, had lost. Some character by the name of Agnew became governor, and the Democrats lost. In any event, Clinton was there, and I called him, and he said, sure. So I hired Jesse, and he waited for the Georgetown seat and got it and went to Georgetown Law School. During the time he was there, Joe Dela Cruz was already attending Berkeley. They were the first two real, in my view, lawyers in the Marianas office. We squeezed the budget and hired a fellow by the name of David Allen from Washington, D.C. to come out and work in the office, providing an internship for Jesse Borja and Joe Dela Cruz for two years or so. And then David left and Jesse and Joe then ran that office for a long time. They were the key to the success of that office. They were involved in, and it's hard for me to remember right off the top of my head, the most dramatic or significant cases that were handled by that office. Jesse or Joe would remember for sure. It was a hard-working office that just handled a lot of bread and butter cases of all sorts.

Willens: By the time the office was established, had the Peace Corps lawyers had left?

Mitchell: By the time I came, the Peace Corps lawyers were either gone or they had been muffled. They were neutralized. I seem to recall there were still some Peace Corps here on Saipan. Mike White, Al Snyder, some of them were still here. One of the Peace Corps 'lawyers, by the way, a fellow by the name of Micky Rappaport, was one of the people who helped them put together the application for the Legal Services Program. I don't think I ever met him. But I heard his name, and everyone remembered him very fondly. We had an active caseload throughout Micronesia. One of the things that we gave a considerable emphasis to was trying to provide assistance to the people of Bikini and the people of Eniwetok. This loops back to some of the work we were doing here, which I shall come to quickly. We were hired to represent the people of Bikini and the people of Eniwetok early in 1971. We continued to represent the people of Eniwetok on through the ten years that I was with the Legal Services Program. The Bikini people were enticed away from us by a fellow by the name of George Allen. Then I think they quit him and stayed with Jonathan Weisgall, who was at that time at Covington and Burling. That in itself is another story. But the people of Eniwetok wanted to go home. They were afraid of the radiation; they wanted if at all possible to go home, but to go home safely and to be able to resettle Eniwetok Atoll. At that time, Dennis Olson was one of my lawyers in the Marshalls office, and he and I collaborated on that case. We wrote a letter to the President of the United States, a long demand letter. We said we represent the people of Eniwetok, and you're the one who has the power to decide. They want to go home. At that time, Eniwetok Atoll and Bikini were closed to the outside world. We later learned that Eniwetok was used as, among other things, as a refueling base for U2 spy flights over Russia and China. The letter got results. We could hardly believe our eyes when we got the response. We were told that there was a fellow by the name of Franklin Haydn Williams who was responsible for Micronesian matters, and that we could take the matter up with him, which we did. And at that time, the Micronesian status negotiations were under way. The Joint Committee was negotiating with the United States. And it became clear to us that it was advantageous to Ambassador Williams and the U.S. side of those talks to give back Eniwetok if they could. A determination was made in the Pentagon that it was no longer needed. The Pentagon needs real estate, and they retain it worldwide as much as possible. If they could buy all their real estate, the problems would go away. That's the philosophy. But precious as the real estate was, even that real estate, it was decided by Ambassador Williams or somebody

in the White House or the Pentagon that our demand would be honored. So they said, all right, you got it. And we nearly fell over backwards. We wrote another letter saying, all right, let's go take a look. People have been kept away from there since December 1947. They've seen great flashes in the sky and heard booms and wondered what was going on. They wanted to go back. They'd heard details about islands that had been alienated. Some of them were very old, and the youngest had never seen the place. So to make a long story short, we got the islands back, they granted our request to visit, and there was a great, great expedition. Dwight Heine, the Marshallese man who was in the Trust Territory government, was on the trip and a lot of other Trust Territory military people. went by ship all the way from Kwajalein to Wujulong where we picked up every man, woman and child that could get on the boat, two boats, and then sailed up to Eniwetok. When we got there, we found out there was an Air Force bombing project under way at the time. It was called the Pacific Area Cratering Experiments. It was sponsored and paid for by the Air Force and the Defense Nuclear Agency. Because of the nuclear test ban, the atmospheric test ban treaty, no nuclear tests could be conducted in the atmosphere. We now know there were some 200 underground tests in Nevada, according to a recent news report. But they had taken high explosives and developed a very, very sophisticated way of using high explosives and very complicated scientific arrays that would simulate a nuclear blast. They needed to test, so they later told us at the Defense Nuclear Agency in Washington, in order to gather the data needed to evaluate the security of their hardened systems in the United States in order to be able to know how to negotiate at the SALT talks. They were trying to simulate an SS9, I think at that time the biggest Russian rockets were the SS9, SS10, and they needed to conduct these tests to get the data to know what to do or not do at the SALT talks, Strategic Arms Limitation Talks. They had bulldozed vast areas of Runit. We sailed around the atoll.

Mitchell: Iroj Joannes, the chief of the island of Eniwetok, was there when they were told to get on the landing barge December 23, 1947. They were put on a landing barge and taken 200 miles across the open sea to Wujulong so that the first nuclear tests program could get under way on Eniwetok. and Iroj Abraham and the others were just absolutely shocked. Runit was bulldozed from one end to the other; islands had disappeared; there were massive piles of junk. During the nuclear testing program, they built a skyscraper, a modern, urban skyscraper, and then blew it to smithereens to measure everything that happened. Runit was a long, narrow island and the tests, at the waist of the atoll, when the explosion was detonated, if it had succeeded, it would have literally blown the island in two and created two islands out of one. Enough was enough was the reaction of the Eniwetok leadership and the people who were there. And we felt the same way. We were very upset about it. We had now been promised the island back, and we had been promised that it would be cleaned up and that a rehabilitation and resettlement program would be developed with the full participation and final veto power of the people themselves. We had insisted that they we select the architect, we select the planner, we select the agriculturalist, we select the whole thing. You pay, we dictate. That's the only way it's going to work anyway, because resettlement programs worldwide always fail, 100 percent failures. This will be the first one that ever succeeds but if and only if you let the people decide and let them do it. When the resettlement begins, the planning and just moves smoothly on into the actual physical resettlement. We read all the literature we could get our hands on, the anthropological and sociological literature on that sort of thing. And it was a mixed legal sociological sort of endeavor. At any rate, they'd agreed to all of that, and then we get there and find out they're doing more damage to the environment, more damage to the place. So, we got back to Saipan, and I said, there's got to be some way that we can stop them.

