

## RECORD OF THE SENATE

MONDAY, JULY 29, 1996

### OPENING OF THE SESSION

*At 4:31 p.m., the President of the Senate, Hon. Neptali A. Gonzales, called the session to order.*

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

Let us all stand for the opening prayer to be led by Sen. Franklin M. Drilon. After which we shall be led in the singing of the national anthem and another song, entitled *Sa Lupang Sarili* by the Musikapelle.

*Everybody rose for the prayer.*

### PRAYER

**Senator Drilon.**

Almighty God and Father, we glorify and worship You, Your name is holy.

Thank You so much for gifting us with renewed vigor and wisdom to faithfully discharge our duties to Your people.

Teach us to hold on to no other but You, as we soon proceed to tackle the crucial issue of peace in Mindanao.

We, Your humble children, equally share the hopes of our people and the noble intentions of the contending parties that peace should now finally descend to that strife-torn corner of our land. Too long had animosity prevented Mindanao from fulfilling its promise. The absence of peace has long prevented our brothers—Christians, Muslims and *Lumads* alike—from reaping the fruits of our national development efforts.

But even as we all desire and work for peace, grant Almighty God that we do not lose sight of our bounden duty to hammer out the peace covenant that does not offend our Constitution and the laws of our land. One that does not impinge upon the sovereignty of our nation. One that is acceptable to all affected sectors whose views we have to consider in an open and free dialogue which is the essence of democracy.

Imbue us with courage and resolve as we deliberate on the formula towards a just, honorable and lasting peace. We seek Your divine hand to guide us all the way. Free us from our biases. Lift us out of our human

frailties. And open our eyes so that we may carefully see the path that leads to that elusive goal.

All these we ask in Your precious name.

Amen.

### NATIONAL ANTHEM

*Everybody remained standing for the singing of the national anthem.*

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

### SUSPENSION OF THE SESSION

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

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

*It was 4:39 p.m.*

### RESUMPTION OF THE SESSION

*At 4:40 p.m., the session was resumed.*

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

### ROLL CALL

The Secretary will please call the roll.

**The Secretary, reading:**

Senator Heherson T. Alvarez .....	Present
Senator Edgardo J. Angara .....	Present
Senator Anna Dominique M. L. Coseteng .....	Present
Senator Franklin M. Drilon .....	Present
Senator Juan Ponce Enrile .....	Present
Senator Marcelo B. Fernan .....	Present
Senator Juan M. Flavies .....	Present
Senator Ernesto F. Herrera .....	Present
Senator Gregorio B. Honasan .....	Present
Senator Gloria M. Macapagal .....	Present
Senator Ernesto M. Maceda .....	Present
Senator Ramon B. Magsaysay Jr. ....	Present
Senator Orlando S. Mercado .....	Present
Senator Blas F. Ople .....	Present*
Senator Sergio R. Osmeña III .....	Present
Senator Ramon B. Revilla .....	Present
Senator Raul S. Roco .....	Present

\*Arrived after the roll call

**Senator Maceda.** Yes, Mr. President.

**Senator Macapagal.** We have also not paid any commitment to liberalize retail trade in this agreement.

**Senator Maceda.** No, Mr. President.

**Senator Macapagal.** And if we will be debating on the liberalization of retail trade, we shall be debating not on the basis of any commitment but on the basis of what we think is good for our country.

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

**Senator Macapagal.** I thank the gentleman, Mr. President, for allowing these matters to be put on record.

**Senator Maceda.** Mr. President, may I just make of record that as stated in the papers previously submitted by the committee, this Protocol was supposed to enter into force on the 30th day of June 1996. But as a matter of courtesy to the Philippines—because the Philippines now chairs the Committee on Trade and Financial Services—the said deadline was extended until July 31. So in that sense it is very timely and urgent that we act on this matter today, July 29, 1996, Mr. President.

**The President.** Are there any further interpellations?

The Majority Leader is recognized.

#### SUSPENSION OF THE SESSION

**Senator Mercado.** Mr. President, may I move for a suspension of the session.

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

*It was 4:55 p.m.*

#### RESUMPTION OF THE SESSION

*At 5:01 p.m., the session was resumed.*

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

#### SUSPENSION OF CONSIDERATION OF P. S. RES. NO. 475

**Senator Romulo.** Mr. President, with the permission of the Chairman of the Committee on Foreign Relations, I move that we suspend consideration of Proposed Senate Resolution No. 475 in the meantime.

