

William H. MILLARD
vs.
FIFTH NORTHERN MARIANA
COMMONWEALTH
LEGISLATURE HOUSE OF
REPRESENTATIVES, et al.

Civil Action No. 87-0006
District Court NMI

Decided May 1, 1987

1. Constitution (NMI) -
Legislature

A CNMI House Special Committee has the power to issue a subpoena. NMI Const., Article II, §14(b).

2. Constitutional Law -
Separation of Powers

The judicial branch, although co-equal to the legislative branch, avoids encroachment upon the Legislature and shuns interfering with the lawful exercise of discretion of that branch. Where the legislature is vested with the discretionary authority to compel witness testimony to aid in legislation, the Court will not interfere with the Legislature's exercise of subpoena power within the context of the case, for it is not the province of the Court to compel the legislature to act wisely, only constitutionally.

3. Constitution (NMI) -
Legislature

For the legislature to invoke its constitutional subpoena power, it is enough that the Legislature assert a legislative need to compel the attendance of a witness before one of its committees.

FILED
Clerk
District Court

MAY 01 1987

For the Northern Mariana Islands
BY *[Signature]*

IN THE DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

WILLIAM H. MILLARD,)
)
Plaintiff)
)
vs.)
)
FIFTH NORTHERN MARIANA)
COMMONWEALTH LEGISLATURE)
HOUSE OF REPRESENTATIVES;)
et al.,)
)
Defendants)

Civil Action No. 87-0006

DECISION

THIS MATTER came before the Court on April 24, 1987, for hearing of Plaintiff's motion to quash or limit the subpoena served upon him by the House Special Committee of the Fifth CNMI Legislature, and Defendants' motion to dismiss the complaint. The Court, having taken the matter under advisement, now renders its decision.

At the heart of this imbroglio is the question of whether or not a special committee of the CNMI Legislature has the power to issue, and command compliance with, a subpoena. However, a full exposition of the history leading to the present dispute is instructive.

Plaintiff, while speaking to the Saipan Chamber of Commerce on January 10, 1987, alluded to the fact that, during his time as a resident of the CNMI and as one interested in engaging in business here, he had been approached by public officials soliciting payoffs from him as a cost of doing

1 business here. Plaintiff identified no one.

2 A brief firestorm of controversy ensued and then the
3 matter appeared to die out. As often proves true, however,
4 appearances were deceiving for, in fact, Plaintiff was
5 subsequently questioned by, and cooperated with, the Federal
6 Bureau of Investigation, which has undertaken a probe into
7 allegations of corruption amongst public officials and employees
8 in the Commonwealth.

9 For whatever reason, interest by the CNMI Legislature
10 in the Plaintiff's remarks was revived and a subpoena recently
11 was issued to the Plaintiff by the House Special Committee, which
12 has decided that now is a propitious moment to initiate its own
13 investigation.

14 Plaintiff seeks to quash or limit the subpoena, so that
15 he is not required to divulge information given previously by him
16 to the FBI.

17 Plaintiff claims that giving this information to the
18 Special Committee, even in a closed hearing, could, through
19 leakage of such information, forewarn subjects of the FBI
20 investigation, allow intimidation or harassment of other possible
21 witnesses, and eventually interfere with investigations by law
22 enforcement authorities, whether they be the FBI or the
23 Commonwealth's Attorney General. Plaintiff also claims that this
24 subpoena, issued under the circumstances of this case,
25 constitutes a violation of his civil rights.

26 In turn, the Legislature seeks dismissal of the

1 lawsuit, principally on the ground that the complaint fails to
2 state a cause of action, but also as an affirmation that the
3 Legislature has the power to issue subpoenas in aid of its
4 legislative functions.

5 [] To the question of whether or not the legislative
6 committee has the power to issue a subpoena the answer is,
7 undeniably, yes. Such power is explicitly provided in Article II,
8 §14(b) of the Constitution of the Commonwealth of the Northern
9 Mariana Islands:

10 ...Each house may compel the attendance
11 and testimony of witnesses and the
12 production of books and papers before the
13 house or its committees...

14 Plaintiff's arguments for quashing or limiting the
15 subpoena, while persuasive, nonetheless would require both that
16 the Court speculate on the likely unfolding of subsequent events
17 and, more importantly, intrude upon the separation of powers.

18 At the foundation of the structure of
19 the Federal Government lies the doctrine of
20 the separation of powers among three
21 independent coordinate branches--- the
22 legislative, the executive and judicial
23 departments. * * * As a corollary, none of
24 them may encroach upon the powers of either
25 of the other two.

26 Trimble v. Johnston, 173 F.Supp. 651, 652 (D.C 1959).

The Commonwealth Constitution provides for an identical
government structure consisting of three branches. And this
Court agrees that "[t]he Constitution imposes on the judiciary a
duty of not lightly interfering with Congress' exercise of its
legitimate powers." United States Servicemen's Fund v. Eastland,

1 488 F.2d 1252, (D.C. Cir.1974), rev'd on other grounds, 421 U.S.
2 491, 95 S.Ct. 8183, 44 L.Ed.2d 324 (1975). The judicial branch,
3 although co-equal to the legislative branch, avoids encroachment
4 upon the Legislature and shuns interfering with the lawful
5 exercise by discretion of that branch. Dayton Newspapers, Inc.
6 v. City of Dayton, 23 Ohio Misc. 49, 259 N.E.2d 522, 526 (1970).
7 Courts are not a forum for legislative relief. Id.

8 Courts may determine an unlawful abuse
9 of power or authority by another branch of
10 the government but where official discretion
11 rather than the law is the criterion, the
12 Court has no power to control legislative or
13 executive discretion. Id.

11 [2] The legislature is vested with the discretionary
12 authority to compel witness testimony to aid in legislation.
13 This being a discretionary power the Court chooses not to
14 interfere with the Legislature's exercise of subpoena power
15 within the context of this case, for it is not the province of
16 this or any Court to compel the Legislature to act wisely, only
17 constitutionally.

18 [3] It is enough that the Legislature assert a legislative
19 need to compel the attendance of a witness before one of its
20 committees. This power to compel, if used wisely, is highly
21 conducive to the promulgation of needed laws for the public good
22 and the welfare of the people in the Commonwealth.

23 It is for the Legislature, however, and not this Court,
24 to decide the wisdom and propriety of compelling testimony before
25 it when there is already being conducted an investigation by an
26 agency which presumably has the facilities, the skill, and the

1 professionalism to conduct such investigations, namely, the
2 Federal Bureau of Investigation.

3 And, it is for the Legislature to decide whether or not
4 its publicly-stated purpose of identifying, prosecuting, and
5 punishing corruption within the ranks of public servants can be
6 reconciled with the proposed closed-door hearings, the rationale
7 for which has been declared to be the protection of innocent
8 parties, and not the exclusion of the public and the media.

9 And, it is for the Legislature to weigh and consider
10 the public's reaction to the appearance of a public body, the
11 members of which might themselves be investigated, conducting a
12 covert inquiry behind closed doors.

13 And, finally, it is for the Legislature to decide if a
14 closed-door investigation is in fact a necessary prelude to the
15 introduction and reconsideration by it of the Ethics in
16 Government bill, or legislation of a similar nature, the likes of
17 which has been introduced in the past but has never been
18 processed for public or legislative consideration.

19 The motion to quash or limit the subpoena is DENIED.
20 The motion to dismiss the complaint is GRANTED, with leave to
21 amend.

22 IT IS SO ORDERED.

23 
24 _____
25 ALFRED LAURETA
26 JUDGE