

RECORD OF THE SENATE

TUESDAY, AUGUST 6, 1996

OPENING OF THE SESSION

At 4:45 p.m., the Senate President, Hon. Neptali A. Gonzales, called the session to order.

The President. The Seventh session in the Second Regular Session of the Tenth Congress is hereby called to order.

Let us all stand for the opening prayer to be led by Sen. Juan M. Flavier.

Everybody rose for the opening prayer.

PRAYER

Senator Flavier.

Our Heavenly Father,

We beseech Thee in the Senate to grant us: Health enough to make work a pleasure, Wealth enough to support our needs, Strength enough to battle difficulties and overcome them,

Grace enough to confess our sins and forsake them, Patience enough to toil until some good is accomplished, Charity enough to see some good in our neighbors, Love enough to move us to be useful and helpful to others,

Faith enough to make real things of God, Hope enough to remove all anxious fears concerning the future.

Amen.

ROLL CALL

The President. The Secretary will please call the roll.

The Acting Secretary [Atty. Tolentino], reading:

- Senator Heherson T. Alvarez Present
Senator Edgardo J. Angara Present
Senator Anna Dominique M. L. Coseteng Present
Senator Franklin M. Drilon Present
Senator Juan Ponce Enrile Present
Senator Marcelo B. Fernan Present
Senator Juan M. Flavier Present
Senator Ernesto F. Herrera Present
Senator Gregorio B. Honasan Present

\*\* On official mission

- Senator Gloria M. Macapagal Present
Senator Ernesto M. Maceda Present
Senator Ramon B. Magsaysay Jr. Present
Senator Orlando S. Mercado Present
Senator Blas F. Ople Present
Senator Sergio R. Osmeña III Present\*
Senator Ramon B. Revilla Present\*\*
Senator Raul S. Roco Present
Senator Alberto G. Romulo Present
Senator Miriam D. Santiago Absent\*\*\*
Senator Leticia R. Shahani Present
Senator Vicente C. Sotto III Present\*
Senator Francisco S. Tatad Present
Senator Freddie N. Webb Present
The President Present

The President. With 19 senators present, the Chair declares the presence of a quorum.

THE JOURNAL

Senator Romulo. Mr. President, I move that we dispense with the reading of the Journal of the previous session and consider it approved.

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

The Secretary will read the Reference of Business.

REFERENCE OF BUSINESS

BILLS ON FIRST READING

The Acting Secretary [Atty. Tolentino]. Senate Bill No. 1652, entitled

AN ACT PROVIDING INCENTIVES FOR INCREASE IN LABOR EMPLOYMENT AND HUMAN RESOURCE DEVELOPMENT, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 6977, OTHERWISE KNOWN AS THE "MAGNA CARTA FOR SMALL ENTERPRISES", AND EXECUTIVE ORDER NO. 226, OTHERWISE KNOWN AS THE "OMNIBUS INVESTMENTS CODE OF 1987, AS AMENDED"

Introduced by Senators Shahani, Magsaysay Jr., and Flavier

\*Arrived after the roll call

\*\*\*On account of illness

PHILIPPINES AS A SILVER MEDALIST IN THE 1996 ATLANTA OLYMPICS

Introduced by Senator Ople

The President. Referred to the Committee on Rules

The Acting Secretary [Atty. Tolentino]. Proposed Senate Resolution No. 530, entitled

RESOLUTION DIRECTING THE APPROPRIATE COMMITTEES TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE CIRCUMSTANCES THAT LED TO THE RECENT BREACH OF THE PAMPANGA MEGADIKE AND ON CONTINGENCY PLANS TO PROTECT THE LIVES OF THE RESIDENTS IN PAMPANGA TOWNS FACING DESTRUCTION FROM LAHAR

Introduced by Senator Ople

The President. Referred to the Committee on Public Works

The Acting Secretary [Atty. Tolentino]. Proposed Senate Resolution No. 531, entitled

RESOLUTION EXTENDING WARMEST CONGRATULATIONS AND FELICITATIONS TO FILIPINO BOXER, MANSUETO VELASCO JR., FOR WINNING A SILVER MEDAL IN BOXING AT THE 1996 WORLD OLYMPIC GAMES HELD IN ATLANTA CITY, USA, AND BRINGING HONORS, BY SUCH HEROIC FEAT, TO OUR COUNTRY

Introduced by Senator Sotto III

The President. Referred to the Committee on Rules

The Acting Secretary [Atty. Tolentino]. Proposed Senate Resolution No. 532, entitled

RESOLUTION DIRECTING THE COMMITTEE ON YOUTH AND SPORTS DEVELOPMENT TO INQUIRE, IN AID OF LEGISLATION, FROM THE PHILIPPINE SPORTS COMMISSION AND THE PHILIPPINE OLYMPIC COMMITTEE ON THE PERFORMANCE AS WELL AS THE CONDITION OF THE PHILIPPINE ATHLETIC DELEGATION DURING THEIR PARTICIPATION IN THE RECENTLY CONCLUDED

CENTENNIAL OLYMPIC GAMES HELD IN ATLANTA, GEORGIA, USA FROM JULY 19 TO AUGUST 04, 1996, AND FOR OTHER PURPOSES

Introduced by Senator Sotto III

The President. Referred to the Committee on Youth and Sports Development

Senator Romulo. Mr. President.

The President. The Majority Leader is recognized.

Senator Romulo. Mr. President, yesterday, we announced that for the agenda or calendar of today's session, we will take up the individual amendments on Senate Bill No. 950, the Special Law on Rape. Also, for interpellation, we have Senate Bill No. 1562, Liberalizing Retail Trade; and Proposed Senate Resolution No. 459, Ratification of the UN Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and Their Destruction.

SUSPENSION OF THE SESSION

Before we take up the first part of the agenda which is the Special Law on Rape for individual amendments, may I ask for a brief suspension of the session so that our colleagues can prepare their individual amendments, Mr. President.

The President. Is there any objection? [Silence] There being none, the session is suspended.

It was 4:53 p.m.

RESUMPTION OF THE SESSION

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

The President. The session is resumed.

BILL ON SECOND READING S. No. 950—Special Law on Rape (Continuation)

Senator Romulo. Mr. President, I move that we resume consideration of Senate Bill No. 950 as reported out under Committee Report No. 78. This is the Special Law on Rape.

The President. Is there any objection? [Silence] There being none, resumption of consideration of Senate Bill No. 950 is now in order.

**Senator Romulo.** We are now in the period of individual amendments, Mr. President. Upon the advice and request of our colleagues, we will consider the individual amendments as we move page by page and line by line.

So, I ask, Mr. President, that the sponsor of the bill, the distinguished Senate President Pro Tempore, Senator Shahani, be recognized, and the individual senators who would wish to propose individual amendments on the particular page where we are in, to be recognized accordingly.

For the first individual amendment, may I ask that the distinguished gentleman from Iloilo City, Senator Drilon, be recognized.

**The President.** Senator Drilon is recognized.

**Senator Shahani.** Mr. President, just for the information of our colleagues, we shall be using the same text. I just would like to make sure that we do have as our working paper the version as of July 31st. This was distributed yesterday.

May I also suggest that we go line by line because of the complexity of the topic before us.

**The President.** Is there any individual amendment on page 1 of Senate Bill No. 950 version as of three o'clock p.m., July 31, 1996?

Senator Drilon is recognized.

**DRILON AMENDMENTS**

**Senator Drilon.** In line 13, page 1, unless there are anterior amendments—just a matter of style—I propose an amendment by deleting the words “a crime” because this whole article and chapter is now part of the Revised Penal Code. Therefore, we can just simplify line 13 by reading “Rape is committed”, instead of saying “Rape is a crime”. Just a matter of style, Mr. President.

**Senator Shahani.** It is accepted, Mr. President.

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

Is there any further amendment on page 1?

**Senator Drilon.** In line 17, Mr. President, instead of the article “a”, it should read THE—“When THE woman”—so that it refers to the victim.

