

REPUBLIC OF THE PHILIPPINES

S e n a t e

Pasay City

Journal

SESSION NO. 67

Monday, March 7, 2005

**THIRTEENTH CONGRESS
FIRST REGULAR SESSION**

SESSION NO. 67
Monday, March 7, 2005

CALL TO ORDER

At 3:09 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

PRAYER

Sen. Ramon Bong Revilla Jr. led the prayer, to wit:

Father, we submit ourselves to You today for guidance and enlightenment in the work we are about to embark on.

We ask Your help in seeking the answers to the questions we are now facing. Give us the wisdom to properly discern the solutions to the problems of our nation. Lord, we ask You to reach into our sensibilities so that we may deliberately proceed with our work, mindful of our great task, without rushing unnecessarily, so that our results will truly be an expression of Your will.

Father, grant us the strength to persevere and continue with our efforts to alleviate the plight of our ailing country. Constantly inspire us to strive further in serving the interests of our nation and of our constituents. Open our minds and our hearts so that we may be genuine representatives of our people. Touch our hearts that we may foster harmony and understanding between our institutions, our leaders, and our countrymen. Lord, teach us to accept our differences and unite in our common aspirations. Bind all of us together in Your love and grace so that we may reap the blessings You have set aside for us.

Amen.

NATIONAL ANTHEM

The Senate Choir led the singing of the national anthem.

ROLL CALL

Upon direction of the Chair, the Secretary of the Senate, Oscar G. Yabes, called the roll, to which the following senators responded:

Angara, E. J.	Flavier, J. M.
Biazon, R. G.	Gordon, R. J.
Defensor Santiago, M.	Lacson, P. M.
Drilon, F. M.	Lapid, M. L. M.
Ejercito Estrada, J.	Pangilinan, F. N.
Ejercito Estrada, L. L. P.	Pimentel Jr., A. Q.
Enrile, J. P.	Revilla Jr., R. B.

With 14 senators present, the Chair declared the presence of a quorum.

Senators Arroyo, Cayetano, Lim, Magsaysay, Osmeña, Recto and Roxas arrived after the roll call.

Senator Villar was on official mission.

Senator Madrigal was absent.

**APPROVAL OF THE JOURNAL
OF SESSION NO. 66**

Upon motion of Senator Pangilinan, there being no objection, the Body dispensed with the reading of the Journal of Session No. 66 and considered it approved.

REFERENCE OF BUSINESS

The Secretary of the Senate read the following matters and the Chair made the corresponding referrals:

BILLS ON FIRST READING

Senate Bill No. 1944, entitled

AN ACT REQUIRING ALL BRANCHES AND AGENCIES OF THE GOVERNMENT, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS AND THEIR SUBSIDIARIES TO DISCLOSE THE IDENTITY OF THEIR FOREIGN CONSULTANTS, THE NATURE OF THEIR WORK AND THEIR COMPENSATION, PERKS AND OTHER PRIVILEGES, AND PROVIDING PENALTIES IN CASE OF VIOLATION THEREOF

Introduced by Senator Angara

To the Committees on Civil Service and Government Reorganization; and Government Corporations and Public Enterprises

Senate Bill No. 1945, entitled

AN ACT CLASSIFYING CYBERSEX OPERATIONS AS A FORM OF PROSTITUTION AND IMPOSING PENALTIES ON CYBERSEX DEN OPERATORS, PERSONNEL, AND PROTECTORS/CODDLERS

Introduced by Senator Defensor Santiago, Miriam

To the Committees on Justice and Human Rights; and Science and Technology

Senate Bill No. 1946, entitled

AN ACT TO EMPOWER THE DEPARTMENT OF EDUCATION (DEPED), THE COMMISSION ON HIGHER EDUCATION (CHED), AND THE TECHNICAL EDUCATION AND SKILLS DEVELOPMENT AUTHORITY (TESDA) TO REQUIRE ALL THE SCHOOL HEADS TO REPORT ALL THE INCIDENTS OF STUDENT SUICIDE IN THEIR RESPECTIVE SCHOOLS, WHETHER CONSUMMATED, FRUSTRATED OR ATTEMPTED, AND TO PROVIDE A PROGRAM FOR STUDENT SUICIDE EARLY INTERVENTION AND PREVENTION

Introduced by Senator Defensor Santiago, Miriam

To the Committees on Health and Demography; Education, Arts and Culture; and Finance

Senate Bill No. 1947, entitled

AN ACT TO REQUIRE THE PHILIPPINE INSTITUTE OF VOLCANOLOGY AND SEISMOLOGY (PHIVOLCS) AND THE PHILIPPINE ATMOSPHERIC GEOPHYSICAL AND ASTRONOMICAL SERVICES

ADMINISTRATION (PAGASA) TO ESTABLISH THE NATURAL CALAMITIES HAZARD MITIGATION PROGRAM

Introduced by Senator Defensor Santiago, Miriam

To the Committees on Science and Technology; Environment and Natural Resources; and Finance

Senate Bill No. 1948, entitled

AN ACT ESTABLISHING THE PHILIPPINE NAVAL ACADEMY (PNA) AND APPROPRIATING FUNDS THEREFOR

Introduced by Senator Magsaysay Jr.

To the Committees on National Defense and Security; Education, Arts and Culture; and Finance

ADDITIONAL REFERENCE OF BUSINESS RESOLUTIONS

Proposed Senate Resolution No. 201, entitled

RESOLUTION EXPRESSING THE SENSE OF THE SENATE THAT THE 1951 RP-US MUTUAL DEFENSE TREATY SHOULD BE REVIEWED IN THE CONTEXT OF GLOBALIZATION, AND OF THE CHANGED AND CHANGING CIRCUMSTANCES THAT IMPINGE ON THE TREATY

Introduced by Senator Defensor Santiago, Miriam

To the Committee on Rules

Proposed Senate Resolution No. 202, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON PEACE, UNIFICATION AND RECONCILIATION AND COMMITTEE ON NATIONAL DEFENSE AND SECURITY TO CONDUCT A JOINT INQUIRY, IN AID OF LEGISLATION, ON THE IMPLEMENTATION OF THE GRP-MNLF PEACE ACCORD

* OF 1996 DUE TO THE RESUMPTION OF HOSTILITIES IN MINDANAO INVOLVING THE ARMED FORCES OF THE PHILIPPINES AND SUPPORTERS OF MNLF CHAIR NUR MISUARI, WITH THE END IN VIEW OF ADOPTING IMMEDIATE AND EFFECTIVE MEASURES TO PREVENT THE ALARMING ESCALATION OF THE ARMED CONFLICT TOWARDS THE ATTAINMENT OF A JUST, COMPREHENSIVE AND LASTING PEACE IN MINDANAO

Introduced by Senators Angara and Biazon

To the Committees on Peace, Unification and Reconciliation; and National Defense and Security

Proposed Senate Resolution No. 203, entitled

RESOLUTION DIRECTING THE APPROPRIATE COMMITTEE/S TO CONDUCT A REVIEW, IN AID OF LEGISLATION, ON THE IMPLEMENTATION OF THE TRIPOLI AGREEMENT AND THE JAKARTA FINAL PEACE AGREEMENT ENTERED INTO BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES (GRP) AND THE MORO NATIONAL LIBERATION FRONT (MNLF) AND ON THE SOUTHERN PHILIPPINES COUNCIL ON PEACE AND DEVELOPMENT (SPCPD) CREATED UNDER EXECUTIVE ORDER NO. 371 DATED 02 OCTOBER 1996

Introduced by Senator Biazon

To the Committees on Peace, Unification and Reconciliation; and National Defense and Security

SUSPENSION OF SESSION

Upon motion of Senator Ejercito Estrada (J), the session was suspended.

It was 3:18 p.m.

RESUMPTION OF SESSION

At 3:20 p.m., the session was resumed.

PRIVILEGE SPEECH OF SENATOR EJERCITO ESTRADA (J)

Availing himself of the privilege hour, Senator Ejercito Estrada (J) delivered the following speech:

A GAMBLING REPUBLIC?

I rise today to call attention to and express concern over the rapid and unprecedented proliferation of gambling in our society.

I rise today to also denounce the unscrupulous and institutionalized corruption being encouraged, tolerated and perpetrated by the management of the Philippine Amusement and Gaming Corporation, or Pagcor, as it is commonly known.

I do so today, in fulfillment of my duties as Vice-Chairman of the Senate Committee on Games and Amusement, and as an occasion for us to reflect on whether or not to consider extending Pagcor's corporate life.

This administration has promised us a stronger Republic, but what we have today is a Republic mired in fiscal crisis, submerged in debt, and rapidly sinking in a web of corruption and deceit.

What we have today is not a strong Republic, but a Republic wronged and desecrated by an unprincipled leader who assumed power under questionable and dubious circumstances.

What this government proclaims today as a strong Republic is really a bankrupt Republic, debt-ridden, a Republic suffering not only from a financial crisis, but from a moral crisis, and a crisis of credibility and integrity.

It is also a government now promoting a gambling Republic where slot machine arcades are sprouting all over the place, courtesy of Pagcor and its private partners,

66

in evident violation of its mandate under Presidential Decree No. 1869 dated July 11, 1983.

This decree authorized Pagcor as the corporate entity solely and exclusively vested with the power to undertake gambling activities, primarily casino gaming and operations in the Philippines.

Pursuant to this, Pagcor must exclusively own, manage and operate casinos and slot machines in the country.

In 2002, Pagcor operated a total of 13 casinos and two satellite slot machine arcades strategically located in the cities of Manila, Pasay, Parañaque, Tagaytay, Bacolod, Cebu, Lapu-Lapu, Davao, Angeles, Olongapo and Laoag, including one inside the Clark Special Economic Zone based on a special agreement with the Clark Development Corporation.

A slot machine arcade is also maintained in Bacolod, as well as another in Ronquillo, Sta. Cruz, Manila, not very far from the Sta. Cruz Church.

Pagcor owned and operated all these casinos and arcades in strict compliance with its exclusive franchise under its charter, P. D. No. 1869, with the exception of those operating in special economic zones where private casino operations have been specifically authorized by law.