I was then invited to go to Washington to the Defense Nuclear Agency. The Defense Nuclear Agency is the branch of the Pentagon that was the umbrella agency under which all the testing was conducted. And that agency was at that time responsible for managing the stockpiles of nuclear weapons of the United States. An elite agency with a three-star admiral or general at the head of it at all times and a lot of scientific and technical personnel in it. I went to Washington at their invitation, and they gave me briefings that lasted all day long. They tried to appeal to my patriotism, and when that didn't work, they tried to scare me.

Willens: What were they trying to accomplish?

Mitchell: They wanted me to get the people of Eniwetok to agree to let the PACE experiments go forward and be completed. The importance of those tests to the international security of the United States was crucial. That's where they made those arguments. I told them quite frankly then, I grant everything you say, but there's no way I can recommend it. You'll have to find somewhere else to do it. Do it in downtown New York City, do it on the White House south lawn, do it anywhere you want, but you're not going to do it at Eniwetok over my dead body. They got really mad. I went back to Saipan and I don't remember at the moment why I made this connection, but I thought of NEPA, the National Environmental Policy Act. I dug in the books, read the decisions, and decided that was our tool to use to block these tests. Daniel MacMeekin and I did all the research and wrote up the papers. Eniwetok was under the jurisdiction of the CINCPAC, Commander in Chief, Pacific, in Hawaii. So we decided to file the lawsuit there in federal court to get an injunction to block the PACE testing program on the grounds that they had failed to study the effect on the human environment of those tests and failed to do an impact statement. We of course laid out everything, including the effect on the people of Eniwetok, not only effect on the birds, the fish, the terrestrial, marine, and all other aspects of the natural environment at Eniwetok, but the effect on the people who were down at Wujulong who were supposed to be back there soon. We gave great emphasis to the human aspect of the impact of that project. I went off to Honolulu, filed our complaint petition, got a TRO immediately from Judge Pence, and then within a few days had a hearing on our preliminary injunction motion before Judge Samuel P. King. It was a wonderful day. They brought lawyers from the Justice Department, the Pentagon, the local U.S. Attorney was there, the court room was full of Micronesians, our clients testified. We had taken photographs, thousands of them, on our first visit to Eniwetok. They contended they hadn't done anything and weren't doing anything and there was no project of any kind there, and their work sure hadn't affected the environment at all. There was a guy who was their chief technical expert. I got him all over the record, lie after lie after lie, and then brought out my photographs, my big blow-ups. What about this? What about Runit? Wasn't that last month? And by the time I took him through all my photographs, I got so excited, I remember looking up and Judge King was waving at me, saying, Mr. Mitchell, excuse me, I think the U.S. Attorney has an objection. The judge granted the preliminary injunction right at the end of the hearing, and then afterwards invited us to get together with his law clerk to help write up his opinion to make sure he didn't make some dumb mistake. Then the Defense Nuclear Agency caved in, turned around, and became our best friend. The Air Force three star general who ran the organization said, "All right, you beat us fair and square. We don't think we're going to win it in the Ninth Circuit, that's what my lawyers tell me. So we're going to find somewhere else to do it. Now let's get together and do this job right." So that began a long, year after year after year, lobbying effort in the U.S. Congress to get the program funded. We then became NEPA experts. We talked to the experts in Washington at the Environmental Defense Fund to try to get their help on

the Eniwetok case. They said, you don't have a ghost of a chance, not a ghost of a chance. So we went and won the case anyway, and after that we decided we were the experts. Then we took a long look at the Continental Hotel, and that's what led to the Continental Hotel case. I said, well, that looks like a NEPA case to me. And so we wrote that case up, developed that one, and sent Ed King off to Honolulu with that one. It was lost there but sort of half won in the Ninth Circuit on appeal. That was a major case here that, contrary to the homestead case, ultimately had absolutely no practical value for the people here.

Willens: When did you first become aware that the Northern Marianas political leadership was interested in separating itself from the remainder of Micronesia?

Mitchell: Shortly after I arrived here, the chambers of the Congress of Micronesia were destroyed by fire.

Willens: That was in early 1971.

Mitchell: Yes. It was an arson. It seemed clear that it was intentional; it wasn't an accidental burning. But I don't think that they ever found out who did it. Conventional wisdom at the time was that the fire was set by someone from here as a message to the Micronesians. As you know, the Congress of Micronesia was headquartered here at that time. It was clear at that time, even earlier, that the Northern Marianas wanted to separate from the rest of Micronesia.

Willens: What was your assessment of that desire for separate status?

Mitchell: This is really a personal perception. The work I was doing at the time did not relate to that. I think from time to time it may have become an issue internally in our organization because we had a lot of young, aggressive lawyers with a mind of their own necessarily. It was none of our business officially, what the Micronesians decided to do on those kinds of general political issues. And we never had any official position one way or the other. And we were insistent with all of our lawyers that they stay out of the status negotiations and let those be handled entirely by the Micronesians with other lawyers. My own personal perceptions were very much influenced the first impressions I had of the Congress of Micronesia. I can remember going up before that building was destroyed, I can remember sitting in that building and watching the debate and noticing Andon Amaraich, a senator from Truk—brilliant, principled, articulate, very impressive person. Lazarus Salii and other members of that Congress of Micronesia from some of the other islands impressed me very favorably. Our organization, of course, was spread throughout Micronesia, and we had hoped to establish and maintain good relations with the real Micronesian leaders throughout Micronesia, so that our program at least would not be antagonistic to them. So it was in our own interests to cultivate friendships with all of the leadership throughout Micronesia, and by and large, I think that happened without our really having to work very hard at it. There was some friction with people like Amata Kabua. So the other perception I had, right or wrong, arose out of the fact that I have little faith in either the concern or the competence of the United States government in terms of Micronesian interests. I never felt in the beginning, and I still don't to this day, I'm afraid, that there is a natural interest on the part of the United States that coincides with the Micronesian interests such that Micronesians will always get or generally by and large get what they need and what they're entitled to, what they should have in an ideal world. The extent to which the Northern Marianas after separation constitutes a smaller thing geographically, conceptually, symbolically, numerically, or otherwise, and has less ability to influence or force an outcome that they need in the United States, the more disadvantaged they're going to be generally. My thought was, probably unrealistic even to this day, that if all

the Micronesians could settle their differences among themselves and accommodate each of the various areas and still maintain a common political unit, then they would be able to command more on the internal scene and more in relation to the United States. They would be able to go to Washington and say, I am here, if you're the president or whatever, representing Micronesia, huge chunk of the ocean, and then quietly say, oh, but it's a couple of thousand islands with 200,000 people maximum, or whatever. I thought everybody would have a better chance in the long run if they been able to stay together. There's another aspect of it that I thought of at the time. I'm also quite concerned about government not serving the interests of the people, just in the very nature of things—public officials are open to corruption, incompetence, whatever. Governments don't work, seldom do, is a premise that seems to have some evidence to support it. And I thought that if the government for the Northern Marianas was part of a larger Micronesia, that it would be more likely for people like Andon Amaraich, good, honest, competent, decent people, to rise to the top, for the benefit of all. In other words, the people of the Northern Marianas would enjoy in general better government if it were a Micronesian government as opposed to one limited to the Northern Marianas.