**The President.** What does the sponsor say?

**Senator Shahani.** Mr. President, I wonder whether the heading in line 14 refers to “A MAN”.

**Senator Drilon.** I withdraw the proposed amendment, Mr. President.

**Senator Shahani.** Mr. President, I am advised by my cosponsor that “THE woman” is the correct phrase. It is accepted.

**The President.** The Drilon amendment is accepted.

**Senator Drilon.** For the record, I will again move for the approval of the amendment.

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

Is there any further amendment on page 1?

**Senator Tatad.** Mr. President.

**The President.** Senator Tatad is recognized.

**Senator Tatad.** Mr. President, just a question before I propose an amendment, if at all needed.

In line 21, the original age was 12, and I recall asking the question why 12, not 13, 14, 15, 16 or 17? Why not 17 rather than 14?

**Senator Shahani.** Mr. President, I said “12” is the beginning of the age of puberty. For a woman, that is an important biological landmark in her physical development. I think 14 was proposed by Senator Revilla, and he asked the same question.

If we say 17, that is a bit more mature now. What we want to preserve here is that age between childhood and puberty—when the girl is still too young to decide on her physical state.

**Senator Tatad.** In the case of rape victims; they do not decide to become rape victims. They are abused; they are assaulted. Should we not expand the universe of minors so that there would be more minors protected by this law?

**Senator Shahani.** Mr. President, if I do not hear any objections.

**Senator Tatad.** What about 16, Mr. President? If 16 is acceptable, I will move that we amend it to 16.

**Senator Shahani.** If our colleague has in mind “sweet sixteen,” it is accepted.

## ROCO AMENDMENT

**Senator Roco.** Mr. President.

**The President.** May the other cosponsor, Senator Roco, be recognized.

**Senator Roco.** Thank you, Mr. President. May I just say, maybe it is better if the age is 14. It is a good compromise.

It used to be a statutory crime of rape. It is now raised to 14 and this is good. But the socialization of our children today starts much earlier. So, now, when we raise it to 16, it may create a lot of possibilities for statutory rape because none of the circumstances above can happen.

We will notice that when it is statutory, there is no force, no threat, there is no deprivation of reason. It may be just a product of concupiscence or the heat of passion of teenagers and that becomes rape. So maybe, Mr. President, if our distinguished colleague from Bicol will already agree to 14, that looks like a good compromise.

**Senator Tatad.** I am satisfied with the clarifications, Mr. President. Thank you very much.

**The President.** Is there any further amendment on page one?

**Senator Roco.** In line 23, the phrase "EVEN THOUGH NONE..." I think it should be "NEITHER".

**Senator Enrile.** Mr. President.

**The President.** Senator Enrile is recognized.

## ENRILE AMENDMENT

**Senator Enrile.** Mr. President, I would like to propose an amendment on page 1, line 19. And I would like to explain why I am proposing this amendment.

For instance, in the middle of the night, a man approaches a woman, and the woman allowed the man to have carnal knowledge with her in the belief that the man is the husband of the woman without the man asserting that he is not actually the husband. I would consider this actually a fraudulent machination. Therefore, for that purpose, I would suggest that line 19 be amended by inserting the words FRAUDULENT MACHINATION, after the preposition "of" and before the word "abuse". It will now read: "...BY MEANS OF FRAUDULENT MACHINATION OR ABUSE OF AUTHORITY OR RELATIONSHIP.

This is particularly true in the case of twin brothers.

**Senator Shahani.** It is accepted, Mr. President.

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

**Senator Enrile.** Thank you, Mr. President.

**Senator Roco.** Mr. President.

**The President.** Senator Roco is recognized.

## ROCO AMENDMENT

**Senator Roco.** It is just a very minor amendment, Mr. President. In line 23, the conjunction "NEITHER" probably should be NONE.

**Senator Shahani.** It is accepted, Mr. President.

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

**Senator Tatad.** Mr. President.

**The President.** Senator Tatad is recognized.

**Senator Tatad.** Just a consequence of that amendment, I believe in line 24, the word "is" should be changed to BE. It is usually plural, rather than singular. But I think the better usage should be "BE."

**Senator Shahani.** It is accepted, Mr. President. I think that should be in the subjunctive, and that is correct.

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

**Senator Flavier.** Mr. President.

**The President.** Senator Flavier is recognized.

**Senator Flavier.** Unless there are earlier amendments, mine is in line 7.

**Senator Drilon.** Mr. President.

**The President.** Senator Drilon is recognized for an anterior amendment.

**Senator Drilon.** In line 5, instead of "HIS OR HER", we propose that it should read ONE'S — O-N-E-'S.

I repeat, Mr. President, in line 5, instead of "HIS OR HER", we propose to change that to ONE'S — O-N-E-'S.

**The President.** Delete "HIS OR HER" in line 5 and replace it with the word ONE'S.

**Senator Shahani.** It is accepted, Mr. President.

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

Senator Flavier is recognized.

**Senator Flavier.** Mr. President, in line 7, this is really an effort to make it gender-neutral and by way of preface on page 1, the paragraph is: "by a man committing the rape" and on page 2, paragraph 2, it is: "a man committing the rape". But for No. 3, particularly line 7, I propose the amendment by changing "a woman" to the word ANOTHER.

So that it will read: "THE GENITAL OR ANUS OF ANOTHER" under the circumstances stated in paragraph 1. This will make it gender-neutral but the intent of the bill will not be lost nor watered-down.

**The President.** Is the amendment accepted?

**Senator Drilon.** Mr. President.

**Senator Shahani.** I think Senator Drilon wants to say something.

**The President.** Yes, Senator Drilon.

**Senator Drilon.** Mr. President, before the Flavier amendment is acted upon, I do recall that the Sponsor did explain in the course of the interpellation that reference to a man was deleted in this particular instance because we wanted to remove homosexual relationship. The Flavier amendment, if approved, will change that principle. I just want that on record.

**Senator Shahani.** Mr. President, I think that is an important point. I referred that matter precisely to my introductory statement yesterday, that the original version wanted to emphasize that the victim of rape was usually the woman, and we wanted to make it that way.

But as the debate went on, and I would like to make it clear to our colleague from Iloilo, that it was discovered that it could also be a woman, or a man could also rape another man. So we have tried to make it gender-free where possible.

I am also waiting for Senator Coseteng, who had several

amendments the day she interpellated me, and I said, "Let me look at the new version because it is getting to be so confusing." But still, as the debate has evolved, I would like it to be gender-free so that, maybe we will legislate for the future. Anyway, this will include the women also.

But let us keep it a little open-ended because it is hard for us to keep it.

Anyway, for review, on page 1, we really have the man and the woman because it is carnal knowledge. No, we cannot interchange that, Mr. President. I would like to make that clear.

But as we go on to pages 2, 3 and 4, we are walking into a more neutral territory and this is where, I think, the gender-free can come in.

So, the deletion of "his" or "her" and changing it into ONE'S already makes it more gender-free. Since we have accepted that, then the use of the word ANOTHER with the deletion of the words "a woman" is acceptable to make this paragraph gender-free, Mr. President.

**The President.** Senator Drilon is recognized.

**Senator Drilon.** Mr. President, for the record: Is it our intention to include relationships between homosexuals in the definition of rape?

**Senator Shahani.** As the debate has evolved, Mr. President, there have been instances really where we have to admit that there can be rape between a woman, by a woman with a woman as a victim.

**Senator Drilon.** Yes, I think that was clear when we debated on paragraph 3. But I also recall that insofar as homosexuals, I think the good sponsor made it very clear at that time it did not include homosexuals. Now with this amendment, there is apparently a change in the rule. In case of prosecution in the future, the answers to these questions become very important.

**Senator Shahani.** Yes, that is true, Mr. President. As I said, in paragraph 1 there is no doubt that it is a woman who is the victim of rape and not the man. I think that was the principle I insisted on. I am not really changing my mind. As the debate has evolved, I myself am not too clear about what rape should consist of. This was one of the major issues debated before, even in the committee.

So it would include homosexual rape, unless my cosponsor has something to say because I think he wanted to limit it to rape with the woman as the victim. But as I said, Senators Mercado

and Herrera did make some important contributions to the debate, that is why subparagraphs 3 and 4 have now been worded the way they are, Mr. President.