The revenues generated from these went solely to the government and such other public programs or projects expressly mandated by law to be funded from Pagcor income, such as the Philippine Sports Commission and the National Commission for Culture and the Arts and the Senate President's Social Fund.

But in 2002, barely a year after Mrs. Gloria Macapagal Arroyo grabbed power from President Joseph Ejercito Estrada, following a failed and aborted impeachment trial, Pagcor initiated an effort to expand its slot machine arcade operations with a plan to open eleven more slot machine arcades.

This could have been simply treated, repulsive as it may be, as an effort to further expand gambling operations. But it was also meant to vigorously broaden the opportunity and access to gambling houses and thereby gradually propagate a gambling culture.

But Pagcor was not simply opening slot machines arcades to be owned, maintained and operated by it exclusively.

Pagcor was entering into joint venture agreements with several private investors, under a 60-40 percent sharing scheme.

How these investors were chosen, what criteria were used, how the selection process was done, what their capitalization was, we do not know. But one thing is certain: there was no transparency in the deals.

As of today, seven investors can be identified based on the contracts with Pagcor. These investors are: 1) Mr. Yap Boon Ming, reportedly a Malaysian national, of the Pacific Palm Corporation who runs the Pan Pacific Hotel and Network Hotel; 2) Mr. Cesar R. Marcelo of the Six-in-One Amusement and Entertainment Corporation; 3) Mr. Datu Ta Kin Yan, apparently another Malaysian national, of the Waz Lian Management Philippines, Inc. who runs the Garwood Park Hotel in Cebu City and Atrium Hotel; and 4) Ms Maria Lourdes Go of the Platinum Gaming and Entertainment Corporation. The rest are Skylove Recreation Haus; Binondo Leisure Resources, Inc., and the JAB-RDCO.

They were the first batch of private investors.

These deals mean that Pagcor was entering into sub-franchise agreements in total violation of its mandate under Presidential Decree No. 1869.

This also means that revenues from slot machine operations are to be shared with selected investors whom the Pagcor have unilaterally chosen, and which eventually

will compete with the casinos wholly owned and operated by Pagcor.

The plan, however, was aborted when it was exposed by *The Philippine Daily Inquirer* in a series of investigative articles and also by the television program, *Probe Team*.

Damage control was subsequently employed. In an effort to appease critics and douse the controversy, Mrs. Gloria Macapagal Arroyo promptly announced in a speech during the launching of the Arsenio Lacson Foundation at the Manila Hotel in August, 2002:

"...I am announcing that I am instructing Pagcor to abort the slot machine arcade project. Pagcor says that they passed the slot machine arcade project as part of their corporate powers, but it is well within the law... it is not a question of what is legal, it is a question of what is morally upright and morally sound..."

Sa madaling salita, pumapel at umeksena muli si Ginang Gloria Macapagal Arroyo.

This instruction was reiterated in a memorandum subsequently issued by Secretary Silvestre Afable Jr., which stated in no uncertain terms that Mrs. Arroyo has instructed Pagcor to abort its slot machine project.

This could have ended there and then. But instead of aborting the project, Pagcor, under the leadership of its chairman and executive officer, Mr. Efraim Genuino, shortly thereafter, opened three new slot machine arcades with private partners and investors and these arcades continue to operate to this day.

These are now located at the City Hotel along Mabini Street and Ermita. At the Pan Pacific Hotel in Adriatico and Gen. Malvar St., also in Ermita, and both well within striking distance of the Malate and Ermita churches. A third arcade was established at

the Network Hotel at the corner of Buendia Extension and Roxas Boulevard in Pasay City. Then in the third quarter of 2003, at Pagcor again, opened three additional ones at the Atrium Hotel at the corner of Buendia Extension and Taft Avenue in Pasay City; the Garwood Park Hotel along Fuente Osmeña in Cebu City; and at the Apo View Hotel in Davao City.

Last year, Pagcor opened four more, *apat na karagdagang* slot machine arcades at the Hyatt Marina Hotel bounded by Pedro Gil St., A. Mabini and M.H. del Pilar in Ermita; at the Westin Philippine Plaza at the CCP Complex in Pasay City in partnership with a British Virgin Islands company named Skylove Recreation House; at the Ambassador Hotel along Mabini St., again in Ermita and in partnership with the Six-in-One Amusement and Entertainment Corporation; and most recently, at the Cavite Coliseum in Bacoor, Cavite.

Kaya po, nitong taong nakaraan, sampung slot machine arcades ang binuksan ng Pagcor at ng mga kasosyo nito. Ano po kaya ang nangyari sa utos ni Ginang Gloria Macapagal Arroyo? Nagbibingi-bingihan ba si Ginoong Genuino o hindi nito sinunod ang utos ng kanyang amo? Alam po kaya ito ni Mrs. Arroyo?

But wait, we are not done yet! Almost a month ago, Pagcor quietly opened again two other arcades, one at the Binondo Leisure Hotel in Binondo in partnership with the Alfredo Benitez Group; and another at the Premiere Hotel, a stone's throw away from the Sta. Cruz Church, and in partnership reportedly with Reghis Romero of the Abu Sayyaf kidnapping fame.

I am informed that five more arcades are now in the pipeline, and to be located in Cebu City in partnership with the Platinum Gaming and Entertainment Corporation; in the Manila Jockey Club in Carmona, Cavite, in partnership with the Reyno family; in Hotel Sogo in San Pedro, Laguna, in partnership with the Golden View Group; at the Subic International Hotel inside the

Subic Free Port; and in a yet undisclosed location in Palayan City in the province of Nueva Ecija.

Isang dosena na po ang anak sa sugal na dapat sana ipina-abort daw, kuno, ni Ginang Gloria Arroyo noong 2002, pero ngayon, buntis na naman at quintuplets pa! Hindi ba alam ni Ginang Arroyo ito o nagbubulag-bulagan lamang dahil kasama ang Malacañang sa hataw?

The common theme that surrounds these slot machine arcades is that they were established as joint ventures with private investors and partners who share in the profits.

The obvious result and net effect is that the new arcades are competing with purely Pagcor operations where 100 percent of the revenues go directly to the government, in contrast to this scheme where 40 percent are channeled to private partners.

This is a sad commentary on a government who claims to be in a serious fiscal deficit and in dire need of funds, needing to impose new taxes on our people who have absorbed the excesses, the abuses, the extravagance, and the corruption of this administration.

But the larger issue here, of course, is the unabated proliferation of gambling dens, mushrooming like weeds in the garden of thieves.

To skirt the issue of the legality of joint venture agreements with private investors, Pagcor changed the contracts by secretly doing away with the agreements with its partners, and replacing them instead with lease contracts for slot machines.

Pagcor executed antedated lease contracts to make it appear that Pagcor is merely leasing slot machine equipment from foreign manufacturers with the rental fee stipulated at 40 percent of the gross revenues derived from the arcades. The stipulated rental fee equivalent to 40 percent of slot machine revenues on a continuing basis appears to be, however, excessive because the cost of new slot machines

and lease improvements can be recovered in full in several months.

Kaya ang nangyari dito, from joint venture, pinalabas na lease contract lang para walang sabit. Yan ang akala nila!

This is patently deceptive. It is a mere cosmetic makeover of a deal that was not only illegal, but also immoral and flawed from the very beginning. It is a mere ploy that hopes to avoid criminal liability.

The government corporate counsel, Justice Amado D. Valdez, responding to a request for a legal opinion from Pagcor, expressed misgivings on this deal. In a letter dated July 30, 2002, to Atty. Carlos Bautista of Pagcor's Corporate and Legal Services Department, Justice Valdez called attention to the nature of the agreement, which, according to him, essentially grants a franchise under the guise of supplying slot machines. Justice Valdez also noted that the 40 percent income granted the private investors is in excess of the maximum ten percent allowed under Section 11 of P.D. No. 1869.

After the opening of two arcades in Pan Pacific in Ermita and in Networld in Roxas Boulevard, the casinos at the Heritage Hotel in Pasay City and the Grand Boulevard Hotel in Manila failed to meet their respective targets in slot machine revenues, while income in other branches also lagged behind.

The Pan Pacific arcade generated revenues of more than P305 million during eleven months of operation from 2002 to 2003 alone, and of which 40 percent or roughly P122 million went to the private partner. Networld Hotel earned at least P102 million during the same period, of which at least P40 million went to the partner.

As of February 2005, almost P2 billion in revenue had been channeled to Pagcor's selected private investors.

Kitang-kita na po ang ebidensiya. Imbes sa gobyerno mapunta ang dalawang daang milyong piso, doon pa

sa mga private investors ng Pagcor. Dapat ay napakinabangan na po iyan ng ating mga kababayan.

Ang PAGCOR kaya talaga ang kapartner ng mga investors na ito o ang mga opisyal ng PAGCOR? Hindi kaya kapartner din ang Malacañang?

For a government crying financial deficit and imposing new and back-breaking taxes on its long-suffering people, this is revolting and infuriating.

It is patently criminal because not only do we deprive government of much-needed revenues, we are also promoting a gambling culture, a gambling Republic amidst all the noisy and hostile voices against *jueteng*, the poor man's game of chance.

The silence of angry and moralizing critics of President Joseph Ejercito Estrada several years back on the issue of gambling is now deafening.

With gambling being institutionalized, with its proceeds gradually being funneled to private hands instead of going to social and beneficial causes, where now are the gods and guardians of morality who once assailed President Joseph Estrada because of gambling?

Is it because they are now part of this unconscionable deal and are benefiting from it? *Mga hipokrito!*

In contrast to this administration, President Estrada appointed morally upright and responsible officials like Justice Cecilia Muñoz-Palma at the PCSO who did not even vote for him. He also retained Mrs. Alice Reyes of Pagcor, whose management was characterized by integrity where casino operations were controlled exclusively by Pagcor.

Nagiging malaking pasugalan ang bansa natin ngayon pero hindi nakinabang ang ating mga kababayan. Ngayon, mayroon na tayong "telesabong". Ano pa kaya ang susunod?

I submit this for the investigation of the Senate in aid of legislation considering that the deliberations on a bill on Pagcor's corporate life will soon reach this august Chamber.

