

RECORDS OF THE SENATE

ORGANIZATION OF THE OFFICE OF THE OMBUDMAN

R.A.No. 6770 / S.B.No. 543 / H.B.No. 13646

Dates:	Pages:
JUN 08,1988	14
AUG 01,1988	20
AUG 02,1988	14
AUG 03,1988	13
AUG 04,1988 , AUG 05, 1988.	19
AUG 08,1988	7
AUG 09,1988	19
AUG 10,1988	5
AUG 11,1988	16
AUG 12,1988	21
AUG 15,1988	10
AUG 16,1988	21
AUG 17,1988	29
AUG 18,1988	30
AUG 22,1988	13
AUG 23,1988	25
AUG 24,1988	15

TOTAL OF NUMBER PAGES

275

295

1 - 14
(14 - pages)

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RECORD OF THE SENATE

JUN 08,1988

BILL ON SECOND READING

Senate Bill No. 543 — Organization of Ombudsman

Senator Mercado. Mr. President, I move that we consider Senate Bill No. 543 as reported out under Committee Report No. 263, entitled

AN ACT PROVIDING FOR THE STRUCTURAL AND FUNCTIONAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES.

I move that we recognize Senator Angara to sponsor the bill.

The President. Just a moment, Senator Shahani is recognized.

**MANIFESTATION OF SENATOR SHAHANI
(Presence of All Senators During the Third Reading
of a Bill)**

Senator Shahani. Mr. President, before we begin with the proceedings this afternoon, I should like to make a manifestation.

Unfortunately, I was not here during the voting for the Conference Committee concerning the Comprehensive Agrarian Reform Program. I was in this building until six o'clock but I had to go to my office for some urgent matters, and I believe there were some of us also in the Chamber who, I think, would have been available for the voting had there been some indication on the part maybe of the Senate Leadership or Secretariat that we should really be in the building because some important voting would take place. I know that last night was a difficult evening for everyone and I am, not really blaming anyone for this situation, Mr. President, but I hope we will understand that for every Senator to be present, voting for such an important bill was important to consider.

May I suggest that perhaps we should think of ways and means of formally informing Senators, even just half an hour or one hour before the voting will take place to be around, or if we have to go somewhere, like to the hospital or to the funeral parlor, or maybe to some important places, that we can be contacted at such and such a place. Because I believe, Mr. President, every Senator would like to have ... every Senator would like to have his or her vote registered. It was reported in the press, in the TV last night that I was absent during the voting and, of course, it does not look good, Mr. President, for any of us to be shown in this light.

So, Mr. President, may I request that when we go into the Third Reading, in other words, when the nominal voting will

take place, could we have some advance notice on that type of voting or when the conference committee is up for a vote. I think I will appreciate it, Mr. President, being told in formal way, not to the grapevine, not by just hearsay that indeed there is going to have a voting. And even if the voting does not take place, at least in the morning so that we will take some possible steps to make sure that we are there when our names are called.

Thank you, Mr. President. If I would have been here, Mr. President, I would like to register that my vote would have been "yes" for the CARP bill.

Senator Mercado. Mr. President, may I just make a short explanation. There are things that are not easy to predict in the conduct of the business of the Senate. Yesterday when we found out at about fifteen minutes after five o'clock that the House of Representatives might vote on the House Conference Committee Report because a decision made by the leadership and all the members of the Senate who were here to proceed and act and vote on it last night. In fact, even before eight o'clock we are not too sure that we would vote on it because of some questions that have been raised and we were all playing it by ear. The objective last night was, hopefully, to vote on it and we did vote on it.

I understand that many were actually present but have to leave early or were not inside the building, I would like to suggest a practice that I have seen effective and being done by other Senators. Those who are out of the building leave some aids here in the Floor who can easily get in touch with them for any emergency as a voting that is unannounced.

For those who have not been able to have their votes registered, my apologies but I would like to mention that this was something that we could not predict with certainty at an earlier hour.

The President. Senator Gonzales is recognized.

Senator Gonzales. Probably we can suggest that a buzzer or some sort of mechanical installation that would ring, preparatory to a Third Reading, be sounded so that if some Senators may be outside of the Session Hall but inside the building, then upon hearing this bell or buzzer they would know that they have to go to the Session Hall for the Third Reading. The Third Reading is very, very important than answering the roll when it is called. In fact, I felt very bad when I came home late after attending a party and then saw in the late evening edition of Newswatch and when the announcer, Dodi Lacuna, said that the Senate approved CARP and that I was the only one who did not vote for it for reasons which are not known. Of course, we do not mind it but somebody we feel as public officials because the first impression that registers in the minds

of the viewers is something that will stick there notwithstanding attempts to correct the same.

Senator Aquino. Mr. President.

The President. Senator Aquino is recognized.

Senator Aquino. Mr. President, yesterday when I was feeling dizzy and Senator Tamano even asked me, "Are you not feeling well?" at about six o'clock I was asking if there was going to be a vote on CARP and they said most probably today. So, that is when I decided after the killing phase....that is when I decided after the killing phase this last weekend to try to recover my health. But then, I discovered that the bill went through. Anyway, since it would not change the results of the vote, I also would like to manifest my vote as *Yes* for the Comprehensive Agrarian Reform Program.

The President. Let that be recorded.

Senator Mercado. Mr. President, I move that we recognize Senator Angara to sponsor Senate Bill No. 543.

The President. Senator Angara is recognized.

Senator Enrile. Mr. President.

The President. Senator Enrile, the Minority Floor Leader is recognized.

Senator Enrile. Mr. President, I just would like to find out before we take up this bill whether there is any calamity or emergency to be served, because my reading of the Constitution which has been mangled, tortured, abused, and disabused since we started our sessions last year is to the effect that a certification by the President would be valid only when the bill presented is to answer a calamity or to meet an emergency. I do not see any calamity today, nor an emergency that must be met by this bill unless we consider the ineptness, tardiness and negligence of the Executive Department as an emergency, because the tardiness of this measure was borne out by the ineptness, the negligence and the delay committed by the Executive Department. It should not be a basis for the issuance of a presidential certification creating its own emergency in order to compel the Congress to enact a law without the attendant required time to scrutinize it.

And so, I would like, Mr. President, to find out whether there is an emergent situation other than the act of delay by the Executive Department that would be the basis of this certification.

Senator Mercado. Mr. President.

The President. The Majority Floor Leader is recognized.

Senator Mercado. Mr. President, I agree that there is no calamity or emergency that we can state as a reason for the certification of the bill under consideration, Senate Bill No. 543. I have my reservation as well as regards the evaluation of the bills that have been certified, but while it is not a calamity or any emergency of catastrophe in nature, there is also an urgency in the government to have this bill passed so that we will have a legal structure to establish the Office of Ombudsman has already been appointed. And as time is passing by our people do not have the benefit of an Office of Ombudsman which can serve as a check against graft and corruption and malpractices of officers in the government. And considering how much money has been lost through corruption in this government, especially in the past, and now we are trying to do our best, maybe we can consider the extent of such practices as a calamity and feel the necessity for us to pass this bill to meet such an emergency.

Senator Enrile. Mr. President, I do not relish the position of my distinguished Colleague, the very able Majority Floor Leader, but the Constitution is very clear, which says that no bill passed by either House shall become a law unless it has passed three readings on separate days. If we are going to tinker with this provision and enact laws that will not comply with the three-day requirement, three separate readings, we might be abetting or participating in the enactment of laws or directly enacting laws that are invalid and unconstitutional, and later on may be considered unconstitutional by our courts. How can we consider an urgency and an emergency? Unless, we simply base it on, maybe, homonyms, their similarity in some.

I cannot see that the urgency of any bill can be considered a calamity. Otherwise, any bill that is presented in this Body will be considered or eligible for certification because everyone can say it is an urgent bill.

Senator Mercado. Mr. President, inasmuch as my thinking is not really diametrically opposed to the interpretation of the Minority Floor Leader, I would like to assure the Minority Floor Leader that we are to confer with the Chief Executive of the Republic and transmit to her legal advisers our reservations so that we can find the solution. And, hopefully, in the next session we will have less questions of this nature.

Senator Enrile. Mr. President, I will not press the point, but I would just like to put on the record that, in my humble view, all of these certifications issued by Malacañang are meaningless, and they are violating the very Constitution under which we operate. They violate the three-day rule required under Section 26, paragraph 2 of Article VI of the Constitution.

The President. The Chair would like to know when the First Reading was accomplished.

Senator Mercado. Mr. President, can I have a suspension of the session while I look for my records?

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

It was 3:57 p.m.

RESUMPTION OF THE SESSION

At 4:00 p.m., the session was resumed with Honorable Jovito R. Salonga, President of the Senate, presiding.

The President. The session is resumed.

The Chair was given by the Secretariat the facts with respect to this particular bill.

Senate Bill No. 543, prepared by the Committee on Justice and Human Rights, with Senators Angara, Tañada and Rasul as authors, per Committee Report No. 263, recommending its approval in consolidation with Senate Bill Nos. 394 and 299 on May 31, 1988. Said report was submitted to the Senate on May 31, 1988, and was assigned for consideration by Special Order on June 3, 1988.

Senator Enrile. I would like to thank the Chair for giving us this information. At any rate, Mr. President, I will raise again this issue at the proper time whether there is a public calamity or public emergency other than the negligence and ineptness of the Executive Department to justify this certification.

Thank you.

The President. The Chair understands that for a time there was some kind of a calamity in the Ombudsman office.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized.

Senator Gonzales. I just want to put on the record what I feel about the issue that had been raised by the distinguished Minority Floor Leader.

The Constitution gives to the President the right to issue the certification of the urgency or the necessity for the immediate enactment of a bill in times of calamity or emergency. How the President exercises that duty, to my mind, could give rise to a political question because as the Chair had pointed out, indeed, in the view of the President, as a result of what had happened on the question of the Ombudsman that had affected both the Supreme Court and the Office of the Special Prosecutor, there may be, in her view, a resulting calamity and, therefore, that is a judgment which is allowed by the Constitution to make, and I think that is not reviewable. That is to be considered as final.

On the other hand, properly, and I think the distinguished Minority Floor Leader recognized it that this may not be the time to raise it because the time would be when this bill, if it is approved on Second Reading and is now called for Third Reading without complying with the three-day rule, that is the time that probably the validity of this certification can be raised and debated on.

But at any rate, Mr. President, I stick to the view that, perhaps, this is a political question.

The President. All right. Senator Angara is recognized.

SPONSORSHIP SPEECH OF SENATOR ANGARA

Senator Angara. Thank you, Mr. President. I thought I will miss the honor of introducing this bill. In behalf of my coauthors, Senators Tañada and Rasul, I have the honor of sponsoring this bill.

"We, the sovereign Filipino people," does begin our Constitution. This opening phrase of our Constitution is not mere rhetorical flourish. The quintessential issue for a democratic government is the relation of the people to its government to the public's prides and interests. It is a relationship more fundamental than any question of procedure, more telling than any division of power among levels of government.

It is for this reason, Mr. President, that Article XI of the Constitution sets forth in no uncertain terms the central doctrine of accountability of public officers. Allow me to quote that section:

Section 1. *Public office is a public trust.* - Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

And by the same breath creates the independent Office of the Ombudsman as a positive response to call for honesty, integrity and efficiency in the public service.

Allow me, Mr. President, to give brief historical background behind the concept of Ombudsman. The concept and model for the Office of the Ombudsman finds its roots in Sweden. During the eighteenth century, King Charles XII appointed an official with the title Hogsta Ombudsman and assigned him to "keep an eye on royal officials" and to keep general supervision over the observance of the laws. Then the Swedish constitution provided that the Ombudsman "shall supervise in the capacity of representative of the Riksdag (Parliament) the observance of the laws and statutes as applied in all matters by public officials and employees; and shall institute proceedings before the competent courts against those who, in the execution of their official

duties, have through partiality, favoritism or other causes, committed any unlawful act or neglected to perform their official duties properly.”

The idea of a public officer officially designated to check abuses of government officials spread throughout Europe, albeit the concept of OMBUDSMAN varied from country to country taking into account the local culture and temperament.

For example, in Sweden and Finland, the jurisdiction of the Ombudsman extends to the judiciary in view of the fact that in both countries, a parallel system of supervision over the acts of the administration exists in the Office of the Chancellor of Justice. But the Ombudsman in each of these countries has no power to investigate actions taken by Cabinet members or elected members of parliament or of local councils.

On the other hand, the Danish Ombudsman's jurisdiction excludes judges but includes ministers as heads of departments. Similarly, the British Parliamentary Commission, its Ombudsman, may investigate the acts of Ministers.

In addition, one may note that in countries like the United Kingdom, Finland and Norway, the Ombudsman is a single official. While in Sweden and Denmark, the office of the Ombudsman may be composed of several members. In the case of the United Kingdom, the Parliamentary Commissioner who acts as the Commissioner of Health is a member of the Commission for Local Administration in England.

In all of these countries, Mr. President, the Ombudsman is an officer of the legislative branch of the government.

What has been the Philippine experience? Let me go into it very briefly.

The Philippines also had its administrative experiments in having a watchdog on the bureaucracy.

As the President will recall, in 1950, President Elpidio Quirino created the Integrity Board to receive and investigate complaints against public officials, for acts of corruption, dereliction of duty, and irregularity in office, and submit recommendations to the President. This Board lasted only for six months.

When he assumed the presidency, President Ramon Magsaysay formed the Presidential Complaints and Action Commission (PCAC) to hasten actions against public officials and employees in the Executive Department and “to encourage public participation in making government service more responsive to the needs of the people.” Directly under and solely responsible to the President, the PCAC is clothed with fact-finding and recommendatory functions. Later, the PCAC was superseded by the Complaints and Action Committee in the

Office of the President with essentially the same powers but spelled out in more detail. But two months after President Magsaysay's death, the office was abolished.

His successor, President Carlos P. Garcia, created the Presidential Committee on Administration Performance Efficiency (PCAPE) to evaluate complaints regarding performance of duties imposed by law on various executive departments, bureaus, and office of government. In 1955, President Garcia also created the President's Anti-Graft Committee (PAGCOM) to implement R.A. No. 1379 (Anti-Graft Law.)

President Macapagal had his own Presidential Anti-Graft Committee (created under Executive Order No. 4, January 18, 1962).

When President Marcos started his administration, he initially had the Presidential Agency on Reforms and Government Operations (PARGO) later replaced by the Presidential Complaints and Actions Office (PCAO) which gain was replaced by the revival of the PARGO.

Unfortunately, Mr. President, these different complaints handling agencies have failed to fulfill their mandate of ensuring honesty, integrity and efficiency in the bureaucracy. These supposed watchdogs, which operated at the pleasure of the president, became mere boothlicking puppies.

Cognizant of this unfortunate development, Congress in 1969 tried to create a statutory grievance agency by passing the Citizen's Counselor Act in 1969 (Republic Act No. 6028) with essential powers to protect and safeguard the Constitutional rights of the people to petition the government for redress of grievances.

The Act gave the Office of the Citizen's Counselor jurisdiction to investigate on complaint by any person any administrative act of a government official when his perception is that such an act is unjust, unreasonable, or made under a mistake of law or fact, or without adequate statement of reasons, or based on grounds that are improper or irrelevant, or done inefficiently, or in conflict with law, or otherwise erroneous. Again, sadly this Act never became operational.

During the 70s, Mr. President, during the 1971 Constitutional Convention, 27 resolutions sought the creation of the Office of the Ombudsman. The thrust behind these resolutions was eloquently summed up in the report of the Committee on Ombudsman of that Convention. And let me, with the President's permission, quote from that report. After saying that it is the duty of the state to provide a system whereby the poor can have easy access for their petty grievances, the report said, and I quote:

What we find, is a system characterized by the supremacy of the powerful and the wealthy, respect for the dignity and personality of the elite, the ruling feudal master and super abundance of opportunity for the oppression of the weak, the poor and the unconnected.

Present reliefs from the protection of the citizen's rights are expensive, cumbersome, circuituous and usually available only to the rich and the powerful.

Government is plagued with graft and corruption, callous indifference and gross inefficiency, political meddling, immorality, compartmentalization of justice and bankruptcy in national and local leadership. The helpless disillusioned citizen may not bear anymore. Already, he has raised his voice in protest and defiance. Because this voice has not reached an official ear, he registers his protest in the streets. Disillusion turns into antagonism and antagonism to bitterness towards the government and the people in government. The people's faith in our institution now hangs by a slim thread and is being stretched to the breaking point. This in fine is the collective plaint of the 27 resolutions submitted to this convention and referred to the committee seeking the establishment of a constitutional caucus with two definite objectives, namely, 1) the promotion of higher efficiency and justice in the administration of the laws; 2) the protection of the constitutional rights of the citizens to petition the government redress of grievances.

But, again, Mr. President, we failed to implement the specific and explicit proposal of the 1971 Constitution to create a body that would act as guardian and protector of the rights of all citizens. Today, as our arduous task of reconstruction continues, the opportunity to create a body that would act as guardian and protector of the people has once again come to us. It knocks on the door of this House of Congress.

While Senate Bill No. 543, the Constitution, Mr. President, under Section 3 to 14 of Article XI, provides for the creation of the Office of the Ombudsman. It is high time we pass an enabling law to give substance to this constitutional mandate. The Executive has already taken the first step with the earlier issuance of Executive Order No. 243 and the recent appointments of the Ombudsman and his overall deputy. The next move, Mr. President, is ours. At present we only have a foundation and a framework for the Office of the Ombudsman. It is our duty to give flesh and life to the foundation and framework. We are bound to mold it into working order and to blend and fit it within the machinery of our government with the ultimate objective of improving and enhancing the delivery of public service to our people.

What will be the role of the Ombudsman under this proposal? Departing from the traditional concept of the Ombudsman, Senate Bill No. 543 which is a consolidation of Senate Bill No. 349 and 299, seeks to mold an Office of the Ombudsman that conforms with our own peculiar, social, cultural and political

values. He is an Ombudsman who is not a mere passive protector but an active guardian of the people with the necessary muscle and appropriate clout. The bill, therefore, establishes and organizes the Office of the Ombudsman to assume three important roles: First, the Office of the Ombudsman attends to complaints of citizens against any official misconduct or efficiency in the most expeditious and inexpensive manner, and provide them relief which may include ordering an official to expedite the performance, meting out the appropriate administrative penalties and/or prosecuting the offenders through the Office of the Special Prosecutor. Second, he takes the cudgels for the citizens and represents them in their request for redress of grievances before government agencies. Third, he is an official critic of government where he studies the laws, rules, and bureaucratic procedures and practices and makes appropriate recommendations to improve and enhance the delivery of public service.

The Office of the Ombudsman is independent of the three branches of government. It is accountable to no one except to the people. However, its decisions are subject to judicial review.

What are the salient features of the bill? Let me go over them very briefly, Mr. President.

First, the scope of the mandate and jurisdiction:

Under the bill, the Office of the Ombudsman shall have jurisdiction over bureaucratic inefficiency and misconduct committed in any manner or in whatever form by any public official and employee including those in government-owned or -controlled corporations. The Office of the Ombudsman, however, cannot exercise administrative disciplinary authority over the following:

- (1) those officials subject to impeachment: namely, the President, the Vice-President, Members of the Supreme Court, and the Members of the Constitutional Commission;
- (2) Members of the Judiciary;
- (3) Members of Congress; and,
- (4) the Cabinet.

But, the Ombudsman, however, retains the power to investigate any misconduct or wrongdoing by these officials for the purpose of initiating the proper action is warranted.

As earlier said, Mr. President, the Office of the Ombudsman is not a toothless tiger. It is an active protector and guardian of the people with an essentially independent clout. This is imperative if you were to avoid the dictate of similar "watchdog"

in the past all of which borrowed their clout from the Executive and all of which were failures. Senate Bill No. 543 thus confers upon the Office of the Ombudsman the power to mete out administrative sanctions in less elaborate proceedings to ensure quick relief for the parties.

In relation to this administrative disciplinary authority, the bill provided for concurrent jurisdiction between the Office of the Ombudsman and Civil Service Commission over actionable administrative acts under the Civil Service Law, PD No. 807. In accordance with general principles of law, the Body which takes first cognizance of the action shall exercise the jurisdiction to the exclusion of the other. However, where the administrative act also constitute an offense punishable under Title VII of the Revised Penal Code on "Crimes Committed by Public Officers," the Anti-Graft and Corrupt Practices Act, and other misconduct punishable under other laws, the Office of the Ombudsman shall exercise primary disciplinary authority over them.

Consistent with the interpretation of the Supreme of the Supreme Court of Sections 7 and 13 of Article XI of the Constitution, in the case of *Zaldivar vs. The Honorable Sandiganbayan* with respect to the power of the Office of the Special Prosecutor, the bill places upon the Office of the Ombudsman the authority to investigate and prosecute public officials and employees through the Office of the Special Prosecutor which is now under the control and supervision of the Ombudsman.

The bill, Mr. President, further clothes the Office of the Ombudsman with the power to prescribe immediate relief in order to protect the rights of the complainants. This is in response to the common complaint that investigations take too long such that the matter in question is invariably rendered academic negating whatever claims or right the complainant may legitimately possess.

After due hearing, administrative penalties which the Office of the Ombudsman may impose range from suspension without pay for one year to dismissal with forfeiture of benefits or a fine ranging from Five thousand pesos to twice the amount malversed, illegally taken or lost, or both at the discretion of the Ombudsman.

The bill also, Mr. President, outlines certain rules of procedures for investigation and provides a system of appeals by which order and decisions of the Office of the Ombudsman are made subject to judicial review. This is essential because the Office of the Ombudsman is engaged in adjudication. Rights of parties to due process must, therefore, be safeguarded.

Special attention, Mr. President, is called to the proposal to authorize the Office of the Ombudsman to commence an inquiry into any complaint concerning unofficial act or omission regardless of the source or form of the complaint. This is to underscore the thrust of the bill which is remedial action.

In conclusion, Mr. President, we request our esteemed Colleagues to seriously consider the call for a responsible and responsive government. We have witnessed widespread and popular protest against the government on the issue of graft and corruption and bureaucratic inefficiency. Our own experience attest to this. We also have seen several failed experiments in our country of institutionalizing a watchdog on the bureaucracy.

We, therefore, strongly recommend the passage of this bill as our contribution towards the establishment of a responsive and honest government.

Thank you, Mr. President.

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

Senator Enrile. Mr. President, may I know if my distinguished Colleague would care to answer some questions?

Senator Angara. Very gladly, Mr. President.

Senator Enrile. Mr. President, without abandoning the issue I raised in connection with this particular measure, I will try to interpellate my Colleague to see if some of the doubts that we have could be clarified.

Mr. President, under Section 3, line 16, the proposed measure contemplates a Deputy *Tanodbayan* for the military establishment. How will this Deputy relate his function to the function of the Presidential Commission on Human Rights? Does the Gentleman not think that this will be a duplication?

Senator Angara. There will be no duplication, Mr. President, since the specific role and function of the Deputy for the military will be defined under the rule-making power of the Ombudsman.

Senator Enrile. So that the Deputy, for instance, has jurisdiction over violations of human rights or alleged violation of human rights by the military?

Senator Angara. Offhand, Mr. President, I would say that it will not because violation of human rights is clearly and specifically vested both by the Constitution and the law on the Commission on Human Rights. and, therefore, the jurisdiction of the military outside human rights violation.

Senator Enrile. Now, Mr. President, I can understand the reason why the distinguished Gentleman had elevated the position of the *Tanodbayan* to that of a constitutional officer or equivalent to a member of the Constitutional Commission, and that he can

be removed only by way of impeachment in order to maintain his independence against the awesome powers of the Executive Department. But, I am just wondering whether it was deliberate that there was no prohibition against the relatives of members of the Office of the Ombudsman to engage in the practice of their profession before that Body or to engage in in any business that may be affected by the Office of the Ombudsman or to run for public office, considering the fact that even the Commission on Election will be under the jurisdiction of the Office of the Ombudsman.

Senator Angara. It was not by design or by deliberate act that we did not include prohibition against relatives.

Senator Enrile. May the son, for instance, of a Deputy Ombudsman, a Deputy *Tanodbayan*, or the son of the *Tanodbayan* appear before that body to represent a client?

Senator Angara. Obviously, Mr. President, he cannot, because even by the rules of legal ethics, he would be prohibited and again I am sure that the rule-making power of the Ombudsman would provide for such a contingency and would prohibit such practice.

Senator Enrile. But why do we shy away from roviding such a rule in the law itself, Mr. President?

Senator Angara. No, we are not shying, Mr. President. In fact, we would welcome a suitable amendment to that effect from the Gentleman.

Senator Enrile. May a businessman's son of any of Deputy *Tanodbayan* or the son or daughter of the *Tanodbayan* himself supply equipment and/or other material needs of the office?

Senator Angara. That will be prohibited, Mr. President, because that is indirectly participating in a business on the part of the Ombudsman or his deputies.

Senator Enrile. Mr. President, the supplier is already an adult, maybe he is already 50 years old and a legitimate businessman beyond the paternal authority of the *Tanodbayan*.

Senator Angara. That is true, but if we follow strictly the Anti-Graft Act, I believe that this act would amount to an unlawful act under the Anti-Graft Act.

Senator Enrile. But, Mr. President, the fact that there was no such provision in this law which is posterior to the Anti-Graft Law, does the Gentleman not think that a smart lawyer like the distinguished Sponsor could draw the conclusion that there is an evident intent not to cover that situation and not to disqualify the person?

Senator Angara. As I said, Mr. President, that contingency is covered by the existing Anti-Graft Act.

Senator Enrile. I notice that this proposed measure copied some of the provisions of the Anti-Graft Law. How come that such provision was not inserted in this prohibition in order to make it very clear that the *Tanodbayan*, like Caesar's wife, ought to be, including his deputies, beyond suspicion.

Senator Angara. For one thing, Mr. President, one, there is no deliberate intent to omit such an important prohibition; secondly, that prohibition already exists in the Anti-Graft Act; and, since the proposal would incorporate the Anti-Graft Act by incorporation, we thought it was no longer necessary. But still, having said that, I still would reiterate our desire to get a suitable amendment.

Senator Enrile. May the wife, the children, the brothers, sisters, in-laws, *bayaws*, and *abirats* of the *Tanodbayan*, and including his cousins, and the Deputy *Tanodbayan*'s, be eligible for appointment in the government service and/or in government-owned or -controlled corporations, or in private corporations?

Senator Angara. Strictly, Mr. President, there is no law specifically banning such an employment of a relative simply because of the relationship. But, perhaps, out of *delicadeza*, the Ombudsman and his deputies ought to be like Caesar's wife above suspicion and would use their persuasive power or moral suasion on thir relatives not to accept any position that the distinguished Gentleman described. But, I think, strictly there is no such legal prohibition.

Senator Enrile. My recollection of the Gentleman's description of the Ombudsman as initially envisioned by the People of Sweden and, which perhaps, we want also to follow in this country is that the Ombudsman must not only be pure, he must be the purest of the pure. And, that there should be no basis whatsoever to even suspect that the actuations and decisions of the *Tanodbayan* or Ombudsman be colored by any material or whatever type of influences or motivation because of blood relations or relations by affinity or otherwise. Does not the Gentleman think it would be necessary that we should clarify that in this measure in order to really make it worth our while to consider this bill under the certification of the President, given the fact that we, treating this bill as an emergency and a public calamity during this few days of session? Does not the Gentleman think it proper that we should really clarify this?

Senator Angara. I would be happy to get an emergency amendment, Mr. President.

Senator Enrile. Mr. President, may the wives, children, brothers, cousins, relatives within the sixth degree of consan-

guinity and affinity be entitled to run for public office subject to the jurisdiction of the COMELEC which in turn will be under the jurisdiction of the Ombudsman?

Senator Angara. There is no provision here, Mr. President, that will cover that situation, because I thought personally that such disqualification is not proper in this bill.

Senator Enrile. Does not the Gentleman think that based from our historical experience it is proper for us and urgently needed to provide this in the law that their relatives whether by affinity or consanguinity should be ineligible for appointment in the bureaucracy and to run for public office so that they are free to act against all the government offices over which they have jurisdiction?

Senator Angara. I may agree in principle to the Gentleman's proposal, Mr. President, but the only question is up to what degree of relationship we should apply such a ban. Because, we may also wick a hardship or injustice on people appointed as Ombudsman or deputies if we put such a harsh provision or disqualification against their relatives.

Senator Enrile. Mr. President, if I read the situation correctly, and without being disrespectful to the newly-appointed members of the Office of the Ombudsman, the President of the Philippines decided to select people who have already retired from the public service. In fact, they are senior citizens because perhaps, in her wise belief that these are Gentlemen who are no longer ambitious, who have no more desire for material things, who have no desire for fame, glory and honor. That their only motivation in accepting this job is to render service to country and people. Perhaps, we should help the President translate these thoughts in this law so that we can make the Office of the Ombudsman a very pure office which we will become the beacon light of our people to remove graft and corruption in the country once and for all.

Senator Angara. I agree with that principle, Mr. President, that we must make the Office of the Ombudsman and his deputies pristine pure. But on the other hand, what I am trying to point out is that these public officials have relatives. If we are too harsh on their relatives, I am not against prohibition against all relatives, I am just saying that perhaps we ought to determine the degree of relationship against which this disqualification ought to apply.

With respect to Justice Vasquez and Justice Colayco, who incidentally are present in the Hall, I have no doubt that they were chosen primarily for their unquestioned integrity and stature and knowledge of the law, and therefore, I have no hesitation at all to say that even without these qualifications the Gentleman is pointing out being inserted in this law that they

will insure and will see to it that their conduct, as well as the conduct of their relatives will be above board.

Senator Enrile. Mr. President, there is no iota of any doubt in my mind about the integrity of the newly-appointed members of the Office of the Ombudsman. I have known these men over the years in my private capacity as a humble practitioner and as a public servant and I think that they are a credit, their appointment is at least one among a few credible acts of the executive department. I know Justice Vasquez and the others, and Justice Colayco and all of them, they have served the country loyally and with the highest degree of integrity, but we are fashioning a law not only to cover the period during which those venerable Gentlemen will serve as Ombudsman. We are thinking of the future, maybe for as long as the Republic will subsist. Does not the Gentleman think that this is the time and place for us to provide all of these so that we can really assist the Executive Department, whose desire is to eradicate one of the most pernicious, corroding factor in our social life as a people which is the burgeoning incidence of graft and corruption?

Senator Angara. Mr. President, the distinguished Gentleman and I really have no disagreement over the principle. I think what we may have a slight disagreement only is on the degree of relationship against which such a prohibition should apply or stand.

Senator Enrile. And the reason why I have raised this issue, Mr. President, and my distinguished Colleague, is in his Section 12, his proposed mandate, he said that the *Tanodbayan* and his deputies are the protectors of the people and so, therefore, if they are the protectors of the people we should help them to be insulated from any misgiving or any hesitation in the performance of their duties of the involvement of relations. Because if for instance, a son or daughter or a relative is a member of the Commission on Elections or one of the chief officers of the Commission or a relative runs for a public office as against somebody and another Filipino, it would be too much to expect that as a human being, they will not be influenced by this Act. So, therefore, in order to attain the objectives of this law, maybe we should provide the disqualification of relatives from occupying positions in the government, be it elective or appointive, so that they are free to act.

Senator Angara. As I said, Mr. President, my distinguished Colleague and I have no basic disagreement over the principle. What we may disagree on perhaps slightly is to the degree of relationship. For instance, under Article VII of the Executive Department, the spouse and relatives by the consanguinity or affinity within the fourth civil degree of the President, cannot be appointed as member of Constitutional Commission. So, such a prohibition, I think, would be quite legitimate up to the fourth civil degree.

Senator Enrile. I will have no desire to extend this *ad infinitum*, Mr. President. We must be reasonable in our determination of the cut-off point, but nonetheless the principle should be established that this office which we are creating for the first time by this law, would serve its purpose by insulating it from all political, economic and other considerations that will affect its decision. Because, as I read the proposed law, this is a very powerful office. Just a mere telephone call to public officer will cause that public officer to tremble. And we do not provide the necessary mechanism to isolate it from pernicious or deleterious practices, then, I think that in time, not maybe this newly-appointed members now but 10 years, 20 years hence — this office would be a source of problem rather than a solution to a problem. So, I would like to anticipate the situation by providing it now that we are considering this charter for the Office of the Ombudsman.

Mr. President, the Special Prosecutor for this Office is an organic element or component of the Office of the Ombudsman. Given the awesome power of this office, the responsibility given to it, the nature of its mission, how come that we have reduced the Special Prosecutor to a mere equal of a staff prosecutor of the Department of Justice?

Senator Angara. That is not exactly true, Mr. President, because the rank and salary that we are assigning to the Special Prosecutor is that of a Deputy Ombudsman which is like an undersecretary.

Senator Angara. I have on page 4, number (3):

The Office of the Special Prosecutor shall be an organic component of the Office of the Ombudsman and shall be under its supervision and control. The Special Prosecutor shall have the rank and salary of a Deputy Ombudsman. The members of the prosecution staff of the Office of the Ombudsman shall receive salaries which shall not be less than those of the members of the prosecution staff of the Department of Justice.

So, it is not the Special Prosecutor.

Senator Angara. No, sir.

Senator Enrile. But the members of the prosecution staff.

How much is the salary of a Deputy Ombudsman, Mr. President?

Senator Angara. One hundred eighty thousand a year, Mr. President.

Senator Enrile. Is this equal to the salary of the city fiscal of Manila?

Senator Angara. Is it equivalent to the salary of the associate justice of the Court of Appeals? Which is higher — the salary of the city fiscal of Manila or the salary of the Deputy Ombudsman? I suspect it is almost the same, Mr. President, because the city fiscal of Manila occupies the rank and salary of an associate justice of the Court of Appeals. So, they must be receiving the same salary.

Senator Enrile. I raised that question, Mr. President, because we have all been in the government service, and if the salary of the Deputy Ombudsman is less than of a city fiscal, he will say: "Ang ranggo mo ay mas mababa kaysa sa akin, bakit mo ako pakikialaman." Iyon ang attitude ng karamihan sa atin kung nasa gobyerno na. Tinatanong ko lang po iyang bagay na iyan.

Now, why did we insert, Mr. President, on Section 12 that the Office of the Ombudsman or the *Tanodbayan* and his Deputies are the protectors of the people. Do we have to state this in the law when, after all, by the whole bill itself, it shows that its purpose is really to revolutionize, revitalize and brutalize the entire bureaucratic system in order that they will not commit any errors of judgment, malicious or otherwise, so that the whole system will go straight like a rod. Do we still have to provide this in the law?

Senator Angara. Mr. President, what we simply did is to restate what the Constitution provides under Section 12 of Article XI.

Senator Enrile. What does it say, Mr. President?

Senator Angara. Section 12, Article XI of the Constitution states:

The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints...

Senator Enrile. It is simply a restatement of the Constitution. There is no harm. But I believe that since it is already in the Constitution, it would be a mere verbosity to repeat it here. But, nonetheless, I will not press the point.

Senator Angara. It serves the purpose, Mr. President. It is not mere verbosity because we are really writing for laymen and laymen are not expected to know what is in the Constitution.

The President. With the permission of the Majority Floor Leader, I would like to ask the Sponsor whether he agrees with the opinion of several Members of the Constitutional Commission that the Ombudsman is a toothless tiger; that he is a powerless eunuch. I think that was the word used — eunuch, a castrated man.

Senator Angara. I did not exactly agree with that statement, Mr. President. Because even when one reviews the proceedings of the Constitutional Commission, one can gather this fact: that the constitutional framers left it to Congress to decide the powers and functions of the Ombudsman. If Congress wants to make it a toothless tiger, then so be it. But Congress, on the other hand, can give it muscle and clout which we are intending to do under this proposal.

The President. In other words, Senator Angara chose to adopt the opinion of the Supreme Court on this point rather than the opinion of the Members of the Constitutional Commission.

Senator Angara. I have no choice, Mr. President. I believe in the Supreme Court's decision and I think I have to abide by it.

The President. Just a second question, with the permission of Senator Enrile. May the Ombudsman, under this bill, investigate the alleged irregularities, anomalies and acts of injustices committed by justices of the Supreme Court?

Senator Angara. That is one gray area where we debated, Mr. President. But as a general rule, the Ombudsman cannot look into the official or the conduct of members of the Judiciary. Because that is one of the offices removed out of the jurisdiction of the Ombudsman. Although, we also added that while they are outside the jurisdiction of the Ombudsman, the Ombudsman may initiate an investigation only to find out whether there is a case or not.

The President. Because the last sentence of Section 17 seems to give authority to the Ombudsman to investigate justice of the Supreme Court for alleged irregularities and alleged anomalies.

Senator Angara. My answer, Mr. President, is that, as a general rule, the Ombudsman cannot inquire or investigate into the conduct of the members of the Judiciary. However, it is true that we provided here that the Ombudsman shall have the power to investigate any misconduct in office only for the purpose of initiating the proper action; but the initiation is different from the filing of the complaint.

The President. Therefore, they can initiate an investigation.

Senator Angara. Yes, they can initiate an investigation.

The President. Who will investigate, in turn, on the alleged injustices committed by the Ombudsman?

Senator Angara. There is no agency provided for in this bill. That is a matter that is left to the legislature because the Ombudsman is subject to impeachment.

Senator Enrile. Thank you, Mr. President, for helping the Minority Floor Leader. I was going to raise the same question regarding a eunuch who is not only described as eunuch but powerless. That would be the worst description — eunuch *na*, powerless *pa*.

Mr. President, may I know why the Members of the Cabinet were actually excluded from the jurisdiction of the Office of the Ombudsman, in fact, this is where merrymaking begins.

Senator Angara. It is a policy choice, Mr. President. Since Cabinet members are after egos of the President, and the President herself is outside the jurisdiction of the Ombudsman, these Sponsors thought that we ought to exclude too the Cabinet members as is the practice in the other countries which I mentioned in my sponsorship speech.

Senator Enrile. May it not be, Mr. President, that, based on our experience and the fact that the President herself opted to cause the insertion of this provision in the Constitution and in fact, certify the bill now to us and that she appointed venerable retired justices of the Supreme Court and the Court of Appeals and the public service to man this office, men of impeccable record and integrity, does not the Gentleman think that the President's purpose was really to ask for assistance to challenge and supervise and surveil the members of her Cabinet, who, even now, publicly defy her Executive Order, in spite of the fact that they are the members of the official family of the President and should be the first to heed her call for official rectitude in the public service?

Senator Angara. I do not know about the shenanigans that the Cabinet members may be doing, Mr. President. But I know for a fact that the President or the Presidency is equipped sufficiently with authority to discipline or impose disciplinary actions against his or her Cabinet. So, I do not think she needs. Or this particular President. President Aquino needs some Ombudsmen to do the disciplining for her.

Senator Enrile. Mr. President, it is not the question of disciplining but to initiate an investigation of the conduct of members of the Cabinet who may neglect their functions or who may own so many businesses, not only in the Philippines but including such places like Singapore. Or who may be involved in running businesses in the country, or who may be participating in the sale of our assets abroad and perceived by the people to be committing some errors of judgement if not outright thievery. Does not the Gentleman think that the Office of the Ombudsman will be an opportune office to help the President discipline these people by initiating an investigation in their conduct and submit this to the President for her official action?

Senator Angara. As I said Mr. President, this is a policy choice. The authors, Senators Tañada, Rasul and myself thought

that the policy is better to exclude Cabinet Ministers because they are an extension of the President's personality, but if this Body decides again as a policy that we ought to include Cabinet Ministers, we will throw it to the Body.

Senator Enrile. Mr. President, if we are doing to bring the military organizations under the jurisdiction of the Ombudsman, what reason is there for us not to bring the members of the Cabinet under the jurisdiction of the Ombudsman.

I can understand the exclusion of the Judiciary from this because the jurisdiction is given to the Supreme Court to discipline the members of the Judiciary and I can very well see, too, the exclusion of the members of Congress, for after all, it is Congress that will initiate the investigation of the Members of the Ombudsman, as brought out by the questioning of the Chair in that particular area. But I cannot see why the members of the Cabinet, the most powerful heads of Departments of the government should be excluded. Does not the Gentleman think that by excluding the members of the Cabinet from the jurisdiction of the Ombudsman, the Congress will be accused because of this, that we are only targetting the small fry and not the biggest fry that must be targetted in the bureaucracy?

Senator Angara. If I may repeat my answer, Mr. President, it is a policy choice that we shall leave to the Body.

Senator Enrile. I will take this up at the proper time, Mr. President, when we come to period of amendments.

Mr. President, in Section 16 the Gentleman provided for disciplinary authority of the *Tanodbayan* of the Office of the Ombudsman — Concurrent Disciplinary Authority — and whoever takes jurisdiction will be the primary body. But why should we do this, Mr. President, when the Ombudsman is supposed to be the protector of the people? Does not the Gentleman think that the Office of the Ombudsman shall always have primacy of jurisdiction over all the jurisdictions in the bureaucracy in order that it can perform its function regardless of whether it is the last to assume jurisdiction?

Senator Angara. We will accept that amendment if the Gentleman proposes it, Mr. President.

Senator Enrile. Thank you, Mr. President.

On line 22, paragraph (a), "maliciously refraining from instituting prosecution against violators of the law," does not the Gentleman think, Mr. President, that by modifying the word "refraining" by the word "malicious," the Gentleman is actually constricting the action of the Office of the Ombudsman because they still have to determine whether there is a basis to show that the delay in the filing or institution of prosecution against the

violators of the law practitioners, we know that it is very difficult to establish malice.

Senator Angara. Mr. President, again, what we did here was to copy almost word for word, the provision of Article 208 of the Revised Penal Code. So, this is the wording of the Revised Penal Code.

Senator Enrile. Then, Mr. President, this is a break against the abuses, intolerance, indifference, and corruption of the bureaucracy. Does not the Gentleman think, Mr. President, that it is about time we make a new radical departure from all legal norms that we have known and remove all of those limiting adjectives from the law so that the Office of the Ombudsman which we have are going to support with taxpayer's money can really perform its job?

Senator Angara. I agree with the principle, Mr. President, but the method or the road to it is different. In my proposal, we are for strengthening the power of the Ombudsman, but at the same time, we ought not to tinker with recognized offenses already in the statute books. That is our view. Because, once we create new offenses, perhaps, the danger is that we may unduly expanding the areas of social wrongdoing in this country that we might find ourselves already entangled in criminal "don't's" in this country.

Senator Enrile. Mr. President, this is against public officers, and maybe it is time that we will make all of these actions statutory crimes instead of crimes attended by intent or malice so that the Ombudsman can perform its job. If there is an indication of delay in the filing of the necessary actions in its judgment, then it should already institute the necessary charges instead of limiting its authority by the adverb "maliciously."

Senator Angara. As I said, Mr. President, that is the language of the Revised Penal Code. All we did was restate that language in the proposal.

Senator Enrile. Mr. President, I will deal with this at the proper time, during the period of amendments. I will not delay the proceedings. I have just but few matters to take up. Anyway, Mr. President, I know that there are others who want to interpellate. I will now stop my interpellation and I would like to thank the distinguished Sponsor.

Thank you.

Senator Angara. Mr. President, I would like to thank the distinguished Gentleman from Cagayan.

The President. Senator Guingona is recognized first, and then Senator Maceda.

Senator Guingona. Mr. President, will the distinguished Sponsor yield to a few questions?

Senator Angara. With pleasure, Mr. President.

Senator Guingona. Mr. President, the Ombudsman was first introduced in the 1973 Constitution. It was both the Ombudsman, known as the *Tanodbayan*, which had the power and authority not only to investigate but to file and prosecute the corresponding civil, criminal or administrative case before the proper court of body, is this correct?

Senator Angara. That is correct, Mr. President.

Senator Guingona. Subsequently, before we come to the present Constitution, there were several presidential decrees, amongst them Presidential Decree No. 1630, which, up to now, has not been amended. This gave to the *Tanodbayan* the exclusive authority to conduct preliminary investigation of all cases cognizable by the *Sandiganbayan*. It also gave to the *Tanodbayan* the authority to file information and to direct and control the prosecution of said cases. Is this correct, distinguished Senator?

Senator Angara. So far, that is correct, Mr. President.

Senator Guingona. In the New Constitution, however, there was a direct division between the powers of the Ombudsman to be known as the *Tanodbayan*, and the prosecution now directed to be under a constitutional office known as the Special Prosecutor, is that correct?

Senator Angara. There is an attempt to delineate the respective functions and powers of the *Tanodbayan*, as now exists, and the Ombudsman, as they were discussing it then; but, as I read it, the delineation was not clearly made at that time because the consensus was that the delineation of the powers and functions would be left to the Legislature.

Senator Guingona. As a matter of fact, in Section 13, of Article XI, the powers, functions, and duties of the Ombudsman or *Tanodbayan* are clearly specified, are they not?

Senator Angara. Yes, Mr. President, but the enumeration is not exclusive.

Senator Guingona. And in this enumeration, there is nothing which gives to the Ombudsman the power to file cases and to prosecute, is there?

Senator Angara. There is none in explicit expressed terms, meaning there is no word saying that the Ombudsman can prosecute, but one of its powers is to investigate, and as

interpreted by the Supreme Court, this word "investigate" implies the authority or power to prosecute as well.

Senator Guingona. But ordinary construction would certainly go against that interpretation, would it not? Because we are reading a Constitution and the Constitution must be strictly construed and we are interpreting this not in the light of personalities; not in the light of the political calamity; but rather in the light of what was the intent of the Constitution and for future years to come.

Senator Angara. On the contrary, Mr. President, the Supreme Court interpreted this Constitutional provision according to its normal signification or meaning without resorting, according to it, to extrinsic aids of interpretation, because as you pointed out, the Supreme Court said that when the language is plain then its ordinary meaning ought to be given to it. That is what exactly the Supreme Court did in this case.

Senator Guingona. In the first place, we cannot invoke, the distinguished Sponsor including, that decision because it is still, first, subject to reconsideration, and in the second place, Supreme Court decision have been known to have been erroneous in the past, and they, themselves, have acknowledged some mistakes in the past which they corrected.

At any rate, may I bring to the attention of the distinguished Sponsor Section 7 of Article XI, which says and I quote:

The existing *Tanodbayan*...

because there was an existing *Tanodbayan* at that time of the adoption of this Constitution.

shall hereafter be known as the Office of the Special Prosecutor. It shall continue to function and exercise its powers as now or hereafter maybe provided by the law except those conferred on the Office of the Ombudsman created under this Constitution.

If it is the contention of the distinguished Sponsor that the powers of the Ombudsman as specified in Section 13 carried with it the power to file complaints, then it cannot give that power now under Section 7, because there is a clear prohibition "except those conferred on the Office of the Ombudsman created under this Constitution." In other words, there is a clear contradiction where the distinguished Sponsor says that the Ombudsman has the power to file complaints and the power already vested in the Office of the Special Prosecutor by virtue of Presidential Decree No. 1630, which expressly gave to the Office of the *Tanodbayan* at that time, and which was continued by virtue of Section 7 to the Special Prosecutor the continuing power to file complaints. And so, therefore, Section 7 clearly

distinguished and says that the existing powers of the *Tanodbayan*, specifically the right to investigate and file cases, shall now be lodged in the Office of the Special Prosecutor. And we cannot deprive him of that and or enlarge or you may give him more powers that we conferred by virtue of Section 13 under this Constitution.

Senator Angara. In the first place, Mr. President, that is not my contention. What I said was the interpretation of the Supreme Court. But anyway, Mr. President, answering the question of the Gentleman, under Section 7 the *Tanodbayan* is continued as special prosecutor and shall continue to exercise its power now or year after provided. My own reading of the Constitution, Mr. President, aided by extrinsic aid is that the Constitution really left to the legislature to adjust and define the respective powers and functions of the Special Prosecutor on the one hand and the Ombudsman on the other.

In other words, when the Constitution says "or year after maybe provided by law," that means that it contemplates the legislature describing the powers in more specific detail. When it says, "except those conferred on the Ombudsman," again the Constitution contemplates a situation where the legislature will define the powers of the Ombudsman. That is exactly what we are doing through this bill. We are trying to define in more specific detail, the role and function of the special prosecutor and function of the Ombudsman on the other.

Senator Guingona. Again on Section 7, second sentence, Mr. President, it reads "it shall continue to function and exercise its powers as now provided by law." "As now" refers to PD 1630 which gives to him the power to prosecute and file cases, is it not?

Senator Angara. That is true, Mr. President, but the Constitution did not freeze or put or write in the stone powers of the *Tanodbayan* under PD No. 1630 because it says "year after may provide."

In other words, future laws may redefine those powers as we are not precisely doing.

Senator Guingona. So that what was given as now cannot be taken from him?

Senator Angara. It can. That is precisely the point, Mr. President. It can be taken because that was the contemplation of the constitutional framers that they will leave to the Congress of legislature the precise adjustment of the powers of the tow offices for the definition of their specific powers which, again, we are doing ow.

Senator Guingona. Which means the office of the Office of the Special Prosecutor, the toothless tiger and the impotent

eunuch which earlier was depicted or descriptive of the Ombudsman. In other words, the distinguished Sponsor would now like to change court and make the Ombudsman the overall powerful body and the Office of the Special Prosecutor the impotent eunuch.

Senator Angara. I have absolutely no intention to do that, Mr. President. In fact, I would present the two institutions equally effective and strong under this bill. What we are trying to do is make a strong Ombudsman, not a toothless one. On the other hand, we are not trying to knock the Special Prosecutor too, because under the plan, the Special Prosecutor would be the prosecutor for all cases pending before the *Sandiganbayan*. I would not call that a "toothless tiger."

Senator Guingona. Under the bill, if the Special Prosecutor does not desire to prosecute because there is not enough evidence in his judgment, can he defy the order of the Ombudsman that he files the case just the same.

Senator Angara. It will be the dynamics of an office that will operate. Since the Special Prosecutor will be part of the organization of the ombudsman, if the Special Prosecutor honestly believes that a complaint ought not to be filed, then I think through the process of dialogue within an office he can convince the supervisor, which in this case is the Ombudsman, that it is not proper to file a case. So, it is not a question of being compelled or not. It is a question of working within an organization and convincing each other that there is merit in a particular action.

Senator Guingona. I would like to believe that, Mr. President, but page 4, line 4 expressly says that the Office of the Special Prosecutor shall be an organic component of the Office of the Ombudsman and shall be under its supervision and control. Will this not go against the inherent discretionary right, power and privilege of a prosecuting officer? Is he not the one charged with evaluating the evidence whether to file or not? Is he not the one that has the discretion whether to prosecute or not? Is that not the intent of the Constitutional Commission to give the Special Prosecutor the power to prosecute, because what kind of prosecutor will he be if he is merely an adjunct and be commanded to do this and to do that, thereby destroying the essence of discretion in a prosecuting officer?

Senator Angara. Mr. President, the best proof of the constitutional intent is the Supreme Court decision. Incidentally, the Supreme Court decision is already final, but for the record, Mr. President, may I just quote, in answer to the question of my distinguished Colleague, the following portion of the decision regarding the fact that the Special Prosecutor is now an adjunct or part of the Ombudsman, and I quote:

Following the system mandated by the Constitution, the Special Prosecutor may investigate and prosecute only by and never without authority from the Ombudsman. In other words, the Special Prosecutor is only an adjunct, or a mere subordinate of the Ombudsman and can exercise the latter's power only by permission and not by usurpation. [Unquote]

Senator Guingona. Is this not inconsistent with his being a constitutional officer, with his being given the rank that has been accorded him and making him a mere adjunct, subject to the total control of the Ombudsman which, with due respect to the Supreme Court opinion, may not really have been the intent of the Constitutional Commission?

SUSPENSION OF THE SESSION

The President. With the permission of the Gentleman, let us have a break for our usual breathing spell, if there is no objection [There was none.]

It was 5:24 p.m.

RESUMPTION OF THE SESSION

At 5:59 p.m., the session was resumed.

The President. The session is resumed.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 543

Senator Mercado. Mr. President, I move that we suspend consideration of Senate Bill No. 543.

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

BILL ON SECOND READING Senate Bill No. 429 — System Establishment for Agricultural Education (Continuation)

Senator Mercado. Mr. President, I move that we consider Senate Bill No. 429 as reported out under Committee Report No. 210.

The President. Consideration of Senate Bill No. 429 is now in order.

Senator Mercado. We are still in the period of interpellation, Mr. President. I move that we recognize the Sponsor, Senator Aquino.

The President. Senator Aquino is recognized.

The Chair understands that Senator Saguisag has some interpellations.

Senator Aquino. I think Senator Pimentel wants to interpellate.

The President. All right. Senator Pimentel is recognized.

Senator Pimentel. Thank you very much, Mr. President.

Will the distinguished Sponsor please yield to a few questions?

Senator Aquino. With pleasure, Mr. President.

Senator Pimentel. Mr. President, the questions that I will raise are not exactly my own, but these are ideas based upon a position paper that was prepared by the Executive Secretary of this organization called "TPAE," Mr. Samuel T. Mansebo. And he says, among other things, and I would like your comments on this so we can clarify these issues, that Section 3 of Chapter I — this is based on page 2 — of the distinguished Sponsor's bill, violates the basic concept of an integrated system of higher education, because according to him, it is the Department of Education, Culture and Sports that is mandated to attain the objectives of the Education Act of 1982 and Executive Order No. 117, Section 4. He says that the Sponsor's bill would only develop an "enclave" — and I am quoting from his position paper "enclave of elite and untouchable agricultural state colleges and universities." Would the distinguished Sponsor kindly comment on that.

Senator Aquino. Yes, Mr. President.

The TPAE — that is, the Technical Panel on Agricultural Education — is under DECS, the Department of Education, Culture and Sports. As a matter of fact, maybe they do not like the idea of this bill because it is precisely this panel that is going to be, not necessarily, the highest authority on agriculture. It will still be under the Department of Education. This technical panel will be the council, what we are proposing as the IDEA Council that will propose recommendations to the different agricultural schools so that the program is integrated.

Senator Pimentel. On the matter of integration, this position paper also states that there is a contradiction in terms here because while we speak of an integrated agricultural educational system, the agricultural colleges and universities will actually be independent units also. So, he says, how can there be integration under such a setup.

Senator Aquino. What we intend to integrate only, Mr. President, is the curriculum, so that the agricultural curriculum,

15 - 34
(20 - pages)

ORGANIZATION OF THE OFFICE OF THE OMBUDMAN.
R.A. No. 6770 / S.B. No.543/ H.B.No. 13646

RECORD OF THE SENATE

AUG 01,1988

NITIVE RELIEF FROM, THE SAID
BALANCE,

recommending its adoption without amendment.

Sponsors: Senators Alvarez, Aquino, Estrada, Gonzales, Guingona, Jr., Herrera, Laurel, Lina, Jr., Maceda, Mercado, Osmeña, Pimentel, Jr., Rasul, Romulo, Saguisag, Salonga, Shahani, Tamano, Tafiada, and Ziga

The President. Referred to the Calendar for Ordinary Business.

BILL ON SECOND READING

Senate Bill No. 543 - Office of the Ombudsman
[Continuation]

Senator Mercado. Mr. President, I move that we consider Senate Bill No. 543 as reported out under Committee Report No. 263.

I move that we recognize the Sponsor, Senator Angara. We are in the period of interpellations, Mr. President.

SUSPENSION OF THE SESSION

The President. Should we suspend the session for a few minutes to give the Members an opportunity to go over the bill again, if there is no objection. [There was none.]

It was 4:24 p.m.

RESUMPTION OF THE SESSION

At 4:32 p.m. the session was resumed, with the Honorable Ernesto M. Maceda as Presiding Officer.

The Presiding Officer [Senator Maceda]. The session is resumed.

Senator Angara and Senator Laurel are recognized.

Senator Angara. Thank you, Mr. President.

Mr. President, the parliamentary situation is that the bill is now under interpellation.

The Presiding Officer [Senator Maceda]. Senator Laurel will interpellate.

Senator Laurel. Mr. President, with the permission of the distinguished Sponsor of the bill and of Committee Report No. 263.

As this is a bill of great impact, I would like to make first some general observations, if I may, prior to propounding specific questions.

My observation is that, this bill is quite a bill. It seeks to implement, we are told, of the pertinent provisions of the Constitution, relative to the Office of the Ombudsman which falls under the Article on the Accountability of Public Officers. But whatever the reasons for the grant of broad powers to the Ombudsman, the bill in my opinion, goes beyond the specific provisions and spirit of the Constitution.

My first impression, Mr. President, upon reading the bill, particularly the provisions relative to its vast powers, is that we might be creating here an ogre that could wield a veritable sword of Damocles over the heads of the entire officialdom; and, therefore, if I may be permitted to raise certain searching questions, I will proceed to the specific provisions.

On Section 9 of the bill, is it the purpose, Mr. President, of the authors to... I would like to ask not with specific reference to Section 9, a general question, as to whether this Office of the Ombudsman is a collective body or not.

Senator Angara. It is composed of one official with several deputies which is called the Office of the Ombudsman. So, I think, technically, it is not a collective body, but it is a person.

Senator Laurel. In other words, there is only one man, and that is, the Tanodbayan, ...

Senator Angara. That is correct, Mr. President.

Senator Laurel. ... who is vested under the bill with broad powers and is entrusted with enforcement of certain mandates.

Here it is provided, Mr. President, that a deputy for the military establishment shall be appointed by

the President; that is, apart from the Tanodbayan, from the overall deputy, and from the three deputies representing each of the three geographical divisions of the country—Luzon, Visayas, and Mindanao. Now, I was just wondering, Mr. President, what is the implication of the appointment of a deputy for the military establishment? Does that mean that the Office of the Tanodbayan will have jurisdiction over actions, malfeasance, misfeasance, nonfeasance of the military, that is, of the officers and of the members of the Armed Forces of the Philippines?

Senator Angara. Well, that is the contemplation, Mr. President. That is why there is a separate deputy for the military so that the whole aspect of public administration, whether civil and military, will be both under the jurisdiction of the Office of the Tanodbayan.

Senator Laurel. But if that is so, would that not somehow be confusing and in the light of the fact that there are the Articles of War which govern the members of the Armed Forces of the country, and that the President is the Commander-in-Chief of the Armed Forces? As a matter of fact, the military is a professional group. Is it not a professional group?

Senator Angara. The fact, Mr. President, that the military will be under the jurisdiction of the Ombudsman does not automatically mean that the Articles of War and the military disciplinary rules would have been excluded from the application. In fact, the Articles of War and the other military rules of discipline will be the one applicable to military personnel. So there seems to be no incompatibility between the Ombudsman taking jurisdiction over military personnel and military discipline applying to them.

Senator Laurel. But what happens in the case of court martial? When there is a violation of the Articles of War, shall we say, in the case of insubordination, which is a very serious offense, is it the Ombudsman that will take or assume

jurisdiction over such a case?

Senator Angara. No, Mr. President, it will be the regular bodies following regular military procedure that will process that complaint, but the Ombudsman will initiate that complaint.

Senator Laurel. Yes, but here, among the powers enumerated in the bill, we go beyond asking the Ombudsman or go beyond the Ombudsman asking or directing investigations. It may, by itself, investigate and, as a matter of fact, impose penalties which include fines.

Senator Angara. That is beyond the contemplation, Mr. President, especially with respect to the military.

Senator Laurel. But there is nothing that says so here.

Senator Angara. Well, we will make that clear during the period of amendments, because that really is not the intendment. While the Ombudsman has jurisdiction over the military personnel, it is not the intendment that the Ombudsman itself will do the prosecution and investigation.

Senator Laurel. I see.

Senator Angara. The intendment is that the existing military disciplinary machinery and procedure will be followed.

Senator Laurel. So the answer is that the Ombudsman or at least the Office of the Ombudsman would have jurisdiction over cases involving the military?

Senator Angara. That is correct, Mr. President. We follow the precedent of other countries where, when there is a new Ombudsman, they appoint a separate Ombudsman for the military, but the military tradition and disciplinary machinery is also kept intact.

Senator Laurel. But we understand that the deputy for the military establishment is merely an extension of the Tanodbayan, which means that it is

the Tanodbayan, by himself acting through his deputy, who is the deputy for the military establishment. So it is actually the Tanodbayan who will assume jurisdiction over the military in this particular case and replacing the President herself.

Senator Angara. That is not true.

Senator Laurel. That is quite unusual, Mr. President, and would go against the constitutional setup under the Charter.

Senator Angara. That is not the intent, Mr. President. The fact that the Ombudsman would have jurisdiction over the military as it would have over the civil bureaucracy does not exclude the traditional authority of the President in the case of the military as Commander-in-Chief, in the case of the civilian bureaucracy as the supervisor of the bureaucracy.

Senator Laurel. In other words, who is the ultimate...?

Senator Angara. And if I may add, Mr. President, the fact is that a separate deputy for the military is specifically provided for in the Constitution, so we are trying to implement that provision, too.

Senator Laurel. It says only "may." Probably the members of the Constitutional Commission were not too certain about that. So, probably that is the way they put it with the word "may."

Senator Angara. Well, to me, that is sufficient authorization. And if there are some doubts on overlapping functions, maybe, the Gentleman can clarify those and introduce some clarifying provisions.

Senator Laurel. Well, Mr. President, may I ask another question with particular reference to Section 10 on page 3, lines 28 to 29:

"The President may appoint other deputies as the necessity for it may arise as determined by the Tanodbayan."

What I am just wondering about, Mr. President, is, this would not suffer from the vice of unconstitutionality; the determination by the Tanodbayan of the number of additional deputies, in the absence of any guideline, apparently may be susceptible to constitutional attack. It is the Tanodbayan who will determine whether other deputies should be appointed or not.

Senator Angara. Would the Gentleman suggest the criteria for the appointment of additional Tanodbayan or deputies?

Senator Laurel. My question merely implied, Mr. President, that there should be guidelines.

Senator Angara. We accept that point. That is why we would appreciate it if the Gentleman could suggest these to us.

Senator Laurel. I shall, Mr. President, at the proper time.

The next question, Mr. President, is on page 4, Section 10, lines 4 to 11:

The Office of the Special Prosecutor shall be an organic component of the Office of the Ombudsman and shall be under its supervision and control. The Special Prosecutor shall have the rank and salary of a Deputy Ombudsman.

Now, this proposed bill really places the Office of the Special Prosecutor under the direct supervision and control of the Ombudsman. Is this not going beyond the intent of the Constitution, Mr. President?

Senator Angara. No, Mr. President, it is simply to implement the Constitution as interpreted by the Supreme Court. In other words, as interpreted by the Supreme Court, the Office of the Special Prosecutor is part and parcel of the Office of the Ombudsman. And what this provision intends is to give meaning to that constitutional provision.

Senator Laurel. Mr. President, the proceedings of the Constitutional Commission quite clearly shows or reveals that the intent was to make the two

offices, the Office of the Ombudsman and the Office of the Special Prosecutor, separate and even independent. And this is contained in the...

SUSPENSION OF THE SESSION

Senator Laurel. May I be permitted, Mr. President, to just go over these proceedings for a little while. May I ask for a half-a-minute suspension, please.

The Presiding Officer [Senator Maceda.] Half-a-minute suspension, if there is no objection. [There was none.]

It was 4:50 p.m.

RESUMPTION OF THE SESSION

At 4:54 p.m., the session was resumed.

The Presiding Officer [Senator Maceda.] The session is resumed.

Senator Laurel. Thank you, Mr. President. I have found the pertinent provision in the *Journal of the Constitutional Commission*. Commissioner Suarez, Mr. President, asked the question:

Q - Is my understanding clear to the effect that the functions of this Office, referring to the Office of the Ombudsman, is different from the Office of the Special Prosecutor?

This is for purposes of the Record because the Office of the State Prosecutor is under the Ministry of Justice, and the Office of the Special Prosecutor that we are creating under Section 5 is a Constitutional Body.

Commissioner Romulo answered, and, I quote:

A - Yes, they are separate and, in effect, the Special Prosecutor is a mandated office by the Constitution.

Senator Angara. Mr. President, one really may quote and cite individual opinions and statements during the proceedings. In fact, I think while we can find citations supporting our proposition, others can also cite individual opinions expressed on the floor to the contrary. But the

point, Mr. President, is that particular matter has already been adjudged and decided by no less than the Supreme Court, the highest judicial body that is authorized to interpret the Constitution. And, as I understand it, the Supreme Court has very clearly stated that the Office of the Special Prosecutor is but an adjunct or a subordinate of the Ombudsman. And, therefore, following the interpretation of the highest tribunal of the land, we are, in effect, implementing that constitutional provision here.

Senator Laurel. I respect the Supreme Court, Mr. President, on its decision. But I must say here that the Supreme Court could be mistaken and that mistake would be apparent not only from the proceedings and debates of the Constitutional Commission, but in the light of the specific constitutional provision.

Section 7 of Article XI states, and I quote:

The existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor. It shall continue to function and exercise its powers as now or hereafter may be provided by law ...

Meaning, what is now and hereafter provided by law? Powers. Not the office, Mr. President, but the powers. "It shall continue to function and exercise its powers." "Powers" is the word closest to what qualifies it. "Or hereafter may be provided by law, except," and this is very significant, "except those conferred on the Office of the Ombudsman created under this Constitution." Meaning, that the powers vested in the Ombudsman may not be passed on or transferred to the Special Prosecutor which makes it plain that the subject of this sentence is powers:

... It shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution.

Senator Angara. Mr. President, this provision, Section 7, as he correctly pointed out, provided for the continuity of the Office of the Tanodbayan or the Special Prosecutor. But beyond ensuring the

continuity, this provision precisely stated that the Congress, by law, will distribute and allocate the powers between them. And when one reads through the proceedings in the Constitutional Commission, the one clear point repeatedly made both by the proponents and the Sponsors and by the critics, like Commissioner Rodrigo, is the fact that it is up to Congress to make this allocation of powers between the Special Prosecutor and the Ombudsman. What we are trying to do through this bill, Mr. President, is precisely, to define those powers and allocate them between the two. We are not discontinuing the Office of the Special Prosecutor; we are continuing it, but only within the Office of the Ombudsman as held by the Supreme Court since it is an adjunct of the Ombudsman.

Senator Laurel. But any allocation of powers should be in conformity with the Constitution, specially when it is quite clear what the Constitution says as sustained by the proceedings of the Constitutional Commission that drafted said Constitution.

Another question, Mr. President:

SEC. 12. *Mandate.*—The Tanodbayan and his Deputies as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations.

My question is directed particularly to government owned or controlled corporations. Does not the Gentleman think that this government-owned or controlled corporations should be precisely defined? Meaning, would these government-owned or controlled corporations refer to government corporations with original charters or without such charters?

Senator Angara. For one, Mr. President, this is an exact repetition of the provision of the Constitution. As I understand it, the words "government-owned or controlled corporations"

refer to chartered corporations.

Senator Laurel. Since we are drawing up a bill implementing the constitutional provision, then we should include, when the proper time comes, Mr. President, the words "WITH ORIGINAL CHARTERS".

Senator Angara. We will welcome that, Mr. President.

Senator Laurel. Mr. President, my next question refers to Section 13, and that is with respect to "immunities" granted or sought to be granted under this bill to the Ombudsman and all members of his staff, from any civil action.

There is no distinction, Mr. President, in this provision even with this immunity being enjoyed during the tenure of the Ombudsman and his staff members, and after said tenure. In other words, here, there is total immunity during the tenure in office of the Ombudsman and his staff members and after. There is nothing said here.

Now, my question, Mr. President, is: Does this really mean to give immunity from suit to the Ombudsman and all members of his staff from any civil action during and after their tenure in office?

Senator Angara. We propose, Mr. President, that the Tanodbayan and his staff be immune from civil liabilities during his tenure in office in order to insulate the office from unnecessary prosecution and harassment. In other words, to make the Tanodbayan even more independent than he is.

Senator Laurel. In other words, the distinguished Sponsor of the Bill would be amenable to entertaining amendments at the proper time with respect to providing that this immunity shall be only during their term of office.

Senator Angara. Certainly, Mr. President.

Senator Laurel. May I ask another question relative to this point? How about a criminal case that is filed? A criminal case usually carries with it the civil suit.

Senator Angara. Then, in that case, Mr. President, the civil suit must be suspended pursuant to this provision.

Senator Laurel. Because the filing of a criminal case carries with it a civil suit.

Senator Angara. So, I believe that the civil suit ought to be suspended.

Senator Laurel. Again, the distinguished Sponsor would entertain, for purposes of clarifying the provision, an amendment to that effect.

Senator Angara. Certainly, Mr. President.

Senator Laurel. Also, with respect to staff members who are granted immunity from civil suits, down to the lowly clerk we would grant immunity under this bill? And he would have therefore the same immunity as the President of the Philippines?

Senator Angara. This provision must be applied within reason, Mr. President, and I suppose the Office of the Tanodbayan will promulgate the necessary rules and regulations to implement this provision, as well as the other provisions. The rule always is that it must be within the rule of reason.

Senator Laurel. In other words, that could be the subject of some rectification or clarification?

Next, Mr. President, I would like to refer to Section 16 of the bill, that is on page 7.

Senator Angara. Disciplinary Authority.

Senator Laurel. The proposed bill, Mr. President, provides for the concurrent disciplinary authority of the Ombudsman and the Civil Service Commission and any other office that might be entrusted with some powers of investigation. Mr. President, the judiciary has had a very sad experience with respect to concurrent jurisdiction, so much so that the rules have been amended to do away with such concurrent jurisdiction. Does the Gentleman not think that concurrent jurisdiction would lead to embarrassing and even inconclusive

and delayed disposition of pending cases under investigation?

Senator Angara. It could, theoretically, Mr. President, but, I believe that giving the Ombudsman concurrent jurisdiction with the Civil Service Commission would answer the need for promptness and speed in this matter, and an overlap is not necessarily an undesirable situation. In fact, in Sweden, Mr. President, there are, in effect, two Ombudsmen operating nationally, the Ombudsman directly responsible to the Legislature, and the Chancellor of Justice, and they operate practically over the same jurisdiction. And, the experience in Sweden is that they do not prejudice or harm the operation of the system of the Ombudsman. And, here, I believe, Mr. President, that the concurrent jurisdiction will not hurt the operation of the system either. In fact, I think, it will contribute to a more efficient response to public complaint because then there is a certain sense of competition between the Ombudsman and the Civil Service Commission.

Senator Laurel. But, I think, Mr. President, there is a difference between Sweden's mechanism and that of the Philippines under the Constitution and under this bill. In Sweden, there are two Ombudsmen, and they have the same category, but here, we have only one Ombudsman, and other offices which are not part of the Ombudsman Office. Obviously, this could lead, Mr. President, to conflicts and mutual recriminations and even delays and inefficiency, so much so that it will be creating or recreating a concurrent jurisdiction that has been giving rise to a lot of problems. It is something, I think, that could be studied. Does not the Gentleman think so?

Senator Angara. Yes, certainly, we can study this, but our solution to the concurrent jurisdiction is the principle that the first agency that takes jurisdiction will have primary jurisdiction, so that there will be no agencies duplicating work over the same matter.

Senator Laurel. Because, Mr. President, in the light of another section of the bill, with respect to Section 13, disciplinary authority, first, the Ombudsman here is granted the power of disciplining public officers and employees, while other bodies may not be so authorized; second, the Constitution itself empowers the Office of the Ombudsman merely to investigate and review; but the bill here authorizes the Ombudsman, and grants the power of disciplining public officers and employees. It goes beyond the constitutional provision.

Senator Angara. Well, if the Gentleman is through with his statement...

Senator Laurel. Well, yes.

Senator Angara. I do not agree that this bill is going beyond what the Constitution has prescribed for the Ombudsman; because, as I understand it, the constitutional provision was construed in the proceedings of the Constitutional Commission and in fact, left it to the Legislature to determine the powers and functions to be allocated to the Ombudsman. It did not say or it did not prohibit the Legislature from granting disciplinary power that we are now granting to the Ombudsman. But over and beyond that interpretation, Mr. President, is the question that one must always ask, if he wants this institution of the Ombudsman to be effective, rather than simply be like the other watchdogs the past administrations created. Then we believe, the Committee believes, that we must give the Ombudsman the necessary teeth in order to implement its own decision. We believe that this is fully in accord with the Filipino custom and tradition, and based on our historical experience. Short of not giving the Ombudsman the disciplining authority, I think we might as well kiss the system goodbye, because it will be like the same watchdogs created in the past—toothless and inutile.

Senator Laurel. But, Mr. President, the bill, actually, if it is going to be approved the way it is, makes the Ombudsman the investigator, the prosecutor, and the judge, all combined in one. I

think that this is rather irregular, unusual, and under the Constitution, illegal.

Going over Section 13 of the Constitution, I think, it is very clear that the Ombudsman shall have only the following powers, functions and duties: investigate, direct, request, publicize, determine cause of inefficiencies, promulgate rules of procedure and exercise such other powers, or perform such other functions as may be provided by law. And that law should be a constitutional law. Mr. President, I think it cannot vest powers in the Ombudsman that would go against the very grain of the Constitution itself. The Constitution cannot allow the power of investigation, prosecution and judging in one man or entity.

Senator Angara. The statement of the Gentleman is correct that one cannot be judge and prosecutor at the same time. But here in this case, we are really trying to give flesh and blood to an otherwise dry institution promulgated in the Constitution which is the Office of the Ombudsman, and the powers and functions granted to it by the Constitution are really almost skeletal. What we are trying to do, Mr. President, consistent with the constitutional intent, is to clothe the Office of the Ombudsman with powers effective enough to carry out the intent of the Ombudsman to be the watchdog of the people.

Now, we may disagree on the interpretation of this provision or that provision and that is good. But in the end, I believe that this Congress ought to be bold enough and imaginative enough to make this instrument of the people's watchdog an effective and effectual one.

Senator Laurel. I think, Mr. President, this really should be carefully studied in the light of provisions here vesting the Ombudsman with so much authority and power: investigative, administrative, fact-finding, judicial. I think we might be creating here a monster.

Senator Angara. Well, we would be grateful to

the Gentleman considering his keen mind if he can make the necessary amendment so that we can make this a better bill. I am sure the Gentleman...

Senator Laurel. This Representation, Mr. President, is trying to think of all those things; that is why I said on first reading, I was a little taken aback by the broad powers vested in the Ombudsman. Even the President, the Congress, the Senate, the Supreme Court, all the important organs and branches of government will be subject to the jurisdiction of the Ombudsman. I think we might be really creating here a monster. But I suggest that we all study this, Mr. President.

Now, a minor suggestion, Mr. President: the bill sometimes speaks of the Office of the Ombudsman and sometimes of the Office of the Tanodbayan. May I suggest that there should be uniformity. That is very minor. For instance, on page 3, Section 10, *Structural Organization* - on line 19, it says: "Office of the Ombudsman", and then, on line 23, "Office of the Tanodbayan", and then, on line 30, "Office of the Ombudsman" again. Probably, we should make it uniform, if I may suggest, Mr. President.

Senator Angara. We will take the suggestion of the Gentleman, Mr. President.

Senator Laurel. Mr. President, I would like to reserve my right to ask a few more questions at a later date to give an opportunity to my other Colleagues who might wish to interpellate this afternoon.

The Presiding Officer [Senator Maceda]. The reservation of the Gentleman from Batangas is noted.

Senator Laurel. Thank you very much.

Senator Alvarez. Mr. President.

The Presiding Officer [Senator Maceda]. The Gentleman from Isabela and Brooklyn is recognized.

Senator Alvarez. Will the Gentleman yield to a few questions?

Senator Angara. With pleasure, Mr. President.

Senator Alvarez. In the enumeration of authority of the Ombudsman, Mr. President, it points out that it will have jurisdiction not only on illegal acts but improper, unjust, and inefficient acts which are very broad. I have no objection to the exercise of these functions. And it will also have jurisdiction over elective officials.

If, let us say, an elective official, whether mayor, governor, congressman or senator, is presumed by the Ombudsman to be carrying on with a woman other than his wife, would the Ombudsman under the provision of this law have the wherewithal to proceed against a particular governor, mayor, councilman, or perhaps, a senator as an act of impropriety, Mr. President?

Senator Angara. Perhaps, not against the senator and, therefore, the Gentleman might be safe. Well, as against the other officials, yes, that is the intendment, Mr. President. Because, the carrying on of an immoral arrangement would be an act that is improper according to the constitutional provision.

Senator Alvarez. Why are we exempting the senators?

Senator Angara. Because of the proper regard we have for officials of Congress, just as we are also exempting the judges from the coverage of this law.

Senator Alvarez. At the opportune time, may I be privileged to introduce the appropriate amendments so that senators should not be exempted?

Senator Angara. Certainly, Mr. President.

Senator Alvarez. Thank you, Mr. President.

The Presiding Officer [Senator Maceda]. Thank you, Gentleman from Isabela.

Senator Pimentel. Mr. President.

The Presiding Officer [Senator Maceda]. The Gentleman from Cagayan de Oro and Marikina is recognized.

Senator Pimentel. Will the distinguished Sponsor yield to a few questions?

Senator Angara. Very gladly, Mr. President.

Senator Pimentel. One of the deputies for the Ombudsman is a deputy for the military. May we find out, Mr. President, if this military deputy will be entitled to investigate and prosecute incidents which happened in the past before this law comes into effect?

Senator Angara. That is a good question, Mr. President. I am not prepared to say that they can. I think that since we provided for the rule-making power of the Office of the Ombudsman, perhaps that is a subject matter that they can treat under the rules.

Senator Pimentel. In which case, Mr. President, perhaps a transitory provision can very well be inserted into this bill.

Now, another question, Mr. President, is: What, in the Gentleman's view, should be done relative to investigations against public officials conducted by the Tanodbayan which are still pending there and yet are given utmost publicity, and in the process, destroy the reputation of the public official concerned; and worse, it is not so much the public official but the family, the children, the innocent members of his family who must invariably suffer through the agony of hearing their name besmirched in public; and then later on, only to be found innocent of the charges? I bring this point, Mr. President, because on page 6, Section 6, the Ombudsman is authorized to publicize matters covered by the investigation, of course, with circumspection, et cetera. But, does not the Gentleman think that there should be an additional safeguard against the undue or

unwarranted publicity that usually attaches itself to current investigations where the one being investigated is entitled under our Constitution to a presumption of innocence?

Senator Angara. Absolutely, Mr. President. I agree with the Gentleman that the confidentiality, as well as the identity of the accused, ought to be kept during proceedings. In fact, that is a requirement under the present Tanodbayan Law, although it is, probably, not followed strictly.

I suppose that when the Ombudsman shall have promulgated the rules and regulations, they will take that into account; because, like the Gentleman, I also believe that the identity of the accused ought not to be publicized before the outcome of the investigation.

Senator Pimentel. Yes, Mr. President. I understand that there is such a rule and probably a similar rule will be promulgated by the Tanodbayan once it is constituted. But perhaps, it is better to give a legal sanction to that rule by embodying such a rule here in this bill.

Of course, I understand we will clash head-on with proponents for free expression and free press if we insist on that point, but at the same time, I think, Mr. President, that, really, the undue publicity and sometimes malicious publicity at that attending investigations should really be curtailed, and I think we owe it to our public officials also, if not to their families.

Senator Angara. We would welcome an amendment to that effect, Mr. President.

Senator Pimentel. And then, Mr. President, I would only want to second the observation of Senator Laurel that, perhaps, it is not good to be duplicating jurisdictions here by allowing, for example, the Tanodbayan to have concurrent jurisdiction over civil service matters which can be easily tackled by the Civil Service Commission.

Perhaps, Mr. President, if the Honorable

Sponsor will kindly consider, the point is that, we might be spreading the powers of the Tanodbayan too thin by enabling him or allowing him to poke his finger into virtually all kinds of misdeeds when, perhaps, the greater concern here is actually graft and corruption.

Senator Angara. Thank you, Mr. President. Again, on that point, we would welcome the Gentleman's suggestion, as well as Senator Laurel's.

Senator Pimentel. On page 15, Mr. President, I would like to direct the attention of the Honorable Sponsor that Section 23 provides for the establishment of Tanodbayan offices in municipalities, cities, and provinces outside Metro Manila.

I would like to point out that there are 1,500 or so municipalities, 60 cities, and 75 provinces. So, I think, we are creating a huge bureaucracy here, Mr. President, if we establish this kind of separate offices for various municipalities, cities and provinces.

I think perhaps we should consider that the small town mayor, by and large, cannot be at liberty to commit graft and corruption and oppression without his attention being called by the people of that locality. Besides, there are several options that the townspeople can take: they can sue him before the Fiscal's Office; they can sue him before the proper court in their own localities. What I am afraid of, Mr. President, is the fact that here we are creating an office which should run after grafters in the National Food Authority or in the Philippine Charity Sweepstakes, instead of concentrating their attention on small-time grafters which can be taken care of easily by the pressures obtaining in the small, concentrated localities.

So, my suggestion, if the Honorable Sponsor will consider, is, perhaps, we should not go through with the proposal to establish a Tanodbayan office in every city, municipality, and province. I think, it is better that we concentrate our efforts

where they are most needed, Mr. President.

Senator Angara. We welcome the suggestion, Mr. President.

Senator Pimentel. Thank you, Mr. President.

Senator Angara. Thank you.

Senator Mercado. Mr. President.

The Presiding Officer [Senator Maceda]. The Majority Floor Leader is recognized.

Senator Mercado. Mr. President, I would like to pursue some points raised by previous interpellators.

Having read the bill, I feel that while we are intending to create a body that would cleanse the bureaucracy of those grafters and corrupt officials, I still cannot remove from my mind an impression which is a lament of our people, that in this country we have not been able to really put to jail any big-time grafters but only the clerks and minor functionaries. Our track record has been very bad. We have the best laws; we have a very good anti-graft law; and now we are creating an office, strengthening it as mandated by the Constitution. But, I must say that I do not find any source of confidence in this bill in its present form. I still have to find evidence that this measure will mean that the big grafters will get caught, a concern the President herself articulated in her State-of-the-Nation address.

Senator Angara. Let me try and help enlighten the Gentleman.

He is right, Mr. President, that the Philippines is one country with so many anti-graft acts on the statute book. In fact, if I remember right, there was a survey of the Southeast Asian Region with regard to how we control malfeasance, misfeasance in the government. The survey of the anti-graft laws in this country showed that we are on top for having too many laws: prohibiting this, prohibiting that; and punishing this, punishing that.

Now, we have tried several mechanisms to implement these laws. As we all know, Mr. President, we have the Sandiganbayan, then the Tanodbayan. Before that, we had several administrative mechanisms going after so-called grafters. But all these, except possibly lately, have failed.

And, therefore, it seems to me, at least, that perhaps we ought to think of this mechanism now given to us by the new Constitution that a new concept of Ombudsman will not only call attention to misfeasance and malfeasance, but also with the necessary power, will investigate and prosecute, and in some cases, even impose disciplinary authority.

So, this is a new institution. This is an innovation that we are trying to set up at this time when the issue of graft and corruption, as the Gentleman rightly said, is rampant and we still have to capture the big fish. I think, if we pass this law with the necessary teeth that we propose to give it the Gentleman, then I am sure, his lament that we have not caught a big fish probably will be solved or, at least, will be answered.

But, as long as we are ambivalent about this mechanism and about the power that we ought to give to the Ombudsman, then I am sure, like the Gentleman said, we will continue not to catch any big fish.

Senator Mercado. Mr. President, one of the reasons why we have so many grafters in government is, in this country crime pays. People get rich while they are in public office and they get away with it; and this is the greatest incentive, I believe, for graft. I agree with the Gentleman. Well, we leave it to the collective wisdom of this Body to come up with measures that can really strengthen this anti-graft body and show that it can really catch some big grafters instead of those small clerks that we keep sending to jail.

On the specifics, Mr. President, comparing the Senate Bill with the constitutional provision, I would

like to point out that on the matter of deputies for the regions, I notice that in the Constitution, the phraseology is, at least, one deputy for Luzon, Visayas, and Mindanao. The words "at least" have been removed; or I do not see them in the bill, and it says: one deputy for Luzon, Visayas, and Mindanao. And, considering the distribution of population and the concentration of offices in Luzon, I feel that there may be an oversight in this matter. Does the Sponsor agree with that observation?

Senator Angara. Yes, I fully agree with the Majority Floor Leader's observation, Mr. President, that there may be other deputies who could be appointed. That is why the last sentence of Section 10 would authorize the President to appoint such other deputies.

Senator Mercado. Mr. President, I have heard the interpellations of the previous Senators who raised some points with regard to the criminal and civil liabilities of those in the Tanodbayan. However, I feel that hailing the Members of the Tanodbayan to court to testify on matters that may be related to what they are investigating, may, in effect, adversely affect their particular functions. We know that in this country with so many cases now pending in our courts and the added job of testifying on the part of the Tanodbayan before the courts may actually hamper their jobs. Would a section on the privilege not to testify for the Tanodbayan staff be in order?

Senator Angara. I should think so, Mr. President, because it would be consistent with the principle that we should insulate the Ombudsman of Tanodbayan from unnecessary pressure.

Senator Mercado. Well, if that is the case, in the Period of Amendments, I would like to propose indeed, a section where a Tanodbayan staff shall not be compelled to testify with respect to the cases they are presently investigating.

Senator Angara. Well, I welcome that, Mr. President.

Senator Mercado. That, Mr. President, is all and I would like to thank the Sponsor for the time that he has given me.

The Presiding Officer [Senator Maceda.] Yes, we will recognize Senator Guingona, who raised his hand earlier, then Senator Gonzales.

The Chair would also like to make the observation that the comments of the Gentleman from Cagayan de Oro and the Majority Floor Leader really involve the review of the basic law, which is the Anti-Graft Law, and not really this particular piece of legislation which is on the Ombudsman proper; but on the substantive law, the Anti-Graft Law still subsists as the basic law.

The President Pro Tempore. Mr. President.

The Presiding Officer [Senator Maceda]. The president Pro Tempore is recognized.

Senator Guingona. Thank you, Mr. President. Will the distinguished Sponsor yield to a few questions?

Senator Angara. Gladly, Mr. President.

Senator Guingona. The measure calls for incorporation of the Office of the Special Prosecutor into the Office of the Ombudsman. Is that correct?

Senator Angara. That is correct, Mr. President.

Senator Guingona. And, therefore, all the powers to investigate, to direct, to discipline, would likewise be, in effect, conferred upon the Office of the Special Prosecutor?

Senator Angara. No, Mr. President. The Special Prosecutor will be limited to his function of prosecution. The power of disciplining rests with the Tanodbayan.

Senator Guingona. Yes, but cannot the Ombudsman delegate to a part of the integral organization part of the functions?

Senator Angara. I believe he cannot delegate a

power which, in the first place, is only delegated to him. So, the power to discipline must be exercised by the Tanodbayan.

Senator Guingona. Is that not part of the intended bill to make the Special Prosecutor part and parcel of the Office of the Ombudsman?

Senator Angara. Yes, the distinguished Senator is correct, Mr. President. While we make the Office of the Special Prosecutor part of the overall organization, that does not imply that the Special Prosecutor would now exercise the powers vested in the Tanodbayan. We will maintain the theory and practice that the Special Prosecutor is limited to prosecution.

Senator Guingona. In Section 10 of page 4 of the bill, subsection 3 deals with the Office of the Special Prosecutor—"shall be an organic component of the Office of the Ombudsman and shall be under its supervision and control."

This means that the Ombudsman can delegate any and all powers that it has to the Office of the Special Prosecutor because it is already part and parcel. It is an organic component.

Senator Angara. Even if he wishes to do that, I do not think, Mr. President, that the Ombudsman can delegate the power of disciplining. He can only delegate—no, not even delegate. He can authorize the investigation and prosecution.

Senator Guingona. On page 6, line 21, Subsection 10, it says:

Delegate to the Deputies, or its investigators or representatives such authority, duty or responsibility as shall ensure the effective exercise or performance of the powers, functions, and duties herein or hereinafter provided.

Senator Angara. Yes, Mr. President. There is nothing inconsistent with this. With respect to the Special Prosecutor, as one of the deputies, what the Ombudsman can delegate is the power of investigation or prosecution because that is the special power peculiar to the Special Prosecutor.

Senator Guingona. Yes, but there is nothing stated here in this bill that would circumscribe that delegated authority. And, this section that we read is encompassing and it seems that it gives to the Ombudsman that power to delegate any and all powers to its investigators or representatives.

Senator Angara. If there is a need to clarify this, Mr. President, because my own opinion is that the power of disciplining, which is unique in this Bill, is vested in the Tanodbayan. That ought to be exercised by no one, except the Tanodbayan.

Senator Guingona. No, but the other powers.

Senator Angara. The other powers, Mr. President, perhaps, can be delegated pursuant to subsection 10, like the power to call on other offices, or subpoena people. But the disciplinary power, I believe, Mr. President, should not be delegated.

Senator Guingona. If that is the contention of the distinguished Sponsor, Mr. President, it seems to run counter to Section 5 of Article XI of the Constitution.

Senator Angara. In what sense, Mr. President?

Senator Guingona. Section 7, which says that the existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor. It shall continue to function and exercise its power as of now, on or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution.

In other words, this specific mandate seems to indicate that the Office of the Ombudsman is distinct and separate from the Office of Special Prosecutor. And, where the bill now seeks to make the Special Prosecutor part and parcel, an organic component of the Ombudsman, and then giving the Ombudsman authority to delegate any and all powers, may run counter to this specific inhibition, Section 7 of Article XI of the Constitution.

Senator Angara. Not necessarily, Mr.

President, because as interpreted by the Supreme Court, the Office of the Special Prosecutor is, in fact, only an adjunct or subordinate to the Ombudsman. Therefore, within that contemplation we have provided for the Special Prosecutor to be placed under the Ombudsman.

Senator Guingona. Would the distinguished Sponsor not have any objection to having the specific powers of the Special Prosecutor specified and expressly stated that those are the only powers, and that the Ombudsman, although he is the boss, cannot delegate to him other powers?

Senator Angara. Certainly, Mr. President, we welcome that suggestion. Precisely, this bill is a statement of the powers and functions of the Ombudsman, vis-a-vis the special prosecutor. So, any such suggestion would be welcome.

Senator Guingona. Now, this bill, Mr. President, does not provide specific functions of the overall deputy. It just simply states that he shall perform the duties of the Ombudsman during the latter's absence. But, I think, the overall deputy has a very vital role to play. Therefore, would the distinguished Sponsor agree to spell out certain functions of the overall deputy, in the same manner, perhaps, that it should provide for the scope, power and authority of the deputy Ombudsman for the military? These are not spelled out in the bill.

Senator Angara. I think that is a good suggestion, Mr. President. Perhaps, what we can do here is just describe in very broad terms the description of their functions and leave the rest of the detail to the rule-making power of the office.

Senator Guingona. Will the Deputy Ombudsman for the military take over the investigative functions of the Commission on Human Rights?

Senator Angara. No, Mr. President, because matters affecting human rights are specifically allocated to the Commission on Human Rights and,

therefore, there will be no overlap in this regard.

Senator Guingona. Who shall determine which is an infraction or violation of human rights?

Senator Angara. Well, the preliminary determination ought to be made by the Ombudsman himself, Mr. President.

Senator Guingona. Not by the Chairman of the Commission on Human Rights.

Senator Angara. Certainly, by the Commission. But we are trying to figure out a way when there is a conflict of opinions within the Commission on Human Rights and the Office of the Ombudsman. That is also one area where the Office of the Ombudsman can provide when they make the rules and regulations.

Senator Guingona. Will the distinguished Sponsor be amenable to clarification during the Period of Amendments?

Senator Angara. Certainly, Mr. President.

Senator Guingona. Section 13, Mr. President, provides for immunity to the Ombudsman and his staff against civil actions or acts or omissions in the discharge of their duties and responsibilities. Would this inhibit congressional committees to invite the Ombudsman and his deputies or his staff for questioning in an inquiry before the legislative bodies?

Senator Angara. As worded, Mr. President, it will not preclude any legislative committee from calling the Ombudsman.

Senator Guingona. Section 16, Mr. President, speaks of disciplinary authority over several grounds, for example, accepting a gift in consideration of the execution of an act which does not constitute a crime, in connection with the performance of his official duty. Will this not be arbitrary, Mr. President? In the context of our culture, when a public official does something good and the beneficiary of that act is grateful, he

does not bribe that public official. He merely gives him a gift. Would this not be an opening for arbitrary acts on the part of the Ombudsman to pounce upon a legitimate gratitude on the part of the recipient?

Senator Angara. If the Gentleman will recall, Mr. President, such tokens of gratitude are not banned nor made an act of graft under the Anti-Graft Act, and there is nothing in this bill that will alter the provisions of the Anti-Graft Act.

Senator Guingona. Mr. President, on page 11 of the bill, Section 17 excludes certain officials from the authority of the Ombudsman. The President is excluded; the Vice-President is excluded because they are punishable by impeachment. The Members of Congress are excluded. Is that not correct, Mr. President?

Senator Angara. That is correct, Mr. President.

Senator Guingona. And this is because Congress has the authority and the original right to impose disciplinary action upon its own Members.

Senator Angara. That is correct, Mr. President.