**Senator Roco.** Mr. President, maybe the distinguished sponsor can consider reclassifying this into something like "sexual assault" as another section other than rape, so that the concept of rape is restricted to a violation of the woman. But there are instances of bestial action that do not necessarily restrict itself to the commission of rape by a man.

I am not objecting to the concept, Mr. President. The only reason I am trying to isolate it is that, I can visualize that our colleagues in the House of Representatives may focus on this to object to the bill. I am trying to modify it to the extent possible so that the bill can have a better sailing in the House of Representatives. So by reclassifying this, if the committee will accept a reclassification, even if we keep it and we call it "sexual assault" or "battery", which is the American term they apply to similar circumstances, maybe we can have this modified as proposed by Senator Flavier.

**The President.** With the permission of the sponsor and the distinguished gentlemen on the floor, I think Senator Coseteng is seeking recognition. May we know her pleasure?

**Senator Coseteng.** Just to seek a clarification, Mr. President. Since this bill is defining rape as a crime against persons, I would like to think that homosexuals are considered persons and that they can either be the offender or the offended party in any of these circumstances.

In subparagraphs 2, 3 and 4—although subparagraph 1 was clearly a crime by a man against a woman—degenderizing it would be true to the intent of the bill at hand. In subparagraph 2 where it reads, "by a man who shall insert his penis into the mouth or anus of another person" who may either be a man or a woman, or a homosexual because in all of these persons, they both possess a mouth and anus as well.

#### SUSPENSION OF THE SESSION

**Senator Romulo.** May I ask for a brief suspension of the session, Mr. President.

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

*It was 5:23 p.m.*

#### RESUMPTION OF THE SESSION

*At 5:53 p.m., the session was resumed.*

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

**Senator Romulo.** We are in the period of amendments, Mr. President. We have just turned to page 2.

**The President.** Are there any amendments on page 2?

**Senator Shahani.** Mr. President, just to recapitulate. In line 5, Senator Drilon proposed that the words "his or her" be deleted and substituted by the word ONE'S and the sponsors accepted this amendment.

In line 7, Senator Flavier proposed the deletion of the words "a woman" and to be substituted by the word ANOTHER, whereupon, Senator Drilon asked for a suspension of the session.

Mr. President, during the break, there was a discussion of whether this bill should be gender-free or whether this subject of rape should be limited to the woman. The sponsors decided that the bill should limit itself to the woman as a victim of rape.

However, in subparagraphs 3 and 4 on page 2, beginning in line 4 to line 8, and line 9 to line 11, we have used in both subparagraphs the word "person" to admit the situation where a woman can be raped by another woman, but the victim still is a woman, Mr. President. That is how the situation stands right now. But I believe Senator Coseteng, who has been pressing for a gender-free version, has some comments to make on this issue. I would like to request that she be recognized.

**The President.** Senator Coseteng is recognized.

**Senator Coseteng.** Thank you, Mr. President.

After the discussion earlier, the sponsors had convinced those who would like to finally see a gender-free rape bill against changing the word "woman" to the words "any person." Although we know that the reality is that man do get raped, though by and large, the victims are predominantly women.

With the more liberal atmosphere and perhaps the influence of the internet or mass communication, we have seen an increase or the rise of men—young boys, for example—being victimized. Senator Mercado had very clearly expressed earlier that when a man inserts his penis into the anus of another man, the probability of contracting HIV is much greater because it is unnatural, and that the lining of the anus tears more easily, subjecting this victim to HIV and making him a higher-risk person.

Although we do not want to be obstructionists, Mr. President, and that it was explained by the sponsors that there could be another provision describing the crime of rape against a

man—in other words, such a sexual assault or something to that effect—I would like to see this bill passed at the soonest possible time. I do not want to be any kind of an obstruction to that. I would go along with the intention of the sponsors—Senators Roco and Shahani—and perhaps look at another paragraph describing or referring to rape of a man in whatever language the sponsors would deem it fit.

So, as far as that section, Article 266-A is concerned, I am willing to go by what the sponsors had earlier wished. I still would like to see a gender-free rape bill somehow, Mr. President.

Since we are still on page 2, and after Section 4 there may still be a provision for Section 5, as was my understanding earlier to be able to describe rape against man in whatever legal language it may be is acceptable to the sponsors, we will allow that new section, as the sponsors are still probably getting the language together.

I would also like to propose an amendment in line 12 where it says, "The fact that the offender is the lawful husband of the offended party shall not negate the commission of the offense." During the period of interpellations, I had asked: "What if the offender was not the lawful husband at the time of the rape and that after the crime was committed, the parent, for example, or some pressure was put on the woman to marry the rapist?"

Would there be a way by which this amendment could be included within that paragraph—that a subsequent marriage after the crime of rape has been committed should not negate the commission of rape as an offense? Subject to style, Mr. President.

**Senator Shahani.** Mr. President, I would like to draw the attention of our colleague from Quezon City to page 4, line 27, the section on "Effect of Pardon", which says:

The express or implied pardon granted by the offended party to the offender shall not be a legal impediment to the prosecution of the crime of rape; neither shall it extinguish the criminal action still pending nor constitute a ground for remitting the penalty already imposed.

I wonder whether that could not be considered, Mr. President.

**Senator Mercado.** Mr. President.

**The President.** With the permission of Senators Shahani and Coseteng, Senator Mercado is recognized.

**Senator Mercado.** I have a parliamentary inquiry, Mr.

President. I am on page 2 awaiting a possible amendment in line 44. May I inquire if we have moved to page 4 already, or are we still on page 2?

**Senator Shahani.** We are still on page 2, Mr. President, and we are actually discussing lines 12 to 14. I have just referred our colleague to page 4, lines 27 to 33 where, I believe, her concerns are met.

**Senator Mercado.** Thank you very much, Mr. President.

**Senator Drilon.** Mr. President.

**The President.** Senator Drilon is recognized.

**Senator Drilon.** With the permission of the sponsor, if she will allow me.

In relation to the comment just made, I noticed that in the section referred to by the Sponsor, the second paragraph of Section 13 on page 6 of the June 3 version was deleted. That paragraph reads: "The subsequent marriage between the offender and the offended party shall extinguish criminal action or penalty imposed."

With the comment now of the good sponsor, does it mean that even if the rape victim and the offender subsequently entered into a voluntary marriage, the husband can still be prosecuted for rape? Is that what it means, Mr. President?

**Senator Shahani.** Mr. President, during the period of interpellations on page 6, lines 6 to 9 of the old version, it was decided—and I think this was quite clear during the debate—that the subsequent marriage shall not extinguish the criminal action. It was also decided to delete lines 8 and 9 because this provision does not apply also to coprincipals, accomplices, and accessories.

**Senator Drilon.** Mr. President, maybe for an orderly discussion, we can debate on this when we reach page 3, because I really have some policy problems if that is the intention of the framers, that is to continue the prosecution for rape even if the victim and the offender voluntarily entered into marriage afterwards.

Assuming that all the essential elements of a valid marriage exist, then the view of the sponsor is that the husband can still be prosecuted for rape.

**Senator Shahani.** The issue there is that it is involuntary. I think that is the point which Senator Coseteng has just brought up—if parents force the daughter to marry.

**Senator Drilon.** Yes, that is precisely what I will bring up, Mr. President, when we reach that portion because of the deletion of the second paragraph, page 6 of the old version, particularly Section 13.

The deletion of the entire second paragraph implies that even with the marriage being contracted, a person can still be prosecuted for rape assuming that all the requisites of a valid marriage are present.

**Senator Shahani.** We shall be happy to do that, Mr. President.

**Senator Drilon.** Thank you, Mr. President.

**Senator Shahani.** I think the points raised by our colleague from Quezon City will also be considered at that point.

**The President.** So what is the status with respect to the amendment proposed by Senator Coseteng?

**Senator Shahani.** Mr. President, she has not really proposed any semantic amendment. She was just expressing an idea. This is why in the period of amendments, I would really appreciate a semantic proposal from her. If she does not, I would propose that we postpone the debate on that issue on involuntary marriage at the proper place—that is in line 22A, page 3.

