



REPUBLIC OF THE PHILIPPINES

S e n a t e

Pasay City

Journal

SESSION NO. 74

Wednesday, May 7, 2008

**FOURTEENTH CONGRESS
FIRST REGULAR SESSION**

SESSION NO. 74
Wednesday, May 7, 2008

CALL TO ORDER

At 3:26 p.m., the Senate President, Hon. Manny Villar, called the session to order.

PRAYER

The Body observed a minute of silent prayer.

ROLL CALL

Upon direction of the Chair, the Secretary of the Senate, Emma Lirio-Reyes, called the roll to, which the following senators responded:

Aquino III, B. S. C.	Lapid, M. L. M.
Arroyo, J. P.	Legarda, L.
Cayetano, C. P. S.	Pangilinan, F. N.
Defensor Santiago, M.	Pimentel Jr., A. Q.
Ejercito Estrada, J.	Revilla Jr., R. B.
Enrile, J. P.	Roxas, M.
Gordon, R. J.	Villar, M.
Honasan, G. B.	Zubiri, J. M. F.
Lacson, P. M.	

With 17 senators present, the Chair declared the presence of a quorum.

Senators Biazon and Escudero arrived after the roll call.

Senators Angara and Cayetano (A) were on official mission, the former abroad.

Senator Madrigal was absent on account of sickness.

Senator Trillanes was unable to attend the session as he is under detention.

APPROVAL OF THE JOURNAL

Upon motion of Senator Pangilinan, there being no objection, the Body dispensed with the reading of the Journal of Session No. 73 and considered it approved.

REFERENCE OF BUSINESS

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

**MESSAGES FROM THE
HOUSE OF REPRESENTATIVES**

Letters from the Secretary General of the House of Representatives, informing the Senate that on April 29, 2008, the House of Representatives approved the following House bills in which it requested the concurrence of the Senate:

House Bill No. 235, entitled

**AN ACT TO ESTABLISH THE BIKOL
BOTANICAL GARDEN IN THE
PROVINCE OF CAMARINES SUR
AND FOR OTHER PURPOSES**

**To the Committees on Environment and
Natural Resources; and Local Government**

House Bill No. 453, entitled

**AN ACT DECLARING CERTAIN
PARCELS OF LAND OF THE
PUBLIC DOMAIN WITHIN SMALL
ISLANDS AS AGRICULTURAL
LANDS OPEN TO DISPOSITION**

10

FOR COMMERCIAL ECO-TOURISM
AND OTHER PRODUCTIVE
PURPOSES

**To the Committees on Environment and
Natural Resources; and Tourism**

House Bill No. 1027, entitled

AN ACT EXCLUDING A PARCEL OF
LAND FROM THE FORBES PARK
NO. 1 RESERVATION, CITY OF
BAGUIO, TO BE GRANTED TO THE
BOY SCOUTS AND GIRL SCOUTS
OF THE PHILIPPINES FOR THEIR
EXCLUSIVE USE AND POSSESSION,
REPEALING FOR THE PURPOSE
REPUBLIC ACT NO. 5786,
ENTITLED AN ACT EXCLUDING A
CERTAIN PARCEL OF LAND FROM
THE FORBES PARK NO. 1
RESERVATION, CITY OF BAGUIO,
TO BE LEASED TO THE BOY
SCOUTS AND GIRL SCOUTS OF
THE PHILIPPINES

**To the Committee on Environment and
Natural Resources**

House Bill No. 1109, entitled

AN ACT DECLARING CERTAIN PARCELS
OF LAND OF THE PUBLIC DOMAIN
WITHIN BORACAY ISLAND, MUNICI-
PALITY OF MALAY, PROVINCE OF
AKLAN AS AGRICULTURAL LAND
OPEN TO DISPOSITION FOR
AGRICULTURAL, RESIDENTIAL,
COMMERCIAL, INDUSTRIAL OR
OTHER PRODUCTIVE PURPOSES

**To the Committee on Environment and
Natural Resources**

House Bill No. 1332, entitled

AN ACT DECLARING A PARCEL OF
LAND OF THE PUBLIC DOMAIN
LOCATED IN BARANGAYS BAM-
BANG, BISAYA, CAHIL, MATIPOK,
TAKLANG ANAK, BALIMBING
AND TAMAYO IN THE MUNICI-
PALITY OF CALACA, PROVINCE

OF BATANGAS AN AGRICULTURAL
LAND OPEN TO DISPOSITION FOR
RESIDENTIAL, COMMERCIAL,
INDUSTRIAL OR OTHER PRODUC-
TIVE PURPOSES

**To the Committee on Environment and
Natural Resources**

House Bill No. 3679, entitled

AN ACT AUTHORIZING THE ESTABLISH-
MENT OF THE TIMBABAN HYDRO-
POWER PROJECT WITHIN THE
AKLAN RIVER WATERSHED FOREST
RESERVE IN BARANGAY MARIA
CRISTINA, MUNICIPALITY OF
MADALAG, PROVINCE OF AKLAN

**To the Committees on Environment and
Natural Resources; and Energy**

House Bill No. 3680, entitled

AN ACT IMPOSING A LOGGING BAN
IN THE THIRD DISTRICT OF THE
PROVINCE OF NEGROS OCCI-
DENTAL

**To the Committee on Environment and
Natural Resources**

House Bill No. 3681, entitled

AN ACT IMPOSING A LOGGING BAN
IN THE PROVINCE OF SOUTHERN
LEYTE

**To the Committee on Environment and
Natural Resources**

House Bill No. 3682, entitled

AN ACT DECLARING CERTAIN
PARCELS OF LAND OF THE
PUBLIC DOMAIN LOCATED IN
BARANGAY COMBADO, MAASIN
CITY, PROVINCE OF SOUTHERN
LEYTE AS AGRICULTURAL LAND
OPEN TO DISPOSITION