Senator Guingona. And that authority is exclusive, is it not?

Senator Angara. That is correct, Mr. President.

Senator Guingona. But on line 25, there is:

Provided, however, That the Office of the Ombudsman shall have the power to investigate any misconduct in office committed by such officials for the purpose of initiating the proper criminal or civil action, if warranted.

Would this "*Provided, however,*" not negate the basic right and exclusive authority of Congress to discipline its own members?

Senator Angara. The Gentleman is right. In fact, the Senate President has pointed this out, and we have agreed during the interpellation to have this proviso deleted.

Senator Guingona. And so, we thank him for agreeing to that.

Section 14 provides that the Ombudsman may punish for contempt in accordance with the Rules of Court under the same procedure and with the same penalties provided therein. Does this mean that an appeal on the contempt order should be filed with the Regional Trial Courts, assuming that the respondent is not satisfied with the imposition?

Senator Angara. What we provided here, Mr. President, is that any act or decision of the Ombudsman would be directly appealable to the Supreme Court. I did not anticipate the question the Gentleman is asking now, since we provided here that the Ombudsman can cite people for contempt.

Senator Guingona. Yes. Under the Rules of Court, he can appeal to the Regional Trial Court.

Senator Angara. That is right. He must apply to the Regional Trial Court for the citation. In that case, Mr. President, I guess the aggrieved party can appeal.

Senator Guingona. He can appeal?

Senator Angara. Yes, Mr. President.

Senator Guingona. We just wanted that clarified.

In Section 25, "Publication of Decision", should it not be "Promulgation of Decision"?

Senator Angara. The Gentleman is correct; "publication" means promulgation.

Senator Guingona. So, at the proper time, can we have the Sponsor agree to the amendment?

Senator Angara. Yes, Mr. President.

Senator Guingona. Now, may we go back, Mr. President, to the disciplinary authority over all elective and appointive officials. Does this mean that the Ombudsman will have authority over the elected mayor or governor?

Senator Angara. That is the intent, Mr. President.

Senator Guingona. Are we not supposed to be under the Office of the Local Government, therefore, under the President? And would this not be a possible clash or confrontation of powers?

Senator Angara. It will not, Mr. President, because the concern of the Ombudsman is with respect to graft and corruption.

Senator Guingona. Yes, but "graft and corruption" is a very broad term, and misconduct may involve graft and corruption; dishonesty may involve graft and corruption; many of the grounds in the Civil Service and in the Administrative Code could be construed for graft and corruption, Mr. President.

Senator Angara. Yes, the distinguished Gentleman is right. That is why I believe that the Ombudsman must carefully draw up the necessary rules and regulations that will take care of the details of this overlap. Because, definitely, as we pointed out, there will be overlap of jurisdiction in many instances because the coverage of the jurisdiction of the Ombudsman under this proposal is so wide-ranging that it will necessarily overlap with other jurisdictions.

Senator Guingona. Talking of overlap, would the provision we cited earlier also include jurisdiction of the Ombudsman over judges?

Senator Angara. No more, Mr. President, since we deleted the proviso.

Senator Guingona. Would they have jurisdiction over Cabinet members?

Senator Angara. No, Mr. President.

Senator Guingona. No more?

Senator Angara. No more.

Senator Guingona. What would be the rationale, Mr. President?

Senator Angara. The rationale for excluding Cabinet members, Mr. President, is that they are members of the official family. And since Cabinet members are subject to accountability, either through the Question Hour or through the Blue Ribbon Committee, or through other legislative committees, we felt that their political accountability is properly answered through that medium.

Senator Guingona. Would that not be a double standard? They are not subject to impeachment; they are subject to administrative sanctions; they are subject to criminal and civil laws. Would that not be a double standard wherein we exempt from the jurisdiction of the Ombudsman just because they belong to the official family?

Senator Angara. It is not applying a double standard, Mr. President. It is applying a different mechanism of accountability for them and that mechanism is, as I said, through the Question Hour and through the other legislative committees. That is one reason. The other reason is that they are the extension of the presidential personality, and we felt that since we are not subjecting the President to this bill, we ought not to subject also the extensions of his or her personality.

Senator Guingona. The Senate President is suggesting a break, Mr. President.

The Presiding Officer [Senator Maceda]. Yes. Does the President Pro Tempore still have a lot of questions to ask?

Senator Guingona. A few more, Mr. President, please. I will accede to the break.

SUSPENSION OF THE SESSION

The Presiding Officer [Senator Maceda]. In which case, we accept the suggestion of the Senate President, transmitted through the Senate President Pro Tempore, that we should have a break, if there is no objection. [There was none.]

It was 6:03 p.m.

RESUMPTION OF THE SESSION

At 6:37 p.m., the session was resumed, with the Honorable Jovito R. Salonga, President of the Senate, presiding.

The President. The session is resumed.

Senator Angara and Senator Guingona.

Senator Guingona. Mr. President, may I refer to Section 13 on page 5 of the bill. It grants immunity to the Tanodbayan or any member of his staff. May we know to what extent the staff here refers to? Does it extend to the clerks?

Senator Angara. Yes, Mr. President. The intendment is that the Ombudsman, when he promulgates the rules and regulations, will define this immunity and the extent to which this immunity will apply. I suppose it is not going to be the rule that each and everyone in the Office of the Ombudsman, to the last janitor, would enjoy this immunity. I suppose the rules will be so interpreted according to reason and the Ombudsman will prescribe the necessary rules and regulations.

Senator Guingona. So, we leave it to the Ombudsman to prescribe the rules as to who should be included in the immunities to be granted.

Senator Angara. Yes, Mr. President, and I suppose that the standard that will be followed is that this immunity ought to extend only to officials who are actually involved in the investigation, prosecution or disciplining.

Senator Guingona. And this freedom from civil action will only apply during the term of office.

Senator Angara. That is true, Mr. President.

Senator Guingona. Supposing the member of the staff or the officer of the Tanodbayan commits a criminal offense during his term and the criminal offense is filed, is the civil action also deemed filed or is he immune from the civil action?

Senator Angara. The civil action would have to be suspended or abated pursuant to this provision.

Senator Guingona. But there is already a criminal action filed and it is a basic principle that for every criminal act, there is a civil liability. What is the rationale for suspending the civil liability considering that he is already facing criminal charges?

Senator Angara. The reason, Mr. President, is that the civil aspect of his liability should not be pursued during his term of office. And, therefore, consistent with that, the institution of the criminal case ought not to carry the automatic institution of the civil case.

Senator Guingona. But, Mr. President, I thought the rationale behind this immunity is to prevent undue harassment to members of the Tanodbayan and his staff during the tenure of office so that they can concentrate on their work. But if there is already a criminal case, he is already harassed. And the reason for the exemption seems no longer to hold water.

Senator Angara. It still would constitute harassment, Mr. President; because, in the civil aspect of his liability, he still has to respond materially to his liability, and to some, that may be more harassment than imprisonment.

Senator Guingona. I see. When the ordinary fiscal is instructed by the Tanodbayan to file a criminal case and the fiscal feels that there is no case and that the charges at issue should be dismissed, can the Ombudsman order the fiscal to file a case?

Senator Angara. Theoretically, he can, Mr. President. But as a matter of fact, I think that will not happen. Because, first of all, when the fiscal is instructed by the Ombudsman to investigate a case, that means the fiscal is, in effect, the representative or delegate of the Ombudsman and the action of that fiscal will bind, in effect, the Ombudsman.

Therefore, I think it would be a very rare case when the Ombudsman would overrule his own representative. As a matter of fact, I think, that would be a very rare occurrence.

Senator Guingona. Yes, but even if it is rare, nonetheless, we should cover that possibility.

Senator Angara. Technically, yes, Mr. President.

Senator Guingona. Supposing the Ombudsman says to the fiscal: "File this case against Mr. X," and the fiscal disobeys him, what is the consequence?

Senator Angara. Either the Ombudsman discharges that fiscal and replaces him with another one or the Ombudsman himself conducts an investigation through the special prosecutor.

Senator Guingona. And there will be no sanction against the disobeying fiscal?

Senator Angara. It depends on the circumstances, Mr. President. If the refusal is ill-motivated or treated by some unjustified considerations, perhaps, there will be some sanctions; but if it is just plain disagreement on the facts and the conclusion to be drawn from them, I do not think sanction would be warranted.

Senator Guingona. The fiscal believes that there is no case but the Ombudsman, on the other hand, says: "There is a case, therefore, file it." The fiscal disobeys him. Would he be open to sanctions?

Senator Angara. It depends on the circumstances, as I said, Mr. President. If the disagreement is purely on the appreciation of the facts and the law, I do not think that any sanction would be justifiable.

Senator Guingona. So, so long as the fiscal is acting in accordance with his discretion, there will be no sanction against him?

Senator Angara. I believe so, Mr. President.

Senator Guingona. And the Ombudsman cannot file the case?

Senator Angara. Well, that is another matter. It may designate another fiscal to investigate anew and that new fiscal might have a different appreciation from that of the first fiscal. So the case may ultimately be filed in the end.

What I am saying is that, as long as the disagreement between the Ombudsman and that fiscal is a genuine disagreement on the appreciation of the facts and the law, then I do not feel any sanction is justified.

Senator Guingona. We do not wish to be facetious, Mr. President, but this has happened before. Supposing that the first fiscal's decision is disregarded and there is a new fiscal and the second fiscal comes up with the same findings; that he believes there is no case, what would happen now? Would the Ombudsman be powerless? Would there be sanction this time against the second fiscal?

Senator Angara. In that case, Mr. President, when two fiscals have come to the same conclusion, I think, as a practical matter, the Ombudsman would be convinced that there is no such case, and only a stubborn Ombudsman would insist that a case be filed.

Senator Guingona. Can the Ombudsman conduct his own investigation if the fiscal refuses?

Senator Angara. Certainly, Mr. President. This is one of the options available to him.

Senator Guingona. What then if the fiscal pursues his own investigation; the Ombudsman pursues his and there will be two findings contrary to each other? I mean, we are pursuing this because the bill says now that the Ombudsman has the power to prosecute and we are trying to find the limits of this power to prosecute, Mr. President. Is this all-encompassing? Can it disregard the findings of the fiscal?

Senator Angara. We have the rule here, Mr. President, that whoever takes cognizance of the case first will have priority. So, we do not foresee the situation that the Gentleman is describing because in that case, whoever has taken cognizance of the case will be given priority.

Now, in case that fiscal is investigating by virtue of a designation, obviously, there is only one investigation, Mr. President.

Senator Guingona. Yes, but, supposing the fiscal who is supposed to investigate says that there is no case. "I will not file it." Can the Ombudsman now prosecute on his own?

Senator Angara. If, on the basis of a second investigation, either conducted by himself or through another fiscal, a case is found to be prima facie available, then, I think, the case can be pursued despite the opinion of the first fiscal.

Senator Guingona. I asked that, Mr. President, because under the bill, the distinguished Sponsor seeks to vest the Ombudsman with prosecutory powers. Is this the intent of the Constitutional Commission?

Senator Angara. Yes, that is the intent of the Constitutional Commission, as interpreted by the Supreme Court, Mr. President.

Senator Guingona. I have here the proceedings of the Constitutional Commission. On page 281 of the July 26, 1986 session, Mr. Davide asked:

Can the Ombudsman conduct investigations?

Mr. Nolleto answered:

It can conduct investigations but it cannot prosecute before a court of justice.

Senator Angara. Yes, I am aware of that exchange, Mr. President. But, as interpreted by the Supreme Court, which is the final arbiter in case of constitutional doubt, the Supreme Court said that the power to investigate vested in the Ombudsman

includes the lesser power to prosecute.

Senator Guingona. And, in the case of fiscals, for example, who will disobey directives of the Ombudsman because in their judgment there is no sufficient evidence, the question asked by Mr. Davide was:

MR. DAVIDE. What if the person to whom the directive is addressed will not comply with it?

MR. COLAYCO. There are always administrative remedies against that.

MR. DAVIDE. Could the offending party be prosecuted then for disobedience?

MR. COLAYCO. Yes, as the case may be and as the regulations of the civil service so require.

MR. DAVIDE. So, in effect, we will have a superbody in this case which can be even more powerful than any other administrative body.

MR. COLAYCO. More or less that is the intention.

MR. DAVIDE. So if the fiscal's office believes that there is really no basis to the recommendation, yet it will be at the mercy of the Ombudsman because the Ombudsman will now prosecute him for disobeying the recommendation of the directive.

MR. COLAYCO. No; the Commissioner is wrong there. The Ombudsman can only order the investigation, that is all.

MR. DAVIDE. I see.

MR. COLAYCO. He cannot overrule.

MR. NOLLEDO. Yes.

MR. DAVIDE. There is the danger of duplication of functions because the Ombudsman will investigate and the result may be forwarded to the fiscal's office. The fiscal's office will then review it before filing the case. So two bodies will have to investigate before the same matter reaches the court.

In view of this seeming contradiction in the distinguished Sponsor's answer, will the Gentleman please clarify whether the Ombudsman can order the fiscal—the first fiscal, the second fiscal, the third fiscal—to file the case?

Senator Angara. The Ombudsman cannot overrule his own special prosecutor as well as a fiscal designated by him, Mr. President. Let us start from that premise. And, therefore, if the Ombudsman disagrees with the findings of any of these officials, then he can go ahead and proceed—

Senator Guingona. To file the case.

Senator Angara. — on the same case. Now, that is different from saying that he can impose disciplinary action on disobeying fiscals; because in that case, I think, whether sanctions will be applied or not will depend on the circumstances, if the refusal of the fiscal to prosecute is genuinely a difference in appreciation of clear facts, evidence and the law, I do not think administrative sanctions will be warranted.

Senator Guingona. What remedy will the respondent have if the Ombudsman persists in the prosecution and this has already been denied by subordinate fiscals?

Senator Angara. The respondent can appeal to the Supreme Court, Mr. President.

Senator Guingona. By *certiorari*?

Senator Angara. Yes, by *certiorari*. Here under this Act, it is still by petition for review, but as observed by Senator Mercado, it ought to be by *certiorari*.

Senator Guingona. All right. Has the Ombudsman any jurisdiction over private parties when the private parties are involved with public officials?

Senator Angara. Yes, especially when it affects one of those acts under the anti-graft act then private persons would also be involved?

Senator Guingona. Even if there is no conspiracy established?

Senator Angara. Well, we must first establish a conspiracy, Mr. President.

Senator Guingona. Does the Ombudsman have jurisdiction over Philippine Ambassadors?

Senator Angara. Yes, Mr. President.

Senator Guingona. To investigate whether they are married to foreigners?

Senator Angara. The fact that they are married to foreigners, Mr. President, is not an extenuating circumstance.

Senator Guingona. In possible danger of national security?

Senator Angara. Come again, Mr. President.

Senator Guingona. Can the Ombudsman investigate Ambassadors who marry aliens with possible danger to national security?

Senator Angara. Well, I suppose that is improper and illegal, so it would come within the jurisdiction of the Ombudsman.

Senator Guingona. Will we not put the President who appointed these Ambassadors in possible embarrassment?

Senator Angara. Well, it is the same principle as investigating bureau heads, Mr. President. They are also appointed by the President.

Senator Guingona. No. The Ambassadors today are disciplined by the Department of Foreign Affairs and they have, at present, the jurisdiction to do so. I think there is a body designated. But under this proposed bill, that jurisdiction will now be vested in the Ombudsman. Would that be a correct statement?

Senator Angara. That is correct, Mr. President, that any misfeasance or malfeasance committed by an Ambassador will come within the jurisdiction of the Ombudsman.

Senator Guingona. Does not the Constitution provide that it is the Supreme Court which shall have original jurisdiction over all cases affecting Ambassadors?

Senator Angara. That is true, Mr. President.

Senator Guingona. Therefore, would this not, in effect, impinge upon the jurisdiction of the Supreme Court covering cases affecting Ambassadors?

Senator Angara. Mr. President, that jurisdiction is not exclusive, as I remember it. Yes, it has original jurisdiction, but it did not say that it shall have exclusive jurisdiction.

So, I believe, Mr. President, that the Legislature, as in this case, can provide that the Ombudsman can also have similar jurisdiction over them.

Senator Guingona. Does this mean that if the Ombudsman takes jurisdiction over Ambassadors, the Supreme Court can still exercise jurisdiction over the same?

Senator Angara. Yes, certainly, Mr. President; but, if I may add, the jurisdiction of the Supreme Court would be judicial rather than administrative.

Senator Guingona. I see. When the Ombudsman desires to subpoena a witness, does it have to apply to the Sandiganbayan to secure the presence of recalcitrant witnesses?

Senator Angara. No, Mr. President. The power of the Ombudsman to issue subpoena is direct.

Senator Guingona. I may have other questions but in view of the lateness of the hour, Mr. President, I am making a reservation for next time.

Senator Mercado. Mr. President.

The President. The Majority Floor Leader is recognized.

SUSPENSION OF CONSIDERATION OF
SENATE BILL NO. 543

Senator Mercado. Mr. President, I move that we suspend consideration of Senate Bill No. 543.

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

14 - Pages
(35 - 48)

ORGANIZATION OF THE OFFICE OF THE OMBUDMAN
R.A.No. 6770 / S.B.No. 543 / H.B.No. 13646

RECORDS OF THE SENATE

AUG 02,1988

Senator Mercado. Mr. President, I wish to reiterate my earlier motion for the suspension of consideration of Senate Bill No. 373.

Senator Paterno. Mr. President.

The President. All right. Senator Paterno again.

Senator Paterno. On advice of my Chairman, I withdraw the proposal, Mr. President.

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

BILL ON SECOND READING

S. No. 543 - Office of the Ombudsman
(Continuation)

Senator Mercado. Mr. President, I move that we consider Committee Report No. 263 on Senate Bill No. 543.

We are in the period of interpellations, Mr. President. I move that we recognize the Sponsor, Senator Angara.

The President. Senator Angara is recognized.

Senator Mercado. Last night, reservations were made on the part of Senator Guingona to continue his interpellation.

The President. Senator Guingona may continue his interpellation.

Senator Guingona. Thank you, Mr. President.

Can the distinguished Sponsor, Mr. President, expressly tell us whether the Ombudsman, under the bill, has the power to prosecute criminally?

Senator Angara. The Ombudsman, under the bill, Mr. President, can prosecute either civilly or criminally. If it is criminally, then he has to do it through the Special Prosecutor.

Senator Guingona. So that the Ombudsman, on its own, cannot initiate criminal prosecution apart from the Office of the Special Prosecutor. Is that a fair statement?

Senator Angara. As a general statement, that is true, Mr. President. But, there maybe circumstances or situations where the Ombudsman may designate a Fiscal or a State Prosecutor to do it, rather than a Special Prosecutor, for the reason that the Office of the Special Prosecutor maybe overmanned; or it is more practical to designate to a Fiscal, for instance, in Tawi-Tawi than send a Special Prosecutor to do it.

Senator Guingona. I am not concerned with situations like that. I would just like to make it clear that in cases of disagreement between the Office of the Special Prosecutor and the Office of of the Ombudsman, now the Tanodbayan, can the Ombudsman disregard the Office and function of the Special Prosecutor and prosecute on its own?

Senator Angara. Mr. President, the Ombudsman, as the superior of the Special Prosecutor, can overrule the Special Prosecutor. And, therefore, the Ombudsman, on his own decision, can go ahead and prosecute despite the contrary opinion of the Special Prosecutor.

Senator Guingona. Mr. President, we do not see that in Section 14 of the bill, the powers, functions and duties. There are 11 powers, functions and duties, and none of them seem to indicate that the Ombudsman, on his own, can prosecute criminally. On the other hand, there is an existing presidential decree which gives to the Office of the Special Prosecutor, the old Tanodbayan, the exclusive authority to investigate and prosecute criminally.

Senator Angara. Well, the power to prosecute on its own, Mr. President, we thought, is already comprehended by this enumeration. But, if the Gentleman wishes a more specific expression of authority, we would welcome such an amendment. The principle that the Ombudsman can overrule a Special Prosecutor, is, I think, a principle that is established under this law. If the distinguished

Gentleman wants it express and specific, we would welcome an amendment.

Senator Guingona. Unless it is made express and explicit, Mr. President, the constitutional inhibition that the Office of the Special Prosecutor should exercise the functions now or hereafter conferred upon it, may lead to certain complications.

Senator Angara. Yes, as I said, Mr. President, we will be grateful if the Gentleman will submit the necessary amendment.

Senator Guingona. Now, Mr. President, going to another matter: The Ombudsman under the bill will have quasi-judicial powers. Is that correct?

Senator Angara. That is correct, Mr. President.

Senator Guingona. That is not intended by the Constitution, is it?

Senator Angara. It is intended by the Constitution. Although it may not be expressly stated, when one goes over the provisions of the Constitution, together with the proceedings, I think one can clearly gather the manifest intent to give the Ombudsman such a quasi-jurisdiction in order to make it an effective watchdog.

Senator Guingona. When there is a complaint against a civil servant and the Ombudsman requires the civil servant to respond in writing within 72 hours, under the bill, it has jurisdiction to do so, excluding the Civil Service Commission. Is that correct?

Senator Angara. Under the bill, Mr. President, if the Ombudsman has taken cognizance of the complaint ahead of the Civil Service, then it takes precedence.

Senator Guingona. Under our present system, there are established rules of procedure; there are established precedents; there are established decisions. Would all of these now be disregarded?

Senator Angara. No, Mr. President. It is not the intendment of this bill to abrogate and alter

any of the existing practices and jurisprudence.

Senator Guingona. If the Gentleman is referring to the appeal procedure, Mr. President, there is a change; because, from the decision of the Ombudsman, we have provided here that the appeal should go directly to the Supreme Court. In that sense, if the proceedings are before the Ombudsman, the appeal is brief and direct. Whereas, if the proceedings are before the Civil Service Commission, technically one can go to the Regional Trial Court to appeal a judgment and down the line.

So, in that sense we are making a shorter route of appeal when the proceedings are before the Ombudsman.

Senator Guingona. In a reading of the Constitution there does not seem to be any power expressly conferred on the Ombudsman to take over the powers of the Civil Service Commission even by virtue of preference only.

Senator Angara. Certainly, Mr. President, the Gentleman is absolutely right. This bill does not intend to cause or exclude the Civil Service Commission from its jurisdiction. What this bill intends to do is to take the Ombudsman's jurisdiction concurrent with the Civil Service Commission only because of our view that the effectiveness of the work of the Ombudsman will largely depend on that. Without it, the Ombudsman would perhaps be a less effective institution.

Senator Guingona. Under the present structure, Mr. President, Presidential Decree No. 630 is still an existing law.

Senator Angara. Yes, Mr. President. But when this bill becomes a law, the provisions of PD 1630, inconsistent with this bill, ought to be deemed repealed.

Senator Guingona. Will the provisions against undue publication of respondents even before the investigation shall have been finalized, be adhered to?

Senator Angara. Yes, Mr. President, except that when Senator Pimentel stood up yesterday, that is exactly the point he raised, and we said that we will put the necessary amendment so that that is expressly provided for in this bill.

Senator Guingona. And the rights of the respondent before the Civil Service Commission and before the courts of justice will not be any less than the rules of procedure prescribed by the Tanodbayan.

Senator Angara. The procedural due process will be respected in full, Mr. President.

Senator Guingona. Thank you, Mr. President.

Senator Angara. Thank you.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized.

Senator Gonzales. Will the distinguished Gentleman, Sponsor of this bill, yield to some questions?

Senator Angara. With pleasure, Mr. President.

Senator Gonzales. This bill under consideration, which is Senate Bill No. 543, a substitute bill or even a consolidation of Senate Bill Nos. 394 and 299, is an implementation of the constitutional provisions creating and governing the Office of the Ombudsman. Is it not?

Senator Angara. That is correct, Mr. President.

Senator Gonzales. I have read these provisions in the Constitution as embodied from Section 5 to Section 14 of Article IX of the Constitution, and I found out that the Constitution even provides in greater detail for this Office of the Ombudsman, so that in my view, even without any implementing statute, it can function in accordance with its terms and in accordance with the purpose of its creation. Does not the Gentleman agree, Mr. President?

Senator Angara. I agree and disagree, Mr.

President. I agree in the sense that, perhaps, even without the benefit of this bill the Ombudsman can operate as it is now operating without this bill.

Senator Gonzales. Yes.

Senator Angara. But with this bill, then, some of the future doubts and ambiguities on the functions, duties, and organization of the Ombudsman would have been cured, and, perhaps, we would have a stronger and more effective Office of the Ombudsman.

Senator Gonzales. Yes, and that is my concern just as it is the concern of some Senators who had previously interpellated the Gentleman. Apparently, the Office of the Ombudsman that we are creating and organizing under this provision is a far different office from that which is contemplated by the Constitution, especially in as far as powers, functions, and duties are concerned. Now, let us consider...

Senator Angara. Can I just respond to that statement, Mr. President?

Senator Gonzales. Yes, Mr. President.

Senator Angara. The bill does not go beyond what this Representation, at least, or the authors of this bill, thought to be the contemplation of the Constitution. There may be powers here that may sound new or may even seem expanded, but in my opinion, that is in keeping with the intentment of the Constitution to make an effective and useful institution out of the Ombudsman, because based on our experience, unless the Gentleman gives it that kind of clout, then the institution would be ineffective or ineffectual.

Senator Gonzales. Since this is the main thrust of my interpellation, let us examine one by one the constitutional powers, functions and duties of the Ombudsman and thereafter compare it with the powers, functions and duties that have been vested in it under this bill under consideration. For example, the enumeration or description of its

functions starts in Section 12 and, stripped of unnecessary verbiage, the function is:

The Tanodbayan and his Deputies as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government ... shall in appropriate cases notify the complainant of the action taken and result thereof.

Nothing in this particular provision would even imply that the Ombudsman would exercise disciplinary authority and impose administrative punishments. Is that not correct, Mr. President?

Senator Angara. Yes. Based on this single provision, I agree with the distinguished Gentleman.

Senator Gonzales. That is why we will examine them one by one, Mr. President.

Senator Angara. But if I may add, Mr. President, if the Gentleman will read this provision, together with the rest of the provision, under Section ...

Senator Gonzales. That is what I intend to do, Mr. President.

Senator Angara. Yes. Then, I think, one can say that the legislature can give the disciplinary power to the Ombudsman.

Senator Gonzales. Section 13, on the other hand, says:

(1) Investigate on its own --

meaning *motu proprio*

--or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient.

The power granted there is the power to investigate, and although unduly broadened by the Supreme Court decision, it includes the power to prosecute; still, the power is limited to that of investigation, and from that one cannot infer any disciplining power or authority. Is that not correct, Mr. President?

Senator Angara. That is not correct, Mr. President, because one cannot read this in isolation; one must read it in its totality.

Senator Gonzales. Precisely, we will now take this up, so that the Gentleman can point out to me, under which provision or a combination of provisions can we infer the grant of broad authority to the Ombudsman under this bill. The Gentleman would agree that standing by itself, the power is to investigate, and that power to investigate in no way grants the Office of the Ombudsman disciplinary authority.

Senator Angara. But the Gentleman will notice, Mr. President, that even with the single word "investigate" the Supreme Court has interpreted it to include the right to prosecute. And therefore, my point, Mr. President, is that one should not read any of this section in isolation; one must read the whole.

Senator Gonzales. Yes, Mr. President, we will do that. But before we examine the whole, let us consider the parts.

Senator Angara. Yes. That is why, beforehand--

Senator Gonzales. So we will determine what is the rule.

Senator Angara. --one cannot make a conclusion on the basis only of a single...

Senator Gonzales. I am asking, Mr. President, that on the basis of this particular provision, we cannot even, by the remotest attempt to extend a power, imply the grant of disciplining authority to the Ombudsman.

Senator Angara. Our position, Mr. President, is that, by virtue of Section 7 and Section 13, one can very logically infer or give or grant the power of discipline.

Senator Gonzales. The Gentleman did mention Section 7 and Section 13. Precisely, these are the

specific powers which are enumerated in Section 13, Mr. President. And that is why I am testing the validity of the Gentleman's assumption or statement. Our respective positions, my position, the Gentleman's position, are not important, but what is the position of the Constitution. I think that is the one that is important.

Senator Angara. Precisely, Mr. President, we are trying to interpret it in our own way and in our own mind what should be the proper, correct reading.

Senator Gonzales. Precisely, Mr. President. If the Gentleman could only answer my question that under Section 13, paragraph (1), under the power to investigate, even if we extend it so as to include the power to prosecute, we cannot imply from it the power or the disciplining authority and the power to impose penalties.

Senator Angara. As I said, Mr. President, perhaps the Gentleman's conclusion ought not to flow on the basis alone of this single paragraph. What I am saying is that the conclusion that the power of discipline can be vested on the Ombudsman should be made not solely on the basis of Section 13 (1) or on the totality of Sections 13 and 7.

Senator Gonzales. Yes, Mr. President.

Senator Angara. Now, the other point, Mr. President, is that even if the Gentleman will read this literally, there is nothing in these two sections that forbids the Legislature from granting the power of discipline to the Ombudsman.

Senator Gonzales. I think, we must concede that the grant of disciplinary authorities is not really provided for in the Constitution, nor can be inferred from any provision of law; but then the Gentleman is invoking an independent grant of that authority by Congress, by law.

Senator Angara. Well, that is partly correct, Mr. President, but still I believe that that

congressional grant is rooted or anchored on the constitutional provision.

Senator Gonzales. All right. There are certain admissions and, however reluctantly given, at least, let us go further because the Gentleman is invoking the whole of Section 13. I might really be wrong, and I want to be corrected this early.

Now, under paragraph (2), it says:

Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision thereof to perform and expedite...

probably a ministerial act because it says:

...any act or duty required by law or to stop, prevent and correct any abuse or impropriety in the performance of duties.

There is neither a grant of disciplining authority, nor can we imply one from this specific provision; only from this specific provision.

Senator Angara. My answer, again, Mr. President, is that one cannot derive that broad, sweeping conclusion solely on the basis of this provision.

Senator Gonzales. There is none solely on this provision. Let us go to (3):

Direct the officer concerned to take appropriate action against a public official or employee at fault--

there is a determination, that is, at fault, and this is very important,

--recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

Mr. President, the power here, even after a determination of fault, is merely to recommend to the appropriate office or agency the imposition of administrative sanctions, which, under this law, instead are to be imposed by the Ombudsman himself or directly. Could not the Gentleman see a conflict between these two provisions, Mr. President?

Senator Angara. I do not see any conflict, Mr. President. As I said, the grant of disciplinary power is something that the Constitution does not forbid.

Senator Gonzales. Well, we will take it differently.

Senator Angara. Again, the question is: Is it necessary to grant the Ombudsman such a power in order to make it effective? That is a means necessary to the end, to the objective.

Senator Gonzales. Is it, therefore, now another power?

Senator Angara. I submit that the means, that is, the disciplinary power, is necessary to achieving that objective of making an effective Ombudsman.

Senator Gonzales. That is precisely what I think will simplify this debate if an admission can be made that the disciplining authority is not really provided for, nor could it be inferred from any specific power or function of the Ombudsman under the Constitution, but only an independent grant of power now by Congress through this bill. If not, we limit our debate then as to whether or not we can or we should grant that kind of power.

Senator Angara. Mr. President, while I can see that this grant of disciplinary power is a congressional grant, what I am saying is that this grant is not precluded, either by the language or the intent of the Constitution.

Senator Gonzales. The intent of the Constitution is to make this an investigative body and then thereafter to either prosecute clearly in the civil, criminal, or administrative cases, or through the existing structures or agencies in our Government. That is, if we read the totality of the provisions of the Ombudsman, the constitutional intent is there but not to make the Ombudsman a superbody. We are always very fond of superbodies now, Mr. President.

Senator Angara. Yes, Mr. President, but we are not making a superbody out of the Ombudsman.

What we are trying to do is give the Ombudsman such power that will make it an effective Ombudsman.

Senator Gonzales. Yes, but in trying to do so, we, in effect, we actually denigrate the position of another constitutional body which is the Civil Service Commission, and which is actually the central personnel agency of the Government. If that were the intention of the Constitution to grant the Ombudsman a disciplining authority which will be concurrent with the power of the Civil Service Commission, then there could have been nothing that would have prevented the Constitutional Commission from doing so. On the other hand, it maintains the independence of another constitutional body which is the Constitutional Commission.

Senator Angara. Mr. President, I disagree with the Gentleman's conception of the Civil Service. The Civil Service is not a disciplining body. The Civil Service, as I understand it, was set up in order to lay down the personnel policies for the public administration of our Government. And it is only, incidentally, a disciplining body. And therefore, if I may continue, this bill, Mr. President, does not in any way try to or attempt to denigrate the position of the Civil Service. In fact, we thought that the role we are assigning to the Ombudsman could compliment the role being performed now by the Civil Service.

Senator Gonzales. Mr. President, whereas, before the Civil Service Commission under the law had exclusive disciplinary jurisdiction over all officers and employees belonging to the Civil Service, now that power is no longer exclusive, but concurrent with the Ombudsman which the Constitution has not granted to that Office. What does the Gentleman call it, Mr. President?

Senator Angara. We call it "strengthening the system," Mr. President. But, Mr. President, to me the question is not whether one is being denigrated

or downgraded. The question is: Would we advance public interest by giving this concurrent jurisdiction to the Ombudsman? Would the perennial cry of our people for quick action on complaints be accomplished by giving this power to the Ombudsman? To me, that is the question one must ask rather than the technical question whether we are denigrating or downgrading or downplaying one agency over the other.

Senator Gonzales. When the constitutional body is created, Mr. President, its powers, functions, and duties are spelled out in the Constitution. While it is true that Congress can grant it additional powers, those powers should only be consistent with the purpose of the creation of that Body, but never overbrought beyond what is intended by the Constitution.

Senator Angara. I agree with the Gentleman, Mr. President. I think any bill should not go beyond the constitutional intendment. And well, there is a difference of opinion now between the distinguished Gentleman and I, and we hope that in the end, we can reconcile these views so that we can make a truly working, operational, effective Ombudsman for our country.

Senator Gonzales. Yes, Mr. President. In trying to do so, let us now not raise the specter of what Senator Laurel has feared—the creation of a monster. It was worst, I thought the Gentleman only used a superbody. Now, he told me it is a monster. Imagine the distinguished Gentleman and I, siring a monster. *[Laughter]*

Senator Angara. I think the Gentleman would be incapable of fathering a monster.

Senator Gonzales. Precisely, that is why I am trying to stop it, because it is not my intendment to sire one.

So, the Gentleman would want to stop our debate by just saying there is an honest difference of opinion between the two of us, and I will accept that.

Senator Angara. No, beyond that, Mr. President, I would really genuinely seek his advice and guidance knowing his expertise in public administration and constitutional law, I am not at all dismissing the weight of his opinion. In fact, I think, it is very helpful to everyone that he is articulating that opinion and enlightening us in the process.

Senator Gonzales. Thank you, Mr. President.

My personal position is that the grant of disciplinary authority to the Ombudsman concurrent with the existing power of the Civil Service Commission, and its authority to impose punishments, other sanctions and penalties which will really be beyond the purview of the Constitution creating the Office of the Ombudsman.

Mr. President, are there specific provision in the Constitution placing the Office of the Special Prosecutor, formerly the Ombudsman, under the supervision and control of the Sandiganbayan? Or is this merely the result of the decision of the Supreme Court?

Senator Angara. That is the offshoot of the decision of the Supreme Court interpreting the Constitution, Mr. President.

Senator Gonzales. Does not the Gentleman think that what should be proper is that, if the Ombudsman has received any complaint or upon its complaint regarding any misconduct in office, presumably committed by an officer or an employee, then, the Ombudsman now would bring the matter to the appropriate agency? For example, if this is a criminal offense committed by a public officer and the offense is related to the office, then he can direct the Special Prosecutor to conduct the preliminary investigation in accordance with the existing law and prosecute the same. In the meantime, because he is under his control and supervision, the Special Prosecutor can oversee if he is actually diligently performing his functions. If the act or omission does not amount to a crime, then the

Special Prosecutor files the administrative case and prosecutes it before the Civil Service Commission in accordance with the established laws. And if it is one that involves civil liability then the Special Prosecutor extends all assistance to the interested party or the party who appears to be the victim in order that he can get a redress. Would that not be a better concept of an Ombudsman rather than the Ombudsman not only conducting, but thereafter, also imposing the penalty and all the sanctions which, under the law, properly appertain to another office or agency of the Government? The idea of an Ombudsman is just there. He throws the weight and the influence of his office to see to it that action is being taken by those who are, by law, required to do so. That is my concept of the Ombudsman; that is the primary function of the Ombudsman.

Senator Angara. That is one vision of the Ombudsman, Mr. President, the traditional almost brokering role that the classic Ombudsman does in other countries. But the other vision is what we are writing in this bill, that it is more than a passive watchman, but an activist watchman, based, first of all, on our historical experience that if it is just merely passive, then nothing really will happen, and the perennial complaint of our people will continue and continue. So, it is really, as the Gentleman puts it, a genuine policy choice. Should we adopt that traditional concept of the Ombudsman as a brokering agency in our public administration or should we not now try another tact, another vision of the Ombudsman being an activist, almost interventionist institution in our society?

Senator Gonzales. Well, we can give it as much powers as the Gentleman wants for the purpose, but at the same time, I think it has never been the intendment of the Constitution that we take away, let us say, the disciplinary powers from the Civil Service Commission over those who are subject to its disciplinary jurisdiction. I think that has never been the intendment of the Constitutional

Commission. Let us say that that is the vision we seek to create and to concretize. That is our vision and it is not the vision of those who created this Body, which is, the Constitutional Commission.

Senator Angara. No, it is far from my intent, Mr. President, to deceive the constitutional intendment as I understand it. As I said, Mr. President, we are grateful for his opinion and advice, because we hope that in the period of amendments, we can take advantage of the distinguished Gentleman's counsel.

Senator Gonzales. There is another provision here to which I must announce in advance that I am personally opposed. And that is Section 13, regarding immunities, where it provides that no civil action shall lie against the Tanodbayan or any member of his staff for any act or omission in discharging the duties and responsibilities herein provided.

Mr. President, in our struggle for what we have attained now, we have fought the grant of immunity of the President of the Philippines; and here is the Office of the President of the Philippines, and perhaps, there could be some reason for granting him some immunity. But here, we found that unacceptable; that is why, we fought the same. We are granting the Ombudsman, who is very much less than the President, the power, the immunity. What could be the reason therefor? Always they say: "We do not want to be free from harassments of civil cases."

When one accepts a public office, I think that is one of the hazards that he must accept. When one accepts a public office, he must be ready for these things; he must accept them. One cannot create a legal barrier as to insulate oneself from court processes. Why should one be afraid? A public officer cannot be held civilly liable for as long as he acts within the scope of his authority or in line with his official duty. Now, here in this particular case, he is subject to suit. He does not enjoy any immunity,

but the immunity has something to do with jurisdiction. The court cannot take cognizance; he is not subject to the court processes. But here, one is subject to the court processes. Given the other a chance, an opportunity, far from acting within the scope of one's authority or in line with the official duty one acted because of personal motives which are based and if given the opportunity to do so. It is only when it is established that one acted with bad faith and malice, thus, liability sets in. So, I feel that even without this immunity, our rules on public officers governing liability of public officers who act within the scope of their authority or in line with official duty is already sufficient.

Now, I do not buy that argument. We must grant immunity to certain officers in order to free him from harassment. I am of the belief that when a person accepts a public office, he always accepts the fact that this is one of the hazards of accepting a public office which one must be ready to accept.

Senator Angara. Mr. President, I fully, intellectually and emotionally share the Gentleman's argument. The reason, if I may say so, that this particular provision found its way to the draft, is the fact that we have unwittingly copied this from R.A. 1630, the original Tanodbayan Law. Now that we have a new Constitution, perhaps my distinguished Colleague is right that such an immunity has no place nor system. But having said that, let me just add, Mr. President, that this is not really a genuine immunity. It is only postponing any civil suit during his term of office. In other words, he can still be sued after he has stepped down from office.

Senator Gonzales. No, Mr. President. There is nothing in this provision that justifies that. I think, the immunity survives his term, for as long as the cause of action is based upon an official act or conduct while he was in office. I think we have to correct that misimpression that after his term, there is no longer immunity. There is still immunity, Mr. President, because the cause of action is an act or

omission that he committed while he was in office.

Senator Angara. There is an abatement of action, if I may put it that way, Mr. President, during his term of office. That means the court cannot entertain any... As I said, Mr. President, we are sympathetic to the Gentleman's suggestion.

Senator Gonzales. Yes, Mr. President, and this effort of interpellation is worth it.

SUSPENSION OF THE SESSION

The President. With the permission of the Gentlemen, shall we call a brief break for a few minutes?

Senator Gonzales. Anyway, I am concluding, Mr. President. Having already obtained that statement, I think all these efforts are worth it, Mr. President, if such Section 13 is deleted. Thank you, Mr. President.

The President. Shall we have a brief break, and resume after a few minutes, if there is no objection? [*There was none.*]

It was 6:18 p.m.

RESUMPTION OF THE SESSION

At 6:42 p.m., the session was resumed.

The President. The session is resumed.

Are there any more interpellations on the Ombudsman Bill?

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized.

Senator Maceda. Mr. President, I just have one question. On page 6, Section 14, Subsection (11):

Investigate and initiate the proper action of the recovery of the ill-gotten or unexplained wealth and the prosecution of the parties involved therein.

Is it the intention of this bill to abolish the Presidential Commission on Good Government?

Senator Angara. No, Mr. President. We do

not have that intent.

Senator Maceda. So, what will be the relations? Do they have concurrent jurisdictions on this matter?

Senator Angara. Yes, perhaps.

Senator Maceda. Does not the Gentleman believe that it should be one or the other? I do not see why we should have concurrent jurisdiction on a matter such as that.

Senator Angara. It could be concurrent jurisdiction, Mr. President, but perhaps, as a matter of departmental courtesy, they can agree between them who should handle it.

Senator Maceda. How would the Gentleman react to an amendment to transfer all the functions of the PCGG to the Ombudsman? I have read in the papers that, at least, five Senators, including the Senator from Metro Manila have filed a legislation abolishing the PCGG. If it is already here in the Ombudsman Law, this would be the simplest way to do it if that is the sentiment of the majority.

Senator Angara. As the Gentleman said, if that is the sentiment of the majority, Mr. President, I have no objection to that.

Senator Maceda. So, technically, it could be done?

Senator Angara. Yes, Mr. President.

Senator Maceda. Would there be no unconstitutionality? Would it be a subject matter that would be within the context of this law, as titled?

Senator Angara. It is within the legitimate concern of this law, Mr. President.

Senator Maceda. Thank you, Mr. President.

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

Senator Enrile. Thank you, Mr. President.

May I know if the distinguished Gentleman will still entertain a few questions?

Senator Angara. Yes, by all means, Mr. President.

Senator Enrile. Mr. President, it is provided in Section 10, subsection 1, lines 27 to 29 here, an authority to the President to appoint other deputies as the necessity for it may arise and as determined by the Tanodbayan. Is there any special urgent reason to delegate this power to the President instead of having it retained by Congress so that we could determine the necessity of authorizing the appointment of additional deputies and also exercise the hand of restraint on the Executive so that we can economize on the funds that are needed to support the action if they will not exercise wise discretion in this?

Senator Angara. There is no particular reason, Mr. President, for granting this authority to appoint other deputies in the President.

Senator Enrile. So that it will not really affect the function of the Tanodbayan if we will delete, subject to the understanding, the caveat, that in the event of need later on proper amendments could be introduced in order to authorize the appointment of additional deputies for the Tanodbayan?

Senator Angara. Yes, Mr. President, nothing will preclude that provision but, perhaps, in anticipation, we may as well provide here now that such additional deputies may be appointed in the future.

Senator Enrile. But precisely, Mr. President, the tendency of the Government, as this humble Representation sees it, is that there is a proliferation of deputies in every department of Government, and this is because the Congress does not have any say about the creation of these jobs, and naturally, when one increases the number of deputies, one

increases the cost of governance. And that is why I am raising this point because at the moment there seems to be no need for additional deputies other than the overall deputy, the three deputies for Visayas, Luzon, and Mindanao, and another special deputy for the military. But the distinguished Sponsor is already anticipating a possible exercise of this prerogative by the President and this might just open the door for possible appointment of people in spite of the fact that there may not be real necessity or need for such appointment.

Senator Angara. As I said, Mr. President, the bill can stand even by the deletion of this provision.

Senator Enrile. Thank you, Mr. President. I will take this up at the proper time.

My next question, Mr. President, is: Why is it necessary, although I realize that this is so provided in the Constitution, to provide a special deputy for the military? Are we now recognizing the military as the fourth branch of Government?

Senator Angara. It is just a reflection, Mr. President, of the constitutional provision that a separate deputy should be appointed for the military.

Senator Enrile. I think that at this time, Mr. President, does not the Gentleman believe that it would be better not to implement that directory provision of the Constitution to really indicate that the military is just an adjunct or a part of the Government, not a special part, so that we can really give meaning to the principle that civilian authority must always be paramount and supreme over the military instead of singling it out with a special deputy equal to that of Mindanao, Visayas, and Luzon, and thereby giving the wrong impression, as I now entertain, that the military is now considered as the fourth branch of Government.

Senator Angara. There is no such implication in this bill, Mr. President. As I said, the fact that we

are providing for a deputy in the military is only an implementation of the constitutional provision.

Senator Enrile. But in the wisdom of Congress it may, if there is a real need for it, provide a Deputy Tanodbayan for the military; but, then the question, Mr. President, as hinted by the interpellation of the distinguished Member from Batangas, this might carry some dire complications, if we consider the fact that the appointment of a Special Deputy for the Military would seem to indicate that there is a special effort to really watch the military; and that in the event that the Tanodbayan should take action against any member of the military, one can apply all the disciplinary procedures under this proposed law and one will then, perhaps, run into conflict with some of the special laws relating to the disciplinary procedure in the military, most especially the Articles of War.

We are not assured yet how this thing will operate. That is why, I am raising this question at this early time.

Senator Angara. We appreciate the caution, Mr. President, but, as I said, the distinction was made not by this bill but by the Constitution; and secondly, that there is no intendment in this bill that the deputy for the military will now apply the military rules on discipline. I think, what the Deputy for the Military will do is take care of the administrative grievances in the military rather than military matters.

Senator Enrile. Precisely, Mr. President, it creates, at least, two kinds of impressions in my mind. One, that the military is being given a special treatment in this law, through the appointment of a special Deputy of the Tanodbayan to deal with the military; second, from the viewpoint of the military, it might take it as a sign that it is not really trusted such that we, in Congress, have decided to appoint a special deputy to become the overall guardian over the conduct of the military which might further demoralize the military; and third, the

impression might be created in the minds of the people, as I have already intimated, that the military is now treated as the fourth branch of Government.

Senator Angara. What this bill merely intends to do is create the position, Mr. President. Whether the Executive will fill it up or not is up to the Executive.

Senator Enrile. But by passing this bill, Mr. President, there is already a policy determination on the part of Congress. We are already putting our imprints on the impressions that we want to create, and while the Executive might not want to fill the position, the burden will be on us; the suspicion will be on us; the blame will be on us, and the heroism will be on the Executive in not filling up the position because of the adverse impressions that could be created. Why should we put this sufferance on our part?

Senator Angara. This sufferance is not created by us nor by any of our action, Mr. President. It is already created in the Constitution.

Senator Enrile. Does the distinguished Sponsor agree, Mr. President, that it is the better part of wisdom that while it is in the Constitution, since it is only directory, not mandatory, we should not pursue it further and translate it into a law?

Senator Angara. My own opinion, Mr. President, is that it is better to anticipate this problem now rather than later. And, as I said, it is up to the Executive, anyway, as the appointing power to fill it up.

Senator Enrile. What is the problem, Mr. President? The problem of putting it in the law or the problem that it is a necessity for us to appoint a Deputy Tanodbayan for the Military.

Senator Angara. One, that there is a congressional judgment that there is a need. Whether the President or the Executive will fill it or not, is her prerogative.

Senator Enrile. Precisely, we are even

helping the President because the military is directly under her, not only as President but as the supreme commander. Therefore, she can discipline the military. She does not need the Tanodbayan to really put the military in its place, if she wants to do that. As far as enforcement of discipline under the Articles of War is concerned, that is actually the prerogative of the President as Commander in Chief of the Armed Forces of the Philippines. There is no need for a Tanodbayan to impose discipline on the military, because no less than the President of the Philippines, unreachable by the Tanodbayan, can perform the powers of discipline.

Senator Angara. As I said, Mr. President, the deputy for the military is not supposed to deal with military discipline, because the military, under the Articles of War, will be a subject matter between the soldier and his Commander in Chief. The deputy, as we see it, will handle administrative grievances among the soldiers.

Senator Enrile. Why not let the overall deputy do that, Mr. President, so that we can economize for the people, instead of putting so many deputies in this Act? We have already an overall deputy, one deputy for Luzon, one deputy for Mindanao, and one deputy for the Visayas; that is, there are four, and we add another one. Why cannot one of these people perform the function of a deputy for the military administratively, if that is the purpose later on?

Senator Angara. That is addressed to the wisdom of the Executive, Mr. President. It is up to the appointing power.

Senator Enrile. Precisely, Mr. President, I am questioning the wisdom of putting it in the law at this time, because it could give a wrong signal. While I take the Gentleman's interpretation at face value that the deputy Tanodbayan and the Tanodbayan will not have any disciplinary action against any member of the military, if we will read the definition of powers of the Office of the

Ombudsman, he can investigate on his own any act or omission of a public officer; and, a military man, from the level of the Secretary of Defense, all the way down to a kitchen police is a public officer under this concept. Therefore, if he has the power of investigation, he will bypass all other government offices because that is the nature of this office. That will render the function of the Judge Advocate of each unit and including the commanders' power over their military men, maybe, somewhat nugatory.

Senator Angara. That is why, Mr. President, as suggested by Senator Guingona, Senator Gonzales and the others, we are going to make a definition of the powers and functions of the deputies, including the military deputy, so that we avoid, precisely, what the Gentleman fears.

Senator Enrile. I am not talking of the deputy, Mr. President, I am talking of the Ombudsman. Because, the Ombudsman is the one that will exercise the power, not the deputy. The deputy is simply an extension of the Ombudsman.

Senator Angara. The powers of the Ombudsman are enumerated. What is not enumerated here is a specification of the powers of the deputy, especially the military deputy.

Senator Enrile. Is the Gentleman going to accept a provision here that all these powers of the Ombudsman as provided in Section 13 will not apply to military men and policemen?

Senator Angara. Well, if the Gentleman will give me a justification for that, maybe, I will accept it.

Senator Enrile. I am asking the distinguished Sponsor, Mr. President. Precisely, I am proposing that we should not put a Deputy Tanodbayan for the military in order not to complicate the problem.

Senator Angara. Well, it is up to the body, Mr. President. I think we have discussed this single point quite extensively. Our position is that we have to provide for a military deputy because we

want to implement the constitutional provision. Whether that deputy ought to be appointed is really up to the President who is the appointing power. Whether the military deputy will confuse the application of military rules, or worse, will give the implication that we are treating the military or army as the fourth branch of the Government, I think, that is far from the intent of the bill.

Senator Enrile. Mr. President, for instance, Section 16, Disciplinary Authority. Suppose the Tanodbayan receives a letter from a concerned citizen saying that jueteng is widespread all over the country; and here in the Province of Batangas, jueteng operation is going on and the provincial commander is tolerating it. Then he assigns it to the Deputy Tanodbayan for the military to check, and in so doing, the Deputy Tanodbayan for the military finds some truth in the allegation of the letter. Now, under Section 16, the Tanodbayan can exercise disciplinary action immediately under paragraph b, sub-paragraph 2, "maliciously tolerating the commission of offenses."

Does the Gentleman think that this is within the competence of the Tanodbayan, thus bypassing the military law dealing on military discipline?

Senator Angara. That is exactly our point, Mr. President. That is why, at the suggestion of some of our Colleagues, we will define the precise powers and functions of the military supervisors so that such conflicts that the Gentleman is pointing out will be avoided.

Senator Enrile. No, it is not the military supervisor, Mr. President. It is the Tanodbayan. The Tanodbayan is the one who performs the disciplinary functions.

Would the distinguished Sponsor agree to provide the provision here that all of these disciplinary functions of the Ombudsman will not apply to the case of military personnel, as well as police personnel?

Senator Angara. I am not prepared to concede that point, Mr. President; because, if we concede that point, we might as well exclude the military from the coverage of this bill. But if we did that, then I think we would be doing violence to the constitutional provision because the Constitution specifically requires a deputy Ombudsman for the military.

Senator Enrile. Does it require or does it simply tell us that we may provide it in the law? I think my reading of the Constitution is that we may or we may not provide such a person in any eventual law. It is not mandatory. It does not say that we must or we will.

Senator Angara. My reading of the provision is that the military is subject to the Ombudsman, but the deputy for the military ought to be separate.

Senator Enrile. Could it be, Mr. President, that those who wrote that Constitution were not really sure as this humble Representation is, whether the military should or should not be covered by the law creating the Ombudsman? That is why, they simply provided in the Constitution the discretion on the part of Congress to include a deputy Ombudsman for the military. If after debating the issue, the Members of Congress in their wisdom find it proper and necessitous to include such an officer to include such an officer in the law creating the Office of the Ombudsman.

Senator Angara. I think, the Constitutional Commission was pretty sure in their minds that the military ought to be under the jurisdiction of the Ombudsman.

Senator Enrile. Where is the provision that says that, Mr. President?

Senator Angara. There is no such provision.

Senator Enrile. As I note the overuse of the word "ought" by the distinguished Gentleman, I did not read that kind of wording in the Constitution.

Senator Angara. Well, since we are dealing here with our own interpretation of the Constitution, the Gentleman is asking me what my reading is; I am trying to advance my own reading of the Constitution.

Senator Enrile. My reading of the Constitution is that it uses the word "may." That is why, I was just wondering why there is an insistence in putting a deputy Tanodbayan for the military. Anyway, Mr. President, in my humble view, I think we are treading on a very unsure, delicate, and dangerous ground. Perhaps, it would be best to leave this out in the meantime; I shall come back to it again at the proper time during the period of amendments and debate the propriety or lack of propriety of including this provision in the light of the provisions of Section 16 and the powers of the Ombudsman as defined, I think, in Section 15.

Thank you very much.

Senator Angara. Thank you, Mr. President.

SUSPENSION OF CONSIDERATION
OF S. NO. 543

Senator Mercado. Mr. President, I move that we suspend consideration of Senate Bill No. 543.

The President. Is there any objection?
[Silence] Hearing none, the same is approved.

Senator Lina. Mr. President.

The President. Senator Lina is recognized.

QUESTION OF PRIVILEGE OF
SENATOR LINA
(On the PCGG Abolition)

Senator Lina. Mr. President, I am not going to interpellate the Sponsor. It is just a point of personal privilege. Reference was made to this Representation that I have filed or in the process of filing a bill abolishing the PCGG. That is not correct, Mr. President. What I filed was a resolution inquiring into the activities of the PCGG in connection with the expiration of its power to issue

**13 - Pages
(49 - 61)**

**ORGANIZATION OF THE OFFICE OF THE OMBUDMAN
R.A.No. 6770 / S.B.No. 543 / H.B.No. 13646**

RECORDS OF THE SENATE

AUG 03,1988

Senator Herrera
Senator Laurel
Senator Lina, Jr.
Senator Maceda
Senator Mercado

Senator Saguisag*
Senator Shahani
Senator Tañada
Senator Ziga
The President

NO - None

ABSTENTION - None

The President. With 21 affirmative votes, no negative vote, and no abstention, Senate Bill No. 483 is approved on Third Reading.

EXPLANATION OF VOTE BY
SENATOR SAGUISAG

Senator Saguisag. Mr. President, I vote Yes, subject to a minor observation or reservation.

In Section 5 of the Bill, there is mention about the socialized cost of transcript of stenographic notes in relation to high-income litigants. I think that the situation is analogous to practitioners who are obligated to make indigence a reason for charging low fees or lower fees. Otherwise, the means of a client is never used as a basis for charging higher fees. Here, simply because one is a high-income litigant, it should not be presumed that he is at fault and should be penalized. Maybe, he was just being harassed.

So, I am voting Yes, but I am just disturbed by that socialized cost to be paid by a litigant who did not want to be sued, and who was not responsible for being haled to court. He may have to pay expensive lawyers, and, on top of everything else, he would have to subsidize the cost of stenographic notes in behalf of those who have less in life. So, subject to that minor reservation, the constitutionality of which I doubt, I vote Yes, Mr. President.

Senator Aquino. Mr. President.

The President. Senator Aquino is recognized.

Senator Aquino. Mr. President, may I also

* With explanation of vote.

register my vote in this balloting: Yes.

BILL ON SECOND READING
Senate Bill No. 543-Office of the Ombudsman
(Continuation)

Senator Mercado. Mr. President, I move that we consider Committee Report No. 263 on Senate Bill No. 543.

We are still in the period of interpellation, Mr. President, and I ask that we recognize the Sponsor, Senator Angara.

The President. Senator Angara is recognized. Is there any more interpellation?

Senator Enrile. Mr. President.

The President. Senator Enrile, the Minority Floor Leader, is recognized.

Senator Enrile. Mr. President, may I continue with my interpellation? Yesterday, I took the floor to ask some questions of the distinguished Sponsor. May I just pursue one minor point.

In connection with the Deputy Tanodbayan for the military, Mr. President, I am wondering why we single out one unit of our government for a special treatment and, in addition, appoint a special deputy for the military whose territorial jurisdiction will be equal to the territorial jurisdiction of the Republic of the Philippines. Because he will administer and supervise and cover the activities of people who will be assigned to Mindanao where, under the law, there is a proposed Deputy Tanodbayan for that area, and also those assigned to the Visayas where there will be a special deputy for the area, and those who will be assigned in Luzon where there is also a deputy specially assigned for that area. In effect, he will have a territorial jurisdiction equal to the jurisdiction of the Ombudsman himself, and the overall Deputy Ombudsman; and yet, he is ostensibly assigned only for the military.

Can we get an explanation on this, Mr. President?

Senator Angara. Yes, Mr. President. As we tried to explain yesterday, this particular provision in the bill is but an implementation of the constitutional provision of Section 5, Article XI, which says that a separate Deputy for the military establishment may likewise be appointed. The observation of the Gentleman that the span of supervision of the Deputy for the military is nationwide, unlike the regional deputies, is correct. And here, I suppose I am vesting it at the motivation of the Constitutional Commission, and I can be in error, Mr. President. I suppose that the Constitutional Commission thought that the military establishment, as distinguished from the civil bureaucracy, deserves a separate Deputy, considering the hugeness of the organization, the uniqueness of its disciplinary rule, and the hierarchy that it follows. So, for all those reasons and for many other reasons—and here, I repeat, I am guessing—those may have been the motivation of the Constitutional Commission.

Senator Enrile. Mr. President, the Constitution says “may be appointed.” It does not say “may be provided by law.” And so, maybe, the President may designate or even give a commission to anyone of the deputies that we will provide as representing that person whose position is actually created in the Constitution.

Senator Angara. I do not disagree with that interpretation, Mr. President. What I am saying is that this bill has taken the other option of designating a separate deputy for the military.

Senator Enrile. Now, Mr. President, may I know whether these deputies will be subject to the confirmatory authority of the Commission on Appointments?

Senator Angara. I believe they are not, Mr. President, because there is a specific provision here that even the Ombudsman is beyond the confirmation power of the Commission on Appointments.

Senator Enrile. The Ombudsman, I think, is beyond the confirmation power of the Commission on Appointments, but, does the word “Ombudsman” include the positions that we create now by law?

Senator Angara. My own reading, Mr. President, is that the inferior position of the Deputy Ombudsman would not be covered either by confirmation if the superior position of Ombudsman is not.

Senator Enrile. We are the ones creating the position, Mr. President. And so, therefore, we can provide the conditions and limitations on the powers of this position and the manner by which the people who will occupy it would be appointed. I do not think that any Member of the Senate would be willing to surrender the prerogatives of the Commission on Appointments unless it is so clearly stated in the Constitution. I could not recall any provision that the Constitution would withdraw or tend to withdraw that power from the Commission on Appointments with respect to persons whose jobs in the government are created or are being created by Congress.

Senator Angara. I have now found the provision in the Constitution, Mr. President. It is Section 9, Article XI. Let me read for the record Section 9:

The Ombudsman and his Deputies shall be appointed by the President from a list of at least six nominees prepared by the Judicial and Bar Council, and from a list of three nominees every vacancy thereafter. Such appointments shall require no confirmation. All vacancies shall be filled within three months after they occur.

Senator Enrile. I stand corrected then, Mr. President. If there is a special provision to that effect, I will take back my statement.

Senator Angara. Thank you, Mr. President.

Senator Enrile. Thank you, Mr. President.

The President. The Chair would like to find out before I call on the next one: Is there anything

in this bill that will safeguard the right of public officials against trials by publicity? Sometimes, with the filing of the complaint, already we find it in screaming headlines in the newspapers without even any hearing at all. And people shy away from accepting public office because of this. Is there any safeguard against trial by publicity?

Senator Angara. That is a very good observation, Mr. President. In fact, that is one of the points raised also by Senator Pimentel. And there is so far nothing in the law that would provide that kind of safeguard, but we said that we will insert the necessary amendment for that safeguard.

The President. I saw the hand of Senator Shahani.

Senator Shahani. Thank you, Mr. President. I would also like to say that I do agree with what the President has just said that there must be safeguards which would protect government employees from trial by publicity. In this connection, I would like, Mr. President, to refer to Section 19, page 12 of the bill. Perhaps, when the time for amendment comes, the power of the Tanodbayan or his Deputy to suspend a respondent-officer or employee will be possible only if the evidence of guilt is strong. I am just making this comment, Mr. President, in relation to what the Chair had just said.

Would the distinguished Sponsor yield to a few observations?

Senator Angara. With pleasure, Mr. President.

Senator Shahani. Mr. President, under Section 22, Subsection 4, page 15, lines 11 to 17, it is stated that the decision of the Office of the Ombudsman may be appealed to the Supreme Court.

Are we not increasing the appellate jurisdiction of the Supreme Court under this provision, Mr. President? And if this is so, it will be recalled that, under Section 30, Article VI of the Constitution, it is stated, and I would quote:

No law shall be passed increasing the

appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and concurrence.

Under this provision, may I know if the Supreme Court is amenable to this provision?

Senator Angara. Well, we have not consulted the Supreme Court specifically, Mr. President, although I have some doubt whether we need to consult the Supreme Court on this. Nonetheless, if it is necessary, we will do so. But the distinguished Senator is absolutely right that, by the present wording of this bill, the jurisdiction of the Supreme Court will be expanded because we have provided here that appeal will be by petition for review. On second thought, we feel that we ought to change this and say that the appeal to the Supreme Court should be by *certiorari* rather than by petition for review.

Senator Shahani. Thank you, Mr. President.

I just would like to reiterate that under this constitutional provision, it is quite clear that, in relation to its appellate jurisdiction, the advice and concurrence of the Supreme Court has to be sought; and, I think, this will have to be taken into account.

Senator Angara. We will take note of that suggestion, Mr. President.

Senator Shahani. Mr. President, on page 3, lines 14 to 16, the word "election" is mentioned there and I think, there will have to be a distinction made between whether it is a special election or a general election. Because, for instance, the Tanodbayan is retired and he is a resident of an electoral district where a special election has just been held. After the special election, can the Tanodbayan, under this provision, be qualified to run in the next general election?

Senator Angara. The intent, Mr. President, is to completely ban or prohibit him from running in the election immediately occurring after his retirement. So, that ban would cover both general and special elections.

Senator Shahani. Mr. President, I just would like to repeat my first point because I would wish to elicit a reaction from the distinguished Sponsor. I did refer to Section 19 on page 12. I wonder whether the Sponsor would be amenable when the time for amendment comes, to qualify the power of the Tanodbayan or his Deputy to suspend a respondent officer only if the evidence of guilt is strong, so that we may minimize cases where a respondent is exonerated and will be entitled to back wages without having rendered any service during the period of suspension.

Senator Angara. We would welcome that suggestion, Mr. President.

Senator Shahani. Thank you, Mr. President.

The President. Is there any other interpellation?

Senator Laurel. Mr. President.

The President. Senator Laurel is recognized.

Senator Laurel. Mr. President, I made a reservation, I think, the other day for this opportunity to interpellate again. But this time, I would just like to concentrate on one particular point, and that is with respect to the jurisdiction of the Office of the Ombudsman which is sought to be created under this bill.

In Section 14 of the bill under consideration, it says that the Office of the Ombudsman shall have the power to investigate on its own, or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient.

I would like to know, Mr. President, the coverage of this particular power of the Ombudsman, because in another section, I think, we are about to consider another bill, and that is on the Commission on Human Rights. It appears that the Commission on Human Rights has a similar power under the Constitution, more particularly Section 18 of the Charter, paragraph 1, which says

that the Commission on Human Rights shall have the function and power to investigate on its own, or on complaint by any party all forms of human rights violations involving civil and political rights.

Now, even before we deliberate and discuss the bill that has also been calendared, perhaps, it would be timely, Mr. President, at this stage to consider the possible conflict that may arise because of these two almost identical, and if not identical, at least overlapping areas, not only of concern but also of jurisdiction.

May we be informed, Mr. President, what is meant...and I say this, Mr. President, because of the danger of such overlapping and conflict, because any act of a public officer or employee, whether it be an act or omission, illegal, unjust, improper, or inefficient may constitute a violation of human rights. And here we have actually two agencies of the government, independent of each other by specific provision of the Constitution, having jurisdiction over the same subject matter. May we be clarified on this point, Mr. President?

Senator Angara. I am glad that the Gentleman asked that, Mr. President.

As the distinguished Gentleman knows, this specific provision that he has just analyzed is an exact repetition of the provision in the Constitution. And, as I understand it, this power to investigate would cover the malfeasance, misfeasance, and nonfeasance of a public official. Now, where do we draw the line when that particular act or omission becomes a violation of these human rights of a citizen? Frankly, I am also at a loss on how to define it, but I can suggest a mechanism for drawing that line. Perhaps, we can provide in the rule-making provision of this Bill that the Ombudsman should sit down with the Human Rights Commission and try to delineate and draw that line.

Senator Laurel. That may be done, Mr. President; but unfortunately, under the same Constitution which vests both parties with powers,

the Ombudsman and the Commission on Human Rights are given the powers to adopt rules of procedures; both of them, and they are supposed to be independent. I do not know which one should have priority or even, shall we say, preference in the assumption of jurisdiction over a particular act that is violative at the same time of human rights.

Senator Angara. Yes, although the two bodies would be autonomous and independent, Mr. President, it is not rare in government that two independent bodies, like for instance, the COA and the Department of Budget and Management, as well as the Commission on Elections, will be sitting down and drawing up a Memorandum of Agreement on the scope of their respective jurisdiction. That is what we envision will happen in case the Commission on Human Rights will question the extent or the overlapping of jurisdiction.

Senator Laurel. Would that be a private arrangement, Mr. President?

Senator Angara. It will be a public arrangement, Mr. President, pursuant to their rule-making power.

Senator Laurel. I suppose that is a constitutional question. In case of conflict, it is the Supreme Court that should decide. Does the good Sponsor mean that the two Bodies, on their own initiative, may disregard the provisions of the Constitution?

Senator Angara. No, Mr. President. It will not be contrary to that principle that the Supreme Court is the final arbiter of disagreement. It is consistent with the principle in administrative law that the agency has the right to determine initially the scope and extent of its jurisdiction. And, therefore, consistent with that, the Ombudsman and the Human Rights Commission can sit down, and initially define the extent and limit of their respective jurisdiction.

Senator Laurel. This is a very important question, Mr. President. Supposed to be calendared next, I think, or already calendared is the

Commission on Human Rights; and whatever we decide on this matter might forestall or, shall we say, foreclose, the amplitude and area of coverage of a coequal. Shall we put it coequal, Mr. President, since both are Constitutional Commissions created by the Constitution, not at par with the Commission on Audit, or the Commission on Elections, and other constitutional commissions, but already created by a specific provision of the Constitution and only the implementation of that particular provision already creating the office is left to the Legislature. So this is a very important matter, and perhaps, we should study this very carefully.

I realize, Mr. President, that the power of investigation of the Commission on Human Rights, by a specific provision of Section 18, paragraph I, is Human Rights violations involving civil and political rights. So there seems to be the key. But here again, we need to define what are these civil and political rights that would remove violations of these rights from the area of coverage of the Ombudsman.

Unfortunately, the provision on the Ombudsman is also very broad, and that is, investigate on its own on complaint. Pareho sila riyon. "Any act of omission of public officials." So, here it is "public official." But, Mr. President, it says: when such act or omission appears to be not only illegal, unjust, improper, inefficient. And human rights, specifically civil and political rights, may be denied an individual in collusion or by tolerance or inaction, inefficiency, mismanagement on the part of a public official. Therefore, it will also be a violation of human rights.

Mr. President, I submit that for the consideration of this Body.

Thank you very much.

Senator Angara. Thank you, Mr. President.

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. Thank you, Mr. President.

Will the Gentleman accommodate this Representation on only one point, Mr. President?

Senator Angara. With pleasure, Mr. President.

Senator Pimentel. What would be the advantage of having a military deputy with the Ombudsman? What advantage will that bring to the government, Mr. President?

Senator Angara. I can think of some grievances that soldiers may make about their wages, about their clothing allowance, about their living conditions, and similar day-to-day complaints. That can, perhaps, be more promptly attended to if there is a military Ombudsman, Mr. President, and, perhaps, the military officers would be happy that they would be relieved of having to attend to this kind of grievances.

Senator Pimentel. Would the creation of this agency, Mr. President, having a military Ombudsman, in effect, not widen the gap between the civilian authority and the military establishment for the reason that, as Senator Enrile has pointed out, it would seem as if we are actually giving special cognizance of the military establishment as if it were an entity apart from the Philippine Government?

Senator Angara. As I said to our Colleague, Senator Enrile, it was a policy choice that we pursued, Mr. President, either we just do not provide for a separate deputy for the military or we do, and we thought that we ought to do it to implement the constitutional provision. So, we are not too committed to either position, Mr. President. It is up to the Body. If the Body feels that such a separate deputy for the military sounds divisive, then we will bow to the will of the Body.

Senator Pimentel. Mr. President, the point is not exactly that it is divisive. Probably, the reason should be that we do not want to give the wrong message to the population, in general, and to the

military establishment, in particular, especially because the examples cited by the Sponsor about certain needs by military personnel can very well be attended to by a civilian Ombudsman. Unless, of course, the proposal is premised on the fact that a military Ombudsman would be in a better position to expedite decisions affecting the military establishment, then perhaps the proposal may be justified. But, unless it is anchored on that premise, Mr. President, I would deem it appropriate to agree with Senator Enrile that, perhaps, the best thing to do here is to just leave the position vacant and concentrate our efforts on the three civilian Deputy Ombudsmen. However, with the doubt in my mind, will that not be constitutionally objectionable, Mr. President, if we do it that way?

Senator Angara. It will not be constitutionally objectionable, Mr. President, because the position, anyway, is there. It is up to Congress to activate it by creating the position in the future.

Senator Pimentel. Thank you very much, Mr. President.

Senator Angara. Thank you.

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. Will the distinguished Sponsor yield to a few questions only?

Senator Angara. For the third time, with pleasure, Mr. President. *[Laughter]*

Senator Guingona. We just wanted to be clarified, Mr. President: Would the Ombudsman have authority to grant immunity to witnesses?

Senator Angara. The bill does not so provide, Mr. President. The bill does not contain any such authorization.

Senator Guingona. Considering the fact that many witnesses are afraid to testify for fear of reprisals—in the United States, there have been

investigative bodies which are given the right to grant immunity for the protection of witnesses—would the distinguished Sponsor consider giving this power to the Ombudsman?

Senator Angara. Yes, Mr. President, we will welcome that additional provision. My attention has just been called that, in fact, in the old Tanodbayan law, such an authorization is given to the Tanodbayan, and therefore, it seems only logical that the Ombudsman is similarly empowered.

Senator Guingona. So we will remove this from...

Senator Angara. No. What I am saying, Mr. President, is that, I think, his suggestion to give authority to the Ombudsman to provide immunity to witnesses is ...

Senator Guingona. Yes. It is spelled out and there are safety measures. It should not be abused also.

Senator Angara. Yes.

Senator Guingona. Now, can the Ombudsman subpoena bank deposit records?

Senator Angara. Well, as a general rule, under the Bank Secrecy Law, Mr. President, bank deposits cannot be bared or disclosed either by subpoena or otherwise, except when the proceeds of a crime is the bank deposit itself. So I guess, the power of the Ombudsman would be limited by the Bank Secrecy Law.

Senator Guingona. So that, if there is a preliminary investigation to determine precisely whether there is an amount of money that is allegedly hidden, the Ombudsman would first have to apply to the court?

Senator Angara. Yes, as a general rule, except, as I said, when the object of the inquiry itself is the money that is secreted in the bank deposit; then I believe the Ombudsman can have that deposit

examined because that is the very object of the inquiry.

Senator Guingona. It can be one of the objects but not the very object of the inquiry, Mr. President.

Senator Angara. Yes, Mr. President. And, according to the recent Supreme Court decision in graft and corruption cases, the Bank Secrecy Law is not applicable; that means, in graft and corruption cases being investigated by the Ombudsman, the Ombudsman can inquire into the bank deposits of the respondent.

Senator Guingona. And there is no need of expressing that in this bill.

Senator Angara. There seems to be no need of expressing that since the Supreme Court has already decided that.

Senator Guingona. Finally—I do not know if this question has been asked—what protection does a citizen have against a possible abusive Ombudsman, aside from his own conscience?

The President. Is there no impeachment proceeding possible?

Senator Guingona. Yes, Mr. President, there is, but the grounds for impeachment seem to be inaccessible to the common man and the legalities seem to be far above his head that, in many instances, he may not even know that he has that right.

Senator Angara. The mechanism for accountability, Mr. President, provided under the Constitution is impeachment. And, I guess, like other constitutional officers whose accountability is called for only through impeachment, then the public assurance that the Ombudsman will do his job and will not abuse it is only the power of public opinion.

Senator Guingona. Finally, Mr. President, I am concerned with the possible overlapping of jurisdiction with the Civil Service Commission. I

think the distinguished Sponsor is willing to limit the grounds.

Senator Angara. Yes, Mr. President. Pursuant to some requests and well-made points by our Colleagues, we are trying to rewrite this particular section so that the overlap will not be as wide and broad as it is now; and perhaps we can limit the jurisdiction to certain crimes or improper conduct rather than this broad definition.

Senator Guingona. The constitutional provision on the Civil Service seems to be all-embracing for all government offices and personnel; it also includes accountability. Therefore, we should delineate the jurisdiction so that there will be no more possible overlapping.

Senator Angara. That is true, Mr. President. So the Committee will introduce that suitable amendment during the period of amendments.

Senator Guingona. Thank you, Mr. President.

Senator Angara. Thank you, Mr. President.

Senator Saguisag. Mr. President.

The President. Senator Saguisag is recognized.

Senator Saguisag. Thank you, Mr. President. Will the distinguished Sponsor yield to a few questions?

Senator Angara. Gladly, Mr. President.

Senator Saguisag. I would like to pursue the last point raised by the Gentleman from Quezon City and Mindanao in regard to the overlapping. Is it the intent of the Sponsor to maintain it in relation to a few limited cases?

Senator Angara. Yes, Mr. President, particularly with regard to behavior involving graft and corruption. That is one broad category of acts that we feel ought to be given to the Ombudsman.

Senator Saguisag. It seems to me, Mr. President, that what concerns us in regard to that arrangement is the possibility of depending on the

personalities involved. There could be the mischief of forum-shopping and, then, the lack of predictability. My own preference is that we should make a tough policy choice whether it is one or the other. So we do not develop two lines of decisions that may need constant reconciliation by the Supreme Court. In any case, maybe, we should wait for the period of amendments and let us see how the proposals will...

Senator Angara. We will pursue the Gentleman's suggestion, Mr. President.

The President. The Chair would like to ask a simple question: Is it not true that in cases of graft and corruption, allegedly committed by military officers, there is already an existing agency, the Anti-Graft Board, which was formed shortly after the EDSA Revolution, chaired by a retired military officer, General Flores, as I understand? Probably, Senator Enrile knows more about this. So, is it the intent of this bill to replace that with the Ombudsman?

Senator Angara. No, Mr. President. The existing Anti-Graft Board, like what the Chair mentioned, as well as the Sandiganbayan, will continue to exist as statutory bodies.

The President. Then, what would be the jurisdiction of the Deputy Ombudsman for the military?

Senator Angara. To initiate investigation, Mr. President.

The President. The Anti-Graft Board initiates investigation against military officers and wherever there is *prima facie* case, they file the corresponding proceedings.

Senator Angara. So this is one area where administrative jurisdiction ought to be clarified and defined among the different agencies.

Senator Saguisag. Mr. President.

Senator Enrile. Mr. President.

The President. Senator Enrile.

Senator Enrile. Mr. President, maybe, at the proper time, we should consider now the possibility of abolishing some of these institutions and really institutionalize the Office of the Ombudsman to really function as the guardian of the common will. I think that was the mandate of the people when they created this institution in our national charter. I think the time has come for us to remove all these ad hoc bodies that have been organized as expedient institutions because of the absence of a Body like the Ombudsman at that time, and in order to avoid this competition over jurisdiction and duplication of functions and duplication of personnel, duplication of equipment, and thereby saddle the people with providing money that would support duplicated efforts.

The President. Is the Minority Floor Leader, therefore, in favor of the abolition of the Anti-Graft Board?

Senator Enrile. Yes, Mr. President, no doubt about that; place all under the jurisdiction of the Ombudsman. I think even the Presidential Commission on Good Government is now on the way out, precisely because we are now creating the Office of the Ombudsman. We should entrust the future to this institution that was wisely crafted by our people, perhaps, and I have no doubt it was wisely crafted. We should entrust the future of the Republic to this institution rather than take a very hesitant, cautious decision by maintaining institutions that, while they performed well, and we must recognize it, nonetheless, they have become a little moribund because of the passing of time and the occurrence of events that had affected their moral armor.

And so, Mr. President, at the proper time, maybe, we can take this up. Thank you.

Senator Saguisag. Mr. President.

The President. Senator Saguisag again.

Senator Saguisag. Thank you, Mr. President.

I would like to go to that portion of the bill Section 14, Subsection (6) regarding the power of the Ombudsman to "publicize matters covered by its investigation when circumstances so warrant,..."

I realize that this is a constitutional provision. Still, I was wondering whether it is up to us here in the Legislature to define those circumstances, or whether it should be left to the Office of the Ombudsman to decipher itself what it may or may not disclose. I can accept that in a clear and present-danger situation under tightly drawn national security criteria, reasonable people may not disagree with that position.

But, there is this problem about the loss of privacy and the defamation that could be inflicted upon the reputation of the respondent. Here, I have heard many good minds; many good people differ. My own bias, Mr. President, is for total disclosure. If the only complaint is that it is so unfair to someone who is charged to have his name publicized, it seems to be even more unfair that if common people are arrested, charged before the fiscal and haled to court, they have no protection. And we are all agreed that anyone who accepts the mantle of public service gives up certain privileges.

So if the intent of the confidentiality rule to protect someone is valid, then he is protected forever. For example, like what happened early in the decade: a sitting Justice of the Supreme Court was the object of rumors about how he had misspent so much money for private purposes. We all knew about it. No one could speak openly about it, precisely, because of the decree then enforced. It was only recently that the name of that Justice surfaced. In the meantime, there came out this remarkable position that unless a sitting Justice is first impeached, he can no longer be criminally prosecuted.

The other virtue in publicizing a charge instituted, let us say, by a respected individual, is

that it encourages witnesses to step forward. So I would like to know from the distinguished Sponsor whether there is really an overriding public benefit to be gained in protecting a public official in a manner that is not enjoyed by an ordinary respondent, or an ordinary arrestee whose name is all over the papers because he was brought to the police precinct, or is languishing in some jail, while some powerful public official has this kind of protection. Will we define the circumstances to cover the situation I have identified?

Senator Angara. My own bias, Mr. President, as I have expressed when Senator Pimentel raised this, is that I also favor giving the accused public official that confidentiality during the period when the charge or complaint against him is being investigated. I think a public official is already subject to so many risks, and one of those risks is really the harassing suits. And if it turned out that the suit was, in fact, unfounded then I would feel that the public official ought to be protected against that kind of publicity.

So, weighing the pros and cons, I favor granting confidentiality to the name of the accused, as well as the complaint, during the period of investigation until a case is actually filed either with the Sandiganbayan or with the appropriate tribunal.

Senator Saguisag. I tend to disagree, but I have to respect that position. It is really a very difficult policy choice. I grant that a lot can really be said for either side. But, as I have said, that is part of the price a public official has to pay especially because that is not granted to an ordinary citizen. If it were only to be extended to everyone, then I would be more comfortable.

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. With the permission of the Gentleman on the floor, I think there is an added consideration why a certain mantle of protection

should be accorded a public official while he is being investigated. This has nothing to do with, let us say, his advantage of being a public official. The fact is that he has certain duties to perform. The shaking of public confidence on his ability to carry on with his duties while the investigation is going on to determine whether or not there is a *prima facie* case against him is, I think, already a sufficient justification for preventing unwarranted publicity of the case before the finding of, let us say, sufficient cause for the filing of the case, Mr. President.

Senator Saguisag. Well, I can live with that; except that, as I have just said, I am disturbed any time a public official is given a privileged position in relation to an ordinary individual. He is pictured as an *estafador*, as a rapist, as someone who committed acts of lasciviousness; and it is equally painful, for himself and his family, to have to go through that; and it could equally be unfounded. So it is not really the principle. It is the uneven-handed application. One is never compelled to join public life. But, if he gets there, I think, in regard to this context, he should not enjoy any advantage not enjoyed by an ordinary individual whose reputation is equally as important as a public official's, and who is equally distracted by the lurid headline or appearance in the media that could hurt him and his family.

Anyway, maybe, what we ought to look at is whether we can draft a law that would put the private individual on an equal footing, meaning, the fiscal would be given the same kind of prerogative to protect the people who may be unjustly harassed.

The President. Is it not a practical consideration that the government finds it difficult to get good men in the private sector to join the public service because of the fear that if they enter public service they will immediately be fair game for all the smear campaigns, character assassination, and trial by publicity?

Senator Saguisag. So, what else is new, Mr. President? I keep getting told everyday that my wife and I are overseeing the construction of a house in Dasmariñas Village, that I am driving a car, the like of which could not even be found in the U.S.; and we are totally unprotected from this. That is why I can hardly wait for noon of June 30, 1992. [Laughter]

The President. Anyway, there is a good book on the subject, authored by Senator Douglas on *Ethics for Public Officials* to balance these conflicting considerations.

Senator Saguisag. If I may move on to another point, Mr. President. In Section 13, is it the position now of the Gentleman to knock out, so to speak, altogether the provision on immunity?

Senator Angara. That seems to be the popular clamor, Mr. President, and I am bowing to that.

Senator Saguisag. But our intention here really is not to place the Tanodbayan in any position less than that enjoyed by people with comparable, well positions, because traditionally, people who do these things have been enjoying certain immunities.

Now, the draft proposal contained this: we removed it, and that may be perceived as the legislative intent to remove an immunity that has been historically enjoyed by public officials. In other words, if I were a fiscal, I would move to indict Pedro. If I am overruled, and that is sustained all the way up to the Supreme Court, the Supreme Court may be mistaken. But, as we all know, the errors of the Supreme Court become the law of the land. In the usual case, I can never be liable for anything; and that is why I would be disturbed if the immunity clause is removed. Then it may be perceived as the wrong signal that those concerned will be enjoying rights less than those enjoyed by other investigators.

Senator Angara. Mr. President, to prevent that kind of implication, when we consented to its deletion, precisely, Senator Gonzales said

that this immunity, anyway, is enjoyed by public official. So, on that condition, we agreed to its deletion, so that the implication that when we dropped this from this law, the clause "public official will now be subject to suit" will not be there.

Senator Saguisag. I am glad that we can spread that upon the legislative history of this measure so those concerned can take that into account.

Now, the final point is whether under Article VIII, Section 5, Subsection (2) and letter (e) of the Constitution, the Supreme Court, I think, always enjoys the final say on all questions of law, even in the absence of any statute. So that is, in fact, right that we recognize what the Constitution says if it involves a ruling on a matter or question of law—the right to question that in a petition for *certiorari* will always be there, even if a certain statute is silent.

Let me phrase it differently. Are we in agreement that the Ombudsman is a lower court for purposes of Article VIII of the Constitution?

Senator Angara. Yes, Mr. President.

Senator Saguisag. That will be all, Mr. President.

Senator Angara. Thank you very much, Mr. President.

The President. Is there any other interpellation? [Silence]

Senator Mercado. Mr. President.

The President. The Majority Floor Leader.

Senator Mercado. Mr. President, if there are no other interpellations, I move that we close the period of interpellation.

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

SUSPENSION OF THE SESSION

Senator Mercado. Mr. President, I move for suspension of the session.

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

It was 5:15 p.m.

RESUMPTION OF THE SESSION

At 5:48 p.m., the session was resumed.

The President. The session is resumed.

Senator Mercado. Mr. President, I move that we suspend consideration of Senate Bill No. 543.

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

MOTION OF SENATOR MERCADO (Inclusion of Senator Rasul as Coauthor of Senate Bill No. 694)

Senator Mercado. Mr. President, with regard to Senate Bill No. 694 filed by Senator Saguisag and read for the first time today, I move that Senator Rasul be included as coauthor.

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

BILL ON SECOND READING Senate Bill No. 373—Early Retirement and Voluntary Separation (Continuation)

Senator Mercado. Mr. President, I move that we consider Committee Report No. 147 on Senate Bill No. 373, entitled:

AN ACT PROVIDING BENEFITS FOR EARLY RETIREMENT AND VOLUNTARY SEPARATION FROM THE GOVERNMENT SERVICE AS WELL AS INVOLUNTARY SEPARATION OF CIVIL SERVICE OFFICERS AND EMPLOYEES PURSUANT TO PROCLAMATION NO. 3 DATED MARCH 25, 1986 AND THE VARIOUS EXECUTIVE ORDERS AUTHORIZING GOVERNMENT REORGANIZATION AFTER THE RATIFICATION OF THE 1987 CONSTITUTION, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

We are still in the period of interpellation, Mr.

President. I move that we recognize the Sponsor, Senator Rasul.

The President. Senator Rasul is recognized. Are there any more interpellations on the bill? [*Silence*]

Senator Mercado. Mr. President, if there are no other interpellations, may we proceed to the period of amendments, if there are no speeches for and against.

The President. Period of amendments, then.

Senator Rasul. Thank you, Mr. President. I would like to manifest that the Committee on Civil Service reconsidered Senate—

At this juncture, 5:49 p.m., the President relinquished the Chair to Honorable Teofisto T. Guingona, Jr., President Pro Tempore.

—Bill No. 373, and after discussing the points raised here yesterday, particularly the points raised by the distinguished Gentleman from Batangas, that the bill could very well be two bills, the Committee decided that Section 10, which could be the subject of another bill, be deleted from Senate Bill No. 373. I do not know the parliamentary procedure, but I would like to believe that it would be possible now to consider Senate Bill No. 373 as having been recommended for approval by the Committee without Section 10. The Committee has introduced some amendments.

We introduced a new section, "SECTION 1. Declaration of Policy." to clearly establish the purpose of this Act and which is to streamline what is generally perceived to be a bloated bureaucracy through a personnel reduction program.

AND I WOULD LIKE TO READ SECTION 1 AS THE NEW SECTION 1:

SECTION 1. DECLARATION OF POLICY.—IT IS HEREBY DECLARED THE POLICY OF THE STATE TO PROMOTE ECONOMY, EFFICIENCY AND EFFECTIVENESS IN THE PERFORMANCE OF GOVERNMENT OPERATIONS AND IN THE DELIVERY OF

ESSENTIAL PUBLIC SERVICES THROUGH A PROGRAM OF PERSONNEL REDUCTION AND PROPER DEPLOYMENT OF OFFICIALS AND EMPLOYEES IN THE GOVERNMENT. FOR THIS PURPOSE, THE STATE SHALL ENDEAVOR TO CURB THE PROLIFERATION OF UNNECESSARY POSITIONS IN THE GOVERNMENT AND TO FOSTER MAXIMUM UTILIZATION OF THE GOVERNMENT'S HUMAN RESOURCES THROUGH AN EARLY RETIREMENT AND VOLUNTARY SEPARATION SCHEME.

Section 5, formerly Section 4...

The President Pro Tempore. Just a minute. Should we not act on this new Section 1 first?

Senator Rasul. Yes, Mr. President.

The President Pro Tempore. Is there any objection or comment? [*Silence*] Hearing none, the same is approved.

Senator Rasul. Thank you, Mr. President.

SECTION 5, formerly Section 4, has been changed substantially to provide sufficient standards in the exercise by the agency head of the discretion to accept application for early retirement.

On page 1, Mr. President, line 1, Section 1 is changed to SECTION 2.

The President Pro Tempore. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Rasul. On page 2, line 15, Section 3 is changed to SECTION 4.

The President Pro Tempore. Just a minute, with the permission of the Sponsor. Line 15 ...

Senator Rasul. On page 2, Section 3 now becomes SECTION 4.

The President Pro Tempore. There may be two different versions. The copy that I have is line 5; Section 2 is now SECTION 3. Is that different?

Senator Rasul. Yes, Mr. President.

We now have a new section; the original Section 1 becomes SECTION 2. That is on page 1.

The President Pro Tempore. Yes, we have approved that.

Senator Rasul. So on page 2, Mr. President, line 25, Section 3 is changed to SECTION 4.

The President Pro Tempore. With the indulgence of the Sponsor, on line 5, Section 2 becomes Section 3?

Senator Rasul. Yes, Section 2 now becomes SECTION 3? on line 5, on page 2...

The President Pro Tempore. Is there any objection?

Senator Laurel. Mr. President.

The President Pro Tempore. Senator Laurel is recognized.

Senator Laurel. I want to make an insertion, Mr. President, to a previous section, and that is on page 1, Section 1 (2), line 15 of this new version, as amended by the Committee.

On line 15, after the word "service", insert, and I quote: AND THOSE WHOSE RETIREMENT HAS BEEN APPROVED UNDER THE PROVISIONS OF THIS ACT.

The President Pro Tempore. What does the Sponsor say?

Senator Rasul. The amendment is accepted, Mr. President.

The President Pro Tempore. The post amendment is accepted.

Is there any objection? [*Silence*] The Chair hears none; the amendment is approved.

Senator Rasul. So, on page 2, Mr. President, Section 3 now becomes SECTION 4.

The President Pro Tempore. Is there any objection? [*Silence*] Hearing none, the amendment is approved.

Senator Rasul. Section 3 now becomes SECTION 4.

The President Pro Tempore. Is there any

AMG 04. 1988

and this is limited to the facts. It is a fact-finding look into, and it is not one institution overlapping the functions or independence upon the other. There is no such thing. And the agreement itself clearly spells this out, Mr. President. It is confined to an inquiry into the facts so that, later on, the Ombudsman can do its own thing and the Senate Blue Ribbon Committee can do likewise.

As far as *delicadeza* is concerned, Mr. President, the duties of the Senate rise above *delicadeza*. As a matter of fact, in many instances in newspaper reports, the distinguished Senator from Cebu has urged the Blue Ribbon Committee to undertake an investigation of the PCGG. And he himself said that he is in favor. And now that we are conducting merely a simultaneous inquiry on facts and nothing else, he cites no rules, no constitutional infirmity, no law as to why he should make such an observation or objection. And, therefore, if it is *delicadeza*, Mr. President, I say that it is *delicadeza* that should restrain him from making such a posture at this instance.

If he cites a constitutional provision, if he cites that we have done wrong, if he cites any rule, then let him do so or forever, out of *delicadeza*, keep his peace.

I stand to answer any and all implications here, on any wrongdoing, on any ethical consideration; and I stand by what the Rules of the Senate, the rules of accountability, and the Blue Ribbon rules say.

We feel, Mr. President, that this is pursuant to the resolution that has been referred to the Blue Ribbon Committee. We are merely undertaking a simultaneous investigation into the facts to save time, to avoid duplication where people are already tired of witnesses going from one investigation to another; and, this is with the agreement of the Tanodbayan, with the agreement of the Ombudsman, with the concurrence of the Senate President himself and the majority of the Members

of this August Body. We felt that there is no reason for any formal resolution to that effect. So, therefore, while I respect the views of the distinguished Senator from Cebu, I ask him to cite any law, any constitutional provision, any rule so that I can be corrected; otherwise, I say, he is out of order.

Thank you, Mr. President.

The Presiding Officer (Senator Maceda). The Gentleman from Cebu suggested that the session go into an executive meeting. Is there any objection to the proposal?

