

## RECORD OF THE SENATE

TUESDAY, NOVEMBER 10, 1992

### OPENING OF THE SESSION

*At 3:28 p.m., the Honorable Neptali A. Gonzales, President of the Senate, called the session to order.*

**The President:** Binubuksan ang ika-34 na pagpupulong ng Senado.

### MOTION OF SENATOR ROMULO (National Anthem to be followed by Prayer as Order of the Day)

**Senator Romulo:** Mr. President, since yesterday was a resumption of the suspended session of October 29, we were not able to have the national anthem. So with the consent of our Colleagues in this Chamber, I move that we have the national anthem sung, and then we go to the prayer, roll call and the rest of the agenda.

**The President:** Is there any objection to the motion?  
[Silence] The Chair hears none; the motion is approved.

### NATIONAL ANTHEM

Aawitin ng Koro ng Senado ang pambansang awit at isusunod nila ang pag-awit ng isang awiting may pamagat na "Magandang Pilipinas."

Pagkatapos, susundan ito ng isang panalangin ni Senador Jose D. Lina, Jr.

*Everybody rose for the singing of the national anthem.*

*After the singing everybody remained standing for the opening prayer.*

### PRAYER

**Senator Lina:**

Heavenly Father,

Our country is in need of peace, justice, and love. So many of our Filipino brothers and sisters are reaching out their hands asking for compassion and mercy to help alleviate the hardships and difficulties they are experiencing.

We pray for peace, not the kind that the world offers but

\* Arrived after the roll call

\*\* On official mission

peace that surpasses all human wisdom and understanding.

We pray for justice, not the kind that favors the rich and the powerful but justice that treats all men as equal.

We pray for love, not the kind that puts so much value on worldly things but the unconditional love which breaks the chains of hatred, violence, and greed.

As the celebration of the Child Jesus' nativity draws near, help us to fully understand the true meaning of the Savior's coming and His promise of salvation. Shower us with Your grace and wisdom that we may be guided in our decisions, always remembering that we are but Your mere instruments.

You are the peace.

You are the joy.

You are the love.

And You are the hope of the Filipino Nation.

Amen.

### SUSPENSION OF THE SESSION

**The President:** The session is suspended.

*It was 3:34 p.m.*

### RESUMPTION OF THE SESSION

*At 3:35 p.m., the session was resumed.*

**The President:** The session is resumed.

Babasahin ng ating Kalihim ang talaan ng mga Senador.

### ROLL CALL

**The Secretary:**

|  |          |
|--|----------|
| Senator Heherson T. Alvarez .....          | Present  |
| Senator Edgardo J. Angara .....            | Present  |
| Senator Agapito A. Aquino .....            | Present* |
| Senator Rodolfo G. Biazon .....            | Absent   |
| Senator Anna Dominique M.L. Coseteng ..... | **       |
| Senator Teofisto T. Guingona, Jr. ....     | Present  |
| Senator Ernesto F. Herrera .....           | Present  |
| Senator Jose D. Lina, Jr. ....             | Present  |
| Senator Gloria Macapagal-Arroyo .....      | Present  |

**The President:** Referred to the Committee on Ways and Means.

**The Secretary:** Letter from Miguel R. Arugay, Officer-in-Charge of Regional Office No. 02, Land Transportation Office, Department of Transportation and Communications, transmitting therewith the duly accomplished Report on the Result of Expended Appropriations for the quarter ending September 1992.

**The President:** Referred to the Committee on Finance.

**The Secretary:** Letter from Ana B. Paraguya, Principal II, of Salay National High School transmitting therewith the following:

Statement of Cumulative Allotments, Obligations Incurred and Balances as of quarter ending September 30, 1992;

Detailed Statement of Cumulative Obligations Incurred Obligations Liquidated/Disbursements and Unliquidated Obligations as of the quarter ending September 1992; and

Report on the Result of Expended Appropriations as of the quarter ending September 1992.

**The President:** Referred to the Committee on Finance.

**The Secretary:** Letter from Zorayda Amelia C. Alonzo, Chief Executive Officer of the Home Development Mutual Fund furnishing the Senate with a copy of the Pag-IBIG FUND 1991 ANNUAL REPORT.

**The President:** Referred to the Committee on Urban Planning, Housing and Resettlement.

The Majority Leader is recognized.

**BILL ON SECOND READING**  
**Senate Bill No. 355 - Expanding the Concept**  
**of Condominium Act**  
*(Continuation)*

**Senator Romulo:** Mr. President, I move that we now resume consideration of Senate Bill No. 355 under Committee Report No. 15 on the Condominium Act.

We are still in the period of interpellations. May I ask that the Sponsor and Author of the bill, the distinguished Gentle Lady from Pampanga, Pangasinan, and Negros Occidental,

Senator Gloria Macapagal-Arroyo, be recognized.

**The President:** Senator Macapagal-Arroyo is recognized.

May the Chair know the parliamentary status of this bill?

**Senator Romulo:** Mr. President, we are still in the period of interpellations.

**The President:** Is there anybody who wants to interpellate the distinguished sponsor?

**SUSPENSION OF THE SESSION**

**Senator Romulo:** Mr. President, may I ask for a suspension of the session for one minute.

**The President:** The session is hereby suspended, if there is no objection. *[There was none.]*

*It was 3:45 p.m.*

**RESUMPTION OF THE SESSION**

*At 3:48 p.m., the session was resumed.*

**The President:** The session is resumed. The Majority Leader is recognized.

**SUSPENSION OF CONSIDERATION**  
**OF SENATE BILL NO. 355**

**Senator Romulo:** Mr. President, I move that we suspend consideration of Senate Bill No. 355, the Condominium Act. The new bill is still being formulated. So we will await the formulation of said bill.

**The President:** Is there any objection? *[Silence]* There being none, the motion is hereby approved.

**BILL ON SECOND READING**  
**Senate Bill No. 176--Hazing as a Crime**  
*(Continuation)*

**Senator Romulo:** Mr. President, I move that we resume consideration of Senate Bill No. 176 as reported out under Committee Report No. 18.

**The President:** Resumption of consideration of Senate Bill No. 176 is now in order.



**Senator Romulo:** Mr. President, we are still in the period of interpellations. I move that the distinguished Gentleman from Manila, Nueva Ecija, and Laguna, Senator Lina, be recognized.

**The President:** Senator Jose D. Lina, Jr. is hereby recognized.

What is the parliamentary status of this bill?

**Senator Lina:** We are in the period of interpellations, Mr. President.

**The President:** Is there anybody who wishes to interpellate the distinguished Sponsor of this bill? [Silence]

Apparently, there are none.

The Majority Leader is recognized.

#### SUSPENSION OF THE SESSION

**Senator Romulo:** Mr. President, may I move for a one-minute suspension of the session.

**The President:** The session is suspended, if there is no objection. [There was none.]

*It was 3:50 p.m.*

#### RESUMPTION OF THE SESSION

*At 3:52 p.m., the session was resumed.*

**The President:** The session is resumed.

**Senator Romulo:** Mr. President, I ask that Senator Lina be recognized; and for the first interpellator, may I ask that Senator Webb be recognized.

**The President:** Senator Webb is recognized.

**Senator Webb:** Thank you, Mr. President. Will the Gentleman agree to some questions?

**Senator Lina:** Willingly, Mr. President.

**Senator Webb:** What are the elements that must concur before one can be held liable for hazing under this proposed bill?

**Senator Lina:** As to the elements, Mr. President, that

will make an act called hazing a criminal act, first, there is a requirement by a group, whether as sorority, fraternity, or any association to the effect that before a person can be part of that organization, group, sorority or fraternity, a physical initiation must first be passed or must be hurdled by the person.

Second...

**Senator Webb:** Mr. President, how about, for instance, if there is mental or psychological pain?

**Senator Lina:** First, there is a requirement that there will be a physical initiation. And as a result of that physical initiation, there is an actual physical, mental or psychological pain and suffering inflicted upon the person who wants to gain entry into the group, association, fraternity or sorority, including entrance into the Armed Forces of the Philippines, Philippine Military Academy, Philippine National Police, and Citizens Military Training.

So the first element is the requirement of the physical initiation, second, because of that, a person is inflicted actual physical, mental or psychological pain. Those are the two elements, Mr. President.