I have been informed that House Bill No. 3409, otherwise known as "An act further amending Presidential Decree No. 1869, otherwise known as the Pagcor Charter" was passed by the House of Representatives on Third Reading. The bill reportedly not only extends Pagcor's corporate life, but effectively legalizes the illegal joint venture agreements that Pagcor has entered into.

We in this august Chamber, must now seize this initiative because the Ombudsman may find it difficult to objectively and freely investigate Pagcor. He is reported to be a yearly guest of the lavish and extravagant birthday parties of the Pagcor chairman who incidentally can perhaps be considered the most traveled government official today.

I assure you, this is but the tip of the iceberg. There are many more anomalies to be discovered and uncovered in Pagcor, and we will watch them like a hawk.

Abangan ang susunod na kabanata!

SUSPENSION OF SESSION

With the permission of the Body, the Chair suspended the session.

It was 3:47 p.m.

RESUMPTION OF SESSION

At 3:49 p.m., the session was resumed.

INTERPELLATION OF SENATOR ENRILE

Senator Enrile commended Senator Ejercito Estrada (J) for having the courage to face the problem of gambling in the country. He noted that casinos and other gambling operations are among the major sources of government revenues that lessen the taxes being shouldered by the taxpayers.

Adverting to P.D. No. 1869, a consolidation of P.D. Nos. 1067-A, 1067-B, 1067-C, 1399 and 1632,

Senator Enrile recalled that in 1970, when he was appointed defense secretary, one of the first instructions he received from then President Marcos was to stop gambling, especially the operations of casinos along Roxas Boulevard. At that time, he said, the operators of casinos were Ted Lewin and the Magdaluyo group and many others; the casinos were like fortresses that cannot be touched by law enforcement agencies. He stated that he designated then Col. Buenaventura Casañas of Iloilo to head the operation to close the casinos which was accomplished within three months. He recalled that during the martial law period, however, the government felt that gambling was a revenue source, and so the President, in the exercise of legislative powers, issued the various presidential decrees that authorized the operations of casinos under the government's monopoly. He stated that under P.D. No. 1869, the government corporation created to handle the gambling operation was given both operational and regulatory functions. Relative thereto, he cited the pertinent sections of said decree, to wit:

Section 8. *Resignation.* -- All persons primarily engaged in gambling, together with their allied business, with contract or franchise from the Corporation, shall register and affiliate their businesses with the Corporation. The Corporation shall issue the corresponding certificates of affiliation upon compliance by the registering entity with the promulgated rules and regulations thereon.

Sec. 9. *Regulatory Powers* -- The Corporation shall maintain a Registry of the affiliated entities and shall exercise all the powers, authority and responsibilities vested in the Securities and Exchange Commission over such affiliated entities mentioned under the preceding section including, but not limited, to amendments of Articles of Incorporation and By-Laws, changes in corporate term, structure, capitalization and other matters concerning the operation of the affiliated entities, the provision of the Corporation Code of the Philippines to the contrary notwithstanding, except only with respect to original incorporation.

Sec. 10. *Nature and Term of Franchise.* -- The Corporation is hereby granted ... the rights, privilege and authority to operate and

maintain gambling casinos, clubs and other recreation and amusement places, sports, gaming pools, i.e. basketball, football, lotteries, etc. whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines.

Given Pagcor's mandate and the fact that Section 8 of P.D. No. 1869 authorizes the registration of persons primarily engaged in gambling, Senator Enrile said the decree envisioned that other entities may engage in the business of gambling provided they are authorized and registered with Pagcor. That being the case, he asked if P.D. No. 1869 prohibits Pagcor from becoming a stockholder of corporations contemplated in Section 8. Senator Ejercito Estrada (J) replied that there is no prohibition.

Senator Enrile asserted that the corporations authorized under Section 8 could independently operate casinos provided they are authorized by Pagcor, or they may join Pagcor either as partners, advisers, managers or service providers. Senator Ejercito Estrada (J) said that the joint venture agreements between Pagcor and its chosen private investors are illegal because based on P.D. No. 1869, Pagcor should exclusively control the operations of all gambling in the country. Under those agreements, he said, the government stands to lose millions or billions of pesos.

Senator Enrile agreed that Pagcor as a regulatory body must control the operations of all gambling in the country by virtue of its power to regulate the businesses. In reaction, Senator Ejercito Estrada (J) noted that Justice Vitug in the case of *Jai Alai* opined that while Pagcor is permitted under its Charter to enter into various agreements in its authorized operations, its power nevertheless cannot be so construed as empowering it to pass on or share its franchise with anyone.

Still on Section 8, Senator Enrile stated that if a person is primarily engaged in gambling, he must register his operations with the regulator, meaning Pagcor, which can affiliate itself with the business of that person either by contract or through the franchise of the corporation. Senator Ejercito Estrada (J) agreed.

Supposing the proponent would put up all the capital, set up the entire enterprise, and comply with

all the requirements, Senator Enrile asked whether sharing could be arranged by contract between the proponent and Pagcor as an operator of gambling casinos, not as a regulator. Senator Ejercito Estrada (J) replied in the affirmative, citing Section 11, paragraph 1 of P.D. No. 1869, which states,

Enter into operating and/or management contracts with any registered and accredited company possessing the knowledge, skill, expertise and facilities to ensure the efficient operation of gambling casinos; *provided*, that the service fees of such management and/or operator companies whose services may be retained by the Corporation shall not in the aggregate exceed ten percent (10%) of the gross income.

Senator Enrile agreed that the provision is applicable when it comes to the service provided by another party to Pagcor. He asked on the possibility of a different sharing under a contract or any arrangement between the proponent and Pagcor. Senator Ejercito Estrada (J) maintained that Pagcor can afford to buy and run all the slot machines. He said that the Pagcor's business partners should have registered first or given legislative franchises before they operated the arcades.

Senator Enrile opined that Pagcor could not exercise its regulatory function if no independent bodies are engaged in the gambling business. For his part, Senator Ejercito Estrada (J) insisted that the government is losing billions of pesos when Pagcor entered into joint venture agreements with private investors. He welcomed the possibility of amending this provision of P.D. No. 1869.

Senator Enrile stated that Section 11, paragraph 1 would come into play if a Las Vegas company, for instance, would offer its services to Pagcor to set up a casino, in which case the service fee that the company shall receive is not to exceed 10% of the gross income.

Senator Enrile stated that the government policy of allowing gambling has served the country quite well in spite of statements or objections from some sectors. He said that like the Philippines, one of the major sources of revenues of countries such as the United States of America, Malaysia, Singapore and even Italy, the citadel of Catholicism, is gambling. He added that operations in Eastern Europe, almost

all the former members of the Soviet Union have turned into centers of gambling operations.

On whether government should forgo gambling as a veritable source of revenue or accept and modernize it so as to attract the money of foreign and local gamblers, Senator Ejercito Estrada (J) said that he is against the proliferation of gambling especially those for which Pagcor entered into joint venture agreements. He opined that billions of pesos should have gone to Pagcor instead of the private investors.

Citing Section 8, Senator Enrile stated that Pagcor is allowed to engage in business thereby creating employment, revenues, infusion of foreign exchange and expansion of tourism in the country. He noted that Laoag, Ilocos Norte is becoming affluent due to the expansion of gambling operation in that area. Senator Ejercito Estrada (J) clarified that he is not against gambling *per se* but he is against the joint venture agreements entered into between Pagcor and its business partners because they are disadvantageous to the government.

Senator Enrile said that given its regulatory and franchising power, rather than engage in the business itself, Pagcor can tell an operator if it can put up the business by investing money, hiring the people, and buying the machines at his own risk. In exchange, he said that Pagcor would collect 50%-70% of the income of the enterprise which is a more advantageous arrangement for the Filipino people. He added that it is a better deal for Pagcor instead of assuming the risk of putting up an enterprise whose success may be doubtful.

Senator Ejercito Estrada (J) maintained that it would be more advantageous for Pagcor to operate the casinos itself than letting its business partners to do it. He revealed that when slot machines are brought to the Philippines, the business partners do not pay for them, instead, they insist on using machines on a trial basis; it is only when the slot machines make money that the business partners pay for them.

Senator Enrile manifested that he would introduce a bill seeking to separate the regulatory powers of Pagcor from the operation of casinos. He asserted that Pagcor as a regulating board would always find itself in conflict with the operators of the casinos. He stated that he would go along with the policy of

allowing gambling in the Philippines as long as the gamblers are the affluent Filipinos and foreigners.

He added that gamblers from the Binondo District, the Makati Business Club and those who engage in illegal operations should be encouraged to gamble so that the government could get back the money taken through illegal means.

Assuming for the sake of argument that gambling casinos or gambling business should not be allowed to operate in the country, asked what entity Pagcor should then regulate, Senator Ejercito Estrada (J) replied that the P.D. No. 1869 does not state so.

Senator Enrile posited that precisely Pagcor, by its very nature, is both a regulator and an operator. He pointed out that since the Congress invested in the Pagcor the power to regulate, the implicit assumption is that others are allowed to engage in gambling operations. He underscored that Section 8 provides that these enterprises are franchised by Pagcor under a contractual arrangement. On the other hand, he stated that if these enterprises render service to Pagcor as service providers since they have the know-how that Pagcor does not have, they come under Section 11, paragraph (1), in which case, the enterprises are limited to receive not more than 10% of their gross income as service fee.

Asked how many laws had been passed by Congress providing that certain government activities are to be serviced from the income arising from gambling operations and who were the beneficiaries of said laws, Senator Ejercito Estrada (J) stated that he would furnish Senator Enrile that information once he got it.

Asked on the disposition of the income of Pagcor, Senator Ejercito Estrada (J) stated that he had requested Pagcor to submit a copy of its earnings.

Senator Enrile stated that the possibility of the misuse of funds of Pagcor cannot be discounted; however, he stressed that the vision when Pagcor was established was that the funds it would generate would be used for the benefit of the less fortunate members of society, specifically for the delivery of health and social welfare services.