Senator Pimentel. Mr. President.

The Presiding Officer (Senator Maceda). Senator Pimentel is recognized.

Senator Pimentel. Mr. President, I do not think there is anything sacrosanct about this debate that it must be conducted behind closed doors. I think that the issues are of public interest and it should be ventilated accordingly in public.

SUSPENSION OF THE SESSION

The Presiding Officer (Senator Maceda). The session is suspended, if there is no objection. [*There was none.*]

It was 4:24 p.m.

RESUMPTION OF THE SESSION

At 6:34 p.m., the session was resumed with the Honorable Ernesto M. Maceda, presiding.

The Presiding Officer (Senator Maceda). The session is resumed. The President Pro Tempore is recognized.

RATIFICATION OF AGREEMENT BETWEEN THE BLUE RIBBON COMMITTEE AND OMBUDSMAN

Senator Guingona. Mr. President, may I move for the ratification of the agreement entered

I will not wait for, but instead proceed on to my question of privilege, is whether or not there is a resolution of the Senate which authorizes the Chairman of the Blue Ribbon Committee to enter into a joint hearing cum investigation of the PCGG which was announced by the Chairman of the Blue Ribbon Committee this morning. I understand that there was even a signing ceremony; and from the records of the Senate, I cannot find any resolution. I understand that projects of this nature are normally authorized by the Senate through a joint resolution that the Senate, for example, passes resolutions authorizing joint commissions or joint bodies such as the joint congressional hearing on the oil price increase. But for a Senate Committee now to venture into, shall we say, unknown grounds without authorization from the Senate, Mr. President, is for me a very alarming development.

For that matter, I think we have a problem of an institutional point of view. Can a Committee of the Senate, even assuming that as it claims in its second "Whereas," there was a resolution of a committee, undertakes such an endeavor without authorization from the Senate? What are the implications of such an action?

The Ombudsman has one objective which is to prosecute. The Senate Committee has another objective which is to undertake inquiries in aid of legislation. And what precedence are we now creating? We are creating a precedence wherein the Chairman of the various committees of which there are 33 in the Senate will go all over the place making contacts with various governmental bodies to set up joint investigations without prior authorization from this Body.

Then, finally, there is the question of *delicadeza*. I did not want to bring this up. Many, many times I have been disturbed by reports in the press on the conduct of the PCGG; but because the PCGG is often identified, unfortunately, with the Liberal Party and, because I was cognizant of the fact that there are certain quarters that feel that I am not in

very good terms with certain leaders of the party, I was always aware of the fact that any ventilation of my part of certain concerns regarding the PCGG would be interpreted as torpedoing the stature or disposition of some Members of the Senate. So I have restrained myself from doing this.

But now the Chairman of the Blue Ribbon Committee is also a ranking member of the Liberal Party, so people will be questioning the *delicadeza* of such an effort. Now I do not want to be misunderstood, Mr. President. I am all in favor of an inquiry by the Senate Blue Ribbon Committee within the institution of the Senate on any matter related to the PCGG. But I have serious reservations about this joint effort with the Ombudsman regardless of what justification may have been put in this document which was released this morning. That is why I told the Chairman of our Committee on Ethics and Privileges: "Alam mo, Rene, hindi ako abogado, but masamang vibes ko rito, masamang kutob ko rito. This is not right and maybe we should look into this."

So, Mr. President, I would like to suggest that the Senate, if it so decides, should adjourn into an executive session, if we do not want to discuss it in open session, and determine whether this endeavor should be authorized by the Senate or also whether the propriety of this act is something that the Committee on Ethics and Privileges must look into.

Thank you, Mr. President.

At this juncture, the President Pro Tempore relinquished the Chair to the Honorable Ernesto M. Maceda.

The Presiding Officer (Senator Maceda).
The Senate President Pro Tempore.

Senator Guingona. Mr. President, the concern of the distinguished Gentleman from Cebu rests on the fact that there may be a need for the Senate as a body to authorize investigation. This is not a joint investigation. This is a simultaneous inquiry

into by the Blue Ribbon Committee and the Ombudsman.

The Presiding Officer (Senator Maceda). It has been moved and seconded by the Majority Floor Leader and the Gentleman from Batangas that the agreement between the Blue Ribbon Committee and the Ombudsman be ratified.

Are there any objections?

Senator Osmeña. Mr. President.

The Presiding Officer (Senator Maceda). Senator Osmeña is recognized.

EXPLANATION OF VOTE OF SENATOR OSMEÑA

Senator Osmeña. Just for the record, Mr. President. Since our meeting was a merienda and not an executive caucus, I can understand the prevailing sentiment of the Body which was very eloquently stated "Nabasa na rin lamang, maligo na" and, therefore, the majority voted to go ahead. Also, I understand and I agree that not to go ahead would have very, very serious consequences. I also stated that, and I think, we can state for the record that it was unanimously agreed that the investigation has to continue. However, I reiterate my serious doubts; and as a reflection of this doubt, the Majority Floor Leader has been tasked with the study and the formulation of a rule whereby the conduct of an investigation or any activity of a committee, together with or in conjunction with another body outside of the Senate, will be dealt with.

And so, therefore, with that remark on the record, Mr. President, while I maintain my reservation on this particular matter, I will just abstain.

The Presiding Officer (Senator Maceda). Are there any objections or abstentions?

Senator Saguisag. Mr. President.

Senator Enrile. Mr. President.

The Presiding Officer [Senator Maceda]. The Minority Floor Leader is recognized.

EXPLANATION OF VOTE OF SENATOR ENRILE

Senator Enrile. Thank you, Mr. President.

I just want to explain my concurrence with the decision to continue with the investigation, Mr. President.

This morning when this agreement was the subject matter of a joint release by the Blue Ribbon Committee and the Office of the Ombudsman, I precisely raised the same point that was raised on the floor, but not as directly as was done here; and I was satisfied with the answers that I got that we can proceed with the investigation without violating the integrity of the Blue Ribbon Committee as an institution, an arm of the Senate. And even if there should be any degree of doubt regarding the novelty of this joint effort between the Legislative branch and a portion of the Executive, or the Judicial department of the Government, I still would have voted in favor of the decision of the majority to proceed with the investigation on the basis of the fact that, in my humble opinion, it would be in the best interest of the country and the Filipino people to hear the truth, whatever the truth may be. There is no prejudgment as to the outcome of this investigation; but I think, it would be healthy for our democracy, our Government and our people that everybody will be heard so that we can dissipate any atmosphere that is deleterious to the national interest, especially at this time if there is a complete and qualified airing of the facts before the Filipino people.

Thank you.

Senator Saguisag. Mr. President.

The Presiding Officer (Senator Maceda). Senator Saguisag is recognized.

EXPLANATION OF VOTE OF SENATOR SAGUISAG

Senator Saguisag. Thank you, Mr. President.

I think all of us here are really in favor of proceeding with the investigation of the PCGG. That is definitely the right thing to do. But even in doing

the right thing, we want to be very sure that we are doing it in the right way. And this approach is totally outside of our experience. It is totally without precedent. The interbranch approach is something that is so novel. It is so novel that I believe we need more time to study it. If this is ruled in the Supreme Court as unconstitutional—if challenged by a party—I wanted to be sure that before I am proved wrong, it would be after thorough reflection and study. And the constitutional, the legal, and the policy questions that have been shunted back and forth, to my mind, have not been resolved adequately to dissipate and dissolve all the doubts that I continue to have.

I would have hoped that we had to devote a little more time on this, but since the matter has come up to a vote, and knowing that I could very well be wrong, I, for the moment, will respectfully beg for understanding in entering my vote as one of abstention.

Thank you, Mr. President.

Senator Paterno. Mr. President.

The Presiding Officer (Senator Maceda).
Senator Paterno is recognized.

EXPLANATION OF VOTE OF SENATOR PATERNO

Senator Paterno. Mr. President, likewise, I would like to register my abstention because I am not thoroughly convinced that this is the proper course to take.

Senator Herrera. Mr. President.

The Presiding Officer (Senator Maceda).
Senator Herrera is recognized.

EXPLANATION OF VOTE OF SENATOR HERRERA

Senator Herrera. Mr. President, I would just like to put on record that I have disagreements with this decision of the Committee to have simultaneous investigation. But the Chairman of the Committee has not violated the Rules of the Senate. I am convinced of the good faith and of the good intention of the investigation. So, I am voting "yes."

APPROVAL OF THE RATIFICATION

The Presiding Officer (Senator Maceda).
Are there any other remarks? [Silence] There being none, the motion is carried with three abstentions.

The Chairman of the Committee on Rules is directed to conduct an immediate study on the matter and formulate a rule to govern similar cases in the future, including the matter of appearances before this investigation.

SUSPENSION OF THE SESSION

Senator Mercado. Mr. President, we shall discuss tomorrow the bills that we have scheduled for today.

I move that we suspend the session until ten o'clock tomorrow morning.

The Presiding Officer (Senator Maceda). Is there any objection? [Silence] The session is suspended until ten o'clock tomorrow morning.

It was 6:42 p.m.

62 - 80
(19 - pages)

**ORGANIZATION OF THE OFFICE OF THE OMBUDMAN.
R.A. No. 6770 / S.B. No.543/ H.B.No. 13646**

RECORD OF THE SENATE

^{at}
AUG 04, 1988

RECORD OF THE SENATE

FRIDAY, AUGUST 5, 1988

RESUMPTION OF THE SESSION

At 10:10 a.m., the session was resumed with the Honorable Jovito R. Salonga, President of the Senate, presiding.

The President. The session is resumed.

Senator Angara will lead us in the opening prayer.

Everybody remained standing for the opening prayer.

PRAYER

Senator Angara.

Almighty Father, we thank You for guiding us in making laws that will direct the course of our nation and shape the lives of our people. We thank You for giving us the courage to rise above ourselves and the strength to carry the burden our people have borne. We thank You for making us believe that we can push frontiers to the limits and forge ahead without fear, for with You, everything is possible.

Almighty Father, it is with sadness that we note that abuse of power and corruption are once again on the rise. The process of decay has set into our hallowed institutions and once respected bureaucracy. And our people, the bedrock of this government, have to endure and suffer the oppressive consequences.

Almighty Father, give us then the grace and the will to restore faith in our entire political structure. Inspire us to dare, to explore and to test the limits of our legislative exercise so that we may yet come up with the means to protect our people, especially the poorest among our poor, from the injustice and inequity that this system breeds.

Almighty Father, if it is Your will, and if it is an answer to our people's outcry, let there be an Ombudsman who will consistently advocate the people's cause and jealously guard their rights.

Let him become a reality and let him come alive among our people that they may know what fairness means and justice is. If this is Your will, then let it be.

Amen.

Senator Mercado. Mr. President.

The President. The Majority Floor Leader is recognized.

BILL ON SECOND READING S. No. 543 - Office of the Ombudsman (Continuation)

Senator Mercado. Mr. President, I move that we consider Senate Bill No. 543 as reported out under Committee Report No. 263.

We are in the period of *turno en contra*; Mr. President, if there are no speeches for and against the bill, I move that we proceed to the period of amendments, and I move that we recognize the Sponsor, Senator Angara.

The President. Are there any speeches for or against the measure? [*Silence*] Since there is none, we now enter the period of amendments.

Senator Angara. Thank you, Mr. President. I have the pleasure and honor of introducing committee amendments to the bill. We have circulated copies of these committee amendments, Mr. President. On page 1...

The President. Just a moment, the Presiding Officer does not have a copy of the amendments.

Senator Angara. I am sorry, Mr. President.

SUSPENSION OF THE SESSION

The President. Shall we suspend the session for a few minutes, if there is no objection. [*There was none.*]

It was 10:13 a.m.

RESUMPTION OF THE SESSION

At 10:17 a.m., the session was resumed.

The President. The session is resumed.

Senator Angara is recognized.

COMMITTEE AMENDMENTS

Senator Angara. Thank you, Mr. President. On page 1, lines 15 and 16, delete the phrase "and a separate Deputy for the military establishment". This is in accordance with the suggestion of Senators Enrile and Pimentel.

The President. Is there any comment? Is there any objection? [Silence] The Chair hears none; the same is approved.

Senator Angara. On page 3, after line 16, insert a second paragraph which reads as follows:

NO SPOUSE OR RELATIVE BY CONSANGUINITY OR AFFINITY WITHIN THE FOURTH CIVIL DEGREE OF THE OMBUDSMAN AND HIS DEPUTIES AND THE SPECIAL PROSECUTOR MAY APPEAR AS COUNSEL OR AGENT ON ANY MATTER PENDING BEFORE THE OFFICE OF THE OMBUDSMAN OR TRANSACT BUSINESS DIRECTLY OR INDIRECTLY THEREWITH OR BE APPOINTED AS CHAIRMAN, DIRECTOR, OR OFFICER OF ANY GOVERNMENT-OWNED OR CONTROLLED CORPORATION OR AS CHIEF OR HEAD OF ANY OFFICE OVER WHICH THE OFFICE OF THE OMBUDSMAN HAS JURISDICTION.

The President. Is there any comment?

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. Will the distinguished Sponsor yield to one or two questions, Mr. President?

Senator Angara. Certainly, Mr. President.

Senator Pimentel. What happens, Mr. President, if the spouse or relative by consanguinity or affinity was already in office prior to the appointment of the Ombudsman?

Senator Angara. The intendment is not to

apply this retroactively, Mr. President. And, therefore, the spouse or relative holding office prior to the effectivity of this act will not be adversely affected.

Senator Pimentel. Now, under that circumstance, Mr. President, the evil sought to be avoided will still be there. Because, apparently, the objective of this prohibition is to disallow the possibility of a spouse or a relative by consanguinity or affinity within the fourth civil degree of the Ombudsman or his deputies, and the special prosecutor from influencing any decision that the Ombudsman might make. But that evil will still exist if a relative or a spouse had been there in some public office earlier than the appointment of the Ombudsman.

Senator Angara. That may be true, Mr. President, but we are here weighing the consequences of the influence that may be exerted by a relative and the right of that relative to occupy that position which she has earned or she may have earned prior to the appointment of his cousin. So, it seems fair only that relatives who have been in government service, in this particular positions, ought also to continue in that office.

Senator Pimentel. That same rationale, Mr. President, would also obtain as regards the appointment of these relatives or spouses as chairmen, directors or officers of any government-owned or -controlled corporations. In other words, the same situation will obtain.

Senator Angara. Yes, Mr. President.

Senator Pimentel. If they have been there before the appointments are extended to the Ombudsman, the Tanodbayan, etc., this prohibition will not apply.

Senator Angara. That is true, Mr. President.

Senator Pimentel. Thank you.

The President. The Chair has a question.

As a rule, the Ombudsman and the deputies were either in law practice or members of the bench. We disqualify relatives, how about former law partners, former associates in the law office?

I remember when I was Chairman of the PCGG attempts were made to have connections with us through our former law associates. Should that not problem be addressed?

Senator Angara. I think that is a legitimate concern, Mr. President, and, we would welcome a suggestion or an amendment to that effect. By the way, this particular amendment, Mr. President, was suggested by Senator Enrile.

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. Mr. President, may the distinguished Sponsor answer a few questions?

Senator Angara. Yes, certainly, Mr. President.

Senator Guingona. May we know the meaning of "Agent on any matter pending before the office."

Senator Angara. "Agent" is one who is representing the interest or cause of another; he is the representative, Mr. President.

Senator Guingona. Representing the respondent in any case?

Senator Angara. Representing someone who have business transaction or may have a pending case before the Ombudsman.

Senator Guingona. But if it is on an informal basis, would this prohibition apply?

Senator Angara. This prohibition perhaps should apply precisely if it is unofficial, because we would want to ban non-transparent, under the table, in-the-shadow representation.

Senator Guingona. So in line with the suggestion of the Senate President, can we include the former law partners but limited to a period of one year; who were former law partners within a

year, I think, within one year prior to the transaction? Because if they were former law partners 20 years ago, then ...

Senator Angara. I see, where the partnership is just recent?

Senator Guingona. Yes. Senator Angara. Personally, I have no objection, Mr. President.

Senator Guingona. How about the CPAs, the auditors, or business associate partners? If the inhibition is to extend that to the lawyers, then it should also be extended to the former auditors, CPAs, or business associates.

Senator Angara. Well, it stands to reason, Mr. President, so, I believe that if we apply it to lawyers, we ought to apply it to accountants.

Senator Guingona. Yes. May I be permitted, Mr. President, to go back to page 1 of the bill? On lines 15 and 16, the Sponsor proposed the deletion of separate deputy for the military establishment.

Senator Angara. Yes.

Senator Guingona. Does this mean without prejudice to the President appointing a separate deputy for the military establishment when circumstances in her judgment would require such appointment?

Senator Angara. This is clearly without prejudice to the President designating any one of the four deputies as an Ombudsman for the military. That is the intent of this deletion, Mr. President.

Senator Guingona. Are we not in effect contradicting the intent of the Constitution, Mr. President?

Senator Angara. We are not, Mr. President, because it seems that a specific separate Ombudsman or deputy for the military is an optional one.

Senator Guingona. Supposing that the President deems that in addition to the three, she would like a fourth one specifically for the

military and that is contained, it seems to me that that is the reading and intent of the Constitution.

Senator Angara. Then she can do so, Mr. President, except that we would need an enabling act for that. We try to give her that opportunity but at the intercession of our Colleagues and convinced of their arguments, we have dropped that option from this.

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized, then Senator Tañada.

Senator Maceda. With the permission of Senator Guingona on the same point. Might it not be better just to restate the provision of the Constitution and in Section 3 just add after the words "Mindanao" and period (.), the same sentence in the Constitution:

A separate deputy for the military establishment may likewise be appointed.

Senator Angara. Can we have a one minute recess, Mr. President?

SUSPENSION OF THE SESSION

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

It was 10:28 a.m.

RESUMPTION OF THE SESSION

At 10:34 a.m., the session was resumed.

The President. The session is resumed.

Senator Angara. Mr. President, may I ask for a reconsideration of the approval of the Committee amendment on page 1, lines 15 and 16.

The President. All right, is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Angara. On page 1, lines 15 and 16, Mr. President, the Committee recommends the following: On line 15, after the word "Mindanao", put a period (.) and then a separate sentence which

reads as follows: A SEPARATE DEPUTY FOR THE MILITARY ESTABLISHMENT MAY LIKEWISE BE APPOINTED.

The President. Is there any objection?

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized.

Senator Maceda. I was just wondering whether there is a better word than "establishment". That is not really the concept. I know it is in the Constitution but we can improve upon it.

Senator Angara. For the Armed Forces?

Senator Maceda. For the Armed Forces.

Senator Angara. That would be better.

Senator Maceda. Thank you.

The President. Is there any objection, as amended? [*Silence*] Hearing none, the same is approved.

Senator Gonzales. Mr. President, insofar as the amendment sought to be introduced by the Committee on page 3 after line 6, now I can understand the prohibition against a spouse or a relative of the Ombudsman and or his deputies and special prosecutor to appear as counsel or agent in any matter pending before their office. I can also understand the reason for the prohibition against such spouse or relative transacting business directly or indirectly with it. But the third prohibition here, that is, to be appointed as chairman, director or officer, or any government-owned or -controlled corporation, or as chief or head of any office over which the Office of the Ombudsman has jurisdiction, in my mind, is too broad that actually it may constitute a violation of due process insofar as the rights of a citizen are concerned if qualified to be employed in the government; and second, as a limitation upon the appointing power of the President. The reason, Mr. President, is that actually, the Ombudsman has jurisdiction over all public officers and employees, over officials or employees of any subdivision, agency or instrumentality of the

government, as well as government-owned or -controlled corporations. Now, why should one be punished in the sense that one is forever excluded from being appointed to such public offices simply because of the accident of birth, that one happens to be a relative of an Ombudsman although there is actually no case or no transaction made whatsoever between the office that he holds and the Ombudsman.

So, I would move for its deletion.

The President. Or probably the question of jurisdiction should be narrowed down only to pending cases.

What is the pleasure of the Sponsor?

Senator Angara. We will accept the suggestion of the Presiding Officer.

Senator Gonzales. No, this is an appointment. An appointment cannot be for the time being. What this provision prohibits is the appointment as chairman, director, officer of any government-owned or controlled corporation or as a chief or head of any office over which the Office of the Ombudsman has jurisdiction. This, Mr. President, is a perpetual disqualification of a relative.

Senator Angara. Can we have a one minute suspension, Mr. President?

SUSPENSION OF THE SESSION

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

It was 10:39 a.m.

RESUMPTION OF THE SESSION

At 10:45 a.m., the session was resumed.

The President. The session is resumed.

Senator Angara. Mr. President, with the permission of the Chair and the Body, can we leave for the moment the proposed amendment on page 3 and move on to other committee amendments?

The President. Are there any objections?

Senator Guingona. Mr. President.

The President. Senator Guingona, then Ser Rasul.

Senator Guingona. Mr. President, subject restyling, another portion: THE SAME PROHIB APPLIES TO FORMER LAW PARTNER OR BUSINESS ASSOCIATE OF THE OMBUDSMAN, HIS DEPUTIES, SPECIAL PROSECUTOR...

The President. That is why the Sponsor is asking for time so that the body can work this out.

Senator Angara. We will go back to this, Mr. President.

Senator Guingona. I see. I thought that only "specifically."

The President. We are skipping this so there will be more time for reflection and work out of the draft.

Senator Rasul. Mr. President.

The President. Senator Rasul is recognized.

Senator Rasul. Thank you, Mr. President. We go back to page 2, Section 8, Removal.

I am bothered, Mr. President, as if Section 8 is concerned, because:

(1) The Tanodbayan may be removed from office on impeachment for and conviction of culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes or betrayal of public trust.

(2) A deputy may be removed from office by the President for any of the grounds provided for the removal of the Tanodbayan, and after due process.

Does this mean, Mr. President, that it is the Tanodbayan who may be granted due process while in the case of the Ombudsman himself can just be removed without due process?

Senator Angara. That is not the implication, Mr. President. The removal of the Ombudsman

provided in the Constitution is through impeachment...

Senator Rasul. Page 2.

Senator Angara. ...through impeachment and as far as deputies are concerned, they are not subject to impeachment but are removable by the President. As a precaution, we provided that the removal must be for cause and by due process. That does not give the implication that the Ombudsman can be removed without due process, because the removal of the Ombudsman is by impeachment.

The President. In any event, we are merely taking up the committee amendments.

Senator Angara. Yes, Mr. President. And, if my coauthor would bear with us, we can go back to this again during the period of individual amendments. Let me just finish with our committee amendments.

Senator Rasul. All right. Thank you, Mr. President.

The President. I understand Senator Tañada would like to say something.

Senator Tañada. It is in connection with what we have already agreed: to suspend consideration, Mr. President. So, I will just take it up later.

The President. All right. Let us move on then.

Senator Angara. Thank you, Mr. President.

On page 4, after line 3, a new subsection is proposed to be inserted, which reads as follows:

(3) THE OFFICE OF THE OVERALL DEPUTY SHALL OVERSEE AND MONITOR THE OPERATIONS OF THE DIFFERENT OFFICES UNDER THE OFFICE OF THE OMBUDSMAN. IT SHALL LIKEWISE PERFORM SUCH OTHER FUNCTIONS AND DUTIES ASSIGNED TO IT BY THE TANODBAYAN.

This suggestion came from Senators Guingona and Laurel, Mr. President.

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. Mr. President, will the Sponsor agree to SHALL OVERSEE AND IMPLEMENT instead of MONITOR, because monitoring is simply being made aware of the operations, but under this provision, he would have no authority to execute the agreed policies of the Office.

Senator Angara. It is accepted, Mr. President.

The President. Just a moment. Should it not be ADMINISTER rather than IMPLEMENT? We do not ordinarily implement operations.

Senator Guingona. Well, whatever, Mr. President, as long as there is the implementing authority.

The President. To oversee and administer the operations.

Senator Guingona. Yes, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Laurel. Well, I heard my name again mentioned by the distinguished Sponsor, and I would like to make the correction that all these insertions and amendments were suggested by me and Senator Guingona.

Here in this new subsection, Mr. President, there are three basic changes. I will not proceed according to the order here. First, the Office of the Special Prosecutor is placed under the supervision and control of the Ombudsman. Second, although here the special prosecutor is considered as a deputy, he is placed under the supervision of the overall deputy. And third, here the Ombudsman is given the power to conduct preliminary investigation for the purpose of prosecuting later on criminal cases.

Those are very basic constitutional questions, Mr. President, and I wonder whether these points have already been resolved by the Committee, and whether we are aware of the fact that these are very important points that should be considered seriously by this Chamber. May I ask the distinguished

Sponsor whether these have been resolved?

May I point out in this connection—and although this is a point that cannot be postponed until a later date—that there is a bill pending in the House of Representatives, just the opposite of this bill, and that is House Bill No. 13701, entitled:

AN ACT AMENDING PRESIDENTIAL DECREE NO. 1630 DEFINING THE SPECIAL PROSECUTOR'S POWER, FUNCTIONS AND DUTIES AND FOR OTHER PURPOSES.

Just the contrary of the proposed bill, so I am just wondering. I do not know that even in a Conference Committee there could be any reconciliation on these particular very basic issues—the three that were listed here in that seemingly laudable provision. May I ask if all these have been seriously considered and whether we are all aware of the impact of this bill?

Senator Angara. Mr. President, the three points raised by the Gentleman are, true enough, basic, but they are not novel.

Let me answer the last point. The last point he made is that this would place the power of preliminary investigation of criminal cases with the Ombudsman; that is so provided in the existing law, Mr. President.

The second point he raised is that the Special Prosecutor shall be placed under the jurisdiction and control of the Ombudsman; that is so held by the Supreme Court.

And, the third point he raised is that the Overall Deputy shall have overall oversight over the different offices under the Ombudsman; that is a good rule of sound management.

Senator Laurel. I realize that authority.

Senator Angara. Excuse me, Mr. President. The fact that there is a House Bill that seems entirely the opposite to what we have been presenting ought not to prevent this Body from considering, in its own judgment and wisdom, this

particular bill, because in case that House Bill is passed, perhaps, the Conference Committee can reconcile them.

Senator Laurel. Mr. President, I am not saying that while a bill is pending in the "Bigger House," this should prohibit us from taking this up. I am simply stating the fact that the position is entirely different—first, from that taken by this Chamber, and second, that these three points included in that new subsection go to the very essence of the constitutional provisions.

I realize that putting the Special Prosecutor, for instance, under the control and supervision of the Ombudsman would make the Ombudsman more effective; but I do not know that this is the proper procedure.

I should think, in the light of the apparent inconsistency in the Constitution, the proper procedure would be a constitutional amendment, because passing a law that is contrary to the provisions of the Constitution, as they exist, is not the course that this Chamber should follow.

Thank you very much.

SUSPENSION OF THE SESSION

The President. Let us suspend the session for a minute, if there is no objection. [*There was none.*]

It was 10:56 a.m.

RESUMPTION OF THE SESSION

At 11:04 a.m., the session was resumed.

The President. The session is resumed.

Senator Angara is recognized.

Senator Angara. Mr. President, we are now on page 4, and the Committee is introducing a new section, Section 3, which I just read into the records. I would like to ask the pleasure of the Body.

The President. Is there any objection to the amendment proposed by the Committee, subject to

the observations of Senator Laurel? [Silence]
Hearing none, the same is approved.

Senator Angara. On the same page, Mr. President, delete lines 4 to 11, and in lieu thereof, insert the following subsection.

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

Senator Enrile. Before we proceed, may I ask for a reconsideration of the approval of the amendment appearing on line 4 to 11, regarding the supervision and control of the Ombudsman over the Special Prosecutor, so that I can direct a few questions.

I would like to clarify a few points.

Senator Angara. Mr. President, could the Gentleman wait, because I have not introduced this particular amendment yet, I have only introduced Section 3?

Senator Enrile. Thank you.

Senator Angara. Now, on the same page, delete lines 4 to 11, and in lieu thereof, insert the following subsection:

4. THE OFFICE OF THE SPECIAL PROSECUTOR UNDER THE SUPERVISION AND CONTROL AND UPON THE AUTHORITY OF THE OFFICE OF THE OMBUDSMAN SHALL HAVE THE FOLLOWING POWERS:

A. TO CONDUCT PRELIMINARY INVESTIGATION AND PROSECUTE CRIMINAL CASES WITHIN THE JURISDICTION OF THE OMBUDSMAN;

B. PERFORM SUCH OTHER DUTIES ASSIGNED TO IT BY THE TANODBAYAN.

THE SPECIAL PROSECUTOR SHALL HAVE THE RANK AND SALARY OF A DEPUTY OMBUDSMAN. THE MEMBERS OF THE PROSECUTION STAFF OF THE OFFICE OF THE OMBUDSMAN SHALL RECEIVE SALARIES WHICH SHALL NOT BE LESS THAN THOSE OF THE MEMBERS OF THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE.

The President. Senator Enrile is recognized.

Senator Enrile. Mr. President, I would like to

ask some questions from the distinguished Sponsor on these proposed committee amendments if he cares to answer.

Senator Angara. Gladly, Mr. President.

Senator Enrile. First, Mr. President, the Special Prosecutor is given the salary of a Deputy Ombudsman. I am just wondering why his rank was not elevated to that of the Deputy Ombudsman.

Senator Angara. His rank is elevated, Mr. President, to the rank of a Deputy Ombudsman in another section of this bill.

Senator Enrile. If that is so, then I will accept the remarks of the Sponsor, Mr. President.

My second question is: What is the meaning of the phrase "supervision and control"? Does this phrase mean that the Ombudsman can tell the Special Prosecutor not to file a case against anybody?

Senator Angara. This implies, Mr. President, that the Ombudsman may overrule the ruling of the Special Prosecutor.

Senator Enrile. In other words, he can tell the Special Prosecutor, "No, you cannot prosecute this case against this particular person."

Senator Angara. He cannot do that, Mr. President, before the event; meaning, the Ombudsman must base his decision after the Special Prosecutor has acted. In other words, if the Special Prosecutor, after a preliminary investigation, has found it justifiable to file a case, then the Ombudsman may overrule him only in that case.

Senator Enrile. If the Special Prosecutor finds a *prima facie* case against a respondent, and the Tanodbayan or the Ombudsman disagrees with his conclusion, can the Ombudsman reverse it?

Senator Angara. Yes, Mr. President.

Senator Enrile. In other words, the Ombudsman can tell the prosecutor, "Do not proceed, in spite of

the presence of a *prima facie* case.”

Senator Angara. With the same effect, Mr. President, but not exactly in the Gentleman's language. In other words, after reviewing the findings of the Special Prosecutor, the Ombudsman might come to the contrary conclusion.

Senator Enrile. Suppose, Mr. President, the Special Prosecutor finds no *prima facie* case against a particular respondent, especially if he is very close to the powers-that-be or an enemy of the powers-that-be, and the Ombudsman disagrees with the Special Prosecutor, the Ombudsman can then make a finding of *prima facie* case and direct the Special Prosecutor to file the case against the respondent.

Senator Angara. That is possible under this proposal, Mr. President.

Senator Enrile. That is the meaning of this phrase “supervision and control.” In other words, the final determination whether to file or not to file a case against anybody in the government will depend upon the sole discretion and judgment of the Ombudsman.

Senator Angara. The ultimate authority, Mr. President, would rest with the Ombudsman because that is the constitutional...

Senator Enrile. And so, therefore, does not the Gentleman think that this particular power of the Ombudsman has a bearing on the disqualification of relatives of either to practice law before this office or to be members of the government including business associates, perhaps, and law partners so that the Ombudsman, if it is humanly possible within the realm of human condition, may be as pure as Caesar's wife in the performance of his duty?

Senator Angara. Definitely, Mr. President.

Senator Enrile. Mr. President, may the overall deputy override the decision of the Special Prosecutor to prosecute or not to prosecute on the

basis of his evaluation of the evidence before him and on the basis and strength of this phrase “supervision and control of the Tanodbayan”?

Senator Angara. The power to overrule rest exclusively and is solely vested in the Ombudsman.

Senator Enrile. And the deputies cannot overrule the Special Prosecutor in making his conclusion that there is or there is no *prima facie* case as the warrant for the filing of the charge?

Senator Angara. Only the Ombudsman; and no Deputy can exercise that power, Mr. President.

Senator Enrile. May any of the Deputy Ombudsmen recommend the prosecution of anybody that they know to be unfit to continue in the public service either because of oppression unjustified conduct, or outright malfeasance misfeasance, corruption in office?

Senator Angara. Yes, Mr. President, because the authority of the Ombudsman extends to his deputies to investigate on their own, so, they can initiate it on their own.

Senator Enrile. Suppose there is a disagreement between the Deputy Ombudsman and the Special Prosecutor on a given case whether to prosecute or not to prosecute because the Special Prosecutor of the office finds no *prima facie* case, whose recommendation would be accepted and followed?

Senator Angara. The ultimate arbiter, I believe, Mr. President, would be the Ombudsman.

Senator Enrile. Since the Special Prosecutor will be the one actively conducting the trial of the case, if he feels that there is no *prima facie* case and he is justified in feeling so, does the Gentleman think he will be able to perform his job properly under those conditions?

Senator Angara. Well, given human frailty, I think, actually, his morale might be affected; but overall, I believe that as a good soldier, a professional prosecutor would still go on soldiering

and go on prosecuting professionally.

Senator Enrile. Mr. President, this is my last question. May I know, in connection with the position of Special Prosecutor, if the disqualification carried in paragraph (2) of the proposed committee amendments will equally apply to the Special Prosecutor?

Senator Angara. Yes, Mr. President, it will extend to the relatives of the Special Prosecutor.

Senator Enrile. Thank you very much.

The entire paragraph says: NO SPOUSE OR RELATIVE BY CONSANGUINITY OR AFFINITY WITHIN THE FOURTH CIVIL DEGREE OF THE OMBUDSMAN AND HIS DEPUTIES AND THE SPECIAL PROSECUTOR. ...So, the Special Prosecutor is specifically mentioned.

Senator Angara. Yes.

Senator Enrile. Thank you, Mr. President.

Senator Angara. Thank you.

At this juncture. 11:15 a.m., the President of the Senate relinquished the Chair to the Honorable Sotero H. Laurel.

The Presiding Officer (Senator Laurel). Just for clarification purposes.

Senator Angara. Yes, Mr. President.

The Presiding Officer [Senator Laurel]. May the Chair ask whether the Special Prosecutor is supposed to be under the control and supervision of the Ombudsman or of his office?

I asked that question because here, it says: THE OFFICE OF THE SPECIAL PROSECUTOR, UNDER THE SUPERVISION AND CONTROL, AND UPON THE AUTHORITY OF THE OFFICE OF THE OMBUDSMAN SHALL HAVE THE FOLLOWING POWERS . . ." etc.

The Office of the Ombudsman is composed of several Deputies, and the Ombudsman himself is placed under the office. So the Ombudsman, acting through the overall Deputy or any of his Deputies, could overrule, as the distinguished Minority Floor

Leader pointed out, the actions and decisions of the Special Prosecutor.

Senator Angara. The answer, Mr. President, is that, it is the Ombudsman rather than his office who will wield or exercise the power of control and supervision.

And so if there is any indication here at all that it would be the Office of the Ombudsman, we would remove that language giving rise to that implication.

The Presiding Officer [Senator Laurel]. Please proceed.

Senator Angara. So, Mr. President, ...

The Presiding Officer (Senator Laurel). Excuse me. With the permission of the distinguished Sponsor, Senator Herrera raised his hand.

Senator Herrera. Just a further clarification, Mr. President. I would just like to know whether the authority to supervise and control can be delegated by the Ombudsman to the overall Deputy over the Special Prosecutor, because the amendment on page 4, second sentence made mention that IT SHALL LIKEWISE PERFORM SUCH OTHER FUNCTIONS AND DUTIES ASSIGNED TO IT BY THE TANODBAYAN, referring to this power of the overall Deputy.

Senator Angara. Mr. President, the power to supervise and control is a power personal and peculiar to the Ombudsman.

Senator Herrera. So it cannot be delegated.

Senator Angara. It cannot be delegated. The only instance I can think of where the overall Deputy may exercise that power and control is when he acts in an acting capacity in the absence of the Ombudsman.

Senator Herrera. So, the overall Deputy does not have also that authority to supervise and control over the other Deputies? Because what is mentioned here is only to oversee and monitor the operations of the different offices under the Office of the Ombudsman.

Senator Angara. That is correct, Mr. President.

Senator Herrera. That power, that authority to supervise and control over the other Deputies is exclusively lodged in the Office of the Ombudsman?

Senator Angara. The Gentleman is correct, Mr. President.

Senator Herrera. Thank you, Mr. President.

The Presiding Officer (Senator Laurel). Please proceed.

Senator Angara. Thank you, Mr. President.

I think, Mr. President, the proposed committee amendments are up for approval or disapproval by the Body.

The Presiding Officer (Senator Laurel). Subject to amendments at the proper time and to whatever observations have been made on the floor.

Is there any objection to the adoption by the Committee of these Committee amendments [Silence] Hearing none, the same is approved.

Senator Angara. Thank you, Mr. President.

On the same page, line 12, Mr. President, these are just stylistic changes. Change the number "4" to number "5"; on line 16, change "5" to "6"; on lines 20 and 21, delete the phrase "those of the Office of". We are not introducing the two last sentences of page 1 of this Committee amendment because of the changes.

The Presiding Officer (Senator Laurel). Is there any objection? [Silence] Hearing none, the same is approved.

Senator Angara. On page 5, Mr. President, line 3, after the phrase "controlled corporations", insert the phrase WITH ORIGINAL CHARTER. With the Chair's permission, perhaps, I can invoke his name as the one who suggested this amendment.

Senator Enrile. Mr. President.

The Presiding Officer (Senator Laurel).

Senator Enrile is recognized.

Senator Enrile. May I find out why we limit the jurisdiction of the Ombudsman only with government corporations having original charters? There are so many government corporations now, Mr. President, that are being taken over by the Government and they are putting their own people in these private corporations. The more there should be someone beyond the power of anybody to check the imprudent exercise of government powers in these private corporations that are being taken over.

The Presiding Officer (Senator Laurel). The point apparently is well taken in the sense that public officers might be involved even in corporations incorporated under the Corporation Law. But at any rate, that can be submitted at the proper time. These are merely Committee amendments.

Senator Enrile. Mr. President, maybe, if the distinguished Gentleman will accept an amendment of this Committee amendment at this time, I am proposing the deletion of that limitation.

Senator Angara. I will respond to that, if the Chair will allow me just to explain the basis for limiting it to chartered corporations.

The Presiding Officer (Senator Laurel). Yes, please.

Senator Angara. It is based, Mr. President on the constitutional provision or the constitutional intent that when referring to government-owned or -controlled corporations, we only refer to corporations with original charters. For instance that is provided for in the Civil Service Commission when it states that the Civil Service embraces all branches, etc., including government-owned or controlled corporations with original charters. But I can appreciate the point and the reality that the Minority Floor Leader is pointing to that; in fact the government corporate sector without original charters is a huge government sector.

The Presiding Officer (Senator Laurel). May the Chair be informed whether the distinguished Sponsor is for that reason withdrawing the proposed amendment on the matter?

Senator Enrile. May I just respond, Mr. President.

The Presiding Officer (Senator Laurel). Please let us ask so that we can cut this short.

Senator Angara. We will accept the amendment of the Minority Floor Leader.

The Presiding Officer (Senator Laurel). The amendment is accepted.

Senator Enrile. Deleting the term...

The Presiding Officer (Senator Laurel). ORIGINAL CHARTER.

Senator Enrile. ...ORIGINAL CHARTER. Thank you very much, Mr. President.

Senator Angara. Meaning, now the reference would cover both corporations with original charters and without original charters.

Senator Enrile. As long as the Government controls the corporation or owns it totally, including those corporations where it claims to exercise control by virtue of the sequestration powers of the Presidential Commission on Good Government where they, in fact, sequestered shares and now attempting to vote them as owners although they have not yet vested the title to themselves.

The Presiding Officer (Senator Laurel). At any rate, the Chair holds that the same has been withdrawn already.

Senator Enrile. Thank you very much.

The Presiding Officer (Senator Laurel). Please proceed.

Senator Angara. Thank you, Mr. President.

On the same page, lines 6 to 9, the Committee recommends the dropping or deletion of the entire

Section 13. This is pursuant to the suggestion made by Senator Gonzales.

The Presiding Officer (Senator Laurel). Is that Section 14?

Senator Angara. Section 13, Mr. President.

The Presiding Officer (Senator Laurel). Section 13. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Angara. On the same page, page 5, line 16, after the word "inefficient", delete the period (.), add a comma (,) and insert the following phrase: INCLUDING THE POWER TO CONDUCT PRELIMINARY INVESTIGATION AND TO DIRECT THE FILING OF THE CRIMINAL CASES WITH THE PROPER COURTS.

The Presiding Officer (Senator Laurel). Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Angara. On page 6, Mr. President, lines 9 and 10, delete "subsection (6)" and in lieu thereof, insert the following subsection:

"Publicize matters covered by its investigation OF THE MATTERS MENTIONED IN PARAGRAPHS ONE, TWO, THREE AND FOUR HEREOF when circumstances so warrant and with due prudence PROVIDED THAT NO PUBLICITY SHALL BE ALLOWED DURING THE PENDENCY OF A PRELIMINARY INVESTIGATION AND THE NAME OF THE COMPLAINANT AND THE RESPONDENT SHALL NOT BE MADE PUBLIC UNTIL AN INFORMATION IS FILED.

May I again volunteer the information, Mr. President, that this is pursuant to the suggestion made by the Senate President and Senator Pimentel.

The Presiding Officer (Senator Laurel). Is there any objection?

Senator Pimentel. Mr. President.

The Presiding Officer (Senator Laurel). Senator Pimentel is recognized.

Senator Pimentel. It is true that I was one of those who strongly batted for the inclusion of this amendment that would prohibit undue publicity

during the pendency of the preliminary investigation. But after mulling over the situation, Mr. President, I am having second thoughts really, considering the stage of our political development where the possibility of cover-up exists upon pressure of powerful personalities over cases affecting themselves. And I think that we should balance this up with the requirement of decency and the right, perhaps, to privacy to which even public officials are entitled. Nevertheless, I think the weight of consideration should be in favor of the public interest of disallowing all, or covering all possible avenues of abuse of power by powerful personalities. And therefore, Mr. President, I would like to request that this proviso be deleted in addition to the reasons which Senator Saguisag had earlier introduced during the debates that it would seem unfair that public officials would enjoy the mantle of protection from adverse publicity during preliminary investigations while those of lesser, let us say, category in terms of public perceptions like private citizens are not so entitled to the same protection. So, I would like to request that this be given utmost consideration by the Sponsor, Mr. President

SUSPENSION OF THE SESSION

The Presiding Officer (Senator Laurel). The session is suspended, if there is no objection. [There was none.]

It was 11:29 a.m.

RESUMPTION OF THE SESSION

At 11:32 a.m., the session was resumed.

The Presiding Officer (Senator Laurel). The session is resumed.

Senator Pimentel. Mr. President.

The Presiding Officer (Senator Laurel). Senator Pimentel is recognized.

Senator Pimentel. Mr. President, there has been a request that we allow this matter to just go

through. However, I must express my own reservations and if the Body decides otherwise, I will respect the decision made on the floor without any rancor. I only wish to make of record very strongly, Mr. President, that the danger of cover-up by powerful persons of crimes for which they are under investigation is very great in this country. And if there is no publicity given to charges that are leveled against them, then I am afraid that justice will be more easily frustrated and this will give rise to more problems that we can imagine, Mr. President.

In fact, several incidents in the recent past involving high ranking personalities of the Government would probably come under the purview of this prohibition, and I do not think that that is good for the development of a democratic process in this country, Mr. President.

Senator Maceda. Mr. President.

The Presiding Officer (Senator Laurel). Senator Maceda is recognized.

Senator Maceda. Mr. President, I have been listening to this matter from the first time the Senator from Cagayan de Oro proposed it. And now he, in effect, has, according to him, "second thoughts."

Now, on the premise that there is a possibility of cover-up, on the other hand, if we are talking about possibilities, the possibility of using the Ombudsman as a vehicle for character assassination or blackmail is just as great if not more possible, or the possibility is higher, in the light of the experience in the Tanodbayan.

Now, I remember the other day when 12 of us were hearing the nomination of Chief Justice Claudio Teehankee. After the hearing, a lot of us got together and said: "We did not feel good about the Commission on Appointments being used as a forum to pursue private resentments against the Chief Justice for what he had decided as Chief Justice."

Now, I accept the possibility of a cover-up. That is why it was made a constitutional body; that is why now we are clothing it with sufficient powers; that is why the qualifications for Ombudsman are higher than ordinary judges. If we, in the very beginning, cannot trust the Ombudsman to be resistant to pressure for a cover-up from the so-called powerful people, what is the use of making it an independent constitutional body? But, on the other hand, how many reputations, how many people have been prejudiced because of charges that have been filed and publicized prematurely and afterwards, dismissed. I think that the two sides of the question are there. And I certainly would decide in favor of the fact that the constitutionalization of the Ombudsman makes it rather immune from pressure for cover-up, if that is the only fear.

Thank you, Mr. President.

The Presiding Officer (Senator Laurel). The Chair takes note of the fact that the points raised by the two distinguished Senators—Senators Pimentel and Maceda—are noteworthy ones. However, the amendments being presented to the floor by the Sponsor are, as we understand it, Committee amendments. And since these are also valid points raised by the Senators adverted to, I think the proper time to ventilate them fully and seriously would be at the period of individual amendments. So, if there is no objection, just to expedite consideration of the bill as amended by the Committee, we will proceed with the sponsorship of the Senator.

Senator Pimentel. Mr. President.

The Presiding Officer (Senator Laurel). Senator Pimentel is recognized.

Senator Pimentel. Just these few thoughts, Mr. President. First, it is not a question of mistrusting the Tanodbayan; we trust the Tanodbayan but we do not trust the system obtaining in the country today. The political immaturity of the nation at large is such that people are not beyond exercising whatever powers they have to

be brought to bear upon a public official to cover up certain misdeeds of the elite, of the powerful, of the privileged few.

Mr. President, if there is anyone who should, probably, vigorously push for the approval of this Committee amendment, it should be your humble Representation.

When I was the Mayor of Cagayan de Oro, Mr. President, my political enemies crucified me before the bar of public opinion by filing so many charges against me in the Tanodbayan and then, having the charges publicized even before they were heard. And yet, when the time came for the Tanodbayan of Mr. Marcos to dismiss these charges, there was not a line that appeared in the newspapers about the dismissals. But, Mr. President, perhaps, that is a price that public officials must pay and perhaps, assured by the balm of a clear conscience, they can sleep peacefully and in the meantime, they will just have to grin and bear it, Mr. President.

The Presiding Officer (Senator Laurel). Is there any objection to the amendment proposed as committee amendments on this particular Section?

Senator Enrile. Mr. President.

The Presiding Officer (Senator Laurel). The Minority Floor Leader.

Senator Enrile. May I ask for the parliamentary situation?

The Presiding Officer (Senator Laurel). The Sponsor, Senator Angara, representing his other cosponsors, Senators Tañada and Rasul had proposed this particular Section to be added, and that is—

Senator Angara. If I may help, Mr. President.

The Presiding Officer (Senator Laurel). Yes, please.

Senator Angara. I think the parliamentary situation is that this proposal is up for the Body's approval or disapproval.

The Presiding Officer (Senator Laurel). What is that particular provision?

Senator Angara. The provision, Mr. President, if I may read once again, to refresh our memories, insert on page 6 lines 10 and 11 the following: PUBLICIZE MATTERS COVERED BY ITS INVESTIGATION OF THE MATTERS MENTIONED IN PARAGRAPHS 1, 2, 3, AND 4, HEREOF WHEN CIRCUMSTANCES SO WARRANT AND WITH DUE PRUDENCE PROVIDED THAT NO PUBLICITY SHOULD BE ALLOWED DURING THE PENDENCY OF A PRELIMINARY INVESTIGATION AND THE NAME OF THE COMPLAINANT AND THE RESPONDENT SHALL NOT BE MADE PUBLIC UNTIL AN INFORMATION IS FILED.

Senator Enrile. But, my understanding is that there is an objection on the floor?

The Presiding Officer (Senator Laurel). May I clarify that?

As I understand there is no objection yet because we have not come to the period of amendments.

Senator Enrile. There was an objection. . .

The Presiding Officer (Senator Laurel). If the Chair might put it. There was an observation. The Chair does not know that there is that objection.

Senator Enrile. My understanding is that the distinguished Gentleman from Cagayan de Oro, Mr. President, has raised an objection to the approval of that committee amendment. And so, therefore, the issue before the Chair is whose position will be upheld, and that being the case, it stands to reason that we will have to vote on this particular amendment.

The Presiding Officer (Senator Laurel). The Chair understands a committee amendment as an amendment adopted by the Committee.

Senator Enrile. But it is to be approved, Mr. President, by the Body.

The Presiding Officer (Senator Laurel). That is a matter that has been taken for granted and assumed by this Chamber.

Senator Enrile. Mr. President, with due respect, if that is the position of the Chair, I most respectfully raise my objection to the adoption of the amendment and may I ask for a voting on this.

Senator Angara. Mr. President, may I ask for a suspension?

SUSPENSION OF THE SESSION

The Presiding Officer (Senator Laurel). The session is suspended, if there is no objection. [*There was none.*]

It was 11:44 a. m.

RESUMPTION OF THE SESSION

At 11:45 a. m. the session was resumed.

The Presiding Officer (Senator Laurel). The session is resumed.

The Minority Floor Leader has made a statement that Senator Pimentel has voiced an objection and not merely an observation with respect to the particular committee amendment proposed by Senator Angara. May the Chair ask Senator Pimentel himself, to speak on that score.

Senator Enrile. Mr. President.

The Presiding Officer (Senator Laurel). Yes, Senator Enrile.

Senator Enrile. Mr. President, may I state for the record that I did not mean to be the spokesman of the distinguished Senator from Cagayan de Oro. I simply conveyed the information that he whispered to my ear when I approached him to find out really what was in his mind.

The Presiding Officer (Senator Laurel). Precisely, the Chair would like to know from Senator Pimentel himself.

Senator Enrile. Thank you very much, Mr. President.

Senator Pimentel. Mr. President.

The Presiding Officer (Senator Laurel).

Senator Pimentel is recognized.

Senator Pimentel. Mr. President, any impression that the Minority Floor Leader was acting as my spokesman is totally inconceivable as far as this Representation is concerned.

At any rate, the point at issue, Mr. President, whether or not we have raised an objection and I would like to confirm that indeed, I have, and the Sponsor knows that. That was an agreement to put the issue before the Senate, in general, Mr. President, unless of course, there are procedural infirmities to that move.

The Presiding Officer (Senator Laurel). So, there is an objection on the part of Senator Pimentel to that particular provision of the committee amendment.

Senator Gonzales. Mr. President.

The Presiding Officer (Senator Laurel). Yes, Senator Gonzales.

Senator Gonzales. Mr. President, before this is put to a vote, may I ask a couple of questions.

First, the prohibition here is, pendency of a preliminary investigation. When does the preliminary investigation begin and when is it terminated, so that we will know the period of the prohibition? How about the filing itself and nothing more? Is that already covered by the prohibition? For example, there is as yet no preliminary investigation being held, but that charges have been filed against a public official. Is that already a part of the preliminary investigation; and therefore, publicity could no longer be made until it is terminated?

Second, according to this, until an information is filed, no action is initiated. This assumes that there is a resolution finding *prima facie* evidence, and therefore directing the filing of information. Suppose the resolution is otherwise?

Senator Angara. It is a very good question, Mr. President.

On the first, when does the mantle of confidentiality begin? I believe, Mr. President, the confidentiality begins from the filing of the charges.

On the second question, Mr. President, what happens if no information is filed? Then, the mantle of confidentiality is likewise lifted at that point.

Senator Gonzales. All right. So, I understand that until an information is filed; probably, until the final resolution of the investigation.

Senator Angara. We accept that clarification, Mr. President, until the final-

Senator Gonzales. Yes, these matters should be stated on the *Record* so that the members of the press or media would be properly guided.

Senator Angara. -until the final conclusion of the preliminary investigation.

Senator Guingona. Mr. President.

The Presiding Officer (Senator Laurel). Yes, Senator Guingona.

Senator Guingona. Mr. President, would it be in order for this Representation to propose a possible amendment to this proposed amendment of the Committee at this stage?

The Presiding Officer (Senator Laurel). An amendment to the...

Senator Guingona. Amendment to the proposed amendment of the Committee.

Senator Enrile. Point of order, Mr. President.

The Presiding Officer (Senator Laurel). We have a pending motion.

Senator Enrile. Point of order, Mr. President.

The Presiding Officer (Senator Laurel). The Minority Floor Leader.

Senator Enrile. The proposed amendment, Committee amendment, was introduced for the approval of the Chamber. There was an objection. And so, therefore, we cannot tinker with this proposed amendment until the objection is disposed of.

The Presiding Officer (Senator Laurel). That is correct.

Senator Guingona. It is not to tinker, Mr. President. It is to save the situation by a compromise...

Senator Enrile. Then that must be taken out of the floor.

The Presiding Officer (Senator Laurel). At the proper time.

Senator Enrile. If we want to talk about compromise, then we must suspend the session and discuss this amongst us instead of proposing the compromise on the floor because there is a pending matter.

SUSPENSION OF THE SESSION

The Presiding Officer (Senator Laurel). The session is suspended, if there is no objection. [There was none.]

It was 11:51 a.m.

RESUMPTION OF THE SESSION

At 11:53 a.m., the session was resumed.

The Presiding Officer (Senator Laurel). The session is hereby resumed.

Senator Guingona. Mr. President, after the words "with due prudence" —

The Presiding Officer (Senator Laurel). Wait. Just hold for a while.

Senator Enrile. Mr. President, there is a pending matter. May I suggest that the proponent of the objection, if he agrees, should withdraw his objection so that we can continue deliberating on

the proposed Committee amendment.

The Presiding Officer (Senator Laurel). There is nothing yet that has been propounded by the distinguished Senator, Senator Guingona, to which Senator Pimentel may agree, so may we just listen to what Senator Guingona is proposing.

Senator Enrile. I will leave that to the Chair.

Senator Guingona. Thank you, Mr. President. We are proposing as an amendment to the Committee amendment so that it will be a Committee amendment. After the word "prudence" insert: PROVIDED ANY PUBLICITY MUST CONTAIN, IN ANY PENDING CASE, BOTH SIDES, THE SIDE OF THE RESPONDENT AND THE SIDE OF THE COMPLAINANT.

The Presiding Officer (Senator Laurel). Well, can we ask Senator Pimentel if that is satisfactory to him.

Senator Pimentel. Mr. President, if the Committee will accept that and introduces it as a Committee amendment, I am willing to withdraw my objection.

The Presiding Officer (Senator Laurel). We are just considering an important point to expedite matters so, may we just ask Senator Angara to state his position on this proposal of Senator Guingona.

Senator Angara. For the sake of unity, Mr. President, we accept the compromise.

POINT OF ORDER

Senator Enrile. Point of order, Mr. President.

The Presiding Officer (Senator Laurel). It is just for the purpose of proposing ...

Senator Enrile. The distinguished Gentleman cannot accept any amendment to his proposed Committee amendment. There is a pending objection precisely to that Committee amendment.

The Presiding Officer (Senator Laurel). That is being withdrawn by the Senator.

Senator Enrile. It has not been withdrawn

Mr. President. It has not been withdrawn by the proponent of the objection.

The Presiding Officer (Senator Laurel). Senator Pimentel, may the Chair ask whether the Gentleman is withdrawing his objection because of that proposal of Senator Guingona?

Senator Pimentel. Iniuurong ko ho ang aking objection in the light of the proposal of Senator Guingona.

Senator Enrile. Thank you, Mr. President.

The Presiding Officer (Senator Laurel). Is the Sponsor of the Committee amendments adopting the proposal of Senator Guingona so that it can be proposed formally? What is the position of the Sponsor?

Senator Angara. We are accepting the compromise.

Senator Enrile. Mr. President, before we vote on that matter, may I ask a question?

The Presiding Officer (Senator Laurel). Yes, please.

Senator Enrile. First, is it the sense of the Chamber that we must tell the members of the media how they will write their stories? Second, what is the meaning of "both sides?" How "both" are the two sides in the treatment of the news?

The Presiding Officer (Senator Laurel). The proper time, I imagine, would be during the period of amendment for purposes of clarification.

Senator Enrile. Mr. President, this is proper because this is being introduced as a proposed amendment.

The Presiding Officer (Senator Laurel). The Sponsor has accepted the proposal. May the Sponsor restate now the amendment that he has accepted in lieu of his original amendment for the consideration of the Senate?

Senator Guingona. Subject to refinement, Mr.

President. PROVIDED THAT ANY PUBLICITY THAT COMES FROM THE OFFICE OF THE OMBUDSMAN MUST CONTAIN THE SIDE OF THE RESPONDENT AND NOT ONLY OF THE COMPLAINANT.

Senator Maceda. Parliamentary inquiry, Mr. President.

The Presiding Officer (Senator Laurel). Senator Maceda is recognized.

Senator Maceda. May I know what will be the procedure now being followed by the Chair, since, if it is accepted by the Committee, will we now be entitled to object to the amendment to the amendment? And if that is so, will it be put to a vote? So, we are just going by indirection.

The Presiding Officer (Senator Laurel). That is correct.

Senator Maceda. We refuse to go directly.

The Presiding Officer (Senator Laurel). That is correct. Now, the amendment submitted in lieu of the Committee amendment originally read by the Sponsor ...

Senator Maceda. The only problem there, Mr. President, is by submitting that amendment to a vote, a vote may not necessarily be an expression of a vote that we favor the original Committee amendment.

The Presiding Officer (Senator Laurel). That is correct.

Senator Maceda. So, the better procedure would have been that the original amendment be voted on. If it is carried, then everything becomes academic. If it is defeated, then any individual Senator in the period of individual amendments can propose it again under the form that, for example, Senator Guingona wants it to be proposed.

Senator Guingona. I have no quarrel with that, Mr. President, except that it should be without prejudice to future rules. Because, under the Rules, a committee may accept an amendment.

The Presiding Officer (Senator Laurel). All right.

SUSPENSION OF THE SESSION

Senator Maceda. I move to suspend the session, Mr. President.

The Presiding Officer (Senator Laurel). The session is suspended, if there is no objection. [There was none.]

It was 12:00 p.m.

RESUMPTION OF THE SESSION

At 12:03 p.m., the session was resumed.

The Presiding Officer (Senator Laurel). The session is resumed.

SUSPENSION OF CONSIDERATION OF S. NO. 543

Senator Mercado. Mr. President, in view of

the fact that there are matters that have to be resolved on this point, on Senate Bill No. 543, I move that we suspend consideration of the said measure.

The Presiding Officer (Senator Laurel). Is there any objection? [Silence] Hearing none, the same is approved.

ADJOURNMENT OF THE SESSION

Senator Mercado. Mr. President, I move that we adjourn the session until four o'clock in the afternoon on Monday.

The Presiding Officer (Senator Laurel). The session is adjourned until Monday at four o'clock in the afternoon, if there is no objection. [There was none.]

It was 12:03 p.m.

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**7 - Pages
(81 - 87)**

**ORGANIZATION OF THE OFFICE OF THE OMBUDMAN
R.A.No. 6770 / S.B.No. 543 / H.B.No. 13646**

RECORDS OF THE SENATE

AUG 08,1988

there is a dispute. So, therefore, if we are really friends of Malaysia and treated as such, not merely rhetorically but factually and realistically because we are members of ASEAN, then the more reason the Government of Malaysia *motu proprio* should have released these people already to us, instead of us begging on our knees for Malaysia to give us the courtesy of having back our own people.

Senator Tamano. Mr. President, the point that I would like to stress is that: first, there is no begging on bended knees, even rhetorically or as a figure of speech, on the part of our President to ask a fellow Head of State to treat with humane consideration a matter that has come up in that country. I believe that if we just give this matter its due course, the successful deliverance of these fishermen from Malaysian jurisdiction will be accomplished. But not if we abort the negotiations that are being made by saber-rattling or by other means intended to show that we are adopting a hardline stand.

Senator Enrile. Without being impolite, Mr. President, who is saber rattling?

Senator Tamano. Well, the enumeration of matters, such as recalling our Ambassador to Malaysia, reducing it to a consular level, a severance of diplomatic relations, strengthening of our Southern defenses at a time when our President has embarked on a very delicate negotiation.

Senator Enrile. How can I possibly saber rattle when we do not even have a kutsilyo to use?

Senator Tamano. That is the point I am trying to state, Mr. President.

Senator Enrile. And precisely, Mr. President, I suggested that we should look into the AFP budget and allocate a bigger resource for this purpose; so that, we can safeguard our Southern border.

SUSPENSION OF THE SESSION

The President. With the permission of the Gentlemen, I received a note here, which says,

“Please suspend the session to allow the Sound Technicians to install another microphone on the floor.”

Senator Enrile. Thank you very much.

The President. So, the session is suspended for a few minutes, if there is no objection, and we can hold also a caucus on the Committee memberships. [*There was none.*]

It was 5:30 p.m.

RESUMPTION OF THE SESSION

At 6:40 p.m., the session was resumed.

The President. The session is resumed.

The Majority Floor Leader.

BILL ON SECOND READING

S. No. 543 - Office of the Ombudsman
(*Continuation*)

Senator Mercado. Mr. President, I move that we consider Senate Bill No. 543 as reported out under Committee Report No. 263.

We are in the period of Committee amendments, Mr. President, I move that we recognize the Sponsor, Senator Angara.

The President. Senator Angara is recognized.

Senator Angara. Thank you, Mr. President.

Mr. President, the parliamentary situation is that the Committee has introduced an amendment which was objected to by Senator Pimentel. And Senator Guingona introduced a compromise amendment which I accepted, and it was at that point that the session was suspended.

Before the resumption, Mr. President, I had spoken to Senator Guingona who has graciously consented to withdraw his amendment, and thereby allowing me also to withdraw my acceptance to his amendment and the consequence will be to restore the original amendment proposed by the Committee.

The President. So, will the Sponsor restate the

original Committee Amendment?

Senator Angara. Yes, Mr. President. On page 6, lines 10 and 11, delete Subsection 6 and in lieu thereof, insert the following subsection:

“Publicize matters covered by its investigation OF THE MATTERS MENTIONED IN PARAGRAPHS 1, 2, 3, AND 4, HEREOF, when circumstances so warrant and with due prudence, PROVIDED THAT NO PUBLICITY SHALL BE ALLOWED DURING THE PENDENCY OF A PERENNIAL INVESTIGATION IN THE NAME OF THE COMPLAINANT AND THE RESPONDENT SHALL NOT BE MADE PUBLIC UNTIL AN INFORMATION IS FILED.”

Senator Pimentel. Mr. President.

The President. All right, Senator Pimentel is recognized.

Senator Pimentel. With the permission of the distinguished Sponsor, Mr. President, may I just make of record that I had objected to the proposed committee amendment, particularly, as it relates to the premature publicity of the investigation before the finding of a *prima facie* evidence against the suspect is made by the investigating authority. And I had moved, Mr. President, to strike out that proviso so that now the Committee Report should no longer have that allowance for the Tanodbayan or for the Special Prosecutor to have that discretion of whether or not to give publicity to the investigation.

Now, because of the amendment of Senator Guingona, I have acceded to a request that I withdraw the objection to that proposed committee amendment. The amendment of Senator Guingona, Mr. President, would, in effect, balance out the reporting requirement regarding the identity or the name of the accused and/or respondent on a case that is still pending investigation.

I really do not know what Senator Guingona intends to do in this situation. And, therefore, if the honorable Sponsor will consider, perhaps, we can go to another section, jump over this particular

section, and we can await the pleasure of Senator Guingona, Mr. President. I think it is important to hear out Senator Guingona considering that the withdrawal of my objection was premised on the fact that the Guingona Amendment would be accepted.

Senator Angara. We accede to the request of Senator Pimentel.

The President. So, for the moment we shall hold this pending...

Senator Angara. Yes, Mr. President.

The President. All right, next amendment.

COMMITTEE AMENDMENTS

Senator Angara. Next amendment is on the same page, line 17, after the word “inquiry”, delete the period (.) and add a comma (,) and insert the phrase “INCLUDING THE POWER TO EXAMINE AND HAVE ACCESS TO BANK ACCOUNTS AND RECORDS”.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Angara. On the same page, it is just a changing of the number, Mr. President, on line 29, change SEC. 15 to SEC. 14.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Angara. On page 7, line 9, change SEC. 16 to SEC. 15.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Angara. Turning now to page 11, Mr. President, on line 15, after the phrase “other pertinent laws”, insert the word OR.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Angara. On the same page, line 17, change SEC. 17 to SEC. 16.

The President. Is there any objection? [Silence]

Hearing none, the same is approved.

Senator Angara. On the same page, lines 25 to 29, after the word "Cabinet", delete the colon (:), add a period (.) and delete the phrase "Provided, however, That the Office of the Ombudsman shall have the power to investigate any misconduct in office committed by such officials for the purpose of initiating the proper criminal or civil action, if warranted."

The President. Is there any objection? [Silence]
Hearing none, the same is approved.

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

Senator Enrile. May I know from the distinguished Sponsor, Mr. President, the import of the deletion of this proviso and the placing of a period (.) after the word "Cabinet"? Will this mean that the Office of the Ombudsman will have no jurisdiction over Members of the Cabinet?

Senator Angara. That would be the implication, Mr. President.

Senator Enrile. May I know, Mr. President, what is the purpose of excluding members of the Cabinet considering the present condition in the country? I humbly believe that the Members of the Cabinet should be within the jurisdiction of the Ombudsman.

Senator Angara. If I may explain, Mr. President, the rationale, the intent of the bill is not to cover constitutional officials removable by impeachment—Members of Congress, the Judiciary, and the Cabinet.

Senator Enrile. I agree with the Sponsor, Mr. President, with respect to officials removable by impeachment and that their responsibility is to the people, including Members of Congress because they are removable by the people, and also the Members of the Judiciary. How about the Members of the Cabinet? What gives them the special role,

Mr. President, to be excluded from the powers of the Ombudsman? Are we now willing to tell the people that we are only after the small fries and that we cannot really tackle the big fries?

Senator Angara. As I was about to explain the rationale for excluding the Cabinet Members, Mr. President, and this is really policy consideration, the rationale is that Members of the Cabinet are accountable to the President directly, and since they are political officials, they are also subject to certain mechanisms of accountability like the Question Hour and the congressional investigation and ultimately, they must answer to the President. That is the policy consideration. It is not because we want to place the Cabinet Members beyond the veil of accountability. It is simply that the mechanism for accountability in the case of the Cabinet is lodged elsewhere than the Ombudsman.

Senator Enrile. Would the Chief of Staff, Mr. President, be subjected to the jurisdiction of the Ombudsman?

Senator Angara. Yes, Mr. President. Because the military will be subject to the jurisdiction of the Ombudsman.

Senator Enrile. In terms of authority, Mr. President, the Chief of Staff is also under the Office of the President, as Commander in Chief and removable by the President at her discretion, why does the Gentleman discriminate against the Chief of Staff and favor the Members of the Cabinet?

Senator Angara. It is not a question of discrimination, Mr. President. It is, as I said, a policy consideration whether we in Congress, should place the Cabinet Members' political or administrative accountability, like the Ombudsman, or we should leave his accountability to be addressed by some other mechanism. It is a policy choice, Mr. President.

Senator Enrile. In other words, Mr. President, even if we have a grafting Cabinet Member, who

builds a palatial house in one or some of the exclusive subdivisions, and the President will not act to remove him; because, there is no evidence available to the President to remove him because the Ombudsman is not given the power to investigate him, we will perpetuate the present pernicious situation where graft and corruption involving Cabinet Members is just whispered around. But there is nothing, really, that can be done legally, because we, in Congress, would be willing to go along by excluding the Members of the Cabinet.

Senator Angara. No, Mr. President, that is not the implication. The implication is that we made a choice of excluding Judges and Cabinet Members, and constitutional officers from the coverage of this law, but if the Body thinks that Cabinet Members ought to be subject to the jurisdiction of the Ombudsman, that is perfectly legitimate.

Senator Enrile. Mr. President, may I know who are we to make the policy decision? I thought that we are precisely discussing this bill yet, and I am just asking the distinguished Sponsor why he has chosen to exclude the Cabinet Members.

Senator Angara. It is the decision of the Committee, Mr. President.

Senator Enrile. Anyway, Mr. President, I will not engage the distinguished Sponsor to a debate. I was simply asking questions; so that, at the proper, time I would like to participate in dealing with this during the individual amendments.

The President. By the way, the deletion of that proviso has already been approved. So, it is in order to move for a reconsideration at this point.

Senator Enrile. I so move, Mr. President:

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Maceda. Mr. President.

The President. Senator Maceda, then Senator Gonzales.

Senator Maceda. On the same point, Mr. President, is it my understanding then if that amendment is carried, that from undersecretary down, they would be subject to prosecution before the Ombudsman for investigation?

Senator Angara. That is true, Mr. President.

Senator Maceda. Supposing the defense of the undersecretary is "This was a decision that was ordered by my Cabinet Secretary for me to make and I have no choice," or much more, if a Cabinet Member goes to a province and he tells the provincial officer, "Do this," and the provincial officer is charged that he has procured something at his level, and his defense is, "My Cabinet Member ordered me to do this." Will the defense of the undersecretary or the provincial officer be included in the deletion of the responsibility of the Cabinet Member?

Senator Angara. If the act or omission is improper, illegal or iniquitous, then it is no defense.

Senator Maceda. But the reality is that there are cases where in a department, the word of a Cabinet Member is more or less, law, and we find very few undersecretaries much less regional directors, and provincial officers who would defy a Cabinet Member. In the long run, Mr. President, corruption in a specific department is really the command responsibility of the Cabinet Member. If the Cabinet Member were on the ball, really, a lot of corruption would not happen. I am just pointing that out now that the Minority Floor Leader has pointed out this problem, and that is the impact. My feeling is that excluding the Cabinet Member would really have some unpleasant repercussions.

Thank you, Mr. President. Senator Angara. I appreciate the suggestion of the Gentleman.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is

recognized. Senator Gonzales. Mr. President, I would go along with the proposition made here by the Minority Floor Leader and Senator Maceda. In fact, I would not limit it to Cabinet Members. I would extend the jurisdiction of the Office of the Ombudsman to all public officials and employees. That is what the Constitution provides. The Constitution makes no distinction whether he is a Cabinet Member or not. I can understand, Mr. President, why the Ombudsman should have no jurisdiction over officials who can be removed only by means of impeachment. It is specifically provided in the Constitution that if the act for which they have been convicted in the impeachment proceedings shall amount to a crime, then it is without prejudice to criminal prosecution and punishment before the courts. Therefore, until the impeachment shall have been decided, then we cannot enforce that provision. But as far as all others are concerned, Mr. President, even Members of Congress, I think should be subject to the jurisdiction of the Ombudsman.

It is true that a Member of Congress can be removed for disorderly behavior only upon the decision of this Body. But that is removal, I mean accountability of public officer may result in civil, in administrative or criminal liability, Mr. President.

It is not always removal. Now, suppose a Member of Congress is accused of a crime of bribery, let us say, of falsification, it is only the Ombudsman who has the stature that could have the requisite, independence, courage and the influence of the high station of his office that can deal with a Member of Congress. An ordinary fiscal would shy away or be terrorized into acting on a complaint against a powerful Senator or a powerful Congressman.

And so, I believe that the Ombudsman should have jurisdiction over all public officials and employees except those who are removable by impeachment.

The President. All right.

Senator Paterno. Mr. President.

The President. Senator Paterno is recognized. Senator Saguisag will be the next.

Senator Paterno. Mr. President, my interpretation of Section 17 with the proviso there, is that the Ombudsman would have the authority and the power to investigate any misconduct in office, and to initiate the appropriate criminal, civil and administrative action; except that, in the cases of Members of Congress, the Judiciary or the Cabinet, the disciplinary action and the decision on the criminal, civil or administrative action will not belong to the Ombudsman, but rather to another Body. In the case of the Senate, it would be the proper committee of the Senate; in the case of Congress, it would be the proper committee of Congress, or the proper Bodies of the Judiciary and Cabinet. Therefore, Mr. President, my interpretation of the elimination of this proviso would be to exempt totally the Members of Congress, the Judiciary and the Cabinet from the jurisdiction of the Ombudsman. Whereas, if that proviso were present, the Ombudsman would still have jurisdiction, but not the disciplinary authority. And therefore, Mr. President, I would urge that we retain this proviso in order that the Ombudsman would not be rendered impotent in the case of Members of Congress, the Judiciary or the Cabinet.

Thank you, Mr. President.

Senator Saguisag. Mr. President.

The President. Senator Saguisag is recognized.

Senator Saguisag. Thank you, Mr. President.

I am also for retaining the proviso here, Mr. President. And as to line 28, I would not limit the power to merely initiating and investigating, but will include prosecuting.

I am not sure whether I understood the distinguished Gentleman from Mandaluyong; for my part, I would also include officials who are

removable by impeachment. I do not agree with the novel notion that someone removable by impeachment could not be charged criminally before he is impeached, because some people are able to retire before their misdeeds are discovered. Then also, some people are afraid to testify against those in power.

In any case, to go back to the first point, we have read that Congressman Mario Biaggi of New York—and our practice is patterned after the U.S.—has just been convicted by a Federal Court. He has, in fact, resigned although he has not been removed. But the main point really is we want this proviso to be as broad as possible. We have to review this notion that justices, like kings, can do no wrong. I am not going to pass judgment on some of the Justices of the Supreme Court who have retired. But suppose we discover their crimes today and no one proceeded against them when they were in power? Certainly, they should still be investigated today.

I agree that the dichotomy is correct here. The first part refers to administrative measures, and the second part, I think, goes properly in another direction, but maybe not far enough. To say that it is limited to initiating the proper criminal or civil action could create problems later on whether it could go beyond merely doing that.

So, I am for a broader scope of power to be given to someone with the stature of the Ombudsman, Mr. President, to include the power of prosecution.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized.

Senator Gonzales. Mr. President, I can see the reason why the bill would seek to exclude from the jurisdiction of the Ombudsman those officials removable by impeachment.

Well, I am not really very sure, and I am not strong on the proposition that a criminal action can be taken only after their impeachment. But what I

am stressing is the fact that the Constitution itself says or provides that if the act for which they had been impeached constitutes an offense, then that is without prejudice to criminal prosecution. What is the import of that, what is the intentment of the framers of the Constitution in putting that, "without prejudice after impeachment"? I think that is a very, very debatable question.

The point is, if the President can be removed only by impeachment, then beyond that, the President is also immune to the processes of the Court. And I think there are authorities on this that while the President is President, no criminal prosecution, much less punishment, can be had. It would be only after her term, or after her impeachment. But so, we will be confronted with a situation of making a distinction again of the President from other officials removable by means of impeachment, and that is why my feeling is that, if we are to exclude the President from the jurisdiction of the Ombudsman, then all officers similarly situated in the sense that they are removable only by impeachment should be grouped together. That is the only import of my statement, Mr. President.

SUSPENSION OF THE SESSION

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

It was 7:04 p.m.

RESUMPTION OF THE SESSION

At 7:08 p.m., the session was resumed.

The President. The session is hereby resumed.

Senator Mercado. Mr. President.

The President. The Majority Floor Leader is recognized.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 543

Senator Mercado. Mr. President, I move that we suspend consideration of Senate Bill No. 543.

The President. Is there any objection?
[*Silence*] Hearing none, the same is approved.

session until 4:00 o'clock tomorrow afternoon.

ADJOURNMENT OF THE SESSION

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

Senator Mercado. I move that we adjourn the

It was 7:08 p.m.

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88 - 106
(19 - pages)

ORGANIZATION OF THE OFFICE OF THE OMBUDMAN.
R.A. No. 6770 / S.B. No.543/ H.B.No. 13646

RECORD OF THE SENATE

AUG 09,1988

BILL ON SECOND READING
S. No. 543 - Office of the Ombudsman
(Continuation)

Senator Mercado. Mr. President, I move that we consider Committee Report No. 263 on Senate Bill No. 543. We are now in the period of Committee Amendments, Mr. President. I move that we recognize Senator Angara to sponsor the measure.

The President. Senator Angara is recognized.

COMMITTEE AMENDMENTS

Senator Angara. Thank you, Mr. President.

The parliamentary situation, Mr. President, is that we are on page 11 and the Body has just reconsidered the committee amendment deleting the proviso appearing on lines 25 to 29. So, if I may move on now, Mr. President, on the next page, page 12, line 12, after the phrase "not exceeding five thousand pesos", insert an additional subsection to SECTION 18 to read as follows:

(3) IN ANY INVESTIGATION UNDER THIS ACT, THE OMBUDSMAN MAY (A) ENTER TO INSPECT THE PREMISES OF ANY OFFICE, AGENCY, COMMISSION OR TRIBUNAL; (B) EXAMINE AND HAVE ACCESS TO ANY BOOK, RECORD, FILE, DOCUMENT OR PAPER; AND (C) HOLD PRIVATE HEARINGS WITH BOTH THE COMPLAINING INDIVIDUAL AND THE OFFICIAL CONCERNED.

The President. The Chair would like to inquire: Did not the Senate stop at Section 17 last night?

Senator Angara. That is correct, Mr. President. In fact, the Body reconsidered the committee amendment to delete the proviso and there was a suspension of the session because Senator Gonzales has some questions to ask about this. But we have talked with Senator Gonzales, as well as with Senator Saguisag, and the point he may want incorporated will be introduced during the period of Individual Amendments.

The President. So, what is the pleasure of the Sponsor? Do we not pass the proposed amendment?

Senator Angara. Well, the Body already

disapproved the deletion of the proviso. So, the proviso will remain, and it will now indicate that the Ombudsman will have jurisdiction over Cabinet Members in initiating criminal cases as well as civil cases.

The President. So the proposed amendment is withdrawn.

Senator Angara. Yes, Mr. President.

The President. All right.

Senator Angara. On page 12, I just read the amendment, Mr. President, on line 12.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Angara. There are changes of numbers, Mr. President, on pages 12, 13 and 14, changing the Section numbers to correspond to the deletion of one Section. So I recommend that at the end of this amendment, the Sections be properly numbered.

On page 15, line 14, Mr. President ...

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized.

Senator Gonzales. Before we proceed further, I just want to propound a question in proposing individual amendments so that I may be guided accordingly. That is, on page 12, line 12. Will the Ombudsman have the power to enter into any plea bargaining agreement?

Senator Angara. There is no explicit provision to that effect, Mr. President.

Senator Gonzales. What does the Gentleman think, Mr. President? Should that power be specifically provided so that the Ombudsman will be properly guided?

Senator Angara. I should think so, Mr. President, that it should be explicitly provided because plea bargaining seems to be one of the recognized modes in the administration of justice.

Senator Gonzales. So, when the appropriate time comes, I will propose an amendment to that effect, Mr. President.

Senator Angara. Thank you, Mr. President.

On page 15, Mr. President, line 14, after the phrase "petition for" delete the word "review" and in lieu thereof, insert the word CERTIORARI. So that, review or appeal from the decision of the Ombudsman would only be taken not on a petition for review, but on certiorari.

The President. What is the practical effect of that? Will it be more difficult to reverse the decision under review?

Senator Angara. It has two practical effect ways, Mr. President. First is that the findings of facts of the Ombudsman would be almost conclusive if supported by substantial evidence. Second, we would not unnecessarily clog the docket of the Supreme Court. So, it in effect will be a very strict appeal procedure.

The President. Senator Guingona, then Senator Gonzales.

Senator Guingona. Mr. President, may we ask the Sponsor some clarificatory questions?

Senator Angara. Certainly, Mr. President.

Senator Guingona. Does this mean that, for example, if there are exhaustive remedies available to a respondent, the respondent himself has the right to exhaust the administrative remedies available to him?

Senator Angara. Yes, Mr. President, that is correct.

Senator Guingona. And he himself may cut the proceeding short by appealing to the Supreme Court only on certiorari?

Senator Angara. On question of law, yes.

Senator Guingona. And no other remedy is available to him?

Senator Angara. Going to the Supreme Court, Mr. President?

Senator Guingona. Yes. What I mean to say is, at what stage, for example, if he is a presidential appointee who is the respondent, if there is no certiorari available, is the respondent given the right to exhaust his administrative remedies first before the Ombudsman can take appropriate action?

Senator Angara. Yes, Mr. President, because we do not intend to change the administrative law principle that before one can go to the court, he must exhaust all administrative remedies. So, the Gentleman is right in saying that the respondent can still exhaust administrative remedies available to him before he goes and seeks judicial review.

Senator Guingona. And no disciplinary action will be meted out against him?

Senator Angara. No, certainly not, because that is part of his right, part of his procedural due process, Mr. President.

Senator Guingona. And preventive suspension will not be imposed upon him pending his right to exhaust all administrative remedies?

Senator Angara. Well, there is a rule, Mr. President, depending on the offense one is charged with. For instance, if one is charged with an offense under the Anti-Graft Act, then preventive suspension would be automatic.

Senator Guingona. Is the distinguished Sponsor going to amend the jurisdiction over the Civil Service? I mean, the overlapping jurisdiction of the Civil Service Commission.

Senator Angara. The bill does not intend to amend the Civil Service Law and regulations. What it does is to give jurisdiction to the Ombudsman, concurrently with the Commission.

Senator Guingona. Yes. Are we limiting it only to graft cases?

Senator Angara. No, Mr. President, it will also

comprehend misbehavior which under the Civil Service laws would be deemed improper.

Senator Guingona. For misconduct, for example, in office, it is still the Ombudsman who may have jurisdiction over drunkenness, for example, or late coming to the office. Is that the concept of the Sponsor?

Senator Angara. No, Mr. President, the concept is for misbehavior or misconduct enumerated under Section... Under this bill, the Ombudsman and the Commission will have concurrent jurisdiction. But in order to avoid duplication and overlap, we insert the principle that whoever takes jurisdiction first will exclude the other. So, it is not necessarily so that the Ombudsman would, for instance, take jurisdiction of a case of drunkenness because it may define jurisdiction.

Senator Guingona. Since the nature of the Ombudsman is basically to ferret out graft and corruption, would the distinguished Sponsor not be amenable to limiting the jurisdiction of the Ombudsman over civil servants to certain grounds only?

Senator Angara. I am not averse to that, Mr. President. We would welcome that during the period of individual amendment, Mr. President. But let me just put the caution even now, that we are designing here for the first time an Ombudsman in our country. So much faith and expectations have been placed on this Office, and let us insure that what we are creating is an institution that would be effective and would be vital, would be active rather than passive.

And so, in that light, I would welcome any amendment during the period of individual amendment, Mr. President, that would strengthen that concept.

Senator Guingona. Yes. Thank you, Mr. President.

Senator Angara. Thank you.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized.

Senator Gonzales. Thank you, Mr. President.

Will the distinguished Sponsor yield to some questions?

Senator Angara. With pleasure, Mr. President.

Senator Gonzales. What is the purpose of the Committee in changing the method of appeal from one of a petition for review to a petition for certiorari?

Senator Angara. To make it consistent, Mr. President, with the provision here in the bill to the effect that the findings of fact of the Ombudsman is conclusive if supported by substantial evidence.

Senator Gonzales. A statement has been made by the honorable Presiding Officer to which I concur, that in an appeal by certiorari, the appeal is more difficult. Because in certiorari it is a matter of discretion on the part of the court, whether to give due course to the petition or dismiss it outright. Is that not correct, Mr. President?

Senator Angara. That is absolutely correct, Mr. President.

Senator Gonzales. And in a petition for certiorari, the issue is limited to whether or not the Ombudsman here has acted without jurisdiction and has committed a grave abuse of discretion amounting to lack of jurisdiction. Is that not the consequence, Mr. President?

Senator Angara. That is correct, Mr. President.

Senator Gonzales. And it is, therefore, in this sense that the intention of the Committee is to make it harder to have a judicial review, but should be limited only to the cases that I have enumerated.

Senator Angara. Yes, Mr. President.

Senator Gonzales. I think, Mr. President, our

Supreme Court has made a distinction between a petition for review and a petition for certiorari; because before, under the 1935 Constitution appeal from any order, ruling or decision of the COMELEC shall be by means of review. But under the Constitution it is now by certiorari and the Supreme Court said that by this change, the court exercising judicial review will not inquire into the facts, into the evidence, because we will not go deeply by way of review into the evidence on record but its authority will be limited to a determination of whether the administrative agency acted without, or in excess of, jurisdiction, or committed a grave abuse of discretion. So, I assume that that is the purpose of this amendment, Mr. President.

Senator Angara. The distinguished Gentleman has stated it so well.

Senator Gonzales. I just want to put that in the *Record*.

Senator Angara. It is very well stated, Mr. President.

The President. The Chair would like to ask, is not the Ombudsman in a dilemma here? Under Section 17, the investigative powers of the Ombudsman may reach the Supreme Court. Is the Chair right?

Senator Angara. That is correct, Mr. President.

The President. So, it is very conceivable that there may be orders and directives coming from the Ombudsman addressed to Justices of the Supreme Court. Is that possible?

Senator Angara. That is technically possible, Mr. President.

The President. If that is so, how can the Supreme Court be an impartial Tribunal with respect to orders and directives coming from the Ombudsman directed to the Supreme Court or its Justices? Are we not here in a dilemma?

Senator Angara. One must admit that such a

dilemma would exist, Mr. President.

The President. A dilemma can only be resolved by exempting the Supreme Court Justices from the investigative powers of the Ombudsman.

Senator Angara. I think some of our Colleagues, Mr. President, have made that kind of reservation and some may introduce, in fact, individual amendments to this particular section during the period of amendments.

The President. It is evident that there must be some final authority to render decisions. Should it be the Ombudsman or should it be the Supreme Court?

Senator Angara. As I understand it, under our scheme of government, Mr. President, it is and has to be the Supreme Court to make the final determination.

The President. Then if that is so, we have to modify Section 17.

Senator Angara. That is why, Mr. President, some of our Colleagues have made a reservation to introduce an appropriate change during the period of Individual Amendments.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized.

Senator Gonzales. Should that eventuality come, would it not present a case of just disqualification of some members of the Supreme Court? That the Supreme Court as a body would still remain? We have a similar situation in the Electoral Tribunal of the Senate where actually, all the legislative Members of the Senate Electoral Tribunal are respondents somehow in the election protest. And there was a petition to disqualify the Senators from sitting as members of the Electoral Tribunal. That would result in a situation where there will only be three Justices of the Supreme Court which definitely would not be the Tribunal as contemplated in the Constitution. Unfortunately,

there is no law, there is no provision of the Constitution that governs this situation. Senator Saguisag was the one who filed this disqualification petition and he was joined by other lawyers from other parties. So, we have really a very, very difficult situation. I am glad that the Senate President had raised the question so that we can provide for this specific situation.

In the case of the Electoral Tribunal, also following the theory of Senator Saguisag, we ruled that the Senators are not legally disqualified because, otherwise, that will wreck the system as provided for by the Constitution, invoked by the parties when they submitted to its jurisdiction and the doctrine of necessity, as eloquently expounded before the Tribunal. There are cases where, by reason of extreme necessity, one is confronted with a choice between yielding to what appears to be the requirements of due process and destroying the system itself so that, that there will be no one to hear this case. So, I am very happy the Senate President has posed this specific situation or problem. It is bound to come and probably, it is well for us now to have our collective brains; let us think of how to resolve a situation like this.

The President. The Chair would like to point out that the dilemma will not be intractable if that involves only one or two or three justices. But supposing the orders and directives of the Ombudsman affect the entire Supreme Court either as an institution or the orders and directives affect all the justices of the Supreme Court?

Senator Angara. Perhaps, Mr. President, one way of avoiding that is by saying that the Ombudsman only acts in actual cases or controversy, and therefore, when it does, it only affects one or two justices and can never affect the whole Supreme Court as a body.

Senator Saguisag. Mr. President.

The President. Senator Saguisag is recognized.

Senator Saguisag. Thank you, Mr. President.

The way out that the Electoral Tribunal found in that *sui generis* case that confronted us, regarding the protest that all of us are facing now, was "doctrine of necessity" which we borrowed from American jurisprudence. But I would have thought that maybe, another alternative would have been to borrow magistrates from another tribunal. So that in case there would be a complaint affecting all the members of the Supreme Court, maybe, the alternative would be to go down to the next highest court within the system. That would be the Court of Appeals. I would really feel more comfortable with that than having a judge sit in his own case. And that was the excruciating dilemma. I do not even know whether the conclusion we reached was the correct one. However, there had to be some way of getting the matter off dead center and the Electoral Tribunal is proceeding now.

So, that would be my thought, Mr. President. The "doctrine of necessity" should be invoked, or maybe, we could go down to the next highest court level to find an impartial group of arbiters who will not be sitting as judges of their own cause.

The President. Which would mean the justices of the Court of Appeals.

Senator Saguisag. Yes, Mr. President.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized.

Senator Gonzales. Mr. President, this was done already in the People's Court Act when members of the Supreme Court who served during the Japanese occupation were disqualified from sitting as members of the Supreme Court in cases coming from the Court of Appeals involving treason. That was declared unconstitutional by our Supreme Court in *Vargas vs. Relloraza*. The reason is that according to the Supreme Court, the net effect of the same would be to create two Supreme Courts: one Supreme Court composed of those which are duly appointed thereto and the second Supreme Court

which will be composed of those who are not disqualified and those who are justices of the Court of Appeals or district judges who will sit temporarily in the Supreme Court. And the Supreme Court said that there will be, in effect, two Supreme Courts. On the other hand, the Constitution only provides that there shall be one Supreme Court. In short, what I am trying to point out is, while there seems to be merit in the alternative suggestion made by Senator Saguisag, the Supreme Court, in a similar case, already ruled such provision to be unconstitutional.

The President. Anyway, we can take that up again when we deal with Section 17 during the individual amendments.

Senator Angara. Yes, Mr. President.

The President. All right. Is there any objection to the change in the wording "petition for review" and make it "PETITION FOR CERTIORARI" now?

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. Just a further clarification, Mr. President. Supposing that for misbehaviour, there is a penalty imposed by the Ombudsman of dismissal, although that may not be commensurate, and the aggrieved respondent files a petition for certiorari and it is not given due course by the Supreme Court, may he still go up to exhaust the administrative remedies, or would that already be moot and academic, Mr. President?

Senator Angara. Well, under the circumstances, Mr. President, since he has elected to go to court, perhaps, he will be bound by his election.

Senator Guingona. Would this not be opening up instances of injustice to civil servants because the Ombudsman is more concerned with graft and corruption not with the day-to-day Civil Service Rules and Regulations where there may be certain

facts that could be ordinarily appealed to and exhaust the remedies all the way up to the Office of the President? Now, we are seemingly depriving him of that right.

Senator Angara. Well, not necessarily, Mr. President. Because, as I said, the first office who takes jurisdiction will exclude the other and very likely, garden-variety common offenses, like what the Gentleman had in mind, could probably be filed with the Civil Service Commission rather than with the Ombudsman. But, at any rate, as I expressed to the Gentleman during the period of amendment, we would welcome any amendment.

Senator Guingona. Because as I understand, all the orders of the Ombudsman are effective immediately regardless of any exhaustion of administrative remedies, regardless of any other rights that the respondent may have under present laws?

Senator Angara. That is correct.

Senator Guingona. Thank you very much, Mr. President.

The President. All right. Is there any objection to the amendment inserting the word CERTIORARI instead of "review"? [Silence] Hearing none, the same is approved.

Senator Angara. Mr. President, we have other amendments but it is stylistic, meaning, changing the number of the sections. So, we would recommend that these sections be renumbered after we have gone through...

The President. Is there any objection to the omnibus amendment, the numbering of the sections? [Silence] Hearing none, the same is approved.

Senator Angara. Thank you, Mr. President. There are two more remaining amendments that were deferred in the meantime, Mr. President. Can I have a one-minute suspension so that we can discuss those...

SUSPENSION OF THE SESSION

The President. It is almost time, anyway, for our usual break. So, let us have a suspension for a few minutes, if there is no objection. [*There was none.*]

It was 5:19 p.m.

RESUMPTION OF THE SESSION

At 5:55 p.m., the session was resumed.

The President. The session is resumed. Senator Angara is recognized.

Senator Angara. Thank you, Mr. President.

Mr. President, we deferred two amendments of the committee. Now, I propose that we take them up again.

The first one, Mr. President, is on page 3. After line 16, insert a second paragraph to Section 9. A copy of this amendment is being circulated, Mr. President. It reads as follows:

NO SPOUSE OR RELATIVE BY CONSANGUINITY OR AFFINITY WITHIN THE FOURTH CIVIL DEGREE, AND NO LAW, BUSINESS OR PROFESSIONAL PARTNER OR ASSOCIATE WITHIN ONE YEAR PRECEDING THE APPOINTMENT OF THE OMBUDSMAN AND HIS DEPUTIES AND SPECIAL PROSECUTORS, MAY APPEAR AS COUNSEL OR AGENT ON ANY MATTER PENDING BEFORE THE OFFICE OF THE OMBUDSMAN OR TRANSACT BUSINESS DIRECTLY OR INDIRECTLY THEREWITH.

