

## R.C.C. NO. 29

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Monday, July 14, 1986

### OPENING OF SESSION

At 9:35 a.m., the President, the Honorable Cecilia Muñoz Palma, opened the session.

THE PRESIDENT: The session is called to order.

#### NATIONAL ANTHEM

THE PRESIDENT: Everybody will please rise to sing the National Anthem.

Everybody rose to sing the National Anthem.

THE PRESIDENT: Everybody will please remain standing for the Prayer to be led by the Vice-President, the Honorable Ambrosio B. Padilla.

Everybody remained standing for the Prayer.

#### PRAYER

MR. PADILLA: Almighty God, Creator of the Universe, Master of Mankind and our Sovereign Lord, "without Thee, we can do nothing; with Thee, nothing is impossible." Thou madest possible the political miracle of February 22-25 through the peaceful revolution of the people, a unique event unknown in the history of our Asian neighbors and unprecedented in our own history. Our people succeeded without violence in terminating and in toppling down the dictatorship which had been entrenched in absolute power during 14 years of martial misrule. More things are wrought by prayers than this world dreams of. Lord, many a time in the past, Thou hast shown deep affection for our country and abiding love for our people.

God of power and light, come to our aid again, in this our delicate responsibility of formulating a new and permanent constitution. We must solicit and beseech Thine Divine Providence for aid and guidance, to enlighten our minds, to instill understanding in our hearts and to fortify our resolve to labor assiduously with devotion and dedication, so that we may submit to our sovereign people a fundamental charter that will not only embody our ideals and aspirations but also assure a just society, an honest government, a responsive administration with the blessings of truth, justice, freedom, peace and progress in a living and effective democracy.

Beloved Mother Mary, You have never abandoned, but have ever extended, Your motherly affection and love to our people. In these days of our need for Your assistance, we pray that You be with us today and always, to bless our people with a better life and for all to enjoy a government not only of and by the people, but more importantly, for the people. Amen.

#### ROLL CALL

THE PRESIDENT: The Secretary-General will please call the roll.

THE SECRETARY-GENERAL, reading:

Abubakar Present [\*] Monsod Present [\*]

Alonto Present [\*] Natividad Present [\*]

Aquino Present Nieva Present

Azcuna Present Nollado Present

Bacani Present Ople Present [\*]

Bengzon Present Padilla Present

Bennagen Present [\*] Quesada Present

Bernas Present [\*] Rama Present

Rosario Braid Present Regalado Present

Brocka Present [\*] Reyes de los Present [\*]

Calderon Present [\*] Rigos Present

Castro de Present Rodrigo Present

Colayco Present Romulo Present

Concepcion Present Rosales Present

Davide Present [\*] Sarmiento Present

Foz Present Suarez Present

Garcia Present [\*] Sumulong Present [\*]

Gascon

Present [\*] Tadeo Present [\*]

Guingona Present Tan Absent

Jamir Present Tingson Absent

Laurel Present [\*] Treñas Present

Lerum Present Uka Absent

Maambong Present [\*] Villacorta Present [\*]

Commissioner Villegas is on official mission.

The President is present.

The roll call shows 26 Members responded to the call.

THE PRESIDENT: The Chair declares the presence of quorum.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: I move that we dispense with the reading of the Journal of last session.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

#### APPROVAL OF JOURNAL

MR. RAMA: Madam President, I move that we approve the Journal of last Friday's session.

THE PRESIDENT: Is there any objection to the motion of the Floor Leader? (Silence) The Chair hears none; the motion is approved.

MR. RAMA: Madam President, I move that we proceed to the Reference of Business.

THE PRESIDENT: Is there any objection that we proceed to the Reference of Business? (Silence) The Chair hears none; the motion is approved.

The Secretary-General will read the Reference of Business.

#### REFERENCE OF BUSINESS

The Secretary-General read the following Proposed Resolutions on First Reading, Communications and Committee Report, the President making the corresponding references:

#### PROPOSED RESOLUTIONS ON FIRST READING

Proposed Resolution No. 487, entitled:

RESOLUTION TO INCORPORATE IN THE TRANSITORY PROVISIONS OF THE NEW CONSTITUTION A PROVISION MANDATING THE TRANSFER OF ALL RECORDS, EQUIPMENT, BUILDINGS, FACILITIES, AND OTHER PROPERTIES OF ANY OFFICE OR BODY ABOLISHED OR REORGANIZED UNDER THIS CONSTITUTION TO THE OFFICE OR BODY TO WHICH ITS POWERS, FUNCTIONS, AND RESPONSIBILITIES SUBSTANTIALLY PERTAIN.

Introduced by Hon. Davide, Jr.

To the Committee on Amendments and Transitory Provisions.

Proposed Resolution No. 488, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION REQUIRING THE STATE TO UNDERTAKE THE TRANSLATION OF THE NEW CONSTITUTION INTO THE VARIOUS PHILIPPINE LANGUAGES AND TO PROVIDE A FREE COPY TO EVERY FAMILY OR HOUSEHOLD.

Introduced by Hon. Bennagen and Sarmiento.

To the Committee on General Provisions.

Proposed Resolution No. 489, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION PROTECTING THE INDISSOLUBILITY OF MARRIAGE AND THE STABILITY OF THE FILIPINO FAMILY.

Introduced by-Hon. Bacani.

To the Committee on Preamble, National Territory, and Declaration of Principles.

Proposed Resolution No. 490, entitled:

RESOLUTION TO INCORPORATE IN THE TRANSITORY PROVISIONS OF THE NEW CONSTITUTION A PROVISION RECOGNIZING THE AUTHORITY AND JURISDICTION OF

EXISTING COURTS, MANDATING THE DETERMINATION OF PENDING CASES IN ACCORDANCE WITH THE LAWS THEN IN FORCE, UPHOLDING THE PROVISIONS OF THE EXISTING RULES OF COURT, PROVIDING FOR THE CONTINUANCE OF INCUMBENT MEMBERS OF THE JUDICIARY AND THEIR REMOVAL ONLY FOR CAUSE, AND REQUIRING SPECIAL COURTS AND QUASI-JUDICIAL BODIES TO SUBMIT THEIR RULES OF PROCEDURE FOR APPROVAL BY THE SUPREME COURT.

Introduced by Hon. Davide, Jr.

To the Committee on Amendments and Transitory Provisions.

Proposed Resolution No. 491, entitled:

RESOLUTION TO INCORPORATE IN THE CONSTITUTION PROVISIONS FOR THE PROTECTION OF THE RIGHTS AND WELFARE OF FILIPINO OVERSEAS WORKERS (FOW'S).

Introduced by Hon. Quesada, Tadeo and Aquino.

To the Committee on Social Justice.

Proposed Resolution No. 492, entitled:

RESOLUTION TO INCORPORATE IN THE TRANSITORY PROVISIONS OF THE NEW CONSTITUTION A PROVISION AUTHORIZING THE PRESIDENT TO REVIEW CONTRACTS ENTERED INTO BY THE PREVIOUS GOVERNMENT OR ANY SUBDIVISION, AGENCY OR INSTRUMENTALITY THEREOF, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS AND TO REVOKE, MODIFY OR AMEND THE SAME WHEN THE NATIONAL INTEREST OR WELFARE SO REQUIRES.

Introduced by Hon. Davide, Jr.

To the Committee on Amendments and Transitory Provisions.

Proposed Resolution No. 493, entitled:

RESOLUTION PROVIDING FOR THE ESTABLISHMENT OF AN INDEPENDENT CENTRAL MONETARY AUTHORITY.

Introduced by Hon. Davide, Jr.

To the Committee on General Provisions.

Proposed Resolution No. 494, entitled:

RESOLUTION TO INCORPORATE IN THE TRANSITORY PROVISIONS OF THE NEW CONSTITUTION A PROVISION MANDATING THE GRANT OF SEPARATION PAY AND OTHER BENEFITS TO CIVIL SERVICE ELIGIBLES WHO WERE SEPARATED FROM THE SERVICE FROM FEBRUARY TWENTY-SIX 1986.

Introduced by Hon. Davide, Jr.

To the Committee on Amendments and Transitory Provisions.

Proposed Resolution No. 495, entitled:

RESOLUTION PRESCRIBING THE ORDER OF SUCCESSION TO THE OFFICE OF THE PRESIDENT IN CASE OF PERMANENT VACANCY OR TEMPORARY DISABILITY AND PROVIDING FOR THE

## MECHANISM FOR THE DECLARATION OF INCAPACITY OF THE PRESIDENT.

Introduced by Hon Maambong, Ople, Natividad and de los Reyes, Jr.

To the Committee on the Executive.

## COMMUNICATIONS

Letter from Mr. Ceferino P. Padua, former Constitutional Convention delegate, submitting the article "Right to Education — Somewhere in the Bill of Rights."

(Communication No. 175 — Constitutional Commission of 1986)

To the Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights.

Letter from Ms. Cristina M. Liamzon of the Philippine Partnership for the Development of Human Resources in Rural Areas, forwarding a resolution proposing the inclusion of provisions on agrarian reform and rural development.

(Communication No. 176 — Constitutional Commission of 1986)

To the Committee on Social Justice.

Letter from the Personnel Officers Association of the Philippines, Inc., signed by Mr. Bayani A. Aquino, recommending certain provisions on the Civil Service.

(Communication No. 177 — Constitutional Commission of 1986)

To the Committee on Constitutional Commissions and Agencies.

Resolution Mo. 217 of Sangguniang Panlungsod of Davao City, proposing to abolish the integration of the local police and the Philippine Constabulary and to return the administrative supervision and control of local police to the mayors.

(Communication No. 178 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Telegram from Mr. Enrique Soriano of Iloilo City proposing the adoption of the jury system.

(Communication No. 179 — Constitutional Commission of 1986)

To the Committee on the Judiciary.

Letter from Mr. Rey Iyog of Sugbongcogon, Misamis Oriental, requesting the inclusion of a provision that would expedite the resolution of cases in the courts.

(Communication No. 180 — Constitutional Commission of 1986)

To the Committee on the Judiciary.

Resolution of the Federation of Senior Citizens of the Province of Albay suggesting the inclusion of a provision giving due recognition to senior citizens.

(Communication No. 181 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Letter from Major Amador R. Tanael, Jr. of the Regional Special Action Force Battalion, PC/INP Regional

Command 4, requesting the inclusion of a provision integrating into the regular force of the AFP reserve officers who have rendered ten or more years active service.

(Communication No. 182 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Letter from Ms. Judith N. Relato of 23 N. Baesa Road, Quezon City, proposing the retention of US bases, disenfranchisement of illiterate voters, synchronization of elections, and a six-year-no-reelection term for all elective officials.

(Communication No. 183 — Constitutional Commission of 1986)

To the Committee on Constitutional Commissions and Agencies.

Communication from the Promotion of Church People's Rights — Mindanao, requesting provisions for the regulation of activities of transnational corporations for the preservation of natural resources and the dismantling of paramilitary forces.

(Communication No. 184 — Constitutional Commission of 1986)

To the Committee on the National Economy and Patrimony.

Communication from the Honorable Neptali Gonzales, Minister of Justice, forwarding a communication from members of the Veterans Federation of the Philippines and other veterans' associations, proposing a presidential form of government with a bicameral legislature.

(Communication No. 185 — Constitutional Commission of 1986)

To the Committee on the Executive.

Letter from Mr. Robert V. Dulay, Officer-in-Charge, Province of La Union, transmitting proposals on the declaration of principles and state policies, local government, autonomous regions and transitory provisions.

(Communication No. 186 — Constitutional Commission of 1986)

To the Steering Committee.

Letter from the honorable Commissioner Regalado E. Maambong, enclosing a copy of the Magna Carta of Social Justice and Economic Freedom by Commissioner (Speaker) J.B. Laurel, Jr., and saying that the basic policies enunciated therein are still valid today.

(Communication No. 187 — Constitutional Commission of 1986)

To the Committee on Social Justice.

Letter from Mr. Tomas L. Joaquin of Mendiola St., Alabang, Muntinlupa, Metro Manila, proposing provisions that will require religious organizations to pay real estate and income taxes; election of the Justices of the Supreme Court and the members of the Commission on Elections by the legislature and the election of fiscals by the electorate, among others.

(Communication No. 188 — Constitutional Commission of 1986)

To the Steering Committee.

Letter from Mr. Orlando G. Rogelio of Victoria, Oriental Mindoro, proposing that the six-year term of President

Corazon C. Aquino and Vice-President Salvador H. Laurel shall commence upon the ratification of the new Constitution; recommending severance of diplomatic relations with communist countries and the retention of United States military bases, and opposing regional autonomy.

(Communication No. 189 — Constitutional Commission of 1986)

To the Steering Committee.

Letter from the United Church of Christ in the Philippines, signed by Bishop Erme R. Camba and Dr. Emilio C. Capulong, Jr., urging the retention of the present provisions calling for and implementing the principle of separation of church and state.

(Communication No. 190 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Resolution of the Philippine Medical Women's Association, Inc., proposing the principle that it shall be the duty of the state to give free primary health care to its underprivileged citizens.

(Communication No. 191 — Constitutional Commission of 1986)

To the Committee on Preamble, National Territory, and Declaration of Principles.

#### COMMITTEE REPORT

Committee Report No. 24 on Proposed Resolution No. 496, prepared by the Committee on National Economy and Patrimony", entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION AN ARTICLE ON NATIONAL ECONOMY AND PATRIMONY,

recommending its approval in substitution of Proposed Resolution Nos. 10, 12, 16, 22, 46, 47, 63, 89, 122, 211, 213, 219, 288, 309, 317, 368, 369, 374, 375, 378, 388, 389, 401 and 412.

Sponsored by Hon. Villegas, Tadeo, Bacani, Bengzon, Jr., Bennagen, Foz, Gascon, Monsod, Natividad, Ople, Romulo, Sarmiento, Suarez, Uka and Villacorta.

To the Steering Committee.

#### SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended.

It was 9:52 a. m.

#### RESUMPTION OF SESSION

At 10:29 a. m., the session was resumed with the Honorable Jose F. S. Bengzon, Jr. presiding.

THE PRESIDING OFFICER (Mr. Bengzon): The session is resumed.

MR. RAMA: Mr. Presiding Officer, before anything else, the Chair would like to acknowledge the presence of college students from the College of the Holy Spirit who are here to observe us.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

#### CONSIDERATION OF COMMITTEE REPORT NO. 18

(Article on the Judiciary)

Continuation

## PERIOD OF AMENDMENTS

MR. RAMA: Mr. Presiding Officer, we are now in the period of amendments on the Article on the Judiciary.

I ask that Commissioner Aquino be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Aquino is recognized.

MS. AQUINO: Thank you, Mr. Presiding Officer.

May I call the attention of the Committee members to the second paragraph. of Section 1, defining judicial power. Would it be possible for the Committee to accept an amendment which would incorporate a positive and explicit definition of the powers of the Judiciary to provide for the redress of wrong for the violation of such rights, such that the amendment by insertion in between the words "inforceable" and "and" would read: THE REDRESS OF WRONGS FOR VIOLATIONS OF SUCH RIGHTS?

MR. CONCEPCION: It is possible, and it is, in fact, included in the draft prepared by the Committee. It is found in Section 7 (5) which states that the Supreme Court has, among others, the power to promulgate rules concerning the protection and enforcement of constitutional rights. The promulgation of such rules indicates that the protection and enforcement of these constitutional rights is something that the courts have to consider in the exercise of their judicial power.

MS. AQUINO: I am conscious of that, Mr. Presiding Officer. It is just that I have in my mind the need to "explicitate" that responsibility on the part of the court, if only to give teeth and muscle to judicial power, essentially the power to adjudicate civil rights. In the formulation of the second paragraph, there is almost a mistaken connotation that judicial power would only refer to the adjudication of adverse litigants, as if it were always in the nature of a private conflict. Would it be possible for the Committee to accept this amendment, if only to underscore the responsibility of the Judiciary being the bulwark of civil liberties?

MR. CONCEPCION: That declaration is included in the first part of the sentence "Judicial power includes — note the words 'the duty,' we did not say 'the power' — the duty of courts of justice to settle actual controversies involving rights which are legally demandable and inforceable. . ." It seems that this part of the paragraph is what the Commissioner would want to be specifically stated.

MS. AQUINO: Mr. Presiding Officer, this is not an amendment for which I am willing to put my life on the line. But may I be clarified on the intention of the Committee in not accepting this amendment?

MR. CONCEPCION: Yes, because it is a duplication which we see as unnecessary. Generally, constitutional provisions are brief, concise but all-embracing. That is a policy acknowledged in constitution-making.

MS. AQUINO: But do I understand it correctly that when the second paragraph was formulated, the idea was to provide in the inclusive formulation the duty of the courts to settle actual controversies and affirmatively asserting that it is likewise the duty of the courts to positively provide for the redress of wrongs for the violations of such rights?

MR. CONCEPCION: How would the Commissioner phrase the paragraph in question?

MS. AQUINO: On line 6, Section 1, after the word "and," insert the phrase THE REDRESS OF WRONGS FOR VIOLATIONS OF SUCH RIGHTS . . .

MR. CONCEPCION: "Settle actual controversies involving rights." That would be a redundancy.

MS. AQUINO: ". . . which are legally demandable and inforceable and THE REDRESS OF WRONGS FOR VIOLATIONS OF SUCH RIGHTS."

MR. ROMULO: Mr. Presiding Officer, the position of the Committee is that it is unnecessary and we are willing to admit on record that the Commissioner's amendment is not acceptable because it is already included in the second paragraph of Section 1, particularly in relation to Section 7 (5).

MS. AQUINO: Mr. Presiding Officer, on the strong representation of Commissioner Romulo, I understand it correctly that it is the implicit intention of the Committee to likewise read into this provision this kind of a duty on the part of the court.

I am respectfully withdrawing my amendment.

THE PRESIDING OFFICER (Mr. Bengzon): Thank you very much, Commissioner Aquino.

MR. ROMULO: Thank you.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, there is an anterior amendment, so I ask that Commissioner Maambong be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Maambong is recognized.

MR. MAAMBONG: Mr. Presiding Officer and honorable Commissioners:

I am adverting to Section 1, line 5 of the second paragraph. I wonder if the Committee would accept an amendment to delete the word "actual" in the phrase "to settle actual controversies" on line 5. May I explain for just a few seconds.

If we say "actual," we are actually contemplating a situation where there are parties, petitioners, respondents, plaintiffs and defendants. But there are so many cases filed in court where there are actually no contesting parties. For example, in a case of declaratory relief, there are really no actual parties, and so by deleting the word "actual" we do not damage the whole provision, but we would only be more specific in our terminology,

I submit, honorable Commissioners.

MR. CONCEPCION: I beg to call the Commissioner's attention to the fact that the Supreme Court has neither authority nor judicial power to pass or grant a declaratory judgment. Judicial power per se is merely the power to settle controversies.

MR. MAAMBONG: I understand that, Mr. Presiding Officer, but the first paragraph in Section I talks not only of the Supreme Court but also of such lower courts as may be established by law.

MR. CONCEPCION: That is right. That is why I said, judicial power is limited to the settling of actual controversies.

It is very risky for any court to pass upon hypothetical questions. The same set of principal basic facts may be affected by the surrounding circumstances which will necessarily be lacking for a judgment on a hypothetical case.

Judicial powers deal with relations among people. Two persons may commit the same crime of homicide but the circumstances surrounding the same constitute part of the equities that may and should be considered by the court in deciding the case. Those equities are lacking in hypothetical cases.

MR. MAAMBONG: Just to leave this point, Mr. Presiding Officer, is it, therefore, the decision of the Committee that declaratory relief is actually an actual controversy? Is that the thinking of the Committee?

MR. CONCEPCION: Determination of what is the law, as between two parties who have a conflict based upon what the law is or whether there is any law, would be an actual controversy.

MR. MAAMBONG: And in the same category, Mr. Presiding Officer, quieting of title, for example, would also be an actual controversy.

MR. CONCEPCION: Yes.

MR. MAAMBONG: Thank you.

MR. CONCEPCION: Thank you.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Aquino be recognized to amend Section 3.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Aquino is recognized.

MS. AQUINO: Thank you, Mr. Presiding Officer.

May I preface my amendment to Section 3 (2) by noting that there is a growing tendency of governments to accumulate more and more power on the pretext of promoting general welfare, and that tendency is practically irresistible, such that for any provision on judicial review to be meaningful, the exercise of the power of judicial review should be feasible and viable, unfettered by the daunting constraints of meeting a high number to be able to strike down a law as unconstitutional.

I was wondering if the Committee would consider an amendment by deletion of the words "plus one" on lines 23, 24 and 25, or in the alternative, if that is retained, to delete the whole phrase "of the members who actually participated when the case was submitted for decision," on line 24.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. ROMULO: Commissioner Regalado will reply.