What we are trying to ban here is the act of physical initiation called hazing. At present, if a person suffers from physical pain or injury at the hand of another, the crime will either be physical injuries--slight or serious--or if death results, it can be murder. But now, we are making a differentiation as far as the act of hazing is concerned. If physical injury, whether serious or slight, or even murder occurs during the physical initiation or even rape or sodomy occurs, there will be a higher penalty.

Just to clarify these independent acts which result in physical injury or the other results that I have mentioned, they are already punished under the Revised Penal Code. But what we are trying to propose is to define a different crime called hazing, as a reaction of society to these present bad activities that are happening in our country which have victimized a lot of the youth of the land--this act called hazing which has resulted already in the loss of lives and injuries to many.

**Senator Webb:** Mr. President, will it be safe and will the Gentleman agree if I say that the pain and suffering one receives should be: One, part of hazing acts or rites; two, part of training; and three, a requirement for membership in an organization, group, fraternity or sorority? Will it be a safe statement to say that this now falls under the category of hazing and as such is punishable?



**Senator Lina:** Yes, Mr. President, although I must say at this point that the training of the Armed Forces of the Philippines, including the Philippine Military Academy, the Citizens Military Training or the Philippine National Police, even at this point, does include physical or even psychological suffering. And I was informed by Senator Biazon that in order to test the psychological preparedness of a trainee--in other words, he is already in training, he is already part of the organization, in order to prepare him, for his work, he is made to undergo some kind of physical exercises or training that can put a person under some heavy physical stress or even psychological stress, like obstacle training, when a trainee is really subjected to some kind of different preparation. But he is already inside the organization.

In effect, Senator Biazon is suggesting that it should be removed from the coverage of hazing because the trainee is already inside the organization.

At the appropriate time, we will introduce an amendment to delete the word "training" on line 13 of page 1 of the bill, so that the act of hazing as a criminal act will only be confined to the activities that are required prior to entry into an association called sorority or fraternity group or even institutions like the Armed Forces, the Philippine Military Academy, and the Philippine National Police.

**Senator Webb:** Mr. President, for instance, under what circumstances should an act be considered a crime punishable under the law on hazing, as an end-result of an action committed by a person or a group of persons? For instance, would sodomy be considered part of a crime of hazing? Would mental anguish or torture be part of this?

**Senator Lina:** In case of sodomy, Mr. President, during the public hearings that we conducted on this bill, there were reports that, in order for some individuals to be accepted to a fraternity, sodomy is part of the initiation. There were also reports that women neophytes are subjected to sexual assaults. In fact, recently, there were reports published in the papers that some 200 girls in one province were found to have been made to engage in sexual acts with their masters when they were recruits of a certain fraternity or sorority.

So it can happen that part of the initiation is forcing the neophytes to engage in sexual acts whether on the female or on the male; sodomy in the case of the male...

**Senator Webb:** Will the distinguished Gentleman be one with me in concluding that these vicious acts are now considered under the crime of hazing?

When the distinguished Gentleman said that it is a part,

that means that it is not a crime but rather a part of hazing.

**Senator Lina:** Now it will merit a higher penalty, if it is done in the course of hazing. But if not committed because of hazing, then it will have the same penalty as in the Revised Penal Code.

**Senator Webb:** Mr. President, if it is a corporation, or a group, or a fraternity which does the hazing, who will be held responsible therefor?

**Senator Lina:** Mr. President, since this is a criminal statute, only persons will be made answerable and penalties can be imposed only upon the persons. But if the question refers to the liability of the officers of a group, fraternity or sorority, then there are penalties that will be imposed upon the officers of the organization, group, fraternity or sorority.

For example, Mr. President, on page 4, lines 5 to 13, which reads:

The school authorities who consent to the hazing or who have knowledge thereof but failed to take any action to prevent the same from occurring shall be punished as accomplices for the acts of hazing committed by the perpetrators. The officers, former officers, or alumni of the organization, group, fraternity or sorority, who actually planned the hazing, although not present at the time of the hazing, shall be liable as principals.

So, here, Mr. President, the culpability of the officers, including the alumni of the organization, group, fraternity or sorority, is established. That is how the officers of the organization can be held liable under this bill in connection with this proposed crime of hazing.

Now, as to the school authorities, Mr. President, at the appropriate time, we will introduce the necessary amendment to pinpoint exactly who these school authorities are. Because the school authorities are couched in general terms and we have to be precise in pinpointing the responsible school authorities who will be made liable as accomplices for the acts of hazing.

**Senator Webb:** I shall be waiting for that, Mr. President. Because there was a case entitled *West Coast Insurance Corporation v. Hurd*. It was held that juridical sources or juridical persons cannot be proceeded against criminally. And as such, they cannot commit a crime for which a willful purpose or a malicious intent is required. Juridical persons, like a corporation, are not liable.



*Ito po ang ikinatatakot ko rito, baka gamitin ng isang korporasyon para gumawa lamang ng hazing pagkatapos mahirap i-pursue ang kaso because they will now hide under the guise of a corporation.*

**Senator Lina:** Yes, that is why we have to specify. Our intention is to get these people who are hiding behind an organization or a corporation to be indicted, to be included in the charge on these acts of hazing, including the owner of the establishment where the hazing activity is being conducted. This is, I would say, an insurance that the people who are really culpable and responsible for the crime of hazing are not spared. In one case, the owner of the establishment was not charged even if the owner of the establishment where the hazing was conducted gave or expressed permission for the use of his house. So in this proposed bill, even the owner of the house or the premise or compound where the hazing activity is being conducted is made liable, Mr. President.

On page 3, line 27, it reads:

The owner of the place where the hazing is conducted shall be liable as an accomplice when he has expressly or impliedly given permission for said hazing to be conducted therein.

*So wala pong lusot ngayon. Talagang masusugpo natin itong hazing dahil ang mga nagmamay-ari ng lugar, whether it is a resort or not, even if it is a house or a private place, kung doon ginawa ang hazing, iyong owner, if he has given his express or implied permission, he is to be made as an accomplice, Mr. President.*

So, *kung grupo, ang mga* officers will be held liable. *Kung* institution, the officers will also be held liable. It is a question at the appropriate time to name exactly who these people are to avoid any escape from responsibility.

**Senator Webb:** On that score, Mr. President, I certainly agree with the honorable Sponsor; but again, I am more insistent on a corporation. For instance, is a director or an officer of a corporation liable criminally for a corporate act performed by its officers and agents?

**Senator Lina:** In the normal hazing activities, Mr. President, this happens in case the sororities, fraternities, and some associations employ physical initiation before a member can gain entrance into the association. But for corporations per se engaged in business, I have no knowledge of any corporate entity that employs hazing as a requirement for employment. But if there are corporations that use this weird kind of activity, then we can include a provision in this bill

that officers of even corporations will be held as accomplices in the acts of hazing, in addition to the persons directly involved in the hazing activities--if that will encompass or really plug any kind of loophole that this law may have in case we do not include that provision.

If that is really necessary, Mr. President, at the appropriate time, we will accept any amendment to that effect.

**Senator Webb:** I hope we can do that, Mr. President, because there was a case, *People v. Montilla*, where it was held that they were not liable criminally for corporate acts performed by its officers and agents.

This is my fear here because if we do not inject it into the bill, I feel that, sooner or later, there will be corporations that will employ hazing. We are looking ahead of time now, Mr. President. Forgive me for being so persistent about this particular issue.

**Senator Lina:** That is indeed a forward-looking provision, Mr. President. That amendment will be welcome at the appropriate time.

**Senator Webb:** Mr. President, just one last question. This involves a situation where, for instance, we have Messrs. A, B, C, D, and E who are officers of X fraternity, whose bylaws require its prospective members to undergo moderate initiation rites.

For instance, Mr. G was recruited as a neophyte. Initiation ceremonies went on beyond moderation, resulting in the death of Mr. G due to the injuries inflicted upon him by A and B during said occasion. Messrs. C, D, and E were not present at the initiation rites nor did they participate in the plan to initiate Mr. G. My question is: Who is liable for the death of Mr. G? Will Messrs. C, D, and E be held liable even if they were not present during the initiation rites?

**Senator Lina:** If they were not present during the initiation rites and they also did not participate in the planning of the initiation rite, then they will not be held liable, Mr. President.

**Senator Webb:** In another occasion, I was saying that they were the ones who induced Mr. G to join the fraternity. Then, later on during the ceremonies, they were not present when Mr. G died because of the initiation rites.