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

#### BILL ON SECOND READING S. No. 950 - Special Law on Rape *(Continuation)*

**Senator Romulo.** Mr. President, I move that we resume consideration of Senate Bill No. 950, the Anti-Rape Act. We are in the period of winding up with the interpellations. May I ask that the sponsors, Senators Shahani, Roco, and Santiago, be again recognized, with Senator Herrera to interpellate.

**The President.** Senators Shahani, Roco, and Santiago, the sponsors of this measure, are hereby recognized, together with Senator Herrera, for purposes of interpellation.

**Senator Herrera.** Thank you, Mr. President. I have only a very few questions. I would like to ask clarification of certain provisions in this bill. I hope that the sponsor will yield to answer these questions.

**Senator Shahani.** I shall be honored to entertain questions from our colleague from Cebu and Bohol.

**Senator Herrera.** Mr. President, under paragraph 3 of Section 2, under this circumstance, even a woman can be prosecuted for rape. Is this correct?

**Senator Shahani.** Mr. President, I think we are limiting the definition of rape in this bill as a crime against women.

**Senator Herrera.** Yes, Mr. President. It is a crime against women. But the culprit can be a woman under this paragraph 3. Let me read the provision of paragraph 3.

Rape is a crime committed...by a man who shall insert any part of his body other than the sexual organ, or who shall introduce any object or instrument into the genital or anus of the woman under the circumstances stated in paragraph one (1) hereof;

A woman can insert any part of her body or introduce any object or instrument into the genital or anus of a woman.

**Senator Shahani.** Mr. President, that is true, and I believe the way Section 2, subparagraph 3 as worded would allow the possibility of a woman being the offender in this case. But we will have to look at the entire bill because we thought that for a while this bill could be gender-free. But we have decided that rape here will be a crime against a woman. We could, for the time being, accept that possibility, but we will have to look at the entire bill for any definitive position on that.

**Senator Herrera.** What about paragraph 4? This particular act can also be committed by a woman. Paragraph 4 reads:

4) by a man who shall subject a woman to have sexual intercourse with an animal under any of the circumstances in paragraph one (1).

So a woman can also commit this particular circumstance which constitutes rape. Is this correct, Mr. President?

**Senator Shahani.** That is correct, Mr. President. As I said, we will have to look at the entirety of the bill. I believe our colleague from Bohol and Cebu has a point there. The way Section 2 is worded under subparagraphs 3 and 4, the acts could be committed by a woman.

**Senator Herrera.** In a case where a man has undergone a sex transplant, can "she" invoke this under this bill, that a crime of rape can be committed against this person whose feeling and physical attributes would be like that of a woman since "she" had a sex transplant?

**Senator Shahani.** Mr. President, I think we will have to determine if "she" has undergone a sex transplant—I mean, he has become "she." As I said, "she" could come under subparagraph 3 or 4.

**Senator Herrera.** These are the only points that I would like to be enlightened, Mr. President. Thank you.

**Senator Romulo.** Mr. President.

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

**Senator Romulo.** Mr. President, may I ask that the gentleman from Cavite, Senator Revilla, be recognized, and then the gentleman from Cagayan, Senator Enrile.

**The President.** Senator Revilla is recognized.

**Senator Revilla.** Mr. President, will the distinguished sponsor yield for one question for clarification on a certain provision of the proposed bill?

**Senator Shahani.** Mr. President, I shall be happy and honored to hear the question of our distinguished colleague from Cavite.

**Senator Revilla.** Ginoong Pangulo, marami po sana akong itatanong, subalit nabanggit na ng mga kaibigan kong Senador iyong mga bagay na nais kong itanong, kaya iisa na lamang ang aking katanungan.

Ginoong Pangulo, napansin ko po na walang probisyon ang ating anti-rape bill tungkol sa tinatawag na "gang rape." Marami pong nagaganap na karumal-dumal na panggagahasa na kung saan ang isang biktima ay pinagsamantalahan hindi lamang ng iisang lalaki kundi ng isang grupo ng kalalakihan.