**To the Committee on Environment and
Natural Resources**

js

House Bill No. 3683, entitled

AN ACT RATIONALIZING THE MANAGEMENT OF THE NATURAL RESOURCES IN THE CAMOTES ISLANDS, PROVINCE OF CEBU, AMENDING FOR THE PURPOSE PROCLAMATION NO. 2152 DATED DECEMBER 29, 1981, ENTITLED DECLARING THE ENTIRE PROVINCE OF PALAWAN AND CERTAIN PARCELS OF THE PUBLIC DOMAIN AND/OR PARTS OF THE COUNTRY AS MANGROVE SWAMP FOREST RESERVES

To the Committee on Environment and Natural Resources

House Bill No. 3684, entitled

AN ACT NAMING THE POLICE REGIONAL OFFICE XI AT SITIO CATITIPAN, BARANGAY COMMUNAL, BUHANGIN DISTRICT, DAVAO CITY AS CAMP QUINTIN M. MERECIDO

To the Committee on Public Order and Illegal Drugs

House Bill No. 3685, entitled

AN ACT DECLARING OCTOBER 2 OF EVERY YEAR AN OFFICIAL NONWORKING HOLIDAY IN THE MUNICIPALITY OF MAJAYJAY, PROVINCE OF LAGUNA AND IN ALL ITS BARANGYS, TO BE KNOWN AS THE MAJAYJAY DAY

To the Committee on Local Government

House Bill No. 3724, entitled

AN ACT RESTORING THE NAME OF THE BOHOL NATIONAL HIGH SCHOOL, REPEALING FOR THE PURPOSE REPUBLIC ACT NO. 8016, OTHERWISE KNOWN AS AN ACT CHANGING THE NAME OF THE

BOHOL NATIONAL HIGH SCHOOL IN TAGBILARAN CITY, PROVINCE OF BOHOL, TO DR. CECILIO PUTONG NATIONAL HIGH SCHOOL

To the Committee on Education, Arts and Culture

House Bill No. 3726, entitled

AN ACT DEVOLVING THE REGULATORY AND FRANCHISING POWERS OVER THE OPERATION OF MOTORCYCLES-FOR-HIRE OR *HABAL-HABAL* TO CITIES AND MUNICIPALITIES, AMENDING FOR THE PURPOSE SECTIONS 447 AND 458 OF REPUBLIC ACT NO. 7160, AS AMENDED, OTHERWISE KNOWN AS THE LOCAL GOVERNMENT CODE OF 1991

To the Committees on Local Government; and Public Services

House Bill No. 3727, entitled

AN ACT CREATING A BARANGAY TO BE KNOWN AS BARANGAY NIPOJNOC IN THE MUNICIPALITY OF AGUINALDO, PROVINCE OF IFUGAO

To the Committee on Local Government

and House Bill No. 3748, entitled

AN ACT SEPARATING THE NUEVE DE FEBRERO ELEMENTARY SCHOOL--PLEASANT HILLS ANNEX IN BARANGAY PLEASANT HILLS, CITY OF MANDALUYONG FROM THE NUEVE DE FEBRERO ELEMENTARY SCHOOL, CONVERTING IT INTO AN INDEPENDENT ELEMENTARY SCHOOL TO BE KNOWN AS THE PLEASANT HILLS ELEMENTARY SCHOOL AND APPROPRIATING FUNDS THEREFOR

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

Handwritten mark

Handwritten mark

BILLS ON FIRST READING

Senate Bill No. 2248, entitled

AN ACT TO REQUIRE HOSPITALS TO INSTALL CLOSED CIRCUIT TELEVISION (CCTV) CAMERAS IN SELECTED PORTIONS OF THE HOSPITAL AND PENALIZING THE PUBLICATION OF THE VIDEO TAKEN BY THESE CAMERAS WITHOUT A COURT ORDER

Introduced by Senator Miriam Defensor Santiago

To the Committees on Health and Demography; and Justice and Human Rights

Senate Bill No. 2249, entitled

AN ACT CREATING A COFFEE RESEARCH, DEVELOPMENT AND EXTENSION CENTER, AUTHORIZING THE APPROPRIATION OF FUNDS THEREFOR, AND FOR OTHER PURPOSES

Introduced by Senator Manuel "Lito" M. Lapid

To the Committees on Agriculture and Food; Ways and Means; and Finance

Senate Bill No. 2250, entitled

AN ACT REQUIRING ALL RETAILERS OF LIQUEFIED PETROLEUM GAS (LPG) TO HAVE A DULY INSPECTED AND ACCURATE WEIGHING SCALE OR WEIGHING MACHINE IN THEIR STORES OR ESTABLISHMENTS AND FOR OTHER PURPOSES

Introduced by Senator Manuel "Lito" M. Lapid

To the Committees on Trade and Commerce; and Energy

RESOLUTION

Proposed Senate Resolution No. 386, entitled

RESOLUTION DIRECTING THE COMMITTEE ON GAMES, AMUSEMENT AND SPORTS OF THE SENATE TO INQUIRE, IN AID OF LEGISLATION, ON THE ALLEGED UNDUE INTERFERENCE OF THE GAMES AND AMUSEMENT BOARD (GAB) INTO THE POWERS, FUNCTIONS AND DUTIES OF THE BILLIARDS AND SNOOKER CONGRESS OF THE PHILIPPINES, A DULY RECOGNIZED NATIONAL SPORTS ASSOCIATION (NSA), WITH THE END IN VIEW OF REVIEWING AND AMENDING THE PERTINENT PROVISIONS OF PRESIDENTIAL DECREE NO. 871 AND OTHER RELATED LAWS DEALING WITH GAMES AND SPORTS

Introduced by Senators Manuel "Lito" M. Lapid, Lacson, Benigno S. Aquino III and MAR Roxas

To the Committee on Games, Amusement and Sports

COMMITTEE REPORTS

Committee Report No. 47, submitted jointly by the Committees on Justice and Human Rights; and Finance, on Senate Bill No. 1976, introduced by Senator Manny Villar, entitled

AN ACT CREATING FIVE (5) ADDITIONAL BRANCHES OF METROPOLITAN TRIAL COURTS IN THE NATIONAL CAPITAL REGION, AMENDING FOR THE PURPOSE BATAS PAMBANSA BLG. 129, AS AMENDED, OTHERWISE KNOWN AS THE JUDICIARY REORGANIZATION ACT OF 1980, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES,

recommending its approval without amendment.

ms

Sponsors: Senators Francis "Chiz" G. Escudero, Enrile and Manny Villar

To the Calendar for Ordinary Business

Committee Report No. 48, submitted jointly by the Committees on Justice and Human Rights; and Finance, on Senate Bill No. 1980, introduced by Senator Juan Miguel F. Zubiri, entitled

AN ACT ESTABLISHING AN ADDITIONAL BRANCH OF THE REGIONAL TRIAL COURT IN THE PROVINCE OF SOUTH COTABATO, AMENDING FOR THE PURPOSE BATAS PAMBANSA BILANG 129, AS AMENDED, OTHERWISE KNOWN AS THE JUDICIARY REORGANIZATION ACT OF 1981, AND APPROPRIATING FUNDS THEREFOR,

recommending its approval without amendment.