MR. REGALADO: Upon consultation with the other members of the Committee, it is our feeling that with respect to the proposed amendment for a declaration of unconstitutionality, we will maintain the vote requirement of majority plus one of the members. The reason for this is that since a law has been deliberated upon by the legislature, and later has been approved by the President, we therefore have had the participation of the two branches of the government. Therefore, it should take a higher number of votes to declare such a law unconstitutional.

Although it was not mentioned by the proponent of the amendment, I might as well include also the fact that the Committee has agreed that with respect to the number of votes, whether majority or majority plus one, we will eliminate the phrase "members who actually participated."

MS. AQUINO: That was my alternative proposal. In other words, if we delete the phrase "members who actually participated when the case was submitted for decision," the required number of votes would only be seven as distinguished from the deletion of "plus one" which should mean six.

MR. REGALADO: That is right.

MS. AQUINO: So, I would concede to the requirement of making a distinction between any ordinary decision and that which would declare a law as unconstitutional such that I was advancing this alternative proposal.

MR. REGALADO: The reason why, instead of making a specific statement as to the number of votes, we are

resorting to the phrase "majority plus one," is that there are also proposals for the increase of the number of the membership of the court. So, we just decided to make it "majority plus one," regardless of what would be the eventual outcome as to the total membership of the court.

MS. AQUINO: So, do I understand it correctly that the Committee is amenable to that proposal to delete just the phrase "the members who actually participated"?

MR. REGALADO: Yes.

MS. AQUINO: Thank you, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): For clarity, will the Committee now, therefore, read the provision as has been accepted?

MR. REGALADO: Section 3 (2) will, therefore, read:

"All cases involving the constitutionality of a treaty, international or executive agreement, or law shall be heard and decided by the Supreme Court en banc, and no treaty, international or executive agreement, or law may be declared unconstitutional without the concurrence of a majority plus one of the members."

MS. AQUINO: Thank you, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Is Commissioner Aquino satisfied?

MS. AQUINO: Yes, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Thank you very much.

MS. AQUINO: Mr. Presiding Officer, may I be allowed to introduce an amendment on Section 7 (5).

MR. RODRIGO: Anterior amendment, Mr. Presiding Officer.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: I would like to call on Commissioner Lerum for an anterior amendment on Section 3.

MR. RODRIGO: May I just make some remarks in connection with the amendment just accepted by the Committee. This is very important because as a consequence of that amendment, we should also amend the same phrase "a majority of the members who actually participated" which appears on lines 31 and 32 of page 1 and lines 2 and 3 of page 2.

MR. ROMULO: Yes, we accept that.

THE PRESIDING OFFICER (Mr. Bengzon): So for the record, may we know from the Committee how many amendments have been accepted.

MR. ROMULO: Mr. Presiding Officer, just a minute, Commissioner Padilla has a remark with regard to Commissioner Rodrigo's comment.

MR. PADILLA: The phrase "of the members who actually participated when the case was submitted for decision" should remain in paragraphs 3 and 4 of Section 3 because oftentimes, the Supreme Court Justices are not in full complement. The reasons are:

(1) vacancy or non appointment;

- (2) legal disqualification;
- (3) voluntary inhibition; or
- (4) justices are absent or on leave.

So for some reasons, a court of eleven (11) may only have seven (7) or maybe eight (8) members who actually participate. It is not correct to have the opinion of a minority of the court prevail over a majority of the members participating. There were instances in the past where a motion for reconsideration was decided and even a decision of conviction in a criminal case reversed on appeal by the accused because the concurrence of eight (8) members, out of fifteen (15), which was the full membership of the court, was not obtained. The full membership was usually never complete, so there had been instances where seven (7) voted for a motion for reconsideration which was denied based on four (4) or five (5) votes against. And because the seven votes do not constitute the majority of fifteen, the motion for reconsideration was lost, and even the judgment of conviction in a criminal case was reversed. That is the effect of several decisions where an aggrieved party or the state in a criminal case or a party in a petition, or in a motion for reconsideration received 7 votes as against 4 or 5 and yet the minority prevailed, and that is what I denounced before as the tyranny of a minority in the Supreme Court.

So while I agree that in determining the validity of a treaty or the constitutionality of a law we should have a majority or a majority plus one of the members because that is quite important to declare a law unconstitutional, in all other cases we should have a majority of the members participating, and I do not believe we should remove that phrase in the two subsequent paragraphs.

MR. ROMULO: So, Mr. Presiding Officer, I stand corrected. We accept the alternative amendment of Commissioner Aquino to Section 3 (2), but we do not accept the amendment to paragraphs 3 and 4 of Section 3.

MR. PADILLA: As a matter of fact, Commissioner Aquino did not propose the elimination.

MR. ROMULO: That is correct.

MR. RODRIGO: Mr. Presiding Officer, I just thought that for uniformity's sake this phrase, which appears in both paragraphs 3 and 4, should also be revised accordingly. However, since that phrase still remains, may I ask a clarification.

THE PRESIDING OFFICER (Mr. Bengzon): The Chair will first dispose of the amendment proposed by Commissioner Aquino which has been accepted by the Committee.

MR. RODRIGO: I thought it was already approved.

THE PRESIDING OFFICER (Mr. Bengzon): It has been accepted by the Committee but we have not put it to a vote yet.

MR. RODRIGO: I move that we vote on it.

#### VOTING

THE PRESIDING OFFICER (Mr. Bengzon): Those in favor of the amendment proposed by Commissioner Aquino, please raise their hand. (Several Members raised their hand.)

Those against the proposed amendment, please raise their hand. (No Member raised his hand.)

The results show 30 votes in favor and none against; the amendment is approved.

MR. RODRIGO Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Yes, Commissioner Rodrigo is recognized.

MR. RODRIGO: Since the phrase "majority of the members who have actually participated when the case was submitted for decision" still appears on paragraphs 3 and 4 of Section 3, may I ask some clarificatory questions for the record.

If a case is brought before the Supreme Court, briefs are submitted — appellant's brief, attorney's brief, reply brief — sometimes together with the petition for certiorari and reply. Afterwards, oral argument follows and sometimes, memoranda are filed. Then a deliberation by the court follows. In this instance, what is the meaning of "members who actually participated"? Let us say a member has read all the briefs, all the pleadings but was not present at the oral argument, did he or did he not participate?

MR. PADILLA: Yes, he participated. It is not necessary that the justices should be present at every single instance during the proceedings. However, in the resolution or decision of the court, sometimes it is stated that some justices took no part or are on leave, and these are those who did not participate.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Concepcion is recognized.

MR. CONCEPCION: "Participated" means those members who took part in the deliberations and reached the conclusions that are incorporated in the court's opinion.

MR. RODRIGO: Suppose a member has read all the briefs and the memoranda and he was at the oral argument but was not present during the deliberations by the members of the court, had he not participated?

MR. CONCEPCION: Actually he had not participated because he was not present in the deliberations. He did not vote or express his opinion for consideration by his colleagues.

MR. RODRIGO: Suppose he had read all the briefs and the memoranda and had listened to the oral argument but he happened to have been sick when the court deliberated, would he not have been considered as having participated?

MR. CONCEPCION: No.

MR. RODRIGO: So he would not be included in determining the majority plus one?

MR. CONCEPCION: That is right.

MR. RODRIGO: The deciding factor then is that the member must have participated in the deliberations of the court.

MR. CONCEPCION: That is the meaning of the draft proposed by the Committee.

MR. RODRIGO: As long as he was present during the deliberations by the members of the court, then he had participated.

MR. CONCEPCION: He cast his vote then.

MR. RODRIGO: For the record, I would like to get an answer because this is very important.

MR. CONCEPCION: Does the Commissioner mean one who was not present but who concurred in the written opinion?

MR. RODRIGO: Let us first say he was actually present — that would be the determining factor he was physically present in the deliberations by the court. Is that the determining factor?

MR. CONCEPCION: If he also signed the concurring opinion, then he participated.

MR. RODRIGO: Even if he was not physically present in the deliberations by the court?

MR. CONCEPCION: Commissioner Regalado will answer.

MR. REGALADO: I think we have to take into consideration another related provision because we speak here of concurrence of a majority of the members who actually participated when the case was submitted for decision. Section 14 (2) says:

A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of court or by the court itself.

MR. RODRIGO: Yes. That is not my point. My point is to define "participated." When is a justice considered to have participated or not in the deliberations of the court? This is very, very important because this will decide whether or not he would be included in the number which will serve as basis to determine the majority or the majority plus one.

MR. CONCEPCION: As we already said, "participated" means those who took part in the deliberations and cast their votes that were taken at the end of the deliberations when the case was referred to one of the members of the court for the writing of the court's opinion.

MR. RODRIGO: So, I repeat my question. Does he have to be physically present in the deliberations?

MR. CONCEPCION: That is correct.

MR. RODRIGO: I thought it was said that even if he was not physically present but concurred in the court's opinion, he would be considered as having participated?

MR. CONCEPCION: We mean having participated in the deliberations and concurred in the opinion.

MR. RODRIGO: He must be physically present and concur in the court's opinion?

MR. CONCEPCION: Yes.

MR. RODRIGO: Suppose he was physically present but he dissented?

MR. CONCEPCION: Yes, he participated.

MR. RODRIGO: But how could he take part, if he was not physically present?

MR. CONCEPCION: That is it. He did not take part in the deliberations. So he did not participate.

MR. RODRIGO: So even if he was physically present but just kept quiet, he did not participate?

MR. CONCEPCION: If he kept quiet, that means he agreed with the opinion of the majority. Silence means, consent.

MR. RODRIGO: May I just make my question very, very simple. Must a justice be physically present during the deliberations to be considered as having participated?

MR. CONCEPCION: As I said, he must be present in the deliberations and cast his vote before the case is assigned to one of the members of the court for the presentation of the opinion.

MR. RODRIGO: So, two things must be considered: First, he must be physically present in the deliberations and second, he must cast his vote.

MR. CONCEPCION: Yes.

MR. RODRIGO: Suppose he was physically present in the deliberations and said he would abstain, is he considered as having participated also?

MR. CONCEPCION: Yes, he participated also.

MR. RODRIGO: So, the important thing is his physical presence.

MR. CONCEPCION: No, because he has to vote also, or at least abstain from voting.

MR. RODRIGO: Yes. So if he abstained from voting but was physically present, is he considered to have participated?

MR. CONCEPCION: Yes.

MR. RODRIGO: Thank you.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Lerum be recognized to introduce an amendment on Section 3.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Lerum is recognized.

MR. LERUM: Mr. Presiding Officer, my amendment is on Section 3(1), line 17 which consists in the substitution of the word "ten" to FOURTEEN. As amended, Section 3(1) will read as follows: "The Supreme Court shall be composed of a Chief justice and FOURTEEN Associate Justices."

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. LERUM: I think the reason here is plain common sense because 15 justices will be able to render more decisions than 11. If we reduce the number, we are impliedly criticizing the former members of the Supreme Court, because under the present provision, we have 15 justices and still there is an accumulation of cases from around 3,000 to 5,000.

It means that these justices have not been doing their work, and I do not think that is correct.

Therefore, in order to ease this backlog of cases, plus those that will be filed, I am proposing that we retain the 15 justices that we have under the present Constitution.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. ROMULO: The Committee regrets that it cannot accept the amendment, but would prefer that the body, as a whole, decide the matter.

We are unable to accept the amendment because, firstly, the 15 slots were never really filled up; secondly, the backlog resulted although there were already 13 or 14 justices; and, finally, since it is a collegial body with 15 full membership, we would need more people in putting into deliberations before a decision is made.

MR. LERUM: May I answer? May I reply to that?

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Lerum has one minute.

MR. LERUM: On the first point where the 15 slots were never filled up, I think that could be remedied by an amendment to the effect that in case a vacancy occurs in the Supreme Court, it must be filled within two months from the date that the vacancy occurs.

On the other hand, the Gentleman said that there are around 3,000 to 5,000 cases. If we divide the work, with 5,000 cases and 11 justices, that means that 400 cases will have to be assigned to each of these 11 justices. On the other hand, if we have 15, that means that about 300 will be assigned for every justice. So, with 15 justices, more decisions will be rendered. I do not agree with the statement that 11 justices can solve the backlog of cases rather than the 15. We cannot see the logic to that. As a matter of fact, during my consultation with the labor sector, they said it is stupid to reduce 15 to 11 when these 15 cannot do the work. I submit to a vote.

MR. CONCEPCION: The observation is good if the backlog was incurred during normal times. But the backlog took place under a climate of uncertainty under the past administration which precisely is sought to be set up by the approval of the new Constitution. Secondly, a Member of this body consulted the present Chief Justice and the latter stated that they can make it with 11 members.

THE PRESIDING OFFICER (Mr. Bengzon): The Chair believes that the issue has been amply ventilated.

Therefore, the Chair now would like to call for a vote.

MR. LERUM: Mr. Presiding Officer, I think this provision is very important. The labor sector is very much interested in this because there are many cases now pending with the Supreme Court involving laborers. In my case, I think I have more than five pending cases for the last 10 years.

THE PRESIDING OFFICER (Mr. Bengzon): Yes. Can we just confine the Commissioner to his arguments that have not yet been articulated?

MR. LERUM: It is true that before, we had very few cases. But now, under the present circumstances, we have plenty of cases and most of them come from the labor sector. I think everyday there is a case being filed in the Supreme Court involving laborers, and this will continue under the present situation. If this were so, and we only have 11 justices, which is usually the number necessary during normal times, I do not think we will be creating a favorable situation where the government will have the respect of the workers. As far as the workers are concerned, they want their cases to be decided as soon as possible. That is why they say that this provision is stupid.

Thank you, Mr. Presiding Officer.

MR. RODRIGO: Mr. Presiding Officer, I propose an amendment to the amendment. I wonder if the proponent will accept an amendment to the amendment.

MR. LERUM: I wish to hear the Commissioner's amendment.

MR. RODRIGO: No, this is an amendment to the amendment: on line 18, change the word "two" to THREE, so that the line will read: "The Supreme Court shall be composed of a Chief Justice and FOURTEEN Associate Justices. It may sit en banc or in THREE divisions."

THE PRESIDING OFFICER (Mr. Bengzon): What does Commissioner Lerum say?

MR. LERUM: Just a minute. Will the Commissioner kindly repeat his amendment? I was getting my copy.

MR. RODRIGO: The last sentence in subsection 1 will read: "It may sit en banc or in THREE divisions."

MR. LERUM: I accept the amendment.

THE PRESIDING OFFICER (Mr. Bengzon): Let us vote on the amendment now as amended.

Will Commissioner Lerum read his amendment as amended by Commissioner Rodrigo? After that, we will call for a vote.

MR. LERUM: The amendment will read as follows: "The Supreme Court shall be composed of a Chief Justice and FOURTEEN Associate Justices. It may sit en banc or in THREE divisions."

VOTING

THE PRESIDING OFFICER (Mr. Bengzon): As many as are in favor of the amendment of Commissioner Lerum, as amended by Commissioner Rodrigo, please raise their hand. (Few Members raised their hand.)

As many as are against, please raise their hand. (Several Members raised their hand.)

The results show 10 votes in favor and 20 against; the amendment is lost.

MR. LERUM: Mr. Presiding Officer, on the same section, I am going to propose the following amendment: After the first sentence, insert the following: IN CASE OF ANY VACANCY, THE SAME SHALL BE FILLED WITHIN TWO MONTHS FROM THE OCCURRENCE THEREOF. This will be between the first and the second sentence.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. ROMULO: Mr. Presiding Officer, the Committee is willing to consider that amendment favorably, if the proponent will make it THREE MONTHS to enable the President to deliberate on the matter.

MR. LERUM: I accept, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Will Commissioner Lerum kindly read his amendments?

MR. LERUM: The amendment will read: IN CASE OF ANY VACANCY, THE SAME SHALL BE FILLED WITHIN THREE MONTHS FROM THE OCCURRENCE THEREOF.

MR. RODRIGO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Rodrigo is recognized.

MR. RODRIGO: Will the Gentleman yield to some questions?

MR. LERUM: Willingly.

MR. RODRIGO: The appointment under the 1973 Constitution is made by only one man. I think in the Constitution which we are drafting, the consensus is to revive the Commission on Appointments. So, it is possible that the President might appoint within three months; but if Congress is not in session and the Commission on Appointments is part of Congress, the appointment cannot be confirmed. Three months might be sufficient, if only one man, one appointing power, is involved.

THE PRESIDING OFFICER (Mr. Bengzon): Excuse me, Commissioner Rodrigo. On page 2, Section 5 of the committee report, the appointments of the members of the Supreme Court and the judges of the lower courts are not subject to confirmation.

MR. RODRIGO: Yes. But I am going to file an amendment to delete that portion and restore the power of appointment to the Commission on Appointments instead of that seven-man committee. So, if the Commission on Appointments is restored, insofar as the appointment of judges is concerned, three months might be too short because it will involve not only choosing by the President of the man he will appoint but actually appointing him and then having it confirmed by the Commission on Appointments.

THE PRESIDING OFFICER (Mr. Bengzon): Would Commissioner Lerum, therefore, agree to a deferment of that proposed amendment until such time as the body decides whether or not the appointment of judges and

justices will have to be confirmed by the Commission on Appointments?

MR. LERUM: I think this amendment can stand because this is a mandate on both the President and the Commission on Appointments, if there will be one. In the meantime, I think an ad interim appointment can be made so that the vacancy can be filled because our purpose here is to help the justices perform their functions. But if, as in the past, some positions of justices are not filled, then we are not helping in the promotion of a speedy settlement of justice. So, I think that could be taken care of by an ad interim appointment.

THE PRESIDING OFFICER (Mr. Bengzon): In that case, we will proceed to vote.

MR. ROMULO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Romulo is recognized.

MR. ROMULO: May we have a slight postponement? Our Chairman has to leave the room momentarily.

SUSPENSION OF SESSION

THE PRESIDING OFFICER (Mr. Bengzon): The session is suspended.

It was 11:14 a.m.

RESUMPTION OF SESSION

At 11:29 a.m., the session was resumed.

THE PRESIDING OFFICER (Mr. Bengzon): The session is resumed.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Lerum be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Will Commissioner Lerum please restate his amendment so that we can proceed to the voting?

MR. LERUM: I am requesting that my amendment be put to a vote.

THE PRESIDING OFFICER (Mr. Bengzon): Will he please restate his amendment?

MR. LERUM: My amendment reads: IN CASE OF ANY VACANCY, THE SAME SHALL BE FILLED WITHIN THREE MONTHS FROM THE OCCURRENCE THEREOF.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. ROMULO: The Committee accepts the amendment.

THE PRESIDING OFFICER (Mr. Bengzon): Is there any objection? (Silence) The Chair hears none; the amendment is approved.

The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner Maambong be recognized to propose an amendment on Section 3.

MR. MAAMBONG: Mr. Presiding Officer and members of the Committee, I have the intention to propose an amendment on line 28, specifically on Section 3, paragraph 3. I intend to propose an amendment to delete the words "presidential decrees," but before I do that, I would like to explain in a very short way.

There are several categories of laws as understood by lawyers, students, courts and practitioners. The first category of law, of course, is the Constitution. The second one in the line of the six categories is the statutes, properly so-called, passed by the law-making body. In most of the books on statutory construction, presidential decrees have been categorized in the second category of laws, which is known as statutes, properly so-called. And, therefore, if that is the interpretation — and that has been interpreted by the Supreme Court in that like — the words "presidential decrees" would actually be covered by the word "law" which is found in Section 3, paragraph 2.

I would like to add further that when we talk of presidential decrees, we are talking of several laws which not only affect the operation of the government; they also affect vested rights, contracts and even international commitments. For example, we have different codes now which are in the nature of presidential decrees. We have the Labor Code, the Insurance Code, Child and Youth Welfare Code, Code of Muslim and Personal Laws, and I can go on. Actually, the reason in my intention to delete the words "presidential decrees" is that they have the category of law which is already mentioned under Section 3, paragraph 2, in contradistinction with the lower category of laws which are mentioned in Section 3, paragraph 3. These are the proclamations, orders, instructions, ordinances and other regulations which are lower in category. We submit the proposal for comment so that we can file the necessary motion, if needed.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. ROMULO: Commissioner Regalado will reply.

MR. REGALADO: The Committee actually took into account the matter of a presidential decree having the status of a law. But then, we also took into account that under the Transitory Provisions in the 1973 Constitution, all presidential issuances were considered part of the law of the land. While it is true that it is generally accepted in academic circles that a presidential decree has the standing of a statutory law, not all people have agreed that it should be given that elevated level. The purpose here of the Committee is to avoid any question in the future because presidential decrees may eventually be invoked in cases before the Supreme Court. The purpose, therefore, of the Committee is to make it specific with due respect to the jurisdiction of the Supreme Court to include presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, just to avoid any question about the coverage of the jurisdiction of the Supreme Court.

MR. MAAMBONG: I just want to be clarified on the specific terms on this matter. Is it the thinking of the Committee that presidential decrees do not have the status of statutory law or what is properly known by lawyers, students and judges as "statutes"?