With the permission of the distinguished sponsor, may we know if they consider the situation of "gang rape" as an aggravating circumstance?

**Senator Shahani.** Mr. President, if my memory serves me well, I think in the Revised Penal Code, that is mentioned as an aggravating circumstance. We already said in the interpellation last Wednesday that we would be willing to add the aggravating circumstances mentioned in the Revised Penal Code. But I think we could accept that.

**Senator Santiago.** Mr. President.

**The President.** Senator Santiago, one of the sponsors, is hereby recognized.

**Senator Santiago.** As a cosponsor of this measure, I beg the indulgence of the principal sponsor in pointing out, in response to the interpellation at hand, that the use of the terminology of penalties in the Penal Code will make the provisions of the Penal Code apply to this special law. Therefore, "aggravating circumstances" will be appreciated in this law for the purpose of imposing penalties.

**Senator Shahani.** Mr. President, I just would like to confirm what I had just said and what Senator Santiago said. Article XIV says that whenever more than three armed malefactors shall have acted together in the commission of an offense, it shall be deemed to have been committed by a band. So, I think this satisfies the point brought up by our colleague from Cavite.

**Senator Revilla.** Thank you. Finally, Mr. President, allow me to join the distinguished gentleman from Catanduanes, Senator Tatad, in introducing at the proper time amendments to increase the age defining statutory rape.

However, in passing, I would prefer to increase the defined age of statutory rape from 12 years old to 14 years old.

Nabanggit ko po ito dahil karamihan ng mga rape victims ngayon ay lampas sa edad na 12 taon na kung saan sila ay laging pinipilit ng kanilang magulang na makipag-sex nang may bayad, halimbawa, sa pedophile. Gawa ng kahirapan at dahil na rin sa pagsunod sa kanilang magulang, sila ay salanta na sa murang edad pa lamang.

Kaya kung maaari po sana, I would suggest na iyong sinabi ni Senator Tatad na 13 years old would be raised to 14 years old.

**Senator Shahani.** Magandang susog po iyan, Ginoong Pangulo. Sa panahon ng pagsusog ay tatanggapin namin ang susog na iyan.

**Senator Revilla.** Maraming salamat po, Ginoong Pangulo.

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

**Senator Romulo.** May I ask that our distinguished colleague from Cagayan, Senator Enrile, be recognized for his interpellation.

**The President.** Sen. Juan Ponce-Enrile is recognized.

**Senator Enrile.** Thank you, Mr. President. As I indicated last week, I will support this bill but I would like to clarify some points just to set the matters into the *Record*.

Mr. President, the first thing that I would like to find out is the status of this bill—whether this is going to be a statutory crime or a part of the crimes defined in the Revised Penal Code.

There is a big difference between these two concepts, Mr. President, because all of us who have studied law know in our course in Criminal Law two types of crimes: Crimes which we call *malum prohibitum* which are statutory crimes and *mala in se* or *malum in se* or crimes that would require intent. That is why we always recite the principle that *actus non facit reum, nisi mens sit rea*. Because in every crime defined in the Revised Penal Code, we require what they call a *mens rea*, meaning intent to commit it; and there are always three stages of intent to commit a crime in almost all cases: attempted, frustrated, and consummated.

Now, am I now to understand, Madam sponsor, that this type of crime will be taken out of the Revised Penal Code and shall be covered by a special law making it a statutory crime rather than a crime that is committed with the accompaniment of intent?

**Senator Shahani.** Mr. President, we will recall that this was the topic of prolonged interpellations not only by Senator Enrile but also by Senator Sotto. In consultation with Senator Roco—we were not able to get in touch with Senator Santiago—we felt that the purpose of this bill would better be served if we limited the bill to amending Article 335 of the Revised Penal Code, at the same time expanding the definition of rape, reclassifying the same as a crime against persons, providing evidentiary requirements and procedures for the effective prosecution of offenders, and institutionalizing measures for the protection and rehabili-

tation of rape victims and for other purposes. In other words, it stays within the Revised Penal Code, and rape is associated with criminal intent.