Sponsors: Senators Francis "Chiz" G. Escudero, Enrile and Juan Miguel F. Zubiri

To the Calendar for Ordinary Business

Committee Report No. 49, submitted jointly by the Committees on Justice and Human Rights; and Finance, on Senate Bill No. 1981, introduced by Senator Juan Miguel F. Zubiri, entitled

AN ACT CREATING THREE ADDITIONAL BRANCHES OF THE REGIONAL TRIAL COURT IN THE ELEVENTH JUDICIAL REGION TO BE STATIONED AT KORONADAL CITY AND AT THE MUNICIPALITY OF SURALLAH, ALL IN THE PROVINCE OF SOUTH COTABATO, AMENDING FOR THE PURPOSE BATAS PAMBANSA BILANG 129, AS AMENDED, OTHERWISE KNOWN AS THE JUDICIARY REORGANIZATION ACT OF 1980, AND APPROPRIATING FUNDS THEREFOR,

recommending its approval without amendment.

Sponsors: Senators Francis "Chiz" G. Escudero, Enrile and Juan Miguel F. Zubiri

To the Calendar for Ordinary Business

**PRIVILEGE SPEECH
OF SENATOR GORDON**

Availing himself of the privilege hour, Senator Gordon hailed the life and achievements of the late Loreto Paras-Sulit, one of the pioneers and leaders of the Red Cross movement in the Philippines.

Senator Gordon urged the Senate to give recognition of her achievements, as follows: 1) she was a public school teacher who wrote elementary and high school textbooks; 2) she joined the Red Cross in 1948 and spearheaded the volunteer movement; 3) she trained young people in great values under the Junior Red Cross Movement during the early 1950s; 4) she practically supported the Red Cross through her fund-raising; (5) she was chosen in 1968 as the Secretary General of the Philippine National Red Cross (PNRC), a position she ably occupied for more than a decade; and 6) she represented the country in many international events and inculcated in the Red Cross staff her kind of professionalism, making it one of the best humanitarian organizations in the country.

Senator Gordon recalled that under the Laurel-Langley Agreement, the PNRC became one of the beneficiaries of properties that were relinquished by American companies to the Philippine government.

He informed the Body that Loreto Paras-Sulit passed away without material wealth but, he believed, she went to meet her Maker with pride and with the knowledge that she had done a great institution proud by her deeds.

Senator Gordon stated that the entire world will celebrate the Red Cross day tomorrow, May 8. He narrated that the movement evolved from an idea of Henry Dunant who, during the Battle of Solferino in 1859, while on his way to meet the king of France to transact some business, went down from his carriage to succor the wounded at a time when there were no rules of war or the so-called Geneva Convention, which would only come into being in 1863. Shortly thereafter, he continued, the Red Cross organization was founded for which deed Henry Dunant was acknowledged and welcomed by kings, princes and heads of states; the organization would later on become officially known as the International Committee of the Red Cross (ICRC). The Red Cross, he pointed out, became the first recipient of the Nobel Prize and through the years, it received four more

such awards, an achievement unsurpassed by any organization or individual.

Today, Senator Gordon said, the ICRC is composed of about 188 societies all over the world and, in times of war, its volunteer workers are able to minister to the wounded on the field and provide them with temporary shelter. In fact, he added, Apolinario Mabini and Gen. Emilio Aguinaldo tried but failed to join the movement which was then under the American Red Cross, membership being a badge of recognition.

Senator Gordon stated that Senator Zubiri is a governor of PNRG and handles the Red Cross Youth, and he, himself, has proudly served the organization for almost 40 years. He bared that the PNRG built 13,000 homes devastated by natural calamities last year; rendered various community services, like helping the wounded at the Batasan complex bombing, the Glorietta and Cavite explosions; rescued fishermen at sea; provided blood for Filipinos in need; gave assistance to the Asian tsunami victims in December 2004, and intends to provide assistance to the victims of the cyclone in Myanmar that claimed 22,000 lives. He urged the senators to pass a resolution expressing appreciation for the achievements of Loreto Paras-Sulit and extending condolences to her bereaved family.

Also, he requested the senators to pass a resolution joining the rest of the world in the celebration of the World Red Cross Day.

MOTION OF SENATOR GORDON

Upon motion of Senator Gordon, there being no objection, the Body adopted a resolution, subject to style, commending the late Loreto Paras-Sulit.

Also, upon motion of Senator Gordon, there being no objection, the Body adopted a resolution, subject to style, joining the rest of the world in the celebration of World Red Cross Day on May 8, 2008.

REMARKS OF SENATOR ZUBIRI

Senator Zubiri congratulated Senator Gordon for bringing to the attention of the Senate the heroic acts of Loreto Paras-Sulit, a simple lady whose hard work and dedication to the Red Cross has made an impact on the organization. He thanked the Senate for approving the resolutions, subject to style, honoring

Ms. Paras-Sulit's memory and service to the PNRG; and joining the rest of the world in the celebration of World Red Cross Day.

He also took the occasion to express appreciation to Senator Gordon, the father of volunteerism, who, as Chairman of the Philippine National Red Cross, has streamlined and professionalized the organization. He said that it has been an honor and pleasure to serve as a member of the board of governors.

