JGL Eye Column

By JOSEPH G. LARIOSA

C HICAGO (*jGLi*) – The provisions of the Philippine Constitution on impeachment are near carbon copies of the United States Constitution so it will be safe to assume that the Philippine senators trying Philippine Chief Justice Renato Corona can look up to precedents on impeachment proceedings in the U.S. Senate for indirect guidance.

In both Constitutions, the use of standard of proof to be used is silent; leaving no doubt that the Senators-jurors would have to use their conscience to decide the fate of the Chief Justice.

On Day 5 of the impeachment trial last Tuesday (Jan. 24), there were bickerings among the Senator-jurors, the Congressmen-prosecutors and the defense as to what standard of proof the Senators-jurors is going to adopt: preponderance of evidence required in civil cases or proof beyond reasonable doubt in criminal trials?

Of course, if you ask the contending parties, it is very easy to tell which proof the jurors would like them to take.

If you ask the defense led by former Supreme Court Associate Justice Serafin Cuevas, he will tell you the “quantum” of proof should be the higher and harder standard – “proof beyond reasonable doubt.”

But if you ask the Congressmen-prosecutors led by Rep. Niel C. Tupas, Jr., he wants lower standard of proof of preponderance of evidence.

But in the middle of the debate, former court judge and now Senator and legal luminary Miriam Santiago gave her piece of mind by suggesting a middle ground – “I humbly submit that the standard of proof be overwhelming preponderance of evidence.”

Mr. Tupas insisted by saying “substantial evidence” is good enough for him. While Justice Cuevas stood his ground by insisting, it must be “beyond reasonable doubt.”

Mr. Cuevas explained that in simple libel or malicious mischief cases that penalize offender with less than six months, the standard of proof needed to convict is proof beyond reasonable. While the removal from public office and perpetual disqualification from public office are “practically death sentence! It is not temporary.”

Unable to reach agreement, Senator Santiago suggested that the “polar differences can only be resolved in caucus.”

“PROOF BEYOND REASONABLE DOUBT”?

D uring the impending impeachment of President Richard Nixon, the Minority Views in the Report of the House Judiciary Committee on Impeachment supported adoption of “proof-beyond reasonable-doubt standard” because certain words such as “try,” “convicted” and “conviction” suggest that impeachment might be likened to a criminal proceeding, where

standard of proof beyond reasonable doubt is required of the Senate.

And during the Senate trial of the impeachment of Judge Harry E. Claiborne in 1986, Claiborne's lawyers filed a motion to designate beyond reasonable doubt as the applicable standard for the Senate to reach determination.

Like Corona's lawyers, Claiborne's lawyers argued that the constitutional language made it clear that an impeachment trial was in the nature of criminal proceeding. The consequences for the defendant were grave, requiring the prosecutors to be held to the highest standard of proof beyond a reasonable doubt.

In opposing the Claiborne motion, House Managers noted that the reasonable doubt standard was designed to protect criminal

defendants, who risked “forfeitures of life, liberty and property.” (Quoting Brinegar v. United States, 338 U.S. 160, 174 (1949).

When put to a vote, the Judge Claiborne’s motion for reasonable doubt was soundly defeated with 75 nays votes against 17 yeas, sending a message that the standard to apply was up to each Senator to decide individually.

In explaining his vote, Senator Orrin Hatch relied on the criminal conviction standard as required in the House Articles of Impeachment that required the Senate to ascertain whether beyond a reasonable doubt Judge Claiborne intentionally filed a false tax return.

NO MIDDLE GROUND

In one of the reports of the National Commission on Judicial Discipline and Removal, it was suggested that the appropriate standard of proof was the middle-ground -- “clear and convincing evidence” -- that the respondent has committed an impeachable offense. It gives force to the purpose of remedying judicial abuse of power, while recognizing the competing interests of avoiding unjustified removals and protecting judicial independence.

This issue of standard of proof was later revisited during the impeachment of District Judge Alcee L. Hastings by Sen. Joseph Lieberman, who asked the Trial Impeachment Committee, what standard to use. Sen. Warren Rudman told him, “I don’t think you are going to find one, Joe. I think it is going to be whatever you apply to it. We looked through that last time, and you are not going to find it. It is what is in the mind of every Senator. If you want to use clear and convincing, preponderance, if you want to use beyond a reasonable doubt—I think it is what everybody decides for themselves.”

But in the end, the Commission recognizes that each Senator is both judge and juror. As Senate Legal Counsel Michael Davidson explained, “it is the sum of Senators’ separate judgments that amount to either conviction or acquittal: any member is entitled to establish the highest, the medium, or a lower standard to govern his or her analysis of the evidence.”

District Judge Harry E. Claiborne, who was impeached and tried for filing a false tax return (had already been convicted in federal court) was convicted in 1986. While District Judge Alcee L. Hastings, who was impeached for perjury and bribery (although acquitted by a jury on the charges) was impeached and convicted by the Senate in 1989.

If you ask me, I would support the fourth alternative – the use of the conscience of each Senator – that is adopted by jurors in common-law trials. It has worked that way since the first impeachment of William Blount, a senator from Tennessee, in 1797 up to 2010 that resulted in the removal from office of

Federal Judge Thomas Porteous. # # #

Editor's Note: To contact the author, please e-mail him at: (lariosa_jos@sbcglobal.net
)