Willens: One issue that came up at the time was the substantial difference between the cultures and the traditions among the districts. There were those who emphasized those cultural differences and maintained that Micronesia was simply a figment in someone's imagination caused by 400 years of administration by colonial powers. Did you come to a form of view as to the extent to which those cultural differences were in fact an impediment to unity within Micronesia?

Mitchell: That's a topic on which I certainly couldn't claim to be an expert. Can a polity exist in some stable, cohesive form which is made of a polyglot population? Look around the world—there are very few things that are called countries these days that aren't a mixture of two or more different cultural elements, some of them so disparate that they can't even talk to one another because there's no common language. The Philippines is a close example, the Soviet Union is a recent example. I am not convinced that cultural diversity standing alone makes it impossible to form a political union. The late Jose C. Tenorio is one neat close example. Joeten could and did understand, relate to and appreciate the Marshallese, the Trukese, the Yapese, the Ponapeans. Everywhere he went in Micronesia, there was camaraderie and there was communication and understanding. He was a cross-cultural type of person who could do that. And the Congress of Micronesia worked well together, I thought, with all that cultural diversity. Without a doubt, there are forces arising from the different cultural groups and identities that have to be accommodated and that can be divisive. But there are other forces that can neutralize or that can counterbalance those—economic interests, international security and that sort of thing. I had the feeling at the time, and I still do, I guess, that cultural differences were cited as an excuse. Beyond that, I'm sorry to say this, but in the Northern Marianas, unlike I think anywhere else in Micronesia or between and among any of the other cultural groups in Micronesia, people in the Northern Marianas looked down their nose at and had a genuine hostility and ill will towards, apart from the Joeten-types, they had ill will toward other Micronesians. In private they referred to them as animals, dogs, filthy, stupid, savages. In the Northern Marianas, the political leaders were to some extent exploiting that hostility towards other Micronesians. The Northern Marianas people are very ambitious, and I don't mean that as a criticism. For the right reasons, they want their own political destiny, to be controlled by themselves, they want prosperity, they want all the good things of life. And one of the ways of achieving that, in that context at that time, was to climb up the backs of the other Micronesians, a common phenomena. It's much easier to climb up somebody else's back

than it is to build your own mountain to climb or flap your wings and fly. So I didn't like that either. But all of that aside, personally I felt it was their choice. I thought they were making a mistake. Today I don't know whether it was a mistake or not. I'm not happy with the way the American government has treated the Northern Marianas, particularly in this post-cold war period where now there seems to be little or no American interest that you can trade off or leverage off of to get what you want for the Northern Marianas.

Willens: There were in the Congress of Micronesia in the early 1976 some economic issues that became very divisive. One was taxation of tourist facilities, for example, that the Marianas thought would fall disproportionately on Saipan. Another was the revenue allocations among the districts, where the Marshalls and the Northern Marianas in particular felt they were generating a substantial share of the revenues and were not receiving a fair share in return. Did you regard those economic issues as real ones?

Mitchell: Well, there again, you're asking a question that really is part, of course, of the much larger question: What makes political amity? What permits them to come into existence and perpetuate themselves or blow apart? But at the time and sense, what comes to mind is this: New York is forever bitching and moaning in the United States about how they're generating a disproportionate amount of the revenue, and it goes down to all the poor states. California has the same complaint until recently when they suffered a recession. Yet the United States doesn't break apart, because there are significantly larger contributions going into the national treasury from one region or state or another. I tend to think that that was again to some extent a 'pretext to support the political ambitions of some of the leaders. What I'm trying to say is this: I don't think that the disparate contributions to the economy, to the public fisc, by the Northern Marianas and the Marshalls standing alone would have or should have dictated against or determined that a wider Micronesian polity was impossible. What I do think is this: I have had more and closer experience with the Marshalls where Amata Kabua was then, throughout the time I was with Legal Services, and up to this time is still, the single most powerful leader there. It was a case of the individual human beings who represented the people in the Marshall Islands—Amata Kabua and his close advisers—wanting to get the money in their own hands for themselves, using the argument, we've got to break away from the rest of these Micronesians. So every and any argument, including the economic one, would be used so as to create anew polity where the probability was very high that they could take whatever they wanted and get away with it. Every businessman, deep down in his heart and soul, wants a monopoly, because that's the way to maximize profit. Whether they tell you the truth or not, every single businessman who's worth the name wants a monopoly. Every single tyrant wants a dictatorship. And Amata Kabua was that type. There was nobody in the Northern Marianas who could rise to that kind of single concentrated power because luckily in this culture and society here, people are extremely skeptical. They have a very clear understanding of human nature, and they will not tolerate that. They just will not tolerate a situation where any one person gets too much power. They'll put them out and put somebody else in, the dumbest person they can find. Camacho scared everybody, so they kicked him out and put dumbbo Larry in there. Now he's gotten smart enough to figure out how to abuse the office, and so they'll put him out and put dumbbo Tenorio in. The people here will do everything they can to prevent that. But Amata Kabua is in a situation now where there's no Trust Territory government, no U.S. government, and he has virtually total power in the Marshalls. I thought if there were a Micronesia-wide government, there might be a chance that that sort of thing wouldn't happen, because the very antagonisms that you cite would have at least some element, some checks and

balances in the system, where the Palauans would be watching the Chamorros, the Chamorros would be watching the Marshallese, so that nobody abused the power.

Willens: What do you think was the importance of U.S. citizenship in defining the aspirations of the Northern Marianans?