COMMITTEE REPORT NO. 43 ON SENATE BILL NO. 2150

(Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2150 (Committee Report No. 43), entitled

AN ACT GRANTING THE RIGHT OF REPLY AND PROVIDING PENAL- TIES FOR VIOLATION THEREOF.

Senator Pangilinan stated that the parliamentary status was the period of interpellations.

Thereupon, the Chair recognized Senator Pimentel, Sponsor of the measure, and Senator Defensor Santiago for her interpellation.

INTERPELLATION OF SENATOR DEFENSOR SANTIAGO

Senator Defensor Santiago expressed her firm support for the bill, but she nonetheless voiced concern that the bill, as presently worded, might be declared unconstitutional by the Supreme Court for which reason, she wanted to raise certain fundamental principles.

She stated that as a general rule, any law passed by Congress enjoys the presumption of regularity — it is presumed to be constitutional unless shown otherwise. But, she said, there are exemptions to the general rule, foremost of which is that any law that seeks to impair the right of free speech does not enjoy the presumption of constitutionality. She said that through-out the centuries, legislators and jurists have held that free speech occupies the highest place in the constitutional hierarchy of values and they have reached the conclusion that when it is so fettered, it is, in effect, removed from ordinary citizen and there would be no democracy. *AS*

AS

She expressed the view that if brought to the Supreme Court, the Court might only take a neutral attitude without giving any presumption. She pointed out that some authors who place high value on freedom of speech contend that a law that seeks to limit the right of free speech or expression should be presumed unconstitutional. To prove that there are grounds for concern that the bill might be declared unconstitutional, she cited the following cases decided by the Supreme Court:

1. *Social Weather Stations Inc. vs. Comelec* – Decided in 2001, in this case, the petitioners brought this action to stop the Comelec from enforcing the Fair Election Act, which provides, “Surveys affecting national candidate shall not be published fifteen (15) days before an election, etc.” In deciding the case, the Supreme Court said, “This kind of a law is unconstitutional” and its reason was that, “The constitutional guarantee of freedom of expression means that the government has no power to restrict expression because of its message, its ideas, its subject matter or its content. The inhibition of speech should be upheld only if the expression falls within one of the few unprotected categories dealt with in *Chaplinsky v. New Hampshire*.” The Supreme Court quoted from the American case, thus: “There are certain well-defined and narrowly-limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene, the profane, the libelous or the insulting or fighting words, those which by the very utterance inflict injury or tend to incite an immediate breach of the peace.” The Supreme Court went on to say, “The Comelec should not stop the prohibition of surveys before election day because it has enough powers under the Administrative Code. Pursuant to this power of the Comelec it can confiscate bogus survey results calculated to mislead voters. Candidates can have their own surveys conducted. No right of reply can be invoked by others.” In effect, the Supreme Court ruled that if one is a candidate and his rival publishes a false survey, he has no right of reply but he can publish his own survey.

Senator Defensor Santiago stated that apparently, no principle of equality is involved and it is a free market to which each candidate brings his ideas. To summarize, she stated that the Supreme Court held that the law is invalid because 1) it imposes a prior

restraint on the freedom of expression; 2) it is a direct and total suppression of a category of expression even though such suppression is only for a limited period; and 3) the governmental interest sought to be promoted can be achieved by means other than the suppression of the freedom of expression.

In *Social Weather Stations vs. Comelec*, she believed that the Supreme Court is not inclined to protect a “right of reply” unless Congress passed a finely crafted law that describes in particular the nature and contents of a news report to erase doubt whether the person named therein is entitled or not to the right to reply.

2. *Telecommunications and Broadcast Attorneys of the Philippines, Incorporated vs. Comelec* or *Telebap vs. Comelec*. In this case, the Supreme Court ruled that it was unconstitutional to prohibit the sale or donation of print space or airtime for political ads except to Comelec, print media and broadcast media.

The reasoning of the Supreme Court was that, “All broadcasting, whether by radio or by television stations, is licensed by the government. Airwave frequencies have to be allocated as there are more individuals who want to broadcast than there are frequencies to assign. A franchise is thus a privilege subject, among other things, x x x to amendment, alteration or repeal by the Congress when the common good so requires.”

Furthermore, the Supreme Court explained: “There are important differences in the characteristics of the two media, however, which justify their differential treatment for free speech purposes. Because of the physical limitations of the broadcast spectrum, the government must, of necessity, allocate broadcast frequencies to those wishing to use them. There is no similar justification for government allocation and regulation of the print media.

“In the allocation of limited resources, relevant conditions may be validly imposed on the grantees or licensees. The reason for this is that, as already noted, the government spends public funds for the allocation and regulation of the broadcast industry, which it does not do in the case of the print media.”

This Court has also held that “because of the unique and pervasive influence of the broadcast media, [n]ecessarily...the freedom of television and radio broadcasting is somewhat lesser in scope than the freedom accorded to newspaper and print media.”

Senator Defensor Santiago opined that what the Supreme Court implied is that Congress could legislate a right of reply in broadcast media but not in print media and its reasoning is that to be able to own and manage broadcast media, one has to apply for a franchise from Congress. She stated that these are relevant points that should be considered in studying the bill.

With regard to Section 1 of the bill, Senator Defensor Santiago observed that it is so broad that it violates the "void for vagueness doctrine" in Constitutional Law which is sufficient basis to be declared unconstitutional by the Supreme Court. She observed that as worded, the section lends to confusion because, on the one hand, there is a right to reply to charges in print media and, on the other hand, there is a right to reply to criticisms in broadcast media, hence, there are two tiers of offensive acts, each one limited to one particular form of media which is arbitrary. She asserted that under the provision, the right to reply can be claimed for anything that is printed or broadcasted.

The "void for vagueness doctrine," Senator Defensor Santiago explained, is usually applied to a penal statute when it establishes a requirement or a punishment without specifying what is required or what conduct is punishable and, therefore, it violates due process. More specifically, she noted that the section states that there is a right to reply to any accusation or any criticism particularly when the criticism is "by innuendo, suggestion or rumor for any lapse in behavior in public or private life" which can cover anything upon which ground, the Supreme Court might invoke the "void for vagueness doctrine."