MR. PADILLA: "Statutes" usually refer to Republic Acts, Commonwealth Acts, Acts of the Philippine Commission, and laws passed by the National Assembly and usually approved by the President.

One paragraph in the Transitory Provisions of the 1973 Constitution states that all proclamations, presidential decrees, executive orders and letters of instructions shall be valid and effective and shall form part of the law of the land. I believe that is the basis for some saying that presidential proclamations have the force and effect of law. But I believe there is a real difference between a statute, like a Republic Act or a Batas Pambansa that was approved by the National Assembly and a decree or proclamation issued unilaterally by the President especially during the martial law regime.

MR. MAAMBONG: I would not go so far as to categorize presidential decrees with general orders, letters of instructions, letters of implementation and proclamations. I am more concerned only in presidential decrees promulgated by the President in the exercise of his lawmaking power. At any rate, in order to obviate any further

discussion, I would like to reiterate my motion to delete the words "presidential decrees" on line 28, Section 3 (3).

MR. ROMULO: The Committee regrets that we cannot accept the Commissioner's amendment.

MR. MAAMBONG: In view of my serious thinking on this matter, I would like that this be put to a vote.

VOTING

THE PRESIDING OFFICER (Mr. Bengzon): The body will put to a vote the proposed amendment of Commissioner Maambong to delete "presidential decrees" on line 28, Section 1, paragraph 3 on page 1.

Those in favor of the amendment of Commissioner Maambong, please raise their hand. (Few Members raised their hand.)

Those against the amendment, please raise their hand. (Several Members raised their hand.)

The results show 5 votes in favor and 23 against; the amendment is lost.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA. I ask that Commissioner de Castro be recognized to present an amendment on the same section.

THE PRESIDING OFFICER (Mr. Bengson): Commissioner de Castro is recognized.

MR. DE CASTRO: We have observed that in many instances, several justices of the Supreme Court are absent because they go abroad. As a result, there are many pending cases in the Supreme Court. Sometimes they cannot get a quorum to declare a law or a decree unconstitutional.

We have limited the number of justices in the Supreme Court to 11, so allow me to introduce an amendment in continuation of line 18 on Section 3 (1), which is to add a sentence to read as follows: IN NO CASE SHALL THE NUMBER OF MEMBERS PRESENT BE LESS THAN EIGHT. Thus, only three may be able to go outside the country. I know of a justice who is always going abroad. To remedy this, I suggest that we push through with my amendment to add a sentence on line 18, Section 3 (1) on page 1, as follows: IN NO CASE SHALL THE NUMBER OF MEMBERS PRESENT BE LESS THAN EIGHT.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. ROMULO: The Committee deeply sympathizes with the objective of the proponent. However, we believe that it may complicate the requirement for a quorum and so, we regret that we cannot accept the amendment.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner de Castro is given a chance to articulate.

MR. DE CASTRO: Will the sponsor please repeat the ruling of the Committee?

MR. ROMULO: The Committee sympathizes with the Commissioner's objective, but we cannot accept the amendment because it may complicate the requirement for a quorum and thus delay the decision of cases all the more.

MR. DE CASTRO: Precisely, we want to maintain that quorum especially when there are 11 justices only. A majority plus one is 7, so I propose 8 to be present. At one time I read in the papers that five justices went to a certain congress and another one went to the United States for medical treatment, until finally we had only about 7 or 8 left out of the 15. We are after the resolution of the pending cases in court. If the Committee does not accept my amendment, I would request that it be put to a vote.

## VOTING

THE PRESIDING OFFICER (Mr. Bengzon): The body will put the amendment to a vote.

Those in favor of the amendment of Commissioner de Castro, please raise their hand. (Few Members raised their hand.)

Those against, please raise their hand. (Several Members raised their hand.)

The results show 4 votes in favor and 18 against; the amendment is lost.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Bacani be recognized to present an amendment to Section 4.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Bacani is recognized.

BISHOP BACANI: I propose to delete the term "natural-born" before the word "citizen" in Section 4, paragraphs (1) and (2). But before I actually propose my amendment, may I just ask the Chairman or any member of the Committee two questions?

THE PRESIDING OFFICER (Mr. Bengzon): Just two questions.

BISHOP BACANI: Yes, Mr. Presiding Officer.

Does the term "natural-born" mean that all things being considered, ethical and professional, and qualifications of the judges, the natural-born citizen is considered better than the naturalized citizen?

MR. CONCEPCION: We would prefer that the matter be voted upon by the Commission. As a matter of courtesy, we feel that it should be submitted to the body.

BISHOP BACANI: So, let me just give them the reason why I submit this amendment. If we fear that a person who is going to be a judge or a justice may not yet be fully integrated into the Filipino way of life, then we can assure the realization of that factor by means other than by disqualifying in perpetuum a person who is not a natural-born citizen from holding any of these positions. Besides, if we reserve these positions only to natural-born citizens we will be classifying our citizens into two classes. In fact, the equal rights of citizens which we considered during the discussions on the Article on Citizenship do not apply in this particular case. Perhaps, if we do not put the term "natural-born" anymore, cases like that of Justice Teehankee will never crop up in the future.

So, I would like to make this amendment an expression of trust not only in the naturalized citizens, but also in the process of naturalizing them which, hopefully, will become more thorough in the future.

THE PRESIDING OFFICER (Mr. Bengzon): Is Commissioner Bacani proposing that the term "natural born" before the word "citizen" on lines 9 and 15 be deleted?

BISHOP BACANI: Yes, so that any citizen of the Philippines with the necessary moral and professional qualifications can hold any position.

MR. CONCEPCION: I want to explain briefly why the Committee cannot accept the proposal. There are other provisions in the Constitution which require, as one of the qualifications, a natural-born citizen, like, for instance, in the Office of the President and in other offices. So it is a matter that affects not only the Judiciary but the entire policy in drafting the Constitution. For this reason, we prefer that the Commission vote on this question. It is

intimately related to other provisions which are beyond the Committee's jurisdiction.

BISHOP BACANI: Yes. When I was proposing my amendments to the Article on Citizenship, I was told that the amendments had to be proposed individually during the period of amendments.

VOTING

THE PRESIDING OFFICER (Mr. Bengzon): We will now put the amendment to a vote.

Those in favor of the amendment of Commissioner Bacani, please raise their hand. (Few Members raised their hand.)

All those against, please raise their hand. (Several Members raised their hand.)

The results show 3 votes in favor and 21 against; the amendment is lost.

The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner Nollado be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Nollado is recognized.

MR. NOLLEDO: Thank you, Mr. Presiding Officer.

My amendment is to add a new subsection (3) on Section 4 which reads: A MEMBER OF THE JUDICIARY MUST BE A PERSON OF PROVEN COMPETENCE, INTEGRITY, PROBITY, AND INDEPENDENCE.

Before the Committee decides on whether or not to accept the amendment, I would like to explain it first.

Mr. Presiding Officer, this is a moral provision lifted with modifications from the "Canons of Judicial Ethics." The reputation of our justices and judges has been unsavory. I hate to say this, but it seems that it has become the general rule that the members of the Judiciary are corrupt and the few honest ones are the exceptions. We hear of justices and judges who would issue injunctive relief to the highest bidder and would decide cases based on hundreds of thousands, and even millions, of mercenary reasons.

The members of the deposed Supreme Court, with a few exceptions, catered to the political likings and personal convenience of Mr. Marcos by despicably surrendering their judicial independence. Why should we resist incorporating worthy moral principles in our fundamental law? Why should we canalize our conservative thoughts within the narrow confines of pure legalism?

I plead to the members of the Committee and to my colleagues in this Constitutional Commission to support my amendment in order to strengthen the moral fiber of our Judiciary. Let not our Constitution be merely a legal or political document. Let it be a moral document as well.

Thank you.

THE PRESIDING OFFICER (Mr. Bengzon): The Chair commends Commissioner Nollado for staying within the five-minute rule.

Thank you very much.

What does the Committee say?

MR. ROMULO: First, we wish to make of record that Commissioner Nollado has filed with us such a resolution, and we joyfully accept his amendment in the hope that with his amendment the lawyers in heaven will have more than St. Thomas More.

MR. NOLLEDO: Thank you, Mr. Presiding Officer.

I would like to mention that Commissioners Napoleon Rama and Crispino de Castro are co-authors of this amendment.

I also thank the Committee.

THE PRESIDING OFFICER (Mr. Bengzon): The amendment has been accepted by the Committee.

Is there any objection? (Silence) The Chair hears none; the amendment is approved.

The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, I move for a suspension of the session until two-thirty this afternoon.

THE PRESIDING OFFICER (Mr. Bengzon): The Chair would like to know whether there are other Commissioners who have registered to propose their amendments.

MR. RAMA: Yes, Mr. Presiding Officer. Precisely, the next amendment would be a long amendment on a very critical provision to be presented by Commissioner Rodrigo. So, probably, it would be better if we suspend the session and discuss that amendment during the suspension.

#### SUSPENSION OF SESSION

THE PRESIDING OFFICER (Mr. Bengzon). The session is suspended until two-thirty this afternoon.

It was 11:57 a.m.

#### RESUMPTION OF SESSION

At 2:37 p.m., the session was resumed.

THE PRESIDING OFFICER (Mr. Bengzon): The session is resumed.

The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, there is a point of clarification to be made by Commissioner Sarmiento on the same provision.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Sarmiento is recognized.

MR. SARMIENTO: Thank you.

Mr. Presiding Officer, may I ask a clarificatory question of my committee, the Committee on the Judiciary. May I know whether or not the Judicial and Bar Council, an innovative creation of the Committee, has the power to receive complaints, administrative and criminal, against the members of the Bench and upon finding of a prima facie case, to prosecute the same before the Supreme Court or the Sandiganbayan?

I asked the question because a few days ago, after the Committee on the Judiciary had submitted its report, I received a letter from a proper lawyer suggesting that the Judicial Commission, now the Judicial and Bar Council, be given the important function of receiving complaints, administrative and criminal, against the members of the Bench and upon finding of a prima facie case, to prosecute the same before the Supreme Court or Sandiganbayan. This lawyer, Mr. Presiding Officer, was responsible for prosecuting two RTC judges, one of whom was recently dismissed from the service by the Supreme Court. Briefly, allow me to read his letter.

THE PRESIDING OFFICER (Mr. Bengzon): Can we just incorporate the letter into the Record so that we do not have to read the whole thing, and maybe if the Gentleman has sufficiently articulated his questions. . .

MR. SARMIENTO: Maybe I need not read the letter but address the question directly to the members.

THE PRESIDING OFFICER (Mr. Bengzon): Yes, could the Gentleman just address his question directly to the members of the Committee so that they can answer?

MR. SARMIENTO: May I ask Commissioner Romulo who was the proponent of this Judicial and Bar Council, his baby?

MR. ROMULO: The Judicial and Bar Council resolutions were also cosponsored by many others, such as Commissioners Davide, de los Reyes and Colayco — so this is a collective work.

My answer is that under the present wording of the section it does not explicitly say that. The section goes on to read: "It may exercise such other functions and duties as the Supreme Court may assign to it." It is within the original contemplation of the resolutions filed that such an activity may ultimately be handled by the Judicial and Bar Council.

MR. SARMIENTO: Thank you, Commissioner Romulo.

THE PRESIDING OFFICER (Mr. Bengzon). The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner Rodrigo be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Rodrigo is recognized.

MR. RODRIGO: Mr. Presiding Officer, I propose the following amendment: On page 2, line 18, after the word "President," insert the words WITH THE CONSENT OF THE COMMISSION ON APPOINTMENTS, so that the sentence would read: "Section 5. The members of the Supreme Court and judges of lower courts shall be appointed by the President WITH THE CONSENT OF THE COMMISSION ON APPOINTMENTS." Then delete everything from the word "from" on line 18, page 2, until line 15, on page 3. In other words, delete the whole provision creating the Judicial and Bar Council.

May I explain my amendment, Mr. Presiding Officer?

THE PRESIDING OFFICER (Mr. Bengzon): The Honorable Rodrigo has five minutes.

MR. RODRIGO: If my amendment is approved, then the provision will be exactly the same as the provision in the 1935 Constitution, Article VIII, Section 5.

Our experience under the 1935 Constitution regarding appointments to the Judiciary by the President with the confirmation of the Commission on Appointments was very satisfactory. From President Quezon on to Osmeña, Roxas, Quirino, Magsaysay, Garcia, Macapagal and even Marcos before he declared martial law, the appointments to the Judiciary, especially to the Supreme Court and to the Court of Appeals, were high class, so much so that we had the highest, the utmost respect for the Judiciary. Before the declaration of martial law, we regarded the Supreme Court, up to the Concepcion Court, with awe and respect. And so why should we change this now, merely because of what happened during martial law?

Mr. Presiding Officer, I have to concede that the respect and trust of the people in the Judiciary has deteriorated since the declaration of martial law. First of all, after martial law was declared, there was no more Commission on Appointments; all appointments were made by only one man, by the dictator.

Secondly, with the declaration of martial law and even after the approval of the 1973 Constitution with the transitory provisions, the security of tenure of the justices and judges was demolished because the President, the dictator, could remove any justice or judge by the mere expediency of appointing his successor. Not only that, the

President, the dictator, was in office for 20 years, and so for the first time in our history, all the members of the Supreme Court and of the Court of Appeals and a majority of the judges of the lower courts were appointed by just one man. And on top of that, our economy deteriorated — our currency lost its value and, consequently, the salaries received by the members of the Judiciary were not sufficient. On top of that, the example of graft and corruption came from above and this contaminated the members of our Judiciary, but this is not the fault of the system of appointment under the 1935 Constitution which we found very, very satisfactory.

If we do not remove the proposed amendment on the creation of the Judicial and Bar Council, this will be a diminution of the appointing power of the highest magistrate of the land, of the President of the Philippines elected by all the Filipino people. The appointing power will be limited by a group of seven people who are not elected by the people but only appointed.

Mr. Presiding Officer, if this Council is created, there will be no uniformity in our constitutional provisions on appointments. The members of the Judiciary will be segregated from the rest of the government. Even a municipal judge cannot be appointed by the President except upon recommendation or nomination of three names by this committee of seven people, commissioners of the Commission on Elections, the COA and Commission on Civil Service . . . even ambassadors, generals of the Army will not come under this restriction. Why are we going to segregate the Judiciary from the rest of our government in the appointment of the high-ranking officials?

Another reason is that this Council will be ineffective. It will just besmirch the honor of our President without being effective at all because this Council will be under the influence of the President. Four out of seven are appointees of the President, and they can be reappointed when their term ends. Therefore, they would kowtow to the President. A fifth member is the Minister of Justice, an alter ego of the President. Another member represents the legislature. In all probability, the controlling party in the legislature belongs to the President and, therefore, this representative from the National Assembly is also under the influence of the President. And may I say, Mr. Presiding Officer, that even the Chief Justice of the Supreme Court is an appointee of the President. So, it is futile; he will be influenced anyway by the President.

And on interpellation, the Committee, in answer to one of my questions, said that if the Council submits to the President the names of three nominees and the President does not want to appoint any of those three, the President can ask the, Council to submit another list of three. We are inserting here a provision which demeans the President elected by our people, the members of the Commission on Appointments, composed of elected representatives of the people in our legislature.

May I have two more minutes?

THE PRESIDING OFFICER (Mr. Bengzon): Yes, I was going to say that the Gentleman has one minute left.

MR. RODRIGO: Why should this council of seven appointed persons be more powerful than the Commission on Appointments composed of legislators elected by the people? Under this proposal, this committee of seven is more powerful than the Commission on Appointments because while the Commission on Appointments has the power of later or subsequent censorship, this committee has the power of previous censorship. Before the appointment is made, this committee already censors.

Another reason is we will be burdening the Chief Justice of the Supreme Court with the burden of the Judiciary. I think we should not burden him anymore. And in practice, the Chief Justice of the Supreme Court will be swamped by people recommending this and that person — from Aparri to Jolo. I know this. This is practical politics. We will drag even the Chief Justice of the Supreme Court into politics.

The last reason is financial. It was stated by the Committee that we reduce the number of members of the

Supreme Court from 15 to 11 one of the reasons being to save money. If we create this Council with emoluments and allowances — they will have to have an office and personnel — I think the expenditure that we will incur is much, much more than whatever amount we save by reducing the number of justices from 15 to 11.

Thank you very much.

THE PRESIDING OFFICER (Mr. Bengzon): Thank you very much, Commissioner Rodrigo.

What does the Committee say?

MR. CONCEPCION: The Judicial and Bar Council is no doubt an innovation. But it is an innovation made in response to the public clamor in favor of eliminating politics in the appointment of judges.

At present, there will be about 2,200 positions of judges, excluding those of the Supreme Court, to be filled. We feel that neither the President alone nor the Commission on Appointment would have the time and the means necessary to study the background of every one of the candidates for appointment to the various courts in the Philippines, specially considering that we have accepted this morning the amendment to the effect that no person shall be qualified unless he has a proven high sense of morality and probity. These are matters that require time, which we are sure the President does not have except, probably, he would have to endorse the matter to the National Bureau of Investigation or to some intelligence agency of the government. And we do not think that these agencies are qualified to pass upon questions of morality, integrity and competence of lawyers.

As regards the implication that we are, in effect, depriving the President of the power of appointment, all we do consider is the fact that the members of the Council are all appointees of the President. They are alter egos of the President so, in effect, they are exercising the power by virtue of the appointment by the President. So, the alleged negation or denial or emasculation of the appointing power of the President does not really exist since all members of the Council, except those who are ex-officio members who, by the way, are also appointees of the President, are all appointees of the President.

THE PRESIDING OFFICER (Mr. Bengzon): The Committee has two more minutes. Is there anybody else in the Committee who would wish to answer?

MR. ROMULO: Commissioner Colayco will answer and then I will follow him.

MR. COLAYCO: The decision of the Committee in creating the Judicial and Bar Council was finally to establish the independence of the Judiciary. We all talk about the independence of the three departments of our government and everybody knows, including the interpellator, that the Judiciary is not independent. It is the President who chooses, names and appoints the judges and who is the President? He is a politician. Granted that most of us know that our present President is somebody above politics, a lot of rumors have been going around that politics has somehow managed to get into the present reorganization of the Judiciary. This is inescapable because the President owes political favors. They are not easy to refuse or to fail to acknowledge on the part of the President-elect.

Second, how can we say that the Judiciary is independent when it is the Legislative that holds and controls the disbursement of funds to maintain it?

Third, the Commission on Appointments is not as sincere in its mission to censor the qualifications of the appointees to the Judiciary as has been mentioned by the Honorable Rodrigo because many appointees who had to pass through the Commission on Appointments were witnesses to the fact that some members of the Commission on Appointments had used it to force the appointments of other people as a compromise for the approval of those who have been already designated by the President. This was an open secret.

So, we felt that the creation of this Council would ensure more the appointment of judges and justices who will be chosen for their confidence and their moral qualifications, rather than to favor or to give something in return for their help in electing the President.

MR. ROMULO: Mr. Presiding Officer, in approaching this question of the independence of the Judiciary, which I do not think anyone will dispute is a necessary goal, the Committee has used a holistic approach — as if it were a four-legged stool. One of the essential legs is the appointment of competent men, honest and so on. Another is, of course, the security of tenure. The third is fiscal independence of the Supreme Court. And if any of the legs of the stool is missing, then the stool cannot stand.

Our experience has been, even with the Commission on Appointments, that politics does get into the picture. We have tried to compromise in arriving at a unique system for us by making the Council a composition of representatives of the three branches of the government plus a wide spectrum of the private sector, and at the same time, without demeaning the power of the President to appoint because she or he inputs the considerations through the Minister of Justice; and the legislature, on the other hand, is able to express its considerations through the representatives of Congress. So we have what we believe is a good compromise. The Bar, equally for the first time, will be represented and has a definite say on appointments; and the private sector, as well as the law schools, is given a representative. As we will notice, the private sector representative need not be a lawyer. So, as I say, it is a holistic approach.

Finally, the problem of filling a vacancy in the Supreme Court within the three-month limit which we have all accepted, and the fact that the legislature may be in recess, is solved by this provision. I think we have to try something different, something radical because the past has not worked. And insofar as the Committee is concerned, we can have any form of government we like and we are safe, provided we have an independent and competent Judiciary. The English experience certainly proves this. And if we are trying to bolster the independence of the Supreme Court it is because in the end it is the Judiciary that will protect all of us. We are not trying to create an independent republic out of the Judiciary, only an autonomous region.

Thank you.

MR. SARMIENTO: Mr. Presiding Officer, may I add a few words to the comments made by the elders? I am also a member of the Committee on the Judiciary.

THE PRESIDING OFFICER (Mr. Bengzon): The Committee's time has been exhausted, Commissioner Sarmiento.

MR. SARMIENTO: May I ask for liberality, Mr. Presiding Officer?