THIS DISQUALIFICATION SHALL APPLY DURING THE TENURE OF THE OFFICIAL CONCERNED.

The President. Are there any questions?

Senator Tañada. Mr. President.

The President. Senator Tañada is recognized.

Senator Tañada. Mr. President, may I just inquire if the prohibition that is sought to be provided here will extend not just to the law partner or associate but to the office itself; because we know that sometimes while it is the law partner or the associate itself, there are times also where

the law office itself is the one that appears.

Senator Angara. The Gentleman is correct, Mr. President, that the spirit, if not the letter of this prohibition, will extend to the law office itself or business partnership.

Senator Tañada. So, would we propose an amendment to that?

Senator Angara. Yes, certainly, Mr. President.

Senator Romulo. Mr. President.

The President. Senator Romulo is recognized.

Senator Romulo. Mr. President, we have not yet received our copy and we are asking the Page to give us copies of this new amended version.

The President. So, if the law office were to be disqualified, what would be the period within which the disqualification should exist? Also one year only?

Senator Angara. The disqualification will subsist during the entire tenure of the Ombudsman or the deputy.

The President. But the law partner or law associate will be disqualified only for one year?

Senator Angara. I am sorry, Mr. President. The reference to one year is that, he is a law partner or business associate one year immediately preceding the appointment of the Ombudsman. That means that a law partner of 20 years ago or five years ago would no longer be covered by this prohibition.

The President. Yes, but if the law office is disqualified for as long as the Ombudsman is the Ombudsman, should not the partners in that law office also be similarly disqualified?

Senator Angara. That is true under this provision, Mr. President.

The President. Are there any other inquiries?

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

Senator Enrile. I am just wondering, Mr. President, whether it may not be better to leave the appearance of any lawyer before this Body subject to challenge by the participant in the litigation because, I think, it would also be unfair, if it is unfair to the relatives, and we have removed the relatives of the members of this Commission. We removed them from the disqualification. It would be most unfair to the law partners of the recruited Ombudsman to deprive them of their livelihood.

The President. Is the livelihood affected by their appearance, however, in other cases?

Senator Enrile. But, it might be, Mr. President, that they may have some clients that would be affected by the Ombudsman. So, they will have to give up the opportunity because of the fact that their law partner was hired by the Government.

Senator Saguisag. Mr. President.

The President. Senator Saguisag is recognized.

Senator Saguisag. What disturbs me here, Mr. President, is the novelty behind this concept. As far as I am concerned, I am familiar with the situation where it is the magistrate or the official who inhibits himself. That is why there are challenges: a petition to inhibit, a petition to recuse is filed. But this is, to me, unusual: the right to make a living on the part of a member of the bar is the one being curtailed. I am not saying that there is something wrong with this. In our experience, under the Rules of Court, I think, it even extends to the sixth degree, but it is the magistrate who inhibits himself. It is usually the one deciding who may be challenged or who, on his own, may say, "I do not want to take part in this proceeding." The parties may even agree and say, "We are willing to take our chances with the magistrate concerned." Maybe, there is something unusual in relation to the Office of the Ombudsman which may require another treatment. But, as I

have said, we seem to be blazing a new trail here where the one affected is the practitioner instead of the magistrate recusing or inhibiting himself. So, are we ready for this?

The President. As the Gentleman usually puts it, "all life is an experiment."

Senator Saguisag. Well, yes, in the words of Oliver Wendel Holmes. So, I mean, I am really open to this.

The President. The Chair can understand why and how a judge can inhibit himself. But, there is only one Ombudsman in this country.

Senator Saguisag. What about the deputy Ombudsman, Mr. President? There may be more than one in a region. If it cannot be handled by Deputy "A", there may be nothing wrong with Deputy "B". Or, the Ombudsman proper may not be able to handle it, but the Overall Deputy may be able to do something about it. I mean, there could be ways of meeting this situation. But, as I said, I realize the peculiar nature of the Office. There may be any number of other people who may be able to do the job but may be barred by some prohibited or some inhibiting relationship.

So, as I said, if that will be the will of the majority, I will go along. I am just, well, sensitive to the possibility that that may be the only well-paying client of a practitioner and he may lose . . .
[*Senator Saguisag laughing*]

The President. Senator Laurel, then the Minority Floor Leader again.

Senator Laurel. Mr. President, may I ask the distinguished Sponsor what would happen if a law partner should separate himself from the Office but later joins it again before the one year preceding the appointment of the Ombudsman?

Senator Angara. As long as the relationship, whether professional or business, is within that one-year period preceding the appointment, Mr. President, then the disqualification will operate.

Senator Laurel. But it says here "WITHIN ONE YEAR."

Senator Angara. Yes.

Senator Laurel. So, during the year before the appointment of the Ombudsman, he is disqualified. That is the meaning, is it not?

Senator Angara. That is correct, Mr. President.

Senator Laurel. But suppose before the first day of that year begins, he decides to separate and then he rejoins.

Senator Angara. Well, he will fall within the ambit of this disqualification, Mr. President.

Senator Laurel. There is nothing that says here, Mr. President.

Senator Angara. Our exchange will be recorded and that would be a proper interpretation.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized.

Senator Gonzales. Suppose one is a partner of another who is subsequently appointed as Ombudsman. At the time of his appointment, he is not a partner. But within one year before he was appointed, he was a partner. Would the disqualification apply?

Senator Angara. It would seem, it will apply, Mr. President, because the prohibition is not just limited to partners but also to associates.

Senator Gonzales. Yes, but here, the point is at the time of the appointment, he is no longer a partner because he had separated from the law firm before, earlier, but within the same year before such appointment. Probably at the time, he has even no inkling that the person concerned will be appointed as Ombudsman.

Senator Angara. It is a difficult situation, Mr. President.

Senator Gonzales. We are also looking into the

justness, the humaneness of this law. We might be unnecessarily depriving people of their professional living, especially in a situation where he has nothing to do with the appointment, and he has no choice in it.

The President. Is it the point of Senator Gonzales that he must be such a partner at the time of the appointment?

Senator Gonzales. I think so, Mr. President, because we might be overstretching the disqualification. Does this apply again to one, who is not a partner at the time of the appointment, but subsequently joins the law firm of which the Ombudsman used to be a partner?

Senator Angara. First, incumbent partners ought to be disqualified.

Senator Gonzales. Yes, there is no question about that.

Senator Angara. Now, a partner or an associate who was not such at the time of the appointment but was so during the one-year period, should it apply to that partner or associate? I should think it should apply, Mr. President, because one can visualize a situation where one knows, say, a week before the appointment that his partner will be appointed, then he can quit the partnership or the business association.

Senator Gonzales. Yes, but suppose he resigned from this law firm 11 months before where the prospective appointment of the Ombudsman was not even being considered?

Senator Angara. I should think that even then, Mr. President, the disqualification should apply because what we are trying to insure is that the most recent relationship ought not to influence the judgment of the Ombudsman and even if one was a partner but quit 11 months before the appointment, I think, the reason for the disqualification still exists.

Senator Gonzales. What is the meaning of

“partner” here, Mr. President?

Senator Angara. A “partner” means, Mr. President, that one shares in the profit and shares in the loss of the partnership?

Senator Gonzales. How about those lawyers who are there on a pay basis?

Senator Angara. They would fall within the term “associates”.

Senator Gonzales. And so the distinguished Sponsor thinks that the disqualification must also apply to a partner but who subsequently resigns from the law office during the one year tenure...

Senator Angara. One year...

Senator Gonzales. No. There is no question that he was a partner at the time of the appointment and, therefore, within one year. But then, let us say, after six months he resigns from the law firm, and puts up his own law firm, he would still be disqualified during the seven-year period, the tenure of the Ombudsman.

Senator Angara. That is the intendment, Mr. President.

Senator Gonzales. When we speak of tenure here, we have to think of the maximum, which would be a seven-year term.

Senator Angara. Yes, Mr. President.

Senator Gonzales. That is the point that bothers me. That is a very, very long period of time, and then one who really has nothing to do and who has no choice on the appointment of the Ombudsman for that matter becomes deprived of his possible earnings appearing before the Ombudsman. But, at any rate, does not the distinguished Sponsor think that it would be better that this provision is worded, as follows: THAT NO SPOUSE OR RELATIVE BY CONSANGUINITY OR AFFINITY WITHIN THE FOURTH CIVIL DEGREE AND NO LAW, BUSINESS OR PROFESSIONAL PARTNER OR ASSOCIATE OF THE OMBUDSMAN AND HIS DEPUTIES AND THE SPECIAL PROSECUTOR WITHIN ONE YEAR PRIOR TO THEIR

290

APPOINTMENTS MAY APPEAR AS COUNSEL?

Senator Angara. I accept that change, Mr. President. That is a better phrasing than the amendment.

Senator Gonzales. Thank you.

The President. Is that accepted already?

Senator Angara. Yes, Mr. President.

The President. Senator Enrile.

Senator Enrile. Mr. President, Justice Holmes said: “The life of the law is not logic but experience.” And so, may I know from the distinguished Sponsor whether he would visualize like me a situation where a person can be closer to a friend than to a relative. We disqualify a relative but we do not disqualify friends. How would the distinguished Sponsor now square this with this prohibition?

Senator Angara. Mr. President, it is very hard to use friendship as a basis for disqualification because friendship too is an absolutely necessary relationship in this country. I agree with the Gentleman that friendship can be stronger than family as for instance indicated by certain fraternities in the University of the Philippines; but nonetheless, Mr. President, I think one cannot put friendship as a basis for disqualification in the same manner that family or business or professional relationship do.

Senator Enrile. Now, second, Mr. President, I am trying to look at the right provision. I think it is Section 8 of the constitutional provision bearing on the Ombudsman, which requires that the qualification of the Members must be that they are all members of the Philippine Bar, but how can professional partners other than a law partner be a liability for somebody close to the Ombudsman?

The President. Is it not possible for a lawyer to be an accountant at the same time; and therefore, having an accounting profession, he has a business

partner who is a member of the Bar?

Senator Enrile. That is a possibility, Mr. President. So, therefore, we found one possible professional soul that could be disqualified or maybe the Ombudsman, being a lawyer, was also at the same time an engineer, and aside from being a law practitioner, he was also a partner in an engineering firm. I was just testing this term. Now, Mr. President, we have talked of partnership. Does this refer only to a civil partnership, or should it apply equally to a corporation which acts like a partnership?

For instance, if A, a lawyer, has a corporation with B and, let us say, B owns 30 percent and A owns 70 percent, and A becomes the Ombudsman or B, the reverse, would the Gentleman cover the situation by this disqualification?

Senator Angara. I would cover that situation, Mr. President, because in a case where A owns 70 percent and B owns 30 percent, that is what we call in corporate laws as incorporated partnership. Therefore, the situation will be covered.

Senator Enrile. Even if one of them should own only 10 percent, they should be treated as partners?

Senator Angara. Yes, Mr. President.

Senator Enrile. Then, we should include this situation in the disqualification.

Senator Angara. Only in incorporated partnership situation.

Senator Enrile. I have a greater problem with this provision than what appears on the surface, that is, we are disqualifying persons because of their association, other than friendship, with the Ombudsman and his deputies, including the Special Prosecutor. But, we know from experience—that is why I said the life of the law is not logic but experience—that most of the time, the work of an organization is done by the people below. And considering the national character of

this office, there will be the distinct possibility that it will have regional offices, which will have regional heads, and these regional heads will be little Ombudsmen in their own respective regions who will be making decisions dealing with the private and public sector. Now, are we going to disqualify some people because they are related to the Ombudsman and we do not disqualify the people who are equally related to the regional heads of the Office of the Ombudsman? Does the Gentleman think that this is attuned to justice and fairness?

Senator Angara. We have to draw the line somewhere, Mr. President. I think, drawing the line at the deputy level is legitimate enough. Otherwise, if we extend the disqualification down to the municipal Ombudsman, then we may find ourselves in a situation, perhaps, where everybody is disqualified.

Senator Enrile. Mr. President, what I am really driving at is this: Since we cannot disqualify friends and people related to other important functionaries of this office—and we know, from our experience as law practitioners and as public men, that friends are sometimes closer to us than our relatives and we may not know all the business connections of people with the Ombudsman—does not the Gentleman think that it would be the wiser thing to do to just adopt the suggestion of the distinguished Senator from Quezon, Senator Saguisag, that we just leave this in the manner we, as practitioners, know in law? And that if there is any doubt regarding the connection of a person appearing before the Ombudsman, we will allow a challenge, so that the Ombudsman or his deputies or special prosecutor will, *motu proprio*, inhibit himself or the person challenged, and if proven that the challenge was valid would not be allowed by that office to participate in the proceedings.

Senator Angara. That is acceptable, Mr. President, in the case of the Judiciary because once we disqualify one Regional Trial Judge, there will be another Regional Trial Judge. But in the case of

the Ombudsman, his position is quite unique. And because of the subject matter that he deals with, which is public misbehavior, we want to announce, in advance, the people who cannot deal with him so that our problems that may exist about influence peddling will perhaps be minimized.

Senator Enrile. Does not the Gentleman think, Mr. President, that the answer to this question lies not really in the disqualification and limitation that we will impose upon the Ombudsman and his deputies and their relations, but rather on the quality of the selection of persons who will be appointed, and that is why the Constitution precisely said that the Ombudsman and his deputies shall be natural born citizens and at the time of their appointment, at least, of such an age, of 40, of recognized probity and independence and members of the Philippine Bar, etc.? Because it places the onus on the appointing power to select the best of the best amongst us to occupy this position, and being the best of the best, those men or women, sitting in these exalted jobs, are actually asked to maintain their highest degree of moral rectitude, not only because they are holding a sensitive position but they should be an example to the entire bureaucracy so that everyone else, hopefully, would follow their example.

Senator Angara. Absolutely, Mr. President, but it will help that judge to preserve his integrity by a provision like this.

Senator Enrile. At any rate, Mr. President, I have given my little view on this. I leave it to the judgment of the Body.

The President. The Chair would like to find out, in accordance with the suggestion of Senator Enrile, to the effect that the life of the law has not been logic but experience. Is it not true that in the Philippines the "compadre" relationship is even more pervasive than the relationship between nephews and uncles? Is it not true, because they do not have this *compadre system* in the United States?

Senator Enrile. Mr. President, if I may be allowed to give my opinion. I think the *compadre system* is very strong.

Senator Angara. If I may give my own opinion too, Mr. President, right here in this hall are social scientists and humanities professors of the University of the Philippines, and they tell me that that is true—the *compadre system* is very strong in this country.

The President. Therefore, the Sponsor is willing to accommodate an amendment to that effect?

Senator Angara. It does not follow, Mr. President, that we will accommodate and exclude now the *compadres* and *comadres*. I still believe, Mr. President, that this committee amendment is the best guarantee for the Ombudsman to preserve his reputation and integrity.

The President. The Chair has a second point. Would it not have strengthened this provision by making it obligatory for the Ombudsman, the deputy, and the Special Prosecutor to make a detailed disclosure not just the ordinary disclosure form of all his business and professional connections and his interests? And if we were to adopt the suggestion of Senator Laurel, the detailed disclosure also of his relatives within the fourth civil degree.

Senator Angara. I think that would strengthen the position of the Ombudsman, Mr. President, if we can make that kind of requirement during the period of amendments. I am sure Senator Laurel would volunteer that kind of amendment.

Senator Enrile. May I just address one more question, Mr. President.

The President. Yes.

Senator Enrile. Would we allow also, Mr. President, the Ombudsman to play golf?

Senator Angara. We are not going to

regulate his recreational activities by this bill, Mr. President.

Senator Enrile. Since the life of the law is experience and not logic, most of the time, Mr. President, transactions are actually discussed and completed in the golf course.

The President. But sometimes the golf partners are the most cordial enemies.

Senator Enrile. Thank you, Mr. President.

The President. Senator Guingona; then Senator Laurel.

Senator Guingona. May I ask just a few questions, Mr. President.

Senator Angara. Yes, Mr. President.

Senator Guingona. If the spouse, the relative, the law partner or business associate is the respondent, this, of course, does not apply, and it would be the Rules of Court provisions that would apply.

Senator Angara. Certainly, yes.

Senator Guingona. Does not the distinguished Sponsor believe that the one-year period should be the measure of the relationship rather than the preceding determination of the closeness? What I mean is that the spouse should be one year married, at least; no spouse within one year preceding the appointment; and no law partner within one year preceding the appointment; but rather, they were partners for at least one year or more.

Senator Angara. I suppose, Mr. President, that a potential candidate for Ombudsman who has several wives cannot be appointed.

Senator Guingona. That is a distinct possibility in the case of Muslims. What I am asking the distinguished Sponsor, Mr. President, is whether the length of partnership should be the more logical yardstick in the light of experience rather than that they were partners, perhaps, for one

day or one month, more than a year before, and then they would be prohibited from appearing. In other words, if they were real partners, then there would be real reason to ask them to inhibit themselves so that they would not intervene or appear as counsel. But if they were only partners for a brief period, I do not think that there is sufficient reason for prohibiting them.

Senator Angara. That is why what we are suggesting, Mr. President, is that the duration of the relationship ought to be at least one year.

Senator Guingona. No, the measure is one year before. So that, if they were partners only for one month, and then the partnership dissolved one year before, that partner can appear.

Senator Angara. Yes, Mr. President. In the premise that if the partnership did not last at least a year, then the undue influence that we are trying to guard against, probably, has not been inculcated. So, the relationship is not a proper object of disqualification.

Senator Guingona. That is right. So, does the Gentleman agree that it is the length of the partnership that should be the determining factor?

Senator Angara. Yes. We are suggesting that it be one year.

The President. Therefore, it should be reworded so that it will be for at least one year preceding the appointment.

Senator Guingona. Yes, no matter how remote.

Senator Angara. We will accept that, Mr. President.

Senator Guingona. And that is also true of the spouse?

Senator Angara. We are not accepting that for the spouse, Mr. President.

Senator Laurel. Mr. President.

The President. Senator Laurel is recognized.

Senator Laurel. I am sorry I have to stand up again, Mr. President. On this amendment just circulated a while ago—I am re-reading it—I have some more questions for the purpose of improving and making more effective and more certain this particular amendment of the Committee on Section 9.

My first question, Mr. President, is, there is a prohibition here in this Section against appearance of spouses and relatives by consanguinity or affinity and of partners and associates. What happens, Mr. President, when there is such an appearance? What is the result, what is the effect, what happens? Under the bill, is there any provision if this should be violated?

Senator Angara. One possibility in that case—that is a good question, Mr. President—is that, if despite the prohibited relationship the Ombudsman allowed the appearance, then perhaps that amounts to breach of trust or betrayal of trust. That is one of the...

Senator Laurel. But what happens? There is a betrayal of trust on the part of the Ombudsman.

Senator Angara. Then that is an impeachable offense.

Senator Laurel. I am glad the Sponsor mentioned that, Mr. President, because I was looking over Section 8 of the bill relative to removal. There is a provision here in Section 8, paragraphs (1) and (2). It speaks of impeachment of the Tanodbayan and of his Deputies, but it does not say who will be the impeaching body.

Senator Angara. As I understand it, Mr. President, impeachment is initiated in the House and tried in the Senate. So Congress is the impeaching body.

Senator Laurel. I am not so sure about that, Mr. President. I think certain officers are provided for in the Constitution, Mr. President. I submit, that that should be restudied.

The second point I would like to ask, Mr. President, is, what is the penalty in case there should be a violation of this particular provision, Section 9 as amended, and of the prohibition which is contained in the bill relative to Section 9 referring to the Tanodbayan and his Deputies and the Special Prosecutor: "They shall not engage in the practice of any profession . . ." et cetera? What is the penalty here as provided in this bill?

Senator Angara. Before leaving the first question of the distinguished Gentleman, let me just cite for the record: which will be the body that would try impeachment. It is provided for under Article XI, Section 3, subparagraph (1) which reads:

The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

And then subparagraph (6) says:

The Senate shall have the sole power to try and decide all cases of impeachment.

And Section 2—

Senator Laurel. Does that definitely cover all public officers including the Ombudsman?

Senator Angara. Section 2 says the Ombudsman is subject to impeachment, Mr. President.

Senator Laurel. I think that should be clarified, Mr. President, that the Ombudsman falls under this particular power of impeachment of the House of Representatives.

The President. Is it the understanding of the Chair that the Ombudsman alone in that office may be impeached, the Deputies may not?

Senator Angara. That is true, Mr. President. That is provided under the Constitution.

Senator Laurel. Mr. President, Section 8, paragraph 2 of the bill provides:

A Deputy may be removed from office by the President for any of the grounds provided for the removal of the Tanodbayan and after due process.

That is all it says.

Senator Angara. The reason for that, Mr. President, is that under the Constitution, it is only the Ombudsman who is subject to impeachment.

Senator Laurel. But these people are assured of a tenure, I think, of seven years. And who will investigate that or initiate the proceedings? In other words, who will bring their acts of malfeasance before the fore of public opinion and then, filing of cases? Is it anybody outside of the Ombudsman in particular?

Senator Angara. Well, in the first place, I think the Office of the Ombudsman will initiate it.

Senator Laurel. It is very difficult, Mr. President, to imagine that an Ombudsman would investigate himself.

Senator Angara. No, I am not talking of the Ombudsman himself, Mr. President. I thought we are talking of the Deputies or personnel of the Ombudsman. I thought the question is who will initiate the prosecution of Deputy Ombudsman, and I was saying that the Ombudsman would be under the law of lights to initiate the proceedings.

Senator Laurel. Well, probably, we should have something here to also monitor the acts of the investigator, the prosecutor and judge; in other words, the Ombudsman himself or his Deputies.

Thank you, Mr. President.

Senator Angara. Thank you, Mr. President.

The President. Is there any other question?

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. Thank you very much, Mr. President.

Will the Gentleman yield to some questions, Mr. President?

Senator Angara. Yes, certainly, Mr. President.

Senator Pimentel. Am I correct, Mr. President, in thinking that the Gentleman has accepted the amendment that instead of the partnership or association being limited by the phrase "within one year preceding the appointment of the Ombudsman", the Gentleman changed that by the phrase "FOR AT LEAST ONE YEAR"?

Senator Angara. Yes, Mr. President, I accepted the deletion of the word "within" and in lieu thereof, insert "FOR AT LEAST ONE YEAR."

Senator Pimentel. Mr. President, I would like to raise the issue that the quality of friendship or association does not really depend on the lapse of one year. What I am trying to say, Mr. President, is that the association or the partnership may have become cemented between the partner or the associate concerned and the prospective Ombudsman, let us say, after the lapse of three months or even six months, or even one month. Perhaps really, Mr. President, the better phraseology would be to retain the phrase "within one year". Because at any given moment within that time frame, such degree of friendship or association can develop between the prospective Ombudsman and the partner. To my mind, there is really no rationale for saying that the partnership should, at least, have lasted for a year, if the intention is to preclude the possibility that that association or partnership would somehow cause the Ombudsman to be influenced in his decision-making by his associate or partner.

The President. Is it the point of Senator Pimentel that, sometimes, love at first sight is more lasting than love over a number of years?

Senator Pimentel. That is correct, Mr. President, specially among the blind. [*Laughter*]

SUSPENSION OF THE SESSION

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

It was 6:40 p.m.

RESUMPTION OF THE SESSION

At 6:45 p.m., the session was resumed.

The President. The session is resumed.

Senator Angara. Mr. President, after conferring with the distinguished Gentleman, the President Pro Tempore and Senator Pimentel, Senator Guingona has graciously agreed to withdraw the amendment and keep the original wording within one year without prejudice to any amendment he made during the period of Individual Amendment.

The President. May we know now the language of the entire amendment so we have something to vote on.

Senator Angara. Yes, Mr. President. Let me read now the proposed amendment including the amendment of Senator Tañada:

NO SPOUSE OR RELATIVE BY CONSANGUINITY OR AFFINITY WITHIN THE FOURTH CIVIL DEGREE AND NO LAW, BUSINESS OR PROFESSIONAL PARTNER OR ASSOCIATE OF THE OMBUDSMAN, HIS DEPUTIES AND THE SPECIAL PROSECUTOR WITHIN ONE YEAR PRECEDING THE APPOINTMENT MAY APPEAR AS COUNSEL OR AGENT ON ANY MATTER PENDING BEFORE THE OFFICE OF THE OMBUDSMAN OR TRANSACT BUSINESS DIRECTLY OR INDIRECTLY THEREWITH.

THIS DISQUALIFICATION SHALL APPLY DURING THE TENURE OF THE OFFICIAL CONCERNED. THIS DISQUALIFICATION LIKEWISE EXTENDS TO THE LAW FIRM FOR THE SAME PERIOD.

The President. This extends to the law office for the same period? I suppose the business office should be covered also.

Senator Angara. Yes, Mr. President, and the law firm or business.

The President. When we say "for the same period," how long will that be, that disqualification?

Senator Angara. Construing it the way Senator Gonzales did, that would be the longest period of seven years which is the term of the Ombudsman.

The President. So, is it seven years? All right, subject to restyling. Is there any objection to the amendment? [Silence] Hearing none, the same is approved.

Senator Angara. Thank you, Mr. President.

The other amendment that we held pending, Mr. President, is on page 6, lines 10 and 11. Again, the President Pro Tempore, Senator Guingona, has graciously agreed to withdraw his proposed amendment here and let the original committee amendment stand without prejudice, of course, to his standing up again during the period of Individual Amendment.

So that the whole amendment will now read, Mr. President...

The President. What line is that?

Senator Angara. On page 6, lines 10 and 11.

The President. Yes.

Senator Angara. Delete Subsection 6 and in lieu thereof, insert the following Subsection:

Publicize matters covered by its investigation OF THE MATTERS MENTIONED IN PARAGRAPHS 1, 2, 3, AND 4, HEREOF, when circumstances so warrant and with due prudence. PROVIDED THAT NO PUBLICITY SHOULD BE ALLOWED DURING THE PENDENCY OF A PRELIMINARY INVESTIGATION AND THE NAME OF THE COMPLAINANT AND THE RESPONDENT SHALL NOT BE MADE PUBLIC UNTIL AN INFORMATION IS FILED.

The President. Is there any comment? Is there any objection?

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. Thank you, Mr. President. At this juncture, in view of the withdrawal of Senator Guingona of his previous amendment, I would like to make of record that unless the honorable Sponsor can accommodate my proposed amendment now, that I be given the right to propose

RESUMPTION OF THE SESSION

At 6:45 p.m., the session was resumed.

The President. The session is resumed.

Senator Angara. Mr. President, after conferring with the distinguished Gentleman, the President Pro Tempore and Senator Pimentel, Senator Guingona has graciously agreed to withdraw the amendment and keep the original wording within one year without prejudice to any amendment he made during the period of Individual Amendment.

The President. May we know now the language of the entire amendment so we have something to vote on.

Senator Angara. Yes, Mr. President. Let me read now the proposed amendment including the amendment of Senator Tañada:

NO SPOUSE OR RELATIVE BY CONSANGUINITY OR AFFINITY WITHIN THE FOURTH CIVIL DEGREE AND NO LAW, BUSINESS OR PROFESSIONAL PARTNER OR ASSOCIATE OF THE OMBUDSMAN, HIS DEPUTIES AND THE SPECIAL PROSECUTOR WITHIN ONE YEAR PRECEDING THE APPOINTMENT MAY APPEAR AS COUNSEL OR AGENT ON ANY MATTER PENDING BEFORE THE OFFICE OF THE OMBUDSMAN OR TRANSACT BUSINESS DIRECTLY OR INDIRECTLY THEREWITH.

THIS DISQUALIFICATION SHALL APPLY DURING THE TENURE OF THE OFFICIAL CONCERNED. THIS DISQUALIFICATION LIKEWISE EXTENDS TO THE LAW FIRM FOR THE SAME PERIOD.

The President. This extends to the law office for the same period? I suppose the business office should be covered also.

Senator Angara. Yes, Mr. President, and the law firm or business.

The President. When we say "for the same period," how long will that be, that disqualification?

Senator Angara. Construing it the way Senator Gonzales did, that would be the longest period of seven years which is the term of the Ombudsman.

The President. So, is it seven years? All right, subject to restyling. Is there any objection to the amendment? [Silence] Hearing none, the same is approved.

Senator Angara. Thank you, Mr. President.

The other amendment that we held pending, Mr. President, is on page 6, lines 10 and 11. Again, the President Pro Tempore, Senator Guingona, has graciously agreed to withdraw his proposed amendment here and let the original committee amendment stand without prejudice, of course, to his standing up again during the period of Individual Amendment.

So that the whole amendment will now read, Mr. President...

The President. What line is that?

Senator Angara. On page 6, lines 10 and 11.

The President. Yes.

Senator Angara. Delete Subsection 6 and in lieu thereof, insert the following Subsection:

Publicize matters covered by its investigation OF THE MATTERS MENTIONED IN PARAGRAPHS 1, 2, 3 AND 4, HEREOF, when circumstances so warrant and with due prudence. PROVIDED THAT NO PUBLICITY SHOULD BE ALLOWED DURING THE PENDENCY OF A PRELIMINARY INVESTIGATION AND THE NAME OF THE COMPLAINANT AND THE RESPONDENT SHALL NOT BE MADE PUBLIC UNTIL AN INFORMATION IS FILED.

The President. Is there any comment? I there any objection?

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. Thank you, Mr. President. At this juncture, in view of the withdrawal of Senator Guingona of his previous amendment, would like to make of record that unless the honorable Sponsor can accommodate my proposed amendment now, that I be given the right to propos

it at a later time, in order not to disrupt the proceedings, Mr. President, for the reason that I do believe that allowing the Tanodbayan or the Ombudsman the power to preclude the publication of any case regarding the name or the identity of the suspect who happens to be, by the way, a public official, before the finding of a prima facie case would, in effect, create a situation where pressures can be brought to bear upon the Tanodbayan or the Ombudsman. And I am afraid that under present circumstance, considering the stage of our development as a democratic society, we have not yet arrived at such political maturity as to inhibit our own public officials and their friends and supporters from coming to his rescue at the time when he is being investigated by the Ombudsman. That is what I am most concerned about, Mr. President, in addition to the fact, as Senator Saguisag has repeatedly stated, that this will be tantamount to a special prerogative of the powerful. Because such right against adverse publicity is not accorded to, let us say, an ordinary person who is being charged for theft, murder or homicide before a corresponding court or being investigated, in fact, by a fiscal, So, in these two grounds, Mr. President, I would certainly request a serious consideration of these observations.

Senator Gonzales. Mr. President.

The President. What is the pleasure of the Sponsor?

Senator Angara. I think Senator Gonzales...

The President. Maybe, the point of Senator Pimentel can be taken up during the period of Individual Amendments. That will be the compromise so that we can vote on the committee amendment.

Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Angara. Thank you, Mr. President.

The President. Senator Gonzales is recognized.

Senator Gonzales. May I call the attention of the Sponsor. During the interpellation, he had agreed that instead of the clause "UNTIL THE INFORMATION IS FILED", then, "THE FINAL RESOLUTION OF THE CASE".

Senator Angara. I am sorry, Mr. President. I have overlooked that. That is true that the phrase "AN INFORMATION" should be substituted with "THE FINAL RESOLUTION OF THE PRELIMINARY INVESTIGATION". So, may I move for a reconsideration and have that phrase "THE FINAL RESOLUTION OF THE PRELIMINARY INVESTIGATION" be inserted immediately after the word "UNTIL"?

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. Mr. President, the point has been clarified. I thought the phrase "UNTIL THE FINAL RESOLUTION OF THE CASE" refers to the ending of the trial and a decision is being handed. Apparently, it is only until after the resolution of the preliminary investigation.

The President. The resolution of the preliminary investigation either results in the dismissal of the complaint or in the filing of an information.

Senator Angara. That is true, Mr. President. That is why we want to catch also the situation where there is no information filed.

The President. All right. During the pendency of the preliminary investigation, there is no publicity here and if the case is dismissed, what need is there for any publicity? The publicity will occur only if an information is filed. Then, there will be need for that publicity.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized.

Senator Gonzales. Here, talks in these coffee shops can be more harmful than actually a publication of certain charges. Innuendos, Mr.

President, may appear in the newspaper, people have a way of actually writing by innuendoes, and the respondent in a preliminary investigation may feel that he has already been publicly identified, and the dismissal of his case will afford him the opportunity to vindicate his name.

The President. So, how will it be worded now?

Senator Angara. So it will be worded as follows—let me just go to the proviso, Mr. President:

PROVIDED THAT NO PUBLICITY SHALL BE ALLOWED DURING THE PENDENCY OF A PRELIMINARY INVESTIGATION, AND THE NAME OF THE COMPLAINANT AND THE RESPONDENT SHALL NOT BE MADE PUBLIC UNTIL THE FINAL RESOLUTION OF THE PRELIMINARY INVESTIGATION.

The President. Probably, it should be plural, the “names” of the complainant and the respondent.

Senator Saguisag. Mr. President.

The President. Senator Saguisag is recognized.

Senator Saguisag. Mr. President, it was partly touched upon by the Gentleman from Mandaluyong. In the real world, the way this will operate is that the preliminary investigation is an artificial period. But that may well lead to a formal complaint being filed as a consequence of a privilege speech in the Senate, and the whole world would have known previously of the complaint against a person. In such a case publicity about exoneration would be extremely useful. But there could also be an instance when everything may be very discreet. Nothing has really come out then, maybe the Ombudsman ought to have some discretion really whether the respondents themselves may not be interested in publicity. Dahil kung wala po namang nakakaalam, bakit pa? But, I think that most of the time, it is not only the coffee shop aspect of it. Long before the formal preliminary investigation

begins, there is publicity. The Senators themselves—maybe, we are doing this everyday—can keep denouncing people before there is any preliminary investigation. In such a case, a formal announcement of exoneration is something that really should have value.

Thank you, Mr. President.

The President. All right. Is there any objection to the amendment, as amended? [*Silence*] Hearing none, the same is approved.

Senator Angara. Thank you, Mr. President. That concludes the submission of Committee amendments.

The President. The Majority Floor Leader.

Senator Mercado. I move that we close the period of committee amendments.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

MOTION OF SENATOR MERCADO (Additional Authors of S. No. 703)

Senator Mercado. Mr. President, with regard to Senate Bill No. 703, the bill on patent, I move that this Representation and Senator Estrada be included as coauthors.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

ADJOURNMENT OF THE SESSION

Senator Mercado. Mr. President, I move that we adjourn the 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 6:57 p.m.

107 - 111
(5 - pages)

ORGANIZATION OF THE OFFICE OF THE OMBUDMAN.
R.A. No. 6770 / S.B. No.543/ H.B.No. 13646

RECORD OF THE SENATE

AUG 10,1988

The Secretary will now proceed with the reading of the Order of Business.

REFERENCE OF BUSINESS

BILLS ON FIRST READING

The Secretary. Senate Bill No. 710, entitled:

AN ACT ESTABLISHING IN CERTAIN CASES PRODUCTION SHARING SCHEME IN THE PINEAPPLE INDUSTRY PROVIDING MECHANISM THEREFOR AND FOR OTHER PURPOSES

Introduced by Senators Herrera, Pimentel, Jr., and Osmeña.

The President. Referred to the Committees on Labor, Employment and Human Resources Development; and Agriculture and Food.

The Secretary. Senate Bill No. 711, entitled:

AN ACT REVISING, CONSOLIDATING AND CODIFYING ALL LAWS AFFECTING FISHERIES AND AQUATIC RESOURCES

Introduced by Senators Tañada and Pimentel, Jr.

The President. Referred to the Committees on Agriculture and Food; Constitutional Amendments, Revision of Codes and Laws; and Finance.

The Secretary. Senate Bill No. 712, entitled:

AN ACT TO REPEAL ALL IMMUNITY PROVISIONS IN A REPUBLICAN DEMOCRACY

Introduced by Senator Saguisag.

The President. Referred to the Committee on Constitutional Amendments, Revision of Codes and Laws.

RESOLUTION

The Secretary. Proposed Senate Resolution No. 229, entitled:

RESOLUTION AMENDING SECTION 11, RULE X AND SECTION 17, RULE XI OF THE RULES OF THE SENATE

Introduced by Senator Mercado.

The President. Referred to the Committee on Rules.

COMMITTEE REPORT

The Secretary. Committee Report No. 303, submitted by the Committee on Social Justice, Welfare and Development, on Proposed Senate Resolution No. 179, introduced by Senator Angara, entitled:

RESOLUTION URGING THE ADVOCACY OF THE WORLD PROGRAMME OF ACTION CONCERNING DISABLED PERSONS IN ALL GOVERNMENT AGENCIES

recommending its approval with amendment.

Sponsor: Senator Angara.

The President. Referred to the Calendar for Ordinary Business.

BILL ON SECOND READING

Senate Bill No. 543 - Office of the Ombudsman
(Continuation)

Senator Mercado. Mr. President, I move that we resume consideration of of Senate Bill No. 543. as reported out in Committee Report No. 263.

We are in the period of individual amendments, Mr. President. I move that we recognize the Sponsor, Senator Angara.

The President. Senator Angara is recognized. But Senator Enrile has something to say first.

PARLIAMENTARY INQUIRY OF
SENATOR ENRILE
(On New Developments on
Philippine-Malaysian Relations)

Senator Enrile. Parliamentary inquiry, Mr. President.

The President. Yes.

Senator Enrile. As a matter of personal privilege, may I know if there is any news regarding developments bearing on the 48 Filipinos on the basis of the claimed development in Malaysia

yesterday so that we will know how to deal with the problem?

I posit the question, Mr. President, because yesterday when I filed the Resolution, there was a motion by a Member of the Chamber to consider the matter immediately. But, the motion was withdrawn because of further developments on this matter on the Malaysian side. May I know if there is any news about it?

The President. The Gentleman's Resolution was referred to the Committee on Foreign Relations. And, if there is any development, the Chairman of the Committee should know.

Senator Enrile. Thank you very much.

The President. All right. Senator Angara is recognized.

Have all the committee amendments been taken up and approved?

Senator Angara. That is correct, Mr. President. We are now in the period of individual amendments.

The President. All right. Are there any individual amendments?

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized; then Senator Maceda.

Senator Guingona. Mr. President, we were just wondering whether clean copies, including the Committee amendments, can be distributed to us because it seems disjointed, Mr. President.

The President. The point is well taken. It might be good to have a clean copy with all the amendments that have been passed. Shall we suspend—

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized.

Senator Maceda. Mr. President, while we are looking for a clean copy, I would like to raise a

possible amendment which is an entirely different matter.

The President. The Chair would like to know whether there is any available clean copy which we can wait for.

Senator Mercado. I have been informed that it is being rushed at the moment, and we have asked the Staff to speed up the work so that we can tackle our work on this particular measure.

The President. All right. Senator Maceda.

Senator Maceda. My principal concern that has not been resolved is with regard to Section 14, Subsection 11, on the power granted to the Ombudsman to investigate and initiate the proper action for the recovery of ill-gotten wealth and/or unexplained wealth and the prosecution of the parties involved therein, which is the PCGG matter, in effect. And I was really wondering whether we have studied this matter thoroughly as to the implications of this: First, are we giving the Ombudsman concurrent jurisdiction on this? By this bill, are we intending to abolish the PCGG and if we are giving the Ombudsman this particular function, whether it is concurrent or exclusive? Are we not again risking the effectivity of the Ombudsman by saddling him with what might again be a very controversial function? Under this function, will the Ombudsman appoint fiscal agents in the future and all the staff similar to the PCGG that we are now investigating?

Now, this has not been specifically granted by the Constitution. Of course, I am not questioning the giving of this power to the Ombudsman, but I wonder whether this particular matter, in the light of present discussions, has really been fully discussed from the viewpoint of policy.

To begin with, do we really want to give the Ombudsman specifically this function and expose them to the inherent problems that such a function will entail?

Senator Angara. Mr. President, we take the position that we should give this kind of power to the Ombudsman. To answer the specific question raised by the Gentleman whether the Ombudsman now will take over the place of the PCGG, the answer is no. The PCGG will continue to go after ill-gotten wealth in the past; but, if in the future, there is going to be some prosecution for ill-gotten wealth, then the second question of the Gentleman will arise whether it is the PCGG or the Ombudsman who will have jurisdiction.

Our view, Mr. President, is that: ultimately, we must provide in the law this kind of power for the Ombudsman because this is looking towards the future. As I understand it, the PCGG could not live forever. It has to come to an end sometime because by design, it was so constructed.

Therefore, we have to have a vehicle that will, in a way, absorb the work and job of the PCGG in the future. And this is what we are intending to do.

Senator Maceda. Mr. President, I understand exactly what the Gentleman has said. Again, I must confess that, at this point, with due respect to the statement of the Sponsor, I do not think that we have fully studied the pros and cons of this bill, even in the light of his explanation now that the PCGG will continue with past cases and that the Ombudsman now will start with future cases.

So, there is an implication there. If that is so, we have to put in this particular Bill, specifically, what he said that the PCGG is now being phased out and will only continue to handle past cases which, as I said, I wonder whether we have really discussed that as a matter of policy.

The President. The Chair understands that under Executive Order No. 1, the jurisdiction of the PCGG is limited to the recovery of ill-gotten wealth under the past regime.

Senator Maceda. Then, the other question which I raised—the option is either to give it to the Ombudsman or to create a separate body, because,

besides this particular problem, the Ombudsman is expected to deal with so many other questions. And I really wonder whether we are risking keeping the Ombudsman effective in all these other functions by giving it this particular function which might be their problem function in the future. I am not saying it will be; I am just saying I do not believe that some of us took this as a matter of course in the past, but in the light of recent developments, I do not think that this policy matter has been given sufficient consideration, at least, by this Representation and I am just being very candid about it, Mr. President.

Senator Angara. Can I just make a short statement on that, Mr. President.

The President. Yes, please.

Senator Angara. Mr. President, my readings of the proceedings of the Constitutional Commission, as well as of Article XI, indicate in my mind that the job of recovering ill-gotten wealth in the future ought to be vested in the Ombudsman. In fact, the Constitutional Commission proceedings would clearly indicate that that was the intent, and in Article XI, we have this reference in Section 15 to the right of the State to recover ill-gotten wealth that will not be barred by prescription, and it seems to me that it is the reflection of the intent—that the Ombudsman would be the proper agency or officer who will undertake this recovery.

Senator Gonzales. Mr. President.

The President. Senator Gonzales.

Senator Gonzales. Mr. President, I think there is much merit in the observation placed on record by Senator Maceda. Because as I recall it—and please correct me if I am wrong—under Executive Order No. 1, as amended, creating the PCGG, the PCGG has taken over from the fiscals the power to conduct preliminary investigations. I seem to recall that under the Magsaysay Anti-Graft Law, before a complaint for the forfeiture of property in favor of the State can be filed, there must be a preliminary investigation conducted by

the fiscal. That power heretofore vested in the fiscal with the creation of the PCGG with respect to ill-gotten wealth has been transferred to the PCGG.

So, the question now is: Is it the intention of this bill to take away that power from the PCGG and vest it in the Ombudsman in all cases? The second is: Assuming that it can legally be done—as I think we can do it—then let us debate now on the propriety of such a transfer of power to the Ombudsman?

Now, if the intention of the Committee is to make a distinction between the recovery of ill-gotten wealth in the past and the power of the PCGG over them to remain intact, in which case the power of the Ombudsman would be prospective that it could refer only to unexplained wealth cases or ill-gotten wealth after February... I do not know what is the cutoff date, I think that should be made explicit in this bill in order to avoid a possible conflict of jurisdiction between these two agencies of Government.

Senator Angara. Mr. President, we are grateful for the very kind advice of our distinguished Colleague. I think he explained very well, more than I can, what the intent of this bill is. The intent really is to limit this power to the present and leave the jurisdiction of the PCGG intact as far as recovery of ill-gotten wealth under the past Administration is concerned.

So perhaps, what we can do, Mr. President, is to introduce individual amendments as a transitional provision when we come to that so that the distinction between the jurisdiction of the Ombudsman and the PCGG could be made clearer.

The President. The Chair would like to ask one question.

Under the Constitution, the responsibility of the Office of the Ombudsman seems to be directed

primarily against public officials and public employees.

Senator Angara. That is correct, Mr. President, under Section 12.

The President. But the recovery of ill-gotten wealth is more than that. It can involve businessmen or private individuals, not necessarily public officials.

Senator Angara. That is true, Mr. President, because under Section 15, the right to recover properties, not only arises against public officials or employees, but also against their nominees and transferees. Therefore, logically, the Ombudsman's jurisdiction, pursuant to the provision of the Constitution, would extend to the transferees or nominees, even to private persons.

The President. Supposing the private individual is neither a transferee nor a nominee, but he is involved in ill-gotten wealth, would the Ombudsman have jurisdiction?

Senator Angara. In my opinion, Mr. President, he must be found to have violated some anti-graft or some other acts in conspiracy with the public official.

The President. Anyway, I will raise an incidental question.

As a matter of policy, is it good for the Office of the Ombudsman to be involved in cases like these, when it is involved in many other cases? Would it be a workable arrangement?

Senator Angara. I leave that to the judgment of the Senators, Mr. President.

Senator Herrera. Mr. President.

The President. Senator Herrera is recognized.

Senator Herrera. In the same Subsection 10 of Section 14, let me read the provision:

Delegate to the Deputies, or its investigators or representatives such authority, duty or responsibility

as shall insure the effective exercise or performance of the powers, functions, and duties herein or hereinafter provided.

I think, Mr. President, while we can delegate authority, responsibility cannot be delegated; otherwise, this will destroy the doctrine of command responsibility

So, maybe, it is important that we have to take a second look into this provision because, I feel that the Ombudsman, as I said, may delegate authority, but I do not think it would be wise to allow him to delegate responsibility.

Senator Angara. I appreciate the very good point raised by the Gentleman, Mr. President, and we would be happy to welcome any amendment.

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. Mr. President, just to make use of the time, may I ask the distinguished Sponsor if, in his copy, the provision of the creation of the representatives of the Ombudsman in the various municipalities, cities and provinces is still carried in the Gentleman's "dirty" copy in the absence of the clean copy?

Senator Angara. I think it is still carried in the original draft, Mr. President. Well, I note that the Gentleman has really raised a question about the wisdom of that provision.

Senator Pimentel. Yes, Mr. President. I would like to reiterate, if the Sponsor would like to consider it, a proposal to delete that provision for the reason that I do not think it is wise to dissipate the energies of this particular agency of the Government to handle all kinds of cases of shenanigans or misdemeanor or misbehavior of our public officials, down to the last municipality in the country.

So, my point of view, Mr. President, is that we had better limit the Tanodbayan, the Ombudsman,

to real big cases of graft and corruption in Government.

Senator Angara. We will welcome that change, Mr. President. It is still carried in Section 23 of the original draft.

The President. The Majority Floor Leader.

SUSPENSION OF CONSIDERATION OF S. NO. 543

Senator Mercado. Mr. President, I have been informed that the clean copies of Senate Bill No. 543 may take some time, considering that the equipment in that room being vacated are being used by our stenographers to make way for changes in our room assignment. I move that we suspend consideration of Senate Bill No. 543, Mr. President.

The President. I think Senator Angara should know. There is a motion to suspend consideration of this bill in the meantime because clean copies will not be available until some time.

Senator Angara. Yes, Mr. President. We abide by the decision, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

BILL ON SECOND READING

Senate Bill No. 373-Early Retirement and Voluntary Separation (Continuation)

Senator Mercado. Mr. President, I move that we consider Committee Report 147 on Senate Bill No. 373.

Mr. President, the parliamentary situation is that we are in the period of Committee amendments. I move that we recognize the Sponsor, Senator Rasul.

The President. Senator Rasul is recognized.

Senator Rasul. Thank you, Mr. President.

I believe we have a new clean copy, Mr. President, and the title is shorter:

AN ACT PROVIDING BENEFITS FOR EARLY

112 - 127
(16 - pages)

ORGANIZATION OF THE OFFICE OF THE OMBUDMAN.
R.A. No. 6770 / S.B. No.543/ H.B.No. 13646

RECORD OF THE SENATE

AUG 11,1988

and retirement premiums. Again, that is automatic, Mr. President. That is not provided in the General Appropriations Act. And then there is the continuing appropriation for public works under Executive Order No. 182.

Now, we may want to review all these continuing public works appropriations, but until such time that we review them, and we remove the continuing or automatic appropriation there is a law that mandates that every year.

Also, Mr. President, there is the provision for CARP. That is also automatic. I recall the executive order—probably Senator Alvarez can remember that executive order. Again, that is automatic. So, all of these have passed legislative scrutiny.

Well, of course, when the executive order was issued, there was no legislature then. It is up to us now to review all those executive orders. If we feel that we should not give automatic appropriation to CARP under the Executive Order—I forgot the number—then that is up to us. If we feel that the continuing appropriations should not be continuing and automatic, then it is up to us to do this.

I am just explaining this, Mr. President, to show that there is no juggling of funds, and that, therefore, the Constitution has been observed. Moreover, Congress, both the House and the Senate approved and passed all these various General Appropriations Act provisions which contain the special projects such as COA, foreign-assisted projects, calamity funds, et cetera.

With that, Mr. President, I hope this little explanation would clarify some of the matters.

Thank you, Mr. President.

The President. The Majority Floor Leader.

SUSPENSION OF THE SESSION

Senator Mercado. Mr. President, I move for the suspension of the session.

The President. The session is suspended after

saying that Senator Romulo is the principal Author of the bill he refers to.

It was 5:33 p.m.

RESUMPTION OF THE SESSION

At 6:05 p.m., the session was resumed.

The President. The session is resumed.

The Majority Floor Leader.

INDIVIDUAL AMENDMENTS

Senator Mercado. Mr. President, I move that we consider Committee Report No. 263 on Senate Bill No. 543, entitled:

AN ACT PROVIDING FOR THE STRUCTURAL AND FUNCTIONAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES

We are in the period of Individual Amendments, Mr. President. Clean copies with the engrossed Committee Amendments have been distributed to the Members of the Senate. I move that we recognize the Sponsor, Senator Angara.

The President. Senator Angara is recognized.

Senator Angara. Thank you, Mr. President.

Mr. President, before we begin the Individual Amendments, may I just state for the *Record* that Senator Gonzales is a coauthor of this bill, in addition to Senators Tañada, Rasul, and myself.

The President. Let that be recorded.

Have the copies of this been distributed already?

Senator Angara. Yes, Mr. President.

The President. The Committee Amendments are in this latest version?

Senator Angara. Yes, Mr. President, the Committee Amendments have been incorporated into this latest version.

The President. All right, let us now take up the Individual Amendments.

Any individual amendment on page 1?

Senator Romulo. Mr. President.

The President. Senator Romulo is recognized.

ROMULO AMENDMENTS

Senator Romulo. Mr. President, with the permission of the distinguished Sponsor, this would be in Section 3, Office of the Ombudsman. Will the distinguished Sponsor accept this amendment on line 14 to read: "one Overall Deputy TO BE KNOWN AS SENIOR DEPUTY TANODBAYAN". The purpose of this is to designate the hierarchy and, also, we would like to propose that the Acting Tanodbayan will be in a concurrent capacity until a Tanodbayan shall have been appointed for a full term. That is later on, Mr. President.

The President. What is the pleasure of the Sponsor?

Senator Angara. We accept the amendment, Mr. President.

The President. So, how will it read now?

Senator Romulo. Well, it would read, Mr. President:

The independent Office of the Ombudsman shall be composed of the Ombudsman to be known as Tanodbayan, one Overall Deputy TO BE KNOWN AS SENIOR DEPUTY TANODBAYAN, one Deputy each for Luzon, Visayas and Mindanao, a Deputy for the military establishment AND A SPECIAL PROSECUTOR.

That will take care also of the Office of the Special Prosecutor.

The President. Let us take up line 14 first.

Senator Romulo. Yes.

The President. "SENIOR DEPUTY TANODBAYAN." Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Romulo. Mr. President, may I proceed.

The President. Please.

Senator Romulo. ..."one Deputy each for Luzon, Visayas and Mindanao and a SPECIAL PROSECUTOR." So that in this Section, Mr. President, all the officials are enumerated, which include the Special Prosecutor.

The President. What is the pleasure of the Sponsor?

Senator Angara. We accept, Mr. President.

Senator Romulo. Thank you.

The President. But, in view of the fact that there is a reference to a separate Deputy for the Armed Forces on lines 16 and 17, should not the Special Prosecutor come in after that sentence?

Senator Romulo. Yes, Mr. President, I stand corrected. After A SEPARATE DEPUTY FOR THE ARMED FORCES MAY LIKEWISE BE APPOINTED.

The President. Subject to refinement and style.

Senator Romulo. Yes, Mr. President.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Is there any other amendment on page 1?

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. Just a comprehensive suggestion, Mr. President. If the referral is to Tanodbayan, then it should be consistent throughout. Because sometimes this bill refers to the Ombudsman, sometimes to the Tanodbayan and it only leads to confusion.

The President. We shall approve this subject to refinement and style.

Senator Guingona. I see.

The President. Is there any amendment on page 2?

Senator Guingona. Mr. President.

GUINGONA AMENDMENT

Senator Guingona. On line 27, Mr. President, after the word "Tanodbayan" and "after due process". Before I present the amendment, may I know what is meant by "after due process?" How will the Deputy Tanodbayan be removed from office?

Senator Angara. We added the phrase "after due process", Mr. President, only to highlight that the Deputy Tanodbayan may not be removed for any cause, or without cause at all. That means he must be removed for cause and after procedural due process.

Senator Guingona. Yes, but does the distinguished Sponsor have anyone in mind who would try the Deputy Tanodbayan?

Senator Angara. Yes. The President will be the one to remove him, Mr. President.

Senator Guingona. Because that may go against the independence of the Tanodbayan, Mr. President. I was wondering, since in Section 12 the Tanodbayan is empowered to make rules and regulations, whether they can include rules and regulations concerning the procedure for the removal of the Tanodbayan.

Senator Angara. Yes, the rules and regulations, Mr. President, may provide for the procedure and even grounds for removal, but still it will answer the Gentleman's original question: Who will remove him?

Senator Guingona. Because if it is the Office of the President, that may go against the independent intent of the Constitution, Mr. President. Perhaps, the Office of the Tanodbayan should discipline itself.

Senator Angara. Whom does the Gentleman recommend, Mr. President?

Senator Guingona. Well, the Ombudsman himself can only be impeached and, therefore, the Deputy should be removed only—

Senator Angara. By the Ombudsman.

Senator Guingona. —by the Ombudsman.

Senator Angara. I have no objection to that, Mr. President.

Senator Guingona. Pursuant to rules and regulations prescribed by the Office of the Tanodbayan.

The President. Would that be a better procedure than removal by the President? The Ombudsman and the Deputy Ombudsman may be trying to protect one another.

Senator Guingona. Yes, but the independence—

The President. Why do we not say there, instead of "after due process", "AFTER DUE NOTICE AND HEARING"?

Senator Guingona. Yes, but by whom?

The President. Evidently, the President is the ultimate authority.

Senator Guingona. I have that reservation, Mr. President, that the constitutional intent was to make this an independent office. If we have allowed the Executive to have disciplinary powers over the Tanodbayan Deputies, that may encroach upon the real or genuine independence of the Tanodbayan.

The President. What is the pleasure of the Sponsor?

Senator Angara. Well, I was originally not averse to accepting that, Mr. President, but since the Chair made a comment that if it is the Ombudsman himself or the Tanodbayan himself who will be given that authority, there may be self-dealing, some mutual-protection society developing among them and, perhaps, it may be better that an outside official be the removing agency so that there would be a sort of check and balance.

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. May we suggest a compromise. Maybe the Supreme Court should be the final arbiter in the removal of a Deputy Tanodbayan instead of the President.

Senator Angara. Including the Special Prosecutor?

Senator Pimentel. No, no, just up to that level of the Deputy Tanodbayan, if the intention is to have a separate constitutional body as a disciplining arm for the Deputy Tanodbayan.

The President. Senator Enrile, then, Senator Gonzales.

Senator Enrile. Mr. President, actually, I have two points but I will deal with this problem. The theory of the Office of the Ombudsman is that it must be an independent body, catering to no favor from either the Office of the President or even the Supreme Court. So that if we want to make this body really independent, then we should grant to the Tanodbayan the power to remove his own deputies if they so commit acts as causes for removal as defined by law, because if we are going to put them under the jurisdiction of the Supreme Court in terms of removal especially the deputies, then the Ombudsman will lose control over his deputies.

The President. Senator Gonzales is recognized.

Senator Gonzales. I can see the reason why it was proposed here that probably the removing authority should be the Supreme Court. My problem with that suggestion is that it may run counter to the principle of separation of powers, because then the Supreme Court will be required to perform an administrative duty or function which is not a consequence of its judicial functions. Time and again, I think, it has been ruled that the Supreme Court cannot be compelled to perform administrative functions except those which are specifically vested in it by the Constitution or those

which are incidental to the performance of judicial functions. The power of removal in this particular case is really executive or administrative and it is certainly not incidental to the exercise of judicial powers of the Supreme Court, because unlike inferior courts, they are not judicial bodies, neither do they perform judicial functions.

Now we are confronted with a situation where we have to make a choice as to who is the removing authority. To me, in the absence of any valid reason, then I think that the power of removal should be inferred from the power of appointment. And since it is the President who has the power to appoint, then unless, I repeat, there are overriding considerations, that should carry with it the power to remove. Of course, there is that protection of due process because of the requirement of notice and hearing.

The President. Supposing a compromise were adopted where the recommendation comes from the Ombudsman himself and the power of removal is vested in the President, so that without the recommendation of the Ombudsman himself, the President cannot just remove?

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. But then again, Mr. President, the danger that he had adverted to earlier will still be there—the danger of in-breeding, familiarity and camaraderie that is bound to develop between the Ombudsman and his deputies. And therefore, may I just mention, Mr. President, that while it is true that the Supreme Court may not be saddled by other administrative matters, I do not think that disciplining the deputy Ombudsman is such an extraneous activity for the Supreme Court considering that the Supreme Court is vested with the power to discipline justices, members of the Judiciary, etc. So, in this special instance, Mr. President, I think we can justify the fact that a deputy Ombudsman may be

removed at the instance or upon action by the Supreme Court.

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized.

Senator Maceda. Mr. President, as pointed out to me by the Sponsor, the Constitution provides that they can be removed in a manner provided for by law which, of course, cannot in any way be contrary to certain established constitutional principles, like separation of powers. I would like to suggest a consideration of a system where the Ombudsman has the power of removal but we set up some sort of standards, qualifications of membership in an investigating body that will investigate and make a recommendation to the Ombudsman, and make the qualifications of the members of that investigating body quite high. That is just a general idea.

The President. The Chair would like to ask the question: The President, by himself, cannot appoint the Ombudsman and the deputies; they must be recommended by the Judicial and Bar Council. Why do we not proceed along the same line, to make the recommendation for removal come from the Judicial and Bar Council?

Senator Maceda. But, Mr. President, I do not think that it was ever intended that the Judicial and Bar Council be an investigating body also for removal. Once we start that precedent, we might start to saddle them with similar...

What I am saying is that the Ombudsman can create a committee composed of people who have the same qualifications as the members of the Judicial and Bar Council. That is just an option that I wanted to make.

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

Senator Enrile. As I said a while ago, Mr. President, it has been my impression, and I think

the Constitution seems to suggest this, that this institution must be insulated from others that may pressure it because it is going to perform a very delicate function for the Government. With due respect to the suggestion of the Chair, if we will leave this to the Judicial and Bar Council, the members of the Judicial and Bar Council will have a very distinct advantage over other people because then, they will have that clout against the deputies, at least, of the Ombudsman which could give them some points of advantage in their dealings with this office.

On the other hand, if we give this to the President, then, the President could probably also utilize this to put a break on the exuberance and enthusiasm of the office to pursue its mission and perform its function especially when the action of this office has a tendency to cause embarrassment or to weaken the political position of the President.

On the other hand, if we give this to the Supreme Court, then there is the danger of a constitutional infirmity because it was pointed out that it could be the basis of a challenge based on the violation of the principle of separation of powers.

So, perhaps, the most prudent and safer course to follow would be to leave the matter of removing the deputies to the Ombudsman, because time may come when the Ombudsman in the performance of his duty, could differ from his own deputies on policies and on the treatment of cases; and wranglings will take place inside this organization. We should not have that kind of a situation in an office that is supposed to be the guardian of the public morality in our society, especially in the bureaucracy. So that, by and large, taking all the risks involved, perhaps, the better thing to do would be to leave this to the Ombudsman. After all, if the Ombudsman becomes oppressive, or he transcends the bounds of proper conduct in the performance of duty, then he could be challenged through an impeachment.

SUSPENSION OF THE SESSION

The President. Let us suspend the session for one minute, if there is no objection. [There was none.]

It was 6:26 p.m.

RESUMPTION OF THE SESSION

At 6:28 p.m., the session was resumed.

The President. The session is resumed.

May I know if there is any compromise arrangement?

Senator Angara. Yes, Mr. President, a compromise language has been agreed upon, and the provision will read as follows:

A DEPUTY AFTER DUE NOTICE AND HEARING MAY BE REMOVED FROM OFFICE BY THE OMBUDSMAN UPON THE RECOMMENDATION OF A THREE-MAN COMMITTEE WHOSE QUALIFICATIONS WILL BE SIMILAR TO MEMBERS OF THE JUDICIAL AND BAR COUNCIL.

Senator Guingona. As provided for in the Rules, in Section 12, Mr. President.

The President. All right, subject to refinement and style. Is there any objection?

Senator Herrera. Mr. President.

The President. Senator Herrera is recognized.

Senator Herrera. I would like to know, Mr. President, as to who will appoint the three persons.

Senator Angara. The Ombudsman, Mr. President.

The President. With the same qualifications as those provided under the Constitution for the Judicial and Bar Council, subject to refinement and style.

Is there any objection?

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. Just a question at this

point, Mr. President: Are we providing for offices, salaries and staff for this three-man body that is being created?

The President. Probably, that will be in the rules and regulations.

Senator Pimentel. Which will be promulgated by the Ombudsman?

Senator Angara. Yes, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

Senator Enrile. Mr. President, Section 8, Removal; Filing of Vacancy, paragraph (1): "The Tanodbayan may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes or betrayal of public trust." I have no problem with this, Mr. President, but by the "culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes," this has a technical definition; "betrayal of the public trust" is still yet to be tested in our legal system.

I am not talking of the venerable members of the office now who are well-known citizens of the country, men of probity, integrity and rectitude, but we are legislating not only for these newly appointed members but for future members.

Now, my question, Mr. President, is: Suppose, in the future, we find a young, energetic Ombudsman who becomes oppressive because of weakness of the flesh; his jurisdiction is all over the bureaucracy. In my little stint in the Government, I have seen many incidents of these in the areas that I was assigned and I would like to anticipate this. Suppose, he becomes oppressive; he persecutes people because somehow in the past, there were grudges developed and scores have to be settled, are

we not going to anticipate this ground as a basis for removing an oppressive Ombudsman?

Senator Angara. Mr. President, the Gentleman is right in saying that the first, I think, five grounds enumerated here are well-recognized grounds for impeachment and the novel one is the last—betrayal of trust. And the situation he described, I think, would fall under “betrayal of trust.”

Senator Enrile. Would, for instance, eloping or taking the wife of a subordinate or a bureaucrat, as a friend, be a ground, be considered a betrayal of the public trust?

Senator Angara. I should think so, Mr. President. Because when we read the proceedings of the Constitutional Commission, they added this novel, new ground “betrayal of public trust” in order to comprehend all misbehavior falling within the oath of office that one takes.

Senator Enrile. Mr. President, I am raising this issue from experience. One of the causes of the outburst, at least, from the viewpoint of the young officers of the Armed Forces of the Philippines in 1986 was, precisely, the pernicious practice of some people then in the higher level of military command, in affecting the tranquility of the domestic homes of some junior officers. And I would like to anticipate this. This is a powerful office. The Ombudsman is removable only by impeachment.

Senator Romulo. Mr. President.

The President. Senator Romulo is recognized.

Senator Romulo. With the permission of the Gentlemen on the floor, and as stated by Senator Angara, perhaps, we can read the opinion expressed by two Members of the Constitutional Commission which pertains to that point, Mr. President.

Senator Enrile. I still have the floor. May I

just be permitted to complete my position, my point?

Apart from this, there is the question of oppression, persecution. Are we not going to anticipate this as a basis, Mr. President? Will this come under the concept of betrayal of the public trust?

Senator Angara. I should think so, Mr. President, because here we are setting up a model of integrity and a paragon of morality, and the situations described by the Gentleman can very well fall within the broad phrase “betrayal of trust.” Because the intendment, as I understand it, I am sure Senator Romulo will support his quotation, is that the phrase “betrayal of trust” is really intended as a catchall to cover improprieties described by the Gentleman.

Senator Enrile. May I request then the distinguished Gentleman from Tarlac to inform us about the debates in the Constitutional Commission?

Senator Romulo. With the permission of the Minority Floor Leader, Mr. President.

The President. Senator Romulo is recognized by the Chair.

Senator Romulo. Yes. Just to state the opinion, views expressed, which reads:

MR. DE LOS REYES. The reason I proposed this amendment is that during the Regular Batasang Pambansa when there was a move to impeach then President Marcos, there were arguments to the effect that there is no ground for impeachment because there is no proof that President Marcos committed criminal acts which are punishable, or considered penal offenses. And so the term “betrayal of trust,” is a catchall phrase to include all acts which are not punishable by statutes as penal offenses but, nonetheless, render the officer unfit to continue in office. It includes betrayal of public interest, inexcusable negligence of duty, tyrannical abuse of power, breach of official duty by malfeasance or misfeasance, cronyism, favoritism, etc. to the prejudice of public interest and which tend to bring the office into disrepute.

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One other Commissioner states:

MR. NOLLEDO. In pursuing that statement, Madam President, we will notice that in the presidential oath of then President Marcos, he stated that he will do justice to every man. If he appoints a Minister of Justice and orders him to issue or to prepare repressive decrees denying justice to a common man without the President being held liable, I think this act will not fall near the category of treason, nor will it fall under bribery nor other high crimes, neither will it fall under graft and corruption. And so when the President tolerates violations of human rights through the repressive decrees authored by his Minister of Justice, the President betrays the public trust. (Debates, July 26, 1986, p. 272.)

Thank you, Mr. President.

Senator Enrile. I am satisfied with the explanation as read by the distinguished Gentleman from Tarlac.

Thank you very much, Mr. President.

Senator Angara. We wish to thank Senator Romulo, Mr. President.

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. Mr. President, the distinguished Sponsor said that indiscretions or marital infidelities can be covered by that phrase "betrayal of the public trust."

Now, I wonder really, if that is not stretching the coverage of that phrase to such a length that we can say that it is not justified by the context of the provision considering the antecedents—treason, bribery, corruption, etc.—and then we go to betrayal of public trust which in his interpretation would cover marital infidelities. I would certainly think that such actuations which are usually done in private are not a betrayal of a public trust, Mr. President.

The President. Maybe betrayal of a husband's trust. [Laughter]

Senator Angara. When I gave that answer, Mr. President, it was in the context of the description of Senator Enrile that such going-ons are happening in the military that causes demoralization of soldiers. And, therefore, I thought that the infidelity is carried on openly and scandalously, and I suppose if it is carried on openly, scandalously and flagrantly, then I feel that that would fall within betrayal of trust.

Senator Pimentel. Well, I could certainly hope that our interpretation here is not necessarily taken into account by the Supreme Court later on when it interprets the scope of that phrase, because that is certainly questionable, I think, Mr. President.

The President. But is not impeachment actually a political decision made by Congress?

Senator Pimentel. Yes, Mr. President, that is correct.

The President. It will not be the Supreme Court; it will be both the House and the Senate.

Senator Pimentel. Yes, Mr. President. In that case then, yes, certainly.

The President. So, is there no proposed amendment?

We can move on.

On page 2, is there any amendment?

On page 3, Prohibitions and Disqualifications. Is there any proposed amendment there?

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized.

MACEDA AMENDMENT

Senator Maceda. Back to page 2, Mr. President, I just want to set into the *Record* these lines 8 and 9: "Must not have been candidates for any elective office in the immediately preceding election."

This does not refer to the next preceding

election, if it is a barangay election. Can we specify that what we really mean is a national election, or both national and local elections?

Senator Angara. The intendment here, Mr. President, is it covers both national and local, special and regular, the idea being to disqualify people who have run...

Senator Maceda. So, we can put that—"for any elective national or local office in the immediately preceding election, whether regular or special."

Senator Angara. It is accepted, Mr. President, because that is the intent.

The President. On what lines will that be?

Senator Maceda. Lines 8 and 9 of page 2, Mr. President: "Must not have been candidates for any NATIONAL OR LOCAL elective office in the immediately preceding election, WHETHER SPECIAL OR REGULAR."

The President. I would like to pose a question. If he participated in the election for barangay captain, shall he be disqualified?

Senator Angara. He will be, Mr. President.

Senator Maceda. Well, if he is disqualified, then that is the most recent... But, that is not the intendment really. It is very unlikely that if he participated...

Senator Angara. It is not likely that a candidate for Ombudsman would be aspiring for barrio captain, but still, since we are trying to... The intent is that those who aspire for any position, whether national or local, will be barred.

The President. We know that in many places in the country, the position or a barangay councilor is more of an imposition because of the high honor, the highest esteem in which a person is held by the community. Shall we therefore bar him?

Senator Angara. Yes, Mr. President, because I

believe that the constitutional intent is to bar anyone who has run and lost in any election. It says "in any election," under Section 8 of Article XI.

The President. We will be disqualifying Senator Saguisag. [Laughter] Is there any objection?

Senator Romulo. Mr. President.

The President. Senator Romulo is recognized.

Senator Romulo. Mr. President, this is on lines 30 and 31.

The President. We have not yet approved the amendment.

Is there any objection to the amendment? [Silence] Hearing none, the same is approved.

Senator Romulo.

Senator Romulo. On page 2, Mr. President, this is part of the amendment we proposed on page 1, line 14, and that is page 2; lines 30 and 31 would read:

OF THE INCUMBENT TANODBAYAN, THE SENIOR DEPUTY SHALL SERVE AS ACTING TANODBAYAN IN A CONCURRENT CAPACITY UNTIL A NEW TANODBAYAN SHALL HAVE BEEN...

So, the proposed amendment is: In lieu of "overall," we substitute SENIOR and between "Tanodbayan" and "until" on line 31, insert IN A CONCURRENT CAPACITY

The President. The Chair notices that the term "overall deputy" is in the Constitution itself. So why do we not say OVERALL DEPUTY or SENIOR .

Senator Romulo. Well, yes, Mr. President.

The President. What is the pleasure of the Sponsor?

Senator Angara. We accept it, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Romulo. Mr. President, on page 2, well, it actually starts from page 1. Before I propose the amendment, may I ask the distinguished Sponsor if he would agree to an amendment?

Mr. President, one of the complaints in the nominees for appointment under the Judicial and Bar Council is that hardly anybody knows who are being proposed. So, when they are nominated and finally appointed, then to some people it is a surprise. Why? Perhaps, if we can have some publication prior to their being appointed after they are nominated, subject to style, then we can give notice to the world or to the people that such and such have been nominated. So that, I would add on line 1 after "council" and on line 2 after "thereafter" something like AFTER PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION OR IN THE LAW JOURNALS or whatever, subject to style. My intention here, Mr. President, is to have that publication so that it is a notice to the people that such and such men or women have been nominated. So, I leave it up to the Sponsor.

The President. What is the pleasure of the Sponsor?

Senator Angara. We accept the amendment, Mr. President. Perhaps, the amendment can come on line 3 on page 2 after the word "occurs".

Senator Romulo. Yes, Mr. President.

Senator Aquino. Mr. President.

The President. Senator Aquino is recognized.

Senator Aquino. Mr. President. May I just make an observation? I have been informed lately that some people who have been nominated, for instance, to the Supreme Court do not like their names to be published for fear that they will not be appointed. So, this is something which is beyond their control. It is possible that somebody gets nominated, and, while it is an honor to be nominated, they do not like this published until they are appointed. So, I think, we should also respect that.

The President. Senator Saguisag? I remember that he has been talking to us about this particular subject.

Senator Saguisag. Thank you, Mr. President. I was just wondering whether this should really be the subject of a separate bill to cover everybody. But, it is again a difficult policy choice. I see the validity of the stand of Senator Romulo, but the stand of Senator Aquino is not groundless either. I was hoping that if we would have such a policy decision made, it should cover all nominees to be named by the Judicial and Bar Council, and I would be glad to co-sponsor such a bill. In balance, I think that there is more to be said in favor of publicizing. The fear normally is because there may be harassment.

Upon the other hand, that is the last chance for the public to come up with really valid charges. As I have said, it has been accepted, anyway, by the Sponsor, but if there would be such an arrangement, I think it should be broader to cover everyone.

The President. May it not be a good idea to have a separate legislation also for the Judicial and Bar Council where such a requirement is made, without prejudice to this particular amendment which has been accepted?

Senator Romulo. Yes, Mr. President, I have been contemplating in introducing such a piece of legislation precisely, because this was brought, not only to my attention, but I suppose to the attention of several legislators. While we also realized the import of what Senator Aquino had stated, in the final analysis, Mr. President, we should all be subjected to transparency. So, to me, the final test is that if the charges are groundless then, I think, that is part of public service. So, we avoid, and have a last opportunity to avoid the appointment of one who may be unfit for such an office.

The President. All right. Let us take up the amendment, subject to refinement and style. Is

there any objection? [Silence] Hearing none, the Romulo Amendment is approved.

Are there any more amendments on page 2? [Silence] If none, let us go to page 3. Is there any proposed amendment on page 3?

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized.

Senator Maceda. Just so that there is no necessity of getting an opinion from the Secretary of Justice which is the usual procedure, may I just put on the Record that the disqualification from holding any other office or employment does not include the profession of teaching.

The President. Where is that? Is there anything here?

Senator Maceda. In Section 9, line 6, it says:

The Tanodbayan and his Deputies and the Special Prosecutor shall not, during their tenure, hold any other office or employment.

And normally, one gets an opinion from the Secretary of Justice that employment does not encompass teaching, but I would rather specify—

The President. Include it?

Senator Maceda.—that for the *Record* to get an answer from the Sponsor that teaching is not prohibited.

Senator Angara. That seems to be the prevailing opinion of the Secretary of Justice, Mr. President, so we will accept that as proper interpretation and have it recorded in the *Records*.

The President. All right.

Senator Maceda. With that clarification, I think, that might be sufficient.

Senator Lina. Mr. President.

The President. Senator Lina is recognized.

Senator Lina. Thank you, Mr. President.

I just would like to ask, Mr. President, in connection with paragraph 3 of Section 8. In case the overall deputy is incapacitated or cannot assume the function of acting Tanodbayan, who among the deputies will then assume the role of Ombudsman?

Senator Angara. The overall deputy, or the senior deputy Tanodbayan will take over, Mr. President.

Senator Lina. In this case, who will be the senior? In terms of appointment, the one appointed earlier?

The question is, assuming that the Overall Deputy himself is incapacitated, who will take over? Is there a seniority...

Senator Angara. I see. We just go down the line of seniority, Mr. President, among the deputies, just as they do in the Supreme Court. So, in terms of...

Senator Lina. The date of appointment?

Senator Angara. The date of appointment.

Senator Lina. Is it not wise to incorporate it already here, or is it an unwritten rule that is observed? In the case of the Supreme Court, it is not a settled policy that the one who was appointed earlier would be appointed as Chief Justice. There is still a leeway on the part of the appointing authority to choose who will be the Chief Justice.

Senator Angara. That is true, Mr. President, but I thought we were just referring to deputies that will succeed the Overall Deputy in case the Overall Deputy becomes incapacitated; and my answer is that, maybe, it ought to be the more senior among the two or three remaining deputies. And seniority here will be determined, I suppose, by the date of appointment.

LINA AMENDMENT

Senator Lina. Well, to make the matter clear, I am proposing an amendment on page 3, line 1 that:

IN CASE THE OVERALL DEPUTY CANNOT ASSUME THE ROLE OF ACTING TANOD-BAYAN THEN THE MORE SENIOR DEPUTY IN TERMS OF APPOINTMENT SHALL ASSUME THE ROLE OF ACTING TANOD-BAYAN UNTIL A NEW TANOD-BAYAN SHALL HAVE BEEN APPOINTED.

Senator Angara. Subject to style, Mr. President, we accept the amendment.

The President. Is there any objection? [Silence] Hearing none, the amendment is approved, subject to refinement and style.

Senator Maceda is recognized.

MACEDA AMENDMENT

Senator Maceda. Mr. President, I take note that the age requirement is 40 years and that they shall serve for 7 years. So, if somebody is 40 years old and will cease from that office at 47 years old, in all probability, he might go to private practice.

On line 19, therefore, of page 3, I propose to add the following:

THEY SHALL NOT BE ALLOWED TO APPEAR OR PRACTICE BEFORE THE TANOD-BAYAN FOR FIVE (5) YEARS FOLLOWING THEIR CESSATION FROM OFFICE.

The President. What is the pleasure of the Sponsor?

Senator Angara. I have no problem with the concept, Mr. President, except that I was wondering whether the period of five years might be unduly long. As I understand it, there is a law that limits it to one year. Perhaps we can be consistent and make it uniform.

Senator Maceda. The idea, Mr. President, is after having appointed all or some of the employees of the Tanodbayan—and I hope that we will adopt this in all the other government offices—there is this usual practice which is being adopted now in the United States. They are starting to prohibit Members of Congress or Members of the Cabinet to

become employees of private firms who have gotten some permits or contracts during their term of office. But the worst scenario is this: ex-Cabinet Members or ex-heads of offices come back and practice before the same office, and they really have a distinct advantage over everybody else.

Well, the Sponsor is suggesting two years, Mr. President.

The President. Only two years before the Tanodbayan?

Senator Maceda. Yes.

The President. How about before the other offices that are theoretically under their jurisdiction?

Senator Maceda. Then that would disqualify them from ...

The President. Only for a limited period.

Senator Angara. For two years.

Senator Maceda. We accept the amendment of the Senate President.

The President. I am just asking a question because they can appear before other offices that had cases before the Tanodbayan.

Senator Maceda. I am sure this will not apply to Justice Colayco.

The President. Can they appear, for example, before the PCGG?

Senator Angara. Well, the amendment, as I understand it, Mr. President, applies only to appearance before the Ombudsman. If the Proponent wants to expand it to other offices ...

Senator Maceda. Well, I think the greater evil is before the Ombudsman itself, but I have no objection to applying it, in effect, to the whole Government except the Judicial Department which is not covered by them.

The President. Is there no existing overall disqualification in some laws?

Senator Angara. There is, Mr. President, a one-year ban.

The President. Yes, there is. Why do we not adopt that, at least?

Senator Maceda. If that is existing, would it not apply also to ... But the realities, Mr. President, really is that one year is too short. Maybe, if we really want to insulate the Ombudsman, two years is acceptable but then there is only that question of whether it is only before the Ombudsman or before the other offices also.

The President. What is the pleasure of the Sponsor?

Senator Angara. Mr. President, I am for the ban that is wider than the Ombudsman.

The President. For a period of two years?

Senator Angara. Yes, Mr. President.

The President. Senator Saguisag is recognized.

Senator Saguisag. Mr. President, if we assume that the Ombudsman, without mentioning any personality, has really been very honest and is living on a take-home pay of ₱14,612.50 every month, so he has no savings at the end; after seven years, that is the only field of law he understands; and if it will be so broad as to cover other courts, is it fair? I mean, is he being penalized for being so honest in office and, therefore, may have to rely only after one year on the only thing he has mastered? He may have forgotten other areas of law after seven years. "Na-kanal po sa criminal law" or ... So, anytime we limit the exercise of something we have worked so hard for, it strikes a member of the profession in a very personal way, and to me, it is anything more than a year. As I said, I assume because that is what I hear from some of the retirees, those who really led a very clean public life who do not have much after retiring.

The President. The proposal is only for one year but overall disqualification.

Senator Saguisag. Maybe. Or, meaning one year overall, two years if only before the Tanodbayan, but not two years overall.

The President. The Proponent of the amendment, Senator Maceda.

Senator Maceda. Well, if that is the only choice given to me by the distinguished Senator from Pasig, my original intention really was not to allow him to practice before the Ombudsman, because in all the offices where I have held, when a former holder of the office comes to me, almost automatically, I find it difficult to refuse, and one really has more influence in the office where he has held, not necessarily in the other offices.

Senator Saguisag. Maybe two years before the Tanodbayan or one year overall.

Senator Maceda. Yes. Two years before the Tanodbayan is my choice, if that is the only choice, Mr. President.

The President. All right, Senator Romulo.

Senator Romulo. Well, Mr. President, I do not have views quite well. I see the point of Senator Maceda, and I think I would agree with that. The only thing I would like to say is that I believe that in the United States, in the Ethics Law that they have, it is one year. And that is why, for instance, such official as Mike Deaver was brought to court or whatever, because he violated that one-year period.

So, I just wanted to put this information, but I would agree with Senator Maceda that the nearer the former official is to retirement, he still has a lot of influence and, therefore, perhaps a two-year period in that particular office has a lot of merit.

The President. All right, subject to refinement and style, two-year period before the Office of the Ombudsman. Is there any objection?

Senator Angara. And one year for all others. I stand corrected, Mr. President. The way the

Chair puts it, I think, is the amendment.

The President. Two years only before the Office of the Ombudsman. Is there any objection? [Silence] Hearing none, the same is approved.

Shall we ... Where is the Majority Floor Leader? [Laughter]

Senator Mercado. Mr. President, I move that we suspend consideration of Senate Bill No. 543.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

SUSPENSION OF THE RULES

Senator Mercado. Mr. President, I move for the suspension of the *Rules* so as to reconsider five bills previously approved on Second Reading.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

MOTION OF SENATOR MERCADO (Reconsideration of Approval of Senate Bill Nos. 429, 255, 532, and 243)

Senator Mercado. Mr. President, I move that we reconsider our approval on Second Reading of the following bills:

Senate Bill No. 429, entitled:

AN ACT RATIONALIZING AGRICULTURE EDUCATION IN THE COUNTRY BY ESTABLISHING A SYSTEM OF STATE COLLEGES AND UNIVERSITIES, PROVIDING FOR MECHANISMS FOR IMPLEMENTATIONS AND FOR OTHER PURPOSES

Senate Bill No. 255, entitled:

AN ACT BANNING THE IMPORTATION OR THE BRINGING INTO PHILIPPINE TERRITORY EVEN IN NEAR TRANSIT AS WELL AS THIS KEEPING OR STORAGE OF NUCLEAR AND OTHER HAZARDOUS OR TOXIC CHEMICAL WASTES FOR ANY USE OR PURPOSE

Senate Bill No. 1, entitled:

AN ACT TO ESTABLISH THE MAGNA CHARTA FOR BARANGAYS

Senate Bill No. 532, entitled:

AN ACT REORGANIZING THE PHILIPPINE STATISTICAL SYSTEM

Senate Bill No. 243, entitled:

AN ACT CREATING THE LEGISLATIVE-EXECUTIVE DEVELOPMENT COUNCIL, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

The President. Are there any objections?

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized.

Senator Maceda. I have no objection, Mr. President. This has been explained to me. I just want to put in the *Record* my understanding that in fairness to these bills and to the public about the impression that these bills were already approved, that after the Ombudsman and the Early Retirement Bill, it is understood that all these five bills will be scheduled and we will not discuss any other bill until we shall have disposed of these five bills.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

SPECIAL ORDERS

Senator Mercado. Mr. President, I move that Committee Report No. 202 on House Bill No. 789, entitled:

AN ACT TO GRANT MEMBERS OF BOTH HOUSES OF CONGRESS OF THE PHILIPPINES GENERAL AUTHORITY TO ADMINISTER OATHS, AMENDING FOR THE PURPOSE SECTION 21 OF THE REVISED ADMINISTRATIVE CODE AND SECTION 41 OF THE ADMINISTRATIVE CODE OF 1987 AND FOR OTHER PURPOSES

be transferred from the Calendar for Ordinary Business to the Calendar for Special Orders.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

128 - 132
(5 - pages)

ORGANIZATION OF THE OFFICE OF THE OMBUDMAN.
R.A. No. 6770 / S.B. No.543/ H.B.No. 13646

RECORD OF THE SENATE

AUG 12,1988

point, in relation to Section 41 of the Administrative Code of 1987.

The President. Is there any other observation?
[Silence] All right.

Senator Mercado. Mr. President.

The President. The Majority Floor Leader.

SUSPENSION OF CONSIDERATION OF
HOUSE BILL NO. 789

Senator Mercado. Mr. President, I move that we suspend consideration of House Bill No. 789.

The President. Is there any objection?
[Silence] Hearing none, the same is approved.

BILL ON SECOND READING
Senate Bill No. 543 - Office of the Ombudsman
(Continuation)

Senator Mercado. Mr. President, I move that we resume consideration of Senate Bill No. 543 as reported out under Committee Report No. 263.

The President. Resumption of consideration of Senate Bill No. 543 is now in order.

Senator Mercado. Mr. President, we are in the period of individual amendments. I move that we recognize the Sponsor of the bill, Senator Angara.

The President. Senator Angara is recognized.

Senator Angara. Thank you, Mr. President.

The parliamentary situation is that we are on page 4, for the individual amendments when we adjourned last night.

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

Senator Laurel. Mr. President.

The President. Senator Laurel is recognized.

Senator Laurel. Mr. President, may I kindly request that I be given the privilege of introducing certain amendments on page 2?

LAUREL AMENDMENT

On page 2, particularly in Section 8. Line 20, Mr. President, in the newest copy, Section 8, paragraph 1, which starts with "The Tanodbayan may be removed", before the word "Tanodbayan," the provision and I quote: IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE XI OF THE CONSTITUTION. So, the entire paragraph will read as follows:

IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE XI OF THE CONSTITUTION the Tanodbayan may be removed from office on impeachment for, etc.

Senator Angara. The amendment is accepted, Mr. President.

The President. Is there any objection?
[Silence] Hearing none, the same is approved.

Senator Laurel. May I add, Mr. President, another amendment by way of addition. This bill does not provide that the Deputy Ombudsman may be removed only after due process and who is to conduct the hearing in order to give due process.

So, I propose, Mr. President, an addition of another paragraph to be placed after the first paragraph of Section 8, after line 24. And my amendment is as follows:

FOR THIS PURPOSE THE PRESIDENT IS HEREBY AUTHORIZED TO CONSTITUTE A HEARING BOARD TO BE COMPOSED OF AT LEAST THREE (3) MEMBERS TO HEAR ALL COMPLAINTS FOR REMOVAL AGAINST THE DEPUTIES. THE DECISION OF THE HEARING BOARD SHALL BE FINAL UNLESS THE PRESIDENT REVERSES A DECISION OF DISMISSAL.

Senator Angara. Can we have a one-minute recess, Mr. President?

SUSPENSION OF THE SESSION

The President. The Chair remembers that this point was extensively discussed last night and a three-man committee was provided for.

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

It was 11:13 a.m..

RESUMPTION OF THE SESSION

At 11:15 a.m., the session was resumed.

The President. The session is resumed.

Senator Laurel. Mr. President, I have been informed by the distinguished Sponsor of this bill that there had already been an amendment that was approved which does not appear yet in the new version available to us this morning. I understand that it covers the same thrust or purpose of my amendment and, therefore, I would like to withdraw my amendment.

The President. The amendment is withdrawn.

LAUREL AMENDMENT

Senator Laurel. Mr. President, in Section 9, page 3, line 14, after the word "by". Just delete the comma (,) after the word "by".

Senator Paterno. Anterior amendment, Mr. President.

The President. Senator Paterno is recognized.

Senator Paterno. Will Senator Laurel yield?

Senator Laurel. If it is an anterior amendment, I yield, Mr. President.

Senator Paterno. Thank you, Mr. President.

PATERNO AMENDMENT

The amendment which I would propose, Mr. President, is on lines 11 and 12 of page 3, Section 9. Before I propose it, I would like to say that the prohibitions and disqualifications in this Section 9 seem to be much less than those of the Members of the Cabinet and, perhaps, a little bit more liberal than those of the Members of Congress because the prohibitions and disqualifications here prohibit engaging "in the practice of any profession or in the active management or control of any business which

in any way may be affected by the functions of their office." That seems to be rather liberal and rather broad, so I would suggest, Mr. President, that we delete on lines 11 and 12 the phrase, "which in any way may be affected by the functions of their office" so that they would be prohibited from engaging in the practice of any profession or in the active management or control of any business.

Senator Angara. We will accept the amendment, Mr. President.

Senator Paterno. Thank you.

The President. Is there any objection? Senator Enrile.

Senator Enrile. Before we approve that proposed amendment, Mr. President, I would like to pose a question. On line 10, after the word "or" on page 3, "in the active management or control of any business", is it the sense of the Sponsor that this will allow the members of this office, the Ombudsman, including its deputies, to act as members of the board of directors of any corporation?

Senator Angara. It will not, Mr. President. The intent is to insulate the Ombudsman and its deputies from any organizational association whatsoever.

Senator Enrile. But, Mr. President, the disqualification refers only to "active management or control of any business," and further qualified by the term, "which in any way may be affected by the functions of their office." If the business is not, in any way, affected by the functions of their office, then they can, in fact, by the sense of this provision, participate in the active management or control of the business.

On the other hand, even if it should be, in any way, affected by the functions of their office, provided the participation is not in the active management or control of the business, like a member of the board of directors, then they may still be members of the board of directors.

Senator Angara. In the first place, Mr. President, he can not be a member of the board of directors because the board of directors, at least, in corporate theory, is the controlling or governing board.

What we are trying to say here, Mr. President, and I think the amendment of Senator Paterno would make this clear enough, is that, he will be prohibited from actively managing a company or be actively involved in a business enterprise. That means, Mr. President, he may be a stockholder before he is appointed and he may continue to be a stockholder because we do not want to disenfranchise him.

Senator Enrile. Mr. President, I think I have read it in the Senate President's book on Corporation Law; and I think, we noticed quite well that a director is not the board of directors. The board of directors controls the corporation, but a single member is not a part of management. He is not the Board. His personal decision has nothing to do with the collective decision of the Board. Therefore, if he is a member of the board, just the mere fact of being a member is not prohibited by this disqualification, because being a member of the board does not mean that one is a participant in the active management of the corporation.

The President. My book on Private Corporations is already out of print.

Senator Enrile. I think Fletcher, Salonga, and all the authorities in Corporation Law will support the proposition that I am saying now, unless there is a new book on Corporation Law by Henderson and some other authorities in Corporation Law that we have not read, Mr. President.

The President. But with the permission of the Gentleman, Senator Paterno's point, I think, is that, since the Members of the Cabinet are precluded from participating in any business, why do we not put the Ombudsman and the Deputy Ombudsman on the same footing?

Senator Enrile. I will agree with that, Mr. President, because then, that will cure the defect here. Because if we retain this provision, "or in the active management or control of any business," and then qualified further by the clause, "which in any way may be affected by his function"; this will open a very big door, in fact, a very refreshing window for the Ombudsman to use, although we know that the incumbent Ombudsman will not do this; but we are writing a law for the future.

I think the suggestion of the Chair implied by the suggestion of the distinguished Senator from Cavite would be a better way of treating the subject.

Senator Angara. I respect the Gentleman's opinion, Mr. President, but still, I believe that one sitting on the board would make him participate in management. But that may be academic now if the Body accepts the suggestion to rewrite the prohibition so that the Ombudsman and his Deputy cannot participate in any business.

The President. Subject to styling, is there any objection?

Senator Paterno. Mr. President.

The President. Senator Paterno.

Senator Paterno. Mr. President, since my proposed amendment has not yet been accepted by the Body, although it was accepted by the Sponsor, in view of the comments of the Minority Floor Leader and the Chair, may I reformulate the amendment so that it will consist of the wording in the Constitution with respect to Members of the Cabinet in Section 13, Article VII.

The wording of the Constitution with respect to Members of the Cabinet, Mr. President, states:

They shall not, during said tenure, directly or indirectly practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or

their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.

The President. What is the pleasure of the Sponsor? That is a mere adoption of the language in connection with Section 13.

Senator Angara. We accept the incorporation of the language of Section 13, Article VII, of the Constitution, Mr. President.

Senator Paterno. Thank you.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Laurel, on page 3 or page 4?

LAUREL AMENDMENT

Senator Laurel. On page 3, line 14, please remove the comma (,).

Senator Angara. That is already deleted, Mr. President.

Senator Laurel. Then may I ask if there has been any definition of terms, particularly the term "relatives" in any part of this bill, before I propose my amendment or any amendment. I noticed, Mr. President, that the term "relatives" here which appears on line 20 of page 3, speaks of consanguinity or affinity within the fourth civil degree. What I have in mind is expanding this to include religious relationships or spiritual relationships.