Having said this, it means that there will be a new chapter. They are proposing a new chapter to be known as Chapter III on rape, under Title 8 of the Revised Penal Code. There it remains as a crime against persons and no longer as a crime against chastity, but the criminal intent is retained.

**Senator Enrile.** So, the distinction between rape as a crime, although now converted from a crime against chastity to a crime against persons, and seduction or the act of lasciviousness would be maintained. Am I correct in this, Mr. President?

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

**Senator Enrile.** In other words, there is also now an effort, if I understand it correctly, to make this crime no longer a private crime but a public crime. Unlike what it is today when being a private crime, it can only be initiated by the aggrieved person or the complaint can be initiated by others with the consent of the aggrieved person.

If these were so, the one who would really initiate the prosecution need not be the offended party or any person acting in her behalf but rather the public prosecutors of the country, it being a public crime.

**Senator Santiago.** Mr. President.

**The President.** Senator Santiago is recognized.

**Senator Santiago.** With the indulgence of the principal sponsor, please allow me to point out the following:

I believe that at this present stage of the discussion, we are discussing Section 4 which is entitled CRIME AGAINST PERSONS, and which provides that "the offense of rape shall hereafter be classified as a crime against persons."

I would also like to say that I consider extremely well-taken the comments of the gentleman in the light of the following circumstances:

The intention of the drafters of this Anti-Rape bill was to facilitate the filing of complaints by any person. The intention, however, as has been implicitly pointed out, is negated by Section 5. Section 5 is entitled "WHO MAY FILE COMPLAINT", and enumerates the persons who may file complaints. However, under the rule of statutory construction which states, *inclusio unius ex exclusio alterius*, the inclusion of items in a list



necessarily excludes those that are not included in that list.

Under this rule of statutory construction, those not included in the enumeration are excluded from filing complaints for rape. That is one defect of the present—terminality. Secondly, the situation is not remedied by the reclassification of the offense into a crime against persons because this bill is intended to be a special law, hence the reclassification is inconsistent. Since including rape as a crime against persons can only be done if the bill seeks to amend the Revised Penal Code, I am sure that the principal author will be ready to consider a proposal that Section 5 should be deleted and Section 4 should be amended to read as follows:

At present, Section 4 reads:

**CRIME AGAINST PERSONS.** The offense of rape shall hereafter be classified as a crime against persons.

The proposal is that Section 4 should read:

**PUBLIC CRIME.** The offense of rape shall hereafter be a public crime and may be prosecuted at the instance of any person.

In this manner, by this suggested amendment, we could effectively amend the Rules of Court on the prosecution of offenses particularly Rule 110.

#### SUSPENSION OF THE SESSION

**Senator Shahani.** Mr. President, could I request a 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 5:22 p.m., the session was resumed.*

**The President.** The session is resumed. Will the sponsors come to an agreement as to what is the real purpose of this bill? Because it comes back and forth that its purpose is to shift the classification of rape from a crime against chastity to a crime against persons. And yet it has been repeatedly pointed out that the purpose of this bill is to take out rape from the provisions of the Revised Penal Code and penalize it as a statutory offense. And therefore, the classification of crimes under the Revised Penal Code would not apply.

So what do we really want from this bill?

**Senator Roco.** I think the lady from Iloilo should first explain whether she wants to sponsor the bill or she wants to oppose the bill because there is some disagreement about the basic concept.

**The President.** Anyway, there is a request of Senator Shahani for a suspension of the session precisely so that the sponsor can confer with each other.

#### SUSPENSION OF THE SESSION

The session is suspended for a few minutes, if there is no objection. *[There was none.]*

*It was 5:22 p.m..*

#### RESUMPTION OF THE SESSION

*At 5:28 p.m., the session was resumed.*

**The President.** The session is resumed. Yes, Senator Roco.

**Senator Roco.** Mr. President, the sponsors had a brief and pleasant meeting.

**The President.** We are very happy for that.

**Senator Roco.** We agreed, as discussed already in prior debates and as we earlier discussed over the telephone with the principal sponsor—unfortunately, I think Senator Shahani failed to contact Senator Santiago—that the proposition before the Chamber now is to amend the definition of “rape” as defined in the Revised Penal Code so that we will look at “rape” as a felony and all other provisions of the Revised Penal Code. As regards the stages of whether it is attempted, frustrated or consummated, all these other provisions, whether there are justifying circumstances, whether there are exempting circumstances, will come into play.