Mitchell: I guess I have a fair amount of doubt that Micronesians in other areas did not want or would not have been happy to get a U.S. passport. There are differences. But the Federated States citizens, for example, they love to be able to go to Guam. They love to be able to go to the States. They love to send their kids there. They don't want any immigration hassles. If they could carry a U.S. passport, the meaning of which to them would be free travel and access to the job market in the United States for their kids, their younger generations, educational opportunities and that sort of thing, they'd be delighted to have. There was a significant difference, I'm sure, between the desires of the other Micronesians and the people of the Northern Marianas. There was a genuine desire to be U.S. citizens, period, including in the sense, we're not anything else anymore now. We're U.S. citizens. The Trukese, the Palauans, the Yapese, the Marshallese, they would have been glad to get, I think, a U.S. passport, but at the same time, they didn't want to deny or repudiate their Micronesian identity. The people of the Northern Marianas, they have a detailed history of all these islands. Combine the modern techniques for analyzing languages in this region throughout the Pacific and Southeast Asia, with the evidence we have of present-day, what we know about present-day Micronesian navigation techniques, and you can pretty reasonably conclude that anciently there was a vast exploration. There were people from Southeast Asia exploring and discovering these islands and settling and resettling and communicating and trading between and among all of them in these ancient sailing canoes. There probably was a period of time during which there were many, many different cultures on all of these islands. Some of the modern-day cultures we know are the vestiges of them here today. Others might have disappeared. But they communicated with one another. They traded. There was a PanMicronesian experience of some kind, for sure. The Northern Marianas were probably the worst hit by modern civilization. There was nowhere for them to hide. The Spanish came. The Spanish killed most, if not all, of the ancient Chamorros. They wouldn't let them use their sailing canoes. The priests knew exactly how to break their spirit. Don't let them use their sailing canoes, don't let them fish, break the culture down to a point where they would submit. And then slaughter the rest. Slaughter the good ones who won't give up. And what that did to the Northern Marianas can't be good. Then at some point they depopulated these islands, as you know, and hauled everybody over to Guam, I suspect in some kind of internment arrangement essentially. And that was the point at which the Carolinians came here and found these islands empty and purported to resettle them. There may have been a population of Chamorros here of 100,000 or more, who knows, with a highly-developed, nicely-integrated society that dated from the first exploration and discovery of these places. What was left, the base of what we now know as modern-day Northern Marianas society, was a very small number of people, probably with a fair admixture from their experience in Guam of Filipino and other cultures that had inter-married into the Northern Marianas group. The point I'm trying to make is simply this: They were here, and then their experience went forward. From that time on, there's a lively, solid, thriving culture and society that can be called Northern Marianas society. But they didn't have left any more the equivalent of Yapese, Palauan, Trukese, Ponapean culture and background, identity, they didn't have it out there. I think that's one of the reasons they looked to American citizenship and American identity, and it meant a lot more to them than it did to the other Micronesians. But it was a big factor. I think it was a very big factor that at that time. It certainly had almost entirely

a symbolic, I don't know what you call it, cultural significance. They didn't see it as dollars necessarily. They didn't see it as an opportunity to relocate, you know, to migrate to the United States the minute they got their passport. It wasn't that. It was an identity—a cultural identity that they could adopt.

Willens: Wasn't it due also to the proximity to Guam, which many of the people here recall looking to in the 1950s and the 1960s as sort of the big city, whose development and opportunities they generally envied?

Mitchell: I don't remember the year now, but there was a plebiscite [on reunification], and Guam said no, and Saipan said yes. From that day forward, everyone I've ever heard comment on it, says we don't want Guam, they don't want us, and you say it once, and that's it, never again. In my experience, for most of the ten years that I was at Legal Services, I was married to a woman from here, and all of my social activities, all of my time outside work, was spent in the Chamorro society. People here don't necessarily admire fact, the Guamanians look down their nose on the people here as country cousins. And the Northern Marianas people—they're not by any means willing to concede that that's their station in life in relation to Guam. More often than not, people look at Guam and say, boy, we don't want to do it that way. And when people here do get money, for example, and they're able to leave, they don't go to Guam. They go to Portland, Oregon or San Leandro, California. They don't very often go to Hawaii. But they certainly don't go to Guam.

Willens: Perhaps in the 1950s and the 1960s Guam, with U.S. citizenship, represented to them something that was a more desirable status than they enjoyed at the time under TTPI Administration.

Mitchell: In order to be sure about that, you'd have to take a look at the Japanese experience here. That was the major difference over the last 50 years, between the experience of the Chamorros here and Guam. The Japanese experience here was a major, major, major influence. People may have admired Japan more than they admired Guam, for example.

Willens: Were people here more susceptible to an Americanization process than the people in other districts might have been because the people in other districts have more traditional culture and practices to preserve?

Mitchell: Maybe, maybe not. Again, I think you have to take a look at the period from roughly 1917 on down. What happened generally was this: Once the Japanese decided to exploit these Northern Mariana Islands commercially, economically, they came in here in very, very large numbers. You've seen the aerial photographs. The whole island of Saipan, stem to stern, was in sugarcane. Garapan was a wonderful city, a wonderful town, with geisha houses, movie theaters, automobiles running up and down the streets, plenty of electricity, the water was good. If you talk to some of the old people, Joeten told me this, this was a beautiful island. To be sure, they only let me have a fifth grade education, but the Japanese really did it right. Markets were clean. No crime, because if you steal something, they chop your hand off. And it was a good life for everybody, except for the fact that we weren't allowed to have much of a piece of . Then, the Americans come and kick the hell out of the Japanese and then do nothing. The Americans did nothing. The Navy seeded this place in tangan-tangan, an insult to the local people of the highest order. They ruined the whole island by spraying the island with tangan-tangan seed. The reason was, so popular opinion goes, to prevent soil erosion, and to keep the people from using the land. Because the tangan-tangan is just about impossible to eradicate. It's almost impenetrable where the tangan-tangan grows up thick in the outlying areas. Then the Navy ran their intelligence operation from upon the mountain, and nobody could go beyond Marpi

Gate, which was just up the road about where the Aqua Resort Hotel is today. People couldn't go north of there, couldn't get through. There were guards. The Navy, the sailors who were here, they were nice and if you wanted a Jeep, go get one from lower base, if you want gas, go get it. Everything was free, it was a cornucopia of sorts, but it didn't compare to the Japanese experience by any means. So I'm not sure that they necessarily admired the Americans except as a free hand-out. Manny Villagomez is another one of the old-timers that you might want to talk to about that experience, the Japanese experience. They had the Americans sized up right away. The smart ones knew how to cultivate and exploit a few of the officers, and the rest of them were a bunch of dumbos here for a short time and in a hurry to get out. So the Americans didn't colonize these islands. They neutralized them and then used portions.