**Senator Lina:** In that case, Mr. President, I think the person who induced the victim to enter the fraternity will be made liable, if they induced the victim to join the fraternity.



May I refer the distinguished Senator from Parañaque to page 4, lines 23 to 26 of the bill:

Officers or members of another organization, group, fraternity or sorority who knowingly cooperated in carrying out hazing by inducing the victim to be present thereat shall be liable as principals.

**Senator Webb:** Mr. President, so the important word here is "present". One has to be present during the initiation rite.

**Senator Lina:** If a person is present during the initiation rite, then it will be *prima facie* evidence of participation therein as a principal.

However, going back to the Gentleman's example, if the recruiter was not present during the initiation rite and the recruitee suffers physical injuries or even death, then the recruiter, I believe, must be held liable as a principal, Mr. President. That is something, I must admit, is not very clear--proper amendments will be introduced to address that particular case.

Again, during the period of amendments, whether by the committee or by the Gentleman, we will introduce needed amendments to cover that situation because page 4, lines 23 to 26 refers to officers or members of another organization who knowingly cooperated in carrying out the hazing by inducing the victim to be present thereat, Mr. President. That is a good question--what will be the liability of a recruiter who turned out to be not present during the hazing itself.

**Senator Webb:** Going back to that particular example, Mr. President. My last question is: For instance, in that same situation--and we are now talking of an act of a corporation, and again I am going back to this particular situation--can the persons involved, Mr. A and B, hide under the veil of corporate fiction? Because earlier, I made mention of the ruling in *People of the Philippines v. Montilla*, and I am trying to go back to that particular segment of the ruling because we now deal with persons who are involved in a corporation. Can they hide under the veil of corporate fiction?

**Senator Lina:** If they are officers, Mr. President, of the corporation and, as I said, we will enumerate the officers even of the school or even of this institution, and now the Gentleman is suggesting corporation, we will enumerate the officers that we will make answerable for the acts of hazing. And if these A and B, in the Gentleman's example, are officers of the corporation, even if they did not actually participate in the

hazing, but they were part of the planning group, and in fact they induced the recruitee to be present during the initiation, then they will be made liable.

**Senator Webb:** I certainly agree with the observation of the Gentleman because, in my own opinion, Messrs. A and B cannot hide under the veil of corporate entity because when a corporation's separate legal personality is used to defeat public convenience unjustly or wrongly, the law should protect the public. The law will regard the corporation as having no separate personality, distinct and separate from its members. Hence the corporation and the individuals composing it will be considered identical.

**Senator Lina:** Thank you very much for those comments, Mr. President.

Just to complete the picture, even conspiracy to commit the crime of hazing shall be punished. Even if no actual injury occurs to the neophyte or member who will be hazed or the hazing itself is prevented by reason of causes independent of the will of the perpetrators, the conspiracy to commit a crime of hazing itself is made a crime. So the officers of the corporation that had been referred to in the example by the Honorable Senator from Parañaque will also face criminal liability.

**Senator Webb:** Thank you very much, Mr. President.

**The President:** May the Chair be clarified on that point?

Is the Sponsor saying that one who merely invites or recruits to membership in a fraternity be held liable, notwithstanding the fact that he has no criminal knowledge or participation during the hazing itself?

**Senator Lina:** Mr. President, knowing that there will be physical initiation.

**The President:** That is the keyword. The keyword is "knowing". That means, he must have criminal knowledge or criminal participation. But the mere act of recruitment as well as invitation to membership--without more-- cannot be made a crime.

Is it not standard in our penal statutes that although corporations as such cannot be held criminally liable, because there is absence of malice, yet the officers who have knowledge of the same or who have participated are held criminally liable?

**Senator Lina:** Yes, Mr. President.



**The President:** All right. That is what the Gentleman meant when he said that in the proposed amendments these officers will be specified.

**Senator Lina:** Yes, Mr. President. So that there will be no confusion, they have to be qualified. Since this is a criminal statute, we can really pinpoint responsibility.

**The President:** One final point.

The criminal acts which constitute hazing resulting in death, injury or sufferings on the part of the victim are separate or independent crimes or offenses. Or, are they necessarily included in the crime of hazing so that one who is prosecuted for hazing can no longer be prosecuted anew for any of the offenses necessarily included therein on the ground of double jeopardy?

**Senator Lina:** Yes, Mr. President. If the charge is hazing and the result is death, then he can no longer be prosecuted for other crimes.

**The President:** And the penalties are made higher by comparison.

**Senator Lina:** Yes, Mr. President, it is increased.

**The President:** All right.

The Minority Leader please.

**Senator Guingona:** Mr. President, will the distinguished Gentleman yield for some questions?

**The President:** He may do so if he so desires.

**Senator Lina:** With pleasure to the Minority Leader.

**Senator Guingona:** May we know the definition of "hazing"?

**Senator Lina:** Mr. President, hazing is defined in the bill from line 5 to line 19. But to summarize, hazing is the infliction of physical, mental or psychological pain and suffering, or a combination thereof, by any person or persons composing an organization, group, fraternity or sorority on any person, including recruits of the Armed Forces of the Philippines, PMA, PNP, Citizens Military Training or Citizens Army Training, as part of initiation rites or as a requirement for membership in such organization, group or fraternity which results in death, mutilation, serious physical injuries, insanity or psychological disorder, sexual abuse, sodomy or

lascivious acts or other injuries as provided by the law.

It is defined here, Mr. President, and the elements are all included in this definition.

**Senator Guingona:** Under that definition which seems to be a little complex, is sexual abuse the means or the result of the intended crime?

**Senator Lina:** Mr. President, it is a result of the initiation rite which we hope to eliminate.

The initiation rite may result in all these specifications that I mentioned. It is so stated here, Mr. President--which may result in death, mutilation, sexual abuse and sodomy.

**Senator Guingona:** Yes, Mr. President, but how can there be hazing which will result in sexual abuse if there is no sexual abuse as a means?

In other words, I would just like to clarify what is the means and what is the result because this definition has a two part definition.

**Senator Lina:** Yes, I get it, Mr. President. The means is the infliction of physical, mental, psychological pain and suffering. So it is all included here. Those are the means, and the results are the ones at the bottom of the definition.

There must be an infliction of physical harm. Mental and sexual abuse are the results of physical harm, Mr. President.

**Senator Guingona:** So that hazing per se, which is a means to the initiation of an organization, is not an intended criminal offense even under this bill.

In order to be a criminal offense within the purview of this intended bill, it must result in either death, mutilation, serious physical injuries, insanity or psychological disorder, sexual abuse, sodomy or acts of lasciviousness, or other injuries as herein provided. If the hazing, in other words, does not result in any of those, then it is permissible.

**Senator Lina:** No, Mr. President. Conspiracy to commit hazing is already punishable. So that, even if there is no actual injury, the fact that a group, sorority, fraternity officers planned hazing, that is already constitutive of the crime of conspiracy to commit hazing. It is on page 3 of the bill, line 4 to line 10, "Conspiracy to commit the crime of hazing...even if no actual injury occurs to the neophyte or member who will be hazed, or the hazing itself is prevented by reason of causes independent of the will of the perpetrators."



**Senator Guingona:** Let us assume that it is a military organization and the sergeant initiates them into the military and he says: "You are all sons-of-a-gun. You are no good."

He insults them; he initiates them into the armed forces. But it does not result in physical pain, it does not result in mental disorder, it does not result in sexual abuse, is that hazing prohibited within the purview of this intended bill?

**Senator Lina:** That is not included, Mr. President. A mere verbal abuse is not included.

**Senator Guingona:** But it says here "anything which inflict mental or psychological pain". A person who insults another and calls him in a derogatory abusive language to instill into him the feeling of being rugged in the armed forces, would command that definition mental or physical or psychological pain.

**Senator Lina:** It does not result in any of those listed, Mr. President. Humiliation is not one of the results. A person may be so humiliated during initiation rite. But that is not what we are contemplating in this proposal.

**Senator Guingona:** That is why, I go back to the original question. The distinguished Gentleman is not punishing hazing per se, because the original intent and purpose of hazing in the more finer traditions of the past, is not intended to inflict pain. It is not intended to commit sodomy. It is not intended to result in death, or any of these. It is just to engender a feeling of separateness, exclusiveness distinct for being a member of a certain organization. No intent to kill, no intent to deflower, no intent to abuse. That is our concept of hazing before the abuses were committed and before death resulted in the recent past.