The President. There is no degree there.

Senator Laurel. That is right, Mr. President. That is why, my amendment, if there was nothing taken up yesterday, will cover relations by spiritual and/or religious ties.

The President. What is the pleasure of the Sponsor?

Senator Angara. Much as I want to accommodate the amendment, Mr. President, I think I have to decline and leave it to the Body to accept that because, introducing this new

relationship as a prohibited relationship will open up a new host of problems.

Senator Laurel. May I then propose that amendment, Mr. President, because the Sponsor has not yet read the amendment that I am proposing now in view of his answer.

On the first page actually, which would be a definition of terms, I propose the following in Section 1 which will provide as follows:

FOR PURPOSES OF THIS ACT, THE WORD "RELATIVE" SHALL REFER TO ANY AND ALL PERSONS FALLING WITHIN THE FOURTH CIVIL DEGREE OF THE OMBUDSMAN AND HIS DEPUTIES, EITHER BY CONSANGUINITY OR AFFINITY, INCLUDING ANY AND ALL THOSE RELIGIOUSLY OR SPIRITUALLY RELATED TO THEM SUCH AS COMPADRE, GODSON, GODFATHER, OR SPONSOR IN A WEDDING, BAPTISM OR CONFIRMATION.

Mr. President, what I have in mind before we take that up is in a separate section, that is Section 10. I will propose later on the following:

DISCLOSURE OF KINSHIP. IT SHALL BE THE DUTY OF THE OMBUDSMAN, HIS DEPUTIES AND SPECIAL PROSECUTOR TO MAKE UNDER OATH TO THE BEST OF HIS KNOWLEDGE AND RECOLLECTION A PUBLIC DISCLOSURE OF THE IDENTITIES OF HIS RELATIVES AS DEFINED IN SECTION 1 OF THIS ACT.

SUSPENSION OF THE SESSION

The President. Shall we suspend the session for a minute, if there is no objection? [There was none.]

It was 11:31 a.m.

RESUMPTION OF THE SESSION

At 11:34 a.m., the session was resumed.

The President. The session is resumed.

SUSPENSION OF CONSIDERATION OF S. NO. 543

Senator Mercado. Mr. President, I move that we suspend consideration of Senate Bill No. 543.

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

ADJOURNMENT OF THE SESSION

Senator Mercado. Mr. President, I move that we adjourn the session until four o'clock Monday afternoon.

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

It was 11:35 a.m.

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133 - 142
(10 - pages)

ORGANIZATION OF THE OFFICE OF THE OMBUDMAN.
R.A. No. 6770 / S.B. No.543/ H.B.No. 13646

RECORD OF THE SENATE

AUG 15,1988

present economic growth?

Senator Guingona. I do not think that is the intent, Mr. President. They have the Regional Development Councils in each region and each one is trying to undertake development within the region with one secretary, I understand, in charge of the development, but certain circumstances perhaps have contributed more to the places that the Gentleman mentioned.

Senator Maceda. Well, I will not discuss the other items further except to ask one last question.

As far as the agriculture sector is concerned, to which the Gentleman has devoted a major portion of the blame, coming from Mindanao himself, and coming from PCCI and all of these, and in connection with the NFA case -- and I do not mean to be personal -- because I can go through all the other departments; but in the interest of brevity, I will just ask this question which represents all the others.

Does the Gentleman think that the performance of the Secretary of Agriculture has something to do with the dismal performance of the agricultural sector?

Senator Guingona. I would say it is in the system, Mr. President.

Senator Maceda. It is in the system? So, irrespective of whoever we put there as Secretary of Agriculture, the system will take over and result in a dismal performance.

Senator Guingona. No. The man at the helm can do a lot and I am not prepared at this time to lay the blame squarely on his shoulders, however.

Senator Maceda. Well, I know the President Pro Tempore does not, but I do. I think the major portion for the blame in all of his speech is because of the dismal performance, not of the President, herself, but of many Members of the Cabinet.

Thank you, Mr. President.

Senator Guingona. Thank you.

SUSPENSION OF THE SESSION

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

It was 6:13 p.m.

RESUMPTION OF THE SESSION

At 6:44 p.m., the session was resumed.

The President. The session is resumed.

BILL ON SECOND READING

Senate Bill No. 543-Office of the Ombudsman (Continuation)

Senator Mercado. Mr. President, I move that we consider Committee Report No. 263 on Senate Bill No. 543, entitled:

AN ACT PROVIDING FOR THE STRUCTURAL AND FUNCTIONAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN AND FOR OTHER PURPOSES.

We are now in the period of individual amendments, Mr. President. I move that we recognize Senator Angara, the Sponsor of the measure.

The President. Senator Angara is recognized.

Senator Angara. Thank you, Mr. President.

Mr. President, the parliamentary situation is that we are on page 3, and the distinguished Senator from Batangas, Senator Laurel, was on the floor, proposing an amendment. Senator Laurel talked to me, Mr. President, and he requested that he will reserve his right to introduce the amendment later on to allow the others to introduce their individual amendments.

The President. All right. Is there any other individual amendment on page 37? [*Silence*] If there is none, we will go now to page 4 of the Ombudsman Bill. Is there any proposed amendment on page 4?

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized.

MACEDA AMENDMENT

Senator Maceda. Mr. President, I am just a little uncomfortable with Section 2, lines 12 to 17. Throughout this bill, there is an effort to provide, by legislation, the rank and salary of certain level of officials, which should be normally left to the usual process of the DBM approving their staffing pattern. Especially in this enumeration, why should the director for records have the same rank and salary as a bureau director? Why should the director for general services that is in charge of janitors and cleaning-women in the office have the rank and salary of a line bureau director? Why should the director for security, who is the chief security guard for the whole Ombudsman, have the same rank and salary as the Customs Commissioner or the Director of Lands?

I no longer objected when the rank of the Tanodbayan was made equal to that of a Deputy. I could probably just close my eyes to giving the prosecutors, for example, special salaries, like on the next page which says that the members of the prosecution staff shall receive salaries which shall not be less than those of the members of the prosecution staff of the Department of Justice. Whether in this or in other bills, Mr. President, the effort should not be to provide for special ranks and salaries by legislation, and leave it to the usual general laws and the standardization process.

The President. So what is the proposed amendment?

Senator Maceda. Well, I would like to delete this Section 2, if the Sponsor would agree, because I do not feel comfortable bestowing the rank and salaries of line bureau directors to anybody that the Ombudsman may organize and say that he is a director for so and so, for such and such.

The President. What is the pleasure of the Sponsor?

Senator Angara. Perhaps, what we can delete is not the whole Section 2, Mr. President, but lines 16 and 17 because that is really what is being objected to. So, the phrase "whose heads shall have the rank and salary of line bureau directors" can very well be deleted.

Senator Maceda. Well, I have no objection Mr. President, although even without this paragraph really, the Ombudsman may organize his office the way he wants to and submit a special budget on the staffing pattern to DBM. The real reason for Section 2 is the lines 16 and 17 that the Sponsor is deleting. But if he wants to leave it that way, I bow to the way he wants to leave it.

So, I move, Mr. President, that after the word "research" on line 16, delete the comma and put a period then delete the rest of the sentence from the words "whose heads" up to the end of line 17.

The President. Subject to restyling the whole paragraph.

Senator Maceda. Yes, Mr. President.

Senator Romulo. May I just add to what the distinguished Gentleman has stated, Mr. President that this is properly addressed in the compensation standardization and position classification which this Representation and Senator Rasul have introduced, and which is now being the subject of hearing in the Committee on Civil Service. And may I point out, Mr. President, that that holds true also with page 5, going ahead, under lines 11 to 13 where again the same wordings are placed there similar to the one in question.

The President. Will Senator Romulo propose an omnibus amendment so we will not have to go paragraph by paragraph.

Senator Romulo. Yes, Mr. President.

The President. Wherever this appears, we are proposing a deletion.

Senator Romulo. Yes, with the permission of the Sponsor, Mr. President.

The President. What is the pleasure of the Sponsor?

Senator Angara. We accept that, Mr. President, because it will be taken care of by the classification and compensation bill.

The President. So, it is subject to refinement and style.

Senator Romulo. Yes, Mr. President, and thank you.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Herrera. Mr. President.

The President. Senator Herrera is recognized.

Senator Herrera. With the permission of the President, I would just like to go back to page 3, No. (4). It seems to me there is a conflict between No. (4) of page 3, and No. (10) of page 8. Now, let me read No. (4) of page 3, Mr. President:

In case of temporary absence or disability of the Tanodbayan, the Overall Deputy shall perform the duties of the Tanodbayan until the Tanodbayan returns or is able to perform his duties.

Let me read No. (10) of page 8. Now, one of the powers of the Tanodbayan is to:

Delegate to the Deputies, or its investigators or representatives such authority, duty or responsibility as shall ensure the effective exercise or performance of the powers, functions, and duties herein or hereinafter provided.

So, my question, Mr. President, under the provision of No. (4): Does it mean that the Tanodbayan cannot delegate to the Deputies the duties of the Tanodbayan, say, assuming he will leave the country? Can he properly delegate to any of the Deputies? Because under Section 4, it seems that it is automatic. It should be the Overall Deputy.

Senator Angara. Yes. Well, paragraph (4) on page 3, contemplates a situation where the

Ombudsman is temporarily absent or out of the country or unable or incapacitated to perform.

Senator Herrera. Precisely. My question is: Before he will go on leave, temporary absence, can he delegate to the other deputies the duties of the Tanodbayan in accordance with paragraph (10) of page 8?

Senator Angara. The two cover a different situation, Mr. President. Paragraph (4) contemplates a situation where the Ombudsman cannot perform the functions and powers inherent in his office. And, therefore, in that case, there is a sort of succession. It is the Deputy Tanodbayan who succeeds, and steps into his shoes.

In the case of delegation on page 8, that means simply to delegate some duties that the Ombudsman himself cannot, perhaps, physically perform; for instance, to delegate to the fiscal of Zamboanga City. I think that is similar to that. It assumes that the Ombudsman is performing his task.

The President. Is there any other proposed amendment on page 4?

Senator Saguisag. Mr. President.

The President. Senator Saguisag is recognized.

Senator Saguisag. Mr. President, it is not really a proposed amendment on page 4, but as long as we have returned to page 4, there is one point I would want clarified.

Mr. President, during the Conference Committee meeting that we had with our House counterparts last week, one point that we had to spend a little time on was whether *iyon hong mag-bilas* at *mag-inso* would be covered by the definition within the fourth civil degree. I would want to know whether it is our intent here to include it in the prohibited relationship, two men who married sisters, and two women who married brothers. Or, is it possible for my *bilas* to appear before me if I were the Ombudsman? We frankly were not able to resolve it be-

cause the consensus we had was that, that was not really the fourth civil degree by affinity. And yet in our culture that seems to be comprehended by what we want to include in a prohibition of this nature. So, I would want the legislative history to show whether we are including *mag-bilas* or *mag-inso* sa ipinagbabawal dito.

May we know from the Sponsor whether he is prepared to commit one way or the other as to what we might want this phrase or this provision to include or exclude.

Senator Angara. Strictly, Mr. President, *mag-bilas* would not fall within the fourth civil degree; and yet, in reality, we know that *mag-bilas* would be a close relationship. Just to visualize the whole thing, it is like Chief Justice Teehankee and Justice Antonio. They are *mag-bilas*; they are not related within the fourth civil degree, and yet they are close. I am really at a quandary, Mr. President, how to regard this kind of relationship.

Senator Saguisag. I am not really proposing any amendment, but what we did, Mr. President, in the Ethical Standards Bill was to include the relationship explicitly.

Thank you, Mr. President.

The President. Is there any amendment on page 4? [Silence] If there is none, we go to page 5.

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

GUINGONA AMENDMENT

Senator Guingona. Mr. President, on page 5, line 3, delete the word ALL. CRIMINAL CASES WITHIN THE JURISDICTION OF THE...; and the word OMBUDSMAN at the end of that line 3; and in lieu thereof, insert the word TANODBAYAN. Therefore, it will read, without the word ALL; CRIMINAL CASES WITHIN THE JURISDICTION OF THE SANDIGANBAYAN.

The President. What is the reason for that amendment?

Senator Guingona. Since we are delegating, subjecting the Office of the Special Prosecutor under the supervision and control of the Ombudsman, he may have cause or reason to delegate other criminal cases to other Deputies, not necessarily confined to the Special Prosecutor.

The President. Provincial and city fiscals may be asked to prosecute.

Senator Guingona. Correct, Mr. President.

The President. What is the pleasure of the Sponsor?

Senator Angara. Accepted, Mr. President, because the amendment is consistent with Section 25, designation of other investigating fiscals.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized.

Senator Gonzales. On the same point, Mr. President. In paragraph (A) of Section 10, one of the powers of the Special Prosecutor is to conduct preliminary investigation. And one of the powers also of the Office of the Ombudsman under Section 13, paragraph (1), is to conduct preliminary investigation.

Now, is the power of preliminary investigation of the Special Prosecutor separate and distinct from the power of preliminary investigation of the Office of the Ombudsman?

Senator Angara. They are one and the same, Mr. President, except that we also have to give the power to conduct preliminary investigation in the Ombudsman because the jurisdiction of Special Prosecutor is limited to cases pending before the Sandiganbayan.

Senator Gonzales. So that all preliminary investigations need not be conducted by the Special Prosecutor. The same can be conducted by, let us

say, an assigned deputy or any fiscal or prosecuting officer who may be designated for that purpose by the Ombudsman.

Senator Angara. That is correct, Mr. President.

Senator Gonzales. So, in fact, probably it is more proper to say that there is only one power of preliminary investigation, and that belongs to the Ombudsman. It is being merely exercised over certain appropriate cases through the Special Prosecutor.

Senate Angara. That is a correct statement of the principle, Mr. President.

Senator Gonzales. Now, Mr. President, in the Sandiganbayan days under Presiding Justice Pamaran, I noticed and I called the attention of the Sandiganbayan to the need for hearing, trying cases involving the same accused who had already been convicted for more than 100 years or 99 years. My thinking being that, is if they had already been convicted to serve a term of 99 years, probably they need not be tried further and the time and the substance of the court should be used in hearing, trying other cases. But the stock answer to me was: "Well, the Special Prosecutor--then the Tanodbayan--had filed those cases. What are we going to do with them?" That is why, in my interpellation of the Gentleman, I have asked him whether the power of the Special Prosecutor would include what in American criminal procedure is known as plea-bargaining.

This is an American term, and there is no real equivalent under our laws on criminal procedure. The nearest would be, first, when the prosecutor consents to one of the accused being a State witness or pleading to a lesser offense or like it. But this is really different. Many cases will be solved through this plea-bargaining; because, for instance, the same accused is facing, let us say, estafa or malversation of funds, 50 counts, arising from the same transaction. Then, probably a plea-bargain might include: "All right, I will plead guilty to five

counts; but then I will no longer be prosecuted as far as the other 45 cases are concerned, and I will enter a *no lo contendere*. I will not challenge. I will already enter a plea of guilty which is actually different from what we know here as being allowed to plead guilty to a lower offense.

Now, would the Gentleman be amenable to that? At any rate, an abuse by the Special Prosecutor will be prevented because he is not under the supervision and control, and acts upon authority of the Ombudsman. Therefore, he cannot enter into that plea-bargaining agreement without the approval of the Ombudsman. What does the Gentleman think, Mr. President?

Senator Angara. I can see the merit of an authority to allow plea-bargaining, Mr. President, because, as I understand it, plea-bargaining also has expedited the criminal justice system in the United States; for instance, where it obtains, and we hope that it will also expedite the process of criminal justice in this country. So, I am amenable to a suggestion to that effect.

Senator Gonzales. If the Gentleman is amenable, subject, of course, to refinement in style, I would propose an amendment and that would now be paragraph (B) of Section 10.

The President. Just a moment. Why do we not dispose of the Guingona amendment first? On line 3, delete the word "or".

Senator Gonzales. Yes, I think it is only proper. I am sorry, Mr. President.

The President. Is there any objection to the Guingona amendment? [Silence] Hearing none, the same is approved.

Senator Angara. Excuse me, Mr. President, there is another amendment.

Senator Guingona. On the same line, Mr. President, instead of "Ombudsman", the last word, SANDIGANBAYAN.

The President. Is that acceptable to the Sponsor?

Senator Angara. That is accepted, Mr. President.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Gonzales. So, the proposed amendment would be between lines 3 and 4 on page 5, insert a new paragraph to read as follows: TO ENTER INTO PLEA-BARGAINING AGREEMENTS. Subject to style.

The President. Is the word or the term "plea-bargaining" accepted generally here in the Philippines?

Senator Gonzales. It is understood, Mr. President, but whether it is generally accepted, I do not really know. Sometimes, we even use it and even among Filipino lawyers, we accept the same and it is no longer taboo. Before, when we make deals with the fiscal--they call it "deals"--to plead guilty to a lesser offense, it has a very bad connotation. But it has become accepted already in the Philippine legal practice. But at any rate, as I have said, it should be subject to style.

The President. This would include, for example, when we say "plea-bargaining agreements," pleading to a lesser offense or agreeing to be a state witness.

Senator Gonzales. That is correct, Mr. President.

Senator Angara. That is correct.

The President. Is there any other comment? Is that accepted by the Sponsor?

Senator Angara. That is accepted, Mr. President.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved, subject to refinement and style.

Any other amendment on page 5?

Senator Paterno. Mr. President.

The President. Senator Paterno is recognized.

PATERNO AMENDMENT

Senator Paterno. A small amendment on line 24, Mr. President. After "Armed Forces", insert the phrase, IF ANY.

The President. What line is that?

Senator Paterno. Line 24, page 5, Mr. President.

The President. What is the pleasure of the Sponsor?

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

PIMENTEL AMENDMENT

Senator Pimentel. Still on line 26, "and the Deputy for Mindanao", in MALAYBALAY, BUKIDNON" instead of "Davao City". The reason, Mr. President, is that Malaybalay is the heart of Mindanao. And therefore, in effect, we will make the Tanodbayan Deputy more accessible to people; and secondly, I believe that it is time we disperse the various national offices to places other than to the developed cities in order to act as a spur to development. Because I am sure that if the Deputy Tanodbayan is located in Malaybalay, Bukidnon, we will have a lot of people seeing him and money will thereby be spent in their going there and to some extent, add to the economic development of that area also.

The President. Is there any comment? What is the pleasure of the Sponsor?

Senator Angara. Well, on the representation of the leader of Mindanao that the presence of a

Deputy will become a magnet for development, I accept the amendment.

The President. Is there any objection? [*Silence*]. Hearing none, the same is approved.

Senator Pimentel. May I continue, Mr. President?

Another amendment starting from line 26 up to line 28, I propose that the word "may" on line 26 be deleted and to substitute it with the word DEPUTIES. "The Tanodbayan DEPUTIES." With the permission of the distinguished Sponsor, I will just read the proposed amendment so it will be clearer, Mr. President:

The Tanodbayan DEPUTIES SHALL VISIT THE VARIOUS REGIONS within their respective geographical AREAS AT LEAST ONCE A YEAR OR OFTENER as public interest may require.

Again, the reason for that, Mr. President, is to compel the Deputies of the Tanodbayan to really go around and make himself accessible to people rather than allow him to sit only in one locality, Mr. President.

Senator Angara. Mr. President, would that substitute for the two lines on 26 up to 28?

Senator Pimentel. Yes, Mr. President, from line 26 starting from: "The Tanodbayan", all the way up to "as public interest may require."

Senator Angara. We accept, Mr. President.

The President. Is there any objection? Is there any comment? [*Silence*] Hearing none, the same is approved, subject to refinement and style. Is that on page 5?

Senator Romulo. Yes, Mr. President.

The President. Senator Romulo is recognized.

Senator Romulo. Mr. President, I would just like to ask the distinguished Sponsor--and I am trying it here in the bill, perhaps, he can guide me--because it says here in the Constitution

under Section 5 of Article XI that there is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as the Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas and Mindanao. I am looking for it, perhaps, it is there, where more than one Deputy may be appointed, say in Mindanao, in Visayas or Luzon. Can the distinguished Senator please guide me?

Senator Angara. I thought we have that proviso here. Let me just look at it. It should be in Section 3. No, Section 3 as presently worded does not accommodate that, Mr. President. But I see his point and the necessity for providing that contingency.

The President. Only one Deputy each under Section 3.

Senator Angara. Yes. Can I invite his attention to page 4 lines 9 to 11? We have a provision for that: "The President may appoint other deputies as the necessity for it may arise..."

Senator Romulo. Well, thank you very much, Mr. President.

The President. Senator Gonzales.

Senator Gonzales. Mr. President, Section 12 seems to me to be the heart of this bill because it speaks of the mandate of the Tanodbayan. Therefore, I feel it should be strengthened. And for that purpose, I would offer this amendment on page 6, line 3 after the word "corporations", remove the period and add the following: AND ENFORCE THEIR ADMINISTRATIVE, CIVIL AND CRIMINAL LIABILITY IN EVERY CASE WHERE THE EVIDENCE WARRANTS. So, it is not only to act upon the complaints but to see to it that liabilities of public officers are enforced.

Senator Angara. We are grateful to our coauthor, Mr. President, for that amendment and we accept it.

Senator Gonzales. I think we should also

delete now the following on lines 3, 4, and 5: "They shall, in appropriate cases, notify the complainants of the action taken and the result thereof."

This is a procedural matter, Mr. President, which seems to be out of place with the mandate of the Ombudsman. I think it can be placed in some other position. This is merely a procedural matter. Anyway, the Ombudsman, even without this provision, can do it, but I feel that since Section 12 speaks of mandate, that sentence is really out of place there.

The President. So you propose the deletion in order not to weaken the whole section?

Senator Gonzales. Yes, Mr. President.

The President. What is the pleasure of the Sponsor?

Senator Angara. We accept the amendment.

The President. Is there any objection?

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. I have no objection, Mr. President. I just want to clarify before voting on the amendment.

Does this mandate include uniformed members of the Integrated National Police over whom NAPOLCOM has jurisdiction?

Senator Angara. That is correct, Mr. President.

Senator Guingona. So that local police officers, even if they are transferred later on to the jurisdiction of the mayor, even if the disciplinary authority is lodged with either the mayors or the INP, the Ombudsman would have concurrent or--

Senator Angara. Concurrent, Mr. President.

Senator Guingona. --or this is true of all the members of the INP?

Senator Angara. That is true, Mr. President.

Senator Guingona. Would it be the deputy for the military who would undertake or oversee the enforcement of this Section?

Senator Angara. Once the new setup is passed I suppose it would no longer be the military, Mr. President. It will be the civilian, Mr. President.

The President. We have not yet disposed of the Gonzales amendment. The Chair would like to ask the question: Is this power of the Ombudsman under the Gonzales amendment exclusive with the Ombudsman? For example, the administrative liability of public officers, is that not shared with the Civil Service Commission?

Senator Gonzales. Yes, Mr. President, but under this bill, there is a concurrent administrative jurisdiction granted to the Ombudsman. I think that was the subject of a long interpellation between the Representation and the Sponsor, and upon the representations of the overall Tanodbayan himself to whom the Sponsor complained about my interpellation. They pleaded for a strong Ombudsman. According to them, elimination of that power, retaining it exclusively in the Civil Service Commission, might unduly weaken the Ombudsman because there are so many cases that they have referred to the Civil Service Commission, nothing has been done about it. I am one who is willing to accept reason, that is why I no longer pursue the elimination of that concurrent jurisdiction with the Civil Service Commission in administrative cases. So that, as the Chair will observe, in subsequent sections there is that disciplining authority that can be directly exercised by the Ombudsman.

The President. So, how will the whole section read now?

Senator Gonzales. Page 6, it would start on page 5:

Section 12. *Mandate* - The Tanodbayan and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against OFFICERS AND EMPLOYEES OF

THE GOVERNMENT OR ANY SUBDIVISION, AGENCY OR INSTRUMENTALITY THEREOF INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS AND ENFORCE THEIR ADMINISTRATIVE, CIVIL AND CRIMINAL LIABILITY IN EVERY CASE WHERE THE EVIDENCE WARRANTS.

The President. Senator Paterno, then Senator Guingona.

Senator Paterno. Mr. President, this treats of the mandate of the Tanodbayan himself. I wonder whether Senator Gonzales would agree that the sentence could perhaps include an objective; the objective being to increase the efficiency of service of the Government to the people. Because, as it stands now, it seems that the Tanodbayan is seen as a prosecutor primarily and not as a defender of the people's rights.

Senator Gonzales. I think this falls under the Article on Accountability of Public Officers. I think that is the main purpose there, to hold public officers accountable to the people. In fact, if there is anything to be added, it should be WHENEVER THE EVIDENCE WARRANTS IN ORDER THAT THEY SHALL AT ALL TIMES BE ACCOUNTABLE TO THE PEOPLE.

Senator Paterno. If, I may, Mr. President. Section 1 of Article XI talks about public office as a public trust, and it says:

Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, and loyalty and efficiency, act with patriotism and justice, and live modest lives.

That is why, I would like not to focus just on the accountability, but also on the positive side.

Senator Gonzales. I have no basic objection to that, but I believe that the Ombudsman has been created by the Constitution really to hold the public officers accountable, to enforce the principle of accountability of public officers to the people and not really for the purpose of efficiency which is governed by the Civil Service provisions.

Senator Angara. If I may interject, Mr. President, the point being raised by Senator Paterno is already stated in the statement of policy, so the objective is...

Senator Paterno. Yes, but we are talking now about the mandate to the Tanodbayan. And, to my mind, Mr. President, the people should be important to the Tanodbayan, because in many cases the Tanodbayan will be the only recourse that an ordinary citizen can go to protect himself from an abusive public official. So, what is important to the complaining public is that action is taken on the complaint. They do not want necessarily the employee to be fired, but they want action taken on their complaint. Therefore, we need to put the people, Mr. President, ahead, it seems to me, of prosecution of public official.

Senator Gonzales. I have really no basic objection in order to promote or the words are: "in order to promote or achieve efficiency." How would we word it?

SUSPENSION OF THE SESSION

The President. Why do we not suspend the session for one minute, if there is no objection? [There was none.]

It was 7:24 p.m.

RESUMPTION OF THE SESSION

At 7:27 p.m., the session was resumed.

The President. The session is resumed.

Senator Paterno. If I may restate the proposed amendment to the amendment, Mr. President.

The President. All right.

PATERNO AMENDMENT

Senator Paterno. It is to include a phrase at the end which will be the following: IN ORDER TO PROMOTE EFFICIENT SERVICE BY THE GOVERNMENT TO THE PEOPLE.

Senator Gonzales. Subject to refinement and

style. We are accepting it, Mr. President.

The President. What is the pleasure of the principal Sponsor?

Senator Angara. We are accepting the amendment, Mr. President.

The President. All right. Is there any objection? Subject to refinement and style. [*Silence*] There being no objection, the amendment is approved.

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized, then Senator Guingona.

Senator Maceda. Before we leave this paragraph, Mr. President, I am not sure now, in view of the deletions proposed by the Gentleman from Mandaluyong, whether my amendment is still in order in this section or not. But following the explanations of Senator Gonzales and Senator Paterno, I think the most important word here is the word "promptly".

Senator Angara. Yes, correct.

Senator Maceda. I think the mandate here, really, besides what is restated in the Constitution is: "shall act promptly". So, I was wondering whether this is in order, subject to style:

PRELIMINARY INVESTIGATION SHALL BE STARTED WITHIN 60 DAYS AND TERMINATED WITHIN 180 DAYS FROM THE DATE OF THE FILING OF THE COMPLAINT.

The President. And this is supposed to be mandatory?

Senator Maceda. Yes, because as far as the Tanodbayan is concerned, they have been delaying all of these for whatever reason. But, the word "promptly" is open-ended, it is in so many laws, but it is never really followed, unless we put a specific period.

The President. So, preliminary investigation must be completed within what time?

Senator Maceda. No, it shall be started, to begin with, within 60 days, and completed within 180 days, from the filing of the complaint, subject to style, Mr. President.

Senator Saguisag. Mr. President.

The President. Senator Saguisag is recognized.

Senator Saguisag. Mr. President, the way it goes now, the investigation commences within a matter of days from the filing of the complaint. I mean, at least the commencement. We all have problems with the way it progresses though.

May we have a recess, Mr. President.

SUSPENSION OF THE SESSION

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

It was 7:30 p.m.

RESUMPTION OF THE SESSION

At 7:35 p.m., the session was resumed.

The President. The session is resumed.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 543

Senator Mercado. Mr. President, I move that we suspend consideration of Senate Bill 543.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

ADJOURNMENT OF THE SESSION

Senator Mercado. Mr. President, tomorrow we shall continue the discussion on Senate Bill 543 and the bill on early retirement.

I move that we adjourn the 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 7:36 p.m.

143 - 163
(21 - pages)

ORGANIZATION OF THE OFFICE OF THE OMBUDMAN.
R.A. No. 6770 / S.B. No.543/ H.B.No. 13646

RECORD OF THE SENATE

AUG 16,1988

on this particular matter.

Senator Enrile. I will not belabor the issue, Mr. President.

Senator Gonzales. We want to thank the distinguished Minority Floor Leader, Mr. President.

The President. In any event, as far as the Chair recalls, in 1954 to 1956 when the Pelaez-Bendetsen Talks were held, Mr. Pelaez was not yet the Vice President of the Philippines, neither was he the Secretary of Foreign Affairs. He became Vice President in 1961 after the elections of November. He belonged to the Legislative Department, but there was consultation with Congress before the appointment of then Senator Pelaez.

The Majority Floor Leader.

BILL ON SECOND READING

Senate Bill No. 543 - Office of the Ombudsman (Continuation)

Senator Mercado. Mr. President, I move that we consider Committee Report 263 on Senate Bill No. 543.

We are still in the period of individual amendments, Mr. President. I move that we recognize the Sponsor, Senator Angara.

The President. Senator Angara is recognized.

Senator Angara. Thank you, Mr. President. Mr. President, the parliamentary situation is that we are on page 6. When we adjourned last night we were discussing the proposed amendment of Senator Maceda. Can we ask that Senator Maceda be recognized?

The President. Senator Maceda is recognized.

MACEDA AMENDMENT

Senator Maceda. Yes, Mr. President. After conferring with the distinguished legal luminaries of this Chamber, a consensus evolved that the amendment should read something like this: PRELIMINARY INVESTIGATION SHALL BE STARTED FORTH-

WITH AND TERMINATED WITHIN 120 DAYS FROM THE DATE OF THE FILING OF THE COMPLAINT.

The President. What is the pleasure of the Sponsor?

Senator Angara. We accept it, Mr. President. It is just a question of where to insert that suitable amendment. We thought that it can be inserted under Section 14, Rules of Procedure.

Senator Maceda. Well, I leave it up to the Sponsor to make the necessary insertion.

The President. Subject to style, then.

Senator Angara. All right.

The President. All right, is there any objection? [Silence] Hearing none, the same is approved.

The President. We go to what page?

Senator Angara. Page 7.

The President. Is there any further amendment on Section 6, page 6?

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. Mr. President, I have an amendment on line 6. I understand that this is Section 13, and the lines from 6 to 9 have been deleted.

Senator Angara. Yes.

Senator Guingona. We just would like to ask the distinguished Sponsor before I present this whether the powers of the Ombudsman would cover all kinds of malfeasance, misfeasance, nonfeasance that have been committed by any officer or employee in the past during the tenure of his office, provided that the cause of action has not been barred by laches, estoppel or other statutory limitations.

Senator Angara. I suppose that if the official is no longer connected with the Government, it may be doubtful if the Ombudsman may have

jurisdiction over him, Mr. President.

Senator Guingona. In other words, Mr. President, this refers specifically to--

Senator Angara. The incumbent.

Senator Guingona.--the past regime, for example. There were some officers in the past regime who had committed wrongdoings, and the statutory limitations were not yet prescribed.

Senator Angara. Are they still in government service?

Senator Guingona. They are no longer in government service. They have resigned and they are now private citizens. But, I would like to know whether the Ombudsman under those circumstances would still have power to prosecute them provided that the laches or the prescriptive period have not...

Senator Angara. I doubt, Mr. President, whether the Ombudsman will have jurisdiction over them since they are no longer members of the government service. But that does not mean that nobody will have jurisdiction over them because the ordinary fiscal or perhaps the PCGG may have authority over them.

Senator Guingona. So, does not the distinguished Sponsor believe that it is better to rather vest the Ombudsman with powers over these certain officials or ex-officials?

Senator Angara. Well, the bill, as all laws are, tends to be prospective, Mr. President. And secondly, the scope of jurisdiction of the Ombudsman extends only to sitting public officials. I think, extending the jurisdiction beyond that may seem to be doubtful.

Senator Guingona. Because my proposed amendment, Mr. President, would cover malfeasance, misfeasance, nonfeasance, that had been committed by any officer or employee as mentioned in Section 12 during his tenure of office, provided

the cause of action has not been barred by laches, estoppel, and other statutory limitations.

Senator Angara. I think that class of suits, Mr. President, should be lodged with the ordinary prosecution officers, and therefore the fiscals will have jurisdiction over that.

Senator Guingona. Mr. President, there are many ex-officials who have resigned but whose accountability are still being investigated now. And provided that the laches, the prescriptive period has not expired, I do not see why they should not be held accountable with the Ombudsman.

Senator Angara. I can appreciate that, Mr. President, but it is a policy choice we are pursuing here, whether the scope of the Ombudsman's arms should extend to ex-officials. I should think that an Ombudsman is a watchman for people in the Government right now, and their concern ought not to be extended to ex-officials--I think the regular prosecution service ought to be adequate.

Senator Guingona. I think Senator Enrile wants to speak.

The President. Senator Enrile is recognized.

Senator Enrile. With the permission of the distinguished Gentleman on the floor, may I pose this question apropos to the question raised by the distinguished Member from Mindanao?

Mr. President, suppose an investigation is ongoing, and clearly, the matter is within the jurisdiction of the Ombudsman; and the appointing power dismisses the person under investigation before the Ombudsman can perform its function; and I recall to mind the case of Mr. Emil Ong. He was under investigation by the Blue Ribbon Committee for alleged venalities committed in the performance of duty as Chairman of the National Food Authority. And there was some showing of ground to conclude that the investigation was not farfetched, and all of a sudden, the appointing power dismissed him not because of venality but because of

incompetence. Would this law authorize the assumption by the Ombudsman's jurisdiction over a situation like that, Mr. President?

Senator Angara. If I may ask, Mr. President, if there is already a pending charge against him before his dismissal, I think his subsequent dismissal will not divest the jurisdiction of the Ombudsman.

Senator Enrile. If we do not provide some kind of a provision to enable the Ombudsman to reach people in the government service even if they are dismissed, then I think we are really weakening the purpose of this law, Mr. President. I am not saying that this will happen, but what will prevent the appointing power from dismissing a public functionary from the service in order to remove him from the jurisdiction of the Ombudsman as has happened in the case of Mr. Emil Ong?

Senator Guingona. Not only that, Mr. President. The Ombudsman, under the proposed bill, gives jurisdiction to private parties as long as there is conspiracy, and so I see no reason why a former official or government employee, provided that the prescriptive period has not lapsed, should not be within the jurisdiction of the Ombudsman.

Senator Angara. Well, it is really up to the Body to include ex-government employees, but as far as the present bill is concerned, it will only apply to incumbent officials.

Senator Enrile. I will also go farther than that, Mr. President.

Suppose an important functionary in the government senses that he is going to be investigated by the Ombudsman; he resigns irrevocably so that he removes himself from the jurisdiction of the Ombudsman, how can the Ombudsman perform its function?

The President. Is it the understanding of the Chair that the jurisdiction of the Ombudsman covers only incumbent public officials?

Senator Angara. That is correct, Mr. President.

The President. Suppose the incumbent public official is in conspiracy with five other private individuals, would there be a case of split jurisdiction?

Senator Angara. No. There will be a single action against them.

The President. So, it is not necessarily true that the jurisdiction is only over the incumbent public official?

Senator Angara. Yes, but the case of private persons in conspiracy with the public official who is charged is different. I think what Senator Guingona is suggesting is that we extend the jurisdiction of the Ombudsman even up to ex-government officials, as pointed out by Senator Enrile.

SUSPENSION OF THE SESSION

The President. Let us suspend the session, if there is no objection. [*There was none.*]

It was 5:01 p.m.

RESUMPTION OF THE SESSION

At 5:02 p.m., the session was resumed.

The President. The session is resumed.

GUINGONA AMENDMENT

Senator Guingona. Mr. President, after conferring with the Sponsor, may I present the amendment to be included in Section 6, in whatever line it can be accommodated, on page 6, to have a new section titled "Applicability."

THE PROVISIONS OF THIS ACT SHALL APPLY TO ALL KINDS OF MALFEASANCE, MISFEASANCE AND NONFEASANCE THAT HAVE BEEN COMMITTED BY ANY OFFICER OR EMPLOYEE AS MENTIONED IN SECTION 12 HEREOF DURING HIS TENURE OF OFFICE; PROVIDED, THAT THE COURSE OF ACTION HAS NOT YET BEEN BARRED BY LACHES, ESTOPPEL AND OTHER STATUTORY LIMITATIONS.

The President. What is the pleasure of the Author?

Senator Angara. We accept the amendment, Mr. President, as part of Section 12. It will constitute as second paragraph of Section 12.

The President. Subject to refinement and style. Is there any objection?

The President. Senator Paterno is recognized.

Senator Paterno. Just a clarification, Mr. President. What would be the period of limitation here? How long, after the separation of the employee from the service, would this be applicable?

Senator Guingona. There are prescriptive periods and laches.

Senator Angara. It depends on the kind of offenses.

Senator Paterno. But there would be a period?

Senator Angara. Yes. For example, malversation, there would be a period for that.

Senator Paterno. And is it the intention of the Sponsor that these periods will apply?

Senator Angara. Yes, certainly.

Senator Paterno. Thank you.

The President. Is there any other observation? Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. On the powers and functions and duties, between lines 12 and 13, Senator Gonzales has distributed copies of a proposed amendment which is similar to what we have.

I have likewise distributed, Mr. President, the copies of my proposed amendment and may I request for a minute recess, Mr. President.

SUSPENSION OF THE SESSION

The President. Let us have the usual break

then, if there is no objection. [*There was none.*]

It was 5:05 p.m.

RESUMPTION OF THE SESSION

At 5:34 p.m., the session was resumed.

The President. The session is resumed.

We are still on page 6.

Senator Angara. That is right, Mr. President.

The President. What lines will be affected by the amendment of Senator Guingona?

Senator Angara. I was suggesting, Mr. President, that the proposed amendment of Senator Guingona come as a separate section on page 8, between lines 8 and 9.

Senator Guingona. I do not mind, Mr. President, except that that is not my sole amendment; that is, with Senator Gonzales. He had earlier distributed copies of a similar amendment.

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. May I suggest, Mr. President, that Senator Gonzales and Senator Guingona should work out their proposed amendment while we go on with the other sections in order not to delay the proceedings.

The President. All right. Is there any other amendment on page 6?

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

PIMENTEL AMENDMENTS

Senator Pimentel. Unless there is an anterior amendment, I would like to propose an amendment to subsection 3 of Section 13.

The President. Section 13.

Senator Pimentel. Subsection 3, Mr. President, particularly on line 28, and more specifically,

directed at the phrase "at fault." I hope our Colleagues follow me. I will just read line 28: "action against a public officer or employee at fault." To my mind, Mr. President, this is vague. It does not really express, I think, a particular action or omission that should be considered a neglect of duty. So, my proposal is to replace that phrase "at fault" with the following: WHO NEGLECTS TO PERFORM AN ACT OR DISCHARGE A DUTY REQUIRED BY LAW, in lieu of the phrase "at fault."

So, to make the sentence clear, starting from line 27 "Direct the officer or employee WHO NEGLECTS TO PERFORM AN ACT OR DISCHARGE A DUTY REQUIRED BY LAW.

The President. What is the pleasure of the Sponsor?

Senator Angara. We accept it, Mr. President.

The President. Is that accepted?

Senator Angara. Yes, Mr. President.

The President. The Chair notices that this is merely the original. It is merely a reproduction of subsection 3 of Section 13 of the Constitution.

Senator Angara. That is correct, Mr. President.

Senator Pimentel. Perhaps, we can make it clearer, Mr. President, by rephrasing.

The President. Would we then be modifying the provision of the Constitution which says: "Direct the officer concerned to take appropriate action against a public officer or employee at fault? Because, the Pimentel amendment is WHO NEGLECTS TO PERFORM.

Senator Pimentel. Yes. Maybe, Mr. President, in order to arrive at a compromise, we can retain "at fault" and just add: OR WHO NEGLECTS TO PERFORM AN ACT OR DISCHARGE A DUTY REQUIRED BY LAW.

The President. That is better. What is the pleasure of the Sponsor?

Senator Angara. We will accept it, Mr. President.

The President. Is there any comment? Any observation? Any objection? [Silence] Hearing none, the same is approved.

Senator Pimentel. May I continue, Mr. President.

The President. Yes.

Senator Pimentel. On line 29, I think that the word here is "recommend," not "recommended." I think there is a typographical error.

Senator Angara. Yes, a typographical error.

Senator Pimentel. "...and recommend his removal, suspension, demotion, fine, censure, or prosecution" I would like to find out whether or not there is a ground to amend the subsequent clause which is "and ensure compliance therewith."

Mr. President, to my mind, this is a little vague again. How does he ensure compliance with the act of removal, suspension, demotion, fine, censure, or prosecution? I would like to make this recommendation or suggested amendment, Mr. President, by adding the phrase:

PROVIDED THAT THE REFUSAL BY ANY OFFICER WITHOUT JUST CAUSE TO COMPLY WITH AN ORDER OF THE OMBUDSMAN TO REMOVE, SUSPEND, DEMOTE, FINE, CENSURE, OR PROSECUTE AN OFFICER OR EMPLOYEE WHO IS AT FAULT OR WHO NEGLECTS TO PERFORM AN ACT OR DISCHARGE A DUTY REQUIRED BY LAW SHALL BE A GROUND FOR DISCIPLINARY ACTION AGAINST THE SAID OFFICER.

The idea, Mr. President, is to make sure that we have a definite concept of how compliance is supposed to be made by the Ombudsman of his own order.

The President. What is the pleasure of the Sponsor?

Senator Angara. Just to make the amendment

clear, as far as I am concerned, Mr. President. So, the amendment will in effect say that if the officer directed fails to comply without just cause...

Senator Pimentel. It should be a ground for disciplining that official.

Senator Angara. Accepted, Mr. President.

The President. Subject to refinement and style.

Senator Angara. Subject to refinement and style.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Pimentel. Thank you, Mr. President.

Senator Alvarez. Mr. President.

The President. Senator Alvarez is recognized.

Senator Alvarez. Page 7, Mr. President, line 19.

The President. On page 7, is there any anterior amendment?

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. Anterior amendment, Mr. President.

Senator Alvarez. This is under Section 13, on "Powers, Functions and Duties." Does the Gentleman have an anterior amendment?

The President. Senator Pimentel.

Senator Pimentel. Mr. President, may I direct the attention of our Colleagues to lines 15 up to 19. The lines state, and I read: "Provided, that no publicity shall be allowed during the pendency of a preliminary investigation and the names of the complainant and the respondent shall not be made public until the final resolution of the preliminary investigation."

I am afraid, Mr. President, that without any sanction this will be a dead law. In fact, as of

now, Mr. President, investigations conducted by the Tanodbayan under the existing decree of President Marcos creating that office prohibits the publication of cases that are under investigation. But we know only too well that the publication goes on unabated and there seems to be no stopping of the publication of these matters.

So my proposal, Mr. President, unless there is a sanction that can be attached to this, is to strike out the whole proviso, starting from lines 15 to 19. We might as well leave the matter of publicizing investigations to the sound discretion of the Ombudsman because, anyway, lines 12 up to 14 grant him that right to publicize rather than make a negative statement here which cannot be enforced anyway.

The President. Or alternatively, provide a sanction.

Senator Pimentel. Or provide a sanction; but unless there is a sanction; we might as well knock this off. There is an added problem, though, if we placed a sanction here because when we provide a sanction, the press will cry out that we are trying to muzzle it and curtail the freedom of expression, Mr. President. So, we are really placed in a bind here.

Senator Angara. Mr. President, would the internal rules and regulations of the Ombudsman prohibiting for a premature leak or disclosure among its personnel be enough sanction?

Senator Pimentel. I do not think so, Mr. President, because the publication can always be made by mass media without reference to the source and, therefore, once again, the Ombudsman will be left holding an empty bag because we cannot pinpoint the source of a publication and compel the publication to reveal its source. So, it will be difficult, Mr. President.

Senator Angara. I can appreciate the point raised by Senator Pimentel, Mr. President. On the other hand, this prohibition is only a partial

withholding of publicity on the theory that when a public official is being investigated, it may turn out that he may be innocent at the end of the investigation. And since, unlike a private citizen, a public official deals with the public, it is important too that his identity and the charge against him be kept temporarily, not forever, under wraps.

Senator Pimentel. I can agree with the rationale of this provision, Mr. President. But in all honesty, I cannot see how it can be enforced under present circumstances. Where there are no adequate sanctions, who will be responsible for the leakage, if any? So, considering the present situation where there is, in fact, a prohibition against the publicity of investigations by the Tanodbayan, still cases are being published left and right, there is no need for the proviso that is sought to be stricken out.

The President. Why do we not tighten the sanctions toward the end of this bill? I remember that, in the case of Secretary Jaime Ongpin, the tremendous publicity against him was a cause for deep anguish on the part of the family. Presently, we should tighten the sanctions toward the end of this bill.

Senator Pimentel. So, I will leave that to the discretion of the Body, Mr. President. My idea is, unless there is a sanction, we might as well remove this proviso because it will be a dead-letter law.

Senator Romulo. Mr. President.

The President. Senator Romulo is recognized.

Senator Romulo. Well, Mr. President, as I understand this provision, this power to publicize is vested in the Office of the Ombudsman and, therefore, it is not any other institution—the press; it is particularly the Ombudsman. I was looking at the discussions in the Constitutional Commission and among other things, the right or the power to publicize is thought to be one way of being able to remove red tape and inefficiencies in the daily transaction of lowly individual citizens in government

offices. So that, in my view, Mr. President, since this function to publicize is vested in the Office of the Ombudsman alone, it is my humble submission that that is one of the responsibilities of the Ombudsman. And therefore, I think that we should give that responsibility to the Ombudsman. At any rate, it says here, “when circumstances so warrant and with due prudence.” So, I feel that, subject to certain refinements, this is an important implement of the Ombudsman, Mr. President. Because, in fact, this Representation was going to suggest, and the President himself has stated that perhaps this provision should be at the end so that it can encompass other provisions like causes of inefficiency and red tape.

I would just like to read one provision here which says:

The Ombudsman is seen as a civil advocate or champion of the citizens against bureaucracy.

And perhaps if we repose this power to publicize, when circumstances warrant and with due prudence, on the Ombudsman, I think this is part of his functions.

And let me also read another provision which, I think, is apropos, and it says here:

If, despite the efforts of the Ombudsman, in spite of the gentle persuasion to these public employees concerned, they do not perform their task, the Ombudsman has the right to publicize, when circumstances so warrant, matters covered by his investigation.

And that is where his power lies.

Mr. President, I submit that this power is reposed in the Ombudsman himself. And therefore, as long as the circumstances warrant and with due prudence, let us leave this power to him.

Thank you, Mr. President.

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. Mr. President, may I just

clarify that there was no intention to strike out the whole subsection (6) of Section 13. In other words, lines 12, 13 and 14, in my intervention, would remain intact, and it is only the disallowance of publicity that will in fact, in my suggestion, be stricken off. This refers only to preliminary investigations and not to any other actions of the Ombudsman regarding investigations in his jurisdiction.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized.

Senator Gonzales. My only problem with respect to that is, however we impose this duty upon the Ombudsman—and we assume that this publicity is to be exercised by that office with prudence—we will convert the office of the Ombudsman into a factory for press releases. Because it will be the Ombudsman who will determine what is to be published, so what it will do is to issue press releases. Now, the question is: How do we enforce it? Can we oblige the press or the media to publish the same or from giving a slant to that press release or from reporting only a part of the same, thus, distorting the effect of the press release because we know what matters are to be published, how to publish the same? The slant to be given to a report are matters of editorial judgment and discretion. And so, to me, it practically serves no purpose aside from converting the Ombudsman to a factory for press releases.

The President. So, what is the suggestion of Senator Gonzales?

Senator Gonzales. My suggestion, Mr. President, as already approved by this Body is: THAT NO PUBLICITY SHALL BE ALLOWED DURING THE PENDENCY OF A PRELIMINARY INVESTIGATION AND THE NAMES OF THE COMPLAINANT AND THE RESPONDENT SHALL NOT BE MADE PUBLIC UNTIL THE FINAL RESOLUTION OF THE PRELIMINARY INVESTIGATION. Because, Mr. President, what is happening in this country is that people would like to believe that where there is smoke there is fire. Actually, a publication, in effect, is already a

conviction, and then characters are ruined; reputations and families, broken. I mean, sometimes, the children of officials, who are actually accused of irregularities in the government, stop studying in schools because they become the butt of jokes, Mr. President. And in an atmosphere where apparently suspicion is evidence and accusation is conviction, I think we owe it also to protect our public officials. And the rights of the people to know, to be informed, are not really completely eliminated. It is merely a suspension of that right for a time until the final disposition of the case.

Here is the situation where we try to balance the need for protecting characters and reputations even of public officials. I think public officials also deserve to be protected in their character and in their reputation, and we are balancing it also with the right of the people to know. We are not, I repeat, eliminating that right; but let it come at the opportune time, and that is, at the time when everybody has already been heard, and a disposition of the case has already been done.

Senator Saguisag. Mr. President.

The President. Senator Saguisag is recognized.

Senator Saguisag. Well, allow me, Mr. President, to rearrange my prejudices, to borrow a well-turned phrase that you, the President, are fond of. I am against prior restraint, simply because it will not work here. Before a case gets to the preliminary investigation stage, when it involves a public official, there is usually a lot of publicity about it which leads to the preliminary investigation, to begin with. Does this mean that a respondent is prevented from conducting a press conference to give his side? And I have also pointed out that publicity encourages witnesses who, otherwise, may not have known that there is such a case or who may not be interested to step forward unless someone has taken the initiative. What about negative publicity? Well, I believe that talk of possible negative publicity in itself is a form of so-

cial control. That fear that he will be talked about is something that inhibits a public official from doing something that is wrong.

So, my own prejudice, I mean, to sum it up, along with Justice Douglas is: What we need is more, not less, speech.

In other words, my stand here is: If Senator Pimentel is for the deletion of lines 15 to 19, I would like to support that and, therefore, leave to the discretion of the Ombudsman what circumstances should be considered in keeping under wraps what is still practicable to keep under wraps; for considerations of national security, maybe in a case involving private crimes.

There is not much we can do about lines 12 to 14, because that is the constitutional language. But I see more problems that will arise and will be solved if we maintain lines 15 to 19.

So, I would like to go on record that I am supporting Senator Pimentel on the point.

Thank you, Mr. President.

Senator Alvarez. Mr. President.

The President. Senator Alvarez raised his hand. Senator Alvarez is recognized.

Senator Alvarez. Mr. President, I am going back to page 7 under the same paragraph, line 19, if there has been no alteration. My proposed amendment which raises the different viewpoint in this Chamber on how to approach this problem goes...

The President. We are still debating whether the proviso there should be retained or deleted from lines 15 to 19.

Senator Alvarez. Mr. President, I have not considered making my position on this particular subject, but I will have no objection to having this provision retained. I have an amendment after this provision.

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

Senator Enrile. Mr. President, I share the proposal to delete this proviso found on lines 15 to 19 on page 7. My reasons are twofold: One, the deletion of this particular proviso would subserve the policy of transparency of the present Government and, at the same time, put the people working in the Government now on notice that if they will not comport themselves, there is the searchlight of public opinion being trained on them in the event that they are haled to an inquiry by the Ombudsman.

Two, the reason that I am proposing as a basis for my support for the deletion of this proviso, Mr. President, is that this is not in accord with our democratic tradition of openness. It intrudes into the freedom of the press. And it was already stated here that it also curtails the right of the respondent; perhaps, to go to the people to tell them that he was unnecessarily being harassed, if really he is being harassed, by the authorities through this investigation that he may encounter.

Finally, we are actually establishing two norms, two standards here: one, for those being investigated by the Ombudsman for the same venalities in Government; and two, for those who are being investigated by the Presidential Commission on Good Government. This kind of a limitation is not included to protect those who are being investigated by the PCGG. We read their names in the papers everyday. And if we are going to give a special consideration to the people who are going to be investigated by the Ombudsman who are actually the Government people now under the present regime, I think there is going to be something that can be said about the standard of justice being practised in this country on that score.

So, I support the proposal to delete this proviso, Mr. President, by the distinguished Gentleman from Cagayan de Oro. I will always support my Colleague from Cagayan de Oro when he is right.

The President. That is a big condition. When?
[Laughter]

Senator Angara. Mr. President, before we put this to a vote, let me just add to what was already said by Senator Gonzales. With the Maceda Amendment, this temporary ban is good only for three months. What we are trying to prevent is the unnecessary destruction of reputation. It is already difficult to be in public service nowadays, Mr. President. As we know, even this House already approved an ethical rule for public officials which, if we read in retrospect, is rather stringent and strict. And with all the risks that a public official faces, I think it would be tragic if his reputation is unnecessarily damaged. We are not saying that the case against him should forever be left unpublicized; we are only saying, "Let us wait for three months and then, let us publicize it afterwards."

Senator Enrile. I would recall, Mr. President, the doctrine of *U.S. versus Bustos* here. I think that, we, lawyers know this very well; that it is a burden of a person who enters public life that his actuations may be subjected to the harsh scrutiny of the public. And if he does not want to be exposed in that condition, then he has a choice not to enter public service. But the moment he enters the public service, then like Ceasar's wife, he should maintain his purity. But if there is a suspicion that he has not maintained the purity, I think, on a matter of policy, it is better that there is free discussion of his actuations. For after all, if he is innocent, that should be enough compensation for the things that may be said against him. He can sleep at night as long as he knows that he is innocent about the whole thing.

SUSPENSION OF THE SESSION

The President. Shall we suspend the session for one minute, if there is no objection. [There was none.]

It was 6:06 p.m.

RESUMPTION OF THE SESSION

At 6:08 p.m., the session was resumed.

The President. The session is resumed.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized.

Senator Gonzales. Mr. President, I just want to put in the record that when Senator Enrile referred to the *U.S. versus Bustos*, it was actually in reference to comments and criticisms against the actuations or conducts of public men. The Court said:

Complete liberty to comment on the official acts of public men is like a scalpel in the case of free speech. Its incision relieves the abscesses of officialdom. Men in public life may suffer from unjust accusation but the wound may be assuaged by the balm of a clear conscience.

It refers to right to comment or criticize official acts of public men, not to preliminary investigations where they are charged.

The President. Senator Angara again.

Senator Angara. Yes, Mr. President. After that brief conference, we have agreed to the deletion of the proviso and in lieu thereof, provide the following: PROVIDED THAT THE OMBUDSMAN UNDER THE RULES AND REGULATIONS MAY DETERMINE WHAT CASES MAY BE KEPT UNDER WRAPS, or something to that effect, subject to style.

The President. Subject to style.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized.

Senator Gonzales. The Ombudsman shall have the power to issue rules and regulations regarding the publicity of proceedings before it.

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. I have no basic opposition

to leaving it to the Ombudsman to promulgate or to draft or to make the necessary rules, but I would just like to include the mandate that if there is publicity from the Office of the Ombudsman, the same must contain the side of the respondent, and not only of the complainant.

The President. That will be a matter left to the Ombudsman.

Senator Guingona. No, but it might be undue delegation, Mr. President, if we do not provide the criteria. We must provide the standards here. The releases may be tilted to one side, or may be arbitrary, Mr. President. So, we would like to include this as a standard that if there is any publicity or release from the Ombudsman, it should contain both sides.

Senator Angara. Mr. President, would the Gentleman be satisfied if we add an additional proviso: PROVIDED FURTHER, THAT ANY PUBLICITY ISSUED BY THE OMBUDSMAN SHALL BE BALANCED.

Senator Guingona. Yes.

The President. Subject to style. Is there any objection? [*Silence*] Hearing none, the same is approved.

I think Senator Alvarez has a reservation. Senator Romulo afterwards.

Senator Alvarez. Mr. President, same page, page 7, after line 19. This is one of those amendments that will invite the expression of political philosophies of certain Members of this Chamber. And the amendment after the word "investigation" on line 19 shall be: PROVIDED FURTHER, THAT IN CASES AGAINST ANY ELECTIVE OFFICIAL, NO INVESTIGATION AND COMPLAINT SHALL BE FILED NINETY (90) DAYS PRIOR TO THE ELECTION INVOLVING HIS OFFICE.

SUSPENSION OF THE SESSION

The President. Why do we not suspend the

session for one minute, if there is no objection. [*There was none.*]

It was 6:13 p.m.

RESUMPTION OF THE SESSION

At 6:17 p.m., the session was resumed.

The President. The session is resumed.

Senator Alvarez. Mr. President, upon consultation with the Chair, and the Members of the Chamber, this Representation will desist from formally proposing this amendment with the end in view that at some point at the end of this bill the idea will be embraced within the rule-making power of the Ombudsman in order that this awesome power may not be used to put at a disadvantage people running for elective office, specially those diminishing breeds of honest elective officials.

The President. All right, the amendment is withdrawn.

Any more proposed amendment? Let us go to the next page, page 8. I thought Senator Romulo had a proposed amendment.

Senator Romulo. Later on, Mr. President.

Senator Herrera. Mr. President.

The President. Senator Herrera, then Senator Gonzales.

HERRERA AMENDMENT

Senator Herrera. Line 2, under paragraph 10. I would propose that the comma (,) after "authority" be deleted, and then insert the word OR between "authority" and "duty", and then delete the words "or" and "responsibility" after "duty", so that the entire sentence will read as follows: "Delegate to the deputies, or its investigators or representatives such authority OR duty as shall ensure the effective exercise or performance of the powers, functions," etc. Now, the reason for this, Mr. President, is that I believe that responsibility cannot be delegated; otherwise, this will destroy

the doctrine of command responsibility.

The President. What is the pleasure of the distinguished Sponsor?

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

GONZALES AMENDMENT

Senator Gonzales. Mr. President, on page 8 between lines 8 and 9, we propose the insertion of a new paragraph; this would be a new section, and tentatively it would be Section 14, captioned, IMMUNITIES.

This is quite a long amendment, Mr. President, but it had already been reduced in writing, and copies of the same were distributed to all the Members of this Body even at the very beginning of the session. And therefore, now I read the proposed amendment.

SECTION 14. IMMUNITIES. IN ALL HEARINGS, INQUIRIES, AND PROCEEDINGS OF THE TANODBAYAN, INCLUDING PRELIMINARY INVESTIGATIONS OF OFFENSES, NO PERSON SUBPOENAED TO TESTIFY AS A WITNESS SHALL BE EXCUSED FROM ATTENDING AND TESTIFYING OR FROM PRODUCING BOOKS, PAPERS, CORRESPONDENCE, MEMORANDA AND OTHER RECORDS ON THE GROUND THAT THE TESTIMONY OR EVIDENCE, DOCUMENTARY OR OTHERWISE, REQUIRED OF HIM, MAY TEND TO INCRIMINATE HIM OR SUBJECT HIM TO PROSECUTION; PROVIDED: THAT NO PERSON SHALL BE PROSECUTED CRIMINALLY FOR OR ON ACCOUNT OF ANY MATTER CONCERNING WHICH HE IS COMPELLED, AFTER HAVING CLAIMED THE PRIVILEGE AGAINST SELF-INCRIMINATION, TO TESTIFY AND PRODUCE EVIDENCE, DOCUMENTARY OR OTHERWISE.

UNDER SUCH TERMS AND CONDITIONS AS IT MAY DETERMINE, THE TANODBAYAN MAY GRANT IMMUNITY FROM CRIMINAL PROSECUTION TO ANY PERSON WHOSE TESTIMONY OR WHOSE POSSESSION AND

PRODUCTION OF DOCUMENTS OR OTHER EVIDENCE MAY BE NECESSARY TO DETERMINE THE TRUTH IN ANY HEARING, INQUIRY OR PROCEEDING BEING CONDUCTED BY THE TANODBAYAN OR UNDER ITS AUTHORITY, IN THE PERFORMANCE OR IN THE FURTHERANCE OF ITS CONSTITUTIONAL FUNCTIONS AND STATUTORY OBJECTIVES. THE IMMUNITY GRANTED UNDER THIS AND THE IMMEDIATELY PRECEDING PARAGRAPH SHALL NOT EXEMPT THE WITNESS FROM CRIMINAL PROSECUTION FOR PERJURY OR FALSE TESTIMONY NOR SHALL HE BE EXEMPT FROM DEMOTION OR REMOVAL FROM OFFICE.

ANY REFUSAL TO APPEAR OR TESTIFY PURSUANT TO THE FOREGOING PROVISIONS SHALL BE SUBJECT TO PUNISHMENT FOR CONTEMPT AND REMOVAL OF THE IMMUNITY FROM CRIMINAL PROSECUTION.

May I explain this amendment for the record, Mr. President. Sometimes, knowledge of facts of irregularities, graft and other forms of malfeasance or misfeasance in Government is more important than sending a person to jail. But the trouble is that, sometimes, knowledge of such facts may be in the possession of a person who may not be forced to give testimony or to produce books and documents proving the existence of such irregularity, graft or corruption on the ground of self-incrimination. And, in the mind of the State, knowledge of the existence of the same would be better than sending that person to jail. And so the State, in order to obtain the information, may compel him to testify even if such a testimony will violate his right against self-incrimination for as long as the law makes him immune from any criminal prosecution thereof. And these are known as immunity statutes in the United States.

The constitutionality of immunity statutes, Mr. President, has been questioned but the United States Supreme Court and also our own Supreme Court sustained the constitutionality of immunity statutes for as long as the immunity from criminal prosecution granted under the law is as comprehensive as the

immunity granted by the Constitution itself.

Also, Mr. President, it may happen-- and this was borne out in the questioning of the Chair last night-- that sometimes, to prove the existence of a crime before the court, the prosecution may need the testimony of one who participated therein, and this is recognized under our rules; that is, under certain conditions, probably the one who is less guilty may be named as a state witness, and in effect, when he complies with the condition of being a state witness, he is immuned also from a criminal prosecution for that offense.

Now, in the case of *Galman vs. Pamaran*, Mr. President--and this may be found in Vol. 138 of SCRA--the Supreme Court, speaking through Mr. Justice Cuevas, said that immunity statutes may be generally classified into two: one, which grants "used immunity;" and the other, which grants what is known as "transactional immunity." The distinction between the two is as follows: "Used immunity" prohibits the use of witness' compelled testimony and its fruits, in any manner, in connection with the criminal prosecution of the witness. On the other hand, "transactional immunity" grants immunity to the witness from prosecution for an offense to which his compelled testimony relates.

In short, in case of "used immunity", the witness, while he cannot be criminally prosecuted on the basis of his compelled testimony, can still be prosecuted for the felony in which such testimony is given; but in this case, his guilt must be established by evidence other than his compelled testimony. That is "used immunity". But in "transactional immunity", Mr. President, he is completely immuned, or he cannot be criminally prosecuted for the felony in which his testimony was given.

Now, what kind of immunity is granted under this proposed amendment? As far as the first paragraph, Mr. President, is concerned, it is "used immunity." That is why it says that "no person shall be prosecuted criminally for or on account of

any matter concerning that which he is compelled". So, it is a "used immunity". But he can still be prosecuted and convicted, not on the basis of his compelled testimony, but on the basis of other competent evidence.

In the second paragraph, Mr. President, it is really a "transactional immunity" because now, he cannot be criminally prosecuted for the felony or the criminal prosecution in which he has given his testimony. The same is true as in a state witness under these rules. But, it is imperative in "used testimony" that before he can invoke it, he must first claim the privilege against self-incrimination, because the right against self-incrimination may be waived, Mr. President, hence, the requirement that it must be invoked by him. But, if in spite of his invocation, the Tanodbayan, or the court, nonetheless, compels him to testify, then the immunity sets in.

Now, how is this enforced? I think, in our own discussion, Senator Saguisag asked this question. Now, we feel that it can be enforced through the contempt powers. And somewhere in this bill there is a grant of contempt powers to the Ombudsman. There is also the inherent contempt power on the part of the Sandiganbayan should we now enter into the trial of the case. But if a state witness refuses to testify in accordance with the basis for which he was chosen as state witness, then that immunity ceases.

Mr. President, I have my own amendment on this particular matter. Senator Guingona has also his own, but we have decided to join in this particular amendment. So, Mr. President, my senior partner, for purposes of this amendment, is Senator Guingona. I am merely his errand boy.

The President. After that presentation, what is the pleasure of the Sponsor?

Senator Angara. What can I say, Mr. President?

The President. Has this been adopted in any legislation?

Senator Gonzales. Yes, Mr. President. In fact, this has become the subject in the *Galman vs. Pamaran* case. This is partly what is Section 5 of Presidential Decree No. 1886: creating this investigating board regarding the *Aquino-Galman* double murder case. This was an investigative body, Mr. President.

Senator Saguisag. Mr. President.

The President. Senator Saguisag.

Senator Saguisag. Thank you, Mr. President. I just want to be enlightened on one point in relation to the power to punish for contempt. At the bottom of page 7, we expressly rely on the Rules of Court in the exercise of such power.

Is it also the intent of the distinguished Gentleman from Mandaluyong that we are also, in a suppletory manner, going to apply the criteria that the one concerned should not be the most guilty; and that his testimony is indispensable? Because he certainly would not want a case where the most guilty would be the one who would enjoy the benefits and the effects of this proposal.

Senator Gonzales. Under the second paragraph it says, "under such terms and conditions as it may determine." The Tanodbayan probably may be guided by the provisions of the *Rules of Court* concerning the designation of a state witness.

At any rate, Mr. President, I think jurisprudence is already settled here, that in the determination of a state witness, I think the judgment of the prosecutor or the fiscal is not being reviewed by the court, although the *Rules of Court* actually has specified the conditions, among which is that he must be the least guilty.

Senator Saguisag. I think the terminology is "does not appear to be the most guilty." That is the difference.

Senator Gonzales. So we are leaving it to the Ombudsman. The degree of participation is such that maybe the most or maybe the least or not the most; but at the same time, that is the only testimony available in order to prosecute the case successfully. That is why we are giving that requisite discretion to the Ombudsman.

Senator Saguisag. But my concern here is that if it is the most guilty who turns state witness, then it could be the height of injustice that the accessories and the accomplices will be the ones to go to jail, so, what I may want in anticipation to say is that when we move to Section 14—the same page, the next provision—I would want to propose, that perhaps, the *Rules of Court* should apply in a suppletory manner. I am particularly interested in preventing the most guilty from enjoying the immunity provision. Certainly, he would be the best witness, but he is the one the State is most interested in sending to jail.

The President. The Chair understands that this is particularly used in the United States in cases of conspiracy, where one cannot distinguish between the least and most guilty because they are equally guilty.

Senator Gonzales. That is right.

Senator Saguisag. That is the theory; but in the real world, there are really degrees, meaning, if we can prove that a crony benefited by ₱1 billion and then he turns a State witness to send a minor clerk who got only ₱10, that is revolting. That is true. They are equally guilty. That is the theory of the law—the guilt of one is the guilt of all. But I would not want that to happen, that a clerk is sent up for 10 years and then the most guilty, under that interpretation, because of the classroom definition that everyone is equally guilty, will enjoy this immunity.

Senator Gonzales. We are aware of the concern of the distinguished Senator from Pasig, but we anticipate that this power will be prudently

exercised by the Ombudsman. It is something that will not be exercised arbitrarily, but we want to give the Ombudsman the requisite flexibility.

The President. In order to meet the observation of Senator Saguisag, can we not say, "UNDER SUCH TERMS AND CONDITIONS AS IT MAY DETERMINE", taking into account the pertinent provisions of the *Rules of Court*?

Senator Gonzales. We have no objection to that, Mr. President.

Senator Saguisag. Yes, because certainly, the two conditions that concern me are the usual ones. The evidence must not be available from somebody else because, if it would be discretionary on the part of the Ombudsman--we are not talking of any personality--if he would have a choice between two potential witnesses who are in an equally similar position to give the evidence, I certainly would favor the one who is less guilty. So, subject to the acknowledgment of those concerns, I can live with the language proposed, Mr. President.

Senator Gonzales. I have no basic objection to that but we are merely explaining that the purpose is to give the Ombudsman the requisite flexibility. A constitutional officer like the Ombudsman, is expected to exercise his powers prudently; and because we do not want to be stonewalled by a situation where there is no other available evidence, except the evidence, which, in the minds of some people, may come from the most guilty, that is the purpose, especially in conspiracy cases, Mr. President.

But, I think the addition of these conditions will not actually make any substantial change in the intent and purpose of this amendment.

The President. So, it is accepted, taking into account the pertinent provisions of the *Rules of Court*.

Senator Gonzales. Yes, Mr. President.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Are there any more amendments on page 7? [*Silence*] Page 8.

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. Mr. President, the Ombudsman has been given under the bill the powers to issue rules of procedure. We notice that on lines 13 to 16, it is empowered to provide penalties for violations which shall not exceed one month suspension without pay or a fine not exceeding five thousand pesos for every violation. May this not be challenged, Mr. President, as undue delegations of powers, considering that there are established grounds and penalties already in the Civil Service Law for violations? Why should we give to the Ombudsman the power to create new sanctions which may be a bad mark against the respondent unnecessarily, Mr. President? Why cannot the Ombudsman apply the sanctions already established in the Civil Service Law?

Senator Angara. We will accept the suggestion of the Gentleman, Mr. President.

GUINGONA AMENDMENT

Senator Guingona. So, can we, therefore, delete the second subsection of Section 14, from lines 13 to 16, Mr. President?

Senator Angara. We accept, Mr. President.

The President. Is there any comment? Any objection? [*Silence*] Hearing none, the same is approved.

Is there any amendment on page 8? [*Silence*] Let us go to page 9.

Is there any amendment on page 9? [*Silence*] No amendment on page 9.

Is there any proposed amendment on page 10?
[Silence]

Is there any proposed amendment on page 11?
[Silence]

Is there any proposed amendment on page 12?

Senator Paterno. Mr. President.

The President. Senator Paterno is recognized.

PATERNO AMENDMENT

Senator Paterno. Mr. President. on page 12, line 6, I propose the insertion of the words WHETHER OR NOT between "him" and "for".

The reason for the amendment, Mr. President, is that this provision says that the public official may be guilty only if he refuses to act within a reasonable time when it is for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage. And, it would be difficult really to prove that this was the purpose. That is why I thought that the phrase "WHETHER OR NOT" might be acceptable.

The President. How will it read then? How will the proposed amendment read?

Senator Paterno. It would read as follows, Mr. President:

(aa) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him WHETHER OR NOT for the purpose of obtaining ,...

Or, as Senator Pimentel suggests, just delete lines 7 to 11.

The President. So, if that is deleted, how will the whole sentence read?

Senator Paterno. The whole sentence will then read:

(aa) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him.

Senator Angara. We accept, Mr. President.

The President. Is there any comment?

Senator Enrile. Mr. President.

The President. Senator Enrile.

Senator Enrile. I would like to refer to paragraph (a) of page 9, line 3, Mr. President: "Maliciously refraining from instituting prosecution against violators of the law."

The President. Why do we not dispose of that pending amendment first? Is there any objection to the Paterno amendment? [Silence] Hearing none, the same is approved.

Senator Enrile may now proceed.

Senator Enrile. May I go back to page 9, Mr. President.

The President. All right.

Senator Enrile. Mr. President, we know from our little experience in law practice that it is very difficult to prove malice, and I am a little uncomfortable with the use of the term "maliciously" or lines 3 and 5 of page 9. Maybe, it would be better to just use the word "UNJUSTIFIABLY" because one does not really have to go into the motive of the person if there is no justification for his inability to institute the proceedings against the violation of the law, then that should already bring the action of the Ombudsman on him.

That would also be true with paragraph (b).

Senator Angara. So, we substitute "maliciously" with UNJUSTIFIABLY. We accept it, Mr. President.

The President. Is there any other comment? Is there any objection? [Silence] Hearing none, the same is approved.

GUINGONA AMENDMENT

Senator Guingona. On page 9, Mr. President lines 17 to 19:

Accepting a gift in consideration of the execution of an act which does not constitute a crime, in connection with the performance of his official duty.

I think that a gift of gratitude, because it does not define what kind of gift, as an expression of an appreciation should not be penalized. Filipinos are very reciprocal, they want to show their gratitude. So, if the distinguished Sponsor will accept, we will go for the deletion of the whole subsection (e).

Senator Angara. Perhaps, Mr. President, we can keep this intact, but spread in the record as in the Anti-Graft Act that tokens of gratitude which are of moderate amounts or gifts during some special festive occasions are not deemed unlawful gifts, and therefore will not fall within the ambit of this provision.

Senator Guingona. The act, Mr. President, is not illegal; it is not criminal, and the actuation of the official has already been done, and then one month, two months later after the gift is given and he is still subject to being penalized.

The President. Supposing it is only one day after.

Senator Guingona. Well, if it is a token gift, Mr. President, I see no ground for including this. Let us not be overstrict with gratitude.

The President. In other words, the Senate President Pro Tempore is in complete agreement with Commissioner Mison.

Senator Guingona. I was not thinking of him, Mr. President.

Senator Angara. Mr. President, a gift that we are contemplating here is something that one gives in consideration of an action one expects the official to perform. So, it is really the moving consideration; whereas, the gift that the Gentleman is thinking is, really, as expressed in the Anti-Graft Act, unsolicited gifts or presents of small or insignificant value offered or given as a mere ordinary

token of gratitude or friendship, according to local custom or usage, which would not be covered by this provision.

Senator Guingona. But the act does not constitute a crime. The act is in the ordinary course of business.

The President. Why do we not provide then, as we did provide in the Anti-Graft Law, that small tokens of appreciation will not constitute a crime?

Senator Guingona. All right.

Senator Angara. All right. What we can do, Mr. President, is we will add a proviso providing that unsolicited gifts or presents of insignificant value offered or given as a mere ordinary token of gratitude or friendship, according to local customs, shall be exempted.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Enrile. Mr. President, with the permission of the Chair, may I request that my amendment to paragraph (b), line 5 of page 9 be withdrawn, and instead we delete the word "malicious" without putting any adjective to the word "tolerating" because my attention was called by the distinguished Gentleman from Mauban that we cannot pass a bill using the words UNJUSTIFIABLY tolerating the commission of offenses." [*Laughter*]

So, I would like to withdraw the word UNJUSTIFIABLY and just delete the word "maliciously".

The President. How about the word "WILFULLY"?

Senator Enrile. Maybe that will serve the purpose, Mr. President.

Thank you.

The President. So, let us reconsider that. Is there a motion for reconsideration?

Senator Enrile. I am making the motion, Mr. President.

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

Senator Enrile. Thank you, Mr. President.

The President. And now the ammendment.

ENRILE AMENDMENT

Senator Enrile. Instead of "Maliciously", it will be WILFULLY TOLERATED.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

The President. The Majority Floor Leader. I think, he has an important motion to submit to the Body. Senator Angara has been on his toes.

Senator Angara. Some more, Mr. President. Perhaps, we can finish with page 13.

The President. All right. We are already on page 12. Is there any amendment on page 12? [Silence]

Is there any amendment on page 13? [Silence] Is there any amendment on page 14?

Senator Shahani. Mr. President.

The President. Senator Shahani is recognized.

Senator Shahani. I think, Senator Pimentel has something to say, Mr. President.

Senator Pimentel. Mr. President, I am sorry, but can we go back to page 12, please.

The President. All right.

PIMENTEL AMENDMENT

Senator Pimentel. It is just an inquiry which I want to raise to the distinguished Sponsor if there is anything in the enumerations here about the laws on gambling? And, I think it is important to include that in the powers of the Ombudsman to enforce, considering the proliferation of illegal gambling in this country, Mr. President.

Senator Angara. There is no specific provision, Mr. President, but gambling would be caught under the catchall provision on page 12, lines 27 to 31.

Senator Pimentel. Yes, but then, Mr. President, if that should be so, there is no need to enumerate all these other statements here because they all constitute acts and omissions punishable by law.

Senator Angara. We accept, Mr. President.

Senator Pimentel. In other words, what I am trying to say, Mr. President, is: Can we add another subsection here between lines 26 and 27 (kk), "Acts of Gambling."

Senator Angara. Certainly. It is accepted, Mr. President.

The President. Is there any observation? Is there any comment? Is there any objection? The Majority Floor Leader.

Senator Mercado. Mr. President, I just would like to be enlightened. What would we mean by "gambling" here? Would buying an instant sweepstakes ticket constitute gambling because in its pure sense, that would be gambling or participating in lotto or in any ...?

Senator Pimentel. Acts of illegal gambling.

The President. Or acts of gambling contrary to law.

Senator Mercado. Thank you very much, Mr. President. I just wanted to be enlighened on that provision.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Romulo. Mr. President.

The President. Senator Romulo is recognized.

Senator Romulo. Well, Mr. President, I would just like to ask the distinguished Sponsor. In

Section 15 or any other section, what if the head of the department, agency, instrumentality, et cetera, has more than one family?

Senator Angara. Does the Gentleman mean he is living with somebody else?

The President. Does that include the extended family system in the Philippines?

Senator Romulo. Yes. I am just inquiring, Mr. President, because it seems to me that that could be the root of some, but not all.

Senator Angara. I am trying to find out the specific provision under which that kind of arrangement would fall, Mr. President.

Senator Romulo. That is another word, "arrangement".

The President. Under lines 27 to 31, "improper, inefficient or inimical to the public service."

Senator Romulo. Well, if it is understood in that sense, Mr. President, then it seems that my question has been answered.

Senator Angara. Yes, Mr. President.

Senator Romulo. Thank you.

Senator Paterno. Mr. President.

The President. Senator Paterno is recognized.

PATERNO AMENDMENT

Senator Paterno. I would like to propose a recourse, Mr. President, and this occurs all too often at the present time - flagrant conspicuous consumption. I have heard the distinguished Minority Floor Leader relay to us, Mr. President, that there are some public officials who go around flashing rolls of ₱500 bills. To my mind, this is flagrant and flagrantly conspicuous consumption.

The President. Ostentatious display of wealth, under the Civil Code.

Senator Paterno. As subparagraph (II), ostenta-

tious display of wealth and flagrantly conspicuous consumption.

Senator Angara. We accept, Mr. President.

The President. Is there any comment? Is there any objection? [Silence] Hearing none, the same is approved.

We were already on page 15. Is there any amendment?

Senator Shahani is recognized.

SHAHANI AMENDMENT

Senator Shahani. Mr. President, we were actually on page 14.

The President. Yes.

Senator Shahani. On line 6, I would like to suggest an amendment. At the end of the sentence concluding with the word "him", I would like the following to be added to the first sentence, Mr. President: IF, IN HIS JUDGMENT, THE EVIDENCE OF GUILT IS STRONG OR THE RESPONDENT'S CONTINUANCE IN OFFICE MAY PREJUDICE THE CASE FILED AGAINST HIM. Here we are, in this section, on preventive suspension, but it looks as if the powers of the Tanodbayan are quite sweeping. I think, before the respondent officer is suspended, the evidence of guilt should be strong. The reason why I would suggest OR ELSE THAT THE RESPONDENT'S CONTINUANCE IN OFFICE MAY PREJUDICE THE CASE FILED AGAINST HIM be added is because the respondent, Mr. President, may be in a position to destroy incriminating evidence against him or harass witnesses while he is in office. I think this would clarify the situation much better.

The President. What is the pleasure of the Sponsor?

Senator Angara. We accept, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Guingona is recognized.

Senator Guingona. May we go back to page 13, Mr. President.

The President. All right.

Senator Guingona. From line 9, after the word "Judiciary," to delete "or the Cabinet," and then to delete "Provided" up to line 13. Because, if the Ombudsman does not have jurisdiction over these officials, we see no logic in giving them the power to investigate and the power to look into their actuations. Why should the Ombudsman pry into the actuations of Supreme Court Justices? So, the deletion would be after the word "Judiciary," on line 9 to line 13.

Senator Angara. Mr. President, we have debated this issue previously, and precisely the question is whether the jurisdiction of the Ombudsman should extend to Cabinet Members or not. We said that the Ombudsman can investigate a Member of the Cabinet, although the Ombudsman cannot apply his disciplinary authority over the Cabinet Member because the disciplinary authority, with respect to Cabinet men, will be the President; with respect to the judges, the Supreme Court; with respect to Members of Congress, both Houses. But if we accept the deletion now, then we are, in effect, saying that the power of the Ombudsman will not extend to the Members of the Cabinet, and we will be back to where we started.

Senator Guingona. Precisely, we have deleted the Cabinet, that they would be subject to the powers of the Ombudsman, Mr. President. But for the Supreme Court, for example, for the members of constitutional commissions, they are impeachable and, therefore, the Ombudsman should not have jurisdiction over them. In the same manner, for Members of Congress, we have our own disciplinary powers. So, therefore, they should not, in any way, even initiate investigations and make referrals.

The President. Is it the position of Senator Guingona that if a Member of Congress is involved, let us say, in malversation of public funds, that he

should not be investigated by the Ombudsman?

Senator Guingona. He should be held accountable, in the same manner as members of the Judiciary are accountable to the proper deciding bodies. The proper forum for disciplining Members of Congress is vested in Congress, Mr. President, and they are not immune from prosecution in the ordinary courts. But there will be a complete violation of certain jurisdiction here if we allow the Ombudsman to pry into the Supreme Court Justices.

The President. My question was limited only to Members of Congress.

Senator Guingona. My answer, Mr. President, is, leave it to the ordinary courts, but for the disciplining to be left to Congress.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized.

Senator Gonzales. Mr. President, I think that is precisely the effect of Section 16. Section 16 speaks of the disciplinary authority of the Ombudsman over all elective and appointive officials of the Government. And excluded from that disciplinary authority are those who could be removed only by impeachment, Members of Congress, the Judiciary, or the Cabinet. That is precisely what Senator Guingona is batting for—that they should not fall under the disciplinary jurisdiction of the Ombudsman. That is precisely the provision.

The President. Which would mean the deletion of the entire paragraph, if we follow the logic.

Senator Gonzales. Yes, Mr. President. And not only that. In answer to the question of the Chair, the fact that they are not subject to the disciplinary jurisdiction of the Ombudsman does not mean that they cannot be investigated for a misconduct in office for the purpose of initiating the proper criminal or civil action if warranted. That is precisely what Section 16 provides.

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. Under this bill, Mr. President, the Cabinet members are not subject to the disciplinary power of the Ombudsman. The Supreme Court Justices are not; the Members of Congress are not. It provides, however, that they can investigate.

Senator Angara. If they committed an offense.

Senator Guingona. But we leave that to the ordinary courts, Mr. President, or to the impeachment process.

Senator Angara. Well, yes, but...

The President. Have we not discussed this extensively before?

Senator Angara. Yes, Mr. President, we debated this very extensively.

The President. Probably we have reached the point of diminishing return. Why do we not begin with this tomorrow?

The Majority Floor Leader.

SUSPENSION OF CONSIDERATION OF
SENATE BILL NO. 543

Senator Mercado. Mr. President, I move that we suspend consideration of Senate Bill No. 543.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Mercado. Mr. President, on the matter of Committees, I move that the name of Senator Lina be withdrawn as member of the Permanent Site Committee.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Mercado. Mr. President, I move that we adjourn the session until four o'clock tomorrow afternoon.

The President. The session is adjourned until...

Senator Laurel. Mr. President.

The President. Senator Laurel is recognized.

Senator Laurel. May I make a reservation to ask for reconsideration of some amendments or provisions adopted tonight and to raise the same tomorrow on fundamental grounds, Mr. President.

The President. The reservation is noted.

Senator Tamano. Mr. President.

The President. Senator Tamano is recognized.

Senator Tamano. Mr. President, may I also ask that the amendments already accepted be...

The President. Put in clean form.

Senator Tamano. ...put in a clean form so that we can look at them.

The President. Senator Angara, there is a suggestion here that we put in clean form all the amendments that have so far been approved.

Senator Angara. Can we ask the recording secretaries to do that in time for tomorrow, Mr. President?

The President. Yes, they are so instructed. The Majority Floor Leader has a pending motion.

ADJOURNMENT OF THE SESSION

Senator Mercado. Mr. President, I reiterate my motion to adjourn.

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

It was 7:08 p.m.

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164 - 192
(29 - pages)

ORGANIZATION OF THE OFFICE OF THE OMBUDMAN.
R.A. No. 6770 / S.B. No.543/ H.B.No. 13646

RECORD OF THE SENATE

AUG 17,1988

STRAIGHT, DISCARDING COLONIAL POINTS OF VIEW AND MANIPULATION OF FACTS, AND THEREBY FOSTER PATRIOTISM AND NATIONALISM UNDER THE AEGIS OF TRUTH AND OBJECTIVE APPRECIATION OF EVENTS AS THEY ACTUALLY TRANSPIRED

Introduced by Senator Shahani.

The President. Referred to the Committee on Education, Arts and Culture.

The Secretary. Proposed Senate Resolution No. 235, entitled:

RESOLUTION DIRECTING THE APPROPRIATE SENATE COMMITTEE TO LOOK INTO THE FEASIBILITY OF BANNING THE PRACTICE OF SMOKING AND DRINKING IN TV SHOWS WHEN NOT A NECESSARY PART OF THE SCRIPT

Introduced by Senator Mercado.

The President. Referred to the Committee on Public Information and Mass Media.

The Secretary. Proposed Senate Resolution No. 236, entitled:

RESOLUTION REQUESTING THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS TO ADOPT AND IMPLEMENT A NEW METHOD OF IDENTIFYING AND MARKING ALL TRANSPORT VEHICLES IN ALL LAND TRANSPORTATION ROUTES THROUGHOUT THE COUNTRY THRU THE USE OF CODED COLORED PLATE NUMBERS DISTINGUISHING AS TO TYPE AND REGISTRATION ORIGIN AND ENFORCING A COLOR CODE SCHEME ON THE BODIES OF PUBLIC UTILITY VEHICLES

Introduced by Senator Maceda.

The President. Referred to the Committee on Public Services.

COMMITTEE REPORT

The Secretary. Committee Report No. 308, submitted by the Committee on Constitutional Amendments, Revision of Codes and Laws, on

Senate Bill No. 730, prepared by the Committee with Senator Gonzales as author, entitled:

AN ACT WITHDRAWING THE IMMUNITY FROM SUIT OF THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT OR ANY MEMBER THEREOF AND REMOVING THE EXEMPTION OF A MEMBER OR STAFF OF SAID COMMISSION FROM THE COERCIVE PROCESS OF *SUBPOENA AD TESTIFICANDUM* OR *SUBPOENA DUCES TECUM*

recommending its approval in substitution of Senate Bill No. 674.

Sponsor: Senator Gonzales.

The President. To the Calendar for Ordinary Business.

BILL ON SECOND READING Senate Bill No. 543 - Office of the Ombudsman (Continuation)

Senator Mercado. Mr. President, I move that we consider Senate Bill No. 543 as reported out under Committee Report No. 263.

We are in the period of individual amendments, Mr. President. I move that we recognize the Sponsor, Senator Angara.

Mr. President, may I just explain that the Secretariat is still running the clean copies which include all previous amendments, but it will take about 30 to 40 minutes before these can be distributed.

The President. Senator Angara is recognized.

Senator Angara. Thank you, Mr. President. The parliamentary situation is that we are on page 13, Section 16. And Senator Guingona is introducing an amendment.

Senator Guingona. Mr. President, just to clarify: on line 9, are the words "or the Cabinet" after "the Judiciary" included or not? Are the Cabinet members subject to the disciplinary authority of the Ombudsman?

Senator Angara. No, Mr. President. The Cabinet members are not subject to the disciplinary authority, but they are subject to the investigatory authority of the Ombudsman.

Senator Guingona. Mr. President, on line 9, there is still the phrase "or the Cabinet"?

The President. What is the pleasure of the Sponsor?

Senator Angara. I am waiting for the proposed amendment, Mr. President.

Senator Guingona. We have to delete the phrase "or the Cabinet".

Senator Angara. No, Mr. President. We should not delete that, and rather, leave it as is. Because the intent of the first part of this provision is that the Ombudsman will not exercise---and I emphasize the words---"disciplinary authority" over members of the Judiciary, those subject to impeachment, Members of Congress and the Cabinet. The reason is that all these institutions have their own peculiar disciplinary machinery and rules. For instance, in the case of the Supreme Court, they have their own elaborate disciplinary procedure. In the case of the Congress, we also have our own disciplinary procedure.

Senator Guingona. I do not know of any established...

Senator Angara. In the case of the Cabinet, since Cabinet members are serving at the pleasure of the President, they are also subject to the disciplinary authority of the President. But the second part of this provision is that if anyone of them commits any misconduct in office, then the Ombudsman has the authority to investigate them and initiate the necessary case or appropriate case against them.

Senator Guingona. Mr. President, as far as Cabinet members are concerned, I know of no special procedure for disciplining them apart from the fact that they are ordinary, unclassified civil servants. There is no special procedure set aside

for them, unlike the Members of Congress where it is expressly stated that it is up to both Houses to discipline its members, and also for the members of the Supreme Court. But Cabinet members are a general class, along with other appointive members of the unclassified civil servants, and I see no reason for this distinction.

The President. The Cabinet members serve at the pleasure of the President.

Senator Guingona. Yes, Mr. President. But here, we are exempting them from the disciplinary scope of the Ombudsman. What is the rationale for such a distinction? We can see it in the Supreme Court Members; we can see it in the Members of Congress. But why the members of the Cabinet? Members of the Cabinet will include, under the Constitution, the deputies, the undersecretaries, and the assistant secretaries.

Senator Angara. Well, that is not quite accurate, Mr. President. It is limited to members of the Cabinet. That means the Cabinet member himself. And if I may repeat the justification for excluding them, it is because there is a body of rules and principles that govern the Cabinet as an institution; and since Cabinet members serve at the pleasure of the President, then really, in law and in theory, the disciplining power must be lodged with the President out of respect for a separate constitutional branch and out of interdepartmental courtesy. So, the Cabinet is a special breed, just as judges are a special breed. The Members of Congress are a special breed; they are subject to their own peculiar disciplinary rules.

But, just so we would not be misunderstood, Mr. President, I want to emphasize that by subjecting these classes to their own peculiar disciplinary rules does not indicate that the Ombudsman will have no jurisdiction over them. Because, some have misconstrued that just because we are removing the disciplinary authority over them, the Ombudsman has lost jurisdiction over them when misconduct in office is concerned. We are not.

Senator Guingona. That is a little hard to understand, Mr. President. They will have jurisdiction, but at the same time, they cannot exercise disciplinary powers over them.

The President. Under the present law, the moment charges are filed with the Sandiganbayan against a Cabinet member, is he suspended automatically?

Senator Angara. Under the law, he is, Mr. President.

The President. Yes, automatically. So, in other words, under the proviso, the Ombudsman can investigate.

Senator Angara. Yes, for any misconduct.

The President. And can file charges with the Sandiganbayan?

Senator Angara. Certainly, Mr. President.

The President. And the moment charges are filed with the Sandiganbayan, suspension ...

Senator Angara. Will follow...

The President. ... automatically.

Senator Guingona. Is that true of Supreme Court justices also?

Senator Angara. That will also be true of Supreme Court justices, Mr. President.

Senator Guingona. Mr. President, can Supreme Court justices be disqualified by the Sandiganbayan? Members of Congress? I do not know whether this is the intent of the Sponsor.

Senator Enrile. Mr. President.

The President. The Minority Floor Leader would like to contribute.

Senator Enrile. With the permission of the Chair and the distinguished Chairman on the floor, Mr. President, may I know from the distinguished Sponsor whether he agrees with the understanding of this Representation with respect to the mean-

ing of Section 12, that the Ombudsman and his Deputies are vested with the function of being the protector of the people?

Senator Angara. We are going back to Section 12, Mr. President?

Senator Enrile. No. I am talking of the provision of the Constitution, Mr. President, on Accountability of Public Officers. And for the information of the distinguished Sponsor, I would like to read Section 12 of Article XI:

The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the government, or any subdivision, agency or instrumentality thereof, including government-owned or -controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

Now, Mr. President, what is the interpretation of the Sponsor of the word "officials"? Does it exclude Cabinet members?

Senator Angara. Well, if the distinguished Gentleman will read this expansively as he is reading this expansively, then it will include all officials in the Government, whether civilian or military.