I hope, Mr. President, we have clarified the legal intention of the drafters of this bill.

Thank you, Mr. President.

**Senator Enrile.** Mr. President.

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

**Senator Enrile.** Mr. President, may I clarify one more point. I am referring to Section 10 which is denominated “Penalty.” I am not questioning the penalty, but I am referring

to the succeeding paragraph. It says here:

Any other crime committed by reason of or on occasion of rape shall be considered as a separate offense and the rules on complex crimes shall apply.

Mr. President, I would think of several situations here where a woman was first raped, then robbed and later on allowed to leave. I would understand that under this paragraph that I have read, the crime of rape will be separate from the crime of robbery. But I have a problem here. All of us who have taken the criminal law course were always impressed by our professors that, normally, the more serious crime absorbs the lesser crime.

Now, in a situation like this, I suppose that the crime of rape would be heavier than the mere act of robbing the victim beside raping her. Am I to understand that this will no longer be true if we amend the present law on rape; that we will have multiple crimes and thereby end up with multiple cases in court, adding to the clogging of our court dockets which we are trying to decongest?

#### SUSPENSION OF THE SESSION

**Senator Romulo.** May we ask for a suspension of the session, Mr. President, because I do not want again a situation where the sponsors will disagree.

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

*It was 5:32 p.m.*

#### RESUMPTION OF THE SESSION

*At 5:38 p.m., the session was resumed.*

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

**Senator Roco.** Mr. President, there was an agreement between the sponsors to propose, at the appropriate time, the deletion of the second and third paragraphs of Section 10. Just so the rules on complex crimes and the other rules of the Penal Code will then come into play for the judge, when the judge is ascertaining the penalty. It also simplifies the burden of the sponsor.

So if this is satisfactory to the distinguished gentleman from Cagayan, at the appropriate time, the second and third paragraphs of Section 10 will be deleted.

**Senator Enrile.** That will be all right with me, Mr. President. The other question that I would like to clarify, Mr. President, is in connection with Section 9—"Evidentiary Requirements." There is some degree of ambiguity here and I would like, with due respect, to clarify this because it says in Section 9:

Verbal objection or physical resistance in any degree of the offended party against any act of rape, or the existence of a situation which renders the offended party incapable of exercising her free will shall be prima facie evidence of lack of consent.

I would like to be clear on this, Mr. President. Under our law, it is constitutionally ordered that a person is presumed innocent at all times, and that the guilt must be proven beyond reasonable doubt.

Now, the establishment of a prima facie case simply because of a verbal objection or physical resistance in any degree will not overturn this presumption of innocence. Am I correct on this, Mr. President?

**Senator Shahani.** That is true, Mr. President. I think we did have an extensive discussion of this section last Wednesday and there was consultation among the sponsors. It was Senator Santiago who suggested that we could change the title of "Evidentiary Requirements" in two presumptions.

**Senator Enrile.** Now, beginning line 17 all the way to line 25.

The following shall not be construed as indicative of consent nor shall be considered as tending to establish the improbability of the commission of the crime:

- 1) the sexual history of the offended party;
- 2) the nature of her work, such as prostitution;
- 3) the amorous relationship between the offender and the offended party.

In other words, what this paragraph actually wants to say, especially lines 24 and 25, "Evidence of such nature at any stage of the prosecution and trial shall be disregarded," is that these are inadmissible evidence to establish consent. Am I correct in this, Mr. President?

**Senator Shahani.** Mr. President, I think in the debate last Wednesday—I believe this was during the period with Senator

Maceda—we decided to delete this paragraph under Section 9, “Evidence of such nature at any stage of the prosecution and trial shall be disregarded,” precisely on that principle that guilt must be established first.

**Senator Enrile.** Thank you very much. That is all, Mr. President.

Thank you very much, Madam sponsor.