THE PRESIDING OFFICER (Mr. Bengzon): The Gentleman may proceed.

MR. SARMIENTO: Mr. Presiding Officer, this Member believes that the creation of the Judicial and Bar Council is a step in the right direction towards achieving judicial independence. In the 1971 Constitutional Convention, many resolutions were filed — more or less 10 resolutions — criticizing the Commission on Appointments of the 1935 Constitution as "a highly partisan bargaining center" — and to quote then Con-Con delegate, now Commissioner Napoleon Rama, the commission was "an instrument of blackmail."

Other countries have Judicial and Bar Councils in their constitutions, such as Thailand, Portugal, Spain, Italy and the States of Arizona and Alaska. In the book entitled—and I would like to share this with my fellow Commissioners — *Guide to Current American Government*, we have these statements concerning this legislative commission on appointments, and I quote:

Congress exerts influence over the judiciary in another major way — through the Senate's prerogative to advise and consent in the President's selection of candidates for judicial offices, including not only Supreme Court Justices but also other federal court judges. The power to name members of the federal judiciary to well-paid, prestigious lifetime posts is perhaps the strongest patronage lever possessed by an incumbent President. As a result, federal judgeships traditionally go to persons of the President's political party despite the stated intention of almost every Chief Executive to make nonpartisan judicial appointments.

The last paragraph says:

In apparent contradiction of the American ideal of an independent nonpartisan judiciary, the process of selecting federal judges is pure politics. No constitutional guidelines exist beyond the provision that the President shall nominate and with the consent of the Senate, shall appoint judges of the Supreme Court and all other officers of the United States.

Thank you, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Thank you.

MR. RODRIGO: Mr. Presiding Officer, may I also ask for a little leniency so that I can speak just for half-a-minute.

The Commission on Appointments was mentioned as an instrument of blackmail. Since nobody is here to defend the Commission on Appointments, I will stand up in its defense. I was a member of the Commission on Appointments for 10 years and the record of that Commission on Appointments, Mr. Presiding Officer, was excellent. We had a few black sheep once in a while, but that was unavoidable in any organization.

Thank you very much.

VOTING

THE PRESIDING OFFICER (Mr. Bengzon): The body is now ready to vote on the amendment proposed by Commissioner Rodrigo.

On page 2, line 18 of Section 5, after the word "President," insert the phrase "WITH THE CONSENT OF THE COMMISSION ON APPOINTMENTS." Delete everything, starting from the word "from" on line 18, all the way to page 3 up to line 15, which, in effect, eliminates the creation of the Judicial and Bar Council.

As many as are in favor of the amendment, please raise their hand. (Few Members raised their hand.)

As many as are against, please raise their hand. (Several Members raised their hand.)

The results show 8 votes in favor and 26 against; the amendment is lost.

The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner de Castro be recognized for an amendment Section 6.

THE PRESIDING OFFICER (Mr. Bengzon). Commissioner de Castro is recognized.

MR. DE CASTRO: Thank you, Mr. Presiding Officer.

My amendment is a very minor one on page 3, Section 6 (4), lines 8 and 9.

MR. DAVIDE: Mr. Presiding Officer, I have an anterior amendment.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Davide be recognized for an anterior amendment.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Davide is recognized.

MR. DAVIDE: I am a member of the Committee but I am constrained to present this amendment. On page 2, line 20, between the period (.) after "vacancy" and the word "Such," insert a new sentence to read as follows: THE PRESIDENT SHALL ISSUE THE APPOINTMENT WITHIN 60 DAYS FROM THE SUBMISSION OF THE LIST.

MR. ROMULO: May I advise Commissioner Davide that this morning, Commissioner Lerum introduced a similar amendment with regard only to the Supreme Court which we have accepted. The amendment provides that there be an appointment within three months. Is the Gentleman suggesting that the period will now apply to the lower courts?

MR. DAVIDE: Since there was already an earlier amendment with regard to the Supreme Court, this will now apply to the lower courts.

MR. ROMULO: The sense of the Committee is that 60 days is awfully short and that the Council, as well as the President, may have difficulties with that.

MR. DAVIDE: I am prepared to suggest 90 days so that the vacancy will not be long, otherwise, the President may not also act on the list and, therefore, we will have a vacant court for a long time.

MR. ROMULO: Is the Gentleman making it uniform, therefore, for the Supreme Court and the lower courts?

MR. DAVIDE: Yes, uniform.

SUSPENSION OF SESSION

MR. ROMULO: May I request a suspension of the session, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The session is suspended.

It was 3:11 p.m.

RESUMPTION OF SESSION

At 3:12 p.m., the session was resumed.

THE PRESIDING OFFICER (Mr. Bengzon): The session is resumed.

MR. ROMULO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Romulo is recognized.

MR. ROMULO: Mr. Presiding Officer, if the Commissioner will make it a uniform 90 days, the Committee accepts and would then leave it to the body to accept the amendment or not.

MR. DAVIDE: I am willing to go for a uniform rule.

THE PRESIDING OFFICER (Mr. Bengzon): How will the sentence now-read?

MR. ROMULO: Could the body suggest the proper wording?

THE PRESIDING OFFICER (Mr. Bengzon): Perhaps then the wording of the amendment of Commissioner Davide will have to be harmonized with the wording of the amendment of Commissioner Lerum which has

already been passed.

#### SUSPENSION OF SESSION

MR. DAVIDE: May I request a one-minute suspension, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The session is suspended.

It was 3:13 p. m.

#### RESUMPTION OF SESSION

At 3:14 p. m., the session was resumed.

THE PRESIDING OFFICER (Mr. Bengzon): The session is resumed.

Commissioner Davide is recognized.

MR. DAVIDE: Thank you, Mr. Presiding Officer.

The proposed amendment is a new paragraph to Section 5 and it will be placed between lines 21 and 22. It will read as follows: WITH RESPECT TO THE LOWER COURTS, THE PRESIDENT SHALL ISSUE THE APPOINTMENT WITHIN NINETY DAYS FROM THE SUBMISSION OF THE LIST.

MR. ROMULO: The Committee accepts.

THE PRESIDING OFFICER (Mr. Bengzon): The Committee has accepted the amendment proposed by Commissioner Davide.

Is there any objection? (Silence) The Chair hears none; the amendment is approved.

The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner de Castro be recognized to make an amendment on Section 6.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner de Castro is recognized.

MR. DE CASTRO: Thank you

As I was saying before the Honorable Davide stood up for an anterior amendment, I have a minor amendment on Section 6 (4), page 3, lines 8 and 9, to delete the clause "and the ex-officio members shall receive such allowances."

As proposed, the whole sentence in Section 6 (4) will read: "The regular members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council."

I have explained my reason for the amendment during the debate and interpellations of the Committee on General Provisions regarding allowances being considered as double compensation.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. CONCEPCION: The Committee will accept the amendment.

MR. DE CASTRO: Thank you.

THE PRESIDING OFFICER (Mr. Bengzon). The Committee has accepted the proposed amendment.

Is there any objection? (Silence) The Chair hears none; the amendment is approved.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Bernas be recognized to present an amendment on the same section.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Bernas is recognized.

FR. BERNAS. Mr. Presiding Officer, on page 2, Section 6 (2), lines 29 and 30, the provision says: "The regular members of the Council shall be appointed by the President for a term of four years." I would like to propose an amendment by adding to the sentence the phrase WITH THE CONSENT OF THE COMMISSION ON APPOINTMENTS.

The reason for this is, in the exposition made by the Committee, the purpose of the creation of the Judicial and Bar Council is to insulate the appointments in the Judiciary against political influence. However, the composition of the Judicial and Bar Council does not really insulate it against the political influence of the President.

So, in effect, we insulate the Council against the political influence of the legislature, but we do not insulate it against the political influence of the President. In fact, we make the political influence of the President prevail because the Council is heavily composed of people appointed by the President.

The requirement of confirmation by the Commission on Appointments, which I understand is provided in the proposal for the legislature, will have the effect of a check on the discretion of the President in the appointments of the members of the Council. So, we have double insulation against political influence.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. ROMULO: Can we have a few minutes?

The Committee is disposed to accept the amendment. However, I think we would like to point out that instead of "'THE' COMMISSION," the amendment would say "A COMMISSION," since there apparently is a question as to what more . . .

FR. BERNAS: I would be agreeable to that. That would be the sense of my amendment.

THE PRESIDING OFFICER (Mr. Bengzon): How will the whole amendment now read?

FR. BERNAS: So, the first sentence of Section 6 (2) shall now read: "The regular members of the Council shall be appointed by the President for a term of four (4) years WITH THE CONSENT OF A COMMISSION ON APPOINTMENTS."

THE PRESIDING OFFICER (Mr. Bengzon): The Committee has accepted the amendment.

Is there any objection? (Silence) The Chair hears none; the amendment is approved.

The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner Aquino be recognized to present an amendment to Section 7.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Aquino is recognized.

MS. AQUINO: Mr. Presiding Officer and the honorable sponsors, Section 7 (5), page 4, line 13, reads:

Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the underprivileged.

My proposed amendment constitutes a substitution on line 17 and subsequent deletion of the next sentence which reads: "The National Assembly may repeal, alter, or supplement the said rules with the advice and concurrence of the Supreme Court."

Mr. Presiding Officer, may I be allowed to explain my proposal?

THE PRESIDING OFFICER (Mr. Bengzon): The Commissioner has five minutes.

MS. AQUINO: The rules of practice and the rules of procedure in court practice are very technical such that logically we confer upon the Supreme Court the power to promulgate such rules. Conformably with the formulation in Section 7 (5), the Committee has vested in the Supreme Court the power to promulgate the same rules. However, even as the Committee has vested in the Supreme Court this power — the power to initiate the rules — it has, likewise, reserved to the National Assembly the power to repeal and to revoke.

I have the sense that when the Committee reserves to the National Assembly the power of repealing and revoking, it gives the legislature a mantle of superiority over the Supreme Court. I would like to propose this amendment on line 17: Instead of the period (.) after the word "privileged," we place a comma (,) followed by the phrase WITH THE CONCURRENCE OF THE NATIONAL ASSEMBLY. In other words, it will be a full 360-degree swing from granting the power to repeal and revoke to the National Assembly to just granting it the power to confirm or concur.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. ROMULO: We would like a clarification because under the proposed provision as it reads, the Supreme Court, in effect, has a veto power. As we understand the Commissioner's proposition, it is now the National Assembly which will be given the veto power.

MS. AQUINO: If the intendment of the term "concurrence" is antecedent requisite for its validity, yes; but I would like to rid the formulation of the odium of granting the National Assembly a superior power of revoking and repealing.

MR. ROMULO: Yes, but the Supreme Court can render that power futile by vetoing it.

MS. AQUINO: That is so, if we would retain the next sentence, but I was proposing to delete the sentence which reads: "The National Assembly may repeal, alter, or supplement the said rules with the advice and concurrence of the Supreme Court."

MR. RODRIGO: Mr. Presiding Officer, that amendment was similar to my amendment, but mine would have been just to repeal that sentence. It seems that aside from just repealing it, the Commissioner would want to add something on line 17.

MS. AQUINO: My concern here is this: There is apparently an overemphasis on the independence and strength of the Judiciary, which I think is warranted in the principle of separation of powers. But as was correctly pointed out by a colleague, the essence of separation of powers balances off only with the concept of checks and balances. In other words, as we insulate one agency, we also give it free play and expose it to the dynamics of checks and balances such that I will be willing to concede to the National Assembly's power of confirming the rules as drafted by the Supreme Court.

MR. RODRIGO: So after deleting that sentence, what is the phrase that is added after the word "privileged"?

MS. AQUINO: After the word "privileged," place a comma (,) and insert the phrase WITH THE CONCURRENCE OF THE NATIONAL ASSEMBLY. My only concern is to expand the formulation of giving a possible impression which would give the National Assembly superiority over the Supreme Court.

MR. RODRIGO: The Commissioner would not want to remove that power completely from the National Assembly.

MS. AQUINO: At first, I had that intention, but as I have mentioned earlier, I am conceding that power now to the National Assembly if only to allow a full play to checks and balances.

MR. ROMULO: Yes, that is correct.

THE PRESIDING OFFICER (Mr. Bengzon): May we have the comments of the Committee?

SUSPENSION OF SESSION

MR. ROMULO: Mr. Presiding Officer, may we have a suspension, to ask Commissioner Aquino to explain to us.

THE PRESIDING OFFICER (Mr. Bengzon): The session is suspended.

It was 3:26 p.m.

RESUMPTION OF SESSION

At 3:37 p.m., the session was resumed.

THE PRESIDING OFFICER (Mr. Bengzon): The session is resumed.

Commissioner Aquino is recognized.

MS. AQUINO: Thank you, Mr. Presiding Officer.

After a conference with the sponsors — we have agreed on a compromise formulation, Mr. Presiding Officer — the Committee agreed to my proposal to delete the sentence beginning on line 17 which reads: "the National Assembly may repeal, alter, or supplement the said rules with the advice and concurrence of the Supreme Court," and in return I am willing to withdraw my proposed amendment to incorporate the phrase WITH THE CONCURRENCE OF THE NATIONAL ASSEMBLY after the word "privileged."

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. ROMULO: We accept the amendment of Commissioner Aquino, it being understood that both bodies, the Supreme Court and the Legislature, have their inherent powers.

THE PRESIDING OFFICER (Mr. Bengzon): Is there any objection? (Silence) The Chair hears none; the amendment is approved.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Maambong be recognized.

MR. MAAMBONG: Thank you, Mr. Presiding Officer.

On the same Section 7 (5), page 4, line 23, I move to delete the words "quasi-judicial bodies" so that the proposed sentence would read: "Rules of procedure of special courts shall take effect upon approval by the Supreme Court."

May I just explain that quasi-judicial bodies actually are not inferior courts. Properly, they belong to the executive department, and I can see no reason why the Supreme Court should have the power of approval of the rules of procedure. Parenthetically, I would like to indicate that in going over the rules of most quasi-judicial bodies, the last portion always states that the rules of court have suppletory effect on the rules which we have promulgated. Therefore, I feel that the words "quasi-judicial bodies" should not be indicated in this provision and the authority of the Supreme Court to approve any rules should mainly refer to rules of procedure of special courts and not to quasi-judicial bodies.

I have stated my motion, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Before the Committee gives its comments, Commissioner de los Reyes is recognized.

MR. DE LOS REYES: Mr. Presiding Officer, may I ask if the proponent of the amendment is agreeable to an amendment to the amendment?

MR. MAAMBONG: Gladly, if it would not conflict with my own amendment.

MR. DE LOS REYES: The rules of procedure of special courts shall be valid unless otherwise disapproved by the Supreme Court. That will be reversed.

MR. MAAMBONG: Let me understand this correctly. The sentence would now read: "Rules of procedure of special courts shall take effect upon approval by the Supreme Court," and then the Gentleman will add that provision?

MR. DE LOS REYES: No, Commissioner. The sentence would rather read: "Rules of procedure of special courts shall BE VALID UNLESS DISAPPROVED by the Supreme Court." In other words, instead of the rules being effective upon approval, they are effective unless otherwise disapproved.

MR. MAAMBONG: It would amount to the same thing. I have no objection, but my main point is to delete the words "quasi-judicial bodies."

I might as well add, Mr. Presiding Officer, that because of the volume of work of the Supreme Court, I recall very distinctly that the canons of professional responsibility which were submitted to the Supreme Court back in the '70s were never acted upon by the body. We are still using the canons of professional ethics and the canons of judicial ethics of the American Bar Association. I think the Integrated Bar and Commissioner Regalado submitted that canons of professional responsibility and the Supreme Court never acted on these. There are so many quasi-judicial bodies, Mr. Presiding Officer, and the Supreme Court may not have the time to go over their rules. But I have no objection to the proposition of Commissioner de los Reyes.

THE PRESIDING OFFICER (Mr. Bengzon): So, as approved, how does the amendment, as amended, read?

MR. MAAMBONG: May I request Commissioner de los Reyes to rephrase the amendment to the amendment?

MR. DE LOS REYES: The amendment, as amended, now reads: "Rules of procedure of special courts shall BE VALID UNLESS DISAPPROVED by the Supreme Court."

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. ROMULO: Commissioner Regalado will reply.

MR. DE CASTRO: May I propose an amendment to the amendment to include QUASI-JUDICIAL BODIES?

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner de Castro, the amendment is to delete the words

"quasi-judicial bodies," so we will have to rule on that first. Besides, the Gentleman's amendment is already a third degree amendment. Can we now have the comments of the Committee?

MR. MAAMBONG: Mr. Presiding Officer, considering the statement of the Chair regarding the prohibition on third degree amendments, probably Commissioners de los Reyes, de Castro and I could approach the Committee and formulate the proposed amendment at one time so that we can save time not talking here on the floor.

THE PRESIDING OFFICER (Mr. Bengzon): Let us first hear the Committee, if it is willing to accept the concept, to begin with.

MR. ROMULO: We are willing to discuss it, Mr. Presiding Officer.

#### SUSPENSION OF SESSION

THE PRESIDING OFFICER (Mr. Bengzon): The session is suspended.

It was 3:43 p. m.

#### RESUMPTION OF SESSION

At 3:47 p.m., the session was resumed.

THE PRESIDING OFFICER (Mr. Bengzon): The session is resumed.

Commissioner Maambong is recognized.

MR. MAAMBONG: Mr. Presiding Officer, after consultation with the Committee and after taking into consideration the proposed amendment of Commissioner de Castro, I would like to ask Commissioner de los Reyes to rephrase his amendment to the amendment.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner de los Reyes is recognized.

MR. DE LOS REYES: Mr. Presiding Officer, the amendment on lines 22 to 24, page 4, will read as follows: "Rules of procedure of special courts and quasi-judicial bodies shall REMAIN VALID AND EFFECTIVE UNLESS DISAPPROVED by the Supreme Court."

MR. MAAMBONG: Mr. Presiding Officer, it has been explained to this Member by the Committee that the reason for retaining "quasi-judicial bodies" is that actually most of the decisions are appealed to the Supreme Court.

I now accept the amendment to the amendment without deleting the phrase "quasi-judicial bodies."

Thank you, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. ROMULO: The Committee accepts.

THE PRESIDING OFFICER (Mr. Bengzon): The Committee has accepted the amendment, as amended.

Is there any objection? (Silence) The Chair hears none; the amendment, as amended, is approved.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Guingona be recognized to present an amendment.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Guingona is recognized.

MR. FOZ: Mr. Presiding Officer, point of inquiry.

THE PRESIDING OFFICER (Mr. Bengzon): Yes, Commissioner Foz may please proceed.

MR. FOZ: I would like to ask the Committee whether or not the term "quasi-judicial bodies" includes the constitutional commissions.

MR. ROMULO: Yes, I believe they are covered by the term "quasi-judicial bodies" as long as they have adjudicatory functions and rules related thereto.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Guingona is recognized.

MR. GUINGONA: Mr. Presiding Officer, I would like to propose an amendment on Section 9 which is as follows: THE ADMINISTRATIVE SUPERVISION OVER LOWER COURTS SHALL BE PRESCRIBED BY LAW PROVIDED THAT, UNLESS SO PROVIDED, SUCH ADMINISTRATIVE SUPERVISION REMAINS VESTED IN THE SUPREME COURT.

May I be allowed to explain?

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Guingona has five minutes to explain.

MR. GUINGONA: There were nine Commissioners, including this Member, that filed Proposed Resolution No. 363, wherein we gave the following reasons:

1. Administrative supervision is fundamentally and essentially an executive function which is inherent in the executive and which supports the basic principle of separation of powers.

The eminent American jurist, Felix Frankfurter, speaking of the court in the case of *Coleman v. Miller*, had observed and I quote: "Our exclusive business is litigation." Our court in the Philippines in the case of *Manila Electric Company vs. Pasay Transportation* said: It is judicial power and judicial power only which is exercised by the Supreme Court."

2. Justices of the Supreme Court and Cabinet members and other officials differ as to their primary or principal qualifications.

In the case of the former, it would be their outstanding legal and judicial expertise, while in the case of the latter, administrative or management ability would be of primary concern.

3. The Supreme Court is a collegiate body.

We know that collective authority is less efficient and less effective in matters of administration and supervision.

4. The Supreme Court already exercises judicial supervision over the lower courts. If we were to add administrative supervision, the concentration of authority in the Supreme Court might affect the growth of law in the country.

5. The statements of law practitioners, including Commissioners Nollado and Maambong — where Commissioner de Castro recalled what he called his horrifying experience with court operations — indicated that such operations had had their share of inefficiency or neglect. And yet, such undesirable happenings occurred during a period when the lower courts were, in fact, under the administrative supervision of the Supreme Court.