Further, Senator Defensor Santiago explained that the doctrine is based on the "due process clause" of the Constitution which means that a person cannot be sent to prison without due process of law that includes notice of the nature of the offense. Maybe, she said, the section does not give enough notice on what kind of procedure would provoke a right to reply. She stated that the "void for vagueness doctrine" requires that the criminal statute should explicitly state the prohibited acts to provide fair warning and rule out arbitrary enforcement.

As this juncture, Senate President Villar relinquished the Chair to Senate President Pro Tempore Ejercito Estrada.

Senator Defensor Santiago disclosed that the right of reply is exact and definite in the laws of the

following countries: Austria – to an incorrect or demonstrably untrue statement; Denmark – to factual inaccuracy; Germany – "counter version" from people affected by an assertion of fact; Greece – to inaccurate publication or broadcast; Finland – to an incorrect or offensive published material; The Netherlands and Norway – for correction of factual inaccuracy; and Spain – to incorrect or damaging information.

Asked whether the section could be tightened up, Senator Pimentel agreed, saying that the Committee would appreciate the help of Senator Defensor Santiago whom he thanked for her exhaustive research on the laws on the right to reply of other countries. As public servants, he stated, the legislators are usually the target of inaccurate media reports and they should have the right to reply to inaccuracies.

Senator Defensor Santiago expressed her strong support for the measure given the nature of Philippine media today. The country, she said, suffers from a culture of corruption that has affected every sector of society, including the media which sometimes criticizes politicians for alleged corruption when they, themselves, could be corrupt. She stated that at one point, one can recall an experience with corrupt members of the media who managed to put on the front page items that were paid for by public relations firms whose clients are adverse to the positions of certain legislators or are simply their political enemies. She recalled the time when she was criticized not because of her position on political issues but because of her looks and her manner of speaking, among others. She stressed that there should be no personality in any fair debate but admitted that there are individuals who are hell bent on character assassination. She stated that the bill should prevent the abuse of freedom of the press, particularly abuse by paid-for reporters or editors who plant defamatory articles in whatever phony guise they can think of, poisoning the minds of their readers or listeners against the person advocating a contrary position.

Reacting thereto, Senator Pimentel said that free speech is very high in the hierarchy of freedoms recognized by civilized nations; and free speech begot freedom of the press. One of the basic premises of the bill, he emphasized, is that free speech is a right of the media and the people and flowing from this is the right of the people to correct inaccurate media reports.

Senator Defensor Santiago said that free speech means that one can say anything as long as it does not denigrate a person's dignity nor violate his basic human rights. She asked what falls under the category of "websites and electronic devices," specifically whether blog is included under the term "website." Senator Pimentel replied in the affirmative, pointing out that everything is included, if need be.

To the information that the Department of Justice (DOJ) does not consider internet as a form of mass media, Senator Pimentel replied that the DOJ's interpretation could be wrong in light of the E-Commerce Act which involves website communications.

On whether the bill ought to also include a provision on when the right to reply should be invoked, Senator Pimentel answered in the affirmative, as he noted that a prescription of actions is also used in criminal law.

Adverting to Section 5 (*Free of Charge*), Senator Defensor Santiago pointed out that in American jurisprudence, the statutory grant or recognition of the right to reply is made in criminal or penal legislation as it is viewed as part of the penalty that has to be incurred by the erring media organization. However, she wondered whether in the Philippine situation, the offended party would also be given equal print space such as, for instance, a full-page right to reply to a full-page paid advertisement against him. Senator Pimentel explained that although the paid advertisement is not directly the fault of the editor or publisher as it is the act of the third party, he is often included in libel suits because he is considered responsible for it. He suggested that the bill be amended so that the person maligned could be given a right to reply but also be required to pay a certain amount for the print/media used. He asked the Body's assistance in crafting the proper response to that kind of situation.

Senator Defensor Santiago expressed concern that in the guise of omitting libelous allegations, an editor might use Section 6 (*Editing Reply*) to refuse to print or broadcast the reply. She suggested that the provision be amended by stating that the reply shall be presumed to be lawful and that the good faith of the editor/publisher shall be a matter for his defense in case he is charged with libel. Senator Pimentel replied that although the editor/publisher ought to be freed from the stress of having to fulfill

the requirement that he ought to publish the reply sent to him by the offended party, it would do well, he believed, that a clause be inserted in the bill clearly stating that the reply is presumed to be lawful and that any publication of the same that might give rise to libelous suits could be defended by the news editor/publisher as the action was made in adherence to the law.

Senator Defensor Santiago pointed out that although Section 7 (*Penalties*) is a penal statute as it intends to make a violation of the right of reply a crime, the bill seems to provide that mere failure to use the reply may be invoked by the party who seeks to impose criminal liability. She believed that truth, accuracy and lack of willfulness ought to be material factors in assessing penalogical liability so that the liable party should be allowed to invoke them as a defense, for instance, when the defendant claims that the material is true or that the story might have been inaccurate but there was no opportunity to check the facts due to deadline constraints, or that it was presented in good faith.

Senator Pimentel pointed out that as provided for in the bill, the offended party could go to court and start proceedings against the recalcitrant editor, or radio/tv/newspaper owner by showing *prima facie* basis that the article or item complained against is untrue, inaccurate and was not made in good faith. He believed that in order to avoid giving the impression that the bill favors the complainant and is prejudiced against the media, certain requirements ought to be laid down to clarify that there must have been compliance with certain requirements that would spell out, in effect, the right of due process for both the complainant and the offending party.

Upon further queries, Senator Pimentel replied that the Code of Ethics being referred to in Section 8 (*Self-Regulation*) would pertain to the ethical standards being followed by members of the broadcast media such as the *Kapisanan ng mga Broadkasters ng Pilipinas*. He agreed that the same ought to be indicated in the bill.

As to the purpose behind Section 10 (*Sunset Clause*), Senator Pimentel explained that Congress ought to have the freedom to review or extend the law after seven years because while the assertion made by media organizations that they are regulating the excesses of their members might be conceptually true, it is not factually accurate since there are

excesses, particularly in the broadcast media, that need to be curbed. However, Senator Defensor Santiago believed that the expectation of an improvement in the journalism industry after seven years still remains to be seen.