**Senator Romulo.** Mr. President.

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

**Senator Romulo.** Mr. President, may I ask now that Senator Mercado be recognized to interpellate.

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

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

I would like to follow up the point raised by Senator Herrera because I remember in the early part of the debate, the sponsor said that the thrust of this particular measure was not focused on rape committed by women but by men. It was because we are converting this to a crime against persons instead of against chastity. Rape an act of violence as well, thus in Section 2 the existing provisions of Section 3 and Section 4 indicate that it can be committed only by a man. However, the answer of the Senate President Pro Tempore was that she was going to look at this provision in a more holistic manner.

Mr. President, does she agree that there should be a deletion of “man” here and it should be “anyone” or “any person”, meaning both men and women will be liable? I am not too clear about it.

The reason I am concerned about this is that I do remember that in the '70s, there was a case in California where a teenager was gang-raped by a group of female teenagers who impaled the girl with a handle of a mop. In fact, the parents of the woman filed a case of rape against the gang and also a case against a television network that produced a program that showed a similar incident which was mimicked by the criminals. That became a celebrated case because it was a case of rape, and a case against a television station and the issue was also censorship.

In the light of that particular incident and considering paragraphs 3 and 4 under Section 2 that rape can be committed by a woman or by a man, can we have a more categorical position if the sponsors are going to accept an amendment to remove the words “a man” and, maybe, place the words “ANY PERSON”

in this particular provision?

#### SUSPENSION OF THE SESSION

**Senator Shahani.** Mr. President, may I request a brief suspension of the session.

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

*It was 5:46 p.m.*

#### RESUMPTION OF THE SESSION

*At 5:50 p.m., the session was resumed.*

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

**Senator Shahani.** Mr. President.

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

**Senator Shahani.** Mr. President, in consultation with the other sponsors, we recognize that Senator Mercado has a point. During the interpellation with Senator Herrera, we said that we would make the appropriate amendments. As I said, we did want this bill not to be gender-free, that it should really be clear that the victim of rape is the woman.

This is why we discarded the earlier approach to this bill which attempted to be gender-free. But if we make the bill that way, then we go into the issue of homosexuality, et cetera, which really makes it too complicated. Having said that, Mr. President, we nevertheless recognize that Section 2, paragraphs 3 and 4, lends itself to ambivalence.

So, instead of saying “by a man,” I think we will say “by a PERSON who shall insert any part of the body.”

Paragraph 4 will also be amended similarly, Mr. President, “by a PERSON who shall subject a woman...” et cetera.

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

The other issue that has to be addressed, Mr. President, is the issue of punishing the parents or guardians who allow their children below 12 years old to have sex with any person for a fee or prostitution, under Section 2 (d) of the bill, on a matter of expanded definition of rape—“when the woman is below twelve (12) years of age, even though neither of the circumstances mentioned above is present.”

Under this particular section, only the male offender is

punished, but the parents are not. Can we resolve this issue, considering that parental authority being exercised by the parents over the minor is critical?

**Senator Shahani.** Mr. President, I think we are here talking about rape, the act itself. And it would be difficult to include other persons, since it is really the offender and the victim who are involved in the crime of rape. But under Republic Act No. 7610, the parents are penalized. This is the act which refers to sexual abuse and exploitation. But, maybe, we can get for our colleague the exact words of that provision so we can be sure that we are meeting his requirements.

**Senator Mercado.** We shall try to propose it during the period of amendments.

Mr. President, may I proceed to Section 8, on the right of the rape victim to a closed-door hearing. Can I be informed on the sanctions if the right to a closed-door hearing will be violated? Who will be penalized, and what is the penalty if the right to a closed-door hearing of the complainant is not followed?

**Senator Shahani.** Mr. President, the choice, of course, is with the complainant. The complainant has the right to ask for a closed-door hearing, so it would be discretionary on the judge himself.

**Senator Mercado.** I can see the intent of Section 8, in this "Protective Measures." It says:

At any stage of the preliminary examination or investigation, prosecution and trial of a complaint for rape, the following rules shall be observed:

- 1) The right to a closed-door hearing of the complainant shall be strictly enforced unless expressly waived by the offended party.

We have passed a lot of bills and laws. While the intent is very clear, I am not too clear as to who will be penalized and what the penalty is. This might end up as a dead letter provision, considering what happens during the preliminary investigation as stated in the earlier debates on police investigation.

**Senator Shahani.** Mr. President, maybe this section would include those details. Because, certainly, these are now dealing with the administration of law itself so that the appropriate charges can be brought against the police, the fiscal and all of those involved in the criminal justice system.