**Senator Lina:** The more generic term, Mr. President, is "initiation". That is the more generic and neutral term. But hazing already connotes infliction of physical pain, Mr. President.

**Senator Guingona:** So the Gentleman's definition here must result in any of these results: Death, mutilation, serious physical injuries, insanity or psychological disorder.

**Senator Lina:** Yes, Mr. President.

**Senator Guingona:** What is the meaning of psychological disorder?

**Senator Lina:** This means that the person either becomes psychotic or neurotic, Mr. President. There is a psychological

disorder, even amnesia, or lapses in memory as a result of the hazing, Mr. President. Of course, insanity has its own legal meaning, but psychological disorder is broad, to include psychosis, neurosis, and other forms of psychological disorder, Mr. President.

**Senator Guingona:** Most of these acts, if not all, are already punished under the Revised Penal Code.

**Senator Lina:** That is correct, Mr. President.

**Senator Guingona:** If hazing is done at present and it results in death, the charge would be murder or homicide.

**Senator Lina:** That is correct, Mr. President.

**Senator Guingona:** If it does not result in death, it may be frustrated homicide or serious physical injuries.

**Senator Lina:** That is correct, Mr. President.

**Senator Guingona:** Or, if the person who commits sexual abuse does so it can be penalized under rape or acts of lasciviousness.

**Senator Lina:** That is correct, Mr. President.

**Senator Guingona:** So what is the rationale for making a new offense under this definition of the crime of hazing?

**Senator Lina:** To discourage persons or group of persons either composing a sorority, fraternity or any association from making this requirement of initiation that has already resulted in these specific acts or results, Mr. President.

That is the main rationale. We want to send a strong signal across the land that no group or association can require the act of physical initiation before a person can become a member without being held criminally liable.

**Senator Guingona:** That is very commendable and I join the distinguished Sponsor for that rationale. But when a person is charged with hazing, it is basic that a criminal information shall contain but one charge. If a person is charged with hazing, may not the accused invoke the defense of two offenses, namely, homicide and hazing if this bill is passed?

**Senator Lina:** No, Mr. President. The crime that will be charged is hazing, but the penalties will differ depending on the result of the hazing. So there is only one crime.



**The President:** That, too, is the impression of the Chair. I think the constitutional principle being invoked by the Minority Leader refers to trust funds and not to special funds. I think we can check on that.

**Senator Guingona:** We can check on that, Mr. President, but my impression is that both laws creating the OPSF created special funds and not trust funds.

**The President:** Yes. In fact, this was already the subject of a prior interpellation--

**Senator Guingona:** Previously.

**The President:** --I think we admitted at that time that this is not a trust fund but a mere special fund.

**Senator Guingona:** Is it a special fund, Mr. President?

**The President:** Yes, it is.

**Senator Guingona:** That is the point.

**The President:** The constitutional provision that the Minority Leader is citing refers to trust fund which cannot be used for other purposes unless the purpose of the fund shall either have been already accomplished or abandoned.

**Senator Guingona:** May we know the difference between trust fund and special fund, Mr. President?

**The President:** Precisely, that is why I have posed the question of whether they are one and the same thing, because I think we can go into the Constitution.

The Gentleman may proceed with his questions.

**Senator Guingona:** Yes, Mr. President.

I think for purposes of enacting this bill, we can say that the purpose for which Republic Act No. 6952 has been enacted has already been complied with. Never mind the ...

**Senator Maceda:** For the nth time, Mr. President, I said I agree to that. But still the Section 1, which says that we are appropriating P5 billion from the OPSF, even if a new Section 4 will be added, will still have to go through because that is the only source of the P5 billion.

**Senator Guingona:** That is all right, as long as the purpose for which it has been previously appropriated has been fulfilled so that, at least, we comply with the

constitutional mandate.

**Senator Maceda:** The purpose of the PPSF has been fulfilled, we agree on that; but we cannot, at this point, agree to a statement that the purpose of the OPSF has been fulfilled.

**Senator Guingona:** The purpose of the fund is embodied in RA No. 6952.

**Senator Maceda:** That is correct, Mr. President. That is the PPSF, the standby fund.

**Senator Guingona:** Yes, Mr. President.

**Senator Maceda:** We have no problem there. Anything we want to do with that fund is fine. I am just bringing to the Gentleman's attention that of that P5 billion, that amount of P4.750.7 has been spent and the amount, in effect, that would be transferred is P249.3.

**Senator Guingona:** Yes, but that is treating it as a fixed item. As we interpret it, that fund has long been replenished. In other words, the P5 billion should now be returned because Caltex and Shell have already been paid. They have amply collected from the claims that they were here trying to lobby for.

**Senator Maceda:** Yes, Mr. President, in principle that is what the bill is all about. But how are we going to replenish the PPSF to make it P5 billion again so that it could be returned?

**Senator Guingona:** It has been replenished in the nature of the OPSF through the collections.

**Senator Maceda:** Does the distinguished Gentleman mean that the OPSF will now release P5 billion to the PPSF?

**Senator Guingona:** Yes.

**Senator Maceda:** From the PPSF, will it go to the Treasury?

**Senator Guingona:** It will go to the appropriation, if the distinguished Gentleman feels that it is a direct appropriation.

**Senator Maceda:** It is a technical point, as I said. I think whatever we can do by indirection we can do by direction, being the Legislative Body.

**Senator Guingona:** So that we will avoid constitutional questions.



penalty will be *reclusion perpetua*.

So that is the difference, Mr. President, between murder and the crime of hazing which results into death. If it is murder, it is *reclusion temporal* to *reclusion perpetua*; if it is committed as a result of hazing, it is the indivisible penalty of *reclusion perpetua*.

**Senator Guingona:** I join the laudable objectives of the distinguished Sponsor, Mr. President, but I am a little disturbed of the statement that the prosecution does not have to prove the elements of murder any longer when this bill is approved. All that the prosecution will have to prove is that there was an organization composed of person or persons who did certain acts, but these certain acts led to murder, to death, to serious physical injuries, to sodomy, and the prosecution will no longer have to prove the elements that resulted in those cases specified under Section 1 of the bill. I am afraid that may distort the basic rationale for the philosophy behind murder, homicide, serious physical injuries, acts of lasciviousness, because if that were so, then the basic elements of such acts willfully, knowingly committed by a person against another would no longer have to be proven. That may be a dangerous departure from the basic tenets of the Revised Penal Code, Mr. President, and I hope that the distinguished Sponsor can enlighten us further.

**Senator Lina:** We only use the example of death occurring as a result of hazing, what the prosecution will have to prove, first, is whether the elements of the crime of hazing are present. That is the first that has to be proven.

Then, in the imposition of the penalty, it is necessary, Mr. President, that if there is sexual abuse--that is why the words "sexual abuse" is used here or "lascivious acts" or "physical injuries"--those will have to be proven by the prosecution. In short, we cannot impose the penalty. If the prosecution fails to prove that there is mutilation, that there is physical injury, these will have to be proven, that they occurred, so that the proper penalty will be imposed.

So if I was not able to express myself thoroughly and completely on that case, then I will repeat myself. The elements of hazing must first be proven.

Now, in the imposition of the penalty, before the proper penalty can be imposed, then the prosecution has to prove what is the result of the hazing; that there is death, there is mutilation, there is sexual abuse, there is insanity, there is psychological disorder. If any of these is proven by the prosecution, then the penalties will be imposed.

I think I will have to repeat myself on that, Mr. President. That is what I meant. I am not saying that when the crime of hazing per se, is proven that a requirement of physical initiation is present before a person can join an organization, that will be enough. That is not the entire picture. The crime of hazing has to be proven, and then in the imposition of penalty the prosecution has to prove what are the results, and the court will have to determine the appropriate penalties based on this law.

**Senator Guingona:** I hope the distinguished Sponsor will bear with us, Mr. President.

May I know the elements that the prosecution will have to prove when death occurs as a result?

**Senator Lina:** Mr. President, first, is the fact of death. It has to be established. The prosecution has to establish that a neophyte died. Second, he died in the hands of the masters. Whether the masters were present or not, there are qualifications under the law. And that one and two must go together, meaning, the death resulted from the initiation, to distinguish it from simple murder.