Willens: Did you form any opinion of Ambassador Williams and his U.S. delegation during the two or three years that they were actively engaged in negotiating with the Northern Marianas?

Mitchell: We had some brief contact with Ambassador Williams, as I mentioned, in connection with Eniwetok and Bikini matters. Thereafter, we had very little contact with him. I'd see him when he was here on Saipan engaged in some sort of public activity, at which we would find ourselves in the audience. I have an opinion about him, and what I'm really trying to do at the moment is scan whatever evidence there may be to support it. The man didn't strike me and impress me in a very positive way. He seemed aloof, unduly so, which was inappropriate from where I was standing. I'd been here by that time for several years in a Micronesian community. He seemed to me to be a bit too stuffy, approaching everything in a cold, aloof sort of way, where it struck me at the time that if the United States had selected somebody else of a different type with a more congenial manner, that the U.S. negotiator might have done better from the U.S. point of view. That's not to say that that impression is relevant at all, but that's the way he struck me. It did seem to me at the time that his interest was primarily to work out a deal that satisfied the military or security interests of the United States and that anything in the way of benefits to the people would be a trade-off or concession that he would make to get what he needed for the military. That's from the sidelines; no inside information. I may have run across him a time or two, but I can't remember right now. I had very little contact with him.

Willens: Let me talk then about the members of the Marianas Political Status Commission. You came to know Joeten, I know, in later years on a personal and professional basis. Did you have any personal relationship to him during the short time that he served on the Marianas Political Status Commission?

Mitchell: No. Fred Scribner from Boston, one of my lawyers in the early years of the Legal Services Program, of the Scribner book publishing family, was out here working for me in the Marianas office for a while, fell in love with Joeten's daughter, and 'I don't know how close they came to actually getting married, but it was a very serious affair. Besides that, it was a very, very small community in those days, and Joeten and I were acquainted socially.

Willens: Edward Pangelinan?

Mitchell: Well, Edward Pangelinan, because he had been a member of that Personnel Committee that got me out here in the first place, he was a person very well known to me and with whom I maintained close relations over those years. For some time, he continued as a member of the Board of Directors of the organization I worked for. Then there was a time when he was in private practice, and so on. I was from the first meeting of Edward Pangelinan, very, very impressed by the man's intellect, his energy. At that time, I haven't

seen him recent years, he had a boundless energy. Very quick and incisive intellect. I thought the Northern Marianas was very, very fortunate to have him. He was in those years young and by some definition certainly inexperienced, but I thought his judgment was good, his instincts were good, and I thought the Northern Marianas was very fortunate to have him.

Willens: Did he ever consult with you about the work of the Commission or the hiring of consultants?

Mitchell: At the point where they decided to get counsel, I think Eddie was participating. He was a member, if I'm not mistaken, of the Joint Committee, the Micronesian negotiating committee, the Joint Committee on Future Status or whatever it was called. And then at some point, he and Herman Q. [Guerrero] decided to get counsel of their own. I can't remember right at this moment how I know this, but I think what happened was Eddie went to Washington, talked with Paul Warnke, who was the counsel to the Micronesian Status Commission and asked Warnke for some recommendations, and I think that Warnke had recommended you by name. I'm not sure. I didn't personally have a role, direct or indirect, in those status negotiations. It would have been natural for Eddie to say something to me, well, you know any lawyers we ought to talk to or we might consider? Right at the moment, I can't remember why I think that he went to Warnke then Warnke recommended you, but I seem to remember that.

Willens: How about some of the other members of the Commission?

Mitchell: Some of what I saw and my direct experience and my impressions were formed through my friendship with Phil Burton. I don't remember when it started, but from the very first time that I cornered him in Washington, we struck it off as just instant and great friends. He was very, very helpful to us in our work for our Micronesian clients, particularly the people of Eniwetok. He always amazed me with his knowledge about current affairs—what was going on out here. He was very up to date. He would call me. I was one of his sources for information or feedback on what was going on. He'd call and ask me questions, and I would answer them. He hated like hell to travel, but he came out here once or twice, and he would be asking me questions like you're asking me. When he was out here, especially during the time when Adrian Winkel was his staff member, he would insist that I had to be with him. And I can remember sitting down with the Northern Marianas people in the old cocktail lounge right next to the beach at the Hafa Adai Hotel when Phil was here. So my impressions and what little I know about the status negotiations really stem as much as anything from Phil Burton.

Willens: How about Oly Borja, did you know him?

Mitchell: Less than others, but I had dealings with him from time to time. He didn't impress me as being very well organized, intellectually or otherwise, and more or sort of a floundering politician. But Eddie Pangelinan, I had the impression, and maybe it was just a hope, that Eddie Pangelinan was the moving influence on that Commission.

Willens: Did you have any impression or familiarity with Joe Screen in the early 1970s?

Mitchell: I had a fair amount of experience with Joe Screen, I should say socially.

Willens: Do you know what his views were with respect to separate status for the Northern Marianas?

Mitchell: I don't know. I do know that Joe Screen was one of the people in those early years who foresaw the rapid economic growth here, and to some extent, drove it and fueled it and

made it happen, I think. He was a major player with Joeten in that effort. I've never heard him say anything one way or the other about the political status issue as such.

Willens: Did you have any views at the time as to the extent to which the Carolinians felt that they were a disadvantaged minority in the Northern Marianas?

Mitchell: That's in some ways a difficult thing to deal with. This is not a very articulate way of putting it, but that is true which is believed to be true, and when it comes to a sense of discrimination or mistreatment, the perception is the reality very often. In those early years when I first came here, I don't think anybody sensed or felt or perceived themselves as being discriminated against. When I looked at the community, the way it existed in 1971 when I first came here, there was no tension or conflict between and among the two groups at all, socially or otherwise. But the Carolinians were, in some ways, discriminated against in terms of employment opportunities, to some extent in places of residence, but by the same token, the Carolinian community had an identity, separate and distinct from the other group, and wanted to live in certain areas and be by themselves. But there was no tension and no perceptions, no conflict that I recall at the time. The status negotiations may have been a catalyst for raising this issue in some concrete way, maybe for the first time. Under the Trust Territory regime, there was equality, nominal and otherwise I suppose. Carolinians' here have some cultural affinities, as you know, to the Trukese, and they had Trukese representatives in the Congress of Micronesia that to some extent they could count on. But then with the plans for separation, it became more of an issue. But I don't see anything, and I've never seen anything even remotely like, systematic or intentional discrimination by Chamorros against Carolinians here.