**Senator Mercado.** On a related matter, Mr. President. Will the right to a closed-door hearing also include the right or the

refusal of the victim or the family of the victim to be interviewed or to have their stories published in the newspapers or covered by media?

One of the most excruciating things that happen to the rape victims is the fact that they get publicity. While there are a great number of responsible radio and television programs and newspapers, we also have tabloids, and some radio and television programs that really look for the gory details to publicize the same.

**Senator Shahani.** Mr. President, in Section 12, under "Damages," there is, in fact, mentioned there—and I think this is one of the new features of this bill—where "the reporter or columnist, editor and publisher in case of printed material; the newscaster or announcer, reporter, director and producer in case of radio or television broadcast, shall be held solidarily liable for damages." I think it is quite clear.

#### SUSPENSION OF THE SESSION

May I request for a brief suspension of the session, Mr. President. There is a request for more consultation.

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

*It was 5:58 p.m.*

#### RESUMPTION OF THE SESSION

*At 6:00 p.m., the session was resumed.*

**The President.** The session is resumed. Senator Shahani is recognized.

**Senator Shahani.** Concerning the right to a closed-door hearing which was previously brought up by Senator Mercado, I think Senator Santiago has a further wording which would support what I have said earlier, Mr. President. May I request that Senator Santiago be recognized.

**The President.** Senator Santiago, as a cosponsor, is recognized.

**Senator Santiago.** Mr. President, in its present formulation, Section 8 provides: "The right to a closed-door hearing of the complainant shall be strictly enforced...."

In order to avoid a collision with the constitutional provision for a right to a public hearing on the part of the accused, the authors have agreed that this particular provision shall instead



read, more or less, as follows: UPON MOTION, THE COURT MAY GRANT A CLOSED-DOOR HEARING IF IT DETERMINES, and so on, and then will follow a description of the situations or the occasions when a closed-door hearing would be considered feasible by the judge.

But under this proposed formulation, the power to grant a closed-door hearing will reside in the judge. The law will not treat the matter as a right on the part of the complainant. The complainant would simply have the privilege of filing a motion for a closed-door hearing, and ultimate and final determination of the issue will rest with the trial judge.

**Senator Mercado.** We thank Senator Defensor-Santiago for the explanation on this particular point, Mr. President.

May I proceed. We are still in Section 12 on "Damages," which states: "In addition to damages that may be recovered under existing laws, the following shall warrant the award of additional damages," and there is the enumeration, Mr. President.

"1) When the offended party becomes insane or suffers psychological damage as a result or by reason of the rape."

I believe, Mr. President, that anybody who goes through a traumatic experience of carnal knowledge without consent will have psychological damage. My impression is that psychological damage can be presumed. In other words, in this particular situation, we are going to determine whether there was psychological damage suffered or the offended party becomes insane.

Mr. President, is it not a better attitude to presume psychological damage—and that when the person becomes insane, that is when the issue of additional damages can be recovered?

Now, if that is the track, there are psychological things that happen to a victim that may not be readily apparent immediately after the commission of the crime and the psychological trauma will manifest itself later.

Up to when can the victim claim damages, or should we not just presume that all those who have gone through the traumatic experience of rape will indeed suffer psychological damage?

**Senator Shahani.** There are degrees of psychological damage, Mr. President, depending on the capability of the victim to overcome that shock. What we are thinking here is really severe psychological damage. I think our colleague is correct in that every rape victim does suffer shock or trauma. But we are talking about additional damages, and insanity, of course, is already an extreme result of shock. Damage, I think, is quite

a strong word there. Damage is sort of permanent. It could be chronic. But I think it is very difficult to put a time limit because it depends on every person. Even medical expertise has no united opinion on the time and the pace of recovery.

**Senator Mercado.** Will we have a technical definition of "psychological damage"? Can we have indicators or parameters to indicate how much damage has been committed on the person's psyche?

**Senator Shahani.** Mr. President, I am glad this issue was brought up. Maybe this sponsor should be given some time to look for a more precise definition of "psychological damage."