Notwithstanding these arguments, Mr. Presiding Officer, this humble Member would not object strenuously to the removal from the Supreme Court the administrative supervision over the lower courts. But I feel that there is a very strong and compelling argument to consider where this administrative supervision of lower courts should be

vested during these times. This argument is the fact that such a provision would work against the interest of justice in this country. There would be a denial of justice resulting in delays in rendering decisions. The Supreme Court, considering the intensive and extensive work required in administrative supervision of literally hundreds of lower courts and 22,000 personnel, would have no time to attend to this complicated work of administrative supervision without sacrificing the principal function of adjudication. It cannot simply wash its hands by saying it delegates this authority to a court administrator, because in the final analysis, it is still the Supreme Court which is vested with the supervision.

May I quote Mr. Toto Olivera in one of his recent columns:

It is said the Supreme Court is so swamped with cases that it is not fair to burden the overworked magistrates with administrative functions.

In support of this view, proponents of the move to relieve the tribunal of this administrative duty point out that there are cases still pending adjudication by the Supreme Court dating back ten years or more.

Considering the backlog of cases that exists and the fact that there have been additional authorities granted to the Supreme Court — the right to review cases involving political questions under Section 1, second paragraph of the committee report, the appeal by the state from a judgment of acquittal, the suspension of the privilege of the writ of habeas corpus, and so forth — it is reasonable for us to conclude that it would take quite a number of years before the Supreme Court could dispose of all past cases, assuming that it could comply with the 24-month mandatory period to render a decision, which I doubt. Also, we are reducing the number of members from 15 to 11.

Justice John Catron of the United States said, and I quote:

The Constitution is a practical instrument made by practical men and suited to the circumstances in which it was intended to operate.

Obviously, the prevailing circumstances which I have enumerated do not justify the granting of administrative supervision to the Supreme Court at this time. So, let the question as to which body or office should exercise administrative supervision over lower courts, whether it is the Supreme Court, the Ministry of Justice or a separate body to be created by law, be determined by a legislative enactment or by a direct action of the people through referendum. Let us not reject the logical and reasonable presumption of regularity in the performance of official duties. Let us not ignore the political maturity of our people which was amply demonstrated by their actions before, during and after the February 7 election. Let us always remember the wise words of Justice Catron that we should include in our Constitution provisions which would take into account the circumstances of our times, including, if I may use the words of Commissioner de Castro, the horrifying number of pending cases.

I, therefore, submit, Mr. Presiding Officer, that we should allow the law to determine where the administrative supervision of lower courts should be at a given time depending upon the circumstances that exist.

Thank you.

THE PRESIDING OFFICER (Mr. Bengzon): Thank you.

What does the Committee say?

MR. ROMULO: The Committee cannot accept the amendment. This is one provision the Committee is willing to die for. We believe it could set back the administration of justice 20 years. We deny the major premises of the proponent. First, administrative supervision of lower courts is not yet an inherent power of the Judiciary. Second, it would not overload the Supreme Court because we have a court administrator who will take care of it. On the

contrary, transferring this administrative supervision to the Minister of Justice would overburden the Minister because he has thousands of prosecutors to supervise. Finally, in the 1935 Constitution it made sense of the power to be vested in the Secretary of Justice because under Sections 67 and 97 of the Judiciary Act of 1948, the power of removal of judges was vested in the President. However the 1973 Constitution so wisely provided that supervision should be left to the Judiciary because of the principle of separation of powers and this is the fourth leg of the stool I was talking about.

Thank you, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): We will put the Commissioner's amendment to a vote.

MR. GUINGONA: Mr. Presiding Officer, in view of the manifestation of Commissioner Romulo that the Committee members are willing to die for this provision, I will not ask for a vote.

MR. ROMULO: Thank you.

THE PRESIDING OFFICER (Mr. Bengzon): The proposed amendment is withdrawn.

The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner de Castro be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner de Castro is recognized.

MR. DE CASTRO: This is a very minor amendment on Section 10, page 5, line 5, which is to put a comma (,) after "incapacitated" and to add AS DETERMINED BY A GOVERNMENT PHYSICIAN and another comma (,). The reason is that sometimes the incapacitation of an individual is determined by the individual himself; it is difficult to put the matter of determining whether or not an individual is incapacitated on the individual himself. And yet he is only 67 years old and he continues to work till he reaches the age of 70.

In the Armed Forces, incapacitation is determined by the medical officer, more particularly the medical officer of the V. Luna General Hospital. An individual cannot say he is incapacitated. Hence, as amended, the whole section shall read: "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, AS DETERMINED BY A GOVERNMENT PHYSICIAN to discharge the duties of their office." The rest of the sentence remains.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. CONCEPCION: I am afraid the Committee cannot accept the proposed amendment. As a matter of fact, and I say, fact, the actual practice has been for the Supreme Court to designate or create a committee of doctors to go over the case and submit these records to the Supreme Court to examine the whole matter and make the recommendations.

The court has deemed it best to choose in every case the doctors who shall probably determine the incapacitation of a member or judge to insure impartiality.

MR. DE CASTRO: In that case, Mr. Presiding Officer, we can put AS DETERMINED BY THE GOVERNMENT PHYSICIAN CHOSEN BY THE SUPREME COURT, because if we leave it at that, nobody will determine the incapacity of that member or judge.

MR. CONCEPCION: As I said, it is determined by a committee of doctors created by the Supreme Court. Another thing, the head of clinics is generally engaged in the general practice of medicine, whereas the incapacity may require an intervention of experts in special lines which are supposed to be related to the incapacity in

question. So that is the present practice which is more acceptable.

THE PRESIDING OFFICER (Mr. Bengzon): Is the proponent insisting on his amendment?

MR. DE CASTRO: I do, because while I agree with the Honorable Concepcion on his explanation, it must be stated in the Constitution who really determines the incapacitation of that judge.

THE PRESIDING OFFICER (Mr. Bengzon): Will the proponent then please restate his amendment.

MR. DE CASTRO: Section 10 would now read: "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, AS DETERMINED BY A GOVERNMENT PHYSICIAN, to discharge the duties of their office." The rest of the sentence remains.

VOTING

THE PRESIDING OFFICER (Mr. Bengzon): We will now put the amendment to a vote.

As many as are in favor of the proposed amendment, please raise their hand. (Few Members raised their hand.)

As many as are against, please raise their hand. (Several Members raised their hand.)

The results show 2 votes in favor and 31 against; the amendment is lost.

MR. MAAMBONG: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Maambong be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Maambong is recognized.

MR. MAAMBONG: Mr. Presiding Officer, my proposed amendment refers to the same section mentioned by Commissioner de Castro. On page 5, line 5, change "seventy" to SIXTY-FIVE. I understand this is a very emotional issue. I do not want to burden the Commission with the pros and cons of the word "seventy" or "sixty-five." I think all the Members are well aware of the issues on this. So, in the event the Committee does not accept the amendment, all I ask is for it to at least discuss before this body in brief the pros and cons of the issue so that we can vote thereon. I now formally move to change "seventy" to SIXTY-FIVE on page 5, line 5.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. CONCEPCION: The Committee had proposals to increase the age of retirement rather than to decrease the same. Also, the Committee heard the opinion of the present Chief Justice of the Supreme Court and a former Chief Justice, as well as that of the Solicitor General, and considering their experience apart from the personal experience of the one addressing the Commission now, it felt that in general the retirement age of 70 years is a fair choice. Many of the present members of the Supreme Court are past the age of 65 years. One of them is Justice Feria who is 69 years old, but he is one of the most active, most efficient, and most competent justices, not to speak of his integrity. There were some, perhaps, in the past, who might have retired from the Supreme Court at an earlier age, like Justices Recto and Laurel. But we all know that they had retired not because of incapacity but for some other personal reasons. In general, the retirement of a majority of those who left the court below the age of 65 years was due to financial considerations. They could not live adequately and decently on the salary that they were receiving and which the members of the court are presently receiving. I think that seventy is a fair choice. Of course, if we were to speak about the experience of the American Supreme Court, a number of its justices retired at the age of 90. But these are, of course, exceptional cases.

THE PRESIDING OFFICER (Mr. Bengzon): The Committee has two more minutes.

MR. ROMULO: Commissioner Suarez would like to comment.

MR. SUAREZ: Commissioner Maambong will recall that the 1935 Constitution provided that the retirement age for justices be fixed at 70 years.

MR. MAAMBONG: Yes, I understand that.

MR. SUAREZ. In the 1971 Constitutional Convention, it was decided to reduce the retirement age from 70 to 65 years on the theory that many of the judges opted to retire at the age of 65 years without necessarily indulging on the assumption that age would reduce their efficiency level.

MR. MAAMBONG: I will not question that statement, considering that the Commissioner was a member of the 1971 Constitutional Convention.

MR. SUAREZ: Thank you. And that was the reason which motivated the delegates of the 1971 Constitutional Convention to propose the. reduction of the retirement age of the judges from 70 to 65 years.

On the other hand — and this is what gives a very unsavory characterization to the increase of the retirement age from 65 to 70 years —in the January 1980 elections, a plebiscite question was tacked on the ballot for the local elections which called for the increase in the retirement age of justices and judges from 65 to 70 years, because at that time, the Chief Justice and no less than four Associate Justices of the Supreme Court who happened to be former classmates of Mr. Marcos were approaching the age of 65 years. It was felt by the Chief Executive that this problem should be met squarely to allow continuity in the martial law administration insofar as its interpretation affected the membership in the Supreme Court.

Is the Commissioner also aware of that situation, Mr. Presiding Officer?

MR. MAAMBONG: I am particularly aware of the date of its submission in the plebiscite as it was tacked on the 1980 elections ballot because then I ran as Provincial Board Member of Cebu. But as regards the Commissioner's other statement of the reasons there was such submission to the people in the plebiscite, I have no personal knowledge.

MR. SUAREZ: In any event, the result was the retirement age of judges and justices was increased from 65 to 70 years. And the game of political "yo-yo" as far as affecting the Judiciary was concerned was terminated, and is sought to be terminated with this proposal to fix the retirement age of judges and justices from 65 to 70 years under the new Constitution.

MR. MAAMBONG: Yes, but I would just like to inject the statement that there is now a general clamor of the members of the Judiciary, especially in the lower courts, that the retirement age be reduced to 65 years.

MR. SUAREZ: That is a different matter, Mr. Presiding Officer. We are only trying to point out that insofar as fixing the retirement age of judges and justices from 65 to 70 years is concerned, we would like to remove it altogether from its unsavory flavor as experienced during the martial law regime.

MR. MAAMBONG: I agree with that statement, but as I mentioned earlier, considering that this is rather an emotional issue and in order not to burden the Committee, I suggest that this issue be submitted to the body for a vote.

MR. SUAREZ: Thank you, Mr. Presiding Officer.

VOTING

THE PRESIDING OFFICER (Mr. Bengzon): The amendment is on line 5, page 5, which is to change "seventy" to "SIXTY-FIVE."

As many as are in favor of the amendment, please raise their hand. (Few Members raised their hand.)

As many as are against, please raise their hand. (Several Members raised their hand.)

The results show 9 votes in favor and 24 against; the amendment is lost.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner Aquino be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Aquino is recognized.

MS. AQUINO: Thank you, Mr. Presiding Officer.

May I ask for some clarification on Section 10, page 5, lines 3 to 6 because it may need an amendment.

Does the Committee mean the security of tenure applies only when the position exists? For example, may the legislature enact a statute declaring an existing judicial position vacant?

MR. ROMULO: Yes, the fault here is that the justices or judges can only be removed by impeachment and, therefore, during good behavior they remain in office until the age of 70 years or are incapacitated. On whether the legislature can abolish their position and declare it vacant, the second paragraph of Section 2 answers that question: "No law shall be passed reorganizing the Judiciary when it undermines security of tenure."

MS. AQUINO: Thank you, Mr. Presiding Officer.

May I ask for a clarification on the first paragraph of Section 12 that begins on line 21. Is it the intention of the Committee to prohibit minute resolutions?

MR. CONCEPCION: No.

MS. AQUINO: In all cases?

MR. CONCEPCION: No. The Committee realizes that there are some routine court matters in all courts of justice which do not require a statement of reasons, like petitions for postponement or extension of time and the like, in which case, minute resolutions should be allowed to expedite the administration of justice.

MS. AQUINO: In that case, what are the consequences of non-observance of the first paragraph of Section 12?

MR. CONCEPCION: A judge of a lower court would be subject to disciplinary action and a member of the Supreme Court to impeachment proceedings.

MS. AQUINO: I ask this because I was thinking this might require statutory implementation. If it is not the intention of the Committee to prohibit minute resolutions, I think the first paragraph of Section 12 would be a surplusage. In fact, it might even amount to an insidious assault on the integrity of the Supreme Court by requiring it to articulate or explicate the reasons for its decision.

MR. CONCEPCION: There is a second paragraph on the same section reads:

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

We will notice that it refers to a petition for review or a motion for reconsideration of a court decision which affects the subject matter of the merits of the case.

MS. AQUINO: For petition for review or motion for reconsideration.

MR. CONCEPCION: Yes.

MS. AQUINO: But if it is explicitly stated in the record that Section 12, first paragraph, is enforceable as a ground for impeachment, I am satisfied, Mr. Presiding Officer.

MR. CONCEPCION: It is actionable because it might be a violation.

MS. AQUINO: Thank you, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Thank you very much.

MR. MAAMBONG: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Bernas be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Bernas is recognized.

MR. MAAMBONG: Anterior amendment, Mr. Presiding Officer.

MR. SUMULONG: Mr. Presiding Officer, anterior amendment to Section 11.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Sumulong is recognized.

MR. SUMULONG: Thank you.

On page 5, Section 11, line 11, insert AND OF THE INTERMEDIATE APPELLATE COURT between "Court" and "in."

On line 12, change the word "it" to THEM and on line 15, after "Chief Justice," insert OF THE SUPREME COURT OR BY THE PRESIDING JUSTICE OF THE INTERMEDIATE APPELLATE COURT, AS THE CASE MAY BE.

So the first two sentences of Section 11 will read as follows: "The conclusions of the Supreme Court AND OF THE INTERMEDIATE APPELLATE COURT submitted to THEM for decision en banc or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the court. A certification to this effect signed by the Chief Justice OF THE SUPREME COURT OR BY THE PRESIDING JUSTICE OF THE INTERMEDIATE APPELLATE COURT, AS THE CASE MAY BE, shall be issued an copy thereof attached to the record of the case and served upon the parties."

May I explain these amendments, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Sumulong has five minutes to explain.

MR. SUMULONG: The Supreme Court is a collegiate court and so is the Intermediate Appellate Court. It is only natural and logical that the decisions of these collegiate courts should be arrived at after all the justices shall have studied the case before them and shall have deliberated upon the briefs and the oral argument of the parties before a justice is assigned to be the ponente of the case. If that is true of the Supreme Court, it should be true also of the Intermediate Appellate Court. But I am more concerned about the Intermediate Appellate Court because I know for a fact that many of the divisions of the Intermediate Appellate Court, formerly the Court of Appeals, simply choose one of their members to make a draft decision and then just pass this draft decision to the other members of the division for their concurrence and signature. So only one justice studies and decides the case. That is the

reason for proposing my amendment on Section 11, so that the provisions contained therein will apply not only to the Supreme Court but also to the Intermediate Appellate Court. As a matter of fact, Mr. Presiding Officer, I know of many cases where lawyers and litigants appealed cases to the Court of Appeals or the Intermediate Appellate Court knowing that the practice is for a division to select one member to make a draft decision and let the other members concur. Many lawyers use fixers to find out who makes the draft decision, and they concentrate their pressure on that justice of the Court of Appeals. This is a practice that should be terminated as early as possible, and I think this provision contained in Section 11 will be the solution by applying it, not only to the Supreme Court but also to the Intermediate Appellate Court.

Thank you, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The Chair thanks Commissioner Sumulong.

May we have the comments of the Committee.

MR. ROMULO: Commissioner Regalado will reply.

MR. REGALADO: Mr. Presiding Officer, we all share the concern of the honorable Chairman of the Committee on the Executive. We also know those alleged practices in the Intermediate Appellate Court, however, I would make two comments on that point.

The Intermediate Appellate Court is a statutory court, not a constitutional re-created court. If we mention here specifically the Intermediate Appellate Court, then it becomes part of the Constitution, although the fact is the Intermediate Appellate Court may also be abolished merely by statute later.

Second, because we appreciate and fully share the concern of Commissioner Sumulong, we added this sentence: "The same requirement shall be observed by all lower collegiate courts," which means that the Intermediate Appellate Court and the Sandiganbayan, which are collegiate courts, have to follow the same requirements that their decisions shall be reached at only after consultation before a case is assigned to a member for the writing of the opinion with the corresponding certification of the highest magistrate of that particular collegiate body. By the way, there may be a little typographical error on line 19. It should be "The same requirements shall be observed by all lower collegiate courts."

MR. SUMULONG: Do I understand this last sentence which will read: "The same requirements shall be observed by all lower collegiate courts" will require the Intermediate Appellate Court, the Sandiganbayan, the Court of Tax Appeals and all other collegiate courts to follow the rule established in Section 11 and that these collegiate courts are not allowed to assign the preparation of a draft decision to one justice alone and have it concurred by the other justices to reach a decision?

MR. REGALADO: Yes, Mr. Presiding Officer, the Intermediate Appellate Court, the Sandiganbayan and the Court of Tax Appeals have to follow the same requirements.

MR. SUMULONG: Is that the clear intent and purpose of this Section 11, Mr. Presiding Officer?

MR. REGALADO: Yes, Mr. Presiding Officer.

MR. SUMULONG: I am satisfied. Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): So the proposed amendment of Commissioner Sumulong is withdrawn?

MR. SUMULONG: Yes, Mr. Presiding Officer, I am satisfied with the explanation of the Committee.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. SUMULONG: Mr. Presiding Officer, I have another amendment on Section 12, second paragraph.

MR. RAMA: Mr. Presiding Officer, there is an anterior amendment by Commissioner Maambong.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Maambong is recognized.

MR. MAAMBONG: Mr. Presiding Officer, members of the Committee, I am just following up the statements of Commissioner Sumulong regarding Section 11. The second sentence of Section 11 says:

A certification to this effect signed by the Chief Justice shall be issued and a copy thereof attached to the record of the case and served upon the parties.

I am not quite clarified on the word "certification," but I take it to mean that this certification contains two things: (1) that there was a consultation and (2) that the writing of the court's opinion is assigned to a member. Commissioner Sumulong just mentioned that with this assignment to a member, some parties might go to that particular member and influence him in some way, because it is also stated that a copy thereof shall be attached to the record of the case and served upon the parties.

I wonder, Mr. Presiding Officer, whether this requirement of serving the parties a copy of the certification that the writing of the court's opinion has been assigned to a member is necessary. And I am now making a specific motion to delete the words "of the case and served upon the parties" on line 16, in line with the statement of Commissioner Sumulong that this might indicate to the party-litigant who the member writing the court's

I so move for the deletion, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. SUMULONG: Mr. Presiding Officer, I would like to propose an amendment to the amendment proposed by Commissioner Maambong, and this refers also to the second sentence of Section 11 which partially reads: "A certification to this effect signed by the Chief Justice. . ." It seems that this section is applicable only to the Supreme Court, so I would like to propose that after the words "Chief Justice," we insert OF THE SUPREME COURT OR BY THE PRESIDING JUSTICE OF ANY OTHER COLLEGIATE COURT, AS THE CASE MAY BE.

MR. MAAMBONG: Mr. Presiding Officer, I cannot accept the amendment considering the explanation of Commissioner Regalado. Actually, the situation contemplated by Commissioner Sumulong is covered by the last sentence of the same section which reads: "The same requirements shall be observed by all lower collegiate courts." I think that covers all collegiate courts below the Supreme Court.

MR. SUMULONG: I am referring, Mr. Presiding Officer, to the phrase "A certification to this effect signed by the Chief Justice. . ." which does not seem to cover all collegiate courts but only the Supreme Court.

THE PRESIDING OFFICER (Mr. Bengzon): Can we have the comment of the Committee on that so this whole question can be clarified?

MR. CONCEPCION: Mr. Presiding Officer, originally I had proposed the words "Presiding Judge," but the members of the Committee preferred "Chief Justice." But when it says "the same requirement," it does not necessarily refer to the Chief Justice but to the Presiding Judge. That is the implication.

MR. SUMULONG: Do I understand from the distinguished Chairman of the Committee on the Judiciary that the last line of this Section 11 means that with respect to lower collegiate courts, the certification will be made by the

presiding justice?

MR. CONCEPCION: I would prefer to use "Presiding Judge" because there is a tendency to call everybody a justice. That may be changed in the future. So the presiding judge should make the certification.

THE PRESIDING OFFICER (Mr. Bengzon): The question of Commissioner Sumulong has been answered in the sense that the last sentence covers the point he is referring to.

MR. CONCEPCION: This requirement of the certification by the Presiding Judge has been deemed necessary precisely to forestall the practice which the members of the Committee have heard followed by some courts. There must be not only a consultation but also a certification of the consultation which must be attached to the record of the case.