Senator Defensor Santiago believed that the U.S. Supreme Court ruling in the *Miami Herald Publishing v. Tornillo*, which limits the right to reply only to the broadcast media on the grounds that the right to reply in print media is equivalent to prior restraint or censorship, does not apply to the Philippine situation because of the fact that the degree of corruption in the two countries is far different, the level of corruption of U.S. media practitioners being not as pervasive as their Philippine counterparts.

Senator Pimentel stated that persons maligned by the print media should also be given the right to reply because malicious comments in the newspapers can be more devastating and lasting compared to those aired on radio and television.

REMARKS OF SENATOR PANGILINAN

Senator Pangilinan said that his amendments to the Omnibus Election Code, which were made during the 13th Congress, sought to monitor how negative advertisements are published in newspapers or aired in television or radio, and the responsibilities or obligations of the medium concerned. He added that the pertinent provisions of the Code may serve as a guide in providing certain requirements for publishers.

SUSPENSION OF SESSION

Upon motion of Senator Pimentel, the session was suspended.

It was 4:48 p.m.

RESUMPTION OF SESSION

At 5:03 p.m., the session was resumed.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2150

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

COMMITTEE REPORT NO. 42 ON SENATE BILL NO. 2121

(Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2121 (Committee Report No. 42), entitled

AN ACT AMENDING SECTIONS 4, 9, 20, 21, 23, 25, 26, 30, 31, 32, 33, 34, 35, 38, 41, 43, 45, 48, 51 OF REPUBLIC ACT NO. 9136 ENTITLED, "AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY AND FOR OTHER PURPOSES."

Senator Pangilinan stated that the parliamentary status was still the period of interpellations.

Thereupon, the Chair recognized Senator Enrile, Sponsor of the measure, and Senator Zubiri for his interpellation.

INTERPELLATION OF SENATOR ZUBIRI

In light of the comments on the supposed unfairness of a quick open access that is being proposed by the amendments to the EPIRA, Senator Zubiri asked how the open access regime could be advantageous to the country. Senator Enrile replied that the entire country is covered by certain franchises and the users of electricity are within the captive market for each franchise distributor, although with a few exceptions like those who have direct connection with the *National Transmission Corporation (Transco)*. He explained that once open access is achieved, the contested area is differentiated from the uncontested area or the captive market, such that in the contested area, parties are allowed to choose whether or not to buy electricity from the distributors or go directly to the generators to contract their supply of power, passing it through the national transmission line down to the wires of the franchise distributor in their area and they simply pay a wheeling charge. Theoretically, he said, the excess power that cannot be used by the distribution companies is paid for by the consumers whether they used power or not, because they are on a "take-or-pay" basis.

Asked whether a big power user like the Mall of Asia, which probably consumes over one megawatt per day, can contract power directly to Sual or ~~the~~

ms

Pagbilao, Senator Enrile replied in the affirmative, adding that the mall can run all its system at the same time and increase its usage of power at a lesser cost.

To the possibility that Meralco would consider such a policy as unfair competition, Senator Enrile replied that under the original EPIRA, Napocor has to sell 70% of its 100% capacities before open access is allowed. In the first place, he said, that is too much of a burden to impose on the people because given market conditions, Napocor and PSALM would not be in a position to dispose their present capacities that fast to attain that desired level simply because the market is depressed; also, government might be selling its generating assets to the detriment of the country. Relative thereto, he recalled that many have wondered why government acquired the Bataan Refinery of Esso and Mobil Oil during the Marcos regime when the fuel industry, like electricity, was regulated. He explained that the government did so to counter-balance the propensity of other industry players to jack-up their prices.

Senator Enrile believed that the same thing could be done in the power industry. He said that he went very slow in requiring the unloading of the Napocor capacities because there are many generators in the industry, some of which are controlled by big interests like Sta. Rita and San Lorenzo. However, he expressed apprehension that since the Lopezes are acquiring other plants, they might be getting 30% to 40% of the generating capacity of the country and if the Napocor could not threaten the Lopezes with a 50%- generating capacity, then Meralco might inordinately raise the price of electricity to the detriment of the people because the generation side of the industry is unregulated. Considering the ongoing process of deregulation, he stressed the need to be careful in using this instrument to warn the Lopezes against dictating electricity cost.

On a related matter, Senator Zubiri manifested that under the renewable energy bill that he, Senators Angara and Defensor Santiago have sponsored, if people are producing their own energy for their own consumption, they are exempt from paying universal charge. Senator Enrile said that he was unaware whether generators are passing their electricity or buying their electricity from a distribution company. He disclosed that he bought his own generator, paid for its fuel and the mechanic and he does not need to pay the universal charge.

Senator Zubiri agreed, hoping that the Committee on Energy would harmonize the renewable energy bill and the amendments to the EPIRA because technically, the DOE has requested that these power companies pay universal charge. Senator Enrile replied that there is such a provision in the EPIRA but he has asked for its suspension, otherwise, he would have taken it up with the Supreme Court because it means taking private property without due process.

Senator Zubiri said that at the proper time, he would request the committees concerned to enhance the particular provision exempting from universal charge those who are producing and utilizing energy for their own consumption. Senator Enrile agreed.

INTERPELLATION OF SENATOR PIMENTEL

Preliminarily, Senator Pimentel expressed concern over the provision in the EPIRA requiring consumers to shoulder the costs of electricity that is accumulated by the IPP, whether used or unused. Senator Enrile replied that the people are supposed to pay the least cost electricity; unfortunately, during the Ramos administration, government, through the Napocor, contracted many capacities based on their estimate of the growth of economy which did not materialize, and many of those power capacities were priced at very high peso value, so when the economy dipped in 1997 and onwards, there was excess power. He said that government employed the mechanism of the market to pass that loss of unused power to the current users of power mainly the households, and many of the companies lessened the use of power, which is why there has been an inordinate rise of power costs over these years.