Senator Enrile. Now, suppose a Cabinet member spends his time scandalously dancing in a disco and kissing a lady in the process, would that not be considered an improper conduct that would authorize the Ombudsman to act and tell the Cabinet Member: "Hoy, tama na iyan at nakakahiya ka. Ikaw ay binabayaran ng bayan; sinusuweldohan ka. Huwag mong gagawin iyan, at mapapasama ang karangalan ng ating bansa." Can he not do that, Mr. President, under this bill?

Senator Angara. Well, the Ombudsman can initiate an investigation on whether a proper case can be filed against the Cabinet member.

Senator Enrile. Are we going to waste our time investigating a disco dancing, Mr. President? Cannot the Ombudsman, as a protector

of the national interest of the people, no less their morals and their well-being and commonweal, call the attention of an exalted Cabinet member and tell him: "Enough is enough. Do not embarrass the government."

Senator Angara. He can do that, Mr. President.

Senator Enrile. Suppose an employee in a Cabinet office is the subject of a sexual harassment by a Cabinet member, and writes the Ombudsman that she is the object of sexual harassment, will the Ombudsman go through the process of conducting an investigation before acting? Can he not admonish the Cabinet member and tell him: "Tama na yan. Huwag mo nang liligawan yung empleyada mo"?"

Senator Angara. He can call the attention of the Cabinet member concerned, Mr. President.

Senator Enrile. Would that not be considered, Mr. President, as the power of discipline of the Ombudsman on the part of the Cabinet member?

Senator Angara. No, Mr. President, because that is only a preliminary act to the application of disciplinary power. But when it comes to applying disciplinary authority, then under our proposal, it ought to be the President.

Senator Enrile. Mr. President, based on his proposal now as the spirit of his proposal, the Ombudsman as a protector of the people will conduct an investigation and goes to the President and says: "Please remove or suspend your Cabinet member, or reprimand him." Suppose the President will not do that?

Senator Angara. That is a political responsibility of the President.

Senator Enrile. So, in other words, we are writing a law that will render the protector of the people inutile.

Senator Angara. No, Mr. President, because

this is only one instance where we also respect the political authority of the highest political leader in this country.

Senator Enrile. I suppose, Mr. President, when the Constitution said that the Ombudsman was vested with the role as the protector of the people, the framers of the Constitution knew the meaning of this phrase. They did not make any exception. And so, under this law, we are, in effect, eroding the meaning of this constitutional precept that the Ombudsman must be the guardian of the national interest and act as a protector of the people.

Senator Angara. We are doing nothing of the kind, Mr. President. The proposal merely defines "given the separation of powers and the courtesy accorded to each department the proper limit and the proper jurisdiction of each."

Senator Enrile. Mr. President, precisely...

Senator Angara. But in the end, Mr. President, the power of the Ombudsman is there. If there is any misconduct committed by any of these officials, then the Ombudsman still has the power to initiate the investigation and file a complaint. So, the ultimate power is still found in this proposal.

Senator Enrile. As they say in Spanish: "Big problems require big solutions." Mr. President, we have a big problem of graft and corruption in Government; so, we need a very big and expeditious solution. That is why I believe that I will go along with the position of the distinguished Gentleman from Mindanao that we should recast this particular provision, excluding from the jurisdiction or ambit of the Ombudsman the judicial system, without excluding the bureaucracy under the said system--the Justices of the Supreme Court and the Intermediate Appellate Courts. The Judges should be excluded but not the bureaucracy under the judicial system. And, as far as the Members of Congress are concerned, they ought to be excluded because of the peculiar role that they play; that they are responsible to the people, but the bureaucracy

under the Senate and the House of Representatives, and the Members of the Cabinet ought not to be excluded.

Thank you, Mr. President.

Senator Angara. If the Gentleman will propose a language to that effect, we would like to consider that.

Senator Guingona. May I therefore propose, Mr. President, from line 7, after the word "subsidiaries", substitute the following: EXCEPT OVER THE PRESIDENT, VICE-PRESIDENT, MEMBERS OF CONGRESS, MEMBERS OF THE CONSTITUTIONAL COMMISSIONS AND MEMBERS OF THE JUDICIARY TO THE LEVEL OF THE JUDGES. Up to Judges first. I have another amendment on the "Provided", Mr. President.

Senator Angara. "Level of the judges," up to what category, Mr. President?

Senator Guingona. Up to the municipal judges.

Senator Angara. Up to the level of municipal judges.

Senator Guingona. Yes.

The President. What is the pleasure of the Sponsor?

Senator Angara. We will accept it, Mr. President.

The President. Is there any comment? Any objection?

Senator Paterno. Mr. President.

The President. Senator Paterno is recognized.

Senator Paterno. Mr. President, I can understand why the Justices of the Supreme Court would be excluded from disciplinary authority, but I do not understand why it goes down to the level of the municipal judge.

Senator Guingona. Well, the disciplinary authority over the judges is vested in the Supreme Court and they have the power to impose sanctions

against judges up to the municipal level.

Senator Paterno. Mr. President, we face the ineffectiveness of the judiciary in actually resolving many of the complaints with respect to delays in action against members of the judiciary at the regional and municipal levels. And if we exclude the judges from this, Mr. President, then we will be vitiating the effectiveness of...

Senator Guingona. If the Gentleman will permit me, Mr. President. My subsequent proposal is that: PROVIDED THAT NOTHING HEREIN CONTAINED SHALL DEPRIVE THE OMBUDSMAN FROM CALLING THE ATTENTION OF OR INITIATING A COMPLAINT AGAINST SUCH OFFICIAL BEFORE THE APPROPRIATE FORUM FOR THE LATTER'S APPROPRIATE ACTION. In other words, if there is a municipal judge that needs disciplinary action the Ombudsman can take the initiative and refer the same to the Supreme Court and inform the Supreme Court that this judge is erring and for the Supreme Court to take disciplinary action against that erring judge.

The President. Suppose the Supreme Court, because of its many duties, does not take any action?

Senator Guingona. Well, that is a defect in the system, Mr. President, but that is their power and I think we have to respect that power.

The President. How do we read then Section 12 when it says that "The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials...", is the municipal judge not a public official?

Senator Guingona. Well, that is true, Mr. President, but...

The President. I can see why the Justices of the Supreme Court are being excluded. There is an impeachment procedure as far as they are concerned. But how about regional trial judges? We will be condemned by the people if we exempt them.

Senator Guingona. Well...

SUSPENSION OF THE SESSION

The President. Let us suspend the session for a few minutes, if there is no objection. [There was none.]

It was 4:35 p.m..

RESUMPTION OF THE SESSION

At 4:43 p.m., the session was resumed.

The President. The session is resumed.

Senator Angara. Mr. President.

The President. Senator Angara is recognized.

Senator Angara. Mr. President, we would like to skip temporarily the discussion of Section 16 since we are still trying to draw up an appropriate language to cover the intent of the amendment. So, with the permission of the Body, can we go on to the subsequent sections?

The President. All right. Are there any other amendments on page 13?

Senator Shahani. Mr. President.

The President. Senator Shahani is recognized.

SHAHANI AMENDMENTS

Senator Shahani. Mr. President, I wonder whether I would be allowed to go back to page 12 because it is something which I overlooked.

The President. All right.

Senator Shahani. Thank you, Mr. President. I should like to suggest that on page 12, line 21, subsection "(gg)" which says "disobedience, refusal of assistance, and maltreatment of prisoners"--this really refers to articles in the Revised Penal Code. Disobedience corresponds to Article 232; Refusal of Assistance refers to Article 233; and Maltreatment of Prisoners refers to Article 235.

Now, Mr. President, in the Revised Penal Code, Article 234 refers to the refusal to discharge public office, and I feel, for the sake of consistency, the

words "REFUSAL TO DISCHARGE PUBLIC OFFICE" should be inserted after the word "assistance" and before the word "and", so that line 21 would, therefore, read: "(gg) disobedience, refusal of assistance, REFUSAL TO DISCHARGE PUBLIC OFFICE, and maltreatment of prisoners." I think this would complete, Mr. President, the division of the Revised Penal Code.

Senator Angara. We accept it, Mr. President.

The President. Is there any comment? Any objection? [Silence]. Hearing none, the same is approved.

Senator Shahani. And then, Mr. President, just a minor amendment on line 27, since this still refers to a major heading which is Section 16, I think, line 27 should have a subsection of "(kk)".

Senator Angara. Perhaps, it should be "(mm)", Mr. President, because we already have "(kk)" and "(ll)".

Senator Shahani. I see. Anyway, I think this would need a heading, so if that is acceptable, Mr. President...

Senator Angara. It is accepted, Mr. President.

The President. Subject to restyling. Is there any objection? [Silence]. Hearing none, the same is approved.

Senator Mercado. Mr. President.

The President. Senator Mercado is recognized.

Senator Mercado. Mr. President, inasmuch as we have been allowed to backtrack a little bit, with the permission of the Chair, I would propose an amendment to what was previously Section 13 on "Immunities" which we have removed. If the Sponsor will remember, during the period of interpellation, I made inquiries with regard to cases wherein the Tanodbayan or its staff may be compelled to testify in court cases on matters coming to their attention in the exercise of their duties. I felt this could disrupt their functions.

Originally, I had second thoughts on this particular amendment because I thought it might affect the right to confront the evidence. But I have been informed that this may, in fact, actually help the accused because if they are not compelled to testify, the prosecutor may be compelled to look for other evidence.

So, I would like to propose, if it will be accepted, that on page 6, where Section 13 used to be, we will have a section that would read:

PRIVILEGE NOT TO TESTIFY. THE TANODBAYAN AND THE STAFF MAY NOT BE COMPELLED TO TESTIFY IN ANY COURT WITH RESPECT TO MATTERS COMING TO THEIR ATTENTION IN THE EXERCISE OR PURPORTED EXERCISE OF THEIR OFFICIAL DUTIES EXCEPT AS MAY BE NECESSARY TO ENFORCE THE PROVISIONS OF THIS ACT.

The President. Would it be possible, after we approve the remaining pages, to go back to these places?

Senator Mercado. I would not have any quarrel on that, Mr. President. I just felt that it might be possible because we are backtracking.

The President. We could go back to the preceding pages.

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized.

Senator Maceda. Mr. President, my question is on page 11. Would the Chair like that now or we ...

The President. Why do we not do it later so that Senator Angara can finish with all these reservations?

Senator Maceda. In which case, Mr. President, before page 13 then, at the bottom of page 12. I was really wondering where we will put an amendment which I suggested earlier on the question of exhaustion of administrative remedies. And this is, in connection with letter "(J)" of page 10:

Knowingly approving or granting any license, permit, privilege, or benefit in favor of any person not qualified. . .

Mr. President, in my experience as Minister of Natural Resources, for every license that was being applied for, whether it was a mining license or a forestry license, or any other license, there were always conflicting parties; and, the losing party or one of the losing parties, in several cases, filed a case in the Tanodbayan or now, in the Ombudsman. But technically, that is not the remedy. The remedy is to appeal the decision of the Cabinet Secretary to the Office of the President with which they are not in agreement. Worse, the usual representation was, that they would withdraw the case in the Tanodbayan if I reversed my decision. It was filed for blackmail.

So, in connection with some grounds here, I think we had approved that in principle during the interpellations, that no cases should be filed against the Executive Official until executive remedies shall have been exhausted.

For example, take the case of now Secretary Reyes. They filed a case against him for the MICT case, but that was contested in the Office of the President, and the Office of the President confirmed the contract. So, how can a matter of an executive or a Cabinet member's discretion, so to speak, be subjected to questions in the matter of knowingly approving any license, when he feels that the other party is not qualified, or worse, not entitled?

Many of these are really subject to discretion or evaluation of the Cabinet member. The proper appeal really is to the Office of the President for a reversal. But, what usually happens is that as soon as the Cabinet member signs the permit, they go to the Tanodbayan to file a case questioning the approval.

So, I was wondering whether the Gentleman would like to put at the end of this Section, at the bottom of page 12, any affirmation of the principle

of exhaustion of administrative remedies before a case could be filed with the Tanodbayan.

The President. The point of Senator Maceda can well apply to the Judiciary after the rendition of a judgment by a court, let us say, a Municipal Court or a Regional Trial Court. A case can be filed against the judge.

Senator Maceda. Or bureau directors, Mr. President. Their decisions are subject to be appealed or confirmed by the department head.

The President. What is the concrete proposal so we shall know the place where it can be put?

MACEDA AMENDMENT

Senator Maceda. NO CASE SHALL BE FILED IN THE OMBUDSMAN ON A MATTER WHICH INVOLVES DISCRETION OR ACTION BY AN EXECUTIVE OFFICIAL UNLESS ADMINISTRATIVE REMEDIES SHALL HAVE BEEN EXHAUSTED TO REMEDY THE INJUSTICE, subject to style, Mr. President.

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. Mr. President, I agree in principle with that proposal, except that we have already established concurrent disciplinary power of the Ombudsman with the Commission on Civil Service. In many cases, the exhaustion of administrative remedies has already been, in effect, amended because we have agreed that the Ombudsman shall have administrative powers and disciplinary powers over public officials.

Senator Maceda. That is right. But, that is a different set of cases. As I was referring to earlier, the matter of granting licenses or awarding of contracts is another problem altogether. Technically--and it has happened--the Secretary of Public Works and Highways could be charged before the Ombudsman of knowingly granting a contract involving thousands of those contractors bidding before the DPWH, to somebody who, the complainant

says, is not entitled to the contract. So, it really slows down the implementation process because Cabinet members or bureau directors would be scared of granting contracts lest they be brought before the Tanodbayan by a losing party, a losing bidder, a losing contractor, or a losing applicant. I wonder how we can balance this. Part of the reason why there has been a lot of criticism against this Administration is this slow implementation of projects; but one of the reasons for the slow implementation of projects is precisely that Cabinet members are so afraid to act lest they be brought before the Tanodbayan when they approve or disapprove an application or a contract.

Senator Guingona. But, then it would have to be very limited to that because some cases may arise from the same set of facts, over which the Ombudsman may have jurisdiction. I do not know if we can limit it, Mr. President.

Senator Angara. Mr. President, if I may intervene. As I understand it, the point being proposed by Senator Maceda is that, if the decision of an administrative official is subject to correction by a superior or a higher official, then no case should be filed against the action of that official until appeal or exhaustion of remedy has been made.

Senator Maceda. Yes, because, technically, there is no damage yet.

Senator Angara. There is no damage yet to the public interest.

The President. As rephrased by Senator Angara, that can apply both to administrative and judicial proceedings.

Senator Angara. That is correct, Mr. President.

The President. All right.

Senator Angara. We will accept that, Mr. President. But, my only problem is where to place it. I do not know whether we have to place it...

Senator Maceda. Subject to style, Mr. President.

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized; then Senator Gonzales.

Senator Enrile. Mr. President, I have my doubts about the proposal. Because if a municipal judge renders a decision using the doctrine of the Supreme Court *res ipsa loquitur*, which is patently erroneous or illegal, one can even draw the conclusion that it was accompanied with malice; and, if we are going to require the losing party to exhaust judicial remedies before the Ombudsman would act, then it will take probably ten years before the Ombudsman can act. Ang sabi nila, "Puti na ang pakpak ng uwak ay hindi pa nakakagalaw ang Ombudsman."

Now, in the case of administrative matters, Mr. President, I think what is contemplated by the Constitution is precisely to correct a patently or even maliciously adopted decision of a bureaucrat. So, I think the Ombudsman can justifiably act in order to test the validity of the action of the bureaucrat. And should the appeal be taken and the appeal is sustained against the complaining party, then that could be set up as a defense by the bureaucrat under challenge by the Ombudsman.

I am just posing this question because I think this is going to cause us a lot of problems if we do not work it out well enough.

The President. Senator Gonzales.

Senator Gonzales. In addition to the concerns expressed by the Minority Floor Leader, if we are to require this exhaustion of administrative remedies and we know that the last step in the administrative process is an appeal to the President who has the power of control and supervision over all Executive departments, bureaus and offices, eventually the subject of a complaint will not really be the decision of a department head, but it will be the

decision of the President of the Philippines, whether it affirms, reverses or modifies the decision of the Cabinet member. It is no longer the decision of a Cabinet member; it is already a decision of the President.

Does it mean that it is the President now who is going to be the respondent in such charge of unjust and manifestly unfair decision? That is why I raised my hand to caution the Sponsor, at least, to give this quite a serious consideration before accepting the proposed amendment.

Senator Enrile. Mr. President.

The President. The Minority Floor Leader again.

Senator Enrile. Mr. President, I think we should go back to the concept of the Ombudsman. The Ombudsman was institutionalized in the Constitution to serve as a protector of the people. And if we must have it in this Chamber, because we are only human, we must have it in favor of granting the broadest power and leeway to the Ombudsman to perform his task unhampered by other limiting factors. We must assume the good faith and trustworthiness of the Ombudsman, precisely, because the Constitution states that the President, as the appointing power, must select the best amongst us to occupy this position. Now, if there is any failure on the part of the appointing power to exercise caution in selecting the best among the best to occupy this position, then the responsibility lies on the appointing power. And, if necessary, we should exercise the power granted under the Constitution to challenge that power, but we should render every possible leeway of grant of power to the Ombudsman to perform its job to protect the people and clean up the messy government.

Senator Paterno. Mr. President.

The President. Senator Paterno is recognized; then Senator Laurel.

Senator Paterno. Mr. President, I would be

inclined to support the manifestations of Senator Maceda in respect to the exhaustion of administrative remedies in those transactions which form part of the routine of an agency, such as the granting of licenses, concessions, entering into construction contracts, et cetera. Perhaps, Mr. President, it is possible to segregate some of these matters from the other matters which may not need the exhaustion of administrative remedies in order for the Ombudsman to exercise disciplinary authority. Like Senator Maceda, I can anticipate that contractors who are dissatisfied with the grant of a contract to a competitor would file a complaint with the Ombudsman and, in effect, ask the Ombudsman to be the judge of whether or not the contract was properly awarded instead of a court of law or an administrative proceeding, which would be the proper venue.

So, I would propose, Mr. President, that perhaps Senator Maceda could identify some of these matters in Section 15, which should be exempted from this disciplinary authority.

Senator Maceda. Mr. President, I think the direction being proposed by the Gentleman from Cavite is very well taken. Probably, we can review all the grounds to see where we can apply it.

As I said, I was principally interested in this matter of losing applicants or losing contractors as they have, because I experienced it myself. Going to the Ombudsman, as the Senator has placed it in a better way, therefore, are we asking the Ombudsman to review who of the applicants qualified under the bidding requirements? Who of the applicants filed the correct bond? Who of the applicants have the proper equipment, have the proper capability.

In this type of a situation, really, I do not think it was intended that the Ombudsman, or at present, the Tanodbayan, should be used as a tool of the losing parties to promote their business interests or to review all government contracts. And that is my main concern.

Now, I take note of the arguments of the Minority Floor Leader and the Gentleman from Mandaluyong. They are both valid. That is why, it is a difficult problem.

As far as the appeal to the Office of the President is concerned, if the Office of the President confirms the decision, then the Gentleman from Mandaluyong is correct that it already becomes the decision of the Office of the President. However, there is added basis for the Cabinet member or for the head of office, if it came from a corporation, for example, to say, "Well, you cannot be more 'popish' than the Pope. My actions have already been confirmed as in order by the highest official of the land. So, it sustains that we had a basis for acting."

Supposing the Office of the President reverses the decision specifically that there was favoritism, et cetera, or there was no basis, then there would be a stronger case against the Cabinet member or the executive officer concerned.

In conclusion, Mr. President, I agree with the Senator from Cavite. Maybe, we should really work out the specific situations and say that under Sections (a), (d), (f), (gg), (hh), (ii), there should be an exhaustion of administrative remedies before they can file the complaint with the Ombudsman.

Senator Angara. In view of that manifestation, Mr. President, can we now ask the proponent to identify for us which section should be affected by his amendment, so that we can move on? In the meantime, we can go on to other amendments.

The President. Does Senator Laurel have any amendment to propose on page 13 so we can move on?

Senator Laurel. Mr. President, I have some amendments. Although I have made some reservations, I thought now is the time to suggest certain guidelines that we could use in fashioning a bill of this nature, if I may be permitted.

The President. Please proceed.

Senator Laurel. I understand, Mr. President, that we are creating the Office of the Ombudsman with as wide and broad powers as possible because of the unfortunate conditions happening in the country, where we see erring public officials going scot-free. We would like to be more decisive in taking note of that situation in the light of the constitutional injunction in Section 27, Article II of the Constitution, which provides that:

The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.

Mr. President, what appears in that Section 12, referred to earlier, is merely an offshoot of that statement of principle in Article II, Section 2, which reads:

The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, . . .

While we believe that we should act promptly and respond as we feel to that public clamor, one basic thing that we should bear in mind is that the Office of the Ombudsman, which is vested with powers to discharge its assigned duties as protector of the people, must be created within the framework of our democratic system. That, I think, should be the main guideline.

And what is that democratic precept within the constitutional and democratic framework, which we find repeated in some sections of the Constitution?

First, I would say, Mr. President, is the principle of separation of powers. That is basic. Second is the injunction that there should always be due process; that anyone vested by law with power should observe the essential requirement not only of the procedural aspect of due process, but also the substantive aspects. Which means, Mr. President, that the law vesting any official with power must

itself be reasonable and not arbitrary; it also means that powers must be separated. And by power, we mean that the Executive, Legislative and Judicial Departments should not be vested in one person.

Unfortunately, Mr. President, as we read through this bill, we are creating here the Ombudsman for a high and honorable purpose to protect the people. However, as I had the occasion to call the attention of this Body, we are vesting the Ombudsman with all the powers of Government -- prosecutory, the power of initiating any complaint, judicial, and I would add, executioner.

Let us bear in mind, Mr. President, that in the light of the provisions of this bill, the Ombudsman is vested with the power to investigate, publicize, recommend, make its own decision, reverse any finding, adopt its own rules, and even the finality of a judgment or order. Almost everything is in its power.

So, I warn this august Body that we might be unconsciously creating a fairy tale monster who, instead of being the protector of the people, could be the abuser and oppressor of the people--to haunt and oppress them without exception.

The Supreme Court Justices are exempted, apparently, from this bill. This bill also states that the Ombudsman can initiate complaints against everyone, including Members of Congress with no exception. And so, what other principles are violated in this bill, Mr. President?

With the Gentleman's permission, it contravenes the constitutional grant of power to the Civil Service Commission. It even trenches on the powers vested under the Constitution in the Commission on Human Rights. It diminishes the powers of the President as Chief Executive of the land and as Commander-in-Chief of the Armed Forces.

Mr. President, those who have been appointed as Ombudsman and Deputy Ombudsman are men of unquestioned integrity. However, subse-

quent appointees may not be of the same mold and character. The grant of these powers would be tantamount to opening the door for abuses should men of lesser caliber hold the reins of the office of this all-powerful body.

And so I ask, Mr. President, at this stage, that perhaps we should reevaluate the constitutional concept of the Ombudsman as protector of the people because, instead of being a protector, the office might be the oppressor. Who will protect us then from the all-powerful Ombudsman? I submit, Mr. President, that this requires a reassessment of the entire direction and concept of the Office of the Ombudsman.

Thank you very much.

Senator Enrile. Mr. President.

The President. The Minority Floor Leader; then Senator Gonzales.

Senator Enrile. Mr. President, I must state for the record that I went to the people before the adoption of this Constitution and argued against this Constitution because of the many defects that we noticed in it and which are now becoming visible to our people. But the people have spoken, and on the basis of what are considered to be the true results of the plebiscite, there was an overwhelming mandate to ratify the Constitution.

This Constitution embodies the Republic of the Philippines that we are now discussing. This is the Republic. It is the Charter of our republican government. A new government was established by this Constitution. And among the concepts written here is the concept of an Ombudsman, and the people wanted an Ombudsman who is independent, free from political influence, free from any other influences, unbounded by anybody but only by the Filipino people because it is supposed to be a protector of the people. And the very Constitutional Commission that drafted the provision on the Ombudsman did not leave it to Congress to define the powers of the Ombudsman. It defined the powers

of the Ombudsman in Sections 12 and 13 of Article XI. The only thing that was left to the Congress to do is contained in paragraph 4, primarily of Section 13, which states that:

Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law...

That is the only thing that we can do so far, as I can understand this provision. And so, therefore, the dangers that have been raised here of the possibility of a fairy monster--not a fairy tale but a fairy monster, if there is such a thing--is not something that we can escape from, if assuming that there is such a risk, because the Constitution so requires us to respect the mandate that they have embodied in Sections 12 and 13. But on the other hand, Mr. President, I think Congress is not really powerless to protect the people if this Ombudsman would become oppressive; although, I have my faith in this institution that it will not be a fairy monster or any kind of monster.

We can exercise the power of limiting its budget if it becomes a source of tyranny. We can initiate impeachment proceedings. The Lower House, at least, can initiate impeachment proceedings against it if there should be an abuse of power. Maybe, we can exercise the power of amendment to change this law if it becomes necessary to curtail the power of this fairy monster, and many other things that can be done.

As I said, Mr. President, we should err in favor of granting the broadest power to this institution, and find out whether the expectation of our people is met, as embodied in Section 27 of Article II, which is actually a policy-decision of the people; and I think this is the basis of the provision on Ombudsman. They said:

The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.

They were not content in commanding the State to do that. They explicitly provided in Article XI,

Sections 12 and 13 the mechanism to help accomplish that objective.

And so, Mr. President, I respect the very able and eloquent position of my distinguished Colleague from Batangas, but I would like to state my position in the *Record*.

The President. Senator Gonzales, then Senator Laurel.

Senator Gonzales. It is not often, Mr. President, that I agree with the Minority Floor Leader, but on the last two points raised by him, I have to give my agreement. If this Body recalls, during the period of debate in the course of the sponsorship of this bill, I subjected the Sponsor to quite an intensive interpellation, especially insofar as the grant of concurrent disciplinary jurisdiction to the Ombudsman with the Civil Service Commission is concerned. But then, all of these are behind us now, because this is really a policy choice.

What kind of Ombudsman do we really want? Do we want an Ombudsman who would perform nothing but the brokering functions, no different from the Ombudsman created under the 1971 Constitution, as amended. It proved to be a toothless tiger! It is nothing but a scarecrow. Panakot lamang sa ibon, pero wala namang talagang kapangyarihan o pinsalang nagagawa.

Is that the kind of Ombudsman that we want? Or do we really want an Ombudsman in the true sense of the term as what the Constitution calls the protector of the people? And on that phrase, to me, we can argue from the commanding heights and try to really determine for ourselves what the framers of the Constitution and the people who ratified the same want the Ombudsman to be.

And although I have my serious reservations before, I have to accept that what we really want is a true Ombudsman with real powers, especially at a time when apparently there are many forces trying to shake the faith of the people in the Government.

Now, due process has been invoked here. I would like to believe, Mr. President, that regardless of whether we put this requirement of due process or, as suggested by the Honorable Presiding Officer, notice and hearing--whether we put it or we write it into the law or not--it is always there because this is a constitutional guarantee. Every administrative proceeding of a quasi-judicial nature must, by our jurisprudence, always conform to and respect the requirements of due process, and the minimum requirements of which are the Siamese twins of the right to notice and the right to hearing.

Now, I would, of course, like to have them expressly written into the statute. But then, I say that the mere fact that they are absent does not mean that the constitutional guarantees do not limit the powers of the Ombudsman. For example, one of the functions of the Ombudsman is to conduct preliminary investigation and to prosecute. In short, one of its functions is to determine whether or not a crime has been committed and whether the respondent is probably guilty of the same.

I would like to see a provision in this bill expressly providing the Miranda rights in such investigation, for the Constitution itself, under Section 12, paragraph (1), Article III provides that:

Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

I would like to believe that these constitutional guarantees are deemed written or superimposed in this bill itself; although, I would say I would be more comfortable if they are expressly provided for in this law. But the absence of provisions on due process and this provision and any other fundamental guarantees on human rights and limitations on

the powers of government, in my mind, even if absent are deemed written in the Constitution, and must be considered limitations on the powers of the Ombudsman.

The President. Senator Laurel is recognized. After this, we will go back to the amendments.

Senator Laurel. Thank you, Mr. President, for the opportunity to respond to my Colleagues on a matter so vital as this topic under discussion.

The distinguished Minority Floor Leader adverted to Section 12 and Section 13 of Article XI to emphasize the fact or the point that we are directed, mandated by the Constitution to vest the Ombudsman with so much power.

I would like to say, Mr. President--yes, let it be clear that I am in favor of vesting the Ombudsman with as much power as possible in order to discharge effectively his responsibilities under the Constitution. But, I repeat, Mr. President, within the basic framework of our Constitution is the doctrine of separation of powers that no one should be vested with all the powers of government, namely, Executive, Legislative, and Judicial.

Now, Section 13 has been adverted to as enumerating the powers, functions, and duties of the Office of the Ombudsman. Nowhere do I find, Mr. President, that the Ombudsman has the prerogative and the authority to impose disciplinary action.

Here in paragraph (1), it is investigative; paragraph (2), it is directive; paragraph (3), it is requesting; paragraph (4), it is publicizing; paragraph (5), it is recommendatory and requesting; paragraph (6), it is publicizing; paragraph (7), it is determining the causes again for purposes of recommendation; and paragraph (8), it is promulgation of rules of procedure. Now I know, and we take note of the fact, that in paragraph (8), it says: "promulgate its rules of procedure and exercise such other powers or performs such functions or duties as may be provided

by law." That law, Mr. President, must be constitutional. And if that is arbitrary, unreasonable and oppressive, that law is unconstitutional because it is violative of the principle of due process. That is a settled jurisprudence, not only in the United States but also right here, Mr. President. It is not only procedural. If the law that empowers a person with so much authority converts that person into what I say and describe as a monster, as an ogre, or as a fairy tale monster; then, that law which creates that monster is unconstitutional because it is violative not only of the basic principles underlying our democratic form of government but also the due process clause in the Bill of Rights of the Constitution.

Thank you very much.

SUSPENSION OF THE SESSION

The President. The Chair would like to declare a break at this hour, if there is no objection. [*There was none.*]

It was 5:33 p.m.

RESUMPTION OF THE SESSION

At 6:01 p. m., the session was resumed.

The President. The session is resumed.

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized.

MACEDA-PATERNAL AMENDMENT

Senator Maceda. Mr. President, at the bottom of page 12 on the last paragraph, may I propose the following amendment together with Senator Paterno.

IN ALL CASES WHERE THE COMPLAINT IS BASED ON GROUNDS UNDER SUBSECTIONS (C), (J) AND (Q) OF THIS SECTION THE OMBUDSMAN OR THE TANODBAYAN MAY REQUIRE THE COMPLAINANT TO EXHAUST ADMINISTRATIVE REMEDIES UNDER EXISTING LAWS AND REGULATIONS BEFORE GIVING DUE COURSE TO THE COMPLAINT.

The President. What is the pleasure of the Sponsor?

Senator Angara. We accept the amendment, Mr. President.

The President. The amendment is accepted. Are there any comments? Any objections? [*Silence*] Hearing none, the same is approved.

We go back to page 13. Is there any further amendment on page 13? [*Silence*] We go to page 14.

Senator Gonzales. Mr. President.

The President. Senator Gonzales, then Senator Saguisag. Let us find out which is the anterior amendment.

Senator Saguisag. I want to raise a point of clarification, Mr. President.

The President. All right, Senator Saguisag.

Senator Saguisag. Lines 30 and 31 where it says:

(A) enter and inspect the premises of any office, agency, commission or tribunal;

The President. Is that on page 14?

Senator Saguisag. On page 13, Mr. President, towards the bottom, lines 30 and 31. I just would want to know whether this power can only be exercised subject to the Bill of Rights regarding search and seizure. Or can the Ombudsman just enter without getting a search warrant?

Senator Angara. In effect, Mr. President, this proposal will provide that warrant to the Ombudsman.

Senator Saguisag. In other words, the Ombudsman on his own cannot just, say, enter the premises of a certain department or any other office in Government without getting a warrant from the Sandiganbayan or some other judicial body?

Senator Angara. Yes, Mr. President.

Senator Saguisag. Thank you, Mr. President.

The President. Is there any other amendment? Let us go to page 14.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized.

Senator Gonzales. Before I propose my amendment, will the distinguished Sponsor yield to a few questions?

Senator Angara. Certainly, Mr. President, to my coauthor.

Senator Gonzales. The Ombudsman exercises concurrent disciplinary jurisdiction with the Civil Service Commission, does it not, Mr. President?

Senator Angara. That is correct, Mr. President.

Senator Gonzales. And the grounds for disciplining public officers and employees are practically the same grounds as provided for in the Civil Service Law.

Senator Angara. That is correct, Mr. President.

Senator Gonzales. In fact, Mr. President, under Section 19, the penalties that can be imposed by the Ombudsman in disciplinary cases are the same penalties provided for in the Civil Service Law and Rules.

Senator Angara. That is correct, Mr. President.

Senator Gonzales. In Section 18, however, the duration of the preventive suspension is different. When it is under the Civil Service Law, I seem to recall that the preventive suspension is only for 60 days, after which, the suspended employee shall be deemed reinstated unless the delay in the termination of the investigation is due to his negligence or fault. Is that not correct, Mr. President?

Senator Angara. That is correct.

Senator Gonzales. However, under Section

18, the duration of the preventive suspension here, according to lines 6, 7, and 8, it says: "until the case is terminated by the Office of the Ombudsman but not more than one year."

My point, Mr. President, is that we may be guilty of violating the equal protection of the laws where we treat persons who belong to the same class differently, for I see no substantial distinction between those subject to the disciplinary jurisdiction of the Civil Service Commission and those of the Ombudsman when such jurisdiction is concurrent and the grounds are the same. The penalties impossible are also the same. And yet, as far as the duration of the preventive suspension is concerned, they are different, Mr. President.

GONZALES AMENDMENT

So, my proposal is to make the duration of the suspension the same as the duration of the preventive suspension under the Civil Service Law.

Senator Angara. We see the merit of the suggestion, Mr. President, and the fairness of it. So, we accept the amendment.

Senator Gonzales. Thank you, Mr. President. We will word it accordingly, subject to style and refinement.

Senator Angara. Yes, so that the preventive suspension by the Tanodbayan will be of the same length of period as the preventive suspension under the Civil Service Law.

Senator Saguisag. Mr. President.

The President. Senator Saguisag is recognized.

Senator Saguisag. Mr. President, unless the practice before the Sandiganbayan has been changed, when I was still appearing there, the practice was: upon the filing of the criminal complaint before the Sandiganbayan, there would be a motion on the part of the Tanodbayan to suspend. It would be subjected to a thorough hearing. But this is where I really share the concern of Senator Laurel.

Assuming that the President is someone like Mr. Marcos and the Ombudsman is someone like Mr. Leonardo Perez, I am not sure whether we want to have this kind of power. In other words, let us forget the present occupants, we have all the highest respect for them. But if upon merely filing a case before the Tanodbayan someone could already be suspended, we could really be set back. I mean, this is such a departure from current practices that we have to review this with more care.

The President. The Chair checked this point with a Justice of the Sandiganbayan. According to their current practice, the moment a complaint or information is filed containing the charges with the Sandiganbayan, suspension comes almost automatically.

Senator Saguisag. My own impression is that it is done after arraignment.

The President. Yes, after arraignment.

Senator Saguisag. There is a formal motion, then there would be an opposition where the one to be adversely affected is given a chance to oppose it.

The President. I think there are recent decisions on the point after arraignment.

Senator Saguisag. But this one is fixed only at the filing, Mr. President, of the charge before the Tanodbayan. So, this is really going to deprive the respondent of something so valuable before he is heard at all. I would want the suspension, if at all, to occur only after a case is filed in court. Otherwise, we would really have a problem of unequal protection. This is our concern. Public life is extremely unattractive as it is. This provision is going to have another "chilling effect" in regard to the recruitment effort of Government to get good people into government service.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized.

Senator Gonzales. The preventive suspen-

sion here is actually an aspect of the exercise by the Ombudsman of the disciplinary jurisdiction. So, actually, this thing would also happen if he were charged before the Civil Service Commission. This is different from charging a person already before the Sandiganbayan; in which case, the proceedings before the Sandiganbayan is a criminal prosecution. It is not an administrative one. Section 18 here refers exclusively to "preventive suspension in the exercise by the Ombudsman of its disciplinary jurisdiction." It is so in the Sandiganbayan because it is explicitly provided. When one is charged under the Anti-Graft and Corrupt Practices Act or for bribery, then the court is the one that exercises the power of suspension if it determines that there is a valid complaint.

We were the ones who handled this case involving the suspended Mayor and councilors of Makati, the late Estrella, and that is where the Supreme Court laid down the doctrine that it is not the provincial governor who must suspend but it must be the court. But then after the court is satisfied that there is a valid complaint, so it issues the suspension order, and the duration of the suspension is not for 60 days or 90 days but "until the final disposition of the case." So, that is entirely different from the preventive suspension referred to in Section 18, Mr. President.

Senator Saguisag. It is not in the language of this provision. Clearly, this is consistent with any proceeding. "The Tanodbayan or his deputy ..."---it is even delegated to someone who is not even the Tanodbayan himself---"... may suspend the respondent officer or employee upon the filing of the charges against him." It does not say here that this applies only to administrative or disciplinary proceedings. If that is the intent, then that should be spelled out. But even so, the fundamental objection remains. There is, to me, something that is so grievously against the interest of a respondent even before he is heard upon the filing of the charges.

The President. Incidentally, there was an amendment approved already, put forward by Senator Shahani.

Senator Gonzales. Yes, Mr. President. That is on this point. In fact, that is a repetition of the Civil Service provisions where a preventive suspension can be heard.

Now, it is true, Mr. President, that it is not explicitly provided, but in the structure of this bill, it is very evident. For example, we find out in Section 15, "Disciplinary Authority" and the grounds are those for disciplinary punishment; then after that, we have Section 16, "Officials Subject To Disciplinary Authority Exceptions"; then comes Section 17 which is "Formal Investigation"; Section 18, "Preventive Suspension"; and Section 19, "Penalties In Administrative Proceedings". So, probably, it is not specifically mentioned because in the structure of the bill, the preventive suspension referred to in Section 18 could only refer to preventive suspension when the Ombudsman exercises his disciplinary authority.

Senator Saguisag. Upon the other hand, lines 9 to 13, on page 13, provide for the investigation of:

...any misconduct in office committed by such officials for the purpose of initiating and prosecuting the proper civil or criminal action if warranted.

If that is the intent, all I am suggesting here, if we will adopt the suspension device at all, is to make it explicit that it is limited to disciplinary proceedings.

Senator Gonzales. There is no harm in that but the Shahani Amendment is a reiteration, practically, of the provision on preventive suspension in the Civil Service decree. The purpose precisely of my amendment is to make the duration of the preventive suspension conform with the duration of preventive suspension under the Civil Service decree.

Senator Saguisag. All I can say is, maybe, it

is really time we got a clean copy of the bill as suggested by Senator Tamano last night. There are so many amendments scattered all over the bill that there could be problems as to what really are before the Body now.

Thank you, Mr. President.

Senator Tamano. Mr. President.

The President. All right. Senator Tamano.

Senator Tamano. Mr. President, I share the view that the matter of suspension should be left to another body and not the Ombudsman. Under Section 13 of Article XI of the Constitution, subsection 3, it states here:

The Office of the Ombudsman shall have the following powers, functions, and duties: ... (3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

The powers of the Ombudsman are so awesome, Mr. President, that we can have here a regular Gestapo with democratic trappings. He can go to any public official and say, "Sususpendihin kita bukas."

The power to suspend should be lodged with another body. I think we should not disturb the Civil Service Law regarding suspension rather than just to combine the powers of investigation and punishment because suspension is essentially, in effect, a punishment.

So, that is my view, Mr. President.

The President. All right. There is a pending amendment which has been accepted by the Sponsor limiting it to a period of 60 days on line 8, page 14.

Senator Guingona is recognized.

Senator Guingona. And for the same grounds, Mr. President, as the grounds embodied in the Civil Service Law. For the same grounds because this is intended to prevent him from authorizing his office

to influence the investigation. But if it can be for any other ground, I think it will be giving undue powers.

The President. Is that not the import of Senator Shanani's Amendment.

Senator Guingona. Yes. I do not know. It is not here, Mr. President. For as long as it is the same ground, the same basis and the period is the same, I think that would be more reasonable.

The President. May we have the comment of the Sponsor?

Senator Angara. Mr. President, with the amendment introduced by Senator Gonzales, then the power of preventive suspension would be the same as the power of the Civil Service Commissioner to suspend. In many of the cases, it can be for the same ground.

The President. The Chair would like to ask this question: Is this a case of concurrent jurisdiction between the Civil Service Commission and the Ombudsman?

Senator Angara. Yes. That is the power of preventive suspension, Mr. President. This is being granted to the Ombudsman in those cases where he exercises concurrent jurisdiction with the Civil Service Commission.

The President. Is it not true that under the decisions of the Supreme Court, concurrent jurisdiction is now frowned upon by the courts, which would give substance to the proposal of Senator Tamano that we follow the provision of Section 13, Subsection (3): "The Ombudsman can direct the Civil Service Commissioner."

Senator Angara. That is one way of looking at it, Mr. President. The other way is what is provided here in the bill: that to give the Ombudsman real and genuine power, then he must have concurrent disciplinary authority.

But just to avoid the pernicious effects of

the proper place to put it in.

Senator Pimentel. Yes. May I, therefore, request, Mr. President, that that proposal of mine be considered in connection with Section 30?

The President. All right.

Shall we move on? Is there any other amendment on page 15? [Silence]

Is there any amendment on page 16?

Senator Alvarez. Mr. President.

The President. Senator Alvarez is recognized.

ALVAREZ AMENDMENT

Senator Alvarez. I am on page 15, Mr. President, line 4, subparagraph (e). After "facts" put a comma and add the following: OR PALPABLE ERROR IN THE APPRECIATION OF FACTS.

The President. What is the pleasure of the Sponsor?

Senator Angara. We accept it, Mr. President.

The President. Is there any objection or comment? [Silence] Hearing none, the same is approved.

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. Mr. President, may I just ask the distinguished Sponsor. Section 21, line 13 states:

All provisional orders of the Office of the Ombudsman are immediately effective and executory.

What is the meaning of "provisionary orders"?

Senator Angara. "Provisionary orders," Mr. President, are temporary orders pending the decision on the merit. For instance, an order of preventive suspension will be a provisional order.

Senator Guingona. But there is a motion for reconsideration, which is to be filed within five

days and then to be decided three days thereafter. Should not the respondent be given that chance to have his motion for reconsideration first be resolved? Otherwise, he will have to go on certiorari to the Supreme Court. That is the only remedy.

Senator Angara. Yes, that is the practice, Mr. President. If one interposes a timely motion for reconsideration, then that stays the order in the meantime. When it says that it is immediately effective and executory, that means that one cannot appeal it to a higher court and have it stayed.

Senator Guingona. So, it is clear that the decision is not suspended until after the motion for reconsideration is resolved?

Senator Angara. Yes, until the Ombudsman has decided on that consideration.

The President. The Chair thinks that this is a very sweeping provision. Would it not be better to make a provision there like:

ALL PROVISIONAL ORDERS OF THE OFFICE OF THE OMBUDSMAN ARE IMMEDIATELY EFFECTIVE AND EXECUTORY UNLESS OTHERWISE STATED?

Senator Angara. We accept that clarification, Mr. President.

Senator Guingona. And therefore, we are clear that pending the resolution of the motion for reconsideration, as embodied in this section, the decision of the Ombudsman is not executory?

Senator Angara. That is correct, Mr. President.

Senator Guingona. Subject to style, Mr. President.

The President. All right. There is a pending amendment on line 16 to add, after "executory," a comma and the phrase UNLESS OTHERWISE STATED. Is there any objection? [Silence] Hearing none, the same is approved.

GUINGONA AMENDMENT

Senator Guingona. And then after that, Mr. President, we state:

THE DECISION OF THE OMBUDSMAN SHALL NOT BE FINAL UNTIL AFTER THE RESOLUTION OF ANY MOTION FOR RECONSIDERATION AS STIPULATED HEREIN.

The President. Is that accepted?

Senator Angara. Yes, that is accepted, Mr. President.

The President. Is there any objection, subject to refinement and style? [Silence] Hearing none, the same is approved.

Is there any other amendment on page 16? [Silence]

We go to page 17.

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

Senator Enrile. I am not proposing an amendment, Mr. President. I just want to be clarified with respect to paragraph 3 of Section 21, page 16, which says:

Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive.

What is meant by "substantial evidence"?

Senator Angara. "Substantial evidence," Mr. President, by the definition of the Supreme Court, is such evidence found in the entire record that will convince a reasonable man that the facts so found are facts.

Senator Enrile. Thank you, Mr. President.

My next question is: What is the connection between the first sentence of this paragraph and the succeeding sentences?

Senator Angara. Well, if the Gentleman is suggesting that this might be misplaced, I think he is correct.

Senator Enrile. My third question, Mr. President, is: Does the Gentleman feel that this provision is valid?

Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than thirty (30) days, or a fine of not more than one (1) month's salary shall be final and unappealable.

These are penalties. No matter how light they may be, nonetheless, they impose a penalty. Should we now foreclose the right of a person being punished to appeal the decision if in his opinion he feels that there is no basis for the decision? A fine of one-month salary may be small to some, but it may be a fortune to an ordinary clerk.

Senator Angara. We leave it to the Body, Mr. President, if the Gentleman has a suggestion.

Senator Enrile. I am just posing a question, Mr. President. I am uncomfortable with this no-appeal provision.

The President. The first sentence seems to suggest that findings of fact, when based on substantial evidence, are conclusive and, therefore, the Supreme Court cannot review findings of fact. They will be considered as conclusive.

Senator Enrile. I would agree with that.

The President. On the second sentence, what is stated there is that it is not only the findings of fact, but the order itself will be final and unappealable.

Senator Enrile. That is correct.

The President. Would an appeal to the Supreme Court be more acceptable to the Minority Floor Leader?

Senator Enrile. Any appeal to a higher body would serve the cause of justice and, maybe, fair play.

The President. On the other hand, the Supreme Court has been telling the Senate that it is overburdened with cases. How do we strike the balance? Actually, there are cases in the Supreme Court pending as of 1965. How do we strike the balance here?

SUSPENSION OF THE SESSION

Shall we suspend the session, if there is no objection? [*There was none.*]

It was 6:50 p.m.

RESUMPTION OF THE SESSION

At 6:51 p.m., the session was resumed.

The President. The session is resumed.

Senator Angara is recognized.

ANGARA AMENDMENT

Senator Angara. Thank you, Mr. President.

After a brief conference with Senator Enrile, the President, and Senator Gonzales, we are proposing that the sentence beginning on line 29 and ending on line 1, page 17 be deleted. The implication of that is that all penalty imposed by the Ombudsman will now be subject to appeal by certiorari to the Supreme Court.

The President. Is there any comment? Any objection? [*Silence*] Hearing none, the same is approved.

On page 18, is there any amendment? Senator Guingona. Senator Pimentel, unless there is an anterior amendment.

Senator Guingona. Page 16, Mr. President.

The President. All right.

GUINGONA AMENDMENT

Senator Guingona. I have one on page 17, Mr. President. Lines 15 to 17 state:

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require.

This may constitute an undue delegation of legislative power, Mr. President, and they may say that all orders are unappealable. Therefore, with the consent of the distinguished Sponsor, if he will agree, we move to delete lines 15 to 17.

The President. What is the pleasure of the Sponsor?

Senator Angara. We accept it, Mr. President.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

ANGARA AMENDMENT

Senator Angara. Mr. President, just to be consistent with the earlier deletion, may I, on page 17, line 2, have the word "other" removed? So that, subparagraph (4) will read: IN ALL ADMINISTRATIVE DISCIPLINARY CASES, ...

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Pimentel. Mr. President.

The President. Senator Pimentel, then Senator Alvarez.

Senator Pimentel. My proposed amendment, Mr. President, covers the first sentence of Section 22, from lines 19 up to 23, unless Senator Alvarez. I think, has an anterior amendment.

The President. Senator Alvarez is recognized.

Senator Alvarez. With the permission of the Gentleman from Cagayan de Oro, Mr. President My amendment is on Section 23, lines 12 and 13.

The President. We are only talking of Section 22.

Senator Alvarez. Are we on page 18, Mr. President?

Senator Angara. No, page 17.

Senator Alvarez. Well, I am sorry. I will wait for my turn.

The President. Senator Pimentel is recognized.

Senator Pimentel. Thank you, Mr. President.

May I just explain very briefly what I intend to propose. In the first sentence of Section 22, the Office of the Ombudsman is given blanket author

ity to establish in municipalities, cities, and provinces offices of the Ombudsman where necessary, as determined by the Ombudsman.

In effect, Mr. President, at least, in theory, the Ombudsman can establish 1,500 municipal Ombudsmen, 60 city Ombudsmen, and 75 provincial Ombudsmen. At least, in theory, as I said. It seems to me that the grant of power here is well-nigh undefined, because it says: "where necessary, as determined by the Tanodbayan."

My proposal, Mr. President, is to eliminate the provision as regards the establishment of offices in municipalities and cities and limit the offices which the Ombudsman may establish to the capitals of provinces, and not only where necessary as determined by the Tanodbayan, but subject to availability of funds.

What I am apprehensive of, Mr. President, is that the Tanodbayan may establish as many offices as he says and then practically compel Congress to appropriate the necessary funds as a result of that determination to establish the offices as he deems necessary.

PIMENTEL AMENDMENT

So, my proposal would then take this form, Mr. President, subject to refinement by way of style. On line 19: SUBJECT TO AVAILABILITY OF FUNDS, the Office of the Ombudsman may establish offices in THE CAPITALS OF PROVINCES outside Metro Manila under the immediate supervision of the Deputies for Luzon, Visayas and Mindanao.

Senator Angara. Would the Gentleman, Mr. President, include chartered cities to provincial capitals?

Senator Pimentel. Mr. President, I would perhaps agree to highly urbanized cities; because, normally, in the provinces, a city which is not highly urbanized or even if it is highly urbanized, in fact, *ipso facto* it is the capital town of the province. And besides, the capitals of the provinces where

some cities are located would not be really that far away from the cities where the additional offices of the Ombudsman is supposed to be established.

The President. So, how will that read now--

May establish offices in HIGHLY URBANIZED CITIES AND CAPITALS OF PROVINCES...

Senator Pimentel. Yes, Mr. President.

The President. Subject to availability of funds.

Senator Pimentel. Yes, Mr. President.

The President. Is there any objection? Any comment? [*Silence*] Hearing none, the same is approved.

Senator Enrile and then Senator Gonzales.

Senator Enrile. Line 25 of page 17, Mr. President.

The President. Senator Gonzales is recognized.

GONZALES AMENDMENT

Senator Gonzales. Mr. President, this will be on page 17, line 14. After the word "favor", delete the period and substitute it with a comma and add the following phrase: IN WHICH CASE HE SHALL BE ENTITLED TO REINSTATEMENT AND PAYMENT OF ALL BACK SALARIES OR WAGES, because he has been acquitted.

Senator Angara. It is accepted, Mr. President.

The President. Is that back wages or...?

Senator Angara. Back salaries.

Senator Gonzales. Or wages.

The President. Back salaries or wages. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Saguisag. Mr. President.

The President. Senator Saguisag is recognized.

Senator Saguisag. Mr. President, as in the case of Mr. Lorenzo Cesar, when he won after many

years of litigation, the office no longer existed; meaning, there could really be some cases where it is no longer possible nor practical to direct the reinstatement. So, I have no problem about the back salaries. I am not so sure about the reinstatement part if it is issued so many years after the dismissal.

Senator Gonzales. Mr. President, yes, I remember that case. In fact, I think it involves a private secretary in the Office of the President who had to wage a 17-year legal battle. The Supreme Court ordered a reinstatement and payment of back salaries. But the Supreme Court recognized that problem of reinstatement, and so, its order was reinstatement to any comparable position having the same category and the same pay. The reinstatement usually is no longer with the same salary, because at that time, the salary was very low 17 years ago. At present, when the order of reinstatement came, the salary of a janitor is higher than the salary of a private secretary 17 years ago. That is why the Supreme Court said that reinstatement means there is a comparable office if the office no longer exists and at a rate of salary which considers the general increases in salary during the period.

I think there is a solution stated by the Supreme Court in cases like this but we cannot possibly anticipate all cases. That is why the general wording of the law is "reinstatement and payment of back salaries."

Senator Saguisag. But as long as it is understood that on a case-to-case basis, it will be resolved in relation to the peculiar equities of a given case.

Thank you, Mr. President.

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

ENRILE AMENDMENT

Senator Enrile. Just a minor amendment, Mr. President. On page 17, line 25, I propose to delete after the word "the", the words "regional or sec-

toral". I do not see any sectoral Deputy in this bill.

Senator Angara. It is accepted, Mr. President.

The President. All right. Is there any objection? [Silence] Hearing none, the same is approved.

Shall we go to page 18? Senator Alvarez has the previous reservation.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized.

GONZALES AMENDMENT

Senator Gonzales. I think the wording of Section 23 is very, very unfortunate because while it speaks of unjust laws, it appears here that it is not the laws that are unjust but the execution or implementation of the same is the one that is unjust. That is why I suggest a rewording of Section 23, as follows:

SEC. 23. *Change of Unjust Laws.*--If the Tanodbayan believes that a LAW IS UNFAIR OR UNJUST, he shall recommend to the President and TO Congress the necessary changes THEREIN OR THE repeal THEREOF.

Senator Angara. It is accepted, Mr. President.

The President. Is there any comment? Any objection?

Senator Paterno. Mr. President.

The President. Senator Paterno is recognized.

PATERNO AMENDMENT

Senator Paterno. It is only to ask, Mr. President, for a minor amendment so that Section 23 would refer not only to unjust laws but also to unjust regulations.

Senator Angara. It is accepted, Mr. President.

The President. All right. Is there any objection? [Silence] Hearing none, the same is approved.

Any more?

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. Mr. President, has the Gonzales Amendment eliminated the word "embarrassment" as found on line 10?

The President. Apparently, that has been deleted in the amendment.

Senator Gonzales. Yes, because what we did was to reword this provision to give force and effect to the intendment.

Senator Pimentel. I have no objection to that. I was just wondering that if that word "embarrassment" was there, I would have proposed another word.

The President. All right. Is there any objection to the Gonzales Amendment, as amended? [Silence] Hearing none, the same is approved.

Senator Alvarez. Mr. President.

The President. Senator Alvarez is recognized.

Senator Alvarez. My amendment comes before Senator Guingona's, Mr. President. It is on line 12, after the word "law", delete "to repeal or amend the objectionable provisions."

The President. So, how will it read?

Senator Alvarez. Mr. President, I understand there had already been some changes on this particular segment that is covered by a previous amendment. I think we need a reprint of this.

The President. All right.

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

GUINGONA AMENDMENT

Senator Guingona. On page 18, Mr. President, line 14, I think the distinguished Sponsor had already agreed to replace "Publication of decision" to PROMULGATION OF DECISION.

Senator Angara. Mr. President, it is true that when the distinguished Gentleman asked about the meaning of this, we thought, too, at that time, that "publication" here meant "promulgation" But after a second reflection, Mr. President, the original wording "Publication" is really meant.

Senator Guingona. In that case, I would like to ask why it is only a decision, conclusion or recommendation adverse to a public official where the communication will be sent. If it is not adverse, does this mean that the communication or decision will not be transmitted to the agency?

Senator Angara. It will be, Mr. President, but it may not be publicized.

Senator Guingona. Well, that is not what is said here. What is mandated here is that if it is adverse to a public official or agency, then, the Ombudsman shall transmit his decision, conclusion, recommendation to the head of the department.

Senator Angara. Yes. The intent, Mr. President, is to communicate to the head of the department a decision adverse to someone under his supervision.

The President. Why "publication" then? "Transmittal" would be the proper word. But should not a decision be transmitted, whether favorable or unfavorable, so that the superior concerned may know.

Senator Angara. I have no objection to that, Mr. President, so that the decision, whether adverse or not, will be transmitted to the agency head.

The President. Subject to refinement and style.

Senator Guingona. Yes, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Guingona. And then on lines 21 to 26:

When transmitting his adverse decision,

conclusion or recommendation, he shall, unless excused by the agency or official affected, include the substance of any statement the public agency or official may have made to him by way of explaining past difficulties with or present rejection of the Tanodbayan's proposals.

We do not clearly comprehend the full significance or import of this.

Senator Angara. This means that when it is an adverse decision, the Tanodbayan should include in his communication to the agency head the explanation given by the public official for the action of which he was found guilty. That means his justification or defense ought to be included in the communication.

Senator Guingona. Well, my difficulty is that "unless excused by the agency or official affected," I do not see...

Senator Angara. Now, what is the proposal of the Gentleman?

Senator Guingona. I think we just delete this.

SUSPENSION OF THE SESSION

The President. Shall we suspend for one minute, if there is no objection. [*There was none.*]

It was 7:10 p.m.

RESUMPTION OF THE SESSION

At 7:11 p.m., the session was resumed.

The President. The session is resumed.

Senator Guingona. Mr. President, after conferring with the distinguished Sponsor, we have agreed to reformulate the entire section for tomorrow.

The President. All right.

Senator Angara. In that sense, Mr. President, if I may just add, we will redraft the language of Section 24 just to simply state that the decision, whether favorable or adverse, shall be transmitted to the

agency head. It is up to him to interpret it in one way or the other.

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. Just to wrap up the discussion on page 18, Mr. President, may I propose that on line 28, we add the following phrase: "The Tanodbayan may, WITH THE APPROVAL OF DEPARTMENT HEAD CONCERNED, utilize the personnel of his office and/or designate or deputize any fiscal, state prosecutor or lawyer," et cetera.

In effect, what we are saying is that there must be some prior consultation and consent of the department head in order not to disrupt also the functions of the department from where the prosecutor or the fiscal may be pulled out by the Tanodbayan.

Senator Angara. We accept that, Mr. President.

The President. Is there any objection?

Senator Saguisag. Mr. President.

The President. Senator Saguisag is recognized.

Senator Saguisag. On page 20, Section 27, there is also a language making it mandatory on the part of anybody asked to render assistance to do so. And, in fact, I have a general observation that the arrangement of the provisions in the remaining pages could stand some improvement. After publishing the decision on page 18, then we go back to designation of investigators and prosecutors, the rights and duties of witnesses.

So, I have an omnibus suggestion here that from pages 18 to 22, we should rearrange; there is nothing substantial. That was why the point raised here by Senator Pimentel really should be taken into account with that provision. If they had been placed together, it would be easier for us to appreciate. I have some ideas myself which I would informally relay to the Sponsor, Mr. President.

The President. All right.

Senator Angara. It is a good suggestion, Mr. President, we accept it.

Senator Mercado. Mr. President.

The President. The Majority Floor Leader.

SUSPENSION OF CONSIDERATION OF S. NO. 543

Senator Mercado. Mr. President, I move that we suspend consideration of Senate Bill No. 543.

The President. Before we act on that motion, a clean copy of the amendments as of last night has been furnished the Chair. I suppose all the others have this latest version.

Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Romulo. Mr. President.

The President. Senator Romulo is recognized.

Senator Romulo. Mr. President, may we just be furnished with the latest updated copy. Because, since we got that, there are others that have been proposed since then.

Thank you, Mr. President.

CONSIDERATION OF SENATE RESOLUTION NO. 229
(Amending *Rules of the Senate*)

Senator Mercado. Mr. President, I move that we consider Committee Report 306 on the proposed Senate Resolution No. 229.

The Secretary. Proposed Senate Resolution No. 229, entitled:

RESOLUTION AMENDING SECTION 11, RULE
X AND SECTION 17, RULE XI OF THE
RULES OF THE SENATE

Following is the full text of the resolution:

Resolved by the Senate, To amend Section 11, Rule X of the Rules of the Senate, by reducing the membership of the following Committees, as follows:

- | | |
|---------------------------------|-----------------|
| (1) Committee on Rules | - from 9 to 5 |
| (2) Committee on Finance | - from 17 to 13 |
| (3) Committee on Ways and Means | - from 15 to 9 |

- | | |
|---|-----------------|
| (4) Committee on Accountability of Public Officers and Investigations | - from 17 to 13 |
| (5) Committee on National Defense and Security | - from 17 to 11 |
| (6) Committee on Economic Affairs | - from 15 to 11 |
| (7) Committee on Foreign Relations | - from 19 to 17 |
| (8) Committee on Justice and Human Rights | - from 15 to 7 |
| (9) Committee on Agriculture and Food | - from 17 to 9 |
| (10) Committee on Agrarian Reform | - from 15 to 3 |
| (11) Committee on Trade and Commerce | - from 15 to 7 |
| (12) Committee on Public Works | - from 17 to 13 |
| (13) Committee on Labor, Employment and Human Resources Development | - from 15 to 11 |
| (14) Committee on Education, Arts and Culture | - from 17 to 11 |
| (15) Committee on Health | - from 13 to 7 |
| (16) Committee on Natural Resources and Ecology | - from 12 to 9 |
| (17) Committee on Science and Technology | - from 11 to 3 |
| (18) Committee on Social Justice, Welfare and Development | - from 15 to 5 |
| (19) Committee on Electoral Reforms and People's Participation | - from 11 to 3 |
| (20) Committee on Local Government | - from 17 to 11 |
| (21) Committee on Urban Planning, Housing and Resettlement | - from 11 to 7 |
| (22) Committee on Public Services | - from 15 to 7 |
| (23) Committee on Public Information and Mass Media | - from 11 to 3 |
| (24) Committee on Banks, Financial Institutions and Currencies | - from 11 to 5 |
| (25) Committee on Government Corporations and Public Enterprises | - from 11 to 5 |
| (26) Committee on Constitutional Amendments, Revision of Codes and Laws | - from 11 to 5 |
| (27) Committee on Women and Family Relations | - from 11 to 5 |
| (28) Committee on Civil Service and Government Reorganization | - from 11 to 5 |
| (29) Committee on Cultural Communities | - from 13 to 5 |
| (30) Committee on Ethics and Privileges | - from 7 to 3 |
| (31) Committee on Accounts | - from 7 to 3 |

30 - Pages
(193 - 222)

ORGANIZATION OF THE OFFICE OF THE OMBUDMAN
R.A.No. 6770 / S.B.No. 543 / H.B.No. 13646

RECORDS OF THE SENATE

AUG 18,1988

RIGHT TO SELF ORGANIZATION AND COLLECTIVE BARGAINING OF GOVERNMENT EMPLOYEES, CREATING A CIVIL SERVICE LABOR RELATIONS BOARD, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

Introduced by Senator Rasul.

The President. Referred to the Committees on Civil Service and Government Reorganization; and Finance.

Senator Herrera. Mr. President.

The President. Senator Herrera is recognized.

Senator Herrera. I would like, Mr. President, that this Senate Bill No. 731 be also referred to the Committee on Labor and Employment.

The President. Let that be recorded.

The Secretary. Senate Bill No. 732, entitled:

AN ACT AMENDING THE REVISED PENAL CODE, AS AMENDED, BY REPEALING CERTAIN PROVISIONS THEREOF

Introduced by Senator Shahani.

The President. Referred to the Committee on Constitutional Amendments, Revision of Codes and Laws.

RESOLUTION

The Secretary. Proposed Senate Resolution No. 237, entitled:

RESOLUTION CALLING UPON ALL CITY AND MUNICIPAL OFFICIALS TO CONVERT THEIR ANNUAL 'FIESTA' CELEBRATIONS INTO MEANINGFUL COMMUNITY EVENTS THROUGH THE HOLDING OF AGRICULTURAL AND TRADE FAIRS, SELECTION OF OUTSTANDING LOCAL CITIZENS AND OTHER ACTIVITIES DESIGNED TO CONTRIBUTE TO THE CURRENT NATIONAL SOCIO-ECONOMIC RECOVERY EFFORTS

Introduced by Senators Shahani and Estrada.

The President. Referred to the Committee on Local Government.

COMMITTEE REPORT

The Secretary. Committee Report No. 309, submitted by the Committee on Foreign Relations, on Proposed Senate Resolution No. 194, introduced by Senator Romulo, entitled:

RESOLUTION CONVEYING THE SENSE OF THE SENATE IN URGING THE PHILIPPINE AND AMERICAN PANELS IN THE ONGOING REVIEW OF THE RP-US MILITARY BASES AGREEMENT TO INCLUDE IN THE DISCUSSIONS THE GRANT TO PHILIPPINE AIRLINES OF LANDING RIGHTS AT CLARK AIR BASE, ANGELES CITY, DURING EMERGENCIES

recommending its approval with amendments.

Sponsor: Senator Romulo.

The President. To the Calendar for Ordinary Business.

BILL ON SECOND READING

Senate Bill No. 543 - Office of the Ombudsman
(Continuation)

Senator Mercado. Mr. President, I move that we resume consideration of Committee Report No. 263 on Senate Bill No. 543. We are still in the period of individual amendments, Mr. President. I move that we recognize the Sponsor, Senator Angara.

The President. Senator Angara is recognized.

Senator Angara. Thank you, Mr. President.

Mr. President, the parliamentary situation is that we are discussing Section 25 on page 18(a) of the new draft. Senator Pimentel proposed that in Section 25, the consent of the agency concerned ought to be obtained by the Tanodbayan, and I have accepted it. That will appear on line 9, page 18(a), after the word "and", so that the whole sentence will read:

The Tanodbayan may utilize the personnel of his office and WITH THE CONSENT OF THE AGENCY CONCERNED designate or deputize any

fiscal, state prosecutor or lawyer in the government service to act as special investigator...

The President. That has been accepted already.

Senator Angara. Yes, Mr. President.

The President. Is there any comment? Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

Senator Enrile. Mr. President, last night in our session, we left the amendment to Section 16. May I now request that we go back to Section 16, and this Representation would like to offer amendments.

The President. Please proceed.

Senator Enrile. Apropos to the discussion that we had last night, I propose to cause the amendment of this Section by deleting on line 8 the comma (,) after the word "Congress", including the words "the Judiciary or the Cabinet"; retain the colon (:), and retain the proviso; and, on line 12, I would like to insert after the word "action", remove the comma (,) and insert the phrase AND IMPEACHMENT PROCEEDINGS, if warranted. So that the whole Section will read:

SEC. 16. *Officials Subject to the Disciplinary Authority; Exceptions.*-The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the government and its subdivisions and their subsidiaries, except over officials who may be removed only by impeachment or over Members of the Congress: Provided, however, That the Office of the Ombudsman shall have the power to investigate any misconduct in office committed by such officials for the purpose of initiating the proper criminal or civil action, AND IMPEACHMENT PROCEEDINGS, if warranted.

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. Mr. President, that would

include judges to the level of municipal judges.

Senator Enrile. It will include all Members of the Judiciary below the Members of the Supreme Court. But in the case of the President, the Vice President, the Justices of the Supreme Court and the Members of the Constitutional Commission including Members of the Congress, while they are not subject to the disciplinary power of the Ombudsman, nothing will prevent the Ombudsman from initiating investigation, if there is any showing of any misconduct, to initiate criminal or civil action, or impeachment proceedings against those officials subject to removal by impeachment.

Senator Guingona. The Constitution, Mr. President, under Section XI of Article VIII, stipulates that:

The Members of the Supreme Court and judges of lower courts shall hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office. The Supreme Court *en banc* shall have the power to discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

Would not this provision conflict with the amendment of the distinguished Senator?

Senator Enrile. Mr. President, frankly, I cannot give an opinion on this. But if there should be any doubt at all, then maybe, we can make a further proviso that in the case of Members of the Judiciary, the disciplinary action shall be taken by the Ombudsman through and under the auspices of the Supreme Court.

SUSPENSION OF THE SESSION

Senator Guingona. May I request a one-minute recess, Mr. President.

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

It was 4:24 p.m.

RESUMPTION OF THE SESSION

At 4:32 p.m., the session was resumed.

The President. The session is resumed. Senator Angara, then Senator Enrile.

ENRILE AMENDMENT

Senator Enrile. Mr. President, in view of our discussion, I would like to rephrase my proposed amendment and the proposed amendment will read as follows:

THE OFFICE OF THE OMBUDSMAN SHALL HAVE DISCIPLINARY AUTHORITY OVER ALL ELECTIVE AND APPOINTIVE OFFICIALS OF THE GOVERNMENT AND ITS SUBDIVISIONS, INSTRUMENTALITIES AND AGENCIES INCLUDING LOCAL GOVERNMENTS, GOVERNMENT-OWNED OR -CONTROLLED CORPORATIONS AND THEIR SUBSIDIARIES IN THE CASE OF MEMBERS OF CONGRESS, THEY SHALL BE SUBJECT TO THE DISCIPLINARY POWERS OF EACH HOUSE IN ACCORDANCE WITH THEIR RESPECTIVE RULES, AND IN THE CASE OF THE MEMBERS OF THE JUDICIARY, THEY SHALL BE SUBJECT TO THE DISCIPLINARY POWERS OF THE SUPREME COURT IN ACCORDANCE WITH SECTION 11 OF ARTICLE VIII OF THE CONSTITUTION. PROVIDED, HOWEVER, THAT THE OFFICE OF THE OMBUDSMAN SHALL HAVE THE POWER TO INVESTIGATE ANY MISCONDUCT IN OFFICE COMMITTED BY OFFICIALS WHO ARE REMOVABLE BY IMPEACHMENT, OR BY MEMBERS OF CONGRESS FOR THE PURPOSE OF INITIATING THE PROPER CRIMINAL OR CIVIL ACTION AND IMPEACHMENT PROCEEDINGS, IF WARRANTED.

Senator Guingona. Mr. President, will the distinguished Sponsor of the amendment answer some questions?

Senator Enrile. Yes, Mr. President.

Senator Guingona. If we include that "Provided", considering that this section now at issue is a section on disciplinary powers, and it is not in any way related to criminal action, or quasi-criminal actions, in some instances, Mr.

President, like recovery of wealth, there may be disciplinary, I mean, disqualification as a penalty and for the Ombudsman to have that power, does not the distinguished Gentleman think that it may confuse because a justice may, in spite of the exclusion under the provision, be investigated for a crime or an offense?

Senator Enrile. That is correct, Mr. President. I will take the officials concerned one by one. Let us start with the President. Under this general rule on the disciplinary powers of the Ombudsman, the Ombudsman has no disciplinary power over the President. But, the proviso now says that while the Ombudsman has no disciplinary power over the President of the Philippines or the Vice President, the Ombudsman can initiate an investigation based on complaint or information obtained by it, and if there is any basis to file impeachment proceedings against the President, then it is the function of the Ombudsman to prepare the necessary complaint, lodge it with the impeaching authority, and let the rules on impeachment operate. This will show to the people that nobody in this country will be above the law and that everybody will be evenly treated under this law.

Now, let us take the case of a member of the Supreme Court. Supposing, a member of the Supreme Court commits an illegal act. Let us say that a judge in Bataan--and this happened in my time--committed an act that was against not only the rule on judicial ethics but also of a violation of the law, and it was brought to the attention of the Ombudsman. The Ombudsman should not be inhibited from conducting an investigation based on its powers under this law, preparatory to the filing of the proper charges both to the Supreme Court, in order to bring about the operation of an administrative act on the part of that court, under Section 11 of Article VIII, but at the same time to initiate a criminal action against the erring member of the judiciary. I do not think that there is any incompatibility.

Now, in the case of the Members of Congress, suppose any one of us or a Member of the "Bigger" House commits a violation of our laws which is both a criminal act, and at the same time a basis for disciplinary action by the Chamber concerned, the Ombudsman should not be inhibited from conducting an investigation and submit its findings to the Chamber concerned, not only to discipline the Member by the House to which he belongs, but at the same time to be the basis for filing a criminal action against any erring Member. I think there is no incompatibility between the power to discipline embodied in the general rule and the proviso that is being sought to be introduced. After all, if the courts will find in any of these cases--let us take the case of the President--if the President is found to have committed the acts found by the Ombudsman as a basis to file impeachment proceedings against him and there is a finding of guilt, the President will have to be removed. He cannot stay in office. And that is also true in the case of the Members of the Supreme Court. And, in the case of the Members of the House, if there is a finding of guilt by a court of competent jurisdiction, it will have to impose the proper penalty which may include disqualification from public office. There is nothing we can do about that; not even the Congress can do anything about it.

Senator Guingona. Mr. President, in the case of a Justice of the Supreme Court who engages in illegal gambling, under the exception to the exceptions proposed by the distinguished Gentleman, the Ombudsman can act, not only initiate, but also find him guilty. I do not know--but assuming only that there is a disqualification, the penalty to the office of the crime or the offense will remove the authority of the Supreme Court to discipline its own Members; in the same manner, Congressmen and Senators who, even if exempted under the amendment of the distinguished Gentleman, because of that "Provided", can now still be subject to the Ombudsman's disciplinary action by filing a case where the penalty so states: "Disqualify."

Senator Enrile. The action to discipline the Members of Congress and the members of the Judiciary belongs to each House of Congress and the Judiciary, respectively, Mr. President. But, as far as disciplinary powers are concerned, the same facts found by the Ombudsman in the course of the investigation which are now submitted to Congress, in the case of Members of Congress, to each House of Congress; or to the Supreme Court, in the case of members of the Judiciary, could be and will be the basis of a criminal or civil action that will be instituted by the Ombudsman against the erring Justice, in the case of the example of the distinguished Gentleman. I do not think that our laws, Mr. President, contemplate that the Justices of the Supreme Court or even the President could be above the law, not subject to prosecution, if there is a violation of our Criminal Law.

Senator Guingona. No, we are not saying Mr. President, that they will be exempt. We are only saying that if this is placed in this section, as proposed, there may be a tendency to confuse because this section at issue is on disciplinary powers. Now, there is a new element of allowing the Ombudsman, in spite of that, to prosecute criminally or for other quasi-criminal offenses which may carry disciplinary penalties.

The President. If I understand Senator Guingona correctly, there is no objection to the language of that proviso, provided it is in another section. Is that it?

Senator Guingona. Well, as to the language, I have my own proposal and I would like to confer with the distinguished Sponsor, Mr. President.

The President. All right.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized.

Senator Gonzales. Mr. President, my interpretation of the proviso is merely to emphasize the fact that, notwithstanding the rule that all

officers removable by impeachment--judges and Members of Congress--are not subject to the disciplinary authority by the Ombudsman, they are, nonetheless, subject to investigation for any civil or any criminal action. And if we delete this provision, it would create a public impression that we are actually, especially the Members of Congress, excluding ourselves from the authority of the Ombudsman; that the Ombudsman is only directed to small fries, small fishes in Government, but those bigger fishes are beyond its authority.

So, I am in favor of the retention of this proviso and I have basically no disagreement with the amendment proposed by the Minority Floor Leader regarding impeachment, except that I am uncomfortable with the language used--to initiate impeachment proceedings--because initiation of impeachment proceedings has a technical meaning in the Constitution. In fact, Section 3, paragraph (1) of Article XI provides that the House of Representatives shall have the exclusive power to initiate all cases of impeachment. Probably, without destroying its substance, it can be reworded as follows: THAT FOR THE PURPOSE OF INITIATING THE PROPER CRIMINAL OR CIVIL ACTION FOR FILING A VERIFIED COMPLAINT FOR IMPEACHMENT IF WARRANTED. Because that is authorized under paragraph (2), Section 3 of Article XI. Even a private individual may file a verified complaint for impeachment.

Senator Enrile. The amendment is accepted, Mr. President.

Senator Guingona. Mr. President.

The President. Senator Guingona.

Senator Guingona. I did not intend in any way to state that Members of Congress or Judges should be exempt from criminal or civil prosecution. I am only concerned with the confusion. I would like to offer, if the distinguished Gentleman will accept this: PROVIDED, THAT NOTHING HEREIN CONTAINED SHALL DEPRIVE THE OMBUDSMAN

FROM CALLING THE ATTENTION OF OR INITIATING A COMPLAINT AGAINST SUCH OFFICIAL BEFORE THE APPROPRIATE FORUM FOR THE LATTER'S APPROPRIATE ACTION.

Senator Enrile. I am sorry, Mr. President, but I think the proposed amendment to my proposed amendment would not be acceptable to this Representation because it does not convey the tenor of what is intended under Section 13.

Senator Guingona. Mr. President, I understood from the distinguished Sponsor that all that he wanted was, if there is a complaint against the justice, that the matter be brought to the attention of the Supreme Court so that the Supreme Court can take the appropriate action. If there is any complaint against the Congressman or the Senator, the Ombudsman can bring the matter to the attention of Congress and refer the matter for disciplinary action of Congress.

Senator Enrile. Mr. President, may I explain my position very briefly. As far as the jurisdiction of the Supreme Court to initiate an investigation against the Members of the Judiciary is concerned, we cannot remove that. That is given under the Constitution.

As far as the power of Congress to initiate an investigation is concerned, through its proper committees in either House, for erring Members, that also cannot be removed under this law. That is given under the Constitution.

What we are trying to define here is the jurisdiction, the authority of the Ombudsman. May the Ombudsman initiate on its own, based on an information or a complaint filed with it by anybody against the officials mentioned, notwithstanding the fact that there is another jurisdiction that can perform that function? I think we should invest the Ombudsman with that implied concurrence, so that it can perform its job as a protector of the interest of the people.

Senator Guingona. If that is so, Mr. President,

then we should put it in another section because the distinguished Senator is confusing here the disciplinary power, which is administrative, versus criminal actions of which the Ombudsman...

Senator Enrile. I have no objection to that, if my distinguished Colleague can find a suitable place for the idea contained in the proviso, Mr. President; but, this is a very important element in the jurisdictional powers of the Ombudsman.

SUSPENSION OF THE SESSION

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

It was 4:50 p.m.

RESUMPTION OF THE SESSION

At 4:53 p.m., the session was resumed.

The President. The session is resumed.

The Chair would like to find out if it would be correct to state that Senator Guingona has no objection to the proposed amendment of Senator Enrile, if it is placed in another section.

Senator Guingona. Yes, Mr. President, because this section refers to "disciplinary."

The President. It is subject to that qualification. Is there any objection? [*Silence*] Hearing none, the same is approved.

ENRILE AMENDMENT

Senator Enrile. Mr. President, before we leave this page, the Chair called attention to the word "or" on line 3, after the word "over". May I move for the deletion of that word.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Enrile. Thank you, Mr. President.

The President. All right. Let us go back to Senator Angara.

Senator Angara. Thank you, Mr. President.

Senator Rasul. Mr. President,

The President. Senator Rasul.

Senator Rasul. Mr. President, we have some points which have been overlooked on page 2.

The President. There are many reservations. We will go back to that. Senator Laurel has his own reservation. I do not know what page it is. We will go back. Let us allow Senator Angara to finish.

Senator Angara. Thank you, Mr. President.

The President. On what page are we now?

Senator Angara. We are now on page 19, Mr. President.

The President. Is there any amendment on page 19?

Senator Guingona is recognized; then Senators Pimentel and Ziga.

Senator Guingona. Mr. President, yesterday we agreed with the Sponsor that we would reformulate Section 24 on page 18. I already gave the reformulated proposal to Senator Angara. There is no substantial difference from what we agreed upon last night.

The President. Shall we read it into the *Record* so the Body can participate?

Senator Angara. If I may, Mr. President?

The President. Yes.

GUINGONA AMENDMENT

Senator Angara. As agreed upon last night, Section 24 will be rewritten and will read as follows:

Section 24. TRANSMITTAL of Decision. - In every case where the OMBUDSMAN has reached a decision, conclusion or recommendation, HE MUST PUT SUCH DECISION, CONCLUSION OR RECOMMENDATION IN WRITING, BRIEFLY STATING THE FINDINGS OF FACTS AND CIRCUMSTANCES SUPPORTING THE SAME AND THE LAW ON WHICH IT IS BASED.

HE SHALL THEREAFTER TRANSMIT SUCH decision, conclusion or recommendation to the head of the department, agency or instrumentality, or of the province, city or municipality concerned for THE LATTER'S immediate AND NECESSARY action. THE decision, conclusion or recommendation MUST BE PERSONALLY SIGNED BY THE OMBUDSMAN OR HIS DEPUTY.

The President. Is that accepted by the Sponsor?

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. Senator-Ziga has an anterior amendment, Mr. President.

The President. Senator Ziga is recognized.

ZIGA AMENDMENT

Senator Ziga. Thank you, Mr. President.

I would like to propose an amendment on page 19, line 7. On line 7, after the words "issue subpoena", add the words *AD TESTIFICANDUM* and the word AND, so that it will read as follows: "to issue subpoena *AD TESTIFICANDUM* AND *subpoena duces tecum*."

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Angara. And on the continuing line, line 8, starting with the words "to summon and compel witnesses to appear and testify under oath before them and/or to bring books", up to line 12, delete these whole three lines, because these are redundant with the meaning of the words *subpoena duces tecum* and *subpoena ad testificandum*.

Delete from line 8 "to summon and compel witnesses to appear and testify under oath before them and/or to bring books, documents and other

things under their control", up to line 10. I believe this has the same meaning as the accepted amendment of *subpoena AD TESTIFICANDUM* and *subpoena duces tecum*.

The President. These are standard words and phrases in various legislations. What is the pleasure of the Sponsor?

Senator Angara. Well, as the Chair noted, this is almost a verbatim reproduction of the provision of the Rules of Court and, perhaps, it will not cause any harm if we keep it, Mr. President.

Senator Ziga. Well, I just believe that the distinguished Sponsor would think that this is just a repetition of the meaning, as accepted already, of the words *ad testificandum* and *subpoena duces tecum*.

Senator Angara. May I suggest that we retain it, Mr. President?

The President. Some people do not understand *ad testificandum*. Many will understand this standard phraseology in many legislations.

Senator Ziga. Well, Mr. President, I withdraw the proposal to have it more clearly understood.

The President. All right. Any other amendment on page 19? Senator Pimentel is recognized.

PIMENTEL AMENDMENT

Senator Pimentel. Thank you, Mr. President.

On line 30, after the word "courts" and the period (.), may I suggest the following sentences, Mr. President:

UPON REQUEST OF THE WITNESS, THE TANODBAYAN SHALL ALSO FURNISH HIM SUCH SECURITY FOR HIS PERSON AND HIS FAMILY AS MAY BE WARRANTED BY THE CIRCUMSTANCES. FOR THIS PURPOSE THE TANODBAYAN MAY CALL UPON ANY POLICE OR CONSTABULARY UNIT TO PROVIDE THE SAID SECURITY AT THE LATTER'S EXPENSE.

The last phrase, Mr. President, is very

important--AT THE LATTER'S EXPENSE. Because usually, the persons provided with security will have to take care of the food and the needs of the security service, making it a big burden on the person being secured.

Senator Angara. We accept, Mr. President.

The President. Subject to refinement and style.

Is there any objection? [*Silence*] Hearing none, the same is approved.

On page 20, is there any amendment?

Senator Romulo. Mr. President.

The President. Senator Romulo is recognized.

ROMULO AMENDMENT

Senator Romulo. On page 19, lines 12 to 15, delete the phrase "through application before the Sandiganbayan or before any inferior or superior court having jurisdiction of the place where the witness or evidence is found." May I ask the Sponsor if it is acceptable to him?

Senator Angara. We accept, Mr. President, because application to the Sandiganbayan or any other court has become unnecessary since, earlier on, we granted the Ombudsman the authority to cite people in contempt, in accordance with the Rules of Court.

The President. Is there any objection?

Senator Saguisag. Mr. President.

The President. Senator Saguisag is recognized.

Senator Saguisag. Just for clarification, Mr. President. Line 4 on page 19 refers not only to the Ombudsman but also to the investigators and prosecutors, regular members of his staff or designated by him. I have no problem with the Ombudsman himself citing a recalcitrant witness for contempt. But is it our intent here to give this extremely powerful prerogative to the subordinates of the Ombudsman?

Senator Angara. Mr. President, the power is only exercisable by the Ombudsman.

Senator Saguisag. As long as that is clear, Mr. President, to reconcile it with lines 14 to 17 of page 9-A regarding the power to punish for contempt.

Thank you.

The President. Is there any objection to the amendment of Senator Romulo? [*Silence*] Hearing none, the same is approved.

Page 20, is there any amendment? Senator Ziga, then Senator Pimentel.

ZIGA AMENDMENT

Senator Ziga. Thank you, Mr. President.

On page 20, line 18, may I propose the insertion of the word COMMISSION between "department" and "bureau". The intention here is to include Constitutional Commissions in the enumeration of government offices.

The President. That can be accepted.

Senator Angara. That is accepted, Mr. President.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Ziga. Thank you.

The President. Senator Pimentel is recognized.

PIMENTEL AMENDMENT

Senator Pimentel. On line 29, Mr. President, after the word "who", may we suggest the insertion of the following clause: FILES A PATENTLY UNWARRANTED, FALSE OR MALICIOUS COMPLAINT AGAINST ANY PUBLIC OFFICIAL OR EMPLOYEE.

The President. Shall we have it again, please?

Senator Pimentel. Mr. President, may I just read from line 28 to make it more sensible. "Any person who FILES A PATENTLY UNWARRANTED, FALSE OR MALICIOUS COMPLAINT AGAINST ANY PUBLIC OFFICIAL OR EMPLOYEE OR WILFULLY

OBSTRUCTS..." Then, of course, in connection with that we have to increase the penalty found on page 21 already.

The President. What is the pleasure of the Sponsor?

Senator Angara. We accept it, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Guingona; then Senator Maceda and Senator Aquino.

Senator Guingona. Mr. President, without in any way affecting the amendment already approved, we had intended to present an amendment by substitution to include the amendment of Senator Pimentel. And this proposed amendment is "OBSTRUCTION OF JUSTICE IN ANY PROCEEDING, INQUIRY OR INVESTIGATION". This is patterned after "the obstruction of justice" which is an offense in the United States, Mr. President, and it specifies the acts that would constitute the offense of obstruction. A person who threatens a witness, who intimidates, who forces, who boxes and, therefore, obstructs the flow of justice would be subject to a penalty of a fine of not less than ten thousand pesos nor more than twenty thousand pesos and imprisonment of not less than five years nor more than ten years at the discretion of the court.

SUSPENSION OF THE SESSION

Senator Angara. Mr. President, since the substitute amendment is rather lengthy, can we have just a one-minute suspension?

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

It was 5:08 p.m.

RESUMPTION OF THE SESSION

At 5:10 p.m., the session was resumed.

The President. The session is resumed.

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. Mr. President, Section 29 will read as follows:

OBSTRUCTION OF JUSTICE IN ANY PROCEEDING, INQUIRY OR INVESTIGATION. ANY PERSON WHO FILES A PATENTLY UNWARRANTED, FALSE AND MALICIOUS COMPLAINT AGAINST ANY GOVERNMENT OFFICIAL OR EMPLOYEE OR WHO BY MEANS OF CORRUPTION OR BY THREATS, FORCE OR INTIMIDATION, OR BY MEANS OF THREATENING LETTER OR COMMUNICATION SHALL INFLUENCE, OBSTRUCT OR IMPEDE ANY WITNESS IN ANY PROCEEDING, INQUIRY OR INVESTIGATION BEING CONDUCTED BY THE OFFICE OF THE OMBUDSMAN UNDER THIS ACT; OR SHALL INJURE ANY PARTY OR WITNESS IN HIS PERSON OR PROPERTY ON ACCOUNT OF HIS ATTENDING OR HAVING ATTENDED SUCH PROCEEDINGS OR ON ACCOUNT OF HIS TESTIFYING OR HAVING TESTIFIED TO ANY MATTER PENDING THEREIN; OR WITH INTENT TO AVOID, EVADE, PREVENT, OR OBSTRUCT COMPLIANCE IN WHOLE OR IN PART WITH ANY CIVIL INVESTIGATIVE DEMAND DULY AND PROPERLY MADE UNDER SUCH PROCEEDING, INQUIRY OR INVESTIGATION, SHALL WILFULLY REMOVE FROM ANY PLACE, CONCEAL, DESTROY, MUTILATE, ALTER OR BY OTHER MEANS FALSIFY ANY DOCUMENTARY MATERIAL WHICH IS THE SUBJECT OF SUCH DEMAND; OR BY MEANS OF CORRUPTION OR BY THREATS OR FORCE OR BY THREATENING LETTER OR COMMUNICATION SHALL INFLUENCE, OBSTRUCT OR IMPEDE OR ENDEAVOR TO INFLUENCE, OBSTRUCT OR IMPEDE THE DUE AND PROPER EXERCISE BY THE OFFICE OF THE OMBUDSMAN OF ITS POWERS AND FUNCTIONS UNDER THIS ACT, SHALL, UPON CONVICTION, SUFFER THE PENALTY OF FINE OF NOT LESS THAN TEN THOUSAND PESOS (₱10,000) NOR MORE THAN TWENTY THOUSAND PESOS (₱20,000) AND IMPRISONMENT OF NOT LESS THAN FIVE (5) YEARS NOR MORE THAN TEN (10) YEARS AT THE DISCRETION OF THE COURT.

The President. What is the pleasure of the Sponsor?

Senator Angara. The amendment is accepted, Mr. President.

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

Senator Angara. May I withdraw my acceptance temporarily, Mr. President.

Senator Enrile. Mr. President, may I ask the distinguished Sponsor of this amendment to restate the first portion of his proposed amendment regarding obstruction of justice?

Senator Guingona. Certainly, Mr. President.

Senator Enrile. May I hear the first portion? I have a copy here, but there was an insertion.

Senator Guingona. Yes. That insertion was the amendment proposed by Senator Pimentel which was already approved by the Body. It says on the second line: ANY PERSON WHO FILES A PATENTLY UNWARRANTED, FALSE OR MALICIOUS COMPLAINT AGAINST ANY GOVERNMENT OFFICIAL OR EMPLOYEE OR WHO ... then continue by...

Senator Enrile. Mr. President, I wonder why the need to use the adverb PATENTLY? Suppose it is false but not patent?

Senator Guingona. I think Senator Pimentel should be the proper party to patently answer that.

The President. The Chair would like to add another question. Is it obstruction of justice really or is that a different crime, the filing of a false malicious complaint? Because obstruction of justice has a technical meaning in law, but Senator Pimentel's amendment is really to penalize unwarranted, false or malicious complaints. It does not come under obstruction of justice in the opinion of the Chair. It must be another section, probably.

Senator Guingona. Well, that is up to Senator Pimentel and Senator Angara. We included that for expediency.

Senator Enrile. I would like to just ask that question and clarify it so that those who will enforce it in the future will not be perplexed by the use of the term "patently", "false", "unwarranted" or "malicious", because I could not foresee a situation where a complaint is unwarranted and it has no malice; or that if it is a complaint that is patently false and it has no malice. I think that when we use these terminologies, "unwarranted", "patently", "false", there is always the element of malice. Does the Gentleman agree with this, Mr. President? So that, this is actually merely a generic term to emphasize the fabrication, in effect, of the complaint.

Anyway, Mr. President, I do not want to belabor the issue. I just want to have a clarification.

Senator Pimentel. With the permission of the distinguished Sponsor, Mr. President. If the object of the doubt of the Gentleman is the word "patent", then let us just eliminate it to simplify the whole thing.

The President. All right.

Senator Angara. Mr. President, may I suggest a substitute description, perhaps, MANIFESTLY FABRICATED OR FALSE?

Senator Enrile. I have no objection. I just want a clarification, Mr. President. I have said my piece.

Thank you, Mr. President.

The President. Supposing it is really false or fabricated but it is not manifest because it was prepared by a good, clever lawyer?

Senator Enrile. And the evidence will show that there was falsity because we have a clever lawyer who cross-examines the witnesses and they will still believe that this was actually fabricated. It was not patent on the face of the complaint.

The President. Anyway, Senator Pimentel has accepted already the amendment.

Senator Enrile. Thank you very much.

Senator Angara. So, we will accept the amendment. Excuse me, Mr. President, Senator Aquino is raising his hand.

The President. Senator Aquino is recognized.

Senator Aquino. On the same amendment, Mr. President. The penalty of imprisonment is not less than five years and not more than ten years. I find that very stiff, Mr. President. I would like to propose NOT LESS THAN ONE YEAR AND NOT MORE THAN FIVE YEARS. I discussed this with some Senators, Mr. President, and five years seems to be very stiff.

The President. All right. Why do we not dispose of that amendment of Senator Enrile first, then, we will go to the amendment of Senator Aquino?

Is there any objection to the amendment of Senator Pimentel, as amended by Senator Enrile? [Silence] Hearing none, the same is approved.

Senator Aquino is recognized.

AQUINO AMENDMENT

Senator Aquino. Mr. President, I would like to propose another amendment: to reduce the penalty of imprisonment from "five to ten years" to NOT LESS THAN ONE YEAR AND NOT MORE THAN FIVE YEARS.

Senator Guingona. We have no objection, Mr. President.

The President. How about the principal Sponsor?

Senator Angara. Are we now disposing of the entire amendment, as amended? We accept it, Mr. President.

The President. It is accepted also.

Senator Saguisag. Mr. President.

The President. Senator Saguisag is recognized.