**Senator Mercado.** Still on the same Section 12, we speak of sexually transmitted diseases in paragraph 4 "when the offended party is infected with HIV or other sexually transmissible disease, in which case the offender shall also be ordered to pay for all hospital and/or medical expenses incurred as a result of the infection."

Mr. President, the incubation period of HIV can be up to 10 years. A person can be infected with the HIV virus but will not manifest any symptom except in an examination of the blood where we have a positive result. But there will be no need for medical expenses because the patient will not be confined.

Let us say that 10 years after the rape, the victim who has been infected with the virus incurs medical expenses that drain all of her savings and the savings of the family, and even as a consequence, as it is now known, will surely die. Should there not be additional damages?

I think the way this particular provision has been crafted, we are looking only at infections that can be cured by simple antibiotics or infections like gonorrhea or syphilis. But the more lethal infection would be HIV. And in the act of rape, the criminal or the offender has actually given the victim a death sentence. It is only suspended. So, should that not be addressed not merely by this provision that speaks of additional hospital or medical expenses but something that may occur even 10 years afterwards?

**Senator Shahani.** Mr. President, I think that is an important point. There is a distinction certainly between HIV and other sexually transmissible diseases.

In the period of amendments, we can put a separate sentence in the case of HIV. It is true that the effect of the transmittal may not be felt until after several years and up to now, there is really no cure for the disease. So I believe it is a valid point, Mr. President.

**Senator Mercado.** We thank the sponsor for the answers to our questions. Thank you very much, Mr. President.

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

#### SUSPENSION OF THE SESSION

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

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

*It was 6:10 p.m.*

#### RESUMPTION OF THE SESSION

*At 6:11 p.m., the session was resumed.*

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

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

**Senator Romulo.** Mr. President, after consultation with the sponsors, I move that we suspend consideration of Senate Bill No. 950.

**The President.** Is there any objection to this motion? *[Silence]* There being none, the consideration of Senate Bill No. 950 is hereby suspended.

#### SUSPENSION OF THE SESSION

**Senator Romulo.** May I ask for another brief suspension of the session.

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

*It was 6:11 p.m.*

#### RESUMPTION OF THE SESSION

*At 6:17 p.m., the session was resumed.*

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

#### RESOLUTION ON SECOND READING

**P. S. Res. No. 475—Ratification: 2nd Protocol-General Agreement on Trade in Services (WTO)**  
(Continuation)

**Senator Romulo.** Mr. President, I move that we resume

consideration of Proposed Senate Resolution No. 475 as reported out under Committee Report No. 146.

**The President.** Resumption of consideration of Proposed Senate Resolution No. 475 is now in order.

**Senator Romulo.** We are still in the period of interpellations. I ask, Mr. President, that the chairman of the Committee on Foreign Relations, Sen. Ernesto Maceda, be recognized.

I also ask that the distinguished Minority Leader, Senator Angara, be recognized to interpellate.

**The President.** Senators Maceda and Angara are hereby recognized for the continuation of sponsorship and interpellation, respectively.

**Senator Maceda.** Mr. President, I would be happy to respond to the Minority Leader.

**Senator Angara.** Thank you, Mr. President. This is a far-ranging Protocol and this is, as I understand it, in line with our accession to the World Trade Organization.

Can the Gentleman tell us, Mr. President, what is the consequence if the Senate does not concur in the ratification of this Second Protocol?

**Senator Maceda.** Mr. President, it would signal a retreat from our previous commitments under the leadership of the distinguished senator when the Senate acceded to the GATT of liberalization in trade and financial services. The Protocol will then go into effect without the participation of the Philippines.

As a matter of fact, I believe that within the next few weeks, it will probably go into effect as regards all those countries which have so far acceded to it.

**Senator Angara.** Mr. President, do we not have until December 1997 to either concur with this Protocol? Are we required to give our concurrence this early?

**Senator Maceda.** Yes, that is correct, Mr. President, although the initial period that was allowed or recommended for accession was June 30, 1996. Subsequently, I understand that after December 1997, there will be a start of another round of discussions on the matter of extending or amending the Protocols.

**Senator Angara.** So, even if we do not ratify now, we do not concur in the ratification now, the Philippines will not incur any penalty nor suffer any liability as a result of such non-concurrence. Would that be correct, Mr. President?