So in the case of the crime of hazing which results in death, first, the elements of hazing must be proven, and second, for the penalty to be imposed, say *reclusion perpetua* because there is death, the prosecution must prove the fact of death, and then the accused was present and part of the initiation.

**Senator Guingona:** Mr. President, these are the elements basically that have to be proven by the prosecution, even without hazing. In other words, the fact of death must be proven. The fact that the accused inflicted or caused the stabbing or the bludgeoning of the victim which resulted in death, all of these must be proven in the crime of homicide.

I just want to know what is the difference. Because when the charge is made later on, there may be two or more offenses in one information which would allow the accused to file a motion to quash.

**Senator Lina:** The difference, Mr. President, is in the penalty. The penalty that is to be imposed when all these results occur is higher, so that the crime of hazing which results in death, mutilation, serious physical injuries will merit a higher penalty.

**Senator Guingona:** Yes, but what would be the rationale for that imposition? Because the distinguished Sponsor has said that he is not punishing a mere organization, he is not



seeking the punishment of an initiation into a club or organization, he is seeking the punishment of certain acts that resulted in death, et cetera as a result of hazing which are already covered crimes.

The penalty is increased in one, because we would like to discourage hazing, abusive hazing, but it may be a legitimate defense for invoking two or more charges or offenses, because these very same acts are already punishable under the Revised Penal Code.

That is my difficulty, Mr. President.

**Senator Lina:** Mr. President, I think we have joined the issues and I can sense that we are practically on the same plane. But before I make a comment on the statements made by the distinguished Minority Leader, the other difference as far as this bill is concerned is that the owner of the establishment where the hazing is conducted is also made liable, either as a principal or as an accomplice. The school authorities who consented to the hazing activity will also be made liable. Even the parents of the officers or members of the fraternity or sorority who own the place will also be made liable. So that through this legislation, even the owners of establishments will have second thoughts before allowing anyone to use the place for hazing activities.

As to the difficulty perceived by the distinguished Minority Leader that there is no difference now as to the penalty between the crime of hazing and the specific crimes that result from the acts of hazing, there is a big difference, Mr. President, in that there can be conspiracy to commit the crime of hazing even if any of these results do not occur. That is one difference. And that the prosecution will be able to angle a higher penalty, if he chooses this specific crime of hazing as the basis for the prosecution and not the separate individual offense of murder, homicide, or serious physical injuries.

Again, I would like to stress that there is a need to do this so that we can send a strong message, as a matter of policy, to our organizations, young or old, that they should not resort to this activity called hazing.

Another point, Mr. President, is this, and this is a very telling difference: When a person or group of persons resort to hazing as a requirement for gaining entry into an organization, the intent to commit a wrong is not visible or is not present, Mr. President. Whereas, in these specific crimes, Mr. President, let us say there is death or there is homicide, mutilation, if one files a case, then the intention to commit a wrong has to be proven. But if the crime of hazing is the basis, what is important is the result from the act of hazing.

To me, that is the basic difference and that is what will prevent or deter the sororities or fraternities; that they should really shun this activity called "hazing." Because, initially, these fraternities or sororities do not even consider having a neophyte killed or maimed or that acts of lasciviousness are even committed initially, Mr. President.

So what we want to discourage is that so-called initial innocent act. That is why there is a need to institute this kind of hazing. *Ganiyan po ang nangyayari. Ang fraternity o ang sorority ay magre-recruit. Wala talaga silang intensiyong makamatay. Hindi ko na babanggitin at buhay pa iyong kaso. Pero dito sa anim o pito na namatay nitong nakaraang taon, walang intensiyong patayin talaga iyong neophyte. So kung maghihintay pa tayo, na saka lamang natin isasakdal ng murder kung namatay na, ay after the fact ho iyon. Pero, kung sasabihin natin sa mga kabataan na: "Huwag ninyong gagawin iyong hazing. Iyan ay kasalanan at kung may mamatay diyan, mataas ang penalty sa inyo."*

*Iyan po ang diperensiya, G. Pangulo. Kaya, kailangan ito. Iyong hong kasalukuyang batas ay after the fact. Halimbawa, may namatay, mayroong nasugatan, saka mo pa lamang makakasuhan. Dito, kahit hindi pa nangyayari ay puwede na nating kasuhan. Iyan ang dahilan kung bakit gusto nating magkaroon nitong special na krimen na hazing para maintindihan ng mga kabataan at ng mga nakatatanda na gumagawa pa nitong physical initiation bago tanggapin ang isang neophyte sa kanilang organisasyon na iyong hazing mismo, the very act is already punishable. Magkakaiba lamang doon sa penalty depende sa resulta.*

**Senator Guingona:** I join the lofty motives, Mr. President, of the distinguished Sponsor. But I am again disturbed by his statement that the prosecution does not have to prove the intent that resulted in the death, that resulted in the serious physical injuries, that resulted in the acts of lasciviousness or deranged mind. We do not have to prove the willful intent of the accused in proving or establishing the crime of hazing. This seems, to me, a novel situation where we create the special crime without having to go into the intent, which is one of the basic elements of any crime.

If there is no intent, there is no crime. If the intent were merely to initiate, then there is no offense. And even the distinguished Sponsor admits that the organization, the intent to initiate, the intent to have a new society or a new club is, per se, not punishable at all. What are punishable are the acts that lead to the result. But if these results are not going to be proven by intent, but just because there was hazing, I am afraid that it will disturb the basic concepts of the Revised Penal Code, Mr. President.



**Senator Lina:** Mr. President, the act of hazing, precisely, is being criminalized because in the context of what is happening in sororities and fraternities, when they conduct hazing, no one will admit that their intention is to maim or kill. So we are already criminalizing the fact of inflicting physical pain. Mr. President, it is a criminal act and we want it stopped, deterred, discouraged.

If that occurs, under this law, there is no necessity to prove that the masters intended to kill or the masters intended to maim. What is important is the result of the act of hazing. Otherwise, the masters or those who inflict the physical pain can easily escape responsibility and say, "We did not have the intention to kill. This is part of our initiation rites. This is normal. We do not have any intention to kill or maim."

That is the *palusot*, Mr. President. They might as well have been charged therefor with the ordinary crime of homicide, mutilation, et cetera, where the prosecution will have a difficulty proving the elements if they are separate offenses.

So I think the issues have been joined, Mr. President. If there may be differences in perception then, at the appropriate time, we are ready to accept any amendment.

I am very happy that the distinguished Minority Leader brought out the idea of intent or whether it is *mala in se* or *mala prohibita*. There can be a radical amendment if that is the point that he wants to go to.

If we agree on the concept, then, maybe, we can just make this a special law on hazing. We will not include this anymore under the Revised Penal Code. That is a possibility. I will not foreclose that suggestion, Mr. President.

**Senator Guingona:** Mr. President, assuming there was a group that initiated and a person died. The charge is murder. My question is: Under this bill if it becomes a law, would the prosecution have to prove conspiracy or not anymore?

**Senator Lina:** Mr. President, if the person is present during the hazing...

**Senator Guingona:** The persons are present. First, would the prosecution have to prove conspiracy? Second, would the prosecution have to prove intent to kill or not?

**Senator Lina:** No more. As to the second question, Mr. President, if that occurs, there is no need to prove the intention to kill.

**Senator Guingona:** But the charge is murder.

**Senator Lina:** That is why I said that it should not be murder. It should be hazing, Mr. President.

**Senator Guingona:** So if it is hazing, there is no need to prove conspiracy.

**Senator Lina:** Yes, Mr. President, in hazing, if those results occur...

Let me qualify that, Mr. President. I am not very clear about the example.

There is death which occurs in a hazing activity. The question is: Does conspiracy have to be proven? My answer is: Not anymore, Mr. President.

In fact, on page 4, the owner of the place where the hazing is conducted shall be liable as an accomplice when he expressly or impliedly gives permission for said hazing to be conducted therein.

It is already presumed, Mr. President, that he is part of the hazing. If the hazing is held in the home of one of the officers or members of the fraternity, group or organization, the parents shall be held liable as principals, when they have expressly or impliedly given permission for said hazing to be conducted therein.

On page 2, Mr. President, the person or persons who participated in the act of hazing when death, rape, mutilation, permanent insanity or mental illness or permanent physical disability result from said hazing, the person or persons who participated therein shall suffer the penalty of *reclusion perpetua*. And then there is also this provision that the school authorities who consented the hazing or have knowledge thereof but failed to take any action to prevent the same from occurring shall be punished as accomplices.