INTERPELLATION OF SENATOR DEFENSOR SANTIAGO

Preliminarily, Senator Defensor Santiago observed that while the basic law under discussion

is P.D. No. 1869 that was issued in 1983, the document from which all discussions should proceed is the Constitution, specifically Article XII, Section 10 which states: "The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations, at least sixty *per centum* of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments," and the second paragraph of the same section that provides, "In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos."

Senator Defensor Santiago remarked that it appears that gambling is one of those areas of investments that government has reserved to corporations or associations, at least sixty *per centum* of whose capital is owned by Filipinos. Further, she stated that there is nothing in the Constitution that prohibits an agency like Pagcor from entering into joint venture agreements; in fact, she noted, the Constitution allows such agreements in connection with natural resources over which the State exercises unquestioned ownership. Therefore, she said, Pagcor may enter into joint agreements as long as the ownership formula is observed but, pursuant to Section 10, the State shall give preference to qualified Filipinos in the grant of concessions covering the national economy.

Noting that in his speech, Senator Ejercito Estrada (J) gave a list of joint venture agreements with individuals with foreign-sounding names, Senator Defensor Santiago asked whether there has been any instance when Pagcor gave preference to qualified Filipinos. In reply, Senator Ejercito Estrada stated that some of the individuals he mentioned are Malaysian nationals.

Asked how Pagcor selected these individuals, Senator Ejercito Estrada (J) stated he had no idea what criteria Pagcor followed in choosing the joint venture partners.

Asked whether fraudulence was committed in the selection of the joint venture partners, Senator Ejercito Estrada (J) replied that there was no transparency in the deals that Pagcor made.

Senator Defensor Santiago noted that the matter of the joint venture agreements alone could be a

reason to inquire into Pagcor's activities in view of the constitutional provision that preference should be given to qualified Filipinos.

As regards the lease agreements of Pagcor with foreign suppliers of slot machines, Senator Defensor Santiago asserted that under P.D. No. 1869, Pagcor has the corporate power to enter into such kind of contracts.

Senator Defensor Santiago asked whether the intention was to lease the slot machines for a certain fee; or, as suggested in the speech, to enter into a joint venture agreement with the foreigners and to avoid public controversy, the term "lease agreement" was used since the term "joint venture agreement" might leave the impression that the foreigners would only get 40% of the profit when, in fact, it might be making more than 40%. Senator Ejercito Estrada (J) affirmed that such was his impression.

Moreover, Senator Defensor Santiago pointed out that by virtue of P.D. No. 1869, Pagcor could enter into management contracts with foreigners and could hire or fire them as its officials or employees. She said that it was strange why Pagcor, which has the financial capability to buy its own slot machines, should enter into lease agreements with unknown foreign lessors when, under the management contracts allowed by its Charter, the earnings of the foreigners who own the slot machines shall be limited to 10%. She then reiterated her query whether the contract is fraudulent in view of an alleged attempt to mask the real intention of Pagcor to allow the foreigners to earn more than 40% of profits. Replying in the affirmative, Senator Ejercito Estrada (J) said that he got hold of the contract of Pagcor and the Malaysian national who, after the exposé of *The Probe Team* and *The Philippine Daily Inquirer*, changed the 60%-40% joint venture to a lease contract. He reiterated that when Mrs. Arroyo spoke before the Arsenio Lacson Foundation in August 2002, she ordered Pagcor to stop the proliferation of slot machines; however, the Pagcor chief defied the order, went ahead and opened other slot machine arcades.

Expressing support for the cause championed by *The Philippine Daily Inquirer* and *The Probe Team*, Senator Defensor Santiago underscored the need to discourage the operation of slot machine arcades because it could easily seduce the minds of the young into believing that they could get

something for nothing or for a very small amount of money. She believed that it is extremely difficult to eradicate this gambling mentality in a young person who adopts this attitude not only for his leisure time activities but also for the rest of his life—his career, profession, and attitude towards his colleagues.

Asked whether he believed that the joint venture contract was void, Senator Ejercito Estrada (J) affirmed that it was void from the start. Thus, Senator Defensor Santiago said that the contracts should be cancelled because they could not be reformed in view of Article 1359 of the Civil Code that states, "xxx When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of fraud, one of the parties may ask for the reformation of their instrument to the end that such true intention may be expressed." Since Pagcor and the foreign supplier of the slot machines have each acted out of bad faith, she said that it would highly be unlikely that either one would ask for the reformation of the instrument. She pointed out that Article 1366 of the Civil Code also provides that there shall be no reformation "when the real agreement is void." The agreement between Pagcor and the foreign supplier, she said, violated a certain provision of the law by masking the real nature of a written document and calling it a "lease" instead of a "joint venture."

Upon query, Senator Ejercito Estrada (J) affirmed that he would like the contract to be rescinded immediately.

Asked whether Pagcor turns over the money to the National Treasury so that Congress could decide on how it should be spent, or whether it goes directly to the Office of the President, Senator Ejercito Estrada (J) replied that Pagcor donates the money directly to various government agencies such as the Philippine Sports Commission and the National Commission for Culture and the Arts, but the bulk of the money goes to the President's Social Fund.

Asked on Pagcor's justification for disbursing public funds without authorization from Congress, Senator Ejercito Estrada (J) answered that its justification stems from its charter.

Senator Defensor Santiago stated she could not find anything in the Pagcor Charter that grants it

such power. In fact, she pointed out that Section 15 provides that an auditor shall be appointed for the Pagcor. Senator Ejercito Estrada (J) stated that he would inform Senator Defensor Santiago about the identity of the Pagcor resident auditor and whether he or she has submitted annual reports.

Senator Defensor Santiago noted that a section of the Pagcor Charter entitled, "Exemption From Civil Service Law," exempts all positions in the Corporation, whether technical, administrative, professional or managerial from the provisions of the Civil Service law, rules and regulations, and they shall be governed only by the personnel management policies set by the Board of Directors, and all employees of the casinos and related services shall be classified as "confidential" appointees.

Asked whether senators are confidential officials, Senator Ejercito Estrada (J) replied in the negative. Senator Defensor Santiago wondered why P.D. No. 1869, which was promulgated under a martial law regime in 1983, exempts only members of Pagcor from the Civil Service law when even the senators of the Republic are not. Senator Ejercito Estrada (J) said he did not know the reason why, except that President Marcos assumed legislative powers when he declared martial law in 1972.

In view thereof, Senator Defensor Santiago stressed that it is time Pagcor officials were covered by the Civil Service law and forgo such an extremely favored and discriminatory treatment under the existing law.

At this point, Senator Defensor Santiago adverted to a 1989 Supreme Court ruling in *Basco vs. Pagcor* that upheld the Pagcor law on the ground that it would earn money that could be used to good purpose to benefit the public, the summary of which is that "public welfare then lies at the bottom of the enactment of P.D. No. 1896." She believed that it does not serve the public welfare when Pagcor, either by itself or in a joint agreement with aliens, or by means of so-called "management contracts" or "lease agreement," enhance and proliferate the operation of slot machines which are apparently the most effective means of seducing the minds of the young into adopting the get-rich-quick mentality that is responsible for the culture of corruption in the country.

Replying to further query, Senator Ejercito Estrada (J) likewise believed that public welfare was not Pagcor's interest when it entered into contracts with private investors.

Senator Defensor Santiago added that P.D. No. 1869 makes it valid for Pagcor to try and extend its operations as far as it can possibly go and make the most money without discrimination as to who its victims are — whether they are people who deserve to be pleased because they stole their money, or whether they are right-thinking people who are misled by the Pagcor propaganda.

As a national policy issue, Senator Defensor Santiago asked on the difference between *jueteng* and Pagcor-operated slot machine arcades. Senator Ejercito Estrada (J) replied that *jueteng* has never been legalized in the country despite the desire of many to legalize it because it targets low-income Filipinos whose money should be spent on basic necessities. While anybody could play *jueteng*, he said that only those in their right age and with the required "show money" could play in casinos. Moreover, Senator Ejercito Estrada said that the Supreme Court ruled in *Basco vs. Pagcor* that P.D. No. 1869 was enacted pursuant to the policy of the government to regulate and centralize, through an appropriate institution, all games of chance authorized by existing franchise or permitted by law. He said that according to the ruling, "As was subsequently proved, regulating and centralizing gambling operations in one corporate entity - the PAGCOR, was beneficial not just to the government but to the society in general. It is a reliable source of much needed revenues for the cash strapped Government. It provided funds for social impact projects and subjected gambling to "close scrutiny, regulation, supervision and control of the Government" (4th Whereas Clause, PD 1869). With the creation of PAGCOR and the direct intervention of the Government, the evil practices and corruptions that go with gambling will be minimized if not totally eradicated."

Senator Defensor Santiago disclosed that the latest and newest Catholic catechism states that gambling is not a sin for as long as the person engaged in that activity can afford to do so. She surmised that Catholic clerics oppose *jueteng* in the belief that it caters to the lower masses of people who cannot afford to gamble. However,

she lamented that she has not heard the clerics raise objections to P.D. No. 1869 possibly because the Pagcor Charter provides that only rich people with certain income are likely to engage in gambling activities, in which case, there is already compliance with the law.

Apparently, Senator Defensor Santiago said, the philosophy of the Catholic Church with respect to gambling is that only the rich can gamble, adding that she does not know what kind of attitude God takes to such kind of blatantly discriminatory intellectualism -- that the rich can gamble simply because they can afford to do so. It seems, she said, that the Church has turned its back to experience which has shown many times that rich people can impoverish themselves because of gambling. She wondered what the Supreme Court has to say about such kind of philosophy, particularly in the light of the equal protection clause of the Constitution. She noted that Pagcor is legal because rich people can gamble and *jueteng* is illegal because it is patronized by the poor.

Senator Ejercito Estrada (J) agreed with the observation saying that only the rich can afford to go to the casinos to gamble and the underprivileged can only afford to bet on *jueteng*. He said that he is in favor of legalizing *jueteng*.

INTERPELLATION OF SENATOR GORDON

At the outset, Senator Gordon congratulated Senator Ejercito Estrada (J) for an excellent presentation on casinos.

Asked about the process through which a contract of lease is granted to those who want to operate a slot machine business, Senator Ejercito Estrada (J) replied that only Pagcor determines its own criteria.