With respect to the amendment proposed by Commissioner Maambong, the purpose of that is precisely in response to the demands of other members of the Committee, that unless it is attached to the records and copies served upon the parties, the public would not know when the function has been performed, so we can forestall any attempt in the future for the court to say that it was not submitted or discussed until some other time.

This is one of the things we are providing to insure that failure of judges to comply with the provisions of the Constitution shall be actionable on the basis of the certifications made by them particularly and specifically.

MR. MAAMBONG: Mr. Presiding Officer, I have no difficulty on that portion of the certification, but from my understanding . . .

MR. ROMULO: For clarification, our intention is not to name the member who will write the decision but only to specify that the writing of the court's decision is assigned to a member of the court.

MR. MAAMBONG: In that case, Mr. Presiding Officer, I think this needs clarification because when the certification says that the case is assigned to a member, we have to specify in the certification who the member is.

If we stop right here on line 16, which states: ". . . shall be issued and a copy thereof attached to the record of the case. . . ," there is no serious difficulty. But when we say "and served upon the parties," the parties now would know who the member assigned to write the opinion of the court is. And it has been stated clearly by Commissioner Sumulong that this may be dangerous, considering that party-litigants may use influence.

MR. ROMULO: As we said, that is not the intention. However, even if we do not serve the party with a copy of the certification, once it is attached to the record of the case, the lawyer has a right to look at the expediente, so he will find out anyway. I hope the Commissioner would suggest a better word. We merely wish the certification to state that a member has been assigned to write the court's decision. We do not wish to identify him.

MR. MAAMBONG: Yes, that would be best, but I am not in a position to suggest how the Committee would reword it in such a manner that the name of the justice assigned to write the court's opinion would not be identified in the certification. I leave that to the Committee.

However, I would like to restate my primary amendment to delete the words "and served upon the parties" on line 17.

MR. ROMULO: The Committee cannot accept the amendment because one of our main objectives is precisely to advise the parties with regard to the period because we would like it to be actionable later on.

MR. MAAMBONG: Mr. Presiding Officer, if the understanding is that in the certification to be served to the parties the name of the justice assigned to write the opinion of the court is not identified, then I withdraw my amendment.

MR. ROMULO: That is the understanding.

MR. SUMULONG: Mr. Presiding Officer, with the explanation of Chairman Concepcion, I am satisfied and I withdraw my amendment to the amendment.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Maambong has withdrawn his amendment to the amendment which is to delete the phrase "and served upon the parties" on the understanding that the name of the justice will not be identified.

MR. MAAMBONG: Thank you, Mr. Presiding Officer.

I will proceed to the last sentence which reads:

Any Member dissenting or abstaining from a decision shall state the reason for his dissent or abstention.

We are all aware, Mr. Presiding Officer, that there are so many decisions of the Supreme Court mentioned in the Philippine Reports and the Supreme Court Reports, Annotated, wherein a member merely mentions, "I concur" and sign or "I abstain" and sign or "I dissent" and sign.

Before I propose any amendment, I would like to know from the Committee if this last sentence means that a member of the court who dissents or abstains should state, as a matter of a mandatory requirement, the reason for his dissent or abstention, or, could a member who dissents or abstains just do the usual thing and place there, "I dissent" or "I abstain," then sign?

MR. REGALADO: We will make it mandatory. May I explain? The line here says: "Any Member dissenting or abstaining from a decision shall state the reason for his dissent or abstention." This is to eliminate the practice of just saying "no part," and then, he places therein his initials or comment "I dissent." The Gentleman wants it to be more or less mandatory because of the phrase "shall state the reason for his dissent or abstention."

MR. MAAMBONG: I just would like to know the intention, Mr. Presiding Officer.

MR. REGALADO: If the Gentleman wants it to be a little stronger and in a more mandatory manner, I think the Committee will have no objection to changing the word "shall" to MUST.

MR. MAAMBONG: Then, I so move, Mr. Presiding Officer, to change the word "shall" to MUST with the following clarification: If it is already acceptable to the Committee that when a member who dissents or abstains will not indicate his reasons, would that be a nonfeasance in the performance of official duty?

MR. REGALADO: That would be a culpable violation, unless he explains why he was not able to indicate his reasons. In the rules on impeachment, it is not only a violation of the Constitution but a culpable violation thereof. So, if despite this directive which is about the strongest we can use without ruffling the sensibilities of the members of the Supreme Court — the word "must" is already an indication of the mandatory nature of that requirement — and they have no reason whatsoever for not complying therewith then it is not only a violation, but a culpable violation, without prejudice to such action as may be taken against him by his own peers in the Supreme Court.

MR. MAAMBONG: Just one final point, Mr. Presiding Officer. Could a justice just say on the bottom of the decision, "I take no part," then sign it?

MR. REGALADO: He has to say, for instance, "I take no part because I am disqualifying myself for the following reasons," and some of them are the reasons for disqualification from participation.

MR. MAAMBONG: Thank you.

MR. REGALADO: But if he just says, "no part," considering the mandatory nature, that would already be a violation.

MR. MAAMBONG: Thank you, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Bernas be recognized.

MR. SUMULONG: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Sumulong is recognized.

MR. SUMULONG: May I just address a few questions to the Committee on the Judiciary regarding paragraph 2 of Section 12?

THE PRESIDING OFFICER (Mr. Bengzon): We are in the period of amendments, Commissioner Sumulong.

MR. SUMULONG: Yes, Mr. Presiding Officer. This will determine whether I will propose an amendment or not. I want to know whether this provision which says "No petition for review . . ."

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Sumulong, we have to dispose of that amendment accepted by the Committee changing the word "shall" to MUST on line 18.

Do we have any objection from the floor? (Silence) The Chair hears none; the amendment is approved.

MR. CONCEPCION: Mr. Presiding Officer, I would prefer to eliminate the word "MUST." Perhaps, I would prefer to say: NO MEMBER OF THE COURT MAY DISSENT OR ABSTAIN UNLESS HE STATES THE REASONS FOR HIS DISSENT OR ABSTENTION. The word "MUST" in dealing with the courts is somewhat strong.

THE PRESIDING OFFICER (Mr. Bengzon): Can we not leave that to the Committee on Style?

MR. CONCEPCION: Of course.

MR. SUMULONG: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Yes, Commissioner Sumulong is recognized.

MR. SUMULONG: Mr. Presiding Officer, I just wish to propound a question to the Committee regarding the meaning of paragraph 2, Section 12, which reads:

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

Mr. Presiding Officer, in several cases that I have handled — and I think this is true also of the other lawyers who are Members of this Commission — regarding motions for reconsideration or petitions for review, we simply receive a resolution saying "denied for lack of merit." Is that enough to comply with this paragraph 2, Section 12?

MR. CONCEPCION: This is precisely in response to the clamor against minute resolutions affecting merits.

MR. SUMULONG: So, if the resolution simply says, "denied for lack of merit," that does not comply with this?

MR. CONCEPCION: It depends upon what is being resolved. If it is a motion for extension of time, a motion for postponement or any of the routine matters, it need not be reasoned out.

MR. SUMULONG: I am only referring to a motion for reconsideration or a petition for review, an appeal by

certiorari to the Supreme Court.

MR. CONCEPCION: That is right. The reasons must be stated.

MR. SUMULONG: Would it not be enough just to say, "denied for lack of merit"?

MR. CONCEPCION: No. The reasons must be stated.

MR. SUMULONG: That would not be sufficient because that happens several times. We file a petition for review by certiorari which is an appeal to the Supreme Court discussing the facts and the laws involved, but when the resolution comes to us, it simply says, "Resolution/petition denied for lack of merit."

MR. CONCEPCION: That is it. That is not enough. It must state why.

MR. SUMULONG: That would not be enough.

MR. ROMULO: It would not be enough.

MR. CONCEPCION: The reasons are there.

MR. SUMULONG: The reasons and the facts in support of the resolution have to be given.

MR. CONCEPCION: Not anymore, while it is necessary to state.

MR. SUMULONG: It has to be stated.

MR. CONCEPCION: Yes.

THE PRESIDING OFFICER (Mr. Bengzon): The question has been answered.

MR. SUMULONG: I am satisfied. Thank you.

THE PRESIDING OFFICER (Mr. Bengzon): Thank you very much.

The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Bernas be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Bernas is recognized.

FR. BERNAS: Mr. Presiding Officer, this has reference to page 5, Section 12, and my proposed amendment is the deletion of lines 27 to 32. A similar proposal not exactly the same, was given to the Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights, but this was not accepted.

Let me just explain the reasons why I am asking for the deletion of this paragraph. First of all, I would like to state that, as worded, it does not change the existing doctrine on double jeopardy. My understanding in the adoption of double jeopardy is that two things must be established: the first jeopardy attached and the first jeopardy terminated. And the termination of jeopardy is either by conviction or by acquittal. We have decisions saying that if the acquittal is rendered by a court that exercises grave abuse of discretion amounting to lack or excess of jurisdiction, it is not an acquittal at all, so that pursuing the case is not pursuing a new case; it is not putting a person in second jeopardy, but simply pursuing the same jeopardy. And the idea being that, while the accused has a right to a day in court, the people have also a right to a day in court. If there is an abuse of discretion amounting to lack or excess of jurisdiction, it means that the people have not had a day in court. The basic reason, therefore, why I ask for its deletion is that: 1) it is not necessary; and 2) while it is not necessary, keeping it here can be very harmful. I say it is not necessary because, as I have already explained, what is stated here can be done even without this provision. It was done in the case of *People vs. Pablo*, decided in 1980. It was also done in the case

decided last week, the Veridiano case.

My principal objection to this is if we wave the flag saying that acquittals may be appealed, even under this very detailed explanation, and when we consider that only the Supreme Court has jurisdiction over this, then we could be subjecting an accused individual to a very serious danger of harassment from a prosecutor who is proud, perhaps, or who has a grudge against the defense or from a complainant who just wants to harass an individual even if he has already been acquitted. So, I grant that there may be certain cases where the Supreme Court makes a mistake in an acquittal. The harm, however, which will follow from waving this flag of possibility of appeal and, therefore, almost inviting appeal from irresponsible prosecutors, could be much more than letting a guilty person go. So, in the interest of making valid acquittals final and in the interest of creating a situation which could invite harassment, I would ask that lines 27-32 be dropped.

MR. ROMULO: Commissioner Padilla will reply.

MR. PADILLA: The legal reasons given by Commissioner Bernas would justify this paragraph rather than its deletion, because he says that this paragraph does not violate the principle of double jeopardy, that there must be a start and a termination of jeopardy, and that if it is in the same case, there is no violation of double jeopardy. So, those very same reasons for deletion are the good reasons for inclusion of this provision.

The case of Veridiano that I mentioned yesterday, which involved a judgment of acquittal by the regional trial court reversing a decision of conviction by the municipal trial court, has clearly held that the petition by the fiscal or by the state, not as a matter of right but in the discretion of the Supreme Court, is in accordance with the law that protects an accused from double jeopardy, because there is no such double jeopardy, and the only limitation in our rules of court, both 1964 and 1985, against an appeal is when such appeal would violate the principle of double jeopardy.

It is contended that it is not necessary, but actually it is necessary to clarify the many obscure notions of many people, including those learned in the law, that any judgment of acquittal is final and not appealable. This, precisely, explains the common erroneous impression that there can be no appeal or no review when the judgment is one of acquittal, regardless of whether there is lack of jurisdiction or there is grave abuse of discretion amounting to lack or excess of jurisdiction. And this provision does not contemplate any new proceeding. As I stated yesterday, quoting Justice Holmes in the *Kepner* case and later Justice Cardoso in the *Palko v. Connecticut* case, even those cases would entertain a new trial. And yet according to those decisions, there is no violation against the immunity or the protection against double jeopardy.

In this case, as reworded by the Committee, its provision is very restrictive because it does not contemplate a new trial. Only the records are open to review in exceptional cases, and only in the discretion of the Supreme Court on specific grounds, manifest disregard of the evidence and grave abuse of discretion. So, this is not harmful; this is beneficial to a sound administration of justice. While we must protect the accused especially against double jeopardy, we cannot disregard the interest of the victims of the crime, the offended party, for a sound administration of justice.

THE PRESIDING OFFICER (Mr. Bengzon): The Chair will give one minute to the proponent of the amendment to close his remark.

FR. BERNAS: Yes. As I said, I agree that this does not change the doctrine on double jeopardy. What I am saying is that there will be many lawyers who will read this as a change on the rule on double jeopardy. Yesterday, we listened to the impassioned speech of Commissioner Rustico de los Reyes, and certainly the substance of his speech was that he read this as a change on the doctrine of double jeopardy, therefore, allowing for an appeal.

How many fiscals will read it the same way or how many offended parties will read it the same way as Commissioner Rustico de los Reyes? It is in those instances where we can have a serious danger of harassment. Removing this will still open the gate for the State to make a position for review on certiorari on the basis of abuse of discretion amounting to lack or excess of jurisdiction. As a matter of fact, this provision now makes it more difficult for the State and for the accused because under present law, it is enough to reopen the case, if there is grave abuse of discretion amounting to lack or excess of jurisdiction. In this particular provision, there is an additional requirement that it is manifestly against the evidence. And precisely, there will be situations that the decision is not manifestly against the evidence precisely because there is grave abuse of discretion in the manner in which it was ran. So, it makes it more difficult for the State and for the offended party to reopen a case because of that requirement. So, because of this, it would seem to me that it would be for the best interest of the State and for the offended party and also for the protection of the accused that this be removed.

#### VOTING

THE PRESIDING OFFICER (Mr. Bengzon): I think the issue has been amply discussed. The body should now vote on the issue. The amendment is the deletion of the paragraph from line 27 to line 32.

As many as are in favor of the amendment, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (Few Members raised their hand.)

The results show 17 votes in favor and 12 against; the amendment is approved.

This paragraph is deleted.

The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner Aquino be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Aquino is recognized.

MR. RAMA: There is an anterior amendment on Section 14.

THE PRESIDING OFFICER (Mr. Bengzon): Excuse me. There is an anterior amendment.

Commissioner Rigos is recognized.

REV. RIGOS: Mr. Presiding Officer, on Section 13, page 6, line 3, which begins with the following: "During their continuance in office, their salary shall not be diminished nor subjected to income tax," the amendment is to change the word "diminished" to DECREASED and to delete the words "nor subjected to income tax."

THE PRESIDING OFFICER (Mr. Bengzon): So, the amendment is to change the word "diminished" to DECREASED and to delete the phrase "nor subjected to income tax." What does the Committee say?

MR. ROMULO: Commissioner Regalado will reply.

REV. RIGOS: I understand that this was in the 1935 Constitution but was deleted in the 1973 Constitution; for what reasons, I cannot now recall. But at any rate, the thing to remember is that if we are to give substance to equality among the three branches in the government, one of the branches should not be given more privileges than the other. If we give it to one, we better give it to all. Very soon, the senators, congressmen and even the President might clamor for the same privilege. So, I believe that the justices and the judges should share in the burden of generating the necessary income needed for the support of our government and must pay their taxes as honestly as possible. If there is any group of people that should be exempted from paying its income taxes, it should be the teachers, the janitors, the security guards and others whose salaries are dismally small. But I think

the justices and the judges can be magnanimous enough, if we are to ask them to pay their income tax.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. REGALADO: Mr. Presiding Officer, under the 1935 Constitution, the provision was that during their continuance in office, the salaries of judges and justices shall not be diminished. And it was understood to mean that it was not subject to income tax.

In the 1973 Constitution, according to Commissioner Jamir here, although they had also intended that the salaries would not be subjected to income tax, the word "diminished" was changed to "decreased" resulting in a different interpretation.

In explaining the 1935 Constitution and our provision that the salaries shall not be diminished while in office and that thereby the Constitution was not creating a privileged class of people who enjoy income tax exemption unlike the others, the Supreme Court in *Perfecto vs Meer*, Volume 85 of the Philippine Reports, page 552, stated, and I beg the Gentleman's indulgence to get their explanation:

. . . the independence of the judges is of far greater importance than any revenue that could come from taxing their salaries. The exemption of the judicial compensation from reduction is not in any true sense a gratuity, privilege or exemption. It is essentially and primarily a compensation based upon valuable consideration.

I will jump to the other points:

On the other hand, the members of the judiciary relinquish their position at the bar with all its professional emoluments, sever their connections with their clients, and dedicate themselves exclusively to the discharge of the onerous duties of their high office. So, it is irrefutable that the guarantee against a reduction of salary by the imposition of a tax is not an exemption from taxation in the sense of freedom from a burden or service to which others are liable. The exemption for a public purpose or a valid consideration is merely a nominal exemption, since the valid and full consideration or the public purpose promoted is received in place of the tax.

And the Supreme Court of the Philippines relied on the same practice in the United States as explained in the case of *Evans v. Core*, Volume 253 of the United States Reports, page 245.

That was their explanation.

REV. RIGOS: Mr. Presiding Officer, we would like to put it to a vote on the floor.

FR. BERNAS: May I be allowed to say a few words in support of the amendment?

MR. RAMA: Mr. Presiding Officer, may I ask that Commissioner Bernas be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Bernas, is this in support of the amendment?

FR. BERNAS: This is in support of an amendment to the amendment with the request for a modification of the amendment.

THE PRESIDING OFFICER (Mr. Bengzon): So, will the Commissioner propose an amendment to the amendment?

FR. BERNAS: Yes. I am going to propose an amendment to the amendment saying that it is not enough to drop the phrase "shall not be subjected to income tax," because if that is all that the Gentleman will do, then he will just fall back on the decision in *Perfecto vs. Meer* and in *Dencia vs. David* which excludes them from income tax, but rather I would propose that the statement will read: "During their continuance in office, their salary shall not be diminished BUT MAY BE SUBJECT TO GENERAL INCOME TAX." In support of this position, I would say

that the argument seems to be that the justices and judges should not be subjected to income tax because they already gave up the income from their practice. That is true also of Cabinet members and all other employees. And I know right now, for instance, there are many people who have accepted employment in the government involving a reduction of income and yet are still subject to income tax. So, they are not the only citizens whose income is reduced by accepting service in government.

REV. RIGOS: I accept the proposed amendment to my amendment.

MR. DE LOS REYES: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): What is the pleasure of Commissioner de los Reyes?

#### SUSPENSION OF SESSION

MR. DE LOS REYES: I move for a few minutes' suspension just to confer with the proponent of the amendment and the proponent of the amendment to the amendment.

THE PRESIDING OFFICER (Mr. Bengzon): The session is suspended.

It was 5:10 p.m.

#### RESUMPTION OF SESSION

At 5:33 p.m., the session was resumed.

THE PRESIDING OFFICER (Mr. Bengzon): The session is resumed.

The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner Rigos be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Rigos is recognized.

REV. RIGOS: Mr. Presiding Officer, I reiterate my proposed amendment on Section 13, page 6, lines 3 to 5: "During their continuance in office, their salary shall not be decreased" and place a period (.), then delete the words "nor subjected to income tax."

THE PRESIDING OFFICER (Mr. Bengzon): May we have the reaction of the Committee?

Commissioner Jamir is recognized.

MR. JAMIR: I am not in a position to announce the decision of the Committee. Let us wait; our Chairman is coming.

THE PRESIDING OFFICER (Mr. Bengzon): I understand from Commissioner Romulo that an agreement has already been reached.

Commissioner Romulo is recognized.

MR. ROMULO: No. Commissioner Bernas will now propose his amendment to the amendment. That is the parliamentary situation.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Bernas is recognized.

FR. BERNAS: During the suspension, we came to an understanding with the original proponent, Commissioner Rigos, that his amendment on page 6, line 4 would read: "During their continuance in office, their salary shall not be DECREASED." But this is on the understanding that there will be a provision in the Constitution similar to Section 6 of Article XV, the General Provisions of the 1973 Constitution, which says:

No salary or any form of emolument of any public officer or employee, including constitutional officers, shall be exempt from payment of income tax.

So, we put a period (.) after "DECREASED" on the understanding that the salary of justices is subject to income tax.

THE PRESIDING OFFICER (Mr. Bengzon): That provision that the Commissioner read will be under the Article on General Provisions?

FR. BERNAS: Yes, I do not know if such an Article will be found in the General Provisions. But at any rate, when we put a period (.) after "DECREASED," it is on the understanding that the doctrine in *Perfecto vs. Meer* and *Dencia vs. David* will not apply anymore.

REV. RIGOS: Agreed, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

FR. BERNAS: Yes, the Committee will accept the amendment.

THE PRESIDING OFFICER (Mr. Bengzon): The understanding, therefore, is that there will be a provision under the Article on General Provisions. Could Commissioner Rosario Braid kindly take note that the salaries of officials of the government including constitutional officers shall not be exempt from income tax? The amendment proposed herein and accepted by the Committee now reads as follows: "During their continuance in office, their salary shall not be DECREASED"; and the phrase "nor subjected to income tax" is deleted.

Is there any objection? (Silence) The Chair hears none; the amendment is approved.