Now, those who are present during the hazing and the presence of any person during the hazing is *prima facie* evidence of participation therein as a principal.

So there is no need to prove conspiracy, Mr. President. There is no need to prove intent to kill. That is why this is different from the crime of murder--if there is death. Because in the crime of murder, intent to kill has to be proven.

I think, Mr. President, I have answered the question and, as I said, the issues have been joined.

**The President:** Can the Chair pose this question, that the presumption by express provision is only *prima facie*. And



therefore, it is a disputable presumption.

**Senator Lina:** Yes, Mr. President.

**The President:** So if one be present during the hazing, he can still prove that he has no knowledge that hazing that would result in death or infliction of harm will be committed.

For example, let us say, that one is a member of a fraternity. And then, there is a notice to them that initiation rites of new members will be performed in the residence of one of the officers of the said fraternity. All members are cordially invited. As a member of that fraternity, he then responded positively to the invitation and went there, not knowing however that some of the hotheaded or irresponsible members of the fraternity will commit the acts which would result in death, mutilation, serious physical injuries and mental derangement. Would that be a proper defense? He was present. How about those being present and yet, they tried to stop the commission of the acts that had resulted in death, mutilation, physical injuries, et cetera? Ought not a distinction be made with respect to that? I mean, will their mere presence there already condemn them to the penalty as provided for in this bill? It might appear too draconian.

**Senator Lina:** Mr. President, the bill says *prima facie* and therefore, it can be rebutted. The presumption is that, the persons present participated in the hazing.

**The President:** So what the Gentleman is trying to say is, mere presence establishes already a presumption, which if not rebutted, would prove complicity.

**Senator Lina:** Yes, Mr. President. That is specified on page 4 of the bill from lines 18 to 20. That the presence of any person during the hazing is *prima facie* evidence of participation therein as a principal. But we are working on a theory of conspiracy, Mr. President.

**The President:** Would the Gentleman also consider those who try to prevent it?

**Senator Lina:** Yes, Mr. President. That can be included in the language in the final form.

**The President:** Because sometimes, it is also not right that we punish a person for the irresponsible acts of others not having prior knowledge of the same and who, on the other hand, would even have done what he could in order to prevent it.

**Senator Lina:** Yes, Mr. President, I think there is

wisdom in that amendment. We will craft the language to convey that important idea.

**The President:** Yes. The Minority Leader.

**Senator Guingona:** Mr. President, my problem here is that the results of the hazing are, more or less, specified which correspond to existing criminal offenses. And the distinguished Sponsor has said that there is no need to prove some of the basic elements of those offenses. For example, in acts of lasciviousness, there is no longer any need to prove the bad intent. It is there and all who are present are presumed to have participated in the acts of lasciviousness.

Let us put it a bit further. The case of rape is charged, and there is no longer any need to prove conspiracy. Conspiracy is presumed, and there is no longer any need to prove that this is against the will of the victim. It is presumed, it may distort the basic concepts of the Revised Penal Code.

Although I agree with the lofty motives of the distinguished Sponsor, I am afraid that the crime of hazing which is basically the result comprises criminal offenses already established, unless there can be shown that there is a complex crime of hazing, complexed with homicide, complexed with acts of lasciviousness, complexed with insanity as a result of the acts. Because this is really what seems to be the thrust--that hazing is penalized, but it largely depends on the result, and the result is already specified under the different articles in the Revised Penal Code.

If the distinguished Gentleman now says that there is no need to prove conspiracy, there is no need to prove intent, then there is no need to prove the results of hazing. But this is not a complex crime because the distinguished Sponsor has said that initiation by itself is not illegal. If initiation by itself is illegal, and the resulting acts of the initiation results in death, serious physical injuries, et cetera, then perhaps, I would go along with the reasoning that there is no need to prove conspiracy, and there is no need to prove intent.

**The President:** The understanding of the Chair from the explanation made by the Sponsor is that if on the occasion or during an initiation rites, death has resulted, then it is not necessary to prove the elements of murder. In short, all that the prosecution has got to prove is the fact of death committed during or on the occasion of the initiation rites. Because the prosecution, therefore, does not have to prove any of the qualifying circumstances which would qualify a killing into murder.

That is the understanding of the Chair. I do not know



whether that is right.

**Senator Lina:** Yes, Mr. President. I think I have explained myself quite lengthily on that. But if we go one by one on the results, Mr. President, as I said, if death results, then the penalty is *reclusion perpetua*.

As already explained further by the Chair and to which I subscribe, that is the fact that has to be proved, and its connection with the hazing has to be proved. The intent to kill need not be proved because that is precisely the result that we want to punish.

As far as mutilation is concerned, the fact of mutilation has to be proved. In the law, Article 262 of the Revised Penal Code, mutilation means the lopping or the clipping of some part of the body. That is alleged and, therefore, that has to be proved if there is mutilation.

The other result is permanent insanity or mental illness. It is a matter of proof, Mr. President. This has to be proved that this is the result in order that the penalty can be imposed.

Serious physical injuries. We know that under the Revised Penal Code, there are serious physical injuries and there are less serious or slight physical injuries.

To qualify as serious or less serious, the prosecution has to prove that so that the penalty can be imposed. I do not see any difficulty there, Mr. President. The prosecution has to prove that it is a serious physical injury resulting from the hazing, ergo the penalty as the one specified under the law will be imposed.

The fact of conspiracy. I think I have already explained that, Mr. President. Those who are present in the initiation rite are presumed to have participated therein. It is a matter of defense on the part of those who are present to say that they did not participate or to prove that they did not participate and that, in fact, they prevented the untoward incident from happening. But we are working on the theory that there is conspiracy, and it is up to the accused to wiggle out of it because it is only a presumption that they participated in the hazing.

**Senator Guingona:** Mr. President, assuming that there is death, am I to understand from the distinguished Sponsor that the charge of murder will not be made in the crime of hazing?

**Senator Lina:** I have already answered that, Mr. President. It is the crime of hazing that will be the proper charge, but that the penalty to be imposed is the penalty of *reclusion perpetua*.

Because in the bill, when the crime of hazing results in death, the penalty is *reclusion perpetua*. It is a separate crime, Mr. President.

**Senator Guingona:** When there is an offense or a result of hazing which is rape, will the prosecution not have to prove the elements of rape?

**Senator Lina:** It is sexual abuse, Mr. President. If it is rape, then we have to go by the traditional definition of rape. It has to be proved that there is sexual intercourse and that there is penetration up to that labia part, as we know it. It has to be proved in order that the penalty, as specified in the law, can be imposed. But it is the crime of hazing which results in rape.

**Senator Guingona:** But that is the difficulty, Mr. President, that the prosecution still has to prove all of these vital elements which are embodied in the results, and I think the results determine what is hazing, because the definition does not state what is hazing, except if it results in death, serious physical injuries, et cetera. So, we do not determine what is hazing unless there is a result and the results are already products of specific offenses enshrined in the Revised Penal Code.

**Senator Lina:** No, Mr. President. Hazing is already defined as the infliction of physical, mental or psychological pain or suffering inflicted by a person or group of persons on a person or persons as a requirement for membership in any organization--

**Senator Guingona:** Yes.

**Senator Lina:** --but which results, et cetera.

**Senator Guingona:** If they do not result, then there is no offense.

**Senator Lina:** Definitely, Mr. President, because if the physical pain has no result, it is no physical pain at all.

**Senator Guingona:** No. If it does not result in any of those acts specified in Section 1, then there is no offense.

**Senator Lina:** Yes, we will accept that, Mr. President. There is no hazing, because no psychological pain, no physical pain results therefrom, ergo, there is no crime.

**Senator Guingona:** No. There is infliction of mental or psychological pain, but it does not result in death. It does not result in serious physical injuries. It does not result in any of these.



**Senator Lina:** No, Mr. President. Psychological or mental suffering is a means employed. So in the definition, it states that hazing is the infliction of physical, mental or psychological pain and suffering, which results-- *Ano iyong physical, psychological suffering? Pinaupo o pinatindig sa ledge ng fourth floor. Because of the trauma, nasira ang ulo. There is psychological disorder. Then the penalty is there. Pero kung walang resulta, di wala.*

**Senator Guingona:** So that the act of initiating is itself not a crime under the Gentleman's proposal.

**Senator Lina:** Because initiation, as I said already, is a generic term, Mr. President. It is a neutral term by itself. But what produces the crime of hazing is the physical pain or suffering which results into those things. But initiation per se--A neophyte is given one dozen roses. He is sent to a beautiful lady who is the crush of the master or the apple of the eye of the master--That is initiation. But there is no result into death or mutilation or psychological disorder. That is no crime. But if the initiation rite involves infliction of physical pain and naturally if there is infliction of physical pain, there will be some result, then that will be the crime of hazing.