Senator Gordon clarified that the proponents of the slot machine business, not Pagcor, must secure a lease with the hotel, adding that there are rules and regulations governing the grant of a lease to any proponent to operate slot machines. He added that the proposed site must be acceptable to the local government and the various interest groups and components of the community.

Further, Senator Gordon pointed out that the financial capability of the proponent to purchase slot

machines, computer software and other necessary facilities to sustain the operation of the slot machines has to undergo review. He related that in an interview, President Macapagal Arroyo ordered the operation of an arcade in Binondo to cease because it did not meet public acceptance, thus, the President followed the requirement for public acceptability. He pointed out that the order to cease operations was only applied to the arcade in Binondo because the government was sensitive to the concerns of the community.

Asked if Pagcor regularly remits its monthly profits to the government, Senator Ejercito Estrada (J) replied in the affirmative.

Senator Gordon noted that Pagcor operates from zero and that it has to borrow money in order to buy slot machines. Senator Ejercito Estrada (J) opined that Pagcor can afford to do so through its earnings.

However, Senator Gordon explained that Pagcor is not allowed to do it because all of its earnings are remitted to the government. He further commented that there is no need for Pagcor to borrow money only to buy slot machines, especially since the machines easily become obsolete. Adverting to the General Appropriations Act of 2002, he posited that there is a strong suggestion that the government should lease rather than purchase capital equipment. He underscored that it is better to lease the machines, especially with a 60% profit share. Senator Ejercito Estrada (J) maintained that Pagcor's joint venture agreements are disadvantageous to the government.

Senator Gordon asked about the disadvantages as regards purchasing capital equipment that would require additional capital or loans when the same could be acquired through lease. He surmised that Pagcor could have preferred the lease agreement to an outright purchase because over a period of time, the maintenance, depreciation and replacement of the slot machines would be at no cost to government. Senator Ejercito (J) Estrada maintained that Pagcor should have operated the arcades so that all earnings would have accrued to the government instead of the private investors. Besides, he observed that even if Pagcor had purchased ten machines from the United States, it would have recovered the cost in a few months.

On a related matter, Senator Gordon informed the Body that in the last year of the stint of Alice Reyes as chair, Pagcor realized P14 billion in gross revenues compared to P22 billion last year under the stewardship of Chairman Genuino. Of course, he pointed out, there were more slot machines being operated at more locations, although, some had been closed upon orders of the President in view of the public outcry.

Given the claim of Pagcor that it earned P22 billion last year, Senator Ejercito Estrada (J) stated that he could not understand why it had to secure a loan. Chair Alice Reyes, he recalled, got a loan for the retirement package of the Pagcor personnel, not for anything else.

Senator Gordon disclosed that Pagcor was, in fact, preparing to set up the Pagcor City, an entertainment center, to encourage tourism. He recounted that as then tourism secretary, he was invited to Pagcor meetings several times because Pagcor was trying to have the Nayong Pilipino relocated to the proposed city. Precisely, he explained, Pagcor had to secure a loan because all of its earnings go to the government. He stressed that unless the Pagcor charter is amended to allow it to keep part of its earnings for its operations, it would not be competitive. He bemoaned that Pagcor is not even allowed to market itself unlike other casinos that can hold entertainment shows to bring in guests. In fact, he pointed out, people are flown all the way to Las Vegas, Hong Kong or Malaysia just to gamble.

Senator Gordon observed that the Philippine government gets 62% of the Pagcor earnings; on the other hand, the Chinese government retains 39% from the earnings of the casinos in Macau; the Malaysian government, 25% from the casino-gaming business; and the Cambodian government, 4%. He pointed out exercising sound business judgment, some casinos in Asia have not exposed themselves to maintaining an inventory of gambling machines and undertaking maintenance and marketing costs.

INTERPELLATION OF SENATOR ANGARA

Senator Angara said that two years ago, he stood on the floor to bring out the issue of slot machines and the Arroyo administration temporarily stopped the operation of slot machines. He said he was surprised to learn that the administration has continued the project. He asked whether Pagcor,

under its charter, is supposed to pay five percent in franchise tax and 50% of its net earnings to government. Senator Ejercito Estrada (J) replied in the affirmative.

Asked whether there are other charges imposed on Pagcor by virtue of special laws, Senator Ejercito Estrada (J) replied in the affirmative, pointing out that the Philippine Sports Commission and the National Commission for Culture and the Arts are among the beneficiaries.

Asked how much these charges add up to, Senator Ejercito Estrada said that he would furnish the information at a later time.

Senator Angara stated that many countries rely on income from gambling to support its social projects, pointing out that many of the states in the U. S. authorize gambling or lottery to support public education and hospitals. He asked where Pagcor's money went in the past 28 years. Senator Ejercito Estrada (J) said that the bulk of Pagcor's earnings went to the President's Social Fund.

Senator Angara pointed out that during the 10th anniversary of the United Kingdom's lottery system, BBC aired almost every hour that the lottery has produced billions of pounds that funded the establishment of a new museum and the Millennium Bridge, and the revival of Manchester as a cultural destination, among others. He asked whether the same could be done relative to the proceeds of Pagcor. Senator Ejercito Estrada (J) stated that Pagcor should be transparent in all its deals.

Senator Angara pointed out that it is the biggest scandal in the lottery policy that there is no palpable and visible evidence of the money generated by lottery. Senator Ejercito Estrada (J) said that Pagcor even spent much on advertising, marketing, representation and entertainment funds, including intelligence and discretionary funds, without rigorous audit. He pointed out that the Consolidated Statement of Income and Expenses for 2003 showed that Pagcor spent for the following: personal services, salaries and wages, P1,022,500,640; employees' benefits, P3,448,574,777; and employees' allowances, P57,085,788. The benefits and allowances of Pagcor employees amounting to P3,505,650,565, he said, is 350% more than the salaries and wages of officers and employees of corporations that are exempted from the Salary

Standardization Law. He added that Pagcor officers and employees are receiving much more than the average public employee and even the President of the Philippines.

In reply to further queries, Senator Ejercito Estrada (J) disclosed that in 2003, Pagcor spent its budget of P948 million for advertising and marketing as follows: public relations, P238 million; advertising, P121,631,017; and per diem of members of the Board of Directors for meetings, P26 million. He said that Pagcor spent P269 million of its intelligence fund.

Senator Angara stated that legislators are complaining about the intelligence fund of several law enforcement officers that do not even match. Senator Ejercito Estrada (J) surmised that the members of the AFP and the PNP who have serious intelligence responsibilities must envy the Pagcor officials and employees.

Asked why Congress is supporting the renewal of the franchise of Pagcor that has no fiscal accountability at all, Senator Ejercito Estrada (J) believed that Pagcor is a rich source of revenue for government although it is wrong in not making its deals transparent. The Bigger House, he said, has approved on Third Reading the measure that extends Pagcor's franchise.

Senator Angara stated that while he is not against gambling or lottery, he is in favor of the use of the proceeds of gambling and lottery for social projects as is being done in Hong Kong where the Hong Kong Jockey Club supports all the needs of public education and hospitals. He said that he would raise further questions when the Pagcor's financial statements become available.

On another matter, Senator Angara pointed out that Pagcor was created in 1977 through Presidential Decree Nos. 1067-A, 1067-B, and 1067-C. However, he said that Pagcor is asking for the renewal of its franchise based on its claim that Presidential Decree No. 1869, which is merely a consolidation of the three presidential decrees, was issued on July 11, 1983, so that Pagcor has only used 22 years of its 25-year franchise. Further, he stated that since Pagcor's franchise has expired in 2002, Pagcor should stop its operation. The Body, he said, should treat Pagcor's application as one for a new franchise and not a renewal.

Assuming that the Pagcor franchise would expire in 2008 as alleged by Pagcor, Senator Ejercito Estrada (J) said that it is disturbing that Pagcor entered into a contract with Waterfront Hotel and Resort whose term extends until December 31, 2008, that is six months beyond the life of the Pagcor franchise.

Senator Angara said that Pagcor should be warned that every transaction that it entered into outside of its power would be questioned by the members. He asked whether Stanley Ho, the gambling lord of Macau, is now the owner of casinos in Laoag and Clark. Senator Ejercito Estrada (J) stated that documents show that the casinos are being run by Mr. Jack Lam who belongs to the group of Mr. Stanley Ho.

Senator Angara said that he would not mind if the big operators come to the Philippines so long as they would give the best terms in operating casinos, and would not come like a thief in the night. Similarly, he said that he would not mind if the gambling operators repatriate their profits as he expressed hope that they would contribute to the development of the areas where they are operating like building infrastructure.

In this regard, Senator Angara informed the Body that even Singapore has now opened its doors to international gambling because it hopes, in the coming years, to partake of a US\$200 billion industry, although, it has imposed very strict, transparent rules. He asked why Pagcor was being secretive and surreptitious about the slot machines in Metro Manila and other areas. Senator Ejercito Estrada (J) surmised that there might be some secret deals between Pagcor and the investors.

In closing, Senator Angara believed that since Pagcor is now applying for the renewal of its franchise, it is time the Committee on Public Services looked into its operations and the social good it may or may not have contributed in the past 28 years.

INTERPELLATION OF SENATOR OSMEÑA

At the onset, Senator Osmeña noted that under paragraph 3, Section 14 of Pagcor's charter, tourists or foreigners and residents with a gross income of P50,000 for the previous years are allowed to play in casinos. However, he pointed out that considering

that its charter was written in 1983, the P50,000 income would be P300,000 today.

Senator Ejercito Estrada (J) expressed the view that Section 14 might be obsolete because Pagcor no longer asks the local players about their income in the previous years as long as they have a show-money of P1,000.

On the underlying reason for putting a limitation on the income of local players in the casinos, Senator Ejercito Estrada (J) opined that it was not the intention of former President Marcos to allow poor Filipinos to play in the casinos when he issued Presidential Decree No. 1869.

Senator Osmeña surmised that unlike the rich who can afford to lose so much money in casinos and the fact that gambling tends to become a vice that encourages a "get-rich-quick" attitude, the poor, who are prone to make a living out of gambling, were prohibited from playing in the casinos.