Willens: All right. Let me go back to Congressman Burton. He did visit here in early 1974 with Congressman Foley, Congressman Ketchum, Delegate Won Pat from Guam and Delegate DeLugo from the Virgin Islands. They visited in Guam for a few days, and then they came over to Saipan and met with the TTPI Administration and then spent several hours in talking to the Marianas Political Status Commission.

Mitchell: Did he come more than once, do you know? He hated to travel.

Willens: He may have come out later for some ceremonial events, but I know this was the first time that any members of Congress had come out for approximately six years. And he took umbrage at the *Pacific Daily News* calling this a junket and told them that the people in Washington on the whole didn't think that Guam was the best place in the world to spend Christmas. Joe Murphy remembers that fondly. But I'd like your help in assessing some positions that Congressman Burton took. In his meeting with the Marianas Political Status Commission, he was particularly insistent that the Commission try to base its objectives on Guam and the Virgin Islands. He did not want the Commission to try to create a new status that would be different than Guam and the Virgin Islands because it would have difficulties getting through Congress, and it would generate more desire for change, I guess, within Guam and elsewhere. And as you know, the Commission and its consultants were determined to try to develop a status that was better than Guam was experiencing, because everyone here knew of some of the problems that Guam had. Burton subsequently told the U.S. delegation, Ambassador Williams, about this meeting, and said that, he told the Commission members not to let their lawyers screw it up and to generally base their demands on Guamanian or other precedents. Do you have any reactions to how important a concern that was to Congressman Burton at the time?

Mitchell: Not let their lawyers screw it up by trying to obtain equal footing with Guam or to do better than Guam?

Willens: Do better than Guam in terms of exceptions from federal laws or more guarantees of self-government or a different tax system. He was very insistent and, for example, that the Commission and the United States agree to have the mirror image tax system here so as not to create any differences between the tax system here as opposed to the tax system in Guam. He was very friendly and sympathetic to the Marianas people on all occasions and to me when I met with him. There was no doubt about that, and the question was in my mind then and now, is sort of how serious was he that the Marianas Commission ran a risk of not getting what they wanted to achieve if they tried to create a significantly different political status alternative than Guam had?

Mitchell: Phil Burton was a consummate politician and consummate parliamentarian. He knew the House of Representatives, that institution and everybody in it. And he knew the Senate probably as well as Lyndon Johnson. I mean, pick the smallest handful of outstanding legislators in U.S. history, and Phil Burton fits in there. He couldn't write a sentence. I don't know if you know that. He couldn't write. There's a condition, it's like anagraphia or something. He couldn't write. But everything went into his head. He could read extremely fast, digest written materials very fast, and he never forgot anything that anybody ever said to him. There was like a tape recording running in his head. But he couldn't write. So there was all the more emphasis and reliance then upon his memory for what he saw and what he heard. And he expressed himself forcefully and not all that articulately, but clearly and forcefully and verbally. But the main point here is he knew the art of the possible. He knew what could get done and what couldn't get done, and he knew how to do it. I suspect that was what he had in mind when he made these kinds of remarks. His effectiveness was due also in large part to the fact that he was absolutely without doctrine. He liked people and he liked things and he had principles and values of his own that he wanted to pursue. When it came to politics, he would transact with the devil himself to get what he wanted. He paid favors constantly to all the people on the other side of the aisle so that when he wanted something, could get it for sure. And every piece of legislation he ever got passed in the House for Micronesians, including for these islands, was done on the suspense calendar. There was never a vote for the most important stuff. Boom, boom, it was done in about 30 seconds from the House floor. Unless you knew what was happening, you never saw it. That slick. On the tax laws, Phil Burton sat in the cocktail lounge at the Hafa Adai Hotel, it must have been this 1974 visit, drinking vodka straight up in tumblers, sitting around with the Northern Marianas political status representatives and haranguing them on the tax issue. And this is what he said: If you're lucky, you're going to have a big boom here. You're going to have a big economy. You're going to have a lot of fat cats coming here from Hong Kong, from Japan, and maybe from the States, from all over the place. And you won't be able to handle them. They'll be richer than you and smarter than you. And you're going to need their money. The only way you're going to get it is to use the Internal Revenue Code. Take it, use it, and apply it faithfully, and you will get the money from what he called the "fat cats." You'll get them. And if you need help from the feds to get them, you'll get that help. Don't try to write your own tax laws, because you're not smart enough, and you're not tough enough, and there's not enough of you to make it work. So use the tax law to get the money, because you're going to need the money then. He foresaw that federal support might decline. He foresaw that they would enjoy great growth here, and his thought, his reason for insisting on the Internal Revenue Code was to get public revenue here. The Covenant as you know provides that the money stays here. You take the Internal Revenue Code as a mechanism for getting the money. That's the reason he insisted on that. And I think he was right. There seems to be some doubt these days about whether the Commonwealth knows how to run the tax administration.

I don't know about that. Maybe they could use some help from experts or whatever. But I think Phil Burton was right about that. If they had tried to write their own tax code, and if there weren't this sort of federal mechanism and indeed the worry that the feds are looking over their shoulder, a local tax law run by local people would be easily corrupted in no time at all. These islands are poor. There are very few people here. Large amounts of money come in. It has occurred to me that it would, depending on the amount at stake for a large hotel project or for a gambling casino industry, be worth it to buy every member of the government from top to bottom. You could keep them all bought and still make a lot of money. Now that's the danger in a tiny little community like this, where there are large rewards at stake. And Phil Burton was very, very sensitive to that. He was a Populist; he was a Huey Long type Populist. He was chary about the greed of mankind.

Willens: Were you at the Hafa Adai?

Mitchell: Yes.

Willens: So you heard that conversation.

Mitchell: I was there. I was sitting there drinking with him and listening to him and although I wasn't inclined offhand to agree that you should have any federal laws here at all, I thought well, it makes sense. I think that was his reason for it. I never heard him say anything at all about the extent to which the Northern Marianas should fashion their deal, you know, higher, lower or anywhere else in relation to Guam, but I would be quite sure, knowing what I do about Burton, that he's making those remarks based on what he perceives as doable in Congress.

Willens: Do you remember having any other conversations with him either before or after the Covenant about the Northern Marianas and its relationship with the United States?

Mitchell: I'm sure I did, but right at the moment none of those memories pop back into my mind. During the time that I was in Washington lobbying for the Eniwetok people and doing the other work there for Micronesian Legal Services, I would see Phil Burton quite frequently and talk on the phone frequently.