**Senator Coseteng.** Mr. President, I was just asking initially if the sponsor would accept that particular amendment. Since we already have the sentence in line 12, page 2, which reads: "THE FACT THAT THE OFFENDER IS THE LAWFUL HUSBAND OF THE OFFENDED PARTY SHALL NOT NEGATE THE COMMISSION OF THE OFFENSE", then perhaps, if the sponsor agrees to accept this amendment, then we would also say "the fact that any involuntary subsequent marriage that arises after the commission of rape shall not also negate the commission of the crime or offense."

**Senator Shahani.** Mr. President, at this point, I would appreciate receiving a text because it would be easier to say whether this is really the place to put it later on. Maybe we could go on, and we can go back to that proposal once it is put in writing.

**Senator Coseteng.** I will do that, Mr. President.

Also under Article 266-A, this particular provision concerns on "Who may file a complaint for rape?" In the previous version, there was a listing presented, such as the parents or legal guardians, relatives, and others who may file a complaint for rape.

The sponsor had agreed earlier to include under this provision that a complaint for rape may be filed by any person. So it is not limited or confined to those who were enumerated in the previous version.

**Senator Shahani.** Mr. President, in the previous version we did enumerate the persons who could file a complaint. I did previously entertain the notion of having an amendment here, that any person can file a complaint for rape. But since we are now reclassifying rape as a crime against persons, there is really no need to indicate in this text what is already accepted as judicial practice.

**Senator Coseteng.** Do we take it to mean that in the absence of a list containing an enumeration of who may file a complaint for rape, when the crime of rape is committed, that anybody would, in effect, be able to file a complaint?

**Senator Shahani.** That is correct, Mr. President. So that there is no need to mention that anymore. But it is true that any person can now file a complaint concerning a case of rape.

**Senator Coseteng.** Thank you, Mr. President, and I also thank the distinguished lady senator.

**Senator Tatad.** Mr. President.

**The President.** Senator Tatad is recognized. Are we still on page 2?

**Senator Tatad.** We are still on page 2, Mr. President. In line 14, I propose the deletion of the period (.) and in lieu thereof, we substitute a comma (,) and we add the following: IF CARNAL KNOWLEDGE WAS ACCOMPLISHED AGAINST THE WILL OF THE WIFE AND UNDER SCANDALOUS CIRCUMSTANCES, OR WHEN THE HUSBAND KNEW AT A TIME OF THE COMMISSION OF THE ACT THAT HE IS AFFLICTED WITH THE HUMAN IMMUNO DEFICIENCY VIRUS (HIV) OR ANY SEXUALLY TRANSMITTED DISEASES, OR WHEN THE HUSBAND HAS, IN FACT, ABANDONED THE WIFE WITHOUT JUSTIFICATION FOR AT LEAST ONE YEAR OR HAS BEEN CHARGED BY HER WITH BIGAMY OR CONCUBINAGE.

Mr. President, this is an attempt to restore what was in the original version as of June 3, 1996. The reason is as follows:

When we speak of marital rape, we speak of a crime different from a rape committed by one person on another without any spousal relationship. In marriage, Mr. President, one very important thing that happens is that, one spouse gives to the other the right to his or her own body. That right may be

abused but not every abuse may be considered rape. So we must make a distinction.

Marital rape, according to canon law, happens when the act is committed against the will of the person and under scandalous circumstances; when perversion, for instance, is applied, and before the presence of one or so many people who have no reason to witness the act, that would be a scandalous circumstance. But we have to take into account that here, we are talking of the nature of marriage, and the Rape Law should not, in any way, alter the rights contracted within marriage. That is the reason for the proposal.

**Senator Shahani.** Mr. President, there was a considerable debate on this. The original bill does contain the conditionalities. But may I request my distinguished cosponsor, Senator Roco, who really was the main proponent of the theme of marital rape.

**The President.** Senator Roco is recognized.

**Senator Roco.** Mr. President, during the debate, a consensus was arrived at that we must remove the conditionalities. The reason is that we are not changing the concept of marriage, but certainly nothing in the marriage contract will justify, allow or permit the husband to use force, threat or intimidation on the wife, or to deprive the wife of reason just to be able to have carnal knowledge, or to abuse authority.

For instance, when the wife is obliged to display her wares, this can fall under abuse of authority or relationship.

Now, the reason we remove the conditionalities, Mr. President, is that it becomes difficult to apply them. For instance, what will constitute a scandalous circumstance? Does it mean that if one is beaten up in private, it is okay? But there is nothing in the marriage contract that allows that. In fact, what we are defining is not so much a crime. What we are defining here is just an exclusionary rule, that the mere fact that the man is the legal husband shall not negate the commission of the offense.

So that in a rape case filed by the wife against the husband, the husband will have to find other defenses other than the fact that he is the lawful husband because it is not covered by the marriage contract. That is the reasoning.

That is the reason we will find it difficult, I guess, to revert to the original because this was subjected to long debate and Senator Enrile is not here. I think Senator Drilon also had grave reservations about all the different conditionalities.

**Senator Tatad.** Mr. President, I am not trying to propose

that being a lawful husband negates the commission of an offense; that just because one is a lawful husband, one may not be charged with rape. What I am trying to say merely is that, not every offense committed by a lawful husband against the wife on the occasion of the conjugal act should constitute rape.

The right of a man to a woman's body and vice versa the right of a woman to a man's body is something consecrated in marriage. That ought to be respected at all times, but that may be abused and, in fact, it is abused. But should that constitute rape? This is the question. Should every abuse of this act constitute rape? I think this is a question more important than what we think it is.

**Senator Roco.** Mr. President, we share the view that there is something sacred about the marriage contract. For instance, in a real marriage does it mean that the husband can beat up the wife, threaten or intimidate her to submit to his carnal desires?

**Senator Tatad.** Not at all.

**Senator Roco.** That is correct.

**Senator Tatad.** That she might be beaten but not raped.

**Senator Roco.** So, if one has sex through force; the gentleman would want a category that that is not rape when it is a husband. Is that what the gentleman means?

We are not redefining the relationship. All we are saying is that, being a lawful husband does not constitute a defense against beating up one's wife, of course, or against depriving her of reason. Nothing is altered in the marriage relationship because nothing in the marriage relationship allows a husband in any event to beat up the wife.

**Senator Tatad.** We have here a phrase under 1 (c). This is an Enrile amendment—"fraudulent machination, abuse of authority or relationship." I refer to the latter part—"abuse of authority or relationship". It is a very vague term. When does one spouse say there has been an abuse of authority or relationship?

If we accept the premise that in marriage there is an exchange of right over each other's body, one may be inconsiderate; one who is altogether loving today may behave like a beast tomorrow.

**Senator Roco.** Mr. President, abuse of authority here originally, was visualized, for instance, when professors or teachers have carnal knowledge with minors or their students. There may be no force, there may be no deprivation of reason, but the poor victim submits to the authority of the offender.

In relationships like uncles, this really covers incest. Obviously, the relationship applies to incestuous relationship or similar category of relationship.

In the case of unlawful fraudulent machination, I think Senator Enrile was referring to an actual case where the husband had a twin, and he passed off the twin to the wife. In that case, maybe there was rape because the husband was passing off his conjugal rights to somebody else who was not entitled to it. Although there is no force, threat or intimidation and there is no deprivation of reason, in that particular case, I can visualize how the lawful or the legal husband can be accused of rape.

Subparagraph 1(d) will not apply, Mr. President, because this is statutory rape.

Subparagraphs 2, 3 and 4, probably, if the husband puts in a bottle of soft drink into the mouth or anus of the wife, I guess that is not covered by the marriage contract. These three subparagraphs may be more difficult to apply because if it is with the consent between husband and wife, they can explore all possibilities so long as they are both acquiescing to whatever it is they feel they are entitled to do.

Subparagraph 4, sexual intercourse with an animal, I guess is not covered by the marriage certificate.

So there is no change in the marriage contract, Mr. President. We are only saying that the fact that he is the husband does not constitute a full defense.

**Senator Tatad.** Mr. President, perhaps I am unable to put my point that clearly. In any marriage, the conjugal act is an act normally availed of by the spouses in a very natural manner. The situation is abnormal when one party uses force, threat or intimidation in a subsisting marriage.