Senator Saguisag. I would like to know, Mr. President, if the purpose here is to enforce a concept similar to the power to punish for contempt, to encourage people to testify and to protect the witnesses.

Senator Guingona. Yes, but more than that, it makes certain acts a penal offense.

Senator Saguisag. But most of these acts, Mr. President, are already punished by other laws. Maybe with far more severe penalties. If I injured a witness to the extent of frustrated murder, I would be glad to get away with ten years. So, if this is in the nature of a contempt power, then, the idea is really preservative and not vindictive. And will there be double jeopardy if I am sent up for ten years and then, prosecuted separately for all the various offenses here?

Usually, the intent here is that as soon as the obstruction ceases, then, the penalty is lifted. And where will the prosecution be lodged? Will it be in a totally separate proceeding where there will be a full-blown exercise of all rights of the accused or will it be in a summary proceeding before a Deputy Tanodbayan? That is why all the while, we are used to the concept that the penalty is usually very light; and usually, one purges himself of contempt the moment he cooperates. But here, there are threats--I mean, this is a collection of offenses found in the Revised Penal Code and for all we know, there are even more serious penalties. So, we may be mixing our purposes here. And I would be disturbed really. I do not think I can accept this kind of language until we are able to clarify this conceptual problem.

SUSPENSION OF THE SESSION

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

It was 5:21 p.m.

RESUMPTION OF THE SESSION

At 5:25 p.m., the session was resumed.

The President. The session is resumed.

Senator Guingona. Mr. President, since the amendment would only apply to the Ombudsman and there is need to have a penal offense of obstruction of justice in all proceedings, whether in the Ombudsman or in the fiscal, or maybe even in parliamentary investigations, we will withdraw this, with the manifestation that we will formulate a separate bill to cover all proceedings.

The President. All right, the amendment is withdrawn.

Senator Angara. Mr. President.

The President. Senator Angara is recognized.

Senator Angara. Mr. President, with regard to the proposal of Senator Pimentel, we recommend that it be placed under a separate section.

The President. But that is approved already.

Senator Angara. That is already approved, Mr. President.

The President. It is a matter of style.

Senator Romulo. Mr. President.

The President. Senator Romulo is recognized.

Senator Romulo. May I just inquire into the status of the proposed amendment of Senator Aquino, in imposing a prison penalty?

Senator Angara. Since the mother amendment has been withdrawn, then the daughter is also withdrawn.

Senator Romulo. I see. Thank you, Mr. President.

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized.

Senator Maceda. If that is fully disposed of, Mr. President, I have a separate amendment.

Senator Angara. Before going to that, Mr. President, may I just manifest that we are also

withdrawing the provision on Section 29 in the draft on page 20, since obstruction of justice will be covered by a future law that Senator Guingona has promised to file. And for Section 29, we propose that the Pimentel Amendment be the one to be there.

The President. All right. Is there any objection to that?

Senator Romulo. Mr. President, with due permission, may I just add: Can the Sponsor restate the Pimentel Amendment so, that we would know what would take the place of that position?

PIMENTEL AMENDMENT

Senator Angara. We will not put any heading yet.

“Section 29 - Any person who FILES AN UNWARRANTED OR FALSE COMPLAINT AGAINST ANY GOVERNMENT OFFICIAL OR EMPLOYEE shall be punished by a fine not exceeding five thousand pesos (P5,000.00).”

Senator Romulo. Thank you, Mr. President.

The President. Should it not be “COMPLETELY UNWARRANTED OR FALSE” because the complaint may be partly correct, partly true, but not entirely correct or not entirely true.

Senator Angara. It is accepted, Mr. President - to read ... “FILES A COMPLETELY UNWARRANTED OR FALSE...”

The President. All right. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized.

MACEDA AMENDMENT

Senator Maceda. Mr. President, Section 27 on page 20 is a standard provision in many laws. However, considering that the Ombudsman is supposed to be investigating government officers, I

do not believe that we should encourage their borrowing clerks, employees, and other persons detailing to the Ombudsman because, as a matter of course, when we ask too many favors from certain offices, we have a hesitation to prosecute them. Therefore, I would like to amend this section to limit it. So, if I may read the whole section:

“Any officer,” deleting “or employee”, so it is clear that the details should be on a higher level, then add WITH HIGHLY TECHNICAL OR SPECIALIZED QUALIFICATIONS OR EXPERTISE of any department, bureau, COMMISSION or office, subdivision, agency or instrumentality of the Government, including government-owned or -controlled corporations and local governments, WHOSE SERVICES ARE URGENTLY NEEDED by the Tanodbayan, shall, WITH THE APPROVAL OF HIS DEPARTMENT HEAD, render assistance to the Office of the Ombudsman.”

Senator Angara. It is accepted, Mr. President.

The President. The Chair would like to ask the question: Supposing the office to which the officer belongs is under investigation by the Ombudsman.

Senator Maceda. That is precisely the point, Mr. President. That is why I would like to discourage this. But I accept that there are cases where they need somebody who is highly qualified--an actuarial guy, a technical engineering man.

The President. Supposing the Insurance Commission is under investigation by the Ombudsman, should the Ombudsman borrow experts from the Insurance Commission?

Senator Maceda. I would say not, Mr. President.

The President. Then, why do we not have that qualification?

Senator Maceda. All right. PROVIDED, HOWEVER, THAT NO SUCH OFFICER MAY BE DETAILED OR HIS SERVICES REQUIRED WHEN HIS OFFICE OR THE HEAD THEREOF IS UNDER

INVESTIGATION BY THE OMBUDSMAN OR HIS DEPUTY.

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Shall we go to page 21?

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

PIMENTEL AMENDMENT

Senator Pimentel. Mr. President, I had a previous amendment that has to do with the sending of telegrams. So, may we start from line 13 of page 21, and particularly the words “five pesos and fifty centavos (P5.50)” should be changed to TEN PESOS (P10.00). On line 14, as is. Then on line 15, the period (.) after the word “words” should be eliminated and the following phrase or clause be added: AND PROVIDED FURTHER THAT THE TELEGRAM IS DULY CERTIFIED AS TO THE SENDER’S IDENTITY AND ADDRESS BY THE MUNICIPAL JUDGE, MAYOR, OR REGISTRAR OF THE COMELEC OF THE MUNICIPALITY OR CITY WHERE THE SENDER RESIDES. The purpose is to ensure that anonymous telegrams are not encouraged and also the five-peso charge is increased to ten pesos in order to enable the Government to earn some money in the process.

The President. Why do we not read the whole thing again?

Senator Pimentel. May I therefore read, Mr. President. We may start from line 10 after the word “grams”: “All mail matters and telegrams containing complaints to the Office of the Ombudsman shall be transmitted at the maximum charge of one peso and fifty centavos (P1.50) and” --with the amendment now, Mr. President, --“TEN PESOS (P10.00) respectively”--meaning, ten pesos for the telegram--“provided that the telegram shall not be more than one hundred and fifty (150) words AND PROVIDED FURTHER THAT THE TELEGRAM IS DULY CERTIFIED AS TO THE SENDER’S IDENTITY AND

ADDRESS BY THE MUNICIPAL JUDGE comma
MAYOR comma OR REGISTRAR OF THE COME-
LEC OF THE MUNICIPALITY OR CITY WHERE THE
SENDER RESIDES.”

The President. The Chair would like to have this observation: the crime or the charge may be so complex that 150 words may not suffice. Number two, the mayor or COMELEC registrar may not be the kind of official we would like to do this. Why not a notary public?

Senator Pimentel. That is all right, Mr. President, although, the COMELEC is supposed to be an impartial authority in the town.

The President. The trouble is that during election time there are many charges and countercharges.

Senator Romulo. Mr. President.

The President. Senator Romulo is recognized.

Senator Romulo. Mr. President, as far as Senator Pimentel's limitation is concerned, I understand it is 150 words. There may be a lot of merit there even in complex cases; because, in my view, the Ombudsman, upon receipt of that telegram, should precisely inquire and send somebody to investigate. I believe that limiting it would be sufficient to put the Ombudsman on notice and it is the obligation of the Ombudsman and his office to follow that up. Just an observation.

The President. Is there any other observation before we approve this? What is the pleasure of the Sponsor?

Senator Angara. We accept it, Mr. President.

The President. So, how will it read now?

Senator Pimentel. With the permission of the Sponsor, Mr. President, the suggestion of the President, I think, is well-taken. Perhaps, we should eliminate the “registrar”.

Senator Angara. And the “mayor”.

Senator Pimentel. At any rate, Mr. President their certification is only to insure that the complainant is a real person and that he is residing in a particular place within the jurisdiction of the one certifying.

The President. Then in that case, just add NOTARY PUBLIC probably.

Is there any objection? [*Silence*] Hearing none the same is approved. Is there any other amendment?

Senator Alvarez.

ALVAREZ AMENDMENT

Senator Alvarez. Anterior amendment, Mr. President, on page 20, line 8: “obstructive misconduct”. Change “misconduct” to CONDUCT.

Senator Angara. Yes, Mr. President. This is on page 20, line 8, the phrase “obstructive misconduct” should be “obstructive CONDUCT”. We accept the amendment.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved. Are there any more amendments?

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. Mr. President, before making the proposed amendment, we would like to ask the distinguished Sponsor whether there is any provision on private citizens being in conspiracy with employees of the Government.

Senator Angara. Not in the text, Mr. President.

GUINGONA AMENDMENT

Senator Guingona. Then we would like to propose, Mr. President, a new section:

IN ALL CASES OF CONSPIRACY BETWEEN AN OFFICIAL OR EMPLOYEE OF THE GOVERNMENT AND A PRIVATE PERSON, THE TANODBAYAN OR THE OMBUDSMAN AND HIS DEPUTIES SHALL HAVE JURISDICTION

TO INCLUDE SUCH PRIVATE PERSON IN THE INVESTIGATION AND PROCEED AGAINST SUCH PRIVATE PERSON AS THE EVIDENCE MAY WARRANT.

And then, the second paragraph:

IN CASE A PRIVATE INDIVIDUAL IS CHARGED FOR ILL-GOTTEN OR UNEXPLAINED WEALTH, THE CASE SHALL BE BROUGHT BEFORE THE ORDINARY CIVIL COURTS UNLESS THERE IS PROOF OF CONSPIRACY WITH THE GOVERNMENT OFFICIAL OR EMPLOYEE CONCERNED.

The President. Just a moment. In all cases of ill-gotten or unexplained wealth, the jurisdiction is with the Sandiganbayan.

Senator Guingona. If they are purely private already, Mr. President.

Senator Aquino. May I ask, Mr. President, how Section 29 reads now?

Senator Angara. Section 29, on page 20, Mr. President, reads as follows:

Any person WHO FILES A COMPLETELY UNWARRANTED OR FALSE COMPLAINT AGAINST AN OFFICIAL OR EMPLOYEE OF THE GOVERNMENT SHALL BE PUNISHED BY A FINE NOT EXCEEDING FIVE THOUSAND PESOS.

Senator Aquino. Precisely, Mr. President, if somebody maliciously files a complaint against a government official or employee, the penalty is only a fine. This is where we want imprisonment included, even if it is only for 30 days, Mr. President. For somebody who can afford it, a fine of ₱5,000 or ₱10,000 does not mean anything as long as he was able to, maybe, smear his enemy. But if there is imprisonment, even if it is for 30 days, then he will probably be more careful.

The President. The Chair would like to know: Under the Revised Penal Code, is not the malicious imputation of a crime punishable already? It seems to me there is something in the Revised Penal Code. And this may be too light for a

malicious imputation of a crime.

SUSPENSION OF THE SESSION

Let us suspend the session, if there is no objection. [*There was none.*]

It was 5:41 p.m..

RESUMPTION OF THE SESSION

At 6:14 p.m., the session was resumed.

The President. The session is resumed. Senator Angara again. Is there any other amendment or is there a pending amendment?

Senator Angara. Mr. President, before the session was suspended Senator Aquino was in the process of introducing an amendment to Section 29.

The President. Yes.

Senator Angara. Before we suspended the session, the Chair asked what the penalty is for a similar offense under the Revised Penal Code. The closest we can find in the Revised Penal Code, Mr. President, is Article 363, which penalizes anyone who incriminates an innocent person and punishes him with an imprisonment of *arresto mayor*, which is one month to six months. So, if Senator Aquino wishes to pursue his amendment, perhaps, the penalty of imprisonment could be from one month to six months.

Senator Aquino. Yes, Mr. President.

The President. All right. Senator Pimentel.

AQUINO AMENDMENT

Senator Pimentel. To make that penalty conform with the requirements of the Penal Code, Mr. President, it should really be one month and one day to six months of *arresto mayor*.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Romulo is recognized.

Senator Romulo. Mr. President, I did not

object; but in principle, it has always been my view that unless it is for violent crimes that would do havoc to the community, modern penology in civilized countries is to veer away from imprisonment. I would just like to make that statement.

The President. Senator Tamano.

Senator Tamano. I have a new amendment, Mr. President.

The President. On what page?

Senator Tamano. I think the Honorable Senator from Quezon suggests that it should be located after Section 6.

The President. Shall we finish first 21 and 22? Then we go back. Is there any further amendment on page 21?

Senator Pimentel is recognized.

Senator Pimentel. Mr. President, on lines 28 up to 31 and line 1 of page 22, the section deals on fiscal autonomy for the Ombudsman.

Mr. President, I understand that the provision is taken from a similar provision that is found in the Constitution, which is Section 14 of Article XI. However, I am apprehensive that this second sentence, starting from line 28, "Appropriations for the Office of the Ombudsman may not be reduced below the amount appropriated for the previous years." Why do we, in effect, completely put the Ombudsman beyond even the scrutiny, much less the supervision, of Congress?

These lines, by the way, which I have objections to are not really found in the constitutional provision also. So, I would move, Mr. President, for the reproduction of the constitutional provision and eliminate the sentence that reads on page 21, "Appropriations for the Office of the Ombudsman may not be reduced below the amount appropriated for the previous years."

The President. Is there any objection?

Senator Angara. Mr. President, if I may just

explain before we act on the proposed amendment. It is true that the phrase "may not be reduced" does not appear in the constitutional provision on the fiscal autonomy of the Ombudsman; but we took the phrase out of the provision in Article VIII for the Judiciary, Section 3, which says:

"The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriate for the previous year..."

And we thought that a similar protection ought to be extended to the Ombudsman as part of the independence we want it to enjoy. That does not mean that Congress may not also exercise the power of control over its budget.

If the Ombudsman, for instance, asks for a higher budget the following year, then Congress can scrutinize and ask for its activities and performance; and if the explanation is not satisfactory, they can deny an increase in the budget.

So, I would just like to put that explanation on record.

Senator Pimentel. Mr. President, there may come a time when certain departments of Government may have to sacrifice for a more urgent priority. And considering the limited financial resources of our country, some of these departments may have to suffer cuts in their appropriations for the previous year. Certainly, Mr. President, I do not think that the intention of the framers of the Constitution was to grant a particular privilege to the Ombudsman as the provision under question would do. In fact, they did not so state in the provision of the Constitution itself regarding appropriation for the Ombudsman.

Therefore, I think, Congress should not be deprived of that authority to cut, where it is necessary, even appropriations for the Ombudsman. Mr. President.

The President. Senator Guingona is recog-

nized. Senator Saguisag is next.

Senator Guingona. I would like to support the move to delete that phrase, Mr. President, because, first of all, fiscal autonomy has not yet been defined into law. There is no legislation covering that.

Second, Mr. President, we have already heard the reservations of some that we are creating a very powerful possible fairy monster.

The President. Does the Gentleman mean Senator Laurel?

Senator Guingona. Yes. And regardless of *compadres*, that would be very powerful. We already heard yesterday that the only safeguards against the possible abusive Ombudsman in the future would be the slow experience of impeachment and the budgetary process.

So, I think, for that reason, Mr. President, we should delete that and just rely on the constitutional provision, as is.

The President. Senator Saguisag is recognized.

Senator Saguisag. Mr. President, I find this phraseology useful in the sense that it stresses and dramatizes our commitment against graft and corruption. After all, this will not be elevated into the level of the constitutional provision. If next year we just reduce it, certainly, we can do it. This cannot be in the nature of an irrepealable law. Its only validity here is that, sometimes, rhetoric has a powerful effect on human conduct. But there is nothing to prevent any future Congress from reducing it to one centavo because there is no constitutional ban. This will not have the effect of the constitutional provision in favor of the Supreme Court. So, this is not going to lead to the evils foreseen by the two Gentlemen who have spoken in support of deleting it.

But in the sense that it stresses, as I have said, our national commitment, then there should not

be any harm in retaining, in my view, the present terminology.

The President. What is the pleasure of the Sponsor?

Senator Angara. For the reasons stated by Senator Saguisag and those I stated earlier, Mr. President, I regret that we cannot accept the amendment.

The President. Does the Gentleman want to have this put to a vote? We can vote on it.

Senator Pimentel is recognized.

Senator Pimentel. Mr. President, I do feel that we have to do something about the prerogative of Congress, the Members of which are among the duly elected officials of the land to have something to say regarding the finances or the grant of finances to the Office of the Ombudsman. And if the argument is that we can do it next year, why do we not do it this year? Why postpone something for tomorrow what we can do today? In effect, therefore, Mr. President, I think that if the idea is to put it to a vote, all right, put it to a vote.

The President. Those who are in favor of deleting that provision, please raise your right hands. [*Several Senators raised their right hands.*] Those who are in favor of retaining the provision, please do the same. [*Few Senators raised their right hands.*] Deletion is carried.

On page 22, is there any amendment?
Senator Ziga is recognized.

ZIGA AMENDMENT

Senator Ziga. Thank you, Mr. President.

May I propose an amendment on page 22, line 10, to change the word "or", after "Official Gazette", to AND so that it will read: "the Official Gazette AND in any newspaper of general circulation in the Philippines."

The President. The effectivity then may take

time because the *Official Gazette* comes out usually very, very late. Maybe, we may want two or three newspapers of general circulation.

Senator Ziga. And in any two newspapers of general circulation in the Philippines.

The President. Or in two newspapers.

Senator Ziga. In two newspapers of general circulation.

The President. Senator Maceda.

Senator Maceda. Mr. President, we all know that there are about 23 newspapers of general circulation and this is the kind of bill that should be given the widest circulation. May I suggest, if the Senator from Bicol will agree, that in this particular case, the two should be made six or one-fourth of the newspapers of general circulation.

Senator Ziga. No objection, Mr. President.

The President. So, how many?

Senator Maceda. Six, Mr. President.

The President. Senator Mercado.

Senator Mercado. Mr. President, that may be a little more expensive. I think the best thing to do is to determine the newspapers, based on available data, that have the largest circulation. We can do that. Even if we have two, at least, they reach the largest audience, if their circulation is wide.

The President. Senator Maceda.

Senator Maceda. Mr. President, some readers have their favorite newspapers. Not everybody reads the *Bulletin*. There are some people who do not like this or that paper. But, seriously, this kind of bill should be immediately brought to the attention of as wide a population sector as we can.

The President. How about a compromise? Usually, in many legislations, three newspapers of general circulation.

Senator Maceda. Two times, Mr. President? [Laughter]

Well, whatever, but I just wanted to bring the point that the wider the immediate publicity, the better for everybody. I think we can afford for that purpose.

The President. What is the pleasure of the Sponsor?

Senator Maceda. I will yield to the Sponsor, Mr. President.

Senator Angara. I think three would be reasonable, Mr. President.

The President. All right. OR IN THREE NEWSPAPERS OF GENERAL CIRCULATION. Is there any objection? [Silence] Hearing none, the same is approved.

Now let us go back. In the point of chronology, the *compadre* amendment; the amendment of Senator Rasul; then the amendment of Senator Tamano. Senator Laurel made a reservation during the first day.

Senator Laurel. Mr. President, my *compadre* amendment. This is on page 4, Section 9, line 9, on the second paragraph. After the word SPOUSE insert *COMPADRE, GODCHILD, GODPARENT*. So that the paragraph will read as follows: NO SPOUSE, *COMPADRE, GODCHILD, GODPARENT*, then follows, OR RELATIVE BY CONSANGUINITY OR AFFINITY...

The President. We are discriminating against *comadres*. [Laughter]

Senator Laurel. Well, the *compadre*, Mr. President, is a generic term which would include *comadre*.

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. Will the distinguished

Sponsor of the amendment yield, Mr. President?

In certain weddings there are three, four, a dozen sponsors. Would they all be comprehended under this proposed amendment?

Senator Laurel. I think, Mr. President, that the word *compadre* here, which would include *comadre*, should be limited to the principal sponsor; or as we say it in the national language *compadrengring*, not the secondary sponsors, because there are sometimes two, three or four sponsors. It is the principal, number-one sponsor.

Senator Guingona. But in some occasions we consider all as principal sponsors.

Senator Laurel. Well, Mr. President, it is hard to have such a coverage. And the Gentleman's proposal here, Mr. President, would like to limit it to the principal sponsor, in view of the fact that we realize it is quite difficult to remember all the different and various godparents or the *compadres* and *comadres*. So, we think that the principal sponsor should be sufficient.

Senator Guingona. Will this amendment cover past *compadres* and *comadres*?

Senator Laurel. Yes, Mr. President, to the best of one's recollection and memory.

The President. Let us find out the pleasure of the Sponsor also.

Senator Angara. Mr. President, much as I want to accommodate this amendment, I think we cannot do so because on the same principle that we said friends ought not to be disqualified. I think, *compadres*, et cetera, also ought not to be disqualified.

In the case of a spouse, Mr. President, there is that natural affinity, and one chooses his spouse voluntarily. In the case of relatives, in a way, the relationship is natural; but in the case of *compadres*, it is more artificial, because except for really close friends who pick one as *compadre*, there are many

instances, Mr. President, when one is picked as a *compadre* because of admiration. I am sure the Senate President, during his political life, had so many *compadres* and godsons because many of them are admirers of the President. So it would be very difficult to use such an artificial relationship as a basis for disqualification.

Senator Laurel. Well, Mr. President, may I reply. In our peculiar Philippine culture, *compadres* are usually more influential than even a relative within the fourth degree of consanguinity or affinity. Public officials generally are asked to stand as godparents of one's children in weddings, baptism or confirmation because of the help that the prospective godparent can extend, I think, not only to the godchild, but also to the *compadre-to-be*.

And so this is the reason, Mr. President, why this proponent here is proposing this amendment, in view also of the fact that here we are investing the Ombudsman and his Deputies with tremendous, awesome powers. That is why we would like to isolate him, if possible, from possible influences coming from people who are even more influential than even one's wife sometimes.

The President. Is it possible to strike a compromise, not to put it here but to put it as a possible ground for disqualification that may be invoked by the other party?

Senator Laurel. Yes, Mr. President, but how about if that should come out later and the discovery should be made after a decision or finding is made? It is all right, I think, for one to disclose it.

That is why I have another amendment here that is supposed to follow this proposal of mine; and that is, a new section to be denominated as Section 10, if I might be permitted to read it, not for the purpose of consideration, but to see the relationship between one I have proposed and this new one. If I may be permitted, Mr. President.

Disclosure of kinship, as Section 10:

IT SHALL BE THE DUTY OF THE OMBUDSMAN AND HIS DEPUTIES, INCLUDING THE SPECIAL PROSECUTOR TO INDIVIDUALLY MAKE UNDER OATH TO THE BEST OF THEIR KNOWLEDGE AND RECOLLECTION A PUBLIC DISCLOSURE OF THE IDENTITIES OF THEIR RESPECTIVE SPOUSES, *COMPADRES*, GODCHILDREN, GODPARENTS AND RELATIVES BY CONSANGUINITY OR AFFINITY WITHIN THE FOURTH CIVIL DEGREE.

Then follows:

THE DISCLOSURE SHALL BE FILED WITH THE OFFICE OF THE PRESIDENT AND THE OFFICE OF THE OMBUDSMAN BEFORE THE APPOINTEE ASSUMES OFFICE AND EVERY YEAR THEREAFTER. DISCLOSURES MADE PURSUANT TO THIS SECTION SHALL FORM PART OF THE PUBLIC RECORDS AND SHALL BE AVAILABLE TO ANY PERSON OR ENTITY UPON REQUEST.

The President. Let us go back to the first question.

Senator Laurel. Yes, Mr. President.

The President. Shall we disqualify the *compadres*, the *comadres*, the godparents? Those who are in favor of disqualifying the *compadre*, the *comadre*, the godparents, please raise your right hands. [*Several Senators raised their right hands.*] Those who are against, please do the same. [*Few Senators raised their right hands.*]

The amendment is lost.

Well, I was proposing a compromise to make it as a possible ground for disqualification to be invoked by the other side.

Senator Laurel. That is if known, Mr. President. But anyhow, since my amendment is lost, may I, however, go to a few other amendments, not to major, if I may, Mr. President.

The President. All right.

Senator Laurel. On page 4, Section 10...

The President. Why do we not do it by page? I think Senator Rasul's amendment is on page 2. Is

that right? There is no amendment on page 1 again.

Senator Rasul. Thank you, Mr. President.

The President. All right.

RASUL AMENDMENT

Senator Rasul. On page 2, lines 20 to 21 if the distinguished Sponsor will agree, I propose to add after the word "reappointment" a new sentence which reads:

APPOINTMENT TO ANY VACANCY SHALL BE ONLY FOR THE UNEXPIRED TERM OF THE PREDECESSOR.

This is in keeping with the constitutional provision, Mr. President, as well as Section 6 of this bill which provides that the Ombudsman and his Deputies shall have the same rank as the Chairman and Members of the Constitutional Commission and, therefore, they have a definite term.

Senator Angara. The amendment is accepted, Mr. President.

The President. All right. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Rasul. On the same page, Mr. President, line 31...

The President. I think Senator Maceda may have an observation.

Senator Maceda. Just for the record, Mr. President. May we clarify that appointment to the unexpired term also means without reappointment; even if he serves for only six months, he cannot be reappointed for another seven years?

The President. What is the pleasure of the Sponsor?

Senator Angara. I think that is not the rule, Mr. President. If one is appointed only to the balance of an unexpired term, he is qualified to a full term.

The President. If the unexpired term is, let us

say, six months, he cannot be reappointed. Is that it, after the expiration?

Senator Maceda. Mr. President, because there are, I think, certain provisions where such is the rule and there are certain provisions where such is not the rule especially in the COMELEC, for example, where there is an idea to rotate the membership and the reappointment is not allowed on that basis.

Senator Saguisag. Mr. President.

The President. Senator Saguisag is recognized.

Senator Saguisag. Mr. President, in view of the peculiar nature of the COMELEC, we can understand the rationale for that provision. It is a highly partisan position. But the nature of service in the Judiciary really is more consistent with serving for life but for good behavior. Will it be consistent with the national interest? If there is only a vacancy for six months, no one would want that because that would mean one would have to give up his practice only to serve for six months. So, I would have thought that the seven-year term should apply to everyone because the rationale for the COMELEC analogy is not the same thing that we see here. We want to make this more permanent in a sense. So, I am not so sure whether we could attract people to fill up vacancies, and who suffers? The public.

Senator Maceda. Well, if that is the interpretation, Mr. President, to which I do not object, then we might as well provide that if there is a vacancy, the new appointee will be given a seven-year term. Why provide only for the unexpired term?

Senator Saguisag. May we know the reasoning behind limiting it to the unexpired term that may deter good practitioners from leaving private practice if he would be there only for a year or so? That seems too short for one to make his imprint in public life.

Senator Rasul. Mr. President, I think this is in

line with the language creating the Constitutional Commission. Those who are appointed to fill a vacancy are only appointed for that unexpired term but I suppose he can be reappointed for another term.

Senator Saguisag. If he can be reappointed, then, all right. But it is really in limiting him to the balance of the vacancy that disturbs me. But the prospect of reappointment should, in fact, be an encouragement for him to do well so he can be reappointed.

The President. But if they can be reappointed, what is the sense of putting it here? That is the point of Senator Maceda. What is the pleasure of the Sponsor?

Senator Angara. As I understand it, Mr. President, when the appointment is to the unexpired term and not to a full term, then, one is qualified, under the present practice, to an appointment to a full term. So, consistent with that, we accept the amendment proposed by Senator Rasul.

The President. All right. The amendment has been accepted.

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized.

Senator Maceda. We have not clarified the matter. Let us say, the vacancy is for six years, so, he is appointed only for the six years vacancy. Now, if there is no clarification in the records, he may be reappointed for another seven years or he may be reappointed only for one more year which will go into a computation process as to when he finishes his seven-year term. That is why I wanted it clarified now before we get into the need to interpret it in the future. My feeling is that the choice is only two: If the rule is that he is only reappointed to the unexpired term, then, he cannot be reappointed. If the rule is that we want him to be qualified for reappointment but subject to a seven-

year limit, then, the appointment, from the very beginning, can be understood to be for a full-seven year term.

Senator Angara. Mr. President, I think Senator Maceda is correct and so is Senator Rasul. The point is that, if one is appointed to the unexpired term, he is entitled to a reappointment. But for how long? That is the question. Senator Maceda said that is only for the period that will fill up the seven years; and which is correct. So, for the *Record*, one may be entitled to a reappointment but only for such period that will make up for seven years. Because the intent is that no Ombudsman or Deputy will serve longer than seven years.

Senator Maceda. In the light of the Saguisag explanation, Mr. President, a qualified person may hesitate to accept, even if it is, let us say, six months, although he knows he could be reappointed because it means to say that he will have to go through the process of having to talk to the President, if that is necessary, for a reappointment. So, from the viewpoint of attracting qualified people, we might as well opt in favor of giving him a full seven-year appointment from the very beginning. Because kung tatanggap siya ng one-year appointment, let us say, at maaisip niya, "After one year, I am not sure. Supposing the President does not want to reappoint me and I have already left my job in the private sector", the same problem that Senator Saguisag raised will arise. While if we say, seven years immediately, then, we might attract better quality people.

Senator Rasul. Mr. President, if a private practitioner, for example, is appointed to the unexpired term, he is well aware that he is appointed only for that period of time. So, he goes into that position with his eyes wide open. And I think the practice in constitutional commissions is that they are only appointed for that period of time. I do not know how it is with COMELEC. I understand they are appointed for a definite period of time and then

there is a gap, after which, he may be appointed for a full term.

Senator Enrile. Mr. President.

The President. The Minority Floor Leader.

Senator Enrile. Mr. President, may I pose a question to the lady Senator? Suppose a vacancy occurs, let us say, because of the resignation or death of the Ombudsman six months before the end of seven years. Does the Gentle Lady think that it is fair for somebody to be appointed only for six months and suffer not only for himself but including his family, business associates, and law partners in these disqualifications that we have written in law?

Senator Rasul. Mr. President, the prospective appointee has the option to accept. He may not accept.

Senator Enrile. But we must consider public policy, Mr. President. I agree with the distinguished Gentleman from Ilocos Sur, Manila, and Laguna that nobody might want to accept because of that burden, so we will have no Ombudsman. We have an office but nobody to occupy it.

Senator Rasul. Mr. President, I was just wondering what would be the function of the overall Deputy Ombudsman. Could he not temporarily fill that unexpired six-month period instead of appointing somebody who might feel prejudiced to serve for only six months and then disqualifying all his relatives from appearing before the Court? Perhaps, the overall deputy could be assigned to fill the unexpired term or to act in lieu of the Ombudsman who retired or resigned.

Senator Enrile. But what is wrong with giving the new appointee a total of seven years, after all he is only one; this is not a collegial body, he is only a single person. It is simply that every permanent appointment to the position of an Ombudsman must have a terminal point of not more than seven years.

SUSPENSION OF THE SESSION

The President. Let us suspend the session for a moment, if there is no objection. [*There was none.*]

It was 6:52 p.m.

RESUMPTION OF THE SESSION

At 6:53 p.m., the session was resumed.

The President. The session is resumed.

Senator Rasul. Mr. President, after discussing the amendment with the distinguished Sponsor, and in view of the observation made by the distinguished Minority Floor Leader, I would like to withdraw the amendment and leave the provision as is.

The President. All right, the amendment is withdrawn.

Any anterior amendment?

Senator Tamano. Mr. President.

The President. Senator Tamano is recognized.

Senator Rasul. Mr. President, I have an amendment on the same page.

The President. On page 1?

Senator Rasul. On page 2.

The President. There is an anterior amendment. Page 1.

Senator Tamano. Mr. President, actually it is related to page 1, but it would be really on page 2. [*Laughter*]

Senator Rasul. Mr. President, that is unfair.

The President. Let us give way to the Lady because she had withdrawn.

Senator Tamano. I give way to the Lady, Mr. President.

Senator Rasul. Thank you.

The President. All right, Senator Rasul is recognized.

RASUL AMENDMENT

Senator Rasul. On the same page, Mr. President, line 31, after "Judicial and Bar Council", it is not clearly seen - the "Members of the Judicial and Bar Council". I would like to add after "Council", AND WHO SHALL BE APPOINTED BY THE PRESIDENT. So that it is clear that the Judicial and Bar Council who had been appointed are not just any member.

Senator Angara. Just for clarification, Mr. President. The reference to the appointment by the President is to "the THREE-MAN COMMITTEE", not to the Judicial and Bar Council.

Senator Rasul. Yes, but who appoints the three-man committee?

Senator Angara. The Ombudsman.

Senator Rasul. In that case, Mr. President, I will amend my amendment on page 2, line 31. In lieu of the "President", I would like to propose AND WHO SHALL BE APPOINTED BY HIM OR BY THE OMBUDSMAN.

The President. Who will appoint the three-man committee?

Senator Rasul. The Ombudsman; according to the distinguished Sponsor.

Senator Angara. Perhaps, we can insert the phrase TO BE APPOINTED BY THE OMBUDSMAN after the word COMMITTEE on line 30, A THREE-MAN COMMITTEE APPOINTED BY HIM OR THE OMBUDSMAN.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

ANGARA AMENDMENTS

Senator Angara. Just for style purposes, Mr. President, on line 31, in lieu of the words "SIMILAR TO", can we say "THE SAME AS". That means the qualifications would be the same as the qualifications of the Judicial and Bar Council.

The President. Is there any objection?

[*Silence*] Hearing none, the same is approved.

The President. Senator Tamano is recognized.

TAMANO AMENDMENT

Senator Tamano. Thank you, Mr. President. Actually, my amendment is really anterior. This is on line 4 of page 2; this is a new paragraph and should read as follows:

IN THE ORGANIZATION OF THE OFFICE OF OMBUDSMAN FOR FILLING UP OF VACANCIES THEREIN A REGIONAL, CULTURAL, OR AN ETHNIC CONSIDERATION SHALL BE TAKEN INTO ACCOUNT TO THE END THAT THE OFFICE SHALL BE, AS MUCH AS POSSIBLE, REPRESENTATIVE OF THE REGIONAL, ETHNIC, AND CULTURAL MAKE UP OF THE FILIPINO NATION.

This is not a novelty, Mr. President. There is a similar provision in the Foreign Service Act of the Philippines that the foreign service should reflect the composition of the Filipino people. This is a new office that is being created. And it so happened that people from Mindanao and, perhaps, the Visayas are sometimes prejudiced because, naturally, the Ombudsman or the head of the agency would favor somebody from his region. So, this kind of provision is something that we will insert in any new office to be created, because this will promote the concept of having an office representative of the composition of our country.

The President. What is the pleasure of the Sponsor?

Senator Angara. We accept it, Mr. President.

Senator Tamano. Thank you, Mr. President.

The President. Are there any comments? Is there any observation? Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Mercado. Mr. President.

The President. Senator Mercado is recognized.

MERCADO AMENDMENT

Senator Mercado. Mr. President, still on page 2, just a matter of style. On line 3, after the word "occurs" put a comma (,) and delete the words "AFTER PUBLICATION" and in its place the phrase EACH OF WHICH LIST SHALL HAVE BEEN PUBLISHED will be inserted.

The President. Just a matter of style.

Senator Mercado. Yes, Mr. President.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

No more on page 2; page 3, page 4?

Senator Laurel. Mr. President.

The President. Senator Laurel is recognized; then Senator Enrile.

ANGARA AMENDMENT

Senator Angara. Anterior amendment, Mr. President. Again, a matter of style, on page 3, line 17, we propose to remove the word "and" between "Tanodbayan" and "his", so that it would read: "The Tanodbayan, his deputies and the Special Prosecutor."

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Laurel. Mr. President.

The President. Senator Laurel is recognized.

Senator Laurel. Mr. President, on page 4.

The President. Yes.

Senator Enrile. Anterior amendment, Mr. President.

The President. We do not know yet the line.

Senator Laurel. On page 4, after line 19, Mr. President.

Senator Enrile. I have an amendment on page 3, Mr. President.

Senator Laurel. I yield, Mr. President.

The President. All right, Senator Enrile.

Senator Enrile. Mr. President, may I know from the distinguished Sponsor the reason for putting the words "OR SENIOR" on page 3, line 5 to qualify the word "Deputy"

Senator Angara. This is the Romulo Amendment, Mr. President.

Senator Enrile. I am raising this question, Mr. President, because I do not know if there is any seniority among the other deputies.

The President. It seems to me that in accordance with page 3, line 5 says that the overall shall be the Senior Deputy.

Senator Enrile. But there would be no need to put the words "OR SENIOR" since the Overall Deputy by definition and provision is really the Overall Deputy. And if we retain the words "OR SENIOR" it would suggest that there is a system of seniority for the deputies other than the Overall Deputy.

Senator Angara. Excuse me, Mr. President. There is one word missing on line 5. It should be the "Overall SENIOR Deputy TANODBAYAN". So, the word "TANODBAYAN" should be inserted there.

Senator Enrile. But, precisely, my question, Mr. President, is we have actually five deputies; six, to be exact. We have the Deputy for Military; we have the Deputy for Mindanao; the Deputy for Visayas; the Deputy for Luzon, and the Overall Deputy.

Now, the man next to the Tanodbayan under the proposed bill is the Overall Deputy. Who could be the Senior Deputy that is thought of here?

Senator Angara. The Senior Deputy is the Overall Deputy.

Senator Enrile. Then the words "OR SENIOR" would be a surplusage, Mr. President?

Senator Saguisag. Mr. President.

The President. Senator Saguisag is recognized.

Senator Saguisag. Mr. President, lines 8 to 11 in capitals may supply the answer. In case the Overall Deputy cannot assume the role of Acting Tanodbayan, maybe, he should be the most Senior Deputy in terms of appointment. It will be in relation to the date of appointment if there are different dates of appointment. The traditional meaning of "seniority" in terms of the date is, maybe, what we want to determine.

Senator Enrile. Precisely, Mr. President, I am raising the question whether there is a need to retain the words "OR SENIOR" on line 5 since there is already a definition or a provision on lines 8 to 11.

Senator Angara. Let me explain, Mr. President, because this is a combination of the amendments proposed by Senators Guingona, Romulo, and Lina. The Overall Deputy shall be called the "Senior Deputy Tanodbayan".

When Senator Lina asked: "Suppose the Senior Deputy Tanodbayan is also incapacitated, who among the deputies will take over in an acting capacity as Tanodbayan?" And the suggestion was that the Deputy who was appointed earlier will become the Senior Deputy.

Senator Enrile. So that, the term "SENIOR" on line 5 therefore refers to the Overall Deputy?

Senator Angara. That is correct.

Senator Enrile. May it not be better, perhaps, Mr. President, if this is just deleted so that it will not complicate the sense of the hierarchical system that is sought to be established here?

The President. The suggestion seems to be well-taken, in view of lines 8 and 9, so that there will be no confusion.

Senator Angara. Yes, a matter of style.

ENRILE AMENDMENT

Senator Enrile. I move therefore that we

delete from line 5, after the word "Overall", the words "OR SENIOR".

The President. Is there any objection? [Silence] Hearing none, the same is approved. Page 4? Senator Laurel.

Senator Laurel. On page 4, after line 19, a new section to be denominated as Section 10, which will read as follows:

DISCLOSURE OF RELATIONSHIPS. - IT SHALL BE THE DUTY OF THE SPECIAL OMBUDSMAN, HIS DEPUTIES, INCLUDING THE SPECIAL PROSECUTOR, TO INDIVIDUALLY MAKE UNDER OATH, TO THE BEST OF THEIR KNOWLEDGE AND RECOLLECTION A PUBLIC DISCLOSURE OF THE IDENTITIES OF THEIR RELATIONSHIP WITH THE PERSONS REFERRED TO IN THE PRECEDING SECTION.

Then follows the next paragraph:

THE DISCLOSURE SHALL BE FILED WITH THE OFFICE OF THE PRESIDENT AND THE OFFICE OF THE OMBUDSMAN BEFORE THE APPOINTEE ASSUMES OFFICE, AND EVERY YEAR THEREAFTER. THE DISCLOSURES MADE PURSUANT TO THIS SECTION SHALL FORM PART OF THE PUBLIC RECORDS AND SHALL BE AVAILABLE TO THE PERSON OR ENTITY UPON REQUEST.

Senator Angara. Just one point of clarification, Mr. President: When the distinguished Gentleman says "to the best of their knowledge and recollection," is it equivalent to the best of one's knowledge or can we say that it is to the best of his information?

The reason I asked that, Mr. President, is that, sometimes, it is almost impossible to recall who, among one's relatives are in government or such; and therefore, one can honestly make a mistake in not listing one, and still would face the risk of perjury. So, if the meaning is "to the best of his information", then I think...

LAUREL AMENDMENT

Senator Laurel. ... AND/OR. And then revise

the amendment "to the best of his knowledge AND/OR information".

Senator Angara. And therefore, will it satisfy the distinguished Gentleman, if it is "to the best of his knowledge"?

We will accept it, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

Senator Enrile. Going back to page 3 again, Mr. President, line 20.

The words in bold letters beginning with the sentence on line 19: **THEY SHALL NOT, DURING SAID TENURE, DIRECTLY OR INDIRECTLY PRACTICE ANY OTHER PROFESSION.** When we say **OTHER PROFESSION**, does it mean that we can practice a profession?

Senator Angara. When they are serving as Ombudsman, I suppose they are practicing their law profession.

Senator Enrile. But they are not in law practice as Ombudsmen; they are government officials.

Senator Angara. I think when a judge is acting as a judge, he is practicing his profession as a lawyer.

Senator Enrile. He is a lawyer, but he is not practicing a profession.

Senator Angara. Well, when they are serving as Ombudsman, I suppose they are practicing their law profession.

Senator Enrile. But they are not in law practice, Mr. President, as Ombudsman. They are government officials.

Senator Angara. I think a Judge is acting his profession as a lawyer.

Senator Enrile. He is a lawyer, but he is not practicing a profession.

Senator Angara. But practicing a profession does not simply mean appearing before courts, Mr. President. It also involves rendering decisions, opinions and consultation.

The President. Moreover, this is an exact reproduction of Section 13.

Senator Enrile. Well, I just want to be enlightened on this. In other words, while we may admit that the occupancy of the position of Ombudsman and Deputy Ombudsman is considered by the Constitution and this law to be a practice of the profession, it does not mean that they can, outside of that function, practice their profession.

Senator Angara. That is correct, Mr. President.

The President. Is there any other amendment on page 4, page 5, page 6, page 7? I think we have gone over this, already. Is there any other amendment?

Senator Saguisag. Mr. President.

The President. Senator Saguisag is recognized.

SAGUISAG AMENDMENT

Senator Saguisag. An omnibus amendment beginning on page 2, line 29. It seems to me, Mr. President, every time we use the term "Ombudsman" to refer to the occupant rather than the office. For consistency, we should use "Tanodbayan" all throughout.

Senator Angara. When referring to the person?

Senator Saguisag. To the occupant. And, then, a very minor point on page 3, line 6, I think the figure "31" should go out.

Senator Angara. Yes, Mr. President.

Senator Saguisag. On page 4, line 7, also a minor amendment; "on", it seems to me should be OR. I would like to revive, Mr. President, my manifestation of last night, again subject to

adjustments to be made because there was a new section, that maybe we ought to rearrange--and I am now on page 18, the Section beginning with No. 23--the provisions.

Senator Angara. Before that, Mr. President, can I just refer to page 12? My recollection is that we missed one line here. On page 12, line 27, "ACTS OF GAMBLING CONTRARY TO LAW", I remember that the phrase CONTRARY TO LAW was added, but it is not in our text.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Anyway, this is subject to refinement and style all throughout.

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. We just would like to know from the Sponsor, Mr. President, how the Ombudsman and his deputies will be addressed, because in the Constitution it says: "To be hereinafter known as the Tanodbayan." Will he therefore officially be called Tanodbayan?

Senator Angara. Yes, Mr. President.

Senator Guingona. And how about his deputies?

Senator Angara. The Romulo Amendment will be called "The Deputy Tanodbayan".

Senator Guingona. Can they not be just referred to as . . .

Senator Angara. The whole office will be called as the "Office of the Ombudsman."

Senator Guingona. So, that is the official designation?

Senator Angara. That is correct.

Senator Guingona. And we do not need to spell that out?

Senator Angara. I think it is spelled out in some of its provisions here.

Senator Guingona. No, because in some it is Ombudsman and in some it is Tanodbayan.

Senator Angara. That is why we will have to ...

The President. We will have to go over it.

Senator Angara. ...for some consistency of language.

The President. Senator Saguisag, any more?

Senator Saguisag. May I just want to make of record, subject to the pleasure of the Sponsor, and I hope that our technical assistants are listening, and very quickly, that this is what I would like to propose.

The Sections beginning with Section 23 on page 18 have to be rearranged. I do not need to read the titles, but Section "25" should be "23"; Section "26" should be Section "23"; Section "27" should be Section "25"; Section "29" should be Section "26"; Section "24" should be Section "27"; Section "23" should be Section "28"; Section "29", as is. Section "30", as is; Section "33" should be Section "31;" Section "28" should be Section "32;" Section "34" should be Section "33;" Section "31" should be Section "34;" and Section "32" should be Section "35;" subject to the pleasure of the distinguished Sponsor.

The President. May I ask Senator Saguisag to collaborate with the principal Sponsor in producing a clean copy of this bill.

Senator Saguisag. We will do so, Mr. President.

ANGARA AMENDMENTS

Senator Angara. We thank Senator Saguisag. Before that, Mr. President, on page 14, may I just call the attention of the Chair that on line 11, instead of "SIXTY (60)" days, my recollection is that, we said "NINETY (90)" days conformably with the provisions of the Civil Service Law.

The President. All right. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Angara. And on page 16, Mr. President, with the permission of Senator Guingona, because this was his amendment, the word "FINAL" on line 22, on page 16, really is, should be EXECUTORY; so that SHALL NOT BECOME EXECUTORY, rather than SHALL NOT BECOME FINAL.

The President. Correct. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Laurel. Mr. President.

The President. Senator Laurel is recognized, then Senator Pimentel.

LAUREL AMENDMENTS

Senator Laurel. Mr. President, I propose a new proviso. On page 9-B, line 9, Section 15. On line 9, after "to the exclusion of all others.", add the following proviso:

PROVIDED FURTHER THAT ANY DECISION, ORDER OR DIRECTIVE OF THE OMBUDSMAN SHALL BE A BAR TO THE FILING OF ANOTHER CASE BASED ON THE SAME GROUND WITH THE OTHER DISCIPLINARY AUTHORITIES AND VICE VERSA.

Senator Angara. We accept the amendment, Mr. President.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Laurel. And, Mr. President, on page 4, lines 30 to 31, Section 10, paragraph 1. I propose the deletion of the sentence on lines 30 and 31. Delete: "The President may appoint other deputies as the necessity for it may arise, as determined by the Tanodbayan." This may be assailed as an undue delegation of legislative power.

Senator Angara. Mr. President, the Constitution, in fact, allows the appointment of more than four deputies. It only says that it should be at

least a deputy for Luzon, Mindanao, Visayas and for the military. But it does not exclude the appointment of additional deputies that is why we provided for this contingency.

Senator Laurel. Mr. President, this is practically mandatory and gives full authority to the Tanodbayan to determine how many and this involves a lot of other factors to be considered like budgetary, etc.

The President. If the Constitution provides for that contingency, we do not have to put it here.

Senator Angara. We thought we need an enabling act for that, Mr. President. Perhaps, what we can say here, is that--because I think the objection is the creation which will be dependent on the determination of the Tanodbayan. Perhaps we can say that the President may, in his judgment, appoint other deputies.

Senator Laurel. May I make a compromise suggestion, Mr. President? Retain the sentence, but instead of "as determined", AS RECOMMENDED.

Senator Angara. All right.

Senator Laurel. Puwede na?

Senator Angara. Yes. Accepted, Mr. President.

The President. Just a moment. Let us dispose of that "puwede na". [Laughter] Is there any objection? [Silence] Hearing none, the same is approved.

Senator Laurel. On page 5, Mr. President, Section 10, paragraph 4, lines 20 to 32. "THE OFFICE OF THE SPECIAL PROSECUTOR"; after this "PROSECUTOR", insert SHALL BE COMPOSED OF THE SPECIAL PROSECUTOR AND A PROSECUTION STAFF. And then after that, "the office". So, it will read as follows: THE OFFICE OF THE SPECIAL PROSECUTOR SHALL BE COMPOSED OF THE SPECIAL PROSECUTOR AND A PROSECUTION STAFF. THE OFFICE, UNDER THE SUPERVISION AND CONTROL AND UPON THE AUTHORITY etc.

Senator Angara. The amendment is accepted, Mr. President.

The President. Subject to refinement and style. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Laurel. Then on page 6, Section 10, paragraph 6, lines 10 and 11, Mr. President, restore the deleted phrase "those of the Office of".

The President. How will it read?

Senator Laurel. The sentence will read as follows: "The Tanodbayan shall appoint all officers ...". This has been changed with a new copy, Mr. President, that is why. The one that has been deleted is no longer in my copy. Now, I have the copy.

On line 10, page 6, deleted after the word "including" are the words "those of the Office of". Those words should be restored, Mr. President, because in the bill, the Special Prosecutor is proposed to be of the same rank and salary as that of the Deputy Ombudsman. He is likewise made subject to the same prohibition and disqualifications applicable to the Ombudsman and his deputies. Yet, with the deletion of the aforementioned phrase, the Special Prosecutor is to be appointed just by the Tanodbayan. He should be appointed by the President just like the other deputies.

The President. What is the pleasure of the Sponsor?

Senator Angara. The amendment is accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved. Any more amendments?

Senator Laurel. I will resume tomorrow, Mr. President.

The President. The principal Sponsor and

Senator Saguisag will supervise the production of a new copy.

ANGARA AMENDMENT

Senator Angara. Yes, Mr. President. Just one point. On page 2, lines 28 to 31, there is a provision here for the removal of a deputy, but there is no provision for the removal of the Special Prosecutor.

So, may I propose that the procedure for removing the Special Prosecutor should also be the same as this provision. So, line 28 will read as follows: A DEPUTY INCLUDING THE SPECIAL PROSECUTOR.

The President. All right. Is there any objection? [Silence] Hearing none, the same is approved.

The Majority Floor Leader.

SUSPENSION OF CONSIDERATION OF S. NO. 543

Senator Mercado. Mr. President, I move that we suspend consideration of Senate Bill No. 543.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Mercado. Mr. President, tomorrow, we shall take up two local bills, House Bill No. 3283, an Act requiring private contractors to hire workers in the area, and House Bill No. 2493, changing the name of Don Mariano Marcos to Sominot.

SUSPENSION OF THE SESSION

Mr. President, I move that we suspend the session until ten o'clock tomorrow morning.

The President. The session is suspended until ten o'clock tomorrow morning, if there is no objection. [There was none.]

It was 7:27 p.m.

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223 - 235
(13 - pages)

ORGANIZATION OF THE OFFICE OF THE OMBUDMAN.
R.A. No. 6770 / S.B. No.543/ H.B.No. 13646

RECORD OF THE SENATE

AUG 22,1988

which means the price differential, the foreign currency exchange rate, and inventory losses.

Senator Romulo. Mr. President.

The President. Senator Romulo is recognized.

Senator Romulo. Mr. President, as the original proponent of this Joint Congressional Committee on Oil Price, this Representation is not entirely uninterested in the questions posed by the distinguished Senate President Pro Tempore.

Looking at the questions posed in the privilege speech of the distinguished Senator, I am of the recollection, after having read the report and recommendations on the Oil Price Stabilization Fund, et cetera, which is considered in the report that these were, by and large, already taken up in detail in the report. And so my question is: Is there anything new here that is not in the report and recommendation of the Laurel-Roco Committee?

Senator Guingona. I am sorry, Mr. President, I have no intent whatsoever to preempt the Committee. I have not seen a copy of that report. I do not know well the contents of that report. As a matter of fact, we only did this on our own. If there is any similarity, I have no intent whatsoever to, in any way, duplicate.

Senator Romulo. Well, my question, really, is not that there is similarity. I just wanted to ask the distinguished Senator if there are matters here now in the privilege speech that were not taken up in the report and recommendation of the Laurel-Roco Committee. That is my question.

Senator Guingona. I do not know, Mr. President.

Senator Romulo. I take a paraphrase value that this privilege speech contains additional material. And so, that is the reason why I have directed that question, for my enlightenment and information, Mr. President.

Senator Guingona. I do not know. I do this

on my own, I did not know that there was such a report.

SUSPENSION OF THE SESSION

The President. Is there any other interpellation? [Silence] The session is suspended for one minute, if there is no objection. [There was none.]

It was 5:36 p.m.

RESUMPTION OF THE SESSION

At 5:40 p.m., the session was resumed.

The President. The session is resumed.

The Majority Floor Leader.

MOTION OF SENATOR MERCADO (Referral of the President Pro Tempore's Speech to the Joint Congressional Committee on Oil Price Increase)

Senator Mercado. Mr. President, inasmuch as new points have been raised in the speech of Senate President Pro Tempore on the matter of oil price increase, I move that said speech be referred to the Joint Congressional Committee on Oil Price Increase.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

BILL ON SECOND READING

Senate Bill No. 543--Office of the Ombudsman (Continuation)

Senator Mercado. Mr. President, I move that we resume consideration of Senate Bill No. 543 as reported out under Committee Report No. 263. We are in the period of individual amendments. I move that we recognize the Sponsor, Senator Angara, and when we adjourned on this matter, Senator Laurel was proposing an amendment.

The President. Senator Laurel is not around.

SUSPENSION OF THE SESSION

There is a pending request for a caucus on the

part of the Committee of Senator Guingona. Shall we declare the usual break, if there is no objection? [There was none.]

It was 5:41 p.m.

RESUMPTION OF THE SESSION

At 6:22 p.m., the session was resumed.

The President. The session is resumed. Senator Angara is recognized.

Senator Angara. Thank you, Mr. President. The parliamentary situation is that, as we were winding up the period for individual amendments, Senator Laurel made some reservations to propose additional amendments.

So, may we ask that Senator Laurel be recognized.

The President. We now have a clean copy.

Senator Angara. We have now a clean copy, Mr. President, incorporating all the amendments as of August 18, 1988, including the suggestion of Senator Saguisag to renumber some of these sections.

The President. Including the amendments that were approved subject to refinement and style?

Senator Angara. Yes, Mr. President. They have been properly stated.

The President. Now, we have to be sure they are approved by the entire Body.

Senator Laurel is recognized.

Senator Angara. Before Senator Laurel, Mr. President, may I just put on record that Senator Guingona is also a coauthor of this bill.

The President. Let that be placed on the *Record*.

Senator Laurel. I propose the following amendments on page 2 of the latest production of the bill.

The President. There is no amendment on page 1.

Senator Angara. None, Mr. President.

The President. All right, let us go to page 2.

LAUREL AMENDMENTS

Senator Laurel. Line 1 on page 2, after the word "Deputies", insert the words INCLUDING THE SPECIAL PROSECUTOR. So the sentence will read: "SEC. 4. *Appointment*.--The Tanodbayan and his Deputies, INCLUDING THE SPECIAL PROSECUTOR, shall be appointed by the President"

The President. What is the pleasure of the Sponsor?

Senator Angara. Accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Laurel. Mr. President, on the same page, specifically line 15, after the word "Deputies", insert the following phrase: INCLUDING THE SPECIAL PROSECUTOR. So that Section 5. *Qualifications* will read as follows: "The Tanodbayan and his Deputies INCLUDING THE SPECIAL PROSECUTOR shall be natural-born citizens of the Philippines".

The President. Is that acceptable?

Senator Angara. Yes, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Laurel. On the same page, Section 7, line 29, after the word "Deputies", insert the phrase INCLUDING THE SPECIAL PROSECUTOR.

The President. Are there more of such amendments, so that we can approve already an omnibus amendment?

Senator Laurel. No more; that is the last, Mr. President.

The President. All right.

Senator Laurel. So that the sentence will read: "The Tanodbayan and his Deputies INCLUDING THE SPECIAL PROSECUTOR..."

Senator Angara. Accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Laurel. On page 3, Mr. President.

The President. Are there any other amendments on page 2? [Silence]

Now, let us go to page 3.

Senator Laurel. On page 3, line 9, delete the word "will" and replace it with the word SHALL.

Previous to that, line 8, after the word TANODBAYAN, insert the word AND. So, line 8, Mr. President, will read: TO BE APPOINTED BY THE TANODBAYAN AND WHOSE QUALIFICATIONS SHALL BE THE SAME....

On line 9, after the word AS, insert the phrase THOSE OF THE APPOINTIVE, so that it will read: SHALL BE THE SAME AS THOSE OF THE APPOINTIVE MEMBERS OF THE JUDICIAL AND BAR COUNCIL. Just a matter of style, Mr. President.

Senator Angara. Accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Are there other amendments on page 3 from the other Members? [Silence] Let us move on to page 4.

Senator Laurel. Mr. President, I do not have any amendment on page 4.

The President. Is there any amendment from the other Members?

Senator Laurel. Mr. President, I have an amendment on page 5.

The President. All right.

Senator Laurel. First sentence, after the word "of", insert the word AND.

The President. What line is that?

Senator Laurel. On line 1, after the word "OF", insert the word AND, so that the sentence, starting from line 29 of page 4, will read: DISCLOSURE OF RELATIONSHIP---IT SHALL BE THE DUTY OF THE TANODBAYAN, HIS DEPUTIES, INCLUDING THE SPECIAL PROSECUTOR TO INDIVIDUALLY MAKE UNDER OATH, TO THE BEST OF THEIR KNOWLEDGE AND/OR INFORMATION, A PUBLIC DISCLOSURE OF THE IDENTITIES OF AND THEIR RELATIONSHIP WITH THE PERSONS REFERRED TO IN THE PRECEDING SECTION.

Senator Angara. Accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Laurel. I think that is all, Mr. President. Excuse me, I think I have one on page 11.

The President. Just a moment. Are there any more amendments on page 5, page 6, page 7, page 8, page 9, page 10, page 11?

Senator Laurel. Mr. President, I have one on page 11. On page 11, line 31, after the word SAME--I am sorry, there is an anterior amendment.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized.

GONZALES AMENDMENT

Senator Gonzales. Mr. President, on page 10, line 6, after the word OFFICE, change the colon to a period and delete PROVIDED, THAT THE CAUSE OF ACTION HAS NOT YET BEEN BARRED BY LACHES, ESTOPPEL AND OTHER STATUTORY LIMITATIONS.

I think, Mr. President, we are providing already defenses. If defenses are to be raised, let them be raised by the respondent; but certainly, let us not open these defenses by means of statutes.

The President. What is the pleasure of the Sponsor?

Senator Angara. It is, of course,

understood, Mr. President, that by deleting this, the Ombudsman cannot bring any suit that has been barred by laches, etc.

Senator Gonzales. Well, laches, Mr. President, is a defense, and I think estoppel also is a defense. And I do not think that in cases of malfeasance, misfeasance, and nonfeasance, estoppel would lie against the Government.

The President. Anyway, these are matters of defense.

Senator Gonzales. Yes, Mr. President, these are matters of defense.

The President. What is the pleasure of the Sponsor?

Senator Angara. Accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Laurel again.

Senator Laurel. Mr. President, on page 11, I have an amendment, and that is on line 31. After the word SAME, insert the following words: FACTS AND ON THE SAME GROUNDS. And after GROUNDS, insert the words AS THOSE FILED, so that the whole proviso starting from line 29 will read as follows: PROVIDED, FURTHER, THAT ANY DECISION, ORDER OR DIRECTIVE OF THE OFFICE OF THE OMBUDSMAN SHALL BE A BAR TO THE FILING OF ANOTHER CASE BASED ON THE SAME FACTS AND ON THE SAME GROUNDS AS THOSE FILED WITH THE OTHER DISCIPLINARY AUTHORITIES AND VICEVERSA.

Senator Angara. Accepted, Mr. President.

Senator Laurel. Thank you very much, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

On page 12, is there any amendment?

Senator Paterno; then Senator Ziga.

Senator Paterno. On page 12, lines 22 to 23, Mr. President, I think a comma belongs there somewhere. But I am not sure just where the Sponsor would like it to be, because, as it stands now, it reads: UNSOLICITED GIFTS OR PRESENTS OF INSIGNIFICANT VALUE OFFERED OR GIVEN AS A MERE ORDINARY TOKEN OF GRATITUDE OR FRIENDSHIP. I am not sure whether this means that the gift or present must be both unsolicited or of insignificant value.

Senator Angara. It must be both unsolicited and of insignificant value, Mr. President.

PATERNO AMENDMENT

Senator Paterno. In that event, Mr. President, I would suggest a comma after PRESENTS and another comma after VALUE.

The President. The Chair would like to ask the question: What is really meant by "insignificant value"?

Senator Angara. Mr. President, the value of a gift will depend, because we copied this from the Anti-Graft Act, on the local customs.

The President. Yes, but that has always been a question even in the application of the Anti-Graft Act. What is really "insignificant"?

Senator Romulo. Mr. President.

The President. Senator Romulo is recognized.

Senator Romulo. Mr. President, my own view is that we should not provide any loophole. Of course, it says here ACCORDING TO LOCAL CUSTOMS, but once we provide an exception where a loophole may be found, then who is to say whether it is unsolicited or solicited? Who is to say whether it is significant or insignificant? Of course, there is "according to local customs", but my own view, Mr. President, is that this phrase from lines 22 to 25 should be deleted.

Thank you, Mr. President.

Senator Angara. This is the Guingona

amendment, Mr. President.

Senator Guingona. Mr. President, the amendment was precisely suggested to cure the defect of the former provision that penalized the giving of a gift for the performance of a duty which is not criminal, by way of appreciation, and our culture is that, in appreciation of something done, a gift should not be penalized. And so, if we can, remove this as an ordinary token on page 23.

Senator Saguisag. Mr. President.

The President. Senator Saguisag is recognized.

Senator Saguisag. The problem, Mr. President, is, some people would do business with Government; some are able to give gifts; some are not. And in the future, the tendency is to favor or to discriminate in favor of those who give gifts.

Under Article 739, subparagraph (3) of the Civil Code, the following donations shall be void:

Those made to a public officer or his wife, descendants and ascendants, by reason of his office.

So, this will be a big step backward.

And also under Article 7 of the Civil Code:

Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary.

So, I am afraid that at the time when there is a clamor for higher moral and ethical standards, we can do without this suggested amendment, not to mention anything about the void-for-vagueness problem that we see. If a Customs official has three 1987 cars, maybe, another car may be modest by his standards. So, this is very elastic.

Senator Guingona. Mr. President, I think that these standards here would apply to ordinary, average, good father-of-a-family standard. If a person gives a memento or a trinket, that is certainly an ordinary gift in appreciation. But if he gives a car, whether it is to a Customs official or not, that

is no longer ordinary. I think the standard is here, Mr. President...

The President. The trouble is that this is in consideration of the execution of an act.

Senator Guingona. Which is not penal.

The President. Yes.

Senator Saguisag. But if it is supposed to be void under an existing statute, are we really going to liberalize the standard in this respect? Because my own experience here, kung tayo ho ay nagpa-practice sa husgado, ang napupuna ho natin ay ang talagang binibigyan ng atensiyon ay iyong alam nilang mga abogadong galante. Kami ho ay hindi nagreregalo noong kami ay nagpra-practice sa husgado. And, usually, we are discriminated against. "Unahin natin ang pagse-serve ng summons sa law office na iyon sapagkat magandang magregalo kapag Pasko." The small practitioners cannot match the gift-giving ability of those who express their appreciation that way. So, this will make it harder for the smaller citizens to compete with other members of society who are in a position to express their appreciation.

SUSPENSION OF THE SESSION

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

It was 6:40 p.m.

RESUMPTION OF THE SESSION

At 6:44 p.m., the session was resumed.

The President. The session is resumed.

Senator Guingona. Mr. President, the amendment, which was already approved, does not seek to recognize the giving of gifts which would abet distorted graft. But on the other hand, we have Senator Saguisag and the others who have pointed out that this could be a wrong signal. However, Mr. President, it is repulsive that a man who, out of gratitude, gives a token gift will be subjected to

penalty. And, therefore, it should be considered as a legitimate defense if the gift is given in that spirit; if the gift is not ostentatious, it is merely nominal or ordinary as a token of gratitude. Then he should be able to raise it as a legitimate defense. We are willing, Mr. President, to have this deleted from lines 22 to 25, provided that the records will show that in such a situation, the person who gives the gift as a token of gratitude of friendship, according to local customs, may raise it as a valid defense in his favor.

The President. There is a proposal to delete that now. Is the Sponsor agreeable to that?

Senator Angara. We accept that, Mr. President.

Senator Romulo. Mr. President.

The President. Senator Romulo is recognized.

Senator Romulo. Yes, I would like to thank the Sponsor for accepting this deletion. And, Mr. President, we should be very strict when it comes to whatever gift. I think this is where all these troubles start when we start with a small gift. And so, let us eliminate it completely, particularly that in this office, the highest standard is required.

And so, Mr. President, I would like to thank the Sponsor for accepting this deletion.

The President. All right. Is there any objection to the deletion of lines 22 to 25? [*Silence*] Hearing none, the same is approved.

Senator Guingona. Before we delete, Mr. President, I would just like to call attention to letter "(k)" on line 18 on page 13.

The President. We are now on page 13.

Senator Guingona. Letter "(k)", line 18: "Accepting gifts offered to him by reason of his office."

Senator Ziga. Mr. President, anterior amendment.

The President. All right, anterior amendment.

Senator Guingona. With due permission, before that, Mr. President, just because this is connected with the previous amendment, I would just like to get the comment of the main Sponsor as to how this will affect the deletion of the amendment which we just approved.

Senator Angara. Mr. President, letter "(a)" contemplates a gift accepted in connection with the office but which does not amount to a crime. Letter "(k)" contemplates a situation where one accepts a gift, also in connection with an office, but it may amount to a crime.

Senator Guingona. So, in letter "k", is it bribery?

Senator Angara. It is indirect bribery.

Senator Guingona. Thank you, Mr. President.

Senator Ziga. Mr. President.

The President. Senator Ziga is recognized.

Senator Ziga. Mr. President, anterior amendment on page 11.

The President. Let us go back to page 11.

ZIGA AMENDMENT

Senator Ziga. I would propose an amendment on line 15. After the words "*Official Gazette*", change the word "or" to AND. And also, change the word "any" to THREE NEWSPAPERS, to read now: "*Official Gazette* AND in THREE NEWSPAPERS of general circulation in the Philippines".

Senator Angara. Can we just inquire, Mr. President, if the proponent would agree to the retention of the word "or"? Because, as pointed out by the Chair four nights ago, publication in the *Official Gazette* can take at the very least six months late. And if we condition the effectivity of the Rules to the publication of the *Official Gazette* and the three newspapers, then we may foresee a very prolonged delay in the effectivity of the Rules.

Senator Ziga. I would withdraw my amendment to change "or" to AND but how about the changing of "any" to THREE newspapers?

Senator Angara. We accept the amendment, Mr. President.

The President. That will make it consistent with the last section, Section 36, on "Effectivity".

Senator Angara. That is correct, Mr. President.

Senator Ziga. The same thing, the same proposal I made, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Lina. Mr. President.

Senator Romulo. Mr. President.

The President. Senator Lina is recognized; then Senator Romulo.

LINA AMENDMENT

Senator Lina. Going back to letter "(e)" on page 12: if we retain these two provisions, letter "(e)" and letter "(k)", we may just create further confusion. We are not going to distinguish anymore whether the gift that is accepted is in consideration or by reason of one's office. That is the tenor or the meaning of letter "(e)" and letter "(k)". So I move that we completely delete letter "(e)" and just retain letter "(k)".

The President. May I ask the Sponsor whether letters "(e)" and "(k)" appear in the Anti-Graft and Corrupt Practices Act?

Senator Angara. They do, Mr. President.

The President. And have they acquired the well-defined meaning?

Senator Angara. Yes, Mr. President. Perhaps, we can accommodate the amendment of Senator Lina if in letter "(k)", we say: "Accepting gifts offered to him by reason of his office OR IN CONNECTION WITH THE PERFORMANCE OF HIS OFFICIAL DUTY."

The President. I think those are two different things. Letter "(e)" is "Accepting a gift in consideration of the execution of an act which does not constitute a crime"; whereas, letter "(k)" is accepting gifts only because the occupant has an office.

Senator Lina. But, Mr. President, on line 21, it is still in connection with the performance of his official duty.

The President. Whereas, in letter "(k)", it has nothing to do with the performance of a duty.

Senator Lina. It is by reason of the office.

The President. Just by reason of the fact that he is the Commissioner of Internal Revenue.

Senator Lina. To me, Mr. President, it is one and the same thing. And, therefore, I am afraid that this might just create some confusion.

The President. Is there any further comment on that?

Senator Enrile. Mr. President, suppose a public official receives a gift from a total stranger, but this total stranger who is known to the public official was making the gift in anticipation of something that he will try to seek from the public official at a later date. And the public official accepts the gift; let us say, he receives a gold medallion from this stranger. Should that public official be allowed to do that?

Senator Angara. It would fall under letter "(k)", Mr. President.

Senator Enrile. It does not, because it is not in the performance of duty. There is no indication on the part of the receiver that, maybe, six months from the date of the giving of the gift, this Gentleman will file an application for a timber concession or for the right to import used cars in the office occupied by the receiver.

Senator Angara. It is received by reason of his office, Mr. President.

Senator Enrile. Suppose, he sends the gift during a wedding anniversary or during a birthday or at Christmas?

Senator Angara. Is he a public official?

Senator Enrile. Yes.

Senator Angara. If it is his birthday, then that is where the problem of interpretation may come in.

Senator Enrile. So, Mr. President, how do we draw the line here? Under paragraph (k), there must be a showing that the gift was given with full knowledge that the man was holding the position and that that was the motivation of the giver. But in these particular instances that I indicated, these were given during personal occasions.

Senator Angara. In that case, Mr. President, the official is probably guilty under the circumstances described by the Gentleman because he is a complete stranger and there is no reason for him to give a gift even during the party.

Senator Enrile. Suppose they are cousins of the eighth degree.

Senator Angara. Well, maybe those eighth-degree cousins are close to each other.

Senator Enrile. Suppose, Mr. President, let us say that a merchant is a good friend of the Commissioner of Customs or the Director of Forestry, as the case may be, and on a family gathering during, let us say, Christmas, birthday or Holy Week, he sends a dozen *lechones* to the house of the official involved. Would that be penalized?

Senator Angara. Possibly, Mr. President, because eight *lechones* are no mere tokens of gratitude even under the definition of Senator Guingona.

Senator Enrile. Suppose it is a suit made by Giovanni? [Laughter]

Senator Angara. Since it is going to be a very expensively tailored suit, perhaps, it might not constitute a simple gift, Mr. President.

Senator Enrile. What then is a simple gift, Mr. President?

Senator Angara. As defined by the Anti-Graft Act, Mr. President, it depends on the circumstances and the local custom. For instance, perhaps, a gift of a book to a voracious reader, like some of the Senators, perhaps, would be a simple token.

Senator Enrile. A gift of a Maruman Golf set, Mr. President, to a voracious golfer.

Senator Angara. It would be very expensive, Mr. President, because a golf set, as I understand it, could cost us not less than ₱5,000. So, it would be a very expensive, not simple gift.

Senator Enrile. So then, if we are going to retain paragraph (e) and paragraph (k) at the same time, does not the Gentleman think that the people who will interpret this law will find it very difficult to really work? We may just as well prohibit all kinds of gifts.

Senator Angara. Not necessarily, Mr. President, because these two provisions are found in the Anti-Graft Act. And so far, I do not see the courts or the Civil Service Commission finding difficulty interpreting these two.

Senator Enrile. But precisely, Mr. President, even if they are found in the Anti-Graft Law, we are now having difficulty in interpreting them. We are now precisely crafting a new law to govern new moralities in our society. Does the Sponsor not think that it would be best to really prohibit all these gifts being received by people that could be under the jurisdiction of the Ombudsman in order to infuse a new morality in the Government?

Senator Angara. Well, that is what we have done, Mr. President, to prohibit gifts...

The President. Senator Paterno would like to say something on that point.

Senator Paterno. Mr. President, with due

respect to the Minority Floor Leader, I do not think we can prohibit gifts totally to officials of the Government. I, for example: it is my custom or it is my wife's custom to give me a gift on my birthday, and also to my children. I mean, how do we prevent a government official from receiving gifts from his friends and close relatives? What we are trying to do is to spell out from whom those gifts should not be accepted. But I feel, Mr. President, that we cannot totally prohibit the official from receiving gifts.

The President. This morning, the Honorable Kim Dae Jung, the Opposition Leader in Korea, presented us with a gift, a book of speeches of Kim Dae Jung. Shall we consider that a violation of the law?

Senator Enrile. Mr. President, I think that is a very special case, considering that Mr. Kim Dae Jung will probably never come back to the Philippines to transact business. But if it were a Korean merchant coming here to engage in business, maybe it will be a different story also.

The President. No, it depends on the circumstances of the particular case.

Senator Saguisag would like to say something.

Senator Saguisag. Mr. President, last October, for several days, when we were discussing the Ethical Standards Bill, many of these very same questions were discussed. Immediately, if all goes well, we may be ready presently with the Conference Committee Report which addresses fairly the varied concerns that have been raised this evening. For instance, token gifts from close relatives are allowed on special occasions. Now, in regard to the gift from Mr. Kim Dae Jung, if its source was the South Korean government, that is technically a violation of Article IX(B) of the Philippine Constitution. That is why, also in the Ethical Standards Bill, we are authorizing accepting the same because they are tokens of courtesy during occasions such as this morning's meeting.

We hope, Mr. President, if all goes well, we will be ready to bring back to this Body soon the result of the Conference Committee work on Senate Bill No. 139. It will precisely recognize the nuances and the peculiarities that are involved in certain situations that have been sort of problematic tonight.

The President. The Chair would like to know how soon that would be.

Senator Saguisag. We hope that even as speak, maybe it is being finalized now. So, as early as tomorrow, Mr. President, and not later than this week, is our hope.

Thank you.

The President. So, back to Senator Angara.

Senator Angara. We are now on page 13, Mr. President.

The President. Is there any amendment on page 13?

Senator Alvarez. Mr. President.

The President. Senator Alvarez is recognized.

ALVAREZ AMENDMENT

Senator Alvarez. On page 13, line 28, Mr. President, between the words "accounts" and "to", insert RELATING, so that it will read: "the adjustment or settlement of accounts RELATING to public property or funds."

Senator Angara. Accepted, Mr. President.

The President. Is there any objection [Silence] Hearing none, the same is approved.

Senator Estrada. G. Pangulo.

The President. Senator Estrada is recognized.

Senator Estrada. G. Pangulo, kun mamarapatin po ng Kgg. na Sponsor, mayroon lamang sana akong gustong isingit sa pahina 10 Kanina pa ako nagtataas ng kamay ngunit hindi ako natatawag.

The President. Saang pahina po iyon?

ESTRADA AMENDMENT

Senator Estrada. Pahina 10, Seksiyon 13. Kung mamarapatin ng Kgg. na Sponsor ay nais ko lamang susugan ang seksiyong ito dahil sa marami sa ating mga kababayan ang nagsasabi na ang napaparusahan lamang ay iyong mga maliliit na kawani sa gobyerno at hindi iyong mga malalaki at nagnanakaw ng milyun-milyong piso sa kaban ng bayan. Kaya ang gusto kong isusog sa Seksiyon 13, pagkatapos ng line 1, ay ito THE OMBUDSMAN SHALL GIVE PRIORITY TO COMPLAINTS FILED AGAINST HIGH RANKING GOVERNMENT OFFICIALS AND/OR THOSE OCCUPYING SUPERVISORY POSITIONS COMPLAINTS INVOLVING GRAVE OFFENSES AS WELL AS COMPLAINTS INVOLVING LARGE SUMS OF MONEY AND/OR PROPERTIES.

The President. Maaari po bang mapakinggan namin ang paninindigan ng tagapagtaguyod ng panukalang batas na ito?

Senator Angara. Ikinagagalak ko pong tanggapin ang panukala ni Senador Estrada.

Senator Estrada. Marami pong salamat.

The President. Is there any comment? Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Romulo. Mr. President. The President. Senator Romulo is recognized, then Senator Enrile.

ROMULO AMENDMENT

Senator Romulo. Kung mamarapatin po ng Presidente ng Senado, sa pahina 11, linya 16, nais ko sanang idagdag iyong publication OF GENERAL CIRCULATION IN THE PHILIPPINES WHICH IS PRINTED IN THE NATIONAL LANGUAGE. Sapagkat, alam ninyo, itong Ombudsman ang kinikilalang kampiyon ng ating mga mamamayan, lalung-lalo na iyong maliliit nating kababayan. Kaya siguro po ay makabubuti kung ang publication ay nasa national language. AT LEAST ONE NEWSPAPER OF GENERAL CIRCULATION IN THE PHILIPPINES PRINTED IN THE NATIONAL LANGUAGE. Since that

is the idea, baka kailangan din na sa ibang lugar ay maglathala nito sa wikang Cebuano o Ilonggo para maintindihan ng nakararaming mamamayan. Iyon lamang po, kung maaari, ang nais kong idagdag dito sa No. 3, lines 16 and 17.

The President. Ano ang paninindigan ng Kgg. na Sponsor?

Senator Angara. Tinatanggap ko po ang dagdag.

Senator Romulo. Marami pong salamat.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Enrile. I am not proposing, Mr. President, any amendment. I just want an information.

Now, Mr. President, suppose these acts were done by the government official concerned outside of the country? Let us take the case of, let us say, the Commissioner of Customs or the Commissioner of Internal Revenue. Maybe, they will not do this, but just a hypothetical issue. Suppose, they are travelling abroad, and a businessman happens to pay for their hotels or gives them, let us say, expensive cufflinks or an expensive fountain pen. Would this rule apply to that situation?

Senator Angara. I should think so, Mr. President. The disciplinary authority will extend to an act or omission even if it is committed abroad.

Senator Enrile. But the penal laws of the country can never operate outside. . .

Senator Angara. As I said, the disciplinary or administrative case will prosper, but probably not the criminal case.

Senator Enrile. I am just posing this question, Mr. President, because this can happen; so, I really do not know the answer.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized.

GONZALES AMENDMENTS

Senator Gonzales. Mr. President, on page 14, I have two proposals.

The President. All right, let us go to page 14.

Senator Gonzales. On line 13, I would propose deleting: "Taking advantage of his official position shall", and on line 14, change the small letter "c" in "committing" to a capital letter "C", so that it would now read as follows: "Committing any of the frauds or deceits constituting swindling and other deceits."

Because, as it is written, in order to constitute a ground, one must take advantage of his official position. And to me, swindling or other forms of deceit, whether a public official takes advantage of his position or not, is *per se* wrong; that is why, I am authoring this amendment.

Senator Angara. We accept the amendment, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Gonzales. Then, on paragraph "(w)", that is on lines 24 to 27, I would propose the following:

Delete the word "Unlawfully". Capitalize the small letter "l" in "leaving"; between "Philippines" and the word "without", insert the following phrase: FOR THE PURPOSE OF RESIDING ABROAD. And then on line 27, after the word "settled", remove the period and add the following phrase: OR FOR THE PURPOSE OF ABSCONDING FROM HIS FINANCIAL OBLIGATION TO THE GOVERNMENT. So that the paragraph now, as amended, will read as follows:

Leaving the Philippines FOR THE PURPOSE OF RESIDING ABROAD without securing from the Commission on Audit a certificate showing that his accounts as an accountable officer for public funds or property have been finally settled OR FOR

THE PURPOSE OF ABSCONDING FROM HIS FINANCIAL OBLIGATION TO THE GOVERNMENT.

Senator Angara. We accept the amendment, Mr. President, because it expresses the intent of this particular provision.

The President. Is there any objection? [Silence] Hearing none, the same is approved. Page 15?

Senator Saguisag. Mr. President.

The President. Senator Saguisag is recognized.

Senator Saguisag. Mr. President, I really had meant to stand up also in connection with lines 16, 17, and 18. I am trying to anticipate the problem; this means for the citizen, for someone who wants to translate this. I know that this is covered by Article 217 of the Revised Penal Code, but it contains another language.

"Appropriate" really should be "malverse" or "embezzle". Also in taking public funds, there is nothing wrong in taking public funds *per se*. So, I have just a general comment that, maybe, instead of the neutral term "appropriate", which we may be doing, I do not know whether it does not apply to us--that, whenever we set aside a certain amount for a car or for merienda, it is liable to be misinterpreted as "appropriation". Are we gaining privately every time we have cookies and coffee? I do not think that is what we meant to cover here. "Embezzling" or "malversing" are the words found in Article 217 from which Subsections "(s)" and "(t)" were borrowed.

SUSPENSION OF THE SESSION

Senator Angara. Can we have a one-minute recess, Mr. President?

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

It was 7:15 p.m.

RESUMPTION OF THE SESSION

At 7:16 p.m., the session was resumed.

The President. The session is resumed.

Senator Saguisag. After conferring with the distinguished Sponsor, we have agreed, in regard to lines 16 to 17, to delete (s) and (t) and instead just substitute the same with MISAPPROPRIATING PUBLIC FUNDS OR PROPERTY since it has a settled meaning in the law.

Senator Angara. It is accepted, Mr. President.

The President. Just a moment. We approved an amendment before on that line. We have to reconsider that first.

Is there a motion for reconsideration?

Senator Angara. I so move, Mr. President.

The President. Is there any objection?

Senator Guingona. Mr. President.

The President. Senator Guingona.

Senator Guingona. The premise of the amendment is that line 16 is already included in the term "misappropriation". Is that correct?

Senator Saguisag. May we have the question repeated, Mr. President?

Senator Guingona. The premise of the Gentleman in proposing that amendment is that line 16 is already included in "misappropriations."

Senator Saguisag. My basic objection is that it is ambiguous. What we have tried to do here is to combine Subsection (s) and Subsection (t) because of the possibility that saying that appropriating for private gain may be consistent with what we, in the Committee on Accounts, or what in the Senate, do every time we appropriate a certain amount for our own selves, consistently with the discharge of our responsibilities as public officials.

Senator Guingona. Well, if it is for a public purpose and it is for a public end, it does not fall

within. This is precisely why we included "for private gain" as a qualification to line 16.

Senator Saguisag. I will not have any difficulty, subject to the pleasure of the Sponsor, to bring back the phraseology "for private gain" to make very clear what the intent of the Body is.

Senator Guingona. Yes, because there may be instances where a public official builds a road that leads to his property. That is not misappropriation but it is the taking of private property for private gain.

Senator Saguisag. Well, I am not sure, Mr. President, if that is consistent with having a benefit enjoyed with the world at large because this is, honestly, one of the first things I did when I came into power. I was expected to do something for my constituents, the benefits of which I enjoy with the rest of the community. There are even placards identifying that the improvement of a portion of the road to Mauban was under the auspices of Congressman Enverga and, up to a certain extent, of this Representation.

Senator Guingona. That is for the benefit of the public.

Senator Saguisag. That is what I mean. When we are talking of the roads that may benefit a certain lawmaker or a certain public official which he enjoys with the rest of the community, I am not sure that that is something we want to be covered by this.

Senator Guingona. That is the principle of double effect, Mr. President. That is the effect for the public and the effect for himself. But, if the dominant motive is really for himself, then it is up to the circumstances.

Senator Saguisag. I agree. That is a very sound scholastic and Thomistic criterion.

SUSPENSION OF THE SESSION

The President. Shall we suspend the session for

one minute, if there is no objection? [*There was none.*]

It was 7:20 p.m.

RESUMPTION OF THE SESSION

At 7:22 p.m., the session was resumed.

The President. The session is resumed.

**SUSPENSION OF CONSIDERATION OF
SENATE BILL NO. 543**

Senator Mercado. Mr. President, I move that we suspend consideration of Senate Bill No. 543.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

ADJOURNMENT OF THE SESSION

Senator Mercado. Mr. President, I move that we adjourn the 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 7:22 p.m.

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236 - 260
(25 - pages)

ORGANIZATION OF THE OFFICE OF THE OMBUDMAN.
R.A. No. 6770 / S.B. No.543/ H.B.No. 13646

RECORD OF THE SENATE

AUG 23,1988

The President. Is there any interpellation?
[Silence] Apparently, everyone is in agreement.

The Majority Floor Leader is recognized.

BILL ON SECOND READING
Senate Bill No. 543 - Office of the Ombudsman
(Continuation)

Senator Mercado. Mr. President, I move that we resume consideration of Senate Bill No. 543 as reported out under Committee Report No. 263.

We are still in the period of individual amendments and clean copies were distributed early, Mr. President. I move that we recognize the Sponsor, Senator Angara.

The President. Senator Angara is recognized and Senator Maceda.

SAGUISAG-GUINGONA-ANGARA AMENDMENT

Senator Angara. Thank you, Mr. President. Before Senator Maceda takes the floor, can I just announce that, last night, Mr. President, Senators Saguisag, Guingona and I were conferring on a disputed language on page 14, subsections "(s)" and "(t)". We have now agreed to keep subsection "(s)", line 16 on page 14 as is, and remove the words "Taking or" on line 17, so that the whole line will read: "Misappropriating public funds or property". So that will resolve the disputed item last night.

The President. Has that not yet been approved by the Body?

Senator Angara. Not yet, Mr. President.

The President. Is there any objection?
[Silence] Hearing none, the same is approved.

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized.

Senator Maceda. I have an amendment on page 26, but I will yield if there is any anterior amendment on the last page.

The President. We are still on page 14.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized

Senator Gonzales. May I propose an amendment on page 15. That would be on line 17.

The President. Is there any further amendment on page 14? If there is none, please proceed.

GONZALES AMENDMENT

Senator Gonzales. Page 15, line 17, this refers to the ground stated in paragraph (ee), and the proposed amendment is as follows: Before the word "Revelation" insert the word UNAUTHORIZED. Then change capital letter R to small letter "r" in "Revelation". And between the words "of" and "secrets" insert the word OFFICIAL. And after "secrets" remove the period and add the following phrase: OR CLASSIFIED DOCUMENTS OR INFORMATION. So that the ground will now read as follows: UNAUTHORIZED revelation of OFFICIAL secrets OR CLASSIFIED DOCUMENTS OR INFORMATION.

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection?
[Silence] Hearing none, the same is approved.

Is there any amendment on page 15?

Senator Tañada. Mr. President.

The President. Senator Tanada is recognized.

TAÑADA AMENDMENT

Senator Tañada. On page 15, Mr. President, line 26, put a comma after the word "powers" and insert the following words AUTHORITY OR FUNCTIONS. The reason for this proposed amendment, Mr. President, is that, aside from powers, authorities or functions could also be usurped.

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection?

[*Silence*] Hearing none, the same is approved. Is there any amendment on page 16?

Senator Saguisag. Mr. President.

The President. Senator Saguisag is recognized.

SAGUISAG AMENDMENT

Senator Saguisag. On page 15, Mr. President, just a small point of style. Lines 22 and 23 state that "Disobedience, refusal of assistance, REFUSAL TO DISCHARGE PUBLIC OFFICE and maltreatment of prisoners." I wonder whether we could bring up "maltreatment of prisoners" and attach it either to "(bb)" and "(cc)" because it seems so out of place where it is, while lines 13 to 15 refer to prisoners. Subject to style, Mr. President.

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection?
[*Silence*] Hearing none, the same is approved.

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized.

Senator Maceda. On page 16, Mr. President,...

Senator Tañada. Anterior amendment, Mr. President.

The President. Senator Tañada is recognized.

Senator Tañada. This is on line 28.

The President. Senator Maceda's proposed amendment is on line 4.

MACEDA AMENDMENT

Senator Maceda. Yes, Mr. President. On line 4, subsection "(M)" has been, I think, inadvertently omitted. So, it should read: "Subsections C, J, M and Q".

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection?
[*Silence*] Hearing none, the same is approved.

Senator Tañada. Mr. President.

The President. Senator Tañada is recognized.

TAÑADA AMENDMENT

Senator Tañada. On page 16, line 26, Mr. President, indicate the appropriate section number which, I believe, would be SEC. 17. And then insert the following as the Section title: INVESTIGATION TO DETERMINE CRIMINAL OR CIVIL LIABILITY OF CERTAIN OFFICIALS AND PRIVATE PERSONS.

Senator Angara. Would the proponent, Mr. President, consider a shorter version: INVESTIGATORY POWER OVER CERTAIN OFFICIALS?

Senator Tañada. We would accept that, Mr. President.

The President. Is there any objection?
[*Silence*] Hearing none, the same is approved.

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized; then Senator Gonzales.

Senator Enrile. May I go back to page 15, Mr. President?

The President. All right.

Senator Enrile. May I call the attention of the distinguished Sponsor to line 13 and line 15. Line 13 speaks of "Consenting to the escape of a prisoner in his custody or charge"; while line 15 speaks of "Infidelity in the custody of prisoners." May I know, Mr. President, what is the difference between these two paragraphs?

Senator Angara. As I understand it, Mr. President, "Consenting to the escape of a prisoner" refers to a situation where the custodian himself deliberately allowed or consented the escape of the prisoner; whereas, "(cc)" implies negligence or inattention that allowed the prisoner to escape.

Senator Enrile. Would not infidelity include the situation covered in paragraph (bb)?

Senator Angara. No, Mr. President, double

(bb) implies a deliberate act on the part of the custodian; whereas, double (cc) implies a disregard or a measure of recklessness over the custody of the prisoner. Therefore, the escape of the prisoner is through negligence of the custodian.

Senator Enrile. Can we not combine these two, Mr. President, and say infidelity in the custody of prisoners or allowing a prisoner to escape?

Senator Angara. As long as we retain the word "consenting", Mr. President, I think we can combine the two situations.

Senator Enrile. When we allow, Mr. President, does not the Gentleman think we are actually consenting? If the person is in our custody and we allow him to escape by leaving the door of the jail unlocked and pretending that we do not know what is happening, that is both infidelity and, if the Gentleman wants a further adjective, "consenting".

Senator Angara. I have no objection in principle to the suggestion, Mr. President. The only reason we chose to use the words here is that these are the words used in the existing laws.

Senator Enrile. So, anyway, Mr. President, I just want a clarification because it would strike me that these two paragraphs would cover the same subject matter. And if one is negligent or one has the custody of a prisoner and he allows him to escape either deliberately or through neglect, I think that would constitute infidelity in the custody of prisoners.

Thank you, Mr. President.

The President. Is there any other amendment on page 16, page 17? Senator Gonzales.

GONZALES AMENDMENT

Senator Gonzales. On page 17, line 8, after the words "due process", add the following sentence: THE AFFIDAVITS OF THE COMPLAINANTS, RESPONDENTS AND WITNESSES MAY BE USED AS THEIR DIRECT TESTIMONY SUBJECT TO THE RIGHT OF CROSS-EXAMINATION BY ANY PARTY ADVERSELY

AFFECTED BY THEM.

Senator Angara. The amendment is accepted, Mr. President.

The President. Does that mean that we cannot have an investigation by mere affidavits?

Senator Gonzales. By mere affidavits, no. There must always be cross examination. That is why it follows the words: "Consistent with due process."

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Guingona. Page 17, line 26, Mr. President, after the words "Preventive Suspension": "FOR THE SAME GROUNDS EMBODIED IN THE CIVIL SERVICE DECREE AND ADMINISTRATIVE DISCIPLINARY GROUNDS EMBODIED IN THE SPECIAL LAWS, THE Tanodbayan AND his Deputy may suspend..." In other words, Mr. President, we are providing for the same grounds embodied in the Civil Service Decree and the same grounds where there are special laws granting disciplinary authority to its own subordinates.

The President. So, how will the whole sentence read?

Senator Guingona. "Section 18. *Preventive Suspension*. FOR THE SAME GROUNDS EMBODIED IN THE CIVIL SERVICE DECREE AND ADMINISTRATIVE DISCIPLINARY GROUNDS EMBODIED IN SPECIAL LAWS, THE Tanodbayan or his Deputy may suspend the respondent officer or employee upon the filing of the charges against him."

The President. May it not be better to have the number of the decree so that we will not have to subject this to refinement and style?

Senator Guingona. Yes, Mr. President.

SUSPENSION OF THE SESSION

The President. Let us suspend the session, if there is no objection. [There was none.]

It was 4:50 p.m.

RESUMPTION OF THE SESSION

At 4:57 p.m. the session was resumed.