Willens: There are some who say that if he hadn't died in the early 1980s, there wouldn't have been the subsequent difficulties between the Commonwealth and the federal government because he would have knocked a few heads together and brought about some accommodation.

Mitchell: He was not only a good parliamentarian and effective legislator, he was also very, very good at harassing the bureaucracy, the way members of Congress are often called upon to do for their constituents. We weren't his constituents, but he spent enormous amounts of time and personal capital for the people here. I am convinced of this—I'd want to be on the record for this, too. Phil Burton loved the Micronesians, and by his lights, everything he did was for their benefit, and he couldn't care less about the Pentagon or the White House or Interior Department or anybody else. When it came to doing what was right, he did it for the Micronesians. If he made any mistakes, they were well-intentioned mistakes. He was on their side, from start to finish.

Willens: Let me take you to a specific day—February 15, 1975, the day that the Covenant was scheduled to be signed. As you know, there was a lawsuit filed the day before by Mike White on behalf of Joe Mafnas, but in fact, the Congress of Micronesia, to enjoin the proceedings. Were you in the court room?

Mitchell: Yes. It was hot. It was one of those things where everybody knew what was happening. It was a momentous event. Somehow we heard. I don't remember, it was like through the

grapevine. I wasn't, for example, I hasten to add affiliated with Mike White or involved with him in any way in r connection with that lawsuit. But we heard about it, and I remember going to the court' house and watching the presentation.

Willens: Did Mafnas stand up at some point and try to fire Mike White? Do you remember anything of that sort?

Mitchell: I don't remember anything like that.

Willens: I don't either.

Mitchell: I remember wondering, who's going to go in on the other side? And then this lawyer showed up in a blue serge suit looking very dapper and dignified. His name was Howard Willens. He was on one side. Mike White did a particularly poor job, I thought, as though he had somehow lost his faith in his clients' cause at some point very early in the proceedings. So I remember sitting in the gallery thinking, this is not a fair match at all. Mike White is really doing a very poor job of it. Just in terms of the balance between the two sides in the proceeding. I remember thinking right from the start, there was a total loser on Mike White's side. Harold W. Burnett was the judge. And I think he either ruled from the bench or ruled very, very quickly.

Willens: After the Covenant was signed, there was an effort to conduct a political education program and a plebiscite was held four or five months later on. Did you have any sense at the time as to the adequacy of the political education effort that was mounted with respect to the Covenant?

Mitchell: I remember it. I don't have any opinion on the subject. I have the impression that, in terms of what was going on here at the time, and similar activity, it was fairly detailed and comprehensive, and beyond that, I didn't form any opinions.

Willens: Did you have any reservations as to whether the people knew in fact what they were voting on?

Mitchell: Well, no. My odd sort of understanding of democracy is that it's like a jury, when there's no rational sense of a way to chose your leaders, you just throw it open and let anybody do it for any reason or no reason, and you let irrationality rule. I thought that the process was necessary and that it was important and desirable and proper to do that sort of thing. But the notion that people would have the time or the necessary educational or other wherewithal to sit down and study the Covenant and understand it in a comprehensive way so as to decide whether to vote yes or no, no process could do that. They'd have to go back and re-educate the whole population and put everybody through a lengthy process. I mean the premise is invalid—that everybody can understand the Covenant before they vote on it. People vote the way they do—for candidates or on any other issue put to the democratic process—they vote based on whatever criteria they chose to vote on. And I don't even think anybody has to be informed. If they vote for it, that's fine with me, that's enough. With or without any reasons. So I have a very perverse view of that. The educational program made sense, and it makes a nice record and all that, but in fact, if the people don't come and say, hey, I want to know more, then they should be permitted to vote on it and get on with things.

Willens: You left the Northern Marianas in about 1981?

Mitchell: I left the Micronesian Legal Services Program in December of 1981 and moved to Yap.

Willens: And then you returned here in about 1985?

Mitchell: April 1985.

Willens: And you've lived here and practiced law ever since.

Mitchell: Yes.

Willens: Are you able to give me some sense of your judgment as to the successes of the Commonwealth under the Covenant and some of its difficulties and shortcomings? To be more specific, to what extent does the Covenant provide a vehicle under which this Commonwealth government could operate and serve the interests of the people?

Mitchell: I have some thoughts on the subject. I begin with the belief that what is envisioned by the Covenant itself, certainly looking at it from this point backwards is a remarkably, if not phenomenally, good deal for the people of the Northern Marianas, accepting as I do the premise that that's what they wanted. They wanted separate status, they wanted internal self-government to the maximum extent possible but in alliance with the United States. I think the terms of the Covenant in that sense are as good as anybody could even imagine them to be. Try to negotiate the same deal today, and you couldn't possibly get it. You wouldn't even get the United States to the table, it seems to me. But, I have come to think, this is based on my experience from 1985 to the present, where in that period of time, I now have for nearly ten years been living with the Covenant, litigating it, issues arising under the Covenant, and living in the real world, on the one hand, the concept is great; on the other hand, it is unworkable. We do not have the population. I have a bell-shaped curve in my mind when I say this. Half of any human population are stupid; the other half are mostly stupid except for a few. A couple of standard deviations above the mean. Every human quality, whether it's intelligence or character or honesty or whatever, the larger the group, the more good things you're going to find, and the more bad, and I'm not sure what the net effect of it is. But here, we don't have enough human beings, and this is not by any means a criticism of the population. We don't have a big enough population, considering the brain drain we've experienced with the kids that go away to the States and never come back. The bright ones are the ones that can and do find other opportunities for themselves. We don't have enough people here to even have a chance by blind democratic means or otherwise, to provide the personnel for a government of the sort that's envisioned by the Covenant and the Constitution. There aren't enough people to go around. And another aspect of it is this: We have this government entity here, that's all we've got. It has responsibility from, say, the bottom up, from the dump up, and it partakes of certain international aspects on the other end, on the high end, if you want to call it that. We have a Governor who spends time and energy and money and resources fighting the international issues arising out of the relationship between the Commonwealth and the United States of America. But he can't do anything about the dump. In one sense, what we need is to get rid of this whole government and say nuts to sovereignty and get a professional city manager in here. This place is about the size of a small town anywhere else on earth. If we could get Lee Kwan Yu to come in here and take over and run this place the way he pulled Singapore out of the swamp in the last 16, 17 years, then we could probably handle everything. But we don't have a Lee Kwan Yu, and we'll never have one. Our Lee Kwan Yu came and went and is somewhere else, and we'll never know who it was, because he's not here. There's not enough grist here for his mill. He's ambitious; he's gone. We need a city manager. We don't have streets. We don't have water. We don't electricity. We don't have the basic services that every little town in America has got. Gallup, New Mexico is better run than this island when you look at the day-to-day administration of the island and this community and the services and support that it needs. On the other hand, how well are they doing on the larger issues? Just go take a look at the quality of the police service, or the fire service. The hospital is good because the government doesn't have