Senator Osmeña noted that paragraph 3(a) of Section 14 does not require tourists and foreigners to present a statement of income. This, he said, supports the view that since they could afford to come into the country, they could also afford to gamble and the government would not be morally responsible for whatever might happen to them since they are not citizens of the Philippines. Senator Ejercito Estrada (J) agreed to the observation.

Moreover, Senator Osmeña noted that while gambling has become a very lucrative industry all over the world, in other affluent countries like the United States, it has been limited to certain cities or areas like Atlantic City in New Jersey, and Las Vegas and Reno in Nevada.

Asked if he was aware of the indiscriminate dispersal of casinos all over the country, even in areas where no tourists go, Senator Ejercito Estrada (J) replied in the affirmative as he reiterated that under the present administration, Pagcor opened at least 13 slot machine arcades in Metro Manila, one in Cebu, and one in Davao.

Senator Osmeña wondered how many of the residents with a gross income of P300,000 would play slot machines in Palayan City in Nueva Ecija. Senator Ejercito Estrada (J) said that precisely, Pagcor must be transparent about its contracts and deals.

On the minimum amount of money that one must have before being allowed to play in a slot machine arcade, Senator Ejercito Estrada (J) replied that a player must have a minimum show-money of P1,000.

Senator Osmeña expressed concern that since no one has a copy of the financial report of Pagcor or information on the actual cost of setting up and operating a slot machine arcade or a casino, he would not be able to determine whether 40% of the gross income is a good take for a joint venture operation. In this regard, he reasoned that Pagcor's machines would not be obsolete if no other casinos are allowed to operate in the country. However, he pointed out that slot machines are self-liquidating since the operator is allowed to make money on them and pay the suppliers from the same income. He surmised that the investors could recover their money in one year. Senator Ejercito Estrada (J) gave the assurance that Senator Osmeña would be given the data.

Asked on the authority that Pagcor has to go into real estate ventures, Senator Ejercito Estrada (J) replied that under Presidential Decree No. 1869, there is no provision allowing Pagcor to go into the real estate business. However, Senator Osmeña pointed out that among its powers provided in the General Provisions, Pagcor shall have the right to lease or purchase public lands or reclaimed lands from the government or even build the necessary infrastructures for its authorized casino operations. He said that since no one is performing oversight functions on Pagcor, somebody could easily make a lot of money out of a P50 billion to P100 billion project that would keep Pagcor in debt for the next 10 to 20 years. He asked if this matter had been looked into. Senator Ejercito Estrada (J) replied in the negative.

Senator Osmeña also reminded that Pagcor's charter allows the government to collect not only the 5% franchise fee but also 50% of the gross earnings over which there is hardly any oversight. He disclosed that in Nevada, the Nevada State Gaming Corporation strictly regulates all gambling establishments there to ensure that the state is not cheated of its proper revenues.

Asked if a similar watchdog oversees Pagcor, Senator Ejercito Estrada (J) replied that he was not aware of any.

Senator Osmeña stressed that certain anomalies have resulted precisely from the lack of oversight. For instance, he cited the 75-year lease agreement for raw space Pagcor signed in 1995 with the Waterfront Hotel in Cebu at a rate of P1,000 per square meter monthly with an escalation clause of 10% annually, when the going rate at that time was only P200 per square meter. He said that the same lease contract carried a marketing agreement which gives the same Malaysian group 20% of the incremental gross earnings of all the casinos in Cebu province for 25 years.

Replying to the Chair's query, Senator Osmeña stated that the marketing agreement was signed in 1995. He said that he exposed the anomaly on the floor of the Senate and a few hearings were conducted but the Ramos government did not do anything about it. He pointed out that the group is making a fortune from the marketing agreement because the earnings of the Cebu casinos have tripled over the years and this arrangement would go on for several more years.

On the other hand, Senator Osmeña disclosed that the Waterfront Hotel signed a 75-year lease contract for Pagcor properties in Mactan and Lahug at a fixed rate of P10 and P17 respectively, per square meter monthly, when the going rate was about P7,000 per square meter. He underscored that the group cheated Pagcor and the Filipino people both ways.

To the suggestion that he add these anomalous agreements to his inquiry, Senator Ejercito Estrada (J) agreed.

Finally, Senator Osmeña asked if COA properly audits Pagcor every year as he had been informed that the members of the board of directors of Pagcor receive emoluments higher than what the trustees of GSIS and SSS receive. He added that the Body should look into this allegation, too. Senator Ejercito Estrada (J) agreed.

INTERPELLATION OF SENATOR BIAZON

Replying to Senator Biazon's queries, Senator Ejercito Estrada (J) gave assurance that he would give the former a copy of Pagcor's report of gross and net earnings. He said that Pagcor's charter is silent on the authorized operational expenses of the gaming corporation, so it is possible that its net income depends on its officials' sole

determination. He agreed that the Body should also review Pagcor's charter.

REFERRAL OF SPEECH

Upon motion of Senator Pangilinan, there being no objection, the Body referred Senator Jinggoy Ejercito Estrada's privilege speech and the interpellations thereon to the Committee on Public Services.

SECOND ADDITIONAL REFERENCE OF BUSINESS

The Secretary read the following matters and the Chair made the corresponding referrals:

COMMITTEE REPORTS

Committee Report No. 15, prepared and submitted by the Committee on Banks, Financial Institutions and Currencies on Senate Bill No. 1949 with Senators Drilon, Magsaysay Jr., M. A. Madrigal and the members of the Committee as authors thereof, entitled

AN ACT GOVERNING THE ESTABLISHMENT, OPERATION AND REGULATION OF LENDING COMPANIES,

recommending its approval in substitution of Senate Bill Nos. 1103, 1180 and 1762.

Sponsors: Senators Angara and Enrile

To the Calendar for Ordinary Business

Committee Report No. 16, prepared and submitted by the Committee on Ways and Means on Senate Bill No. 1950 with Senators Recto, Drilon, Flavio, Pangilinan and Gordon as authors thereof, entitled

AN ACT AMENDING SECTIONS 27, 28, 34, 106, 108, 109, 110, 111, 112, 113, 114, 116, 117, 118, 119, 125, 148, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES,

recommending its approval in substitution of Senate Bill Nos. 1337, 1838 and 1873 taking into consideration of House Bill Nos. 3555 and 3705.

Sponsor: Senator Recto

To the Calendar for Ordinary Business

SPECIAL ORDER

Upon motion of Senator Pangilinan, there being no objection, the Body approved the transfer of Committee Report No. 16 on Senate Bill No. 1950 to the Calendar for Special Orders.

**COMMITTEE REPORT NO. 16
ON SENATE BILL NO. 1950**

Upon motion of Senator Pangilinan, there being no objection, the Body considered, on Second Reading on Senate Bill No. 1950 (*Committee Report No. 16*), entitled

AN ACT AMENDING SECTIONS 27, 28, 34, 106, 108, 109, 110, 111, 112, 113, 114, 116, 117, 118, 119, 125, 148, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

Pursuant to Rule XXIII of the Rules of the Senate, with the permission of the Body, only the title of the bill was read *without prejudice* to the insertion of its full text into the Record of the Senate.

Thereupon, the Chair recognized Senator Recto for the sponsorship.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 6:04 p.m.

RESUMPTION OF SESSION

At 6:09 p.m., the session was resumed.

SPONSORSHIP SPEECH OF SENATOR RECTO

In sponsoring Senate Bill No. 1950, Senator Recto delivered the following speech:

Many of you here can think of a hundred reasons why we should not pass

this bill. To these, I can think of only one good reason why we should.

By the time I would have finished this speech, the government would have borrowed more than P21 million. We borrow at a rate of P1,060,000 per minute. To pay our debt, P1.2 million is gone from the Treasury every 60 seconds.

In this greatest debt pile-up in history lies the greatest failure of our generation. Whether we are in the Majority or in the Opposition, we cannot escape the blame. There is bipartisan guilt on this matter because in the revolving-door politics of ours, each one of us, one time or another, had sat on either side of the aisle. We both had the experience of being on the saddle, or toppling the one on it.

Thus, the debt problem is not caused by one group. If blame is to be assigned, let it be on a generation of leaders, our generation.

If we have created our own mess, then it is our duty to clean it up. If this problem was created by this generation, then it must be solved by this generation. And even if this problem was inherited by this generation, we must see to it that this problem ends with us.

It is a generational debt we must settle during our watch. We should not pass on to the next generation of leaders what had been passed on to us. The torch of leadership that we shall pass must not be wrapped in IOUs.

Why is it that as parents, we hate leaving debts to our children, but as politicians we want the national debt passed on to the next government?

We borrow recklessly knowing full well that those who will come after us will foot the bill. We refuse to live within our means so we borrow against future incomes. In securitization, we even pawn wealth to be created by workers yet to be born. We have not only mortgaged our children's future,

16

we have taken a second mortgage on their children's future as well.

Our refusal to pay taxes, or compel their collection, will perpetuate this cycle, and guarantee that the next generation will be an indentured one.

And if that happens, our children will remember us, not with a debt of gratitude, but simply for the debt we have left them.

Many years from now, I fear that Aquilino Pimentel V, Frankie Pangilinan II, or Richard the Third of Olongapo will berate us from across the ages as they file past our portraits on the way to the Session Hall of the same Senate of their forebears to grapple with a fiscal crisis whose seeds we had planted.

At this juncture in our history, we have two choices: Be the greatest generation by paying our dues; or let the one after us claim that title for any generation who will clean up our mess will surely be worthy of that honor.

Thus, the liberation of our grandchildren from a crushing debt begins when we start living within our means, when we start funding our needs with revenues instead of borrowing, when we stop making many national *vale* that are payable in 30 annual *gives*.

We have started to create a better future for our children when we passed a law that increased the tax on sin products, and another one that would make honest men out of taxmen.

Now we are about to take the third and hardest step on our journey to fiscal salvation. The proposal at hand will raise the biggest revenue, and spare no one.

The VAT is so pervasive that it precedes our stay in this world and lingers on after we are gone. We are brought out into this world in value added-taxed carriages and are laid to rest in value added-taxed coffins.