The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner Aquino be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Aquino is recognized.

MS. AQUINO: I would request a clarification pertaining to Section 14, subparagraph 3. In Section 11 of the 1973 Constitution, in the Article on the Judiciary, there was an explicit proviso on the effect of noncompliance with the reglamentary period provided for by law which states that the decisions being appealed shall be considered affirmed in the absence of any decision on the part of the Judiciary. What is the effect of this? Earlier, in the period of debate, the honorable sponsors mentioned that the Court does not automatically lose jurisdiction. So, I would like to be clarified about the intention of the Committee in deleting the pertinent provisions of the 1973 Constitution. This might render unnecessary the possibility of any amendment.

MR. ROMULO: Yes.

MR. CONCEPCION: What portion would the Commissioner consider directory?

MS. AQUINO: That was at the instance of my query in the period of debate when I asked if this paragraph would have a mandatory effect.

MR. CONCEPCION: Yes, it is.

MR. ROMULO: Yes, it would have a mandatory effect. That is precisely why we amended the provision on the 1973 Constitution which, in effect, said that the lower courts' decision would be affirmed if the Supreme Court does not decide it within the 1 8-month period.

MS. AQUINO: So, what is the enforceability of this provision?

MR. ROMULO: So, the import of this provision, together with Section 14 (1), is to show through the various certifications required with regard to the beginning and the end of the period that should the Supreme Court or any other court not decide within the period prescribed, it shall constitute a culpable violation of the Constitution, for which, of course, appropriate action can be taken.

MS. AQUINO: And what makes it actionable according to the provision is that the Chief Justice or the Presiding Judge, as the sponsor mentioned earlier, will issue a certification that he has not complied with the Constitution; in effect, this will create for him the evidence against himself.

MR. ROMULO: That is correct.

MS. AQUINO: Thank you, Mr. Presiding Officer. That will obviate any amendment.

MR. ROMULO: Thank you very much.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. DE LOS REYES: Mr. Presiding Officer.

MR. RAMA: I ask that Commissioner Monsod be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Monsod is recognized.

MR. MONSOD: I would like to pose an amendment to Section 15.

MR. DE LOS REYES: Anterior amendment, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Anterior amendment.

MR. DE LOS REYES: Yes.

THE PRESIDING OFFICER (Mr. Bengzon): What section?

MR. DE LOS REYES: Section 14.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner de los Reyes may proceed.

MR. DE LOS REYES: On line 9 of Section 14, the word "must" was used. I understand from the distinguished sponsor, Chief Justice Concepcion, that "must" is too strong a word. So, I propose that it be changed to SHALL; however, it be placed on record that it is the collective sense of the Committee and the Members of this Assembly that this provision is mandatory. In other words, we remove the word "must," which according to Chief Justice Concepcion does not sound all right.

MR. ROMULO: May I comment?

The Chairman's reservation was addressed to Section 11, specifically to the sentence which reads: "Any Member dissenting or abstaining from a decision shall state the reason for his dissent or abstention." However, I believe the Chairman has no objection to the use of "must" in Section 14 (1), because we wish the Supreme Court to know that this is mandatory.

MR. DE LOS REYES: All right; I do not insist on my amendment.

MR. ROMULO: Thank you.

MR. DE LOS REYES: Thank you.

THE PRESIDING OFFICER (Mr. Bengzon): Thank you.

The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Monsod be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Monsod is recognized.

MR. SUMULONG: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Does Commissioner Sumulong have any anterior amendment?

MR. SUMULONG: Yes, I have an amendment to offer with respect to paragraph 2 of Section 14.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Sumulong is recognized.

MR. SUMULONG: May I proceed, Mr. Presiding Officer?

THE PRESIDING OFFICER (Mr. Bengzon): Yes.

MR. SUMULONG: Paragraph 2 of Section 14 reads as follows: "A case or matter shall be submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of court or by the court itself." I propose that after the word "pleading" on line 15, delete the comma (,); and then on line 16, delete the word "memorandum" and in lieu thereof insert AFTER ORAL ARGUMENT so that this paragraph 2 will read as follows: "A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading or AFTER ORAL ARGUMENT required by the rules of court or by the court itself."

May I briefly explain this, Mr. Presiding Officer?

THE PRESIDING OFFICER (Mr. Bengzon): Yes, please go ahead.

MR. SUMULONG: Formerly, the procedure is for setting the case for oral argument where both parties will be allowed to argue for or against in the presence of all the justices of the Supreme Court or whatever court it was. And after the oral argument, then the members of the court, while the facts were still fresh in their mind, would deliberate and reach a decision. But now, the procedure has changed. Under our Rules of Court now, after the appellant has filed a reply brief, then the case is already considered submitted for decision. And usually that reply brief lies there for months or for a long time without any decision. And that is why I believe that the wording of this paragraph should be changed because the words "last pleading" cover already the reply brief of the appellant, and the word "memorandum" applies in case there is an oral argument. Usually, the court says, "Well, you file; let the appellant file a memorandum within 10 days." And then, the appellee can submit a reply memorandum within 10 days also from receipt of the appellant's memorandum.

That was the procedure, Mr. Presiding Officer. And I think that if we want to avoid decisions which are studied only by one justice or allowed to lie sleeping for a long time, we should revert to the old rule of setting the case for oral argument where all the justices will have to be present. They should read all the briefs involved and then hear the arguments of both sides. And after the oral arguments, they should deliberate right away while the facts and the law are fresh in their mind, and reach a decision.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. CONCEPCION: I would want to ask for a clarification. How would the Commissioner rephrase paragraph 2? How would he put his idea across?

MR. SUMULONG: I am proposing that on line 15, after "pleading," delete the comma (,) and then on line 16, delete "memorandum" and in lieu thereof insert AFTER ORAL ARGUMENT so that this sentence will read: "A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading or AFTER

ORAL ARGUMENT required by the rules of court or by the court itself."

This will allow a case to be submitted immediately after oral argument.

MR. CONCEPCION: Does the Commissioner mean that the Court should hear all cases on oral argument?

MR. SUMULONG: The Court should set the case for oral argument where all the justices will be present and both sides will argue before them; and after the oral argument, while the facts and the law are fresh in their mind, then the justices can deliberate and reach a decision.

MR. CONCEPCION: But still, the question is: Does the Commissioner wish to have an oral argument in all cases so that the Court could not decide without an oral argument?

MR. SUMULONG: Yes, I would prefer that, Mr. Presiding Officer. There should be an oral argument in all cases especially before the Supreme Court and the Court of Appeals.

MR. CONCEPCION: Suppose the parties agreed?

MR. SUMULONG: Because under the present rules, there is delay where it says that after filing the reply brief of the appellant the case is deemed submitted for decision. And usually not all the justices partake in the writing of the decision.

MR. CONCEPCION: My first question is still unanswered. So, no case can be decided without a previous oral argument.

MR. SUMULONG: We can allow the appellant to submit his brief then, after that, the appellee will file his brief. And after both parties have submitted their briefs, we should set the case for oral argument and then reach a decision.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Sumulong, the question precisely is that every single case that is brought up to the Supreme Court, therefore, must be set for oral argument.

MR. SUMULONG: Yes, I prefer that because, I think, the results will be better. If there is an oral argument, all the justices will be required to be present. They will hear both sides. Whereas, if we say that after the filing of the reply brief of the appellant, the case is submitted for decision, we cannot be sure that all the justices will study the case.

MR. CONCEPCION: Suppose the parties have agreed to submit the case without oral argument.

MR. SUMULONG: That is disadvantageous, Mr. Presiding Officer, because if there is no oral argument, we will not be sure that all the justices will participate, study and deliberate the case.

MR. CONCEPCION: That is why there is a certification required of the deliberations.

MR. SUMULONG: I beg the sponsor's pardon.

MR. CONCEPCION: There is required a certification about the deliberation in the court, if that is what the Commissioner wants to ensure. There is a provision in the Rules that once a case has been discussed by the court, there must be a certification to that effect.

MR. SUMULONG: There was a time, I remember, where every case, before it is submitted for resolution, is set for oral argument. And I think the reason is to make sure that all the justices will study the case before the oral argument is held. More so, during the oral argument, they will be hearing both sides. After that, while the facts and the law are fresh in their mind, they can make a speedy decision which cannot be done, if there is no oral

argument. I understand that that is the procedure being followed in the US federal courts.

THE PRESIDING OFFICER (Mr. Bengzon): Will the Committee accept the proposed amendment?

MR. CONCEPCION: We prefer to submit that to the Commission.

MR. RODRIGO: Mr. Presiding Officer, before we vote, I would like to make some observations.

Paragraph 2 of Section 14 should be read in conjunction with paragraph 1.

THE PRESIDING OFFICER (Mr. Bengzon): That is right.

MR. RODRIGO: Paragraph 1 does not only refer to the Supreme Court and the collegiate courts but even to lower courts. So, this applies even to regional trial courts. Does the proponent mean to say that even in regional trial courts, there should be an oral argument?

MR. SUMULONG: Yes. I think it should be done in the Court of Appeals, the Court of Tax Appeals and in the Sandiganbayan.

MR. RODRIGO: Does the Commissioner mean that in the regional trial courts and the municipal courts, there should also be oral argument after hearing? As I said, paragraph 2 refers to all the courts referred to in paragraph 1; and paragraph 1 refers even to lower courts including municipal courts and city courts. The last phrase there mentions a period of "three months for all other lower courts."

MR. SUMULONG: No, I would apply my proposal to have an oral argument before submission of the case where the court is collegiate.

MR. RODRIGO: Then the proposed amendment has to be reworded.

And another question, as the Commissioner himself has said, usually after an oral argument, the parties are given time to submit memoranda. Does he mean to say that after oral argument no memorandum should be allowed and immediately after oral argument, the case should be submitted for decision?

MR. SUMULONG: That will depend upon the court. If they believe that after the oral argument they would need the filing of the memorandum, that can be done.

MR. RODRIGO: Then in that case, the case should be deemed submitted for a decision not after the oral argument, but after the filing of memoranda, if any.

MR. SUMULONG: Yes, that is a last pleading.

MR. NATIVIDAD: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): What is the pleasure of Commissioner Natividad?

MR. NATIVIDAD: Will the proponent of the amendment yield to just one question?

THE PRESIDING OFFICER (Mr. Bengzon): Is Commissioner Sumulong willing to yield to some questions?

MR. SUMULONG: Yes, with pleasure.

MR. NATIVIDAD: Thank you.

I wonder if Commissioner Sumulong's stand would change especially with regard to Section 11 which says:

The conclusions of the Supreme Court in any case submitted to it for decision en banc or in division, shall be reached in consultation before the case is assigned to a member for the writing of the opinion of the court.

The reason for the Commissioner's amendment is for the participation of all the justices, and this section insures this participation.

MR. SUMULONG: My proposed amendment, in which an oral argument is necessary before a case is submitted for resolution, is complementary to Section 11 to make sure that a case will be studied by all the justices and not only by one. Under the present rule, after a reply brief has been filed by the appellant, the case is considered submitted for resolution. I know of many cases where only one or a few justices have studied the case.

MR. NATIVIDAD: I submit, Mr. Presiding Officer. I would just remind the honorable Commissioner.

VOTING

THE PRESIDING OFFICER (Mr. Bengzon): I think the issue has been amply discussed and everything is clear on both sides. We are ready to vote now.

Those in favor of the amendment of Commissioner Sumulong, please raise their hand. (Few Members raised their hand.)

Those against the amendment, please raise their hand. (Several Members raised their hand.)

The results show 6 votes in favor and 23 against; the amendment is lost.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Monsod be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Monsod is recognized.

MR. MONSOD: I want to propose an amendment by substitution on Section 15. I propose to delete the entire section and in lieu thereof place the following: SECTION 15. THE JUDICIARY SHALL ENJOY FISCAL AUTONOMY. APPROPRIATIONS FOR THE JUDICIARY MAY NOT BE REDUCED BY THE LEGISLATURE BELOW THE AMOUNT APPROPRIATED FOR THE PREVIOUS YEAR AND, AFTER APPROVAL, SHALL BE AUTOMATICALLY AND REGULARLY RELEASED.

I just want to clarify that the reason for this amendment is that the Judiciary should not be exempt from the budgetary process of submitting and justifying its budget, except that upon approval, it should be automatically and regularly released.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. ROMULO: The Committee accepts. May I ask if the second and the last sentences are joined in one?

MR. MONSOD: No, there are only two sentences here.

THE PRESIDING OFFICER (Mr. Bengzon): The Committee has accepted the amendment.

Is there any objection? (Silence) The Chair hears none; the amendment is approved.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Maambong be recognized.

THE PRESIDING OFFICER (Mr. Bengzon). Commissioner Maambong is recognized.

MR. MAAMBONG: Presiding Officer and members of the Committee, I propose to delete the last sentence on Section 16, lines 28 to 30 which reads: "The Chief Justice shall address the National Assembly at the opening of each regular session."

May I explain that I have gone over the operations of other deliberative assemblies in some parts of the world, and I noticed that it is only the Chief Executive or head of state who addresses the National Assembly at its opening. When we say "opening," we are referring to the first convening of any national assembly. Hence, when the Chief Executive or head of state addresses the National Assembly on that occasion, no other speaker is allowed to address the body.

So I move for the deletion of this last sentence.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. ROMULO: Mr. Presiding Officer, this is contained in my resolution and I think the Committee agrees that we should retain it, except that the Chief Justice should not address the Assembly on the same day that the President does, but on any other subsequent day. We have three reasons for this: First, as Commissioner Ople says, we live by symbols nowadays; and thus, we want to dramatize the importance of justice through the personification of the Chief Justice appearing before the National Assembly.

Second, since the amendment of Commissioner Monsod will not make the appropriations automatic, we want the Chief Justice to be able to explain to the legislature the needs of the Judiciary in a very dramatic way without lowering his dignity or seemingly appearing to beg.

Third, we want to impress upon the Chief Justice and the members of the court that they have a responsibility to answer for their performance by appearing before the representatives of the people.

We would prefer that the body vote on it.

MR. NATIVIDAD: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Natividad is recognized.

MR. NATIVIDAD: Mr. Presiding Officer, will my colleague from the Opposition yield.

MR. MAAMBONG: I yield, but on the floor I am not a member of the Opposition; I am only an opposition outside.

MR. NATIVIDAD: I withdraw the word "Opposition" and in lieu thereof I use the word "Commissioner."

MR. MAAMBONG: Thank you.

MR. NATIVIDAD: Is it not a fact that the Chief Justice of the Supreme Court was always invited by the Batasan, when it converted itself into a committee of the whole, to address that body during appropriations hearings but not on the opening day? The same is true in the old Congress, when we converted the House into a committee of the whole during appropriations hearings and the Chief Justice was then invited to address us.

I wonder if the Commissioner was a Member then of the Batasan when Chief Justice Castro came here to discuss the Judiciary's budget.

MR. MAAMBONG: In reply to the Commissioner's statement, traditionally, that is the correct procedure being followed in the old Congress and also in the First Regular Batasang Pambansa. As a matter of fact, during the opening ceremonies of both bodies, all Cabinet ministers, justices of the Supreme Court — not only the Chief Justice — were invited, together with the members of the diplomatic corps. It is also true that upon invitation the

Chief Justice addressed the legislature when converted into a committee of the whole.

Traditionally, Cabinet ministers who were not Members of the Assembly were not allowed to address the First Regular Batasang Pambansa. So they had to appoint their respective parliamentary deputy ministers who were Members of the Assembly to answer the questions during the Question Hour.

MR. NATIVIDAD: Yes, the Batasan converted itself into a committee of the whole, whenever a Cabinet minister who was not a Member of the Batasan addressed the Assembly.

So, considering that past practice, I feel that the Chief Justice may be invited by the National Assembly. However, his addressing the body on the same day the President does has no precedent yet.

MR. ROMULO: The Committee wishes to explain that that is not our meaning.

MR. NATIVIDAD: I accept that, that is why I was trying to find out if the proponent of the motion to delete the last sentence of Section 16 would change his stand if the Chief Justice is invited for another day.

MR. MAAMBONG: I feel very awkward about this provision. I moved for its deletion because it is not really necessary to institutionalize this practice in the Constitution.

At any rate, as pointed well by Commissioner Natividad, the Chief Justice can always address the National Assembly when it is converted into a committee of the whole. Actually, I find no necessity for this provision.

MR. NATIVIDAD: I submit to the Commissioner.

Thank you.

THE PRESIDING OFFICER (Mr. Bengzon): The Chair notes that the intention of the Committee is not really to have the Chief Justice address the Assembly at the opening of the regular session.

Is the proponent still insisting on his amendment by deletion or would he tailor his amendment to accommodate the intention of the Committee?

MR. MAAMBONG: I object to that last sentence because it says: "at the opening," which means the first day of convening the Batasang Pambansa or the National Assembly.

MR. ROMULO: The Committee is willing to amend by putting AFTER.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Rodrigo is recognized.

MR. RODRIGO: I would like to ask the Committee a question.

It is now clear that the Committee is willing to delete that sentence so that the Chief Justice does not have to address the National Assembly at the opening session.

It is the sense of the Committee to make it compulsory for the Chief Justice to address the National Assembly during its session and for the National Assembly to invite him?

MR. ROMULO: Yes.

MR. RODRIGO: Then, I know how to vote on that amendment because I am really against making it compulsory for the Chief Justice to address the National Assembly and for the National Assembly to invite him. That was never done during our time.

THE PRESIDING OFFICER (Mr. Bengzon): I think the issue has been amply discussed.

## SUSPENSION OF SESSION

MR. MAAMBONG: Mr. Presiding Officer, may I ask for a suspension of the session so that we can confer with the members of the Committee? Probably, we can iron this out without the necessity of voting on it.

THE PRESIDING OFFICER (Mr. Bengzon): The session is suspended.

It was 6:01 p.m.

## RESUMPTION OF SESSION

At 6:08 p.m., the session was resumed.

THE PRESIDING OFFICER (Mr. Bengzon): The session is resumed.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner Maambong be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Maambong is recognized.

MR. MAAMBONG: First of all, I would like to withdraw my primary amendment.

THE PRESIDING OFFICER (Mr. Bengzon): The primary amendment is withdrawn.

MR. MAAMBONG: In lieu of that primary amendment, I would like to substitute the following on lines 28 to 30: THE CHIEF JUSTICE MAY ADDRESS THE NATIONAL ASSEMBLY ON A DAY SET FOR THE PURPOSE DURING ITS REGULAR SESSION.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. ROMULO: Upon the advice of the Commissioner, who is far wiser than I, the Committee accepts the amendment.

THE PRESIDING OFFICER (Mr. Bengzon): The Committee has accepted the amendment. Is there any objection?

MR. RODRIGO: Much as I do not want to object, it is really a useless provision. Why should we encumber our fundamental law of the land with a useless provision? The people might laugh at us.

## VOTING

THE PRESIDING OFFICER (Mr. Bengzon): Since there is an objection, the Commission will now vote on the amendment of Commissioner Maambong.

Those in favor of the amendment, please raise their hand. (Few Members raised their hand.)

Those against the amendment, please raise their hand. (Several Members raised their hand.)

The results show 14 votes in favor and 15 against; the amendment is lost.

MR. RODRIGO: Parliamentary inquiry. Does it mean that the last sentence remains?

THE PRESIDING OFFICER (Mr. Bengzon): Yes, because the amendment was lost.

MR. RODRIGO: Then I will present an amendment to delete the last sentence on lines 28 to 30.

## VOTING

THE PRESIDING OFFICER (Mr. Bengzon): I think we have debated on this enough. Let us now vote.

Those in favor of the amendment to delete the last sentence on page 6, lines 28 to 30, please raise their hand. (Several Members raised their hand.)

Those against, please raise their hand. (Few Members raised their hand.)

The results show 24 votes in favor and 10 against; the amendment is approved.

The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Davide be recognized for a one-word amendment.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Davide is recognized.

MR. DAVIDE: May I be allowed to have another amendment outside of that? But, first, may I move to reconsider an approved amendment. The amendment that was approved earlier and which I am now seeking to reconsider is the amendment introduced by Commissioners Maambong and de los Reyes on line 23, page 4.

MR. MAAMBONG: With the kind indulgence of Commissioner Davide, I have an anterior amendment which I reserved with the Floor Leader.

MR. OPLE: Mr. Presiding Officer, Bishop Bacani and I have reserved time with the Floor Leader and with the members of the Committee for a reconsideration of the vote on Section 5.

Does Commissioner Davide's amendment pertain to any section anterior to that?

MR. DAVIDE: Posterior; the proposed reconsideration will be an amendment to paragraph 5 of Section 7.

MR. OPLE: I have the permission of Commissioner Davide to seek the floor first on the basis of an anterior amendment.

MR. DAVIDE: I am willing to yield.

MR. OPLE: What about Commissioner Maambong?