Under what circumstances would a woman or the wife say the husband employed force, threat or intimidation when she says she does not want to have any sexual relationship with the husband?

As we earlier said—and this is not my own invention, this is something pertinent to marriage—if upon marriage each party gives to the other the right to his or her body, that it requires a specially grave reason for one party to refuse the conjugal debt in which case the other party would unreasonably employ force, threat or intimidation, how do we establish in this law the fact that the spouse, the woman had a serious, grave and valid reason to deny the other party the exercise of his right?

**Senator Roco.** In fact, Mr. President, under a 1921

decision, it is a matter of human right of the wife to say no. The Supreme Court has considered it as a valid denial.

Marriage does not necessarily and automatically grant the man or the woman rights to coerce the other. That is all we are saying, and that does not change by these wordings. It remains the same.

Also, Mr. President, there are articles that say, even the charter on human rights, that we cannot be deprived of the rights on the basis of sex, gender, or religious belief. There are articles that point out and maintain that if the wife cannot say no, then it is discriminatory, simply because she is a woman. But we do not have to get into all those justifications.

Lines 12 to 14, Mr. President, are really just an exclusionary rule in terms of the defenses available to the husband. It does not alter the marriage contract, it does not alter the marriage relationship, it does not alter the concept of rape.

**Senator Tatad.** I am very grateful to our distinguished colleague for his explanation. Unfortunately, I am unable to share his point of view on this issue. I will have to cast a negative vote on this particular point if this is unchanged, Mr. President.

Thank you very much.

**Senator Roco.** Yes. Thank you very much, Mr. President.

There are some small modifications, Mr. President, that Senator Enrile requested me to introduce.

#### ENRILE AMENDMENT

The words "A WOMAN" in line 2 and line 7, to be consistent, should become "THE WOMAN". So that all the indefinite article "A" become a definite article "THE". That is consistent with the first definition. That applies also to line 9: "A PERSON WHO SHALL SUBJECT THE WOMAN" instead of "A WOMAN".

**The President.** This is an individual amendment of Senator Enrile made through Senator Roco. What does the sponsor say?

**Senator Shahani.** Mr. President, I uphold the position of Senator Roco.

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

**Senator Roco.** There is one other amendment Senator Enrile requested. In line 12, "THE FACT THAT THE OF-

FENDER IS THE LAWFUL...”, he requests that the term “LAWFUL” be changed to LEGAL. It is more consistent with normal terminologies describing the husband as the legal husband. He says there is no unlawful husband; although some husbands, very often, commit unlawful deeds.

So, if that is all right, Mr. President.

**Senator Shahani.** It is accepted, Mr. President.

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

Senator Drilon is recognized.

#### DRILON AMENDMENT

**Senator Drilon.** Mr. President, in line 15 of the same page, a matter of style, delete the phrase “The crime of”.

**Senator Shahani.** It is accepted, Mr. President.

**The President.** And capitalize the letter “R” in the word “rape”. Is that right?

**Senator Drilon.** Yes, Mr. President.

**Senator Shahani.** It is accepted, Mr. President.

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

**Senator Drilon.** In line 17, Mr. President, again, a matter of style, delete the phrase “the crime of”.

**Senator Shahani.** It is accepted, Mr. President.

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

**Senator Drilon.** If there are no anterior amendments in line 30, Mr. President, for the same reason, delete the words “crime of”.

**Senator Shahani.** It is accepted, Mr. President.

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

**Senator Drilon.** Unless there is an anterior amendment, I have an amendment in line 41. In line 41, the original law uses the word “husband” instead of “spouse”. The proposed bill

would now use the word “spouse” which may indicate that the husband can be a victim of rape.

In the present bill, instead of “spouse”, it is “husband”.

**Senator Shahani.** Mr. President, Senator Drilon is correct. This was really an oversight. Since we are quoting the original text of the Heinous Crimes Law, it should be “husband” and not “spouse”.

**Senator Drilon.** So, I would propose the amendment by the deletion of the word “spouse” in line 41 and changing the same with the word HUSBAND.

**Senator Shahani.** It is accepted, Mr. President.

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

Is there any further amendment on page 2? [Silence] Is there any amendment on page 3?

Senator Drilon is recognized.

**Senator Drilon.** Mr. President, starting with line 19, the original version states that an aggravating circumstance shall be “KNOWLEDGE BY THE OFFENDER OF THE PHYSICAL DISABILITY OF THE OFFENDED PARTY AT THE TIME OF THE COMMISSION OF THE CRIME.”

Now, there is added the phrase “MENTAL OR EMOTIONAL DISABILITY”. I have two questions before I propose an amendment.

First, how would we distinguish this proposed aggravating circumstance with the existing aggravating circumstance under Article 14 which states that an aggravating circumstance shall be one where advantage is taken of superior strength or means employed to weaken the defense?

How would this aggravating circumstance be different from the existing law, Mr. President?

**Senator Shahani.** Mr. President, I think this expands the words “superior strength”. It is not just physical, but there is a greater mental focus on the part of the offender and more emotional control on the part of the offender. I mean, the victim can be devoid of reason, or she may be mentally disabled and also emotionally unstable. Quite often, the victims of rape are not just those who are physically weak.

**Senator Drilon.** I can appreciate “mental disability”, but I have some problem with “emotional disability”. “Mental

disability" would have a definite meaning in medical science and as understood in criminal law, but "emotional disability" is something else.

I wonder if the good sponsor can consider limiting the aggravating circumstance to "physical or mental disability" and deleting the word "emotional" because really, "emotional disability" is such a vague term, unless there is a technical meaning to this.

**Senator Shahani.** Mr. President, in medical science now, the term "behavioral disorder" is accepted. In fact, I am going to attend a conference in San Francisco on the matter of the delivery of basic health care to those who suffer behavioral disorder.

So, I placed the word "emotional". I think medical science has already gone into emotional disorder. I think this is correct, and this is an instance where the law will have to follow medicine.

**SUSPENSION OF THE SESSION**

**Senator Drilon.** May I ask for a one-minute suspension of the session, Mr. President?

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

*It was 6:34 p.m.*

**RESUMPTION OF THE SESSION**

*At 6:35 p.m., the session was resumed.*

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

**Senator Shahani.** I think Senator Roco has a formulation, Mr. President.

**The President.** Senator Roco is recognized.

**ROCO AMENDMENT**

**Senator Roco.** Mr. President, maybe we can get an agreement so that the amendment will go this way. **PHYSICAL OR MENTAL DISABILITY OR EMOTIONAL DISORDER**, so the terms will have more definite meanings.

**Senator Shahani.** I think that is acceptable, Mr. President.

**Senator Roco.** Thank you, Mr. President.

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

Are there any further amendments on this page?

**SHAHANI AMENDMENT**

**Senator Shahani.** Mr. President, since we have agreed to limit the bill to women as victims of rape, in line 25 of page 3, I think we will have to delete the words "HIM OR"; and it will read: "TO RENDER HER INCAPABLE".

**The President.** To delete "HIM OR HER".

**Senator Shahani.** No, we will retain the word "HER".

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

Any amendment on page 4?

**Senator Mercado.** Mr. President.

**The President.** Senator Mercado is recognized.

**MERCADO AMENDMENTS**

**Senator Mercado.** Mr. President, my amendment is in line 10, unless there are anterior amendments.

In line 10, after the word "DAMAGES" and before the semicolon (;), I move for the inclusion of the phrase **SUFFERED BY THE OFFENDED PARTY AS A CONSEQUENCE OF UN-DUE AND SENSATIONALIZED PUBLICITY.**

May I just explain my amendment: I believe it may not be sound policy to hold media solidarily liable for all the damages as a consequence of the rape that has been committed. Damages should be confined only to those that were suffered by the offended party as a consequence of the sensationalized publicity.

My interpretation of this particular provision, Mr. President, is that media and the accused will be held liable for all the damages that the court may award as a consequence of the rape.

I am proposing this particular amendment to separate the issue of the damages suffered as a consequence of undue or sensationalized publicity.