If tax is the membership fee to a government, then a citizen pays his dues in the form of VAT many times in a day, from the moment he flushes the value added taxed-water down the toilet in the morning, to the time he brushes his teeth with a value added taxed-toothpaste at night.

The omnipresent trait of the VAT stems from the fact that it is a consumption tax, and man, well, is a consumption animal.

It is a sales tax, so every time a person buys a good or a service, he pays a tax on it. Value-added refers to additional inputs on a product, so that when a one-peso leather becomes a two-peso wallet, the added value is worth one peso, and it is the amount upon which the value-added tax of ten percent will be levied.

If that plain wallet gets reincarnated as a designer leathersgood then the difference between the purchase price and the sale price is subject to a ten percent VAT.

The VAT chain can be compared to a product riding an LRT coach, with each station imposing a ten percent tax on whatever additional service it can provide within its segment, until the final stop, where the buyer foots the accumulated bill, taxes and all.

The government's dependence on VAT collections is robust. Last year, it collected P139 billion in VAT, or 18 centavos for every tax peso.

Nobody can escape from VAT. *Ka Roger* may evade the military, avoid income tax and pay no franchise tax, but the long arm of VAT picks his pocket even in his mountain hideout because each time he buys a cellcard or a *Lucky Me*, he pays a VAT.

Let it not be said that we did not submit this bill to public hearings. For the record, we held 9 public hearings, lasting a total of 30 hours and which were attended by more than 1,000 people.

If the committee was only after the bottomline, we could have rubberstamped

our approval to the Executive's request for a higher and broader VAT.

But we all know that a tax proposal is not made superior nor feasible by its promise of yield. Senators are not like pharaohs whose enchantment with the pyramids led them to turn a blind eye to the human cost.

We do not embrace tax measures like long lost loves. Public interest requires us to treat each with a healthy dose of skepticism, and the VAT bills were not spared of the cynical eye.

Because a good tax measure is forged in the anvil of criticism, the VAT bills were subjected to a battery of tests to establish whether they should indeed be adopted.

In our opinion, a VAT bill, or for that matter any revenue measure, worthy of our support must be fair and just.

A bill must not perpetuate an unjust system wherein a few firms that wallow in income do not pay tax while people who wallow in poverty do.

We can only get the people to pay a tax that will hurt them if they will see that those better off will also feel the pinch. People naturally despise paying taxes, but they will despise us more if they will see others who should pay, do not.

The cornerstone of any just tax system is the proportionate allocation of both pain and perks, of relief and rewards. In this regard, we had asked the government: Do the VAT bills spread out the burden or put it all on the shoulders of the consumers?

If it will be borne by the consumers, what can we do to lighten the load? If we cannot exempt them from the tax hike, can we at least soften the blow?

The committee hearings also gave us the opportunity to challenge the basis of exempting sectors from the VAT. What caused them to be beneficiaries of legislative

grace in the first place? Was it due to a sound economic idea or simple strength of political numbers? Is it economic sacrilege to tax them?

In examining the VAT system, we saw an inordinate number of leaks in the upstream sector of the economy, prompting us to ask our guests: Will plugging all these leaks or letting the VAT chain begin there, yield revenues for the government?

What is the rationale behind exempting from VAT the most profitable firms whose profits are guaranteed by the government while subjecting to VAT mom-and-pop operations who have to sink-or-swim in the vagaries of the free market system?

How much taxable income are exhaled through these VAT loopholes was another question repeatedly asked, concerned as we are with foregone revenues.

If we are going to lift their VAT exemptions, will it cancel the need to raise the VAT rate and spare millions of people from paying a higher VAT? How about the ease of collection? Will it be easier to collect billions of pesos from a few VAT transactions than a few pesos each from billions of VAT transactions?

Have we tried to collect existing VAT assessments before putting additional pressure on those who have long been complying?

Does this round of VAT proposals improve the efficiency of the system? Does it involve leak repairs? If not, we will only increase the leak once we increase the water pressure, so to speak.

Are there any other taxes that can substitute for a higher VAT rate, or complement a slimmer version of the latter? Are we putting all our fiscal eggs in one VAT basket?

On the issue of multiple rates, will this scheme promote ease of collection and prevent distortion in the chain or will it lead to confusion and revenue loss?

[Handwritten signature]

In short, we were looking for a formula that would plug the leaks, expand the base, simplify collection, ensure transparency, yield buoyant revenues, and distribute the burden in the VAT system.

With the above as guideposts, we have come to the conclusion of discarding a higher VAT rate in favor of lifting VAT exemption of certain goods and services. It is a move that will not jeopardize the government's need for additional revenues.

In VAT, the DoF wants P71.24 billion. The House says P71.21 billion. We counter with P81.8 billion. With regard to the DoF, it does not include the power sector and, therefore, it does not complete the VAT chain.

The DoF and the House hit their targets using the double-barrel shotgun of a VAT rate increase and the expansion of the VAT coverage. I say we can hit ours with a single shot, of just expanding the VAT base.

Thus, under our proposal the VAT rate stays at ten percent. In exchange, we let a few goods and services - twelve to be exact - to be covered by VAT. Why increase the VAT on, say, 6,000 products, when VAT-ing 12 will do the trick?

This option is fairer to the taxpayer, and one that this government can live with.

A tax system which allows the most profitable company in the country, a coal-fired power plant, not to pay VAT, while a small store beside it is made to pay VAT, fails the fairness test.

There is injustice when a coal-fired plant that grosses P131.7 billion a year does not keep a book on VAT transactions, while a small store that sells on the average two cellcards, one case of gin, one ream of cigarette, and half a case of beer a day keeps one.

Thus, a "higher VAT" will simply assign the burden of shouldering the "added VAT" on those who are already saddled

by VAT. A "higher VAT" will petrify the status quo, and preserve static, if not, sliding collections.

Our preference for a "wider VAT" over a "higher VAT" is also anchored on administrative considerations. Not only is it a superior policy from the point of view of principles, but from practical considerations as well.

We need a tax that will give "fast-acting relief" to the fiscal woes of the government. Sectors presently exempted can provide the infusion of funds to this government, fast. The advantage of capturing the VAT from upstream industries such as fuel and power is that only a few players will be monitored, thus the ease of collection, and the least leaks, which are not possible in a diffused VAT base setup.

The committee recommends that power; fuel; airline and shipping fares; night and day clubs; services of doctors and lawyers; works of art; and non-food agricultural products join the VAT club.

We have taken the greatest care in what goods and services will be included in the VAT net.

Let me assure the Body that staples and basic necessities would remain VAT-free. Staple food and agriculture, health and education, low-cost housing and lease of residential units would stay VAT-free zones.

The result is that when a laborer eats his *almusal* at dawn, he can ball a fist of VAT-free rice to go with his VAT-free *galunggong* and VAT-free *kamatis* dipped in VAT-free *bagoong* with a VAT-free egg on the side, and cap it with a cup of VAT-free *kapeng-barako* made sweet by VAT-free *muscovado* while he scans lotto results in a VAT-free *dyaryo*.

While we are imposing VAT on these services and goods, we are proposing measures that will mitigate the impact on such a tax on consumers.

In the case of IPPs, we exempt indigenous and renewable energy sources.

We will not VAT the sun, the wind, the mighty river of Agus, the steam of Mount Apo, or the gas from the bowels of Malampaya.

However, for power plants that run on oil, we will reduce to zero the present excise tax on bunker fuel, to lessen the effect of a VAT on this product.

For electric utilities like Meralco, we will wipe out their franchise tax in exchange for a VAT.

And in the case of petroleum, while we will levy the VAT on oil products, so as not to destroy the VAT chain, we will however bring down the excise tax on socially sensitive products such as diesel, bunker fuel and kerosene.

By reducing the excise tax on fuel to give room to VAT, we are giving up P11 billion in annual revenues a year. As to the franchise tax on electric utilities, its repeal will cost us an additional P5.69 billion. If relief has a price tag, it bears this number: P16 billion - a year.

What do all these exercises point to? These are not contortions of giving to the left hand what was taken from the right. Rather, these sprang from our concern of softening the impact of VAT, so that the people can cushion the blow of higher prices they will have to pay as a result of VAT.

As a result of these moves, fears arose that the VAT on power generation companies, electric utilities and electric cooperatives will cause a spike in power rates. Yes, there will be an increase, but not astronomically, as some fear-mongers would like us to believe.

Latest simulations made by Napocor point to only 40 centavos per kilowatt hour increase, as a result of the mitigating measures we are proposing such as the VAT-exemption of indigenous energy sources, the repeal of the franchise tax on electric distribution companies, and the reduction of the excise tax on bunker fuel.

On fuel, our proposal, as shown by the graph, is "gentler and kinder" than the DoF's. Because an excise tax is fixed and impervious to the ebb and flow of gas prices, the VAT, while it will rise with gas prices, shares the same downhill ride when prices go down.

If we will notice in the slide, on the socially sensitive products, for diesel, the DoF's plus 20% will be at P2.91 increase per liter. Our version is only 63 centavos because we reduced excise taxes.

For fuel oil, the DoF would have it at P1.86; ours should be at P1.22. For LPG, the DoF would have P1.99; ours would be at P1.66.

We have also increased the non-VAT threshold to P750,000 a year so that any VAT-registered entity will not have to pay VAT if his average monthly gross income does not exceed P62,500 a month.

A doctor who does not make P62,500 a month will not pay VAT nor does a store owner, or a tailor, or an architect, or a couturier.

You can have an income bigger than what *Ate Glo* makes in a month, and still you will not pay VAT. P750,000 is the magic number. This is the natural inoculation against VAT. You don't earn this in a year, you are automatically inoculated against VAT.

We also have a provision that responds to the challenge of plugging the leaks in the collection of VAT before raising its rates or widening its reach.

We propose to spread out of the creditable input VAT on the purchase and import of capital goods to 60 months, a move that will raise P22.6 billion a year.

The recouping of VAT payments will not be instantaneous but is stretched to five years. Only VAT-on-VAT crediting will be allowed, unless one is an exporter, in which

case, the credit can be applied to other tax liabilities.