The President. The session is resumed.

Senator Angara. Mr. President, can we ask that Senator Guingona be recognized?

The President. All right, Senator Guingona is recognized.

GUINGONA AMENDMENT

Senator Guingona. Mr. President, may I propose that on line 26, after Section 18, "Preventive Suspension", the phrase: "The Tanodbayan..." up to line 28, be deleted and instead, the following amendment is proposed to replace the same:

THE TANODBAYAN MAY PREVENTIVELY SUSPEND ANY SUBODRINATE OFFICER OR EMPLOYEE UNDER HIS AUTHORITY PENDING AN INVESTIGATION, IF THE CHARGE AGAINST SUCH OFFICER OR EMPLOYEE INVOLVES DISHONESTY, OPPRESSION OR GRAVE MISCONDUCT, OR NEGLECT IN THE PERFORMANCE OF DUTY, OR IF THERE ARE REASONS TO BELIEVE THAT THE RESPONDENT IS GUILTY OF CHARGES WHICH WOULD WARRANT HIS REMOVAL FROM THE SERVICE.

And this will be up to line 28, after the word "him". After that word, then the continuation will correspondingly continue, Mr. President.

Senator Angara. Mr. President, we accept the amendment, but just for style, would the Proponent accept after the phrase, THE TANODBAYAN, insert the phrase, OR HIS DEPUTY? And then, remove the word SUBORDINATE so that the sentence will read: THE TANODBAYAN OR HIS DEPUTY MAY PREVENTIVELY SUSPEND ANY OFFICER OR EMPLOYEE...

Senator Guingona. Yes, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

We go to page 18.

Senator Gonzales. Mr. President.

The President. Senator Gonzales is recognized.

GONZALES AMENDMENT

Senator Gonzales. Mr. President, unless there be anterior amendments, I propose an amendment on lines 31 and 32, on page 18. I propose to delete the phrase: "arbitrary in the ascertainment of facts". Substitute it with the word GROSS, so that the whole ground will now read as follows: "an error in the application or interpretation of law, rules or regulations, or gross or palpable error in the appreciation of facts". I think it is not "acts". It should be, OF FACTS; otherwise, there will be redundancy.

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Saguisag. Mr. President.

The President. Senator Saguisag is recognized.

SAGUISAG AMENDMENTS

Senator Saguisag. The same page, Mr. President, lines 9 and 10.

The phrase which says: "the penalties provided in the civil service law and rules shall be applied", it seems to me that "and rules" on line 10 should be brought up to line 9 after "penalties", to read: "the penalties and rules provided in the civil service law shall be applied".

Senator Angara. The amendment is accepted, Mr. President.

The President. By the way, what is the number of the decree referred to there?

Senator Saguisag. It is Presidential Decree No. 807.

The President. Why do we not specify the number of the decree?

Senator Saguisag. It is subject to verification, but I believe it is PD 807.

Senator Angara. That is correct, Mr. President.

The President. All right, is there any objection? [Silence] Hearing none, the same is approved.

Senator Saguisag. Mr. President, if I may step back to page 17.

The President. All right.

Senator Saguisag. The top four lines, it seems to me, take care only of the period of preliminary investigation, unless I missed something. It is not clear here what happens after the preliminary investigation, and I would like to propose that we have language to the effect, that those concerned shall be subject to the same penalties or liabilities and shall be tried jointly; because, otherwise, it is not clear what happens after the preliminary investigation.

Senator Angara. We accept that, Mr. President, because it clarifies the meaning, the intent.

The President. How will it read now?

Senator Saguisag. Well, THEY SHALL BE SUBJECT TO THE SAME PENALTIES AND LIABILITIES, AND SHALL BE TRIED JOINTLY; subject to refinement, but that goes beyond the preliminary investigation stage.

The President. All right, is there any objection? [Silence] Hearing none, the same is approved.

Page 18, no more amendment; page 19, Senator Ziga, then Senator Gonzales.

Senator Ziga. Thank you, Mr. President. On page 19, line 15, I would like to propose an amendment after the word "within", to change "seventy-two (72) hours" to TEN (10) DAYS.

The President. Instead of "seventy-two (72) hours", TEN (10) DAYS?

Senator Ziga. Yes, Mr. President.

The President. Is that accepted or not?

Senator Ziga. To give ample time to the ...

Senator Angara. Mr. President, one of the hallmarks of this bill is speedy and quick response. I have no objection to lengthening "seventy-two (72) hours", but I feel that lengthening it to TEN (10) DAYS might deprive the bill of that element of quickness in response to what we are trying to inject.

The President. How long a time would the Sponsor find acceptable?

Senator Gonzales. Mr. President, may I volunteer the information that the 72 hours here is the standard period provided in the Civil Service Law and Rules.

Senator Ziga. In that case, Mr. President, I am withdrawing the proposed amendment.

Senator Angara. Thank you, Mr. President.

The President. Senator Gonzales.

GONZALES AMENDMENT

Senator Gonzales. Are we on page 19, Mr. President?

The President. Page 19.

Senator Gonzales. On page 19, line 27, delete the phrase "take action to" so that it will now read "correct the omission." It is more direct; it is more positive and it is more in keeping with the structure of this paragraph.

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Is there any amendment on page 20? Page 21? Senator Saguisag.

SAGUISAG AMENDMENT

Senator Saguisag. Page 20, Mr. President, lines 18 and 19 on "Newly discovered evidence".

I think it would be better to adopt the language in the Rules of Court. It says, NEWLY DISCOVERED EVIDENCE WHICH HE COULD NOT, WITH REASONABLE DILIGENCE, HAVE DISCOVERED, AND PRODUCED AT THE TRIAL OR INVESTIGATION, AND WHICH, IF PRESENTED, WOULD PROBABLY ALTER THE RESULT.

Senator Angara. We accept it, Mr. President.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Is there any further amendment on page 20? We go to page 21. Is there any amendment? Page 22. Senator Tañada.

TAÑADA AMENDMENT

Senator Tañada. Mr. President, on page 22, line 9, I propose that we put a colon after the word "cases" and then insert the following proviso:

PROVIDED THAT NO FISCAL, PROSECUTOR OR SUCH LAWYER SHALL BE SO DESIGNATED OR DEPUTIZED IF HE HAS A PENDING CRIMINAL OR ADMINISTRATIVE CASE IN THE OFFICE OF THE OMBUDSMAN OR IN HIS DEPARTMENT OR OFFICE.

Senator Angara. The amendment is accepted, Mr. President.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Is there any further amendment on page 22? Senator Saguisag.

Senator Saguisag. Mr. President, this is not really an amendment but I would just want a point clarified. On lines 5 and 6, what happens if the department head himself is the one under investigation? Do we understand that the deputy or the next in command would grant such consent?

Senator Angara. Yes, Mr. President. That should be the interpretation.

Senator Saguisag. Thank you, Mr. President.

The President. All right. Page 23. Senator Guingona and then Senator Gonzales.

Senator Guingona. May I go back to page 22, Mr. President, and ask the distinguished Sponsor whether the Tanodbayan can deputize private lawyers to handle prosecution, because we foresee that with the number of cases, the existing government lawyers, fiscals, state prosecutors, may not be sufficient, and we were wondering whether in some instances, the Tanodbayan may deputize private lawyers under certain standards for specific cases to aid the Tanodbayan.

Senator Angara. It is not the intent of the bill, Mr. President, to deputize lawyers in the private practice. The intent is to deputize only lawyers in the government service.

Senator Guingona. May we know what is the rationale against harnessing private lawyers, if there is a need to do so?

Senator Angara. It is not a bias against tapping the services of private lawyers, Mr. President. It is an inclination towards using the services of many government lawyers.

When I was the President of the Integrated Bar, Mr. President, we found out that there were so many lawyers in the government service who are largely untapped.

One organization of lawyers is, for instance, the COMELEC lawyers. Their work is limited only during election time. So, most of the time they are largely untapped. That is one. And so, we thought that since lawyers in government service have taken a particular oath when they entered the service, and because of the fact that most of them are largely unutilized, have unutilized time, we thought that it would be good to tap them in the process.

Senator Guingona. But there is nothing wrong with deputizing private lawyers.

Senator Angara. No, sir. There is nothing basically wrong in tapping private lawyers, but under this set-up, the Ombudsman cannot, and should not.

Senator Guingona. Will the distinguished Sponsor not have any objection to amending line 6, on page 22, " ... department head concerned, designate or deputize lawyers from the Integrated Bar, any fiscal, state prosecutor, or lawyer."

Senator Angara. Well, as I explained, Mr. President, the bill here is in favor of lawyers in Government, and we may have to respectfully decline any amendment that would allow tapping the services of lawyers in private practice, not because we are against lawyers in private practice, but we thought the first preference ought to be lawyers in the government service.

Senator Guingona. Well, the priorities may be exercised within the discretion, Mr. President, but there is a precedent to this. I understand that the COMELEC deputizes private lawyers from the Integrated Bar.

SUSPENSION OF THE SESSION

The President. The session is suspended for one minute, if there is no objection. [*Silence*]

It was 5:12 p.m.

RESUMPTION OF THE SESSION

At 5:15 p.m., the session was resumed.

The President. The session is resumed. Senator Angara.

Senator Angara. Mr. President. can we ask Senator Gonzales to be recognized.

The President. Senator Gonzales is recognized.

Senator Gonzales. Mr. President, on page 22, line 23, after the close parenthesis, add the following sentence: THEY SHALL LIKEWISE HAVE THE POWER TO PUNISH DIRECT OR INDIRECT CONTEMPT IN THE SAME MANNER AND SUBJECT TO THE SAME PENALTIES AS PROVIDED FOR IN THE RULES OF COURT.

Senator Angara. It is accepted, Mr. President.

The President. By the way, before we take this

up, what happened to the Guingona Amendment Senator Guingona.

Senator Guingona. Mr. President, I understand that there is a bill being prepared by Senator Saguisag concerning this. But, considering, Mr. President, that we are already enacting the Ombudsman Bill, and I do not know what is the status of Senator Saguisag's bill, perhaps it would already be good to empower the Ombudsman with the authority to designate or deputize noted private lawyer from the Integrated Bar to handle specific cases.

The President. Provided it is not a disintegrated Bar.

Senator Guingona. Provided it is not a disintegrated Bar.

Senator Saguisag. Mr. President.

The President. Senator Saguisag.

Senator Saguisag. Yes, Mr. President. I have filed Senate Bill No. 717. It is called "Special Independent Prosecutors Act" or SIPA, for short. This comprises 11 pages because of the extremely peculiar situation that it is meant to cover. I wonder whether this could be telescoped in a few words because we have to provide for so many--

The President. Contingencies?

Senator Saguisag. --contingencies, Mr. President. So, my own preference really, is for the matter to be treated separately, unless we are ready again to have this bill go through some delay. My own preference is to make the panel bipartisan. Make it only a one-time task patterned after the Independent Counsel provision of the Government of Ethics Act in the U.S. of 1978. This has been very successful as to people like Mr. Nafziger and Mr. Muse.

So, that is my problem here. It may not be possible to condense within a few words the intent of Senate Bill No. 717. We have really to sit down on this.

Senator Enrile. Mr. President.

The President. With the permission of the Gentleman, Senator Enrile.

Senator Enrile. Mr. President, may I ask if the proposal of the distinguished Gentleman from Mindanao is *ex gratia, pro bono* or is this going to be paid for by the Government, services that will be rendered by the private lawyers?

Senator Guingona. We are authorizing the Ombudsman to provide rules and regulations.

Senator Enrile. Suppose the lawyer refuses to be deputized, Mr. President?

Senator Guingona. If the lawyer refuses to be deputized, I do not think he should be forced.

Senator Enrile. That will be involuntary servitude, Mr. President.

Senator Guingona. Yes, that is right. He will not be forced to.

Senator Saguisag. The idea here, Mr. President, is to look for people like Mr. Jaworski who went after Mr. Nixon, who would be willing to serve for nominal fees. My own intention here really is to appeal to the private Bar even to make use of their private offices to help in the fight against graft and corruption. I am sure that the psychic income will be more than ample compensation for a good number of the leading lights of the Bar. Certainly, no one is going to be recruited, or compelled, or constricted. It should be someone whom--we have people like Messrs. Joaquin Misa, Camilo Quiason, Mario Ongkiko, who, I believe, if properly appealed to, could help in the effort.

But, I believe, it is really too complicated to inject it as an amendment here. That is why, we have this separate bill, Mr. President.

Senator Enrile. Mr. President, may I also raise a question apropos this suggestion.

The Government is the one prosecuting a

government official on the assumption that the government official is guilty of some venalities in Government. And, the Government has all the resources available at its disposition, supported by tax money from the people. But it might be that the government official who is the subject of inquiry by the Ombudsman, may be innocent and he may finally be found to be innocent. And yet, we are, in fact, now authorizing the Ombudsman to deputize even private practitioners, if it is needed, to run after this poor government official. How about the right of the poor government official who may be innocent of the charge to be represented also by able lawyers so that there is equal justice?

Senator Guingona. Now, there is, first, Mr. President, the...

The President. The Chair believes that this should be treated separately and we can remedy this in that separate bill; otherwise, we will never end this Ombudsman Bill. [Laughter]

Senator Guingona. I just would like to say, Mr. President, that it is not the private lawyers that are prosecuting. It is the Ombudsman. They are only doing it at the behest and under the direction of the Ombudsman.

And, secondly, there will be private lawyers for the respondents.

Senator Enrile. That is correct, Mr. President. But if one gets a lawyer, let us say, from a big law firm, Sycip, Salazar, et cetera, or somebody else to represent the Government and the Government is already possessed of awesome powers, awesome resources against a poor government employee who may not even have the wherewithal to pay a decent lawyer, I think we will tilt the scales of justice unevenly against the respondent.

The President. Why do we not treat that matter separately in the bill of Senator Saguisag? Let us see how it will be.

Senator Saguisag. Yes. One final point on the matter, Mr. President, if I may. In my bill, I limit it to certain individuals - if it is the actuation of the President that is involved, or that of the Vice President and of really high-level officials who can afford lawyers. In other words, I share the concern of the distinguished Minority Floor Leader. If we apply this in a very widespread manner, that problem can really arise. That is why we have to isolate really powerful people whom those in Government may not be willing to go after and that is why we have to appeal to the private bar.

Thank you, Mr. President.

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized.

Senator Maceda. Mr. President, just a brief question of privilege. Earlier, I wanted to join but the four microphones were already occupied. Will the Secretary consider putting additional microphones on the floor?

The President. All right. Senator Herrera.

Senator Gonzales. Mr. President.

The President. Just a moment. Let us allow Senator--is that an anterior amendment?

All right. Let us go back to Senator Gonzales' amendment that has been presented on the floor already.

Senator Gonzales. Yes, Mr. President.

The President. All right.

Senator Gonzales. And, not only that, Mr. President. I wish to apologize to Senator Guingona. I have absolutely no intention of taking the floor from him. I did not know that he was there, but the Chair recognized me and so I proceeded to propose my amendment.

So, may I likewise repeat the amendment that I have offered and that will be on line 23, page 22, after the closed parenthesis, following the word

“found.”, add the following: **THEY SHALL LIKEWISE HAVE THE POWER TO PUNISH DIRECT OR INDIRECT CONTEMPT IN THE SAME MANNER AND SUBJECT TO THE SAME PENALTIES AS MAY BE PROVIDED IN THE RULES OF COURT.**

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

Senator Enrile. Mr. President, in the definition of the powers of the Ombudsman, under Section 14, now Section 13, I would like to call the attention of the Chair to page 9, lines 24 to 26. Would this not suffice to cover the proposed amendment of the distinguished Gentleman?

Senator Gonzales. Mr. President, I have been looking for an expressed grant of contempt power and, ordinarily, it should follow the grant of the subpoena power which is embodied in paragraph of Section 24. But now that my attention has been called by the Minority Floor Leader to the provisions of paragraph 9 of Section 13, I withdraw my amendment.

Senator Enrile. In fact, Mr. President, the paragraph sought to be amended by the distinguished Gentleman from Mandaluyong seems to be a surplusage because under paragraph 8 of Section 14, the Ombudsman has the power to administer oaths, issue *subpoena* and *subpoena duces tecum* and take testimony.

And then paragraph 9, punish for contempt in accordance with the Rules of Court and under the same procedure and with same penalties provide therein.

Now, in the Section being amended by the distinguished Gentleman, there is also the power of *subpoena ad testificandum* which is actually provided already under Section 14.

Senator Gonzales. Well, I leave that matter to the Sponsor because it is not covered by the

amendment I have proposed and which I have withdrawn, after my attention has been called to a prior provision.

The President. The amendment is withdrawn.

Senator Enrile. Thank you, Mr. President. And may I call the attention of the distinguished Sponsor to the provision on page 22 which says that the Tanodbayan and his investigators and prosecutors, whether regular or designated, shall have the authority to administer oaths, issue *subpoena ad testificandum* and *subpoena duces tecum*, summon and compel witnesses to appear. And these are the same provisions appearing on page 9, paragraphs 8 and 9.

The President. Probably, the Sponsor would like to have some latitude in restyling this, so that we do not have any redundancy.

Senator Angara. If I may, Mr. President, the reason that provision is repeated in a way in Section 23 is because we want to give such authority, not only to the Tanodbayan, but also to the prosecutors and such other officials as he may designate.

The President. All right. Is there any further amendment on page 23? Senator Herrera.

Senator Herrera. With your permission, Mr. President, I would like to go back to page 21. Lines 10 and 11, this is in the case of appeal resolved in favor of the respondent in which case he shall be entitled to reinstatement and payment of all back salaries or wages.

Now, in Senate Bill No. 530--the same circumstance--what we approved is in addition to the reinstatement and payment of all back wages. He is also entitled to the legal rate of interest. So, I thought we should be consistent with that because I do not think we have to discriminate against the public employees. That is what we approved as far as the employees in the private sector are concerned.

The President. Maybe we are putting into

question what we have already approved. What does the Sponsor say?

Senator Angara. As I understand it, Mr. President, Senator Herrera just simply wants interest added to the back salaries and wages.

Senator Herrera. Yes, Mr. President, to be consistent with our position.

Senator Angara. And as I understand it too, that is in accordance with prevailing jurisprudence--that back salaries will earn the legal rate of interest. Perhaps we can accept the amendment.

The President. Senator Gonzales.

Senator Gonzales. I am the author of this amendment, Mr. President. Basically, I have no objection to the amendment now being proposed by Senator Herrera. But since we have opened the whole thing, probably, we might just as well say: **AND WITHOUT LOSS OF SENIORITY RIGHTS.**

In the Government service, seniority is sometimes a factor especially in promotions. A case may drag on for years and justice is done, not only by reinstatement and payment of all back salaries and wages with interest, but also without loss of seniority rights because his temporary separation from the service here, brought about by an adverse decision, would amount to an unjust dismissal.

The President. The Chair would like to pose the question. Supposing the appeal is resolved in favor of the employee, but not on the merits, but because of a technicality?

Senator Gonzales. I think, Mr. President, the jurisprudence on the matter has always been consistent; that in such cases, the law requires that the decision appealed from is made by law immediately executory. In this particular case, the decision of the Ombudsman is immediately executory, notwithstanding the appeal. Now, if somehow the appeal is resolved in favor of the employee regardless of the reason, then it only

stands to reason that his separation is unjustified and, therefore, he should be entitled to reinstatement and payment of all back salaries and wages.

Senator Angara. If I may add also, Mr. President, the policy consideration there is that in resolving the question who shall bear the loss in such a case, whatever is the reason for the dismissal, the Government should bear the loss.

The President. As long as that is understood, whether on the basis of the merits or on the basis of a pure technicality.

Senator Gonzales. Yes, Mr. President.

The President. Senator Saguisag.

Senator Saguisag. There are two points, Mr. President. Suppose, that the case was dismissed because the witnesses were murdered under circumstances that could be linked to whoever may be interested in liquidating them. The other thing is that by analogy to the private sector, normally, if someone was able to gain employment elsewhere, what he has earned elsewhere is deducted. That is why I am not sure whether this should really be all that unqualified if the one suspended or removed was able to gain, in fact, better income in some other place.

Senator Angara. In those two instances, Mr. President, where the witness has been murdered deliberately to get the case dismissed, I think the Court may very well say, on equitable grounds, that he is not entitled to back wages or such, using equitable principle.

On the second point, when salaries received from other sources during the layoff have to be deducted, I think that follows as a matter of principle without having to state it here.

The President. Senator Gonzales is recognized.

Senator Gonzales. That assumes that the employer has any participation or responsibility in the murder of the employee.

Senator Angara. Yes, Mr. President.

Senator Gonzales. He may be murdered by other people without the knowledge of the accused or without his participation.

Probably, what can be invoked now is, in view of the long period and the dragging of appeals, a recent doctrine laid down by the Supreme Court. They have reinstatement and payment of back salaries for a period of three years without conditions or qualifications whatsoever. That is the prevailing doctrine now-- *Balbitra Case*.

The President. Why do we not incorporate that?

Senator Gonzales. Not exceeding three years without conditions or qualifications.

SUSPENSION OF THE SESSION

The President. Why do we not suspend the session for a while, if there is no objection? [*There was none.*]

It was 5:37 p.m.

RESUMPTION OF THE SESSION

At 6:11 p.m., the session was resumed.

The President. The session is resumed.

Senator Gonzales, Senator Angara.

Senator Gonzales. Mr. President, I move for the reconsideration of the approval of the amendment I proposed last night on lines 10 and 11 of page 21 in order that it can now include the concerns expressed by Senator Herrera and Senator Saguisag.

The President. Is there any objection? [*Silence*]

How about the Sponsor?

Senator Angara. Without objection, Mr. President.

The President. All right. Approved.

GONZALES AMENDMENT

Senator Gonzales. And now, I propose on the same line after the word "favor" on line 10, page 21, remove the period, substitute it with a comma, and add the following: IN WHICH CASE HE SHALL BE ENTITLED TO REINSTATEMENT WITHOUT LOSS OF SENIORITY RIGHTS AND PAYMENT OF ALL BACK SALARIES OR WAGES WITH LEGAL INTEREST NOT EXCEEDING THE PERIOD OF THREE (3) YEARS WITHOUT CONDITIONS OR QUALIFICATIONS.

The President. What is the pleasure of the Sponsor?

Senator Angara. The amendment is accepted, Mr. President.

The President. Is this found in any existing legislation?

Senator Gonzales. Yes, this is now jurisprudential, Mr. President, and this is a consequence of long, pending cases involving... at first, this was a principle applicable to the private sector, to the laborers and employees; but later, it was made applicable to public officials and employees.

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. Just to clarify, Mr President.

May we know from the Sponsor of the amendment if the three-year period refers to the interest, or does it include the amount of back wages and salaries that he is to receive?

Senator Gonzales. Yes, Mr. President. The computation should be for back salaries or wages plus interest...

Senator Angara. Perhaps, just to make that clear, Mr. President, we should put a comma after the word "interest".

Senator Gonzales. Yes. I mean, that would improved that, Mr. President.

The President. From what date will the three-year period be reckoned?

Senator Gonzales. Actually, what this amendment merely says is that the case has been pending for five years. He cannot be paid all the back salaries and wages during the five-year period, but he can only be paid back salaries and wages corresponding to a period of three years. That is the point of this amendment.

The President. Is there any objection? [Silence] Hearing none, the same is approved. Is there any further amendment?

Senator Herrera. Mr. President.

The President. Senator Herrera is recognized.

HERRERA AMENDMENT

Senator Herrera. On page 22, Mr. President, lines 28 and 29. I would like to suggest that after the word "rating" insert the words THE HONESTY AND INTEGRITY OF; and then on line 29, after the word "basis", put a period and between the period and the word "indicating", insert the words: THE SCHEME SHALL ALSO INDICATE, and then delete the word "indicating". So that the sentence will read: "It shall device a scheme of rating THE HONESTY AND INTEGRITY OF THE investigator and prosecutor on a quarterly basis. THE SCHEME SHALL ALSO INDICATE therein the number of cases they received, investigated, prosecuted and disposed of during the quarter "

The President. It is only honesty and integrity? How about competence? What is the pleasure of the Sponsor?

Senator Angara. I have no objection, Mr. President. Are the words "competence" and "performance" included in the rating scheme?

The President. Senator Herrera, Senator Angara has a question.

Senator Angara. Is the performance or competence included in the rating, Mr. President?

Shall it devise a system of rating the honesty and performance?

Senator Herrera. I think the efficiency and effectiveness, Mr. President, are components of competence.

Senator Angara. So, "honesty, integrity and competence?"

Senator Herrera. No, just "honesty and integrity," because I thought in the first sentence, efficiency and effectiveness, to my mind, are already components of competence, so that there is no need anymore to insert "competence". My amendment is on lines 28 and 29.

The President. How shall it read now, the whole sentence?

Senator Herrera. Line 27. "It shall devise a scheme of rating THE HONESTY AND INTEGRITY OF THESE INVESTIGATORS AND PROSECUTORS ON A QUARTERLY BASIS. And after that, "THE SCHEME SHALL ALSO INDICATE therein the number of cases they received, investigated, prosecuted and disposed of during the quarter."

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized.

MACEDA AMENDMENT

Senator Maceda. For purposes of brevity, Mr. President, why do we not just incorporate that in the first sentence, which shall be: "The Office of the Ombudsman shall prescribe a system of rating the efficiency, effectiveness, HONESTY AND INTEGRITY of the INVESTIGATORS AND PROSECUTORS" etc., on a quarterly basis, indicating therein the number of cases they received..."

The President. Is that acceptable to the Proponent of the amendment, Senator Herrera?

Senator Herrera. Yes, Mr. President.

The President. So, that is acceptable.

Senator Angara. That is accepted, Mr. President.

The President. All right, is there any objection to the amendment as amended? [Silence] Hearing none, the same is approved.

Page 23 again. Page 24.

The President. Page 24, Senator Gonzales; then Senator Guingona.

Senator Gonzales. May I ask a few questions of the Sponsor, Mr. President. Will the Sponsor yield?

Senator Angara. Very gladly, to my coauthor, Mr. President.

Senator Gonzales. Yes. I can understand the purpose of Section 26, but this one section might actually defeat the very purpose for the enactment of this bill because public policy demands that citizens, instead of taking the law into their own hands or taking remedies by themselves, should go to court and file the proper complaint. That is the dictate of public policy.

Now, with this Section 26, it may unduly frighten away many citizens from filing the necessary complaint, because it may turn out later that at the time he filed the complaint, he believed in good faith that that is true; but then, probably for lack of full information, it turns out to be false, and now, he is subjected to a criminal liability.

And so, I would suggest strongly, that there should always be the element of wilfulness or malice on his part in order that he can be subjected to criminal prosecution and punishment. But a person who files a complaint in his belief at that time that it is true, but later is proven to be false, certainly, ought not to be subjected to a criminal liability.

And so, it should be: IF ANY PERSON WHO WILFULLY OR MALICIOUSLY FILES A COMPLETELY UNWARRANTED OR FALSE COMPLAINT... Insert the words MALICIOUSLY OR WILFULLY.

Senator Angara. Before I respond, Mr.

President, I can appreciate the chilling effect of a provision like this which a potential complainant can have against misconduct in the Government. This proposal was submitted to us by Senator Pimentel.

Senator Gonzales. That is why I did not dare to offer immediately any amendment, but I am raising the point for consideration of the author of this amendment, and of the Sponsor, Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. Mr. President, in support of the suggestion of Senator Gonzales, and considering that the Civil Code acknowledges malicious prosecution, and allows the recovery of damages for malicious prosecution, and considering, however, that according to jurisprudence there are three elements that must concur before malicious prosecution can be upheld, may we suggest that the three elements constituting malicious prosecution be included in the amendment proposed by Senator Gonzales. And the three elements, in accordance with jurisprudence, Mr. President, are: first, that the plaintiff, or the person files or instigates and/or prosecutes a case without probable cause; second, that he does so with legal malice, and third, that he is actuated by improper or sinister motives. These are the elements that would constitute the offense of malicious prosecution and for which the Civil Code would allow exemplary and moral damages, Mr. President.

So, with the permission of Senator Gonzales, we would amend the amendment by reading on line 7, page 24, ANY PERSON WHO, ACTUATED BY LEGAL MALICE, FILES, INSTIGATES AND/OR PROSECUTES AN UNWARRANTED OR FALSE COMPLAINT WITHOUT PROBABLE CAUSE AGAINST ANY GOVERNMENT OFFICIAL OR EMPLOYEE, SHALL BE PUNISHED BY IMPRISONMENT.

The President. How does Senator Gonzales react to that amendment to his amendment?

Senator Gonzales. The most that I can say at this time is probably we need some refinement because the words "malice" and "willful" have already accepted legal connotations and qualifying them with the word "legal", to me, would be unnecessary.

And so, any person who willfully--may I have the other ...

Senator Guingona. The three elements, Mr. President, is that the person instigates or prosecutes; second, that there is no probable cause and, third, that the person was actuated by malice. It says here, "legal malice". These are the three elements that would constitute malicious prosecution.

The President. Under the Revised Penal Code, in order to constitute a libel, there must be malicious imputation of a crime, offense tending to cause dishonor, to discredit a person, or to blacken his memory.

Senator Guingona. This is not amounting to libel, Mr. President, but it is malicious prosecution. We can adopt the terminology in the jurisprudence subject to ...

Senator Angara. Can the Gentleman please repeat his amendment?

Senator Guingona. The three elements ...

Senator Angara. Not the three elements but the phraseology. We know the three elements.

Senator Guingona. "Any person who, actuated by malice, files, instigates and/or prosecutes a completely and unwarranted or false complaint without probable cause against any government official ..."

Senator Gonzales. Mr. President, we are thinking along the same lines. The only trouble, Mr. President, is that, as worded, this Section 28 already discourages the citizens because with the mere filing of the complaint, he will already be charged for violation of Section 26.

SUSPENSION OF THE SESSION

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

It was 6:29 p.m.

RESUMPTION OF THE SESSION

At 6:31 p.m., the session was resumed.

The President. The session is resumed. Senator Guingona.

GUINGONA AMENDMENT

Senator Guingona. Mr. President, after conferring with Senator Gonzales and Senator Saguisag, who is a coauthor in this proposed amendment, we have agreed, more or less, to the wordings, Mr. President: ANY PERSON WHO, ACTUATED BY MALICE OR GROSS BAD FAITH, FILES AN UNWARRANTED OR FALSE COMPLAINT AGAINST A GOVERNMENT OFFICIAL OR EMPLOYEE ...

Senator Angara. The amendment is accepted, Mr. President.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

ANGARA AMENDMENT

Senator Angara. Mr. President, just to put a heading to this section, may we suggest that the phrase "MALICIOUS PROSECUTION" be the heading of this section.

The President. All right, is there any objection? [*Silence*] Hearing none, the same is approved. Senator Tañada.

TAÑADA AMENDMENT

Senator Tañada. Just a matter of style, Mr. President. On lines 10 and 11 of the same page, page 24, may I propose to delete the words "of *arresto mayor*" so that we can avoid using the designation of penalties provided for in the Revised Penal Code.

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection [*Silence*] Hearing none, the same is approved. Senator Maceda.

Senator Maceda. Mr. President, just clarification. I was on the telephone when the amendment was approved. How about the word "instigates". Is that proposed to be included. Because in many cases, these malicious suits are used by big businessmen or big contractors. The instigate any employee or any dummy to be the one to file a case.

Senator Guingona. I have no objection, Mr. President. It was the principal Sponsor who suggested the removal of "instigates"

Senator Angara. Mr. President, I understand the concern of Senator Maceda, but the situation: this crime is already included here without having to include the word "instigates" because he would be a principal by inducement.

Senator Maceda. All right, as long as that is understood. Thank you.

The President. Are there other amendments on page 24? [*Silence*]

We go now to page 25. Is there any amendment on page 25? [*Silence*]

Page 26. Is there any amendment? Senator Herrera.

HERRERA AMENDMENT

Senator Herrera. Section 32, Mr. President, in between lines 13 and 14, insert the sentence, THE ANNUAL REPORT SHALL INCLUDE THE PERFORMANCE RATING MENTIONED IN PARAGRAPH 3 OF SECTION 23 OF THIS ACT.

Now, the reason for this, Mr. President, is that we give so much power to this Office of the Ombudsman. I think Congress and the President should know the performance of the investigators and prosecutors of this Office. So that is the reason why I feel that in this annual report, the performance

of each investigator and prosecutor should also be included.

Senator Angara. I have no objection, Mr. President; but, may I suggest that the amendment be inserted on line 11, after the word "performance".
INCLUDING THE PERFORMANCE RATING
MENTIONED IN SECTION

The President. Is there any comment? Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Pimentel. Mr. President.

The President. Senator Pimentel.

Senator Pimentel. On page 26, lines 2 and 3, Mr. President, in my copy, the last phrase is, "or a notary public". I think that the "notary public" should be placed in the line of MUNICIPAL JUDGE, MAYOR, ELECTION REGISTRAR, OR A NOTARY PUBLIC.

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Romulo. Mr. President.

The President. Senator Romulo.

Senator Romulo. Mr. President, page 26, line 8, Section 31: "shall be AUTOMATIC and released IN FULL AT THE BEGINNING OF THE FISCAL YEAR."

The President. Is that accepted by the Sponsor?

Senator Angara. Yes, Mr. President.

The President. Is there any objection?

Senator Pimentel. Mr. President.

The President. Senator Pimentel.

Senator Pimentel. This is not exactly an objection, Mr. President, but just an inquiry whether the releasing of appropriations to agencies of the Government in full is a usual practice. Because it is possible that the collections for a given period may

not really accommodate such a mandate of the law.

Senator Romulo. Yes, Mr. President. The question is well put; but, in the case of the Ombudsman, we want to give it as full independence as possible. Besides, the appropriation could not possibly be so big that it would cause any cash-flow problem to the budget. So this, to me, is a message to all that the Ombudsman really has the power and that we are supporting it in full. Certainly, if we give it all the necessary appropriation, that is the best support that we can give.

The President. Senator Pimentel.

Senator Pimentel. The danger here, however, is that in the meantime that the money is not needed by the Office of the Ombudsman, this can give rise to some activities which may not be justified by the Office. For example, placing the money in money market while it is not being used. I am not saying that they will do it but I am just citing the possibility that it can be done. Money that is not needed for a particular operation, for example, let us say, for the second half of the year, may not be disposed by the Ombudsman pursuant to the requirements of its office, because the contingency for the use of the money will not have arrived yet, Mr. President.

The President. The Chair is bothered by another consideration. There are departments that need appropriations very badly, like the Department of Health, like Social Welfare. Will this not constitute a discrimination in favor of the Ombudsman?

Senator Romulo. Mr. President, it is a special case and I do not think the amount is huge. So in order to give that message and to give it its full independence, so that they do not have to wait for the next release, it is the view of this Representation that it is a well-considered exception.

Senator Paterno. Mr. President.

The President. Senator Paterno.

PATERNO AMENDMENT

Senator Paterno. Mr. President, I suggest that the release be made for each quarter, in full at the beginning of each quarter. This would assure that the release would be made automatically but yet, not provide the whole year's amount.

The President. Is that acceptable?

Senator Romulo. Well, Mr. President, one knows when he starts to count whether he will win a vote or not. So I accept that amendment, Mr. President. [Laughter]

The President. All right. Is there any objection?

Senator Pimentel. Mr. President.

The President. Senator Pimentel.

PIMENTEL AMENDMENT

Senator Pimentel. Just to complete the proposed amendment, Mr. President. The phrase should be: "and released IN FULL ON A QUARTERLY BASIS."

Senator Maceda. AT THE BEGINNING OF EVERY QUARTER.

Senator Pimentel. AT THE BEGINNING OF EVERY QUARTER. "released IN FULL AT THE BEGINNING OF EVERY QUARTER."

The President. What is the pleasure of Senator Romulo?

Senator Romulo. It is accepted, Mr. President.

The President. All right. Is there any objection? [Silence] Hearing none, the same is approved. Any further amendment on page 26? Senator Rasul, then Senator Enrile. Colonel Rasul first. [Laughter]

Senator Rasul. Mr. President, I just would like to make an amendment in the title after all the amendments have been introduced.

Senator Enrile. May I go back to page 15, Mr. President?

The President. What page?

Senator Enrile. Page 15.

The President. Why do we not finish until page 27 and then we can go back? Any amendment on pages 26 and 27?

Senator Maceda. I was wondering whether this is necessary because we did have an amendment before which was partly taken care of in a previous amendment. But part of the amendment before specifies that the matter of the power of the Ombudsman to go after ill-gotten wealth shall apply only to cases after February 2, 1987 as a transitory provision. Would that be necessary, Mr. President?

The President. What is the opinion of the Sponsor?

Senator Maceda. So as to clarify any conflict with the PCGG.

Senator Angara. This point was discussed, at the Chair will recall, and the consensus seems to be that the power of the Ombudsman would only extend from February 2 onwards, and the PCGG for...

The President. February 2, 1987?

Senator Angara. 1987.

The President. Or from the time of the installation of the Aquino Administration.

Senator Angara. That is correct, Mr. President.

The President. I think it should be from the date of the installation of the Aquino Administration.

Senator Maceda. Because the concept of the Ombudsman, Mr. President, was in the new Constitution.

The President. What about the ill-gotten wealth between February 25 up to February 2, 1987?

Senator Maceda. Technically, the PCGG could also cover.

Senator Angara. No.

The President. Under Executive Order No. 1, that is not under the PCGG.

Senator Maceda. All right.

Senator Angara. I think, the Chair is right. Perhaps, we ought to cover the period up to February 26.

Senator Maceda. In which case, Mr. President, could we insert after Section 34 a new paragraph which will be the new Section 35:

TRANSITORY PROVISION. WITH REFERENCE TO THE POWER OF THE OMBUDSMAN UNDER SUBSECTION 11, SECTION 13, THE SAME SHALL BE EXERCISED WITH REGARD TO CASES OF ILL-GOTTEN WEALTH OCCURRING AFTER FEBRUARY 25, 1986.

The President. It is not OCCURRING. ILL-GOTTEN WEALTH AMASSED OR ACCUMULATED AFTER.

Senator Maceda. Yes, Mr. President, I agree.

The President. All right. Subject to refinement and style.

Senator Angara. It is accepted, Mr. President.

Senator Maceda. Is that acceptable to Senator Saguisag?

The President. Senator Saguisag.

Senator Saguisag. It is just a question of where to place it, Mr. President. I think that is one option. I would just want to toss for consideration whether it may not be improper either to place it-- may I call attention to the bottom part of page 9 and the top part of page 10, where it says: "Investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth and the prosecution of the parties involved therein."

I do not think the location really matters if we are agreed on the concept. I am just submitting that for consideration, whether it would not be more logical to complete the thought.

Senator Maceda. I have no objection.

Senator Guingona. Mr. President.

The President. All right.

Senator Guingona. Mr. President, may we have the amendment read again, please.

Senator Saguisag. Page 9, line 32, "investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth and the prosecution of the parties involved therein."

Senator Maceda. Maybe, after the word "wealth", insert the phrase AMASSED AFTER FEBRUARY 25, 1986.

Senator Guingona. Mr. President, are we to understand that wealth amassed before February, 1986 will not be subjected?

The President. But we will have a question of split jurisdiction here.

Senator Guingona. Well, we have always been splitting.

The President. No. This decision of the Supreme Court very recently is that we should as far as possible avoid split jurisdictions.

Senator Guingona. But, Mr. President, when the Ombudsman finds a sufficient cause where another body like the PCGG did not, since prescription is expressly provided for in the Constitution as not being a defense for hidden wealth, should not the Ombudsman have a concurrent power to investigate? There is an expressed provision in the Constitution, Mr. President, that does not allow the defense of prescription against hidden wealth and the PCGG, I understand, is concentrated on the President's family, close relatives, cronies. Supposing that

this is not within the scope, are we to understand that the Ombudsman now is inhibited from going after the wealth amassed?

The President. The cronies there are not only with respect to the cronies of the former President, even subordinates, business associates.

Senator Guingona. Yes, but these officials are not, in any way, related. They do not fall within that Executive Order creating the PCGG.

The President. They need not be related--subordinates in the Government. Anyway, the Solicitor General can do that also.

Senator Guingona. Well, we feel, Mr. President, that there is nothing wrong in granting the Ombudsman the power. Why limit when the Constitution itself does not?

The President. Do we have another agency of the Government going after the ill-gotten wealth before? That might be the point of concentration again.

Senator Guingona. In the case of misfeasance, malfeasance, we allow retroactivity. And in the case of the greater crime of ill-gotten wealth, we do not. I do not see the logic, Mr. President.

The President. What does the Sponsor say?

Senator Angara. Well, we debated this matter earlier, Mr. President, and we feel that a division of labor ought to be drawn and we agreed that even after February 25, 1986, cases of ill-gotten and unexplained wealth of those connected with the previous regime have to be lodged and should stay with the PCGG.

The President. Senator Paterno.

Senator Paterno. May I suggest, Mr. President, that perhaps, the point of Senator Guingona might be answered by inserting the phrase: UNLESS THE RESPONSIBILITY FOR TAKING SUCH ACTION IS SPECIFICALLY VESTED IN SOME OTHER AGENCY OF THE GOVERNMENT. In other

words, the Ombudsman would have the responsibility for investigating and initiating action for the recovery of ill-gotten and unexplained wealth except for those which are specifically vested as the responsibility of some other agency. It would have residual responsibility.

The President. Senator Enrile.

Senator Enrile. Mr. President, if I recall correctly what was said before, I think it was the Chair who suggested that this government institution being drafted should deal mainly with the personnel of the Government, primarily, and that the Presidential Commission on Good Government should be left to handle its own work dealing, as it is now, with former government officials and private persons. Perhaps that is a wiser position because when the time should come for the Government to decide to dismantle the Presidential Commission on Good Government, then an amendment to this law would be initiated at that time to transfer the powers of the PCGG to the Ombudsman in order not to complicate their jurisdictional relationship at this time, rather than not do it where we will have a dual jurisdiction over the same problem.

SUSPENSION OF THE SESSION

The President. Shall we suspend the session, if there is no objection? *[There was none.]*

It was 6:52 p.m.

RESUMPTION OF THE SESSION

At 6:54 p.m., the session was resumed.

The President. The session is resumed. Senator Guingona.

Senator Guingona. Mr. President, the Chair has explained that the jurisdiction of the PCGG extends not only to the cronies, to the close relatives, to those who have connived or conspired with the cronies, but also to subordinates and persons in Government unrelated to the former President, the cronies and their relatives.

In view of this fact, there seems to be, therefore, a jurisdictional power conferred on the PCGG. And in order to avoid conflict of jurisdiction, we will withdraw the proposed amendment, Mr. President, subject, however, to the understanding that when and if there is a change in the jurisdictional power of the PCGG, then perhaps, we should amend this Ombudsman Bill or Law to include that power.

The President. The amendment is withdrawn.

On page 26, any more amendment? [Silence]
On page 27?

Senator Romulo is recognized; then Senator Enrile.

Senator Angara. Excuse me, Mr. President. I think we have not submitted for approval the amendment of Senator Maceda.

The President. Has that not yet been voted on?

Senator Angara. Not yet, Mr. President.

The President. Is there any objection to the Maceda amendment? [Silence] Hearing none, the same is approved.

ROMULO AMENDMENT

Senator Romulo. Well, Mr. President, just to repeat what was accepted yesterday but which is not here, to add on line 2, page 27, after "Philippines", the following: ONE OF WHICH IS PRINTED IN THE NATIONAL LANGUAGE.

The President. I think we took that up yesterday.

Senator Romulo. Yes, but it was not printed here.

The President. What is the pleasure of the Sponsor?

Senator Angara. The same is accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Enrile is recognized.

Senator Enrile. Page 15, Mr. President, I suggest that on line 15, after the word "custody"...

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. With the permission of Senator Enrile, I just wanted to ask Senator Romulo whether his amendment refers to the printing of the whole newspaper in the National Language, or the printing of the Bill in the National Language, because the way it was worded, Mr. President, it would seem as if it is a newspaper of general circulation that must be printed in the National Language.

If that is so, then the publication can be in English, but printed in a newspaper which is published in the National Language, Mr. President.

I think there is a need to clarify that particular point.

Senator Romulo. Well, that is a good point, Mr. President. Actually, my own view is that the Rules and the Bill itself should be printed in the National Language.

The President. Is that what it says in the amendment?

Senator Romulo. Well, subject to style, I leave it to the Sponsor.

Senator Angara. I thought, Mr. President, that the requirement of "one among the three" is that, that newspaper is printed in the National Language. For instance, *Ang Taliba* or *Ang Pilipino Ngayon*, so that both the text of the law and the newspaper in which it is printed would be in the National Language.

Senator Romulo. Yes.

Senator Angara. Because that was the amendment of Senator Ziga on the publication of the Rules and Regulations.

Senator Romulo. Right. So, in the printing of the Rules and the Law, it should be in the National Language; in addition, the newspaper which is in the National Language.

The President. Let us clarify that. It may be in a Tagalog newspaper or in a newspaper in the National Language. Is it necessary that the law itself, let us say, this one, should also be in the National Language?

Senator Romulo. That is my submission, Mr. President.

The President. Is that the desire of the Sponsor also?

Senator Angara. Perhaps, Mr. President, we should provide one Section that the law should be both in English and in Pilipino; and in case of conflict, one would prevail, so that we have something to be officially printed.

The President. Let us make sure that what we approved shall prevail, and we are approving this in the English language. In case of a conflict between the Tagalog version and the English version, shall the English version prevail?

Senator Romulo. Yes, Mr. President.

The President. Is there any objection? Senator Paterno.

Senator Paterno. Mr. President, would the Sponsor agree that what would be printed in the newspaper in the National Language shall be an official translation of the law? So that, we will not have a situation where we would have two texts and it is the English version that is binding. Official translation ang ating ilagay doon sa pahayagan.

The President. Well, it may be an official translation; but there may be a conflict between the English version and the Tagalog or Pilipino version, even if it is an official translation.

Senator Paterno. I take it, Mr. President, that there is a difference between being an official text

and an official translation. It is merely a translation of the official text.

Senator Romulo. It is an official translation of the official text.

Senator Paterno. Yes.

Senator Angara. That is why, in case of conflict, the official text, which is in English, prevails.

Senator Paterno. There is only one official text, and that is in English.

Senator Angara. We can provide otherwise. At any rate, that is a moot point, Mr. President. If the Body agrees that there will be an official translation in the National Language, then the amendment would be that that official translation will be the one printed in the newspaper of general circulation.

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized.

Senator Maceda. Mr. President, I have no objection, in principle, to the proposal. I would just like to ask the Chair that since we did not do this for an important legislation like the CARP, is this precedent we are setting now going to be followed henceforth for all legislations in the future?

The President. May I ask that question addressed to Senator Romulo?

Senator Romulo. Mr. President, yesterday, we said that, particularly, this law aims to provide a redress, an avenue, a source for the small people. The Ombudsman would have to be the champion of the small people; and, therefore, there is a particular need for this particular law to be in a language that can easily be understood by the common people. That is the reason why we have proposed the translation to be in the National Language, and the printing in a newspaper of general circulation in the National Language.

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

Senator Enrile. Mr. President, with due respect to the opinion of my distinguished Colleague from Tarlac, how about the Ilocanos, the Ibanags, the Hiligaynons, the Visayans, the Boholanos, the Tausugs, the Maranaos, the Samareños, the Bolinaos, and the Dumagats?

SUSPENSION OF THE SESSION

The President. Let us suspend the session, if there is no objection. [*There was none.*]

It was 7:03 p.m.

RESUMPTION OF THE SESSION

At 7:08 p.m., the session was resumed.

The President. The session is resumed.

Senator Romulo. Mr. President.

The President. Senator Romulo is recognized.

Senator Romulo. Well, Mr. President, after further discussion, this Representation would like to withdraw the amendment but with the understanding that the Ombudsman will cause the text of the law and the rules to be translated into as many local languages as possible and for it to be disseminated in the respective regions where those local languages are spoken.

The President. All right. Is there any further amendment?

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

ENRILE AMENDMENT

Senator Enrile. Page 15, Mr. President. May I suggest that line 15 be amended.

The President. What page?

Senator Enrile. Page 15, line 15, "Infidelity in the custody of prisoners." Insert after the word "custody" and before the preposition "of", the

phrase OR MALTREATMENT. So that this paragraph will read: "Infidelity in the custody OR MALTREATMENT of prisoners."

The President. What is the pleasure of the Sponsor?

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Enrile. Now, line 22, Mr. President, I proposed an amendment...

Senator Pimentel. Mr. President, I was trying to raise my hand in that same line on infidelity and maltreatment of prisoners.

The President. All right.

Senator Pimentel. Can we include detention prisoners also? Persons in detention.

Senator Angara. No, but prisoners have distinct legal connotations. So we have to distinguish between those who have been arrested for detention purposes or whatever.

Senator Enrile. "...or prisoners OR DETAINÉES."

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Enrile. On line 22, my proposed amendment is to remove the comma after the word "assistance" and then insert the disjunctive OR and delete REFUSAL. And then, on line 23, put a period after the word "office" and delete the rest of this sentence, so that paragraph (gg), beginning on line 22, shall read as follows: "Disobedience, refusal of assistance OR to DISCHARGE PUBLIC OFFICE."

Senator Angara. The amendment is accepted, Mr. President.

Senator Enrile. Now, my last...

The President. Let us pass it first. Is there

any objection? [Silence] Hearing none, the same is approved.

Senator Enrile. My last suggestion, Mr. President, is that there should be a provision authorizing the perpetuation of testimony, in accordance with existing rules.

Senator Angara. My recommendation, Mr. President, is that we include a provision under the Rules and Procedure whereby the Rules of Court are made supplementary to the rules of the Ombudsman.

The President. Senator Laurel is recognized for the final amendments.

Senator Angara. Excuse me, Mr. President. Can we put that amendment...?

The President. All right. Is there any objection to that last amendment? [Silence] Hearing none, the same is approved.

Senator Laurel. Mr. President.

The President. Senator Laurel is recognized.

LAUREL AMENDMENTS

Senator Laurel. Mr. President, on page 17, line 17, my amendment is to put a period after the word "addressed" and delete lines 18 to 19. So the sentence will read as follows, starting from line 14: "Any delay without just cause in acting on any referral made by the Office of the Ombudsman shall be a ground for administrative action against the officers or employees to whom such referrals are addressed."

The reason for this, Mr. President, is that lines 18 to 19 provide that this delay, meaning, inaction shall constitute a graft offense. I do not know, Mr. President, that failure to act makes one a grafter.

The President. What is the pleasure of the Sponsor?

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Laurel. My amendment on page 20 is to the same effect; maybe, it is better to refer to the bottom of page 19, paragraph (4). Again, something is repeated here with respect to delay: "Any delay or refusal to comply with the referral or directive of the Tanodbayan or any of his Deputies, after a second tracer, shall constitute a ground--shall likewise constitute a graft offense..." So my amendment, Mr. President, is: on line 1, page 20, delete "after a second tracer".

The President. What is the pleasure of the Sponsor?

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Laurel. And the second amendment, referring to the same section, is that on line 4, put a period after the word "addressed" and delete the rest of the sentence starting with "and shall likewise constitute".

The President. What is the pleasure of the Sponsor?

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Laurel. On page 11, Mr. President.

The President. Oh, we are going back.

Senator Laurel. I wish I did not have to do this; but, Mr. President, in the interest of further clarity, I was the one who fathered this amendment. But upon more serious and repeated consideration, I said, it should be further clarified and improved.

And so, Mr. President, starting with line 29 on page 11 which reads: PROVIDED, FURTHER, THAT ANY DECISION, ORDER OR DIRECTIVE OF THE OFFICE OF THE OMBUDSMAN, insert the words ON A CASE.

Senator Maceda. Mr. President.

The President. Why do we not allow him to complete it?

Senator Maceda. It is a point of order.

The President. Yes.

Senator Maceda. Since this is an approved amendment by no less than the Gentleman himself, I think the proper procedure is for the Gentleman to ask for a reconsideration of his own amendment. It will open the matter.

Senator Laurel. That is correct, Mr. President. But in my eagerness to finish this item, I overlooked that necessity in accordance with the *Rules*.

So Mr. President, since this is my own amendment, I ask for a reconsideration of the amendment which I introduced.

The President. Is there any objection to the motion for reconsideration? [*Silence*] Hearing none, the same is approved.

Senator Laurel. Now, Mr. President, to repeat, on line 30, insert the words ON A CASE after the word "ombudsman".

The President. All right. Is that all?

Senator Laurel. No, Mr. President. I thought it would be one by one. So I will continue in order to make it complete. I think my amendment last night, Mr. President, was GROUNDS AS THOSE FILED. Delete AS THOSE FILED, Mr. President. Then, on line 31, insert the word ANY after the word WITH. So the whole amendment and sentence will read as follows, starting from line 29: PROVIDED, FURTHER, THAT ANY DECISION, ORDER OR DIRECTIVE OF THE OFFICE OF THE OMBUDSMAN ON A CASE SHALL BE A BAR TO THE FILING OF ANOTHER CASE BASED ON THE SAME FACTS AND ON THE SAME GROUNDS WITH ANY OTHER DISCIPLINARY AUTHORITIES AND VICE-VERSA.

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized.

Senator Maceda. For the *Record*, Mr. President, is it understood that this does not preclude disbarment or, let us say, loss of medical license and other reputation of professional license of the employees involved?

Senator Laurel. I did not get it right.

Senator Maceda. Meaning to say, if this amendment goes through, can he still be disbarred if he is a lawyer? Can he still lose his doctor's license from the Medical Board if he is a doctor, et cetera?

Senator Laurel. Yes, Mr. President, he can still lose.

Senator Maceda. I just wanted that in the *Record*, Mr. President.

The President. What is the pleasure of the Sponsor?

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection? [*Silence*] Hearing none, the same is approved.

Senator Laurel. That is all, Mr. President.

The President. Now, we have finished all the amendments.

Senator Rasul. Mr. President.

The President. I am sorry. Senator Rasul is recognized.

Senator Rasul. If my distinguished cosponsor will agree, I would like to amend the title, to read:

AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN AND FOR OTHER PURPOSES.

The reason, Mr. President, is for logical and practical considerations. Because the structural organization must, of course, be based upon the functional organization or definition of functions. It is just a switching of "FUNCTIONAL" before "STRUCTURAL".

Senator Angara. It is accepted with pleasure, Mr. President.

Senator Rasul. Thank you, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Mercado. Mr. President, it is my pleasure to move that we approve Senate Bill No. 543 on Second Reading.

The President. Is there any objection? Is there any comment?

Senator Saguisag. Mr. President.

The President. Senator Saguisag is recognized.

Senator Saguisag. Mr. President, it gives me no pleasure to stand in opposition to this motion, but this is sure to pass by tomorrow. So, I would hope it would be possible to get a clean copy.

Senator Mercado. Mr. President, to satisfy Senator Saguisag, I withdraw my motion.

The President. The motion is withdrawn.

Senator Angara. Mr. President.

The President. Senator Angara is recognized.

Senator Angara. Would it be improper if we move that the period of Individual Amendments be closed today?

Senator Saguisag. But it is, precisely, to save ourselves from, maybe, some glaring, obvious error that might have escaped our notice tonight. But we are sure that within the first hour tomorrow, we should be able to do it. As I said, I hate to be the one to do it, but I would hope we could postpone the moment of glory of the Sponsor by another 20 hours or so.

The President. All right.

ADJOURNMENT OF THE SESSION

Senator Mercado. Mr. President, I move that we adjourn the session until four o'clock tomorrow afternoon.

The President. Is there any objection? [Silence] Hearing none, the session is adjourned until four o'clock tomorrow afternoon.

It was 7:21 p.m.

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261 - 275
(15 - pages)

ORGANIZATION OF THE OFFICE OF THE OMBUDMAN.
R.A. No. 6770 / S.B. No.543/ H.B.No. 13646

RECORD OF THE SENATE

AUG 24,1988

amount reflected in this settlement. In other words, the amount that was recovered by the PCGG from PAGCOR funds was turned over to the National Treasury.

Second, the treasury bills recovered for the Cultural Center of the Philippines have been turned over to Malacañang, not to the National Treasury.

Third, the funds recovered for UCPB have been turned over to them; meaning, to the UCPB as of the date of this statement, that is, July 31, 1988.

And the question I would like to pose is, why was the money of PAGCOR turned over to the National Treasury and why was the money of the UCPB turned over to the UCPB and why was the money of the Cultural Center not turned over to the Cultural Center but to Malacañang? That is the reason why I have filed my resolution containing questions to be asked of the Executive Secretary so that he can enlighten this Chamber.

Senator Lina. Well, that is a fair statement coming from the Minority Floor Leader. As I said earlier, as soon as the report arrives, considering that I did not know that there would be this privilege speech, I would like to study and to share with him the report that was submitted by the PCGG to the Committee on Finance of this Chamber here yesterday.

Thank you, Mr. President.

Senator Enrile. Thank you, Mr. President.

The President. The Majority Floor Leader is recognized.

SUSPENSION OF THE SESSION

Senator Mercado. Mr. President, I move for a suspension of the session.

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

It was 4:31 p.m..

RESUMPTION OF THE SESSION

At 4:57 p.m., the session was resumed.

The President. The session is resumed.

BILL ON SECOND READING

Senate Bill No. 543--Office of the Ombudsman
(Continuation)

Senator Mercado. Mr. President, I move that we consider Committee Report No. 263 on Senate bill No. 543, entitled:

AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES.

We have distributed clean copies, Mr. President, and I move that we recognize the Sponsor, Senator Angara.

We are in the period of individual amendments.

The President. Senator Angara is recognized.

Senator Angara. Thank you, Mr. President.

Before we ask the Chair to recognize Senator Saguisag for some changes of style, may I just call the attention of the Body that on page 7, lines 3-5, the provision or the sentence which reads: "Preliminary investigation shall be started forthwith and terminated within one hundred twenty (120) days from the date of the filing of the complaint." has been transposed from a later provision because we thought that for the sake of logic and orderliness, this provision ought to be placed here rather than under the Rules and Procedures.

The President. All right. Senator Saguisag is recognized.

SAGUISAG AMENDMENTS

Senator Saguisag. Thank you, Mr. President.

I have some minor suggestions to make. I caused to be sent to the Sponsor earlier a list of these minor suggestions.

For the *Record*, may I turn to page 2, line 4 of

the clean copy of the bill with approved amendments as of August 23, 1988. I suggested that we delete the alternative of publication, "or in the law journals." Those publications usually come out late; there are very few copies made of those; and they would not serve the purpose. So, may we suggest that after "general circulation", there should be a period and "or in the law journals" should be deleted.

Senator Angara. The amendment is accepted, Mr. President.

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

Senator Saguisag. Thank you, Mr. President.

On line 25 of the same page, in the phrase: "the term of office", I suggested that "the" should be changed to THEIR .

Senator Angara. The amendment is accepted, Mr. President.

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

Senator Saguisag. Page 6, Mr. President, lines 15 and 16, it seems to me that there is redundancy in saying: "at least once a year or oftener", so, my suggestion is to remove "or oftener".

The President. Is it accepted?

Senator Angara. The amendment is accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Saguisag. Page 8, Mr. President, line 8: "That the Tanodbayan under the rules"... I have suggested that "the" should be changed to ITS.

Senator Angara. The same is accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Saguisag. On line 11 of the same page, I am not comfortable with the criterion of "balanced." I was wondering whether to borrow from the Revised Penal Code; the criteria should be "FAIR AND TRUE."

The President. The Chair thinks that the moving consideration there was to give both sides an opportunity to be ventilated. I think that was the suggestion of Senator Guingona.

Senator Saguisag. But that is hard to enforce in the sense that after evaluating the facts and the evidence, we usually come down on one side or the other. And, in the recitation of facts, usually that is what we set forth, that this is the side of the complainant and this is the side of the respondent. But balancing is, to me, an impractical test. Precisely, an investigator or any judge or any adjudicator is expected to throw his weight in the end on one side or the other. But, if we could say "balanced, FAIR AND TRUE" I may be able to reconcile the concerns expressed earlier by Senator Guingona and what I am expressing now.

Senator Angara. The amendment is accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Saguisag. I have no further amendment except that may I just spread upon the *Record* one or two concerns. In regard to page 4 where we limit the right of certain lawyers to appear before the Tanodbayan, I am sure that our intent here is not to derogate from the authority of the Supreme Court as the final arbiter in all matters regarding the right to practice law. And, in our removal of the immunity clause that should not be construed to mean that we are denying the Tanodbayan and everyone under him the traditionally and universally exercised immunities that attach to the legitimate discharge of one's public duties.

Finally, I wonder whether there is to be found in

the latest version the suggestion made last night that we make explicit the suppletory application of the Rules of Court. Those will be all, Mr. President.

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

GUINGONA AMENDMENT

Senator Guingona. On page 13, Mr. President, lines 9 and 10: "Committing any of the frauds or deceits constituting swindling and other deceits." I suggest that we remove the entire line of "constituting swindling and other deceits." and instead say AS PENALIZED BY LAW. Because, "deceits" is modified by "deceits" again.

The President. That is a matter of style. Is that accepted?

Senator Angara. Yes, Mr. President, that is accepted.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized.

MACEDA AMENDMENT

Senator Maceda. On page 14, Mr. President, on lines 8 and 9, just a matter of style. Could we rearrange it to read: "Infidelity in the custody of prisoners or detainees or THEIR maltreatment."

Senator Angara. The amendment is accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Are there any more amendments?

Senator Herrera. Mr. President.

The President. Senator Herrera is recognized.

Senator Herrera. On page 11, Mr. President, paragraph (a), I feel that if it is one's duty to

prosecute a violator of the law, we do not have to "willfully refrain" to make it subject to disciplinary action. The mere failure to prosecute, to my mind is already a matter to be a subject of disciplinary action. So, I would like to propose that instead of "Willfully refraining", we will use "FAILURE".

SUSPENSION OF THE SESSION

Senator Angara. Mr. President, may I request a one minute recess?

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

It was 5:06 p.m.

RESUMPTION OF THE SESSION

At 5:06 p.m., the session was resumed.

The President. The session is resumed.

Senator Herrera. Mr. President, I withdraw my proposed amendment.

The President. The proposed amendment is withdrawn. Are there any more amendments?

MACEDA AMENDMENT

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized.

Senator Maceda. On page 15, Mr. President, line 8, just for purposes of clarity: After the word "officials" insert OR EMPLOYEES, because "officials" has a technical term or a technical meaning.

Senator Angara. It is accepted, Mr. President.

The President. Why do we not accept an Omnibus Amendment that wherever that occurs, it should be corrected accordingly?

Senator Angara. Yes, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved. Are there any more amendments?

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. On page 15, Mr. President.

The President. Yes.

Senator Guingona. I just want to enter into the Record that on lines 7 and 8, the phrase "disciplinary authority over elective and appointive officials of the government..." would include contractual officials. In other words, is a person contracted for a certain term and for the duration of his contract covered by this provision?

Senator Angara. No, Mr. President. Contractual workers probably are not covered by this provision, because the intendment is to cover officials and employees on regular employment with the Government.

Senator Guingona. So that, if the contractual person contracted for commits an anomaly on the occasion of his contract, he would not be subject to the disciplinary authority of the Ombudsman?

Senator Angara. Possibly not, Mr. President, unless he committed an offense or an impropriety in conspiracy with the public official.

Senator Guingona. I wonder if that is the intent, Mr. President. May I ask for a one-minute recess.

SUSPENSION OF THE SESSION

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

It was 5:10 p.m.

RESUMPTION OF THE SESSION

At 5:13 p.m., the session was resumed.

Senator Guingona. Mr. President, instead of making any amendment, at this stage, I will just like to spread into the *Record* the fact that there is a gray area in certain nominees elected to government corporations, for example, to the Monetary Board, who may not be under the jurisdiction of the

Ombudsman as stated now.

So perhaps, the proper solution would be for the Ombudsman to study the matter further and to promulgate the necessary rules either to cover them or to provide for special cases.

The President. Is that agreeable to the Sponsor?

Senator Angara. Yes, Mr. President. That is completely acceptable.

Senator Guingona. With sufficient guidelines so that the people may be guided accordingly in the interest of the nation.

The President. The Chair would like to call the attention of the Sponsor on the same page, page 15, line 12 and line 15. Why do we not use "disciplinary powers" instead of "power" and, for the sake of uniformity, the word "authority" to "disciplinary authority"? On line 7, we use "disciplinary authority" and in the title we also use DISCIPLINARY AUTHORITY.

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection? *[Silence]* Hearing none, the same is approved.

Is there any other amendment? Senator Maceda.

MACEDA AMENDMENT

Senator Maceda. Mr. President, all my amendments are amendments of style and I do not want to change any amendment that has already been approved on the floor.

Section 21, Mr. President, page 16, is a little difficult to read. "The Tanodbayan or his Deputy may preventively suspend any officer or employee under his authority pending an investigation FOR ANY OF THE FOLLOWING GROUNDS:

(a) If the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty;

(b) If there are reasons to believe that the re-

spondent is guilty of charges which would warrant his removal from the service;

(c) If in his judgment the evidence of guilt is strong; and

(d) If the respondent's continuous stay in office may prejudice the case filed against him."

Then the next sentence should already be a paragraph, Mr. President.

The President. That will make it clear.

Senator Angara. Yes, that is accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved. Are there any other amendments?

Senator Herrera.

HERRERA AMENDMENT

Senator Herrera. I am sorry, Mr. President, I have to stand up again.

On page 11, paragraph (b), since Senator Enrile who is the Proponent of this provision is around, I would just like to raise this question.

In a case where there is no willful toleration in the commission of an offense, but there is merely failure or neglect to stop the commission of an offense, is it not a subject of disciplinary action?

In the same way that where there is no willful refraining, but there is merely failure from instituting prosecution against violators of the law, could it not be a subject of disciplinary action?

Otherwise, Mr. President, I would suggest that instead of "Willfully" tolerating," maybe, we can change that if Senator Enrile and Senator Angara will agree. Because I just feel, Mr. President, that in the statement of policy, we mentioned about efficiency, honesty and integrity. So, when one is lazy that he neglects to prosecute, or neglects to stop a commission of an offense, to my mind, it is punishable or can be a subject of a disciplinary

action, if we have to be true, to be consistent, with the policy statement of this bill.

Thank you, Mr. President.

The President. What is the pleasure of the Sponsor?

Senator Angara. Mr. President, that was an amendment proposed by Senator Enrile; that is why I think, Senator Herrera is addressing that question to him.

Senator Enrile. Mr. President, I have no objection to the removal of the qualifying word "willfully" on both paragraphs (a) and (b).

The President. Senator Pimentel.

Senator Pimentel. May I just know, Mr. President, what would be the effect of the removal of the word "willfully"? May that not be raised as a defense in the absence of willful toleration?

Senator Enrile. The respondent will be chargeable for neglect of duty or for just a mere failure of acting.

Senator Pimentel. So, in effect, would the removal or deletion of the adverb "Willfully" mean that the respondent cannot raise that as a defense later on?

Senator Enrile. No, he cannot raise that as a defense.

The President. The Chair would like to know. Supposing the act of refraining from instituting prosecution against violators of the law is based on some ground?

Senator Enrile. In that case, Mr. President, that will be a defense that he can raise in his behalf. If it is accepted as a basis to exculpate him, then. . .

The President. If we delete the word "willfully", any kind of refraining might be punishable.

Senator Enrile. Any kind of refraining will make the Ombudsman justified in trying to

impose disciplinary action against the individual. But since the imposition of a disciplinary action is not automatic, but rather there is some kind of a hearing, then the respondent could raise defenses.

The President. Why do we not say then, "refraining without valid ground", or something to that effect?

Senator Enrile. I would like to call the attention of the Chair that when I first proposed the amendment for paragraph (a), I used the word "Unjustifiably". I did not use "Willfully". I do not know who inserted the word "Willfully" instead of "Unjustifiably".

The President. "Unjustifiably" is better.

Senator Enrile. I changed the word "Unjustifiably" in paragraph (b) because my attention was called by the distinguished Gentleman from Mauban, and I agreed with him to the effect that we cannot possibly say, "Unjustifiably tolerating". So, I agreed that instead of "Unjustifiably" in paragraph (b), we use the word "Willfully".

But in paragraph (a), we use the word "Unjustifiably".

Senator Herrera. Mr. President.

The President. Senator Herrera.

Senator Herrera. Maybe "Unjustifiably" is a better word because if we use "Willfully", there seems to be malice.

Now, if one is just lazy, he does not perform his duty, I feel that is a subject of disciplinary action. He fails to prosecute because he is lazy.

ENRILE AMENDMENT

Senator Enrile. Mr. President, may I then propose an amendment on line 4, paragraph (a). Delete the word "Willfully" and change it to UNJUSTIFIABLY.

Senator Angara. That is accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Enrile. In the case of line 6, we cannot use the adverb "Unjustifiably", Mr. President. So, I do not know the sense of the Chamber whether or not we want to remove the adverb "Willfully".

The President. "Unjustifiably" was already objected to.

Senator Enrile. We cannot say that he should be disciplined for "unjustifiably tolerating."

The President. That is correct.

Senator Angara. Perhaps, just simply deleting the word "Willfully" would suffice, Mr. President.

Senator Enrile. I will propose an amendment then, Mr. President: on line 6, paragraph (b), delete the adverb "Willfully".

Senator Angara. That is accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Maceda. Mr. President.

The President. Senator Maceda.

Senator Maceda. On page 17, Mr. President, line 22, going back to the main sentence:

The Office of the Ombudsman shall inquire into acts or omissions . . . which from the reports or complaints it has received, the Tanodbayan . . . consider to be . . . based on improper motives or irrelevant considerations; . . .

In the words of Senator Saguisag, Mr. President, I am not comfortable with the word "irrelevant."

Senator Angara. What about CORRUPT CONSIDERATIONS?

Senator Maceda. Well, that is more appropriate, but a catchall phrase of "relevant" or "irrelevant" certainly is going to result in a lot of interpretations.

Senator Angara. So, Mr. President, if I may suggest, in lieu of "irrelevant", we say CORRUPT CONSIDERATIONS.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Maceda. Thank you.

The President. Is there any amendment? Senator Saguisag?

Senator Herrera. Mr. President.

The President. Senator Herrera.

Senator Herrera. I wonder, Mr. President, if we should not include, among the matters to be subject to disciplinary action, the filing of income tax on time. I feel that government employees should set the example. Iyong timing, one can just pay surcharge. But, I think, government employees should pay on time. They should not delay the payment of income tax. I know there is a penalty for failure to pay on the date required by law; but, in addition to that, I feel government employees should set the example.

Senator Saguisag. Mr. President.

The President. Senator Saguisag.

Senator Saguisag. On page 16, Mr. President, on "Preventive Suspension." I was wondering whether the criterion of IF IN HIS JUDGMENT THE EVIDENCE OF GUILT IS STRONG, which is a criterion I like, should be related to another criterion like the severity of the penalty. Otherwise, it may be unfair if a very low-level clerk who happens not to have issued a receipt, may be suspended for 90 days. That was why, in the formulation of Section 41 of the Civil Service Decree, the criteria usually go together. That will also harmonize it with the intent in the earlier criterion that it has to involve dishonesty, oppression, or grave misconduct. I think the rationale for suspension, normally, is to prevent a powerful official from coercing witnesses and the like. The rationale does not exist when it

is a low-level employee we are talking about.

So, I would like to suggest a change beginning with line 27, "of duty, or if", and here is my suggestion, Mr. President: OR IF IN HIS JUDGMENT THE EVIDENCE OF GUILT IS STRONG OF CHARGE WHICH WOULD WARRANT THE RESPONDENT'S REMOVAL FROM THE SERVICE. Kasi ho minsan napakagaan naman ng kaparusahan. Wala namang impluwensiya iyong sususpendihin. Kay unang-una, wala pa pong koneksiyon doon sa parusa which may be an admonition only. Why suspend a clerk for 90 days if he is in no position to be able to hide the records or to frighten witnesses?

SUSPENSION OF THE SESSION

Senator Saguisag. May we have a one-minute recess, Mr. President?

The President. Let us suspend the session, if there is no objection. [There was none.]

It was 5:29 p.m.

RESUMPTION OF THE SESSION

At 5:41 p.m., the session was resumed.

The President. The session is resumed. Senators Angara and Saguisag.

SAGUISAG AMENDMENT

Senator Saguisag. Thank you, Mr. President.

After having conferred with the Sponsor, may we offer the following rephrased version of Section 21, the first sentence, beginning with line 22. The recast version is as follows:

"The Tanodbayan or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if IN HIS JUDGMENT THE EVIDENCE OF GUILT IS STRONG comma AND a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty semi-colon b) the charges would warrant removal from the service semi-colon or c) the

respondent's continuous stay in office may prejudice the case filed against him."

The President. What is the pleasure of the Sponsor?

Senator Angara. The amendment is accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

Senator Laurel is recognized.

LAUREL AMENDMENT

Senator Laurel. Mr. President, I would like to propose an amendment that would include directors, trustees, and representatives nominated by the Government in government agencies or government-owned and -controlled corporations.

The President. That is line 11, page 15, after the word "subsidiaries".

Senator Laurel. Page 15, line 11, after the word "subsidiaries", a separate sentence should be inserted, to this effect: DIRECTORS, TRUSTEES AND REPRESENTATIVES NOMINATED BY THE GOVERNMENT IN GOVERNMENT AGENCIES AND IN GOVERNMENT-OWNED OR -CONTROLLED CORPORATIONS ARE LIKEWISE SUBJECT TO DISCIPLINARY AUTHORITY OF THE OFFICE OF THE OMBUDSMAN.

The President. The Chair would like to ask: We are only talking here about government-controlled corporations, because if they are government-owned they are already public officers.

Senator Laurel. That is right, Mr. President; however, we are including here those representatives nominated by the Government in government entities like the Monetary Board, state universities, et cetera. And where the law provides for representatives to be drawn from the private sector, they become public officials in the sense of this bill, Mr. President. The object of the bill is to do away with graft and corruption, insure efficiency and competence, and the delivery of public services.

The President. How would the amendment now read?

Senator Laurel. Mr. President, the amendment would read, as a sentence, after the word "subsidiaries on line 11, as follows: DIRECTORS, TRUSTEES AND REPRESENTATIVES NOMINATED BY THE GOVERNMENT IN GOVERNMENT AGENCIES AND IN GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS ARE SUBJECT TO THE SAME DISCIPLINARY AUTHORITY OF THE OMBUDSMAN.

The President. But if they are already government-owned corporations, are they not automatically covered?

Senator Laurel. Yes, Mr. President. Well, I accept the amendment if that is an amendment, Mr. President, just by removing "government-owned and -controlled corporations." Just retain "IN GOVERNMENT AGENCIES AND ENTITIES."

SUSPENSION OF THE SESSION

The President. Shall we suspend the session, if there is no objection? [There was none.]

It was 5:47 p.m.

RESUMPTION OF THE SESSION

At 5:57 p.m., the session was resumed.

The President. The session is resumed.

Senators Angara and Laurel.

Senator Laurel. Mr. President, I am rephrasing my amendment to Section 18, line 11 after the word "subsidiaries" to read as follows: DIRECTORS, TRUSTEES OR REPRESENTATIVES OF THE PRIVATE SECTOR IN GOVERNMENT AGENCIES AND DIRECTORS OR TRUSTEES REPRESENTING THE GOVERNMENT IN ANY CORPORATION IN WHICH IT HAS EQUITY INTEREST SHALL ALSO BE SUBJECT TO THE DISCIPLINARY AUTHORITY OF THE OFFICE OF THE OMBUDSMAN.

The President. What is the pleasure of the Sponsor?

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection?
[Silence] Hearing none, the same is approved.

May it not be more appropriate to have a paragraph on line 11 in the case of Members of Congress?

Senator Angara. Yes, Mr. President, after that amendment, I think it is proper to have a separate paragraph. It is accepted, Mr. President.

The President. Is there any objection?
[Silence] Hearing none, the same is approved.

Is there any other amendment?

Senator Maceda. Mr. President.

The President. Senator Maceda, then Senator Pimentel.

Senator Maceda. Mr. President, I do not know if an amendment is necessary. I would just like to inquire for the record whether below the Supreme Court, it is understood that there is no injunction policy against the Ombudsman by lower courts. Or, is it necessary to have a special paragraph for that?

Senator Angara. Well, there is no provision here, Mr. President, that will prevent an injunction against the Ombudsman being issued.

Senator Maceda. In which case, I think that the intention, this being one of the highest constitutional bodies, is to subject this only to certiorari to the Supreme Court. I think an injunction from the Supreme Court is, of course, in order but no lower courts should be allowed to interfere. We had a very bad experience with even, let us say, the Forestry Code where no injunction is supposed to be issued against the Department of Natural Resources. Injunctions are issued right and left by RTC judges all over the country.

The President. Why do we not make an express provision to that effect?

Senator Angara. We would welcome that, Mr. President.

The President. No writ of injunctions from trial courts other than the Supreme Court.

Senator Maceda. I so move, Mr. President for that amendment.

The President. Is there any objection?
[Silence] Hearing none, the same is approved.

Are there any other amendments?

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

PIMENTEL AMENDMENT

Senator Pimentel. It is on page 24, Mr. President. I will read the particular provision. It says:

SEC. 33. *Fiscal Autonomy.* -- The Office of the Ombudsman shall enjoy fiscal autonomy. Appropriations for the Office of the Ombudsman, after approval, shall be automatic and released in full at the beginning of every quarter.

As worded, Mr. President, it looks like the Ombudsman will have the right to receive the appropriations four times a year, and at the beginning of every quarter. So, my suggestion is to insert the word QUARTERLY, "released QUARTERLY in full at the beginning of every quarter" on line 14.

Senator Angara. The same is accepted, Mr. President, because that was really the intent.

The President. Is there any objection?
[Silence] Hearing none, the same is approved.

Is there any other amendment?

Senator Lina. Mr. President.

The President. Senator Lina is recognized.

Senator Lina. Mr. President, this is not an amendment. It will be difficult if I will not bring this up now or forever keep my peace. I am still disturbed by paragraph (11) of Section 13. This is on page 8, lines 27 to 30, Mr. President.

As I said earlier, there has been much debate on this but I am still not satisfied.

The President. What page is this?

Senator Lina. Page 8, lines 27 to 30, Mr. President: "Investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth amassed after February 25, 1986 and the prosecution of the parties involved therein."

My understanding, Mr. President, is that, after February 25, 1986, it would be the Ombudsman that would have the power to initiate the necessary action for the recovery of unexplained wealth. That is not connected with the ill-gotten or unexplained wealth of the previous President, his immediate family, relatives and close associates both here and abroad.

Before February 25, 1986, Mr. President, it is the PCGG, under Executive Order No.1, that has the power to recover all ill-gotten wealth accumulated by the former President, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, et cetera. This is found in Section 2 of Executive Order No. 1. The mandate of the PCGG under Executive Order No. 1, Mr. President, is very specific for the recovery of ill-gotten wealth accumulated by the past regime, et cetera.

How about unexplained wealth amassed before February 25, 1986 by people in Government who are not considered as close associates of the previous President; for example, a governor in a certain province in the country who rose to fame and glory and wealth, not because of his connection with that former President? Because of his own doing, this governor amassed a considerable amount of wealth that he could not explain. Which government agency then would have the power to initiate action for the recovery of the unexplained wealth of a government official not connected with or even a close associate of the previous President?

The President. May he be considered a subordinate of the dictator?

Senator Lina. The wording of the law can be stretched to include a governor as a subordinate; but in reality, the President has supervision over local government officials, the latter being elected by the people, and therefore, cannot be considered a subordinate in the sense of the President towards a member of the Cabinet, of a member his immediate family or his personal Staff. That would be the meaning of a subordinate. But a governor, or even a mayor of a big city, might have accumulated unexplained wealth, had villages built in the countryside, and therefore, he would be outside the jurisdiction of the PCGG. I am disturbed that this may be used as a defense of a former governor or mayor who, before February 25, 1986, amassed a considerable amount of unexplained wealth.

SUSPENSION OF THE SESSION

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

It was 6:07 p.m.

RESUMPTION OF THE SESSION

At 6:16 p.m., the session was resumed.

The President. The session is resumed.

Senators Angara and Lina are recognized.

Senator Lina. Mr. President, after conferring with the Sponsor and my other Colleagues here in the Chamber, my understanding of paragraph 11 of Section 13 is that cases of unexplained wealth amassed before February 25, 1986 by individuals in the Government who cannot be considered close associates or subordinates of the previous President can still be handled by the PCGG under paragraph (b) of Section 2 of Executive Order No. 1 which states: "The investigation of such cases of graft and corruption as the President may assign to the Commission from time to time" or by the residuary power of the prosecuting

officials of the Government such as the fiscals.

This clarification has to be placed in the *Record*, I believe, in order to answer future questions as to which agency will have jurisdiction over unexplained wealth, amassed by certain individuals who were not close associates or subordinates of the previous President, but who had been in the Government before February 25, 1986.

The President. Let that be placed in the *Record*.

SUSPENSION OF THE SESSION

Shall we now declare a break for our usual breathing spell, if there is no objection? [*There was none.*]

It was 6:18 p.m.

RESUMPTION OF THE SESSION

At 6:50 p.m., the session was resumed.

The President. The session is resumed.

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. Mr. President, I would request that we consider as an omnibus motion or omnibus amendment the deletion of all constitutional officers and bodies, from the jurisdiction of the Ombudsman. In other words, Mr. President, the official constitutional bodies against whom the procedure for ventilating a grievance of any citizen or any person is already embodied in the Constitution through the impeachment process.

I think, Mr. President, that the provision that would grant the Ombudsman the right to even initiate criminal investigation against persons removable only by impeachment would actually be an intrusion and a derogation of the constitutional process of impeachment itself which may not be proper under the circumstances.

I understand that, earlier, there was a proposal to create a three-man body to investigate the

Ombudsman, if he should be in violation of any law; but I think that the possibility of the Ombudsman abusing is already adequately met by the constitutional provision for his impeachment should that eventuality arise. Therefore, Mr. President, perhaps, we should consider deletion of all references to constitutional bodies which are made subject to the investigatory power of the Ombudsman for the reasons that I have cited.

The President. The pertinent section is found on page 15, Section 19, and we approved that after a long debate--the investigatory power over certain officials. The proponent of that amendment, Senator Enrile, is not here right now.

Senator Pimentel. Does that mean that we cannot move for a reconsideration, Mr. President? Or, shall we wait for him tomorrow?

The President. But there were other supporters here of that amendment. So, what is the pleasure of the Sponsor?

Senator Angara. As the President properly noted, this was the subject of a long debate. As I remember it, one of the arguments for the coverage of these officials is the fact that if we exclude them from the investigatory arm of the Ombudsman, we would, in effect, be creating a "group of untouchables." I thought somebody used that phrase. Therefore, we said, "All right, we should bring this group of officials under the ambit of the Ombudsman," and we voted for this.

So, my position, Mr. President, is: if the Body wants to reconsider it, I will leave it to the Body. But, I would not accept the dropping of this Section at this time.

The President. Senator Saguisag.

Senator Pimentel. Before Senator Saguisag takes the floor, Mr. President, may I just raise this inquiry. What happened then to the plan to create a three-man body to investigate the Ombudsman? Has that been dropped?

Senator Angara. Not yet. It has not been proposed, in fact.

The President. There is no proposal yet.

Senator Angara. No proposal yet.

Senator Pimentel. Yes. All right. Thank you.

The President. Senator Saguisag.

Senator Saguisag. Thank you, Mr. President.

Under the Constitution, the grounds for impeachment are well set out: culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. These are really very few offenses. An impeachable officer can commit rape, acts of lasciviousness, homicide, slight physical injuries, and all these should be investigated by a powerful official like the Ombudsman. So, this will revive all the criticisms that we are creating those sacred cows again. We really need this constitutional body to be able to have the kind of prestige and power that could not be associated with a mere fiscal or a municipal judge.

This will otherwise be very hard to explain to the people. I thought that that was really the motivation; we wanted to be sure that this very powerful constitutional official may be the only one who may have the kind of power and prestige required to investigate even more powerful officials than he is. And, this may also reinforce the concept that, for as long as someone is not impeached, then he could not be prosecuted.

In the jurisdiction where we borrowed this, even now, there is that black judge who, in fact, has already been convicted. But now there is some difficulty in impeaching him. And that is not the first instance. In the United States where we borrowed the concept of impeachment, some judges have been convicted but still continue to draw their pay because they have not been removed from office by impeachment. So, there is nothing really wrong in this concept of parallel

jurisdiction. And to remove at the last minute what has been debated so thoroughly before with the distinguished Minority Floor Leader who has left, probably thinking as was the impression of everybody, that this was just going to be, well, a little finishing touch here and there and we are done, this may not be the best way of proceeding in this respect, Mr. President.

The President. But the Chair would like to ask the question. Everyone is subject to the investigatory power of the Ombudsman, including the President, the Vice President, Justices of the Supreme Court, and Members of Congress. In the event of abuse, probably in the year 2500--not the present Ombudsman-- just in case there is abuse or misconduct by the Ombudsman, who will, in turn, investigate the Ombudsman?

Senator Saguisag. Well, that will fit perfectly in the other bill I have filed to create the special independent prosecutors to include really powerful officials under their jurisdiction. The thing is this bill is not meant to cure all ills that our society faces today. There are any number of other measures that can take care of that. But this is a bill that should have been approved yesterday, so to speak. And, there should be something left for us to do in the coming days. Meaning, just like any other bill, like CARP, this is going to be an imperfect bill with good and bad features. But that is democracy. So, what may be an improvement on the part of one may be the very reason it would be resisted by the other. I think we can more than live with this and try to leave some other problems to be solved in other measures.

The President. Is the Chair made to understand that this gap will be filled by the distinguished Senator's bill?

Senator Saguisag. That is easily "accommodatable," if there is such a word. That will, I think, be perfectly in accord with the philosophy of that other bill, Senate Bill No. 717.

So, I would like to appeal to the Body that if that would be the problem, then certainly, in the committee hearing, I would personally move for the inclusion of the Ombudsman as one of the officials to be investigated by the three-man panel that I have proposed in that bill, Mr. President.

Senator Pimentel. Mr. President, may I just have this very brief rejoinder. I think that there is a reason for the Constitution in delimiting the causes for the removal of certain people.

In other words, as far as the President and other impeachable officials are concerned, the Constitution merely provides for very limited cases; if I am not mistaken, about five or so grounds for impeachment. That being the case, I think it will not be a good idea for a statutory provision to widen the scope for the filing of charges against a sitting President, for example, or a sitting Member of the Judiciary. Of course, any wrongdoing can be raised against them and there will be adequate sanctions in the Constitution and in the minds of the public. But, as far as their removal and subsequent persecution is concerned, that must depend on a successful impeachment of the persons concerned because we all know, Mr. President, that the impeachment of these particular officials will not in any way bar a persecution for the offense upon conviction by impeachment.

Senator Saguisag. But, Mr. President, we know how difficult it is for any deliberative body to pass any measure. That is why, precisely, we have to have another avenue. A simple impeachment proceeding can tie up a Congress for years. And if there are 100 culprits, there will be no time left for legislation. Suppose these crimes are committed during the breaks of Congress? That is why there should be a body that is open everyday to receive complaints against the most powerful officials. For me, I would prefer my pet bill calendared before I get involved in impeaching anybody. I mean, that is a natural concern. And to get 225 people to proceed against a single official, if we will just have one

impeachment proceeding every six months, there may be nothing else for us to do.

This is a typical bill. We thought it was simple but we are now bogged down on our fourth week.

So, I do not think that that is the intent. Experience will show that the impeachment proceeding is very rarely resorted to. And if we will close other avenues, we will further disillusion our countrymen.

In other words, the things that our countrymen are complaining about are cases that can be brought now before policemen, before fiscals. But they are not encouraged because they know that nothing may happen. So we are now creating, well, these possibilities for the Ombudsman to go after higher officials.

I am saying, Mr. President, that if we want to include merely the Ombudsman here, if that is the immediate problem, maybe that could await the wisdom of another day but not tonight. I mean, we can pass this. This is a good bill as it is, on balance, and I hope that we will be able to move on to the bill of Senator Rasul tomorrow.

The President. Senator Laurel is recognized.

Senator Laurel. I think, Mr. President, there is reason to incorporate here a provision providing for the investigation of himself, because there is nothing here, nor in the Constitution, providing for such investigation. To my mind, under the bill, he is one of the most powerful figures in our political firmament.

The President. That may take weeks.

Senator Laurel. No. Just a simple provision to the effect that, "for any misconduct or abuse of authority on the part of the Ombudsman, a three-man commission designated by the Judicial and Bar Council shall conduct the investigation." Something to that effect, subject to style, Mr. President. And that would create an overall balance, because that is precisely one of our fears, which I had occasioned

twice to air, that we might be creating a powerful figure, a monster, I said, and so who will protect us from the protector?

The President. Well, what is the pleasure of the Sponsor?

Senator Angara. Well, Mr. President, initially, I thought that such a measure would be necessary; but, on second thought, I feel that it may not be necessary in this one instance in the law and in reality where we will just have to settle on the process provided by the Constitution for the discipline and the removal of the Ombudsman, which is through impeachment. I think this is a gap that, perhaps, as Senator Saguisag said, "can be filled another day."

So, I leave it to the vote of the Body, Mr. President, whether to accept this amendment or not.

The President. All right. Senator Pimentel.

Senator Pimentel. Mr. President, firstly, if that should be the argument of the Sponsor, then we shall have created the most powerful personality or person in Government office by statute, more powerful than the offices which have been created by the Constitution, which I think is an anomaly by itself.

Then, secondly, Mr. President, as far as the suggestion of Senator Laurel is concerned, may I bring to the attention of the Body that Section 8, Article VIII of the Constitution speaks of the Judicial and Bar Council. The intention of the Judicial and Bar Council is to be a screening body, a recommendatory body, which will deal with judicial appointments.

And thirdly, Mr. President, may I bring to the attention of our Colleagues Subsection (5) of Section 8, which I will read:

The Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

Therefore, it would seem as if this will be an unconstitutional act for us to assign a function, an appointing function, to a Judicial and Bar Council, which was never envisioned to be exercising such a power and which can exercise only such functions as may be assigned to it by the Supreme Court. So I think we are faced with that problem, Mr. President.

The President. Shall we then wait for the wisdom of another day?

Senator Pimentel. If that wisdom is coming at all, Mr. President, I wonder. At any rate, I think within the next 24 hours it may come if we will adjourn tonight because we are all tired already and the energy is running out, considering the lateness of the hour. So, my own suggestion is we sleep over this tonight and hope that by tomorrow we can approve this bill as proposed by the Sponsor.

The President. The Sponsor is probably hoping that we would approve this already on Second Reading. This is already the fourth week.

Senator Angara. That is correct, Mr. President.

The President. Senator Paterno.

PATERNO AMENDMENT

Senator Paterno. Mr. President, I would like to make a tentative proposal on Section 19. It seems to me that the tendency of the Members of this Chamber is to allow the Office of the Ombudsman to investigate, provided that the power to investigate is not used arbitrarily, whimsically, or for ulterior motives. I wonder, Mr. President, if that desire could be answered, on line 19, by limiting the power to investigate to SERIOUS misconduct, not just any misconduct. In other words, we want to convey that this power should be used sparingly and only when needed.

So, if we were to say "SERIOUS misconduct in office or gross abuse of authority," perhaps, we will be setting the parameter under which that power can be used; and as I said, use sparingly and

only when it is really necessary.

The President. Is Senator Paterno proposing that amendment? "The Office of the Ombudsman shall have the power to investigate any SERIOUS misconduct in office allegedly committed," because we cannot presume that misconduct has already been committed.

Senator Paterno. Yes, Mr. President, I am making that proposal.

Senator Pimentel. May I just make this observation, Mr. President. If that should be the limiting clause to the functions of the Ombudsman, then matters like "infidelity in the custody of prisoners or maltreatment" cannot be handled by the Ombudsman because these are not really serious ... Only for impeachable officials?

Senator Paterno. Yes, Mr. President.

Senator Pimentel. Well, in that case, probably, it may be done, Mr. President.

The President. All right. What is the pleasure of the Sponsor on the Paterno Amendment?

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the same is approved.

The Majority Floor Leader may want to move for the approval on Second Reading.

APPROVAL OF SENATE BILL NO. 543 ON
SECOND READING

Senator Mercado. Mr. President, I move for the approval of the bill, as amended, on Second Reading.

The President. We shall now vote on the bill as amended, on Second Reading. As many as are in favor of the bill, as amended, will please say *Aye*. [Several Senators: *Aye*] As many as are against will please say *Nay*. [Silence] Senate Bill No. 543 is approved on Second Reading, as amended.

Congratulations to Senator Angara.

Senator Angara. Thank you, Mr. President.

ADJOURNMENT OF THE SESSION

Senator Mercado. Mr. President, I move that we adjourn the 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 7:12 p.m.

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