**Senator Shahani.** Mr. President, I think that makes it clearer; I accept the amendment.

**The President.** How is the amendment now?

**Senator Mercado.** Line 10 would read as follows: "SOLIDARILY LIABLE FOR DAMAGES SUFFERED BY THE OFFENDED PARTY AS A CONSEQUENCE OF UNDUE AND SENSATIONALIZED PUBLICITY;"

**Senator Shahani.** It is accepted, Mr. President.

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

**Senator Mercado.** On the same page, page 4, line 13, after the word "disease" and before the comma (,), I move for the inclusion of the phrase AS A RESULT OF RAPE COMMITTED.

Mr. President, it is important for us to establish that it was the offender who caused the HIV or STD infection. Otherwise, he should not be held liable for the HIV or STD infection which may develop or may be acquired later.

In other words, in this particular case, we are trying to pinpoint the responsibility, Mr. President. That is the rationale for the phrase that I am seeking to be included in line 13.

**Senator Shahani.** Mr. President, I think that is a useful amendment and I accept it. I would like to say that Senator Mercado was the original proponent of this amendment which appears on subparagraph 4, line 4. It is accepted.

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

**Senator Mercado.** Thank you very much, Mr. President.

**The President.** Is there any further amendment on page 4?

**Senator Drilon.** Mr. President.

**The President.** Senator Drilon is recognized.

**Senator Drilon.** Mr. President, on page 4, between lines 33 and 34, I propose the following...

**Senator Roco.** Mr. President.

**The President.** Senator Roco is recognized.

**Senator Roco.** Mr. President, on page 4, The Effect of Pardon, have we finished that?

**Senator Drilon.** That is where my amendment is proposed, Mr. President.

**Senator Roco.** In lines 27 to 33, Mr. President—I have not discussed this with the sponsor—maybe we want to delete this. Because under the situation, it is conceivable that the offender thereafter got married to the offended party. I mean, they voluntarily got married but he is still being prosecuted by the barangay captain.

**Senator Drilon.** In fact, Mr. President, my proposal was precisely to reinstate the previous provision which will in effect extinguish the crime upon marriage.

**Senator Roco.** Yes.

**Senator Drilon.** The proposal now is to delete lines 27 to 33.

**Senator Roco.** My problem, Mr. President, with just marriage being one mode of pardon is, it puts the man, the husband, at a disadvantage. If one is single when he committed rape and he got married, he is forgiven. And this is I think the point of Atty. Tolentino. But if he is already married and he beats up his wife, he will be accused and he can never be forgiven because he cannot marry his wife again.

So, to avoid these conceptual difficulties, we should just delete this. I know that the effort is to make it more strict. But can we imagine a person being married already and he is being prosecuted by his neighbor for having raped the woman who became already his wife? We will have an unforgiving society.

**Senator Drilon.** Mr. President, does that mean that we will not provide anymore for an extinguishment of the liability even in case of marriage if we delete entirely lines 27 to 33? Does that mean that marriage will not be an implied pardon?

**Senator Roco.** I have not correlated it with the other sections but I am just interpreting it broadly. I guess the other rules will apply when one gets married. In this particular case, it will not because it is already a crime against persons.

We should reflect on that, Mr. President. But, certainly, whether we put it back expressly, by deleting this effect of pardon, it will stand a better chance even when we put it there, that marriage will extinguish. Maybe we can put a separate provision on "marriage will extinguish."

**Senator Drilon.** The original phraseology submitted by the committee in its June 3, 1996 version, Mr. President, would state that, "The subsequent marriage between the offender and the offended party shall extinguish the criminal action or penalty imposed. The extinguishment of the criminal action or the penalty shall not apply to coprincipals, accomplices and accessories."

This paragraph was totally deleted. That is why I am concerned that even a subsequent marriage is no longer an implied pardon and therefore, even if the marriage was contracted between the offender and the offended party, and assuming that it was a valid marriage, as Senator Roco said, the barangay chairman can still prosecute the husband.

**Senator Roco.** Mr. President, subject to style, maybe we can put back the old provision and add also a section on "in case the husband is forgiven by the wife." I think forgiveness by the wife should even be encouraged.

I suspect the Civil Code even encourages us to generate forgiveness between husband and wife. So if we put back the provision suggested by the gentleman from Iloilo, together with a provision that forgiveness by the wife will also extinguish the offense, then we may have a more balanced statute.

**Senator Shahani.** If I may recall what Senator Coseteng said, Mr. President, there are instances where the marriage was involuntary. Of course, that was before the rape. In other words, the parents forced their daughter to marry.

**Senator Drilon.** Procedurally, Mr. President, in that case, we will have first to invalidate the marriage through a civil procedure because we cannot invalidate the marriage in the criminal case which is for prosecution of rape. If the defense is subsequent marriage and there is an allegation that it was not a valid marriage, then, to my mind, we have to void first the marriage in another proceeding.

The assumption here is that the marriage contracted is a valid marriage. Therefore, it should cause the extinguishment of the criminal action.

**Senator Roco.** So, can we modify the amendment of the gentleman, Mr. President, subject to style?

**Senator Drilon.** May I first state the amendment? The amendment of Senator Roco, Mr. President, is to delete line 17.

**Senator Roco.** No. Maybe we can substitute this provision with what the gentleman will now propose.

**DRILON AMENDMENT**

**Senator Drilon.** I would propose, Mr. President, the following:

THE SUBSEQUENT MARRIAGE BETWEEN THE OFFENDER AND THE OFFENDED PARTY SHALL EXTINGUISH THE CRIMINAL ACTION OR THE PENALTY IMPOSED; *PROVIDED, HOWEVER, THAT WHERE THERE*

ARE COPRINCIPALS, THE EXTINGUISHMENT OF THE CRIMINAL ACTION OR THE PENALTY SHALL NOT APPLY TO SUCH COPRINCIPALS, THEIR ACCOMPLICES AND ACCESSORIES.

**ROCO AMENDMENT**

**Senator Roco.** *AND PROVIDED, FINALLY, THAT IN CASE IT IS THE LEGAL HUSBAND WHO IS ACCUSED, SUBSEQUENT FORGIVENESS BY THE WIFE SHALL ALSO EXTINGUISH...*

Otherwise, we will have an unbalanced law where one has the advantage when he is single but if he is married, he is punished.

Subject to style, Mr. President.

**Senator Shahani.** Yes, Mr. President. But I remember that Senator Drilon objected to the application of the penalty to coprincipals, accomplices and accessories in his first intervention. Now I take it he is putting them back.

**Senator Drilon.** May I correct that, Mr. President. I was objecting to the inclusion only of the accomplices and accessories.

In other words, I contemplate a situation of gang-rape, where there are several coprincipals and there are several accomplices and accessories. The marriage between one of the offenders and the victim will extinguish the criminal liability as far as the particular offender is concerned. But it need not extinguish the criminal liability of the other members of the gang, the accomplices and accessories of those coprincipals.

That is my intention—trying to hew closely to the proposal of the sponsors. I would repeat, when I first interpellated, I was only referring to accomplices and accessories but not to coprincipals.

**Senator Shahani.** With that clarification, Mr. President, the amendment is accepted by the sponsor.

**The President.** And subject to style.

**Senator Shahani.** Subject to style, Mr. President.

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

Is the "*PROVIDED, FINALLY*" of Senator Roco included in the Drilon amendment?

**Senator Drilon.** Subject to style, I accepted the Roco amendment, Mr. President.

**The President.** So it is understood that way.

**Senator Drilon.** I assume the sponsor accepted my amendment as amended by Senator Roco because, again, it presents a very important principle and, that is, there can be an extinguishment of a criminal liability in case of marital rape by the forgiveness of the spouse.

**Senator Shahani.** That is correct, Mr. President.

**The President.** All right. Are there any further amendments on page 4? [Silence]

On page 5?

**Senator Drilon.** Mr. President, just for clarification. Section 3 would refer to administrative cases. When we say "Suspension of Certain Public Officers and Employees. - The filing of a complaint for rape, et cetera," this refers to administrative complaints because in the June 3 version, "preliminary investigation" is mentioned and therefore, it refers to complaints filed before the fiscal's office.