**Senator Guingona:** Yes, Mr. President. The qualifying element is the result. My problem with that is that the results are embodied in some specific offenses. And when I asked him if there is a need to prove the elements of these specific offenses, the answer was no. There is no need to prove conspiracy, there is no need to prove intent, there is no need to prove the personalized doing which resulted in that act. So we have some difficulty there, although I go along with the lofty objectives of this bill.

**The President:** All right.

**Senator Lina:** Mr. President, I think I have already explained myself quite lengthily on this. If I have difficulty explaining myself and be understood then, maybe, I need to sit down with the distinguished Minority Leader so that I can expound some more on my thoughts and ideas on this bill.

But I did say that when the result is death, the intent to kill no longer need to be proved. But if it is permanent physical disability, in our Revised Penal Code, Mr. President, that is defined and, ergo, the prosecution has to prove that it is a permanent physical disability. I do not see any difficulty with that, Mr. President. It has to be proved.

Serious physical injuries? That is defined under the Revised Penal Code. Depending on the number of days that the person needs medical attention, the physical injury may either

be serious, less serious or slight. The prosecution has to prove the elements of that, Mr. President.

I think if we have to go one by one into the results, it can be explained, Mr. President, that the prosecution has to prove the elements of those specific results. Otherwise, they will not be called serious physical injuries if only one day is required by the doctor to have this person under medical care.

And I did not say that when the result is serious physical injury, the prosecution does not have to prove that it is serious physical injury. No. The prosecution has to prove that this accused or this victim has to spend this number of days, and so on, and so forth.

If it is sexual abuse, then there has to be proven that the victim was sexually abused. But after the determination of the evidence by the court, then the impossible penalty, as suggested in the law, will be the one imposed.

So I think there is a logical framework here in this bill, Mr. President.

**Senator Guingona:** I would like to have the privilege of sitting down with the distinguished Sponsor, Mr. President, because I do not see how conspiracy need not be proven in one offense and has to be proven in others. Intent, for example, does not have to be proved in death. It is presumed, and it has to be proven in serious physical injuries that the intent was to really inflict those injuries. There seems to be a confusion of a complex offense here which does not seem to exist, Mr. President.

If the crime of hazing were really punishable then, perhaps, those elements of conspiracy and intent need not be proven because all of these will be absorbed into the higher offense of hazing. But if hazing is by itself not an offense, and from the answers of the distinguished Sponsor they do not seem so because initiation, even hazing, as long as they do not produce these results is not a criminal offense, then there is no complex offense. And what are we punishing? Hazing as an offense.

So I feel that, perhaps, we should look into this more closely.

Thank you, Mr. President.

**Senator Lina:** Mr. President, I think I have answered the points raised by the distinguished Minority Leader. I did not say that hazing is not a crime. In fact, that is the purpose of this bill, to make hazing as a crime and the elements are explained



in the definition.

I have already answered the point of conspiracy, that there is a presumption involved.

Maybe we can see this bill in a better light at the appropriate time.

**The President:** Senator Roco and then after him, Senator Shahani.

**Senator Roco:** Mr. President, will the distinguished Gentleman yield for a few questions?

**Senator Lina:** Willingly, Mr. President.

**Senator Roco:** Mr. President, if it is any consolation to the Gentleman, I think everybody, including the Minority Leader, is in favor of the bill. I notice that almost all the Members will be in favor of punishing hazing. But the wordings and the phraseology seem to lend itself to some misconstruction, at the very least.

Mr. President, will the Gentleman agree to just defining, in simpler words, what hazing is? This is not formal, subject to style. The following wordings may solve the difficulties raised by the Minority Leader and the Gentleman from Parañaque. It is something like this:

ANY PERSON OR GROUP OF PERSONS WHO, AS MEMBER OR LEADER OF A FRATERNITY, SORORITY OR SIMILAR ORGANIZATIONS, SHALL INFLICT PHYSICAL OR PSYCHOLOGICAL HARM OR INJURY UPON ANOTHER WHO IS SEEKING OR IS BEING RECRUITED INTO SAID ORGANIZATION SHALL BE PUNISHED FOR THE CRIME OF HAZING AND SHALL BE SUBJECT TO THE PENALTY OF *PRISION CORRECCIONAL* or whatever.

Mr. President, everybody I have been listening to has been trying to catch the elements. So the elements will be: There are persons who belong to a fraternity; they inflict physical or psychological harm upon another who is seeking to join or is being recruited.

So with those four elements--and those seem to be the answers of the Gentleman, Mr. President--we now have a definition of hazing. That, by itself, is subject to whatever penalty--*prision correccional* or whatever the Gentleman would propose. Will that be a satisfactory middle ground?

**Senator Lina:** The question is premised, Mr. President,

on the fact that the phraseology of the bill leaves much to be desired.

**Senator Roco:** No, no.

**Senator Lina:** Definitely, during the period of amendments, Mr. President, all suggestions are welcome to improve and refine the bill. But I reserve the judgment on some things. If it is being proposed, I will consider and most probably accept, especially coming from a brilliant Colleague like Senator Roco.

**Senator Roco:** I will have no more questions after this, Mr. President.

In any event, I am really trying to be as supportive as possible to the Gentleman.

**Senator Lina:** The definition that has been proposed, Mr. President, can be accepted if that is the proposal.

**Senator Roco:** Did I hear the Gentleman correctly when he said that, first, of course, there must be a person or a group of persons; second, they must belong to an organization of whatever kind; and third, they inflict physical or psychological harm upon somebody, upon another, who is either trying to become a member or who is being recruited into the membership? I guess, Mr. President, from the answers of the distinguished Sponsor, those seem to be the elements of the crime of hazing.

**Senator Lina:** We are willing to accept that, Mr. President, with the inclusion of the recruits for the Philippine Military Academy, for the Philippine National Police and others because many deaths have been reported due to hazing in these institutions.

**The President:** We have to include also those who are not being members or officers of any fraternity or organization at present who participated during the hazing. Otherwise, they would not be liable.

**Senator Roco:** Yes, Mr. President. If we establish that generic definition, then the variations can cover. So if hazing results in death or whatever it is, then the penalty shall be this. If hazing results in insanity or whatever it is, then the penalty shall be this. If hazing is participated in by non-members of the organization, then I leave to the Gentleman the recommendation of whether he wants that to be aggravating or mitigating. Maybe it should be aggravating. Maybe it should increase the penalty. Because if we do that in simpler terms, Mr. President, maybe the difficulties raised by the Minority Leader



and Senator Webb may no longer arise.

**Senator Lina:** That is acceptable. If this is the period of amendments, Mr. President, it is accepted. Looking at the bill, it is structured in such a manner that the results are already included in the enumeration of the results. If that will clarify the bill further and refine the definition, in the period of amendments, that would be most welcome.

**Senator Roco:** In which case, Mr. President, may I then ask some substantial questions.

On page 2, when we speak of immediate dismissal from the school or institution in which they are enrolled, it seems to indicate that the dismissal can only be done as a result of final conviction--when there is already a final judgment. Is that the intention of the Sponsor or do we want to allow precisely the schools--if they are schools--to be able to dismiss, expel or suspend the student even before final judgment? This has arisen, Mr. President, in the celebrated case of Villa. It became a litigable issue.

So could I have a clarification on the intention of the Sponsor as regards dismissal from the universities or colleges?

**Senator Lina:** That is actually what we envisioned, Mr. President. The school must exercise its authority and, therefore, the school administrative proceedings can go on independent of what the courts will say.

So we really need to improve this particular provision, and that is also true as far as No. 2 and No. 3 are concerned.

**Senator Roco:** Yes. I thought, Mr. President, that has to be clarified.

The other substantive question, Mr. President, I would like to be clarified on what has been caught on by the Senate President and the Minority Leader--the question of being principal.

The parents, it says on page 4, shall be held liable as principals when they have, expressly or impliedly, given permission for said hazing to be conducted therein. Presumably, "therein" apparently refers to the home.