This provision will finally cancel the zero-rated VAT privilege of IPPs, which some say was sneaked in through the siddoor of the bicameral conference committee on the EPIRA.

An IPP that is VAT zero-rated is not only VAT-exempt, it may also claim tax credits for VAT payments on purchases, including imports. The credits may then be used to offset other tax obligations of said IPP. The repeal of this privilege will free the government from the cash flow problems attendant to refunds given to the IPPs.

This demonstrates how, like a finger stabbed into a leaking dike, a simple plug can stop the hemorrhage in revenues.

It is at this point that I would like to interject the reasons why we cannot agree to a multi-tier VAT as proposed by the House.

The internationally accepted doctrine is that for VAT to be effective, it must be broad-based as possible and hew to a single rate. All experts we have consulted have warned us that a multiple VAT rate system will be a nightmare to administer. It will become the playground of VAT evaders, they say.

One scenario painted before us is the possibility of the government ending up refunding VATable persons whose VAT input (purchase) is bigger than his VAT output (sale). Multiple VAT rates will create many Bermuda Triangles in the chain where VAT payments can disappear or diminish in size.

Businessmen lose too as they would have to maintain different books of account for articles subject to different VAT rates. Instead of attending to their businesses, they will be riveted to their books.

The beauty and integrity of the VAT chain, Mr. President, rely on a chain of

invoices and receipts that can leave an audit trail. Tax compliance by self-confession does not apply on VAT, as the latter requires records of transactions.

VAT can be likened to a GPS that can track purchases, sales and taxes from point of production to point of consumption.

This is the tool that we need to monitor the petroleum industry given reports of large-scale smuggling in this sector, which had deprived the government of billions of pesos in foregone revenues a year.

VAT can validate and reconcile taxes paid at point of landing or production to what are paid at point of final consumption through an unbroken chain of invoiced transactions. At present, there is no way of knowing if a diesel bought from a gas station is excise tax-paid as all fuel that arrives at the retail outlet is assumed to be tax-paid.

But in VAT, you can now have a way of tracking the journey of a gasoline shipment, from the first drip out of an oil tanker to the last drop into a gas tank.

This VAT, will end the *Only in Da Pilipins* phenomenon of diesel use going down by 260 million liters a year at a time when 300,000 more diesel-engine cars went on the road, or of national gasoline consumption plummeting by 880 million liters between 1998 and 2003 when the number of gas-fed cars actually jumped by 460,000 units during the same period.

All in all, the proposal of the Senate Committee on Ways and Means will raise P64.3 billion in additional revenues annually even while by mitigating prices of power, services and petroleum products.

However, not all of this will be wrung out of VAT. In fact, only P48.7 billion amount is from the VAT on twelve goods and services. The rest of the tab - P10.5 billion - will be picked by corporations.

What we therefore prescribe is a burden sharing between corporate Philippines and

126

the consumer. Why should the latter bear all the pain? Why should the fiscal salvation be only on the burden of the consumer?

The corporate world's equity is in form of the increase in the corporate income tax from 32 to 35 percent, but up to 2008 only. This will raise P10.5 billion a year. After that, the rate will slide back, not to its old rate of 32 percent, but two notches lower, to 30 percent.

Clearly, we are telling those with the capacity to pay, corporations, to bear with this emergency provision that will be in effect for 1,200 days, while we put our fiscal house in order. This fiscal medicine will have an expiry date.

For their assistance, a reward of tax reduction awaits them. We intend to keep the length of their sacrifice brief. We would like to assure them that not because there is a light at the end of the tunnel, this government will keep on making the tunnel long.

The responsibility will not rest solely on the weary shoulders of the small man. Big business will be there to share the burden.

To business, we are aware of the warning of a U.S. statesman that governments likely to confiscate wealth are unlikely to find much wealth to confiscate in the long run.

We would like to assure you that the "capacity to pay" yardstick is applied to both the small man and big business. Taxes to extinguish debts of the state must not be so hard on the businessman that it would diminish his industry, or worse, extinguish his trade. Government cannot get milk from a dead cow.

But on the other hand government cannot be a milking cow of business also.

This is true in some segments of the power sector. To escape taxation, some power firms have wrapped themselves up in the flag, using this, together with "pro-people" and "patriotic" incantations, as some sort of an amulet against VAT.

But what kind of patriotism is one that is soluble in taxes? Dissolving easily at the polite request of the government to pay VAT, for after all, they continue to enjoy a raft of tax perks?

A Navotas power barge under contract with the government charges the latter – now hold your breath – P899 per kilowatt hour last year. In La Union, a private diesel plant sells power at P13.36 per kilowatt hour to Napocor. P18.31 is what the San Roque hydroelectric plant bills the government for every kilowatt hour.

Twenty-two IPPs posted combined gross sales of P221.6 billion in 2003 but they paid only P6.57 billion in all kinds of national taxes that year.

That is a tax burden of not even three percent, lower than what is exacted from a policeman.

In fact, income tax payments of one million national government employees are at least four times bigger the tax payments of the IPPs. Yet, the latter had gross sales bigger than the combined basic pay of those in the public payroll.

Based on their financial statements, many IPPs can absorb the VAT, or at least lower the cost of power, phantom or real, but that would be like asking Dracula to donate blood for a change, instead of drawing it from others.

This is the final episode of a taxing season. We have saved the hardest for the last.

This is a Senate that always tempers and never tops the tax proposals of the government. To every executive overture of a new tax, our reply has never been of ratification, but of restraint.

Voting for a new tax can never be a moment of triumph for us, although some in the other Chamber may claim that it is for them. When we pass a tax measure, it is not our finest hour. We sponsor tax bills with no relish but with great reluctance, and always with a heavy heart.

126

Our prudence stands in stark contrast with the cavalier way by which the finance department would like to wring more VAT payments out of our people.

The finance department may agree to the Senate version but on top of that, increase it from 10% to 12% and, therefore, could generate P100 billion.

This demand is too steep. The DoF will be fomenting a crisis instead of ending one if it is allowed to go ahead with its plan.

It has been said that in levying taxes and shearing sheep, one must stop when one hits the skin. The duty of the Senate is to watch over the shoulders of the government so that the latter like a good shepherd will shear the wool, not the skin. Too high and too many taxes can kill the flock. Looking back at the DoF demand, one can see no difference between the taxman and the taxidermist, only that the latter leaves the skin.

So this is where we find ourselves again, in the familiar ground of standing between the taxman and the taxpayer.

Our proposal is feasible and fair, equitable and easy to collect; more important it is high in the compassion quotient. Our proposals have many values added on it.

The easy but low road is to go where the political wind blows, but in the end it will leave the people twisting in the wind. The high but hard road is to take what may not be popular but is right. That is after all the function of leadership. Sometimes we serve our constituents not by pandering to their wants but in asserting what is proper over their objections.

The applause to our courage may not come now, but belatedly, as it reverberates from across the ages, coming from a grateful generation whose leaders, as they pass our portraits on the way to this Session Hall would say: Once upon a time, never had the fate of so many depended on so few.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 6:41 p.m.

RESUMPTION OF SESSION

At 6:47 pm, the session was resumed.

Senator Pangilinan informed the Body that Senators Enrile, Lacson and Revilla have made reservations to interpellate on the measure.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1950

Upon motion of Senator Pangilinan, there being no objection, the Body suspended consideration of the bill.

APPROVAL OF SENATE BILL NO. 1862 ON THIRD READING

Upon motion of Senator Pangilinan, there being no objection, the Body considered, on Third Reading, Senate Bill No.1862, printed copies of which were distributed to the senators on March 3, 2005.

Pursuant to Section 67, Rule XXIII of the Rules of the Senate, upon motion of Senator Pangilinan, there being no objection, Secretary Yabes read only the title of the bill, to wit:

AN ACT PRESCRIBING A FIXED TERM OF OFFICE FOR THE CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES (AFP) AND FOR OTHER PURPOSES.

The Secretary of the Senate called the roll for nominal voting.

RESULT OF THE VOTING

The result of the voting was as follows:

In favor

Biazon	Lapid
Drilon	Pangilinan
Enrile	Pimentel
Flavier	Recto
Gordon	Revilla
Lacson	Roxas

Against

Arroyo

Abstention

None

With 12 senators voting in favor, one against, and no abstention, the Chair declared Senate Bill No. 1862 approved on Third Reading.

**EXPLANATION OF VOTE
BY SENATOR ARROYO**

Explaining his negative vote, Senator Arroyo said that ordinarily, he would have voted for the bill. However, he believed that the provision which speaks of "loss of confidence" is offensive to the Constitution as he adverted to a maxim in law which says, "Where the Constitution does not distinguish, the law may not distinguish."

Senator Arroyo stated that the "commander-in-chief clause" of the Constitution is one power where, IF HE FIRES THE CHIEF OF STAFF, the "due process clause" cannot be applied; in fact, in the military, there are certain aspects where due process cannot be invoked. He said when the law says, "loss of confidence," that is restricting the power of the President to fire the Chief of Staff. He reminded the Body that the President, who is the commander-in-chief of all the armed forces, is within his constitutional right to fire the Chief of Staff for whatever reason and that cannot be appealed. Moreover, he said, the President may not demote a general but can remove or relieve him of his command for such is the discipline in the AFP. He warned that the provision might haunt HALF A DOZEN MEMBERS WHO someday might become President.*

SPECIAL ORDERS

Upon motion of Senator Pangilinan, there being no objection, the Body approved the transfer of the following to the Calendar for Special Orders:


1. Committee Report No. 14 on Senate Bill No. 1943 (amending the Central Bank Act); and
2. Committee Report No. 12 on Proposed Senate Resolution No. 195 (concurring in the ratification of the framework convention on tobacco control).

ADJOURNMENT OF SESSION

Upon motion of Senator Pangilinan, there being no objection, the Chair declared the session adjourned until two-thirty in the afternoon of the following day, March 8, 2005.

It was 6:53 p.m.

I hereby certify to the correctness of the foregoing.


OSCAR G. YABES
Secretary of the Senate
Is M Abu

Approved on March 8, 2005

*As corrected by Senator Arroyo on March 8, 2005