**Senator Shahani.** Yes, these are administrative cases, Mr. President, within the bureaucracy itself.

**The President.** Why do we not put that?

#### DRILON AMENDMENT

**Senator Drilon.** So that I would propose an amendment pursuant to that suggestion of the Senate President:

In line 35, delete the article "a" and substitute it with the words AN ADMINISTRATIVE. So that it will now read: "The filing of AN ADMINISTRATIVE complaint..."

**The President.** But suppose it is a criminal information?

**Senator Drilon.** Precisely, Mr. President, that is what I asked—whether this section would refer only to administrative complaint—and the answer was in the affirmative. I do not know the intention of the sponsor if, in fact, it is not an administrative complaint but a complaint filed before a prosecutor's office against a public officer. What is the effect of that?

**The President.** Yes, because before an information is filed, at least there is a preliminary investigation not in a case of an administrative complaint and yet, there is already a suspension.

**Senator Shahani.** I think the administrative here, Mr. President, does not belong to the filing.

#### SUSPENSION OF THE SESSION

**Senator Drilon.** May we ask for a short suspension of the session, Mr. President?

**The President.** Is there any objection? [Silence] There being none, the session is suspended.

*It was 6:53 p.m.*

#### RESUMPTION OF THE SESSION

*At 7:10 p.m., the session was resumed.*

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

**Senator Drilon.** Mr. President, after conferring with the sponsors, we have come up with certain amendments to clarify Section 3.

In line 35, we insert the word CRIMINAL between "a" and "complaint"; and between "complaint" and "for" on the same line, we insert the phrase BEFORE A PROSECUTOR'S OFFICE.

So that, if I may read line 35, as amended, starting with the word "Employees. - The filing of a criminal complaint before a prosecutor's office for rape against any..."

**Senator Shahani.** It is accepted, Mr. President.

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

**Senator Drilon.** In line 39 of the same page, Mr. President, after the semicolon (;), we add the following: *PROVIDED, THAT IN THE EVENT THAT THE COMPLAINT IS DISMISSED AT THE CONCLUSION OF THE PRELIMINARY INVESTIGATION, THE PUBLIC OFFICER OR EMPLOYEE CONCERNED SHALL BE IMMEDIATELY REINSTATED WITHOUT LOSS OF SENIORITY RIGHTS OR OTHER BENEFITS.*

**Senator Shahani.** It is accepted, Mr. President.

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

On page 5.

**Senator Drilon.** On page 5, we have an amendment. We propose the deletion of lines 5 to 9 on page 5. The reason we are proposing this is, first, this is a bill punishing rape. On the other hand, this provision, if it remains, will punish a public official for failure to perform certain duties. Second, we do not believe it is equitable that we impose a penalty of imprisonment on a superior officer who may not have jurisdiction over the fiscal investigating the complaint; therefore, that superior officer may not be able to facilitate the speedy investigation of the complaint.

It is for these reasons that we propose the deletion of the penalty clause under lines 5 to 19, and the penalty of the superior officer for his failure to perform the duties enumerated in lines 1 to 4 will be administrative in value to be governed by Civil Service rules.

**Senator Shahani.** Mr. President, I think these amendments proposed by Senator Drilon clarify the issue that we are limiting this to administrative practices. I accept the amendment, Mr. President.

**The President.** May I hear again. Is the gentleman limiting it to administrative practices?

**Senator Drilon.** The purpose of deleting the penal sanction, Mr. President, is: First, the whole bill is a bill on rape. But we include here a penalty for failure to perform an administrative function and therefore, it is not proper.

The second reason is that, as a matter of principle, we should not punish criminally a superior officer who fails to facilitate the speedy investigation of a complaint where the superior officer has no jurisdiction over the investigating prosecutor. We submit, therefore, the criminal penalty should be deleted. The sponsor has graciously accepted.

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

WEBB AMENDMENT

**Senator Webb.** Mr. President.

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

**Senator Webb.** I have an anterior amendment. This is also on page 5, line 3. Between the words "complainant" and "from" insert the words AND/OR VICTIM. The reason why I am inserting such words, is that, it does not necessarily mean that the complainant is the victim or the victim is the complainant. We want to make sure that we respond in the said bill to the possibility that the complainant may be a barangay captain or the

victim's parents, but not necessarily the victim.

**Senator Shahani.** We accept, Mr. President.

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

DRILON AMENDMENT

**Senator Drilon.** In line 10, Mr. President, of the same page.

**The President.** That is, the Duty of the Investigating Officer.

**Senator Drilon.** Yes, Mr. President. Upon our conference with the sponsor, we are informed that the investigating officer here refers to a police officer and would not include a prosecutor at the preliminary investigation stage.

To clarify therefore, Mr. President, may we propose that we delete the word "investigating" and substitute it with the word POLICE.

**Senator Shahani.** We accept, Mr. President.

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

**Senator Drilon.** Along the same reasoning in line 11, we propose to insert the phrase BY THE POLICE between the words "complaint" and "for".

**Senator Shahani.** We accept it, Mr. President.

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

**Senator Drilon.** In line 12, instead of the word "investigating", we delete that word and substitute the same with the word POLICE.

**Senator Shahani.** We accept it, Mr. President.

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

**The President.** How about in line 23?

**Senator Drilon.** Yes, in line 23 the word "investigating" be deleted and substitute it with the word POLICE.

**Senator Shahani.** We accept it, Mr. President.

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

On page 6, page 7.

**Senator Shahani.** Mr. President.

**The President.** Yes, Senator Shahani.

**Senator Shahani.** In line 25 of page 6, delete the word "municipality" and substitute it with the word PROVINCE.

We are proposing this in consultation with the Department of Social Welfare and Development. They said, "To establish a crisis center in every city and municipality would be beyond the means of the government." So, as an initial effort, it should be CITY AND PROVINCE, Mr. President.

**The President.** Or probably in every PROVINCE AND CITY.

**Senator Shahani.** Yes. PROVINCE AND CITY, Mr. President.

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

On page 7.

**Senator Drilon.** On page 7, line 21, there is an appropriation here. Obviously, this is not included in the General Appropriations Act. Will there be an insertion now?

#### SHAHANI AMENDMENT

**Senator Shahani.** Mr. President, before Section 7, may I refer to line 10 of page 7. It would be better if subsection 5 provides "psychological counseling AND MEDICAL SERVICES WHERE NECESSARY for the family of rape victims."

In other words, we add the phrase AND MEDICAL SERVICES WHERE NECESSARY and in line 11 delete the word "rehabilitation."

So it would now read: "Provide psychological counseling AND MEDICAL SERVICES WHERE NECESSARY for the family of rape victims."

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

**Senator Shahani.** Mr. President, this Section 7 is a new one. However, we have to consult the government offices

concerned. Although we gave an earlier version of the bill to Senator Maceda for his own information, I did not have time to give him this new version of the appropriations because he left early tonight.

**The President.** Actually, this is not really an appropriation. It is merely an authority to appropriate.

**Senator Shahani.** That is correct, Mr. President.

**Senator Drilon.** Mr. President.

**The President.** Senator Drilon is recognized.

**Senator Drilon.** So, do we have to wait for the comment of the chairman of the Committee on Finance, Mr. President? As the good sponsor mentioned, she did not have the opportunity to refer this matter to the chairman of the Committee on Finance.

In any case, Mr. President, the amendments are so extensive that it may be best that we do not close the period of amendments now until we see a new version. Maybe at the next opportunity, the chairman of the Committee on Finance can comment on this particular provision.

**The President.** So we will hold this under advisory.

On page 8, are there any amendments? These are standard provisions. Is there any provision here that prohibits the publication of the name and picture of a rape victim until the information is filed with the court?

**Senator Shahani.** I think that is implied because there is a penalty for undue publicity; in other words, if the victim is humiliated or socially degraded. This appears on Section 5, Mr. President.

It is in line 6: "The offended party nor the accused shall suffer from any social degradation, embarrassment, humiliation or any other emotional stress and trauma brought about by undue and sensationalized publicity."

**The President.** That is on page 6, Section 5. I am just merely throwing this idea to the sponsors. Because when it is a prohibition, then it should be in very certain and specific terms, if the committee so desires.