**Senator Lina:** Yes.

**Senator Roco:** What kind of principal would he be categorized in, Mr. President? How will the parent under this Section be categorized--as a principal by direct participation or as a principal by inducement or whatever?

**Senator Lina:** By indispensable cooperation.

**Senator Roco:** By indispensable cooperation.

**Senator Lina:** Because the hazing could not have been held without his cooperation by providing the place for the hazing.

**Senator Roco:** But the Senate President, I think, has suggested that, since this is part of the Penal Code and is, therefore, a felony, when the mind is not criminal, there can be no crime.

Will the Gentleman now have this definition of "principal" by indispensable cooperation even upon a parent who merely allowed permission of the hazing not even knowing what kind of hazing may have been going on? Is this the intention of the Sponsor to enlarge, therefore, the liability in the definition on the concept of "principal" by indispensable participation?

**Senator Lina:** Mr. President, that really has to be clarified. We have already defined hazing in the first part of the bill, and we anticipate the amendment that we have initially accepted to be coming from the distinguished Senator from Bicol, so that when it is stated here that the parents expressly or impliedly gave permission for said hazing, it is knowledge of that hazing as defined. But if that needs to be clarified further to the effect that there is knowledge of the hazing as defined in this Act, then it will even improve the phraseology of the bill.

I accept the idea that the parents who own the place must have knowledge of the fact and the idea of hazing as defined in the bill.

**Senator Roco:** I am glad, Mr. President, that the Sponsor would allow us some suggestions later on.

Now altogether on a different matter, Mr. President, and this is out of curiosity. When the Sponsor suggested this penalizing or criminalizing of hazing, what penal law or philosophy is he following? Does he feel that penalty is to deter, or penalties are actually part of retribution?

**Senator Lina:** Mr. President, it is more on deterrents.

**Senator Roco:** So does the Gentleman believe that penalty is actually to deter? Because if he does, then one can wonder why he resists this capital punishment if penalty is to deter.



**Senator Lina:** Yes, Mr. President. I will qualify that. What I intended or what I thought was a noble idea to accomplish was to have a specific crime that answers this particular problem. In that sense, if there is a law that punishes a certain act, then the people whom we want to stop from committing that act will be stopped or discouraged from committing that act. It is in the sense that I said when I decided to file this bill. It is in the context of deterring, it is the idea of deterring these people not because of that penalty, but because there is a specific crime that covers that kind of act. That is the context of my answer, because there is no crime of hazing at this point. Now, if we institute the crime of hazing, then the would-be hazers will be discouraged because there is already the crime of hazing.

**Senator Roco:** But the experience of society does not seem to support that conclusion, Mr. President, as kidnapping is a crime, and nobody seems to be deterred.

**Senator Lina:** The problem is not in the crime itself being punished but it is in the law enforcement, Mr. President, and in the administration of justice.

**Senator Roco:** Yes, Mr. President. They are already far appalled in terms of the bill. I would support the bill with the clarity of the definition of hazing, and maybe everybody in the Hall will be supporting it as well under those conditions.

Thank you, Mr. President.

**Senator Lina:** Thank you very much. *Salamat po*, Mr. President.

**The President:** Senator Shahani is recognized.

**Senator Shahani:** Mr. President, I know our Colleague is quite tired, but I would like to assure him my questions will be brief, so I wonder whether he would at this stage entertain a few questions from me.

**Senator Lina:** Willingly, Mr. President. *Hindi pa naman ho* tired.

**Senator Shahani:** Mr. President, on page 3, subsection c, there is reference there to the recruit having undergone hazing, he is prevented from reporting the unlawful act to his parents or guardians. As is well known, silence is part of the initiation rites, and it is possible that the victim will not be willing to report what has happened to him or to her. This is especially true in the crime of rape, even the victim will not admit that she has been raped, and even the parents would not want to admit that that crime has been committed.

What happens then if there is silence on the part of the victim herself or himself?

**Senator Lina:** Mr. President, when there is silence on the part of the recruit who has undergone hazing but the parents know, then the parents can file the case.

This is similar to the proposed bill on rape which the distinguished Senator from Pangasinan filed. The crime of rape will no longer be classified under crime against chastity but already under crime against persons. Therefore, it does not depend anymore on the victim to file the case, but any member as part of the bill on rape, a responsible member of the barangay can file the rape case.

The same is true here, Mr. President. If the recruit decides to be silent, but the parents or anyone, who saw or witnessed the hazing or have knowledge of the hazing, can file the case.

This section, Mr. President, is an aggravating circumstance. It is included in this enumeration of instances when the maximum penalty shall be imposed.

So, first, on the intention of the question. When the recruit decides to be silent, his parents, brothers, anyone who has knowledge of the commission of the crime can report it and be a complainant, Mr. President.

**Senator Shahani:** But in the actual text of this bill, the burden is still on the recruit because it says here:

WHEN THE RECRUIT, HAVING UNDERGONE HAZING IS PREVENTED FROM REPORTING...

It is actually still the victim who will have to report.

**Senator Lina:** Mr. President, if the distinguished Senator can refer to lines 11 to 12 of the bill, the context of this Section is this:

THE MAXIMUM PENALTY HEREIN PROVIDED SHALL BE IMPOSED IN ANY OF THE FOLLOWING INSTANCES: ...

(C) WHEN THE RECRUIT, HAVING UNDERGONE HAZING IS PREVENTED FROM REPORTING....

So the penalty is higher. This does not refer to the instance that it is the recruit himself who will file the case. *Iyon ho ang context nito.*



**Senator Shahani:** I am really thinking more of the rape victim, Mr. President. In other words, if she decides to remain silent. And I do not see any reference here really where others... Because in the previous rape bill, it is only the victim or the parents who can report a rape case.

**Senator Lina:** In the Revised Penal Code, since this will be an amendment, Mr. President, it is presumed that this is not a private offense. When we say this is not a private offense, anybody can file, the witnesses, those who saw the crime, the parents, the guardians can file the charge. That is why, it is not necessary, Mr. President, to make that distinction at this point.

In the rape case, it is a private offense. So there is this difficulty, indeed, if the rape victim decides to remain quiet. But as far as this is concerned, it is understood that this is not a private offense, Mr. President.

**Senator Shahani:** I hope that is clear, Mr. President. I think that still is a question in my mind.

Also on lines 27 to 29, there is reference here as to the owner of the place where the hazing is conducted.

This has been raised by others, but I would like to raise this question again: Suppose the owner is ignorant that hazing has taken place and that there are cases when it is really kept secret, because that is part of the code of initiation and silence is a very important dimension in hazing, what happens then, Mr. President?

**Senator Lina:** They will not be held liable. There must be criminal knowledge. The owner of the place, whether the school authorities or the parents of the neophytes are only liable if they have knowledge and they expressly or impliedly have given their permission for said hazing to be conducted therein.

**Senator Shahani:** Thank you, Mr. President.

**The President:** The Majority Leader is recognized.

**Senator Romulo:** Mr. President, I ask that we suspend the session so that we can go into a caucus to discuss certain matters.

**The President:** Can we close the period of interpellations?

**Senator Romulo:** Mr. President, I move that we close the period of interpellations.

**The President:** Is there any objection? [Silence] There being none, the motion is approved.

#### SUSPENSION OF THE SESSION

**Senator Romulo:** Mr. President, I move that we suspend the session so that we can go into a caucus.

**The President:** Is there any objection? [Silence] There being none, the motion is approved.

Let us repair to Room No. 410 for a short caucus.

*It was 6:02 p.m.*

#### RESUMPTION OF THE SESSION

*At 6:48 p.m., the session was resumed.*

**The President:** The session is resumed. The Majority Leader is recognized.

#### SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 176

**Senator Romulo:** Mr. President, before we adjourn I move that we suspend consideration of Senate Bill No. 176, Hazing as a Crime, under Committee Report No. 18.

**The President:** Is there any objection to this motion? [Silence] There being none, the motion is approved.

#### ADJOURNMENT OF THE SESSION

**Senator Romulo:** Mr. President, there being no other matters to be taken up in this session, I move that we adjourn this evening's session until three o'clock tomorrow afternoon, Wednesday.

**The President:** Is there any objection? [Silence] The Chair hears none; the motion is approved. The session is hereby adjourned until three o'clock tomorrow afternoon.

*It was 6:49 p.m.*