Senator Pimentel noted that a similar problem happened in California which resulted in over-capacity of the IPPs to supply power and when the demand was not that big and under the "take-or-pay" principle, California had difficulty adjusting its electric rates. He believed it is important to look at the experience of other countries to see how government could help lessen the burden of the people. Senator Enrile replied that the only way to do it is to use up the excess capacity because for as long as it is unused, the burden would be on the households.

Asked on the estimated excess energy that needs to be used up and the cost involved in using it, ~~He~~

rs

Senator Enrile replied that the total national megawattage is between 12,000 and 13,000 and the actual usage at peak hours is about 10,000 megawatts but the users of electricity have to pay for the total wattage.

Asked on the possibility of determining the amount of the excess power that is available for the use of Mindanao, Visayas or Luzon, Senator Enrile explained that the power that passes through the grids is dispatched everyday wherever needed. He explained that even if some of the plants are shut off because nobody is using power, the government has to pay for power purchased from the IPP and this obligation is included in the price of power sold to consumers serviced by the grid. He noted that Luzon and Visayas have the same grid but charges differently and Mindanao has its own grid with its own charges. Senator Pimentel requested the resource persons to present the figures to show where the difference lies. Senator Enrile stated that it would be provided the next session day.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 5:27 p.m.

RESUMPTION OF SESSION

At 5:27 p.m., the session was resumed.

INTERPELLATION OF SENATOR GORDON

At the outset, Senator Gordon noted that the bill proposes to bring down the level of privatization to 50% to pave the way for open access.

Asked on the level of privatization of Napocor assets, Senator Enrile replied that it is now at 49%. He stated that while 50% is the proposed cut-off, privatization will be brought gradually to the desired level of 70% because there are now big players in the industry. He said that the bill intends to discipline the industry players to protect the consumers.

Asked how the Senate could prod PSALM to accelerate the privatization of Napocor faster, Senator Enrile that the Senate could use its clout, the budget

and the power to investigate. He said that the Committee is open to suggestions on how Napocor and PSALM could be pushed to privatize.

Relative to Section 21, specifically the provisions that qualify the types of concession contract under which the Transco may be privatized, Senator Gordon expressed concern that the compensation scheme could be used to circumvent the 60% Filipino ownership mandated by the Constitution. Senator Enrile explained that there are two ways of disposing Transco: 1) government sells Transco as a common stock corporation, in which case the buyer does not have to get a franchise from Congress since Napocor transferred its franchise to Transco as part of its asset; and, 2) through concession – a) government sells only the transmission assets, in which case the buyer must have a franchise; or, b) government allows a concessionaire to operate the system as its own business, in which case it does need a franchise.

On the matter of rural electrification, Senator Gordon wondered if the electrical cooperatives are ready to compete in a deregulated and highly competitive market. Senator Enrile informed the Body that there is a continuing government program to improve the managerial and technical capabilities of administrators and technical staff. He acknowledged that cooperatives can expect high systems losses because bringing electricity to a sparsely populated rural area means stringing electrical lines across many kilometers to connect houses and barangays that are few and far between. He said that the income of cooperatives might not be able to cover overhead and attendant costs and time will come when Congress has to revisit the matter and perhaps allow big players to come in.

As to how many cooperatives are operating above water, Senator Enrile replied that most of them are, in fact, under water. He stated that compared to the systems losses in the rural areas, however, systems losses is higher in congested urban areas where the incidence of electricity theft is high. He said that it is the function of efficiency of the distribution company to invest money to see to it that their system is fairly clean. Furthermore, he underscored that Meralco can afford to reduce its systems losses, noting that it was able to have a return on base rate of 23% when in the early days, the Public Service Law provided explicitly that no utility of any kind is allowed to earn more than 12% return. ~~AS~~

10

As to how the government can assist small electric cooperatives, Senator Enrile stated that the EPIRA has a provision condoning the P18 billion arrearages of cooperatives to the government. He said that city-owned power firms should be privatized because for as long as the local government runs the distribution system, politics will come into play and losses will be higher because local officials are wary of disciplining their own constituents.

Senator Gordon agreed that the energy sector in the cities should be privatized or allowed to engage in joint ventures. Senator Enrile stated that this is precisely why he finds fault with Meralco as it has not been able to increase its efficiency despite being a private business. He bared that the reason for its inefficiency is that some of its own people have their own electric businesses doing illegal connections in the small corners of Metro Manila. He said he could not understand why Meralco could not police its own ranks. If such situation is true in the case of Meralco, he opined that it might even be worse in city-owned electric power systems where people, who could not afford paying for the service, could plead with the LGU leadership to make electric power free for them. He said that in his radio program, he had received complaints from people whose lines were cut by Meralco for non-payment of bills, while others enjoy the service which Meralco personnel have illegally connected. He said that he was glad that Winston Garcia was raising the issue against Meralco to put the latter on its toes. Senator Gordon said that he also favors the move because the stockholders have the right to find out how the company is being run.

Asked how existing laws could be strengthened against those who try to steal power or sabotage power operations, Senator Enrile suggested an increase in penalties. Moreover, since the cap for the systems losses of Meralco is only 8% and the cap provided by law is not more than 9.5% in cities and 14% in rural areas, he stressed the need to bring down the cap for areas like Metro Manila. Senator Gordon expressed hope that the provisions would be strengthened not only to punish those who steal power but also to encourage cooperatives to become more efficient.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2121

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

ADDITIONAL REFERENCE OF BUSINESS

The Deputy Secretary for Legislation, Atty. Edwin B. Bellen, read the following matters and the Chair made the corresponding referrals:

BILLS ON FIRST READING

Senate Bill No. 2251, entitled

AN ACT PROVIDING FOR THE STRICT REGULATION AND STIFFER PENALTIES FOR THE ILLEGAL/UNLAWFUL IMPORTATION, MANUFACTURE, ACQUISITION, SALE, DISPOSITION OR POSSESSION OF EXPLOSIVES AND CHEMICALS OR ACCESSORIES USED IN THE MANUFACTURE OF EXPLOSIVES, REPEALING FOR THE PURPOSE EXECUTIVE ORDER NO. 522 AND AMENDING CERTAIN PROVISIONS OF PRESIDENTIAL DECREE NO. 1866, AS AMENDED, AND FOR OTHER PURPOSES

Introduced by Senator Ramon "Bong" Revilla Jr.