anything to do with it, although their financial management is a mess. At least it's vastly better than it was before. Look at our Superior Court. This is our state court of general jurisdiction. The quality of the opinions that come out of that court are abysmal. They are embarrassing. They are unworthy of publication anywhere. You have judges that are either not bright enough or not well enough educated. One of our judges sneaks in the back door, wraps up his work in an hour, then is gone again. They're lazy. They don't want to work. Four full-time Superior Court judges. Our Supreme Court is just one thin, thin millimeter away from being a disaster. When we had Villagomez, Borja, and Dela Cruz in there, we had all of the available intellect in that court. It was all there. That's all we had. In other words, for the judiciary, we had to put all the intellect we had in that one court. That left nothing for the Superior Court. Now we've lost Borja, and we're falling backwards. If we lose Dela Cruz, as we might, because his wife has moved to Hawaii, we're just one heartbeat away from total disaster here. There's no margin, there's no depth, there's no nothing here to keep this place running on a consistent basis for the next two or three generations in any way that's going to please, and this is what worries me, those younger generations, the kids. When I came here, it was hard for anybody to go away to school. But now there's been some money made, and the kids go away to school. They see a nice town. Their expectations and their desires for a quality of life for themselves and their children necessarily are ratcheting up and up and up and up. They come back here and take a look. If there's any way to get out, they get out. I don't blame them for this. I go to the funerals of all the people I know on the island, that's when you see the whole family back. They've all come back from the States. I went to a funeral of someone recently who has a son who works for the Economic Commission. He's a first-rate civil engineer. He's living in Germany. I said to him, "We need you here. We need people like you back." "Are you kidding? Why would I come and God-forsaken place?"

Mitchell: What concerns me is what is a minimally acceptable quality of life for the people, with all their varied interests and values and needs and desires and all that. I don't have much faith in government, that's my bias. I don't think it happens because you have good government necessarily, because somebody makes it happen. It's sort of a byproduct of a situation where somehow the raw material is there and the forces are in existence, so that somehow on balance, on average, over the long run, it creates a community that does have enough or more than enough for the people who are living there. I look around me, and I don't see it here. I don't see anybody in this government, this situation, based on the Covenant, I don't see anybody going out and developing a plan and searching for industries that would be appropriate, working out a plan that taps the resources that way that will create the sort of life that everybody wants. We've got what we wanted. It's all here. We've got it. We've got sovereignty, got the courts, we've got a whole government that's modeled on the State of New York, State of California. But when you get down to the interface between that government and the people and the net affect on each and every family and individual, the results are not very good. And I'm very concerned about the prospect for the future.

Willens: Do you have any reaction to the impact of that economic growth on the community?

Mitchell: I cite it as further evidence of my previous statement. We don't have a single economist here. Neither the government nor anybody who I know of in the private sector. The government doesn't collect data. We don't have data to analyze what happened, to understand what happened from the mid-1970s through the present. As you know, up until 1983, it was very difficult for outside investment to come here at all, because they carried over into the Commonwealth law the old Trust Territory Foreign Investors Business Permit Act thing. So in 1983, the law was amended, and it's an open-door policy so far as outside

investment is concerned. What happened during those years can be understood, and your question answered, only if there's a fair amount of data that tells you what happened, and then somebody who understand economics looks at that and analyzes it. For example, it's true there were very large amounts of money in international investment that came here during those years, but where did it go and what did it do once it got here? How did it affect people? Some easy answers, there's some very easy ones, but the easy ones don't take you all the way to an understanding. A certain piece of land is sold, somebody owns it, and they sell large amount of money. And then you could what happened to that money in their hands and how it affected that family. At the other spectrum, how did that money that went landowner or the money that was then spent develop a hotel for that property, to what did that affect the farmer living over in Laolao and his wife, his kids. To what extent, if any, did the money that came here affect our schools, our hospital, whatever. The data is not there that I know of. You talk to Bill Stewart, he's the only thing remotely like an economist, and our government doesn't even perceive that as a need. We'd better be collecting information, and then we'd better be looking at it so we can understand what's happening. So what I'm saying is, a lot of money came in here. No question about it. It affected some people very, very directly, dramatically and radically, and others it didn't affect at all. And everything in between. Where did all the money come from? That's an important question, too. We don't have the answer to that. How much came from where? Makes a huge difference. But the money came in in very large amounts, and to some extent, we're now seeing just very recently a lot of that money sort of churned in and around and among the Japanese speculators that were here. There are now lawsuits in the Superior Court involving, in one case, on the order of \$40 million, where a Japanese investor in Tokyo who stayed in Tokyo provides money to his Japanese friends who come down here to buy and sell land, and they cheat him out of very large amount of money, and the money sort of flows back and around and among them. Obviously, the amount of money that was ripped off by Japanese partners from the partners that ended up back in their accounts in Japan didn't affect us at all. Except now we're paying for the courts and the judges and the time for them to fight that out between and among themselves. So that's a net loss. It needs to be studied not only to understand what happened to us, but to understand where we are now and where do we want to go from here.

Willens: I have been told and you have reminded me that the Congress of Micronesia passed a fairly restrictive foreign investment act that the Commonwealth government carried over in 1978 until ultimately the Commonwealth enacted its own law in 1983.

Mitchell: It just repealed the old restrictions and left it open.

Willens: Were the Northern Marianas leaders under the new Commonwealth concerned about foreign investment, or were they in fact seeking to encourage it?

Mitchell: Opinions differ depending upon who you're talking with, but I suspect the majority of the people here were in favor of opening the door. They had confidence they could deal with any international investors who came their way.

Willens: Why wasn't it done earlier?

Mitchell: I don't know. I'm sure there were people who thought about it. There's probably a legislative record of that. But what they did was simply repeal the old Foreign Investors Business Permit Act, and there were then no restrictions, no guidelines, no nothing. There didn't need to be, I suppose. Anybody who wanted to come here could come and incorporate, get a business license and conduct business from anywhere in the world.

Willens: Well, that concludes my questions for this project. Thanks very much, Ted.

Mitchell: Okay. Thank you for including me in the project.