On My Mind
10/17/03

If Senate President Pete P. Reyes and Senator Paul A.. Manglona won't go to arbitration to resolve the conflict in the Senate, an alternate might be the filing of a suit by an constituent adversely affected by the Governor's refusal to entertain the bills submitted to him. Then the court could rule on the legality of the Governor's action, rather than on the action of Senate members. Since that could conceivably be couched as a conflict between two branches of government, the court would not be able to invoke the doctrine of separation of powers, as it has in the suit between Senate factions.

In the meantime - the Manglona suit already in the courts may not be decided til nearly Christmas, given the mid-November hearing date and the intervening holidays - members of both houses of the legislature (or should one say three?- but then, one of them isn't doing any legislating so maybe it doesn't count) might want to begin drafting laws to prevent a similar situation from arising again.

First and foremost should be a law stating unequivocally that a convicted felon cannot hold office - that regardless of when the conviction occurs in relation to his term of office, upon conviction a felon no longer holds that office, regardless of whether that person holds an elected, appointed, or civil service position in government.

And if there isn't already a law against a felon setting the terms of his own resignation- as there does not appear to be - that's another law that should be promptly enacted.

The Senate might also want to think about re-writing its house rules, to make provisions for settling the kind of disruptive dispute now going on. Maybe, as a form of preventive medicine, the House ought to look into that too - a dispute resolution procedure that would be invoked in battles for leadership.

Then there's what's known as the Chatham House Rule - which stipulates that participants meeting in closed sessions may not reveal anyone's position on items discussed, which could also be used to settle disputes..

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Members of the legislature might also want to look into the proper role of their legal counsels. At present, their legal counsels sign off on proposed laws as being of "legal sufficiency" - or words to that effect. Whatever that means, one of the things that that phrase does not appear to mean is "of legal reasonableness." If it had, laws such as Public Law 12-18, which sets such unrealistic controls on election campaign contributions, or the Civil Service law, which says on the one hand that government employees may not hand over anything of value to promote a political purpose, but on the other hand that government employees have a right to make voluntary contributions (outside the office, after working hours), would never have made it to the floor of either house, much less have been passed into law.

One of the outgrowths of the controversy around Pam Brown's nomination as Attorney General

was the perception that the purposes of legislative legal counsel was to find ways to do what legislators wanted, regardless of the reasonableness of the proposed action. If legal counsels did their job properly, they would not only concern themselves with "legal sufficiency" but also with a bill's constitutionality, its reasonableness, its appropriateness, which would lead to better laws as well as saving the AG's office and other agency attorneys a lot of time and energy.

One solution would be to revamp the Legislative Bureau, so that legislative counsel are not assigned to one house or another, but are picked according to their knowledge in applicable areas of the law. Originally modeled after the U.S. Congressional Research Service, the Bureau did not go far enough when it left in place the practice of separate legal counsel for the House and Senate.

The suggestion has also been made (by the House Speaker) that staff of the Legislative Bureau (including its attorneys), in order to maintain their objectivity and independence, be given some kind of job security - under some sort of civil service system.

According to the *United States Government Organization Manual*, the U.S. Congressional Research Service "provides objective, nonpartisan research, analysis, and information support to assist Congress' legislative, oversight and representative functions. It also helps to insure an informed Congress....It responds in a timely and objective manner to congressional inquires for information and analysis at every stage of the legislative process and in subject areas relevant to policy issues before Congress."

If the attorneys assigned to CNMI's Legislative Bureau achieved even half of that, just think of the improvement in our laws!

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It's rather amusing that Senator Paul A. Manglona keeps repeating that Associate Judge Govendo declared, in the opinion he handed down last week in the Atalig case, that Ricardo S. Atalig is still a senator. He did no such thing. What the Associate Judge did say was that the courts could not intervene in the business of the Senate.

In fact, the decision handed down by Govendo strongly suggested that Atalig should no longer be considered a senator. At one point the decision reads, "Although this Court is of the opinion that Mr. Atalig should forfeit his office..." Judge Govendo also notes -at some length - that Atalig said he'd be happy to have his office declared vacant.

With the Governor having declared Atalig's office vacant, and having declared that an election should be held to replace him, and the Board of Elections having now scheduled such an election, the pretense that Atalig is still a senator is just that - a fantasy.

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There's been some criticism of Govendo's decision - except for the Attorney General's office, which has filed an appeal, mostly among non-lawyers - who generally voice frustration that Govendo refused to rule on Atalig's status. The fact of the matter is that a judge is limited in the rulings he can make by the arguments submitted to him by the attorneys on either side. In this case, CNMI's AG argued that according to the "quo warranto" rule, Atalig no longer had a right to his office - which of course, the other side argued against. Govendo ruled that the "quo

warranto rule did apply, that the AG was qualified to invoke it, and that the question was not moot because Atalig's letters of resignation were "unequivocal."

The argument was then made by the AG's office that Atalig should forfeit his office under 1 CNMI §7851 - which states that any person convicted pursuant to that section of the CNMI Code is prohibited from working for the CNMI government for ten years. According to the law, action leading to such prohibition must be triggered by the Office of the Public Auditor.

In analyzing the issue Govendo found that in other states where such forfeiture laws are used against elected officials, the laws specifically mention [elected] "office," "forfeiture," or "expulsion." The CNMI law does not. If, as some claim, the CNMI law was meant to apply to elected officials, one can only conclude that it was poorly written, since it does not follow precedents set in other jurisdictions. Thus, Govendo ruled that it would be stretching the CNMI law too far - violating the principle of separation of powers - to apply it to Atalig. This left him with no alternative but to say that, under the circumstances, the court could not "oust" Atalig.

If other arguments had been brought up by the AG, perhaps the outcome would have been different, but they were not. Govendo was limited by what had been presented to him.

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Reminiscent of his pre-judge days, when Govendo would occasionally write long, often funny letters to the editor, Govendo took the opportunity, in a footnote, to comment on Atalig's view that giving jobs in government to relatives, and ignoring the fact that those relatives might then not even turn up at work, was part of the culture.

Wrote Govendo, "Culture may mean many things, but it is doubtful that Mr. Atalig means the Chamorro and Carolinian cultures that date back hundreds of years. What Mr. Atalig apparently means is a political culture that dates back only twenty-five years, and seems to have been remarkably cultivated by the CNMI's first and second generation of politicians." Then he added, "It remains to be seen ... if this 'something for nothing' government job culture is tolerated by the present generation or the next one."

Let us hope not!