To the Committee on Public Order and Illegal Drugs

Senate Bill No. 2252, entitled

AN ACT PROHIBITING OWNERS OF FIRECRACKER FACTORIES FROM EMPLOYING CHILDREN AS FIRECRACKER MANUFACTURERS, ASSEMBLERS OR PACKERS AND IMPOSING PENALTIES THEREOF

Introduced by Senator Ramon "Bong" Revilla Jr.

To the Committees on Public Order and Illegal Drugs; and Youth, Women and Family Relations

Senate Bill No. 2253, entitled

AN ACT PROVIDING FOR STIFFER PENALTIES AGAINST PUBLIC OFFICIALS AND EMPLOYEES WHO REFUSE OR NEGLECT TO ACT

PROMPTLY ON THE PUBLIC'S PERSONAL TRANSACTIONS AND COMMUNICATIONS AS REQUIRED UNDER REPUBLIC ACT NO. 6713, OTHERWISE KNOWN AS THE CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES

Introduced by Senator Antonio "Sonny" F. Trillanes IV

To the Committee on Civil Service and Government Reorganization

Senate Bill No. 2254, entitled

AN ACT PROVIDING FOR A CEILING ON ALL PUBLIC DEBTS OF THE REPUBLIC OF THE PHILIPPINES AND FOR OTHER PURPOSES

Introduced by Senator Antonio "Sonny" F. Trillanes IV

To the Committees on Finance; and Economic Affairs

Senate Bill No. 2255, entitled

AN ACT GRANTING NIGHT SHIFT DIFFERENTIAL PAY TO THE GOVERNMENT EMPLOYEES INCLUDING THOSE IN GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS AND APPROPRIATING FUNDS THEREFOR

Introduced by Senator Antonio "Sonny" F. Trillanes IV

To the Committees on Civil Service and Government Reorganization; and Finance

Senate Bill No. 2256, entitled

AN ACT CREATING PLANTILLA POSITION IN THE DEPARTMENT OF EDUCATION FOR VOLUNTEER TEACHERS WITH AT LEAST FIVE YEARS OF CONTINUOUS SERVICE IN THE PUBLIC SCHOOL SYSTEM AND APPROPRIATING FUNDS THEREFOR

Introduced by Senator Antonio "Sonny" F. Trillanes IV

To the Committees on Education, Arts and Culture; Civil Service and Government Reorganization; and Finance

RESOLUTIONS

Proposed Senate Resolution No. 387, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEES ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS; AND ENVIRONMENT AND NATURAL RESOURCES TO CONDUCT A JOINT HEARING, IN AID OF LEGISLATION, ON THE ALLEGED BRIBERY OF HANJIN HEAVY INDUSTRIES INC., AND EXTORTION BY LOCAL GOVERNMENT OFFICIALS WHICH VIOLATED/ MAY VIOLATE ENVIRONMENTAL LAWS AND LAWS ON GRAFT AND CORRUPTION

Introduced by Senator Compañera Pia S. Cayetano

To the Committees on Accountability of Public Officers and Investigations; Local Government; and Environment and Natural Resources

Proposed Senate Resolution No. 388, entitled

RESOLUTION CONGRATULATING JUSTEN PAUL TOLENTINO FOR BEING ONE OF THE AWARDEES IN THE FIFTH INTERNATIONAL CHILDREN AND YOUTH ART FESTIVAL: OPTIMUM WATER CONSUMPTION HELD IN IRAN

Introduced by Senator Jinggoy Ejercito Estrada

To the Committee on Rules

COMMUNICATION

Letter from Joaquin C. Lagonera, Senior Deputy Executive Secretary & Acting Head, PLLO of

JCS

the Office of the President of the Philippines, transmitting to the Senate an original copy of Republic Act No. 9500, entitled

**AN ACT TO STRENGTHEN THE
UNIVERSITY OF THE PHILIPPINES
AS THE NATIONAL UNIVERSITY,**

which was approved and signed into law by Her Excellency, President Gloria Macapagal Arroyo, on April 29, 2008.

To the Archives

COMMITTEE REPORT

Committee Report No. 50, submitted jointly by the Committees on Justice and Human Rights; and Constitutional Amendments, Revision of Codes and Laws, on Senate Bill No. 1836, introduced by Senator Miriam Defensor Santiago, entitled

**AN ACT ADDRESSING THE SYSTEM
OF PROSTITUTION, IMPOSING
PENALTIES ON ITS PERPETRATORS,
PROVIDING PROTECTIVE
MEASURES AND SUPPORT
SERVICES FOR ITS VICTIMS,
AMENDING FOR THE PURPOSE
ARTICLE 202 AND 341 OF THE
PENAL CODE,**

recommending its approval without amendment.

Sponsors: Senators Francis "Chiz" G. Escudero, Gordon and Miriam Defensor Santiago

To the Calendar for Ordinary Business

PROPOSED SENATE RESOLUTION NO. 388

Upon motion of Senator Pangilinan, there being no objection, the Body considered Proposed Senate Resolution No. 388, entitled

**RESOLUTION CONGRATULATING
JUSTEN PAUL TOLENTINO FOR**

**BEING ONE OF THE AWARDEES
IN THE FIFTH INTERNATIONAL
CHILDREN AND YOUTH ART
FESTIVAL: OPTIMUM WATER
CONSUMPTION HELD IN IRAN.**

With the permission of the Body, only the title of the resolution was read without prejudice to the insertion of its full text into the Record of the Senate.

**ADOPTION OF PROPOSED
SENATE RESOLUTION NO. 388**


Upon motion of Senator Pangilinan, there being no objection, Proposed Senate Resolution No. 388 was adopted by the Body.

ADJOURNMENT OF SESSION

Upon motion of Senator Pangilinan, there being no objection, the Senate President Pro Tempore declared the session adjourned until three o'clock in the afternoon of Monday, May 12, 2008.

It was 5:56 p.m.

I hereby certify to the correctness of the foregoing.


EMMA LIRIO-REYES
Secretary of the Senate
ES *RS* *AS*

Approved on May 12, 2008