**Senator Shahani.** Further on, Mr. President, it says here:

Towards this end, the investigating officer, prosecutor or the court to whom the complaint has been referred may, whenever necessary to ensure fair and impartial proceedings, and after considering all the

circumstances for the best interest of the parties, order a closed-door investigation, prosecution or trial and that the name and personal circumstances of the offended party and/or the accused, or any other information tending to establish their identities, and such circumstances or information on the complaint shall not be disclosed to the public.

This is not the media, Mr. President, but rather those who are involved in the investigation and prosecution.

**The President.** For uniformity, there is again that term "investigating officer" in line 9 of page 6. Do we have to change the term "investigating officer" here to "POLICE officer" for the sake of consistency?

**Senator Shahani.** That is correct, Mr. President. That is absolutely right.

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

Senator Drilon wants that a clean copy of this bill be prepared and distributed to the members of this Body before further action is had thereon.

**Senator Shahani.** I think that would be the best procedure, Mr. President.

**The President.** All right.

**Senator Macapagal.** Mr. President.

**The President.** Senator Macapagal is recognized.

**Senator Macapagal.** I have a few amendments that are very simple. I would suggest that we take them up tonight before a new copy is made, so that these can also be considered when further action will be taken.

**The President.** So, what are the amendments of Senator Macapagal?

**Senator Macapagal.** There is a motion here of Senator Drilon to suspend further consideration of the amendments until a new copy is furnished. But I would like to have my amendments put in first, so that they can be included in the new copy.

**The President.** Is the lady senator prepared now to give the amendments?

**Senator Macapagal.** Yes, Mr. President.

**The President.** Senator Macapagal is recognized.

MACAPAGAL AMENDMENTS

**Senator Macapagal.** Thank you, Mr. President. My first amendment is on page 3, lines 12 to 14. The purpose of this amendment is to be specific in including those aggravating circumstances already recognized under existing laws, such as those mentioned in Article 14 of Republic Act No. 3815, the Revised Penal Code, as well as those in Republic Act No. 7659 which is the Heinous Crimes Law. This is the result of the interpellation that we had with the distinguished sponsor.

Mr. President, the amendment is on one provision but it is in three lines—lines 12, 13 and 14. So if I may give the amendment my line and then give the total amendment before it is accepted or rejected by the sponsor.

**The President.** So they are interrelated with each other.

**Senator Macapagal.** Yes, Mr. President.

**The President.** Senator Macapagal may proceed to do so.

**Senator Macapagal.** On page 3, line 12, insert the word AGGRAVATING after the phrase "in addition to the". Also replace the words "enumerated under" with RECOGNIZED UNDER EXISTING LAWS.

In line 13, delete the word "be".

In line 14, replace the phrase "considered as aggravating circumstances in" with the word AGGRAVATE.

So that lines 12 to 15 shall read:

IN ADDITION TO THE AGGRAVATING CIRCUMSTANCES RECOGNIZED UNDER EXISTING LAWS, THE FOLLOWING SHALL AGGRAVATE THE CRIME OF RAPE.

That is the proposed amendment.

**Senator Shahani.** Mr. President, I think I know the intent of our distinguished colleague from Pampanga, but the word "aggravate" is just used too often here. "In addition to the aggravating circumstances, the following shall aggravate...". Maybe we could improve the style.

**Senator Macapagal.** Mr. President, subject to style, we can delete the word "aggravating" once, but still I would like it to be

more clearly stated than it is presently worded.

**The President.** With the permission of the two ladies on the floor, I think Senator Drilon seeks to intervene.

**Senator Shahani.** I think the concern of our colleague from Pampanga is when she inserted the phrase "and in other laws". But we have already included under page 2, Article 266 (b), the penalties, and these are precisely taken and adopted *in toto* from Republic Act No. 7659, the Heinous Crimes Law.

**Senator Drilon.** Mr. President, with the permission of the two ladies.

**The President.** Senator Drilon is recognized.

**Senator Drilon.** Just for the consideration of the sponsor when she acts on the proposed amendment. When we say "aggravating circumstance", it means that with the presence of these circumstances, the next higher penalty is imposed, as we know. Now, when we say "shall aggravate," I do not know if that would have the same meaning.

I just want to put that on record for the consideration of the sponsor.

**Senator Shahani.** Precisely, that was my objection, Mr. President.

**Senator Macapagal.** So, if the proposed amendment in line 14 is legally awkward, I withdraw the use of the term "aggravate".

Mr. President, since there is going to be a reprinting, I will look for an alternative formulation, and that will be the style change which I will submit to the sponsor so that it can be included in the printed version tomorrow, if that is all right with the sponsor.

**Senator Shahani.** I will be happy to accommodate our colleague. Again, I just would like to draw her attention that on page 2, the heinous crimes provisions on penalties on rape are included in this bill. That is just for her information, Mr. President.

**Senator Macapagal.** Mr. President, do I understand that as the distinguished sponsor has said, Article 14 of Republic Act No. 3815 is already totally included in this version of the bill?

**Senator Shahani.** That is correct, Mr. President.

**Senator Macapagal.** What about Republic Act No. 7659, the Heinous Crimes Law?

**Senator Shahani.** Under the penalties, Mr. President.

**Senator Macapagal.** So, they are all already subsumed?

**Senator Shahani.** That is correct, Mr. President.

**Senator Macapagal.** Mr. President, I will just make a quick check with my own documentation. But if that is indeed going to be the case, then I withdraw this amendment.

Mr. President, on page 3, line 36, we would like to differentiate the damages mentioned in the bill from moral damages.

Therefore, the proposal is to insert the words **THE ACTUAL** after the phrase "In addition to" so that lines 36 to 38 shall read: "In addition to **THE ACTUAL** damages that may be recovered under existing laws, the following shall warrant the award of additional damages."

**The President.** I think in law, we have classification of damages. We have actual or compensatory damages; we have exemplary damages; we have moral damages.

When we use the phrase "in addition to actual damages", we are actually limiting the extent of the damages recoverable under existing laws.

**Senator Macapagal.** What would be the damages that would be taken out of the scope, Mr. President?

**The President.** Here, damages would be inclusive of all kinds of damages recoverable under the law which includes, as I have said, actual or compensatory damages, moral damages, and exemplary damages.

**Senator Shahani.** So the present wording should stand as it is.

**Senator Macapagal.** All right. I will study the matter further because, after all, we will be taking this up again tomorrow. Thank you.

**The President.** I think we better suspend consideration of this bill for further amendments, if there will be other members who may so desire.

#### SUSPENSION OF CONSIDERATION OF S. NO. 950

**Senator Mercado.** I so move, Mr. President, that we suspend consideration of Senate Bill No. 950.

**The President.** Is there any objection to the motion?

[Silence] There being none, consideration of Senate Bill No. 950 is hereby suspended.

**Senator Shahani.** Mr. President, may I be enlightened. In other words, we shall be preparing a clean text for tomorrow's discussion. Did I get the Chair correct?

**The President.** I think the sentiment expressed here by Senator Macapagal is that it is still open for additional amendments.

**Senator Shahani.** After the clean copy. This is just a procedural step.

**The President.** Is there any objection on the part of Senator Macapagal to that? A clean copy will be prepared without prejudice to the offer of amendments by other members.

**Senator Macapagal.** That is understood, Mr. President.

**The President.** All right.

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

#### SUSPENSION OF THE SESSION

**Senator Mercado.** May I ask for a short suspension of the session, Mr. President?

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

*It was 7:37 p.m.*

#### RESUMPTION OF THE SESSION

*At 7:38 p.m., the session was resumed.*

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

**Senator Romulo.** In tomorrow's session, we shall continue the final individual amendments on Senate Bill No. 950, the special law on rape.

We shall start the interpellation on Senate Bill No. 1562, Liberalizing Retail Trade; and Proposed Senate Resolution No. 459, Ratification of the UN Convention on the Use of Chemical Weapons.

#### ADJOURNMENT OF THE SESSION

Tomorrow is Wednesday, Mr. President. I move that we adjourn this evening's session until four o'clock tomorrow afternoon.

**The President.** The session is adjourned until four o'clock tomorrow afternoon, if there is no objection. [There was none.]

*It was 7:39 p.m.*