MR. MAAMBONG: Considering that my reservation with the Floor Leader refers to Section 1, may I go ahead with my anterior amendment?

MR. OPLE: I recognize precedence of Commissioner Maambong's amendment.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Maambong is recognized.

MR. MAAMBONG: This proposed amendment may not be actually necessary, if I can get some clarificatory answers from the Committee.

I am referring to Section 2, line 14 which reads: "No law shall be passed reorganizing the Judiciary when it undermines security of tenure."

The way I see it this probably refers to a particular law, the Judiciary Reorganization Act of 1981 (BP No. 129). From that point of reference, I would just like to know whether there is any form of judiciary reorganization which does not, in some way, undermine the security of tenure. We had the Judiciary Act of 1943, which was amended several times before the Judiciary Reorganization Act of 1981, and if I recall correctly, upon the implementation of both laws, there was always some form, one way or the other, of abridging the security of tenure. So, if there is such an abridgment of security of tenure, I find that this provision may not be tenable. I would just like to get a clarification from the Committee.

MR. ROMULO: The Committee does not prevent a reorganization or a revamp, but prohibits it if the only purpose is to kick out judges. That is the essence of this provision. Therefore, a reorganization in good faith, as in the de la Llana case, would be acceptable. But if the main purpose is really to throw out the judges so that we

bring in a completely new set, then it is not in good faith. So, this provision seeks to prohibit that kind of a reorganization. But let us say that the legislature reorganizes the number of courts because in one region it is either too many or too little, then that would seem to be a valid reorganization.

MR. MAAMBONG: My point is that with this provision we are actually shackling the legislative body or the Supreme Court. Forgive me if I am wrong, but as I see it, a real honest-to-goodness judiciary reorganization — without any intention of kicking out judges just like that — has to undermine the security of tenure in some way. And if we put this provision, there would be no situation wherein a law will be passed without undermining the security of tenure. So, why should we place a provision which will shackle the legislative body?

MR. ROMULO: I think the intention is not to prevent the National Assembly from passing a reorganization law, but to give the judges, the citizens, or some other petitioners a chance to question it. For example, if we increase the number of courts, there may be a reorganization but that does not undermine the security of tenure.

MR. MAAMBONG: Just a point of reference. In the last judicial reorganization, we changed the jurisdiction and nomenclature of the courts, for instance, from municipal court to municipal circuit trial court. Because of the changes in the structural arrangement of the Judiciary from the top down to the lower courts, whether the government liked it or not, the abridgment of the security of tenure was not avoided.

May I repeat my that if we put such a provision, there may be no instance at all where we will be reorganizing the Judiciary without violating the Constitution. So, this is a suggestion which I may put to a motion. Why do we not just delete this provision as it is very self-limiting?

MR. ROMULO: Perhaps the proponent, Commissioner Davide, would like to say a few words.

MR. RAMA: I ask that Commissioner Bernas be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Bernas is recognized.

FR. BERNAS: I would like to support the deletion of this provision because it does not really add anything.

During the interpellations yesterday, I asked whether or not this is an absolute prohibition of reorganization and I was told it is not. There can be reorganization provided it does not violate the security of tenure. If it does, then the reorganization will be unconstitutional. Therefore, the validity of the reorganization will have to be decided ultimately by the Supreme Court as provided in paragraph 2 of the subsequent section. So, any reorganization act is just a law, just like any other law. But if we challenge its constitutionality, then we throw it to the Supreme Court on the basis of Section 2. So it seems to me that these two lines are useless. A reorganization act is a law. The validity or constitutionality of a law can always be passed upon by the Supreme Court under paragraph 2 of Section 3. So to me, this is unnecessary.

THE PRESIDING OFFICER (Mr. Bengzon): We have already had two speakers in favor of the amendment by deletion. Just for the record, is Commissioner Maambong formalizing that amendment by deletion?

MR. MAAMBONG: I so move to delete the second paragraph of Section 2, lines 14 to 15, which states: "No law shall be passed reorganizing the judiciary when it undermines security of tenure."

#### VOTING

THE PRESIDING OFFICER (Mr. Bengzon): The Committee has given its views, so the body will now vote.

Those in favor of the amendment by deletion, please raise their hand. (Few Members raised their hand.)

Those against, please raise their hand. (Several Members raised their hand.)

The results show 16 votes in favor and 19 against; the amendment is lost.

The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Ople be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Ople is recognized.

MR. OPLE: Thank you very much, Mr. Presiding Officer.

At this instance, I am associating myself with Commissioner Bacani regarding Section 4. There was a previous voting on this section. May I explain what we would like to propose to the Committee and to the Commissioners? I think we have the leave of the Committee. We have secured it previously for a reopening of the action of the Commission on this section.

Section 4, subsection 2 reads:

The National Assembly shall prescribe the qualifications of judges of lower courts, but no person may be appointed judge thereof unless he is a natural-born citizen of the Philippines and a member of the Philippine Bar.

We would like to propose that the phrase "natural-born" be deleted. May I explain? As written, I think this subsection would bar from the lower courts any naturalized citizen. We would not like to disturb this requirement for the Supreme Court. This is a time-honored policy of the State that the occupants of such exalted offices as the President, Vice-President, members of Congress and justices of the Supreme Court should be natural-born citizens. But in this case, an act of gross wholesale indiscriminatio is being committed against naturalized Filipinos who may not even qualify for the lowest position in the Judiciary, say, in a municipal trial court. This should not be a salient feature of a constitution devoted to the equality of our citizens except where there are compelling traditions that reserve the highest and the most exalted offices to natural-born citizens.

It is most unlikely that naturalized citizens will apply for positions in the lower courts. I think their temperaments and training fairly impel them to seek careers other than those of the Judiciary. But to provide in this Constitution a blanket prohibition against naturalized citizens serving in the lower courts, I think, is also a very deplorable indictment of a whole class of citizens who have already passed the tests established by our own laws for them to become Filipino citizens.

Although the Supreme Court must remain reserved to natural-born Filipinos, there must be no constitutional prohibition against naturalized citizens seeking access for services in the lower courts as members of the Judiciary. Of course, when they enter the Judiciary at the lowest level, they know in advance that they may not aspire for membership in the Supreme Court. But at least, all of them are on notice as naturalized Filipino citizens that they cannot rise to that zenith in the same manner that great secretaries of state in the United States, the latest of them, Henry Kissinger, who are naturalized Americans go through these careers knowing that they will never qualify to become President or Vice-President of the United States.

So, in the interest of fairness and equity for those who have embraced the duties and obligations of Filipino citizens other than the natural-born, Commissioner Bacani and I would like to plead with the members of the Committee and with the body to allow the deletion of the requirement of natural-born citizens for the qualification of judges of lower courts, if they are otherwise qualified. Hence, Commissioner Bacani and I seek a reconsideration of the earlier vote on Section 4, subsection 2.

MR. SUAREZ: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): We must first ask the Commission to vote whether or not a reconsideration would be in order.

So, is Commissioner Ople, therefore, proposing a motion to reconsider the decision of the body?

MR. OPLE: I move for a reconsideration of the earlier vote on Section 4, subsection 2.

THE PRESIDING OFFICER (Mr. Bengzon): Is there any objection? (Silence) The Chair hears none; the motion is approved.

The voting on Section 4, subsection 2 is reconsidered.

Is the Commissioner now moving to delete the term "natural-born" on line 15?

MR. OPLE: Yes. But before I put this to a motion, may I inform the Assembly that we have secured the prior permission of the Committee, headed by the Chief Justice, to make this proposal to the Commission.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. ROMULO: We would only like to point out that the term "lower court" includes the appellate court. So, it is not just the regional trial court that will be affected, but also the appellate court.

THE PRESIDING OFFICER (Mr. Bengzon): Meaning, the Intermediate Appellate Court?

MR. ROMULO: Yes, including the Sandiganbayan and the Court of Tax Appeals.

MR. OPLE: As I said earlier, a naturalized Filipino who starts from the bottom of the ladder knows in advance that the absolute zenith he can aspire to in a career requiring a lifetime of devotion to the law, as a member of the bench, would be the Intermediate Appellate Court, and no higher.

MR. ROMULO: Then, we would rather submit the question to a vote.

FR. BERNAS: Mr. President, just a point of clarification.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Bernas is recognized.

FR. BERNAS: If we were to delete the qualifier "natural-born," would it be within the power of the National Assembly to require that a justice of the Intermediate Appellate Court be a natural-born citizen?

MR. OPLE: Yes. I do not think this prohibits in advance the enactment of a law, setting that matter in favor of the natural-born citizen for the Intermediate Court of Appeals.

FR. BERNAS: Is that the understanding of the Committee also?

MR. ROMULO: Yes. We believe that the legislature can impose that condition on the Intermediate Appellate Court, having been created by statute.

FR. BERNAS: But then, we follow the principle that unless the Constitution makes a distinction between natural-born and naturalized citizens, the law should not make a distinction.

MR. ROMULO: That is a valid rule of interpretation.

FR. BERNAS: So, that would prevent the legislature from prescribing that justices of the Intermediate Appellate Court be natural-born citizens.

MR. ROMULO: Assuming that the legislature agrees with our statutory construction.

THE PRESIDING OFFICER (Mr. Bengzon): Is Commissioner Bernas clarified now?

FR. BERNAS: In other words, we are putting this on record, for purposes of the legislature, telling it that as far as we are concerned, this does not prevent it from requiring that a justice of the Intermediate Appellate Court be a natural-born citizen.

MR. OPLE: May I say that that is the intent of the sponsor as well.

May I formally propose that amendment and move for its approval.

VOTING

THE PRESIDING OFFICER (Mr. Bengzon): The issue has been amply discussed. We will now put that to a vote.

Those in favor of the amendment to delete the words "natural-born" on line 15, page 2, Section 4, subparagraph (2), please raise their hand. (Several Members raised their hand.)

Those against, please raise their hand. (Few Members raised their hand.)

The results show 21 votes in favor and 12 against; the amendment is approved.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Davide be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Davide is recognized.

MR. DAVIDE: As a consequence of the approval of that particular amendment and considering my deep concern regarding the entry into the Judiciary, a very delicate position, of naturalized citizens, may I be allowed to introduce an amendment on the first paragraph of Section 4, specifically on line 9.

Between the words "Court" and "unless," insert the following: OR ANY LOWER COLLEGIATE COURT.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. ROMULO: Does Commissioner Davide mean that to become a member of a collegiate court, one must be a natural-born Filipino citizen?

MR. DAVIDE: Yes, similar to that of the Supreme court.

MR. ROMULO: This will, therefore, partially dilute the amendment we have just approved.

MR. DAVIDE: Yes, but I would like to invite the attention of the body that there will be more qualified natural-born Filipino citizens with the expansion of our interpretation of "natural-born Filipino citizens" under the Article on Citizenship — granting those who elected Philippine citizenship under the 1935 Constitution and all those who were born before January 17, 1973 the status of natural-born citizens. We will have enough lawyers of this class of citizens. But beyond that, the members of the intermediate or lower collegiate courts occupy a very delicate position. I could just imagine if we have a naturalized Filipino attending to cases involving the interest of naturalized Filipinos or aliens. We cannot truly expect that all those who became Filipino citizens by naturalization could truly be assimilated into the Philippine community and that they could really imbibe the customs, traditions, aspirations, hopes and dreams of the Filipinos. So, probably for the lower courts, that may be allowed but not for the members of the Supreme Court and the lower collegiate courts.

Thus, I plead for the approval of this proposal.

FR. BERNAS: Mr. Presiding Officer, one clarificatory question.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Bernas is recognized.

FR. BERNAS: Does the proponent of the amendment also mean that any justice or judge of a collegiate court must not only be a natural-born citizen but at least 40 years of age, and has for 15 years or more been a judge of a lower court or engaged in the practice of law and so forth?

MR. DAVIDE: That could be the effect because the amendment is in paragraph (1).

FR. BERNAS: Hindi ba mahirap iyon?

THE PRESIDING OFFICER (Mr. Bengzon): All right, what does the Committee say?

MR. ROMULO: What is the final amendment now, Mr. Presiding Officer?

THE PRESIDING OFFICER (Mr. Bengzon): The amendment reads: "No person shall be appointed member of the Supreme Court OR ANY LOWER COLLEGIATE COURT unless he is a natural-born citizen of the Philippines . . ."

MR. ROMULO: Would the proponent clarify what he means by "LOWER COLLEGIATE COURT"?

MR. DAVIDE: This phrase would refer to the following present courts: the Sandiganbayan, the Court of Tax Appeals and the Intermediate Appellate Court, or any other collegiate courts which may be created later.

MR. ROMULO: The committee accepts the amendment with the observation that in many cases the decision of the Intermediate Appellate Court is final.

MR. DAVIDE: Certainly, that is among the reasons why, with more vigor, we must allow the passage of this amendment.

MS. AQUINO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): What is the pleasure of the Commissioner?

MS. AQUINO: I would only like to ask the proponent some clarification.

MR. DAVIDE: Willingly.

MS. AQUINO: Apparently, Commissioner Davide's proposal does not only cover the question on Citizenship. In other words, he is putting the justices of the Intermediate Appellate Court in the same rank as those of the Supreme Court, with all the qualifications enumerated in Section 4.

MR. DAVIDE: That would be the effect of the proposed amendment. But if the Commissioner wants, we could place here somewhere the other requirements like age, length of service as a judge at a lower court, or length of practice of law in the Philippines.

MS. AQUINO: I would be amenable to an amendment which would allow naturalized citizens to be members of the lower collegiate courts, but for all of these requisites to likewise apply to them, we might be dumping constraints to the possibility of being appointed to this position.

SUSPENSION OF SESSION

MR. DAVIDE: May I request a suspension of the session?

THE PRESIDING OFFICER (Mr. Bengzon): The session is suspended.

It was 6:40 p.m.

#### RESUMPTION OF SESSION

At 6:46 p.m., the session was resumed.

THE PRESIDING OFFICER (Mr. Bengzon): The session is resumed.

The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner Davide be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Davide is recognized.

MR. DAVIDE: Mr. Presiding Officer, may I be allowed to propose a modification of the original amendment? The modification consists of two amendments. The first on line 9, and the second on line 10. On line 9, insert between "Court" and "unless" the following: OR ANY LOWER COLLEGIATE COURT. On line 10, put a period (.) after the word "Philippines" and after the period (.), insert this phrase: A MEMBER OF THE SUPREME COURT MUST BE. Between "and" and "for," delete the word "has" and substitute it with MUST HAVE BEEN. So, it will now read as follows: "No person shall be appointed member of the Supreme Court OR ANY LOWER COLLEGIATE COURT unless he is a natural-born citizen of the Philippines. A MEMBER OF THE SUPREME COURT MUST BE at least forty years of age, and MUST HAVE BEEN for fifteen years so . . ." Then continue on the succeeding lines until the Nollado amendment.

THE PRESIDING OFFICER (Mr. Bengzon): Until the phrase "Philippine Bar."

MR. DAVIDE: Also, the word "been" on line 11 should be deleted to read: "and MUST HAVE BEEN for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines . . ."

THE PRESIDING OFFICER (Mr. Bengzon): Would the Gentleman read the second sentence again?

MR. DAVIDE: "A MEMBER OF THE SUPREME COURT MUST BE at least forty years of age, and MUST HAVE BEEN for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines." Then the Nollado amendment.

MR. MAAMBONG: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): What the pleasure of Commissioner Maambong?

MR. MAAMBONG: Would the proponent accept an amendment to the amendment so that the provision would read: "A MEMBER OF THE SUPREME COURT MUST BE at least forty years of age, and MUST HAVE FOR FIFTEEN YEARS OR MORE BEEN a judge of a lower court . . ." Because it would look awkward if we say: "MUST HAVE BEEN for fifteen years or more been a judge."

MR. DAVIDE: No, there is no "been" anymore on line 11; we have deleted "been."

MR.- MAAMBONG: So, I am repeating my amendment to the amendment. The provision then reads: "AND MUST HAVE FOR FIFTEEN YEARS OR MORE BEEN a judge of a lower court or engaged in the practice of law in the Philippines."

MR. DAVIDE: We can leave it to the Style Committee, although I believe that "have" should immediately be followed by "been."

THE PRESIDING OFFICER (Mr. Bengzon): Can we leave it to the Style Committee?

MR. DAVIDE: We can leave it to the Style Committee.

MR. SUAREZ: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Suarez is recognized.

MR. SUAREZ: Just one point of clarification.

As proposed, the Gentleman would admit the possibility of a situation where the National Assembly may provide that members of the Intermediate Appellate Court, the Sandiganbayan or the Court of Tax Appeals be less than 40 years of age. They do not have to have been engaged in the practice of law for 15 years and they do not have to be in the Judiciary for 15 years.

MR. DAVIDE: That would be the effect because in the original proposal of the Committee, the members of the lower collegiate courts are classified as belonging to lower courts. So, the basic qualification will be that they are natural-born citizens of the Philippines and members of the Philippine Bar.

MR. SUAREZ: Thank you.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Monsod is recognized.

MR. MONSOD: Mr. Presiding Officer, I just wanted to make a small suggestion.

Should they also be members of the Philippine Bar because, otherwise, there will be no phrase saying that members of the collegiate courts should be members of the Philippine Bar, which would have been a requirement under Section 2?

MR. ROMULO: They could not have practised law.

MR. DAVIDE: They should really have.

MR. MONSOD: So, it should read: 'UNLESS HE IS A NATURAL-BORN CITIZEN OF THE PHILIPPINES AND A MEMBER OF THE PHILIPPINE BAR.' And additionally, THE SUPREME COURT MEMBERS MUST BE. That could also be a matter of style, but that is just to have consistency between paragraphs 1 and 2.

BISHOP BACANI: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Yes, Commissioner Bacani is recognized.

BISHOP BACANI: I would like to speak against the amendment. I was told I could still speak against the amendment proposed by Commissioner Davide.

THE PRESIDING OFFICER (Mr. Bengzon): Is Commissioner Suarez proposing any amendment?

MR. SUAREZ: No.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. ROMULO: The amendments are not clear to us now. What is the amendment?

THE PRESIDING OFFICER (Mr. Bengzon): Will the Gentleman restate his amendment?

MR. DAVIDE: Yes, there was a proposal by Commissioner Monsod which I am still studying.

So, the original amendment merely consists in the insertion of the phrase OR ANY LOWER COLLEGIATE COURT between "Court" and "unless" on line 9. And on lines 10 and 11, we place a period (.) after "pines" of the word "Philippines."

THE PRESIDING OFFICER (Mr. Bengzon): Could the Gentleman just read the whole amendment, so that the

whole body can follow.

MR. DAVIDE: Section 4 (1) will read: "No person shall be appointed member of the Supreme Court OR ANY LOWER COLLEGIATE COURT unless he is a natural-born citizen of the Philippines. A MEMBER OF THE SUPREME COURT MUST BE at least forty years of age, AND MUST HAVE BEEN FOR FIFTEEN YEARS OR MORE a judge of a lower court or engaged in the practice of law in the Philippines . . ." Then followed by the Nollado amendment.

THE PRESIDING OFFICER (Mr. Bengzon): Where does the suggestion of Commissioner Monsod come in?

MR. DAVIDE: The suggestion of Commissioner Monsod is also to require specifically that the members of any lower collegiate court be members of the Philippine Bar. But it is just a question of placement.

I would seek the assistance of the Committee.

MR. SUAREZ: Mr. Presiding Officer, I am sorry, but may I ask one more question.

THE PRESIDING OFFICER (Mr. Bengzon): Yes, Commissioner Suarez is recognized.

MR. SUAREZ: If we are going to limit the application of the rest of the provisions to a member of the Supreme Court, that would practically render null and void the Nollado amendment regarding the requirement that Justices of the Supreme Court and all other members of the lower courts must be with proven integrity. That might render this academic.

THE PRESIDING OFFICER (Mr. Bengzon): Can the Commission not decide on the concept and intention and leave the styling to the Committee on Style?

MR. REGALADO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): What is the pleasure of Commissioner Regalado?

MR. REGALADO: There was that matter about membership in the Philippine Bar Association.

THE PRESIDING OFFICER (Mr. Bengzon): Yes.

MR. REGALADO: Under Section 4 (2), the National Assembly shall prescribe the qualifications of judges of lower courts and this includes the Intermediate Appellate Court, the Sandiganbayan as well as the Court of Tax Appeals. They are required to be members of the Philippine Bar. Does that answer the question of Commissioner Monsod?

MR. DAVIDE: Yes, but the main concern of Commissioner Monsod is that we actually raise the level of lower collegiate courts. The level now is on the first paragraph.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Davide, I think the point of Commissioner Monsod is that he was apprehensive about the fact that membership in the Philippine Bar was not included in this qualification for the Supreme Court or Intermediate Appellate Court. That is already taken care of by the second paragraph.

MR. DAVIDE: If the interpretation of the second paragraph insofar as membership of the Philippine Bar is concerned would be that it would also apply to the members of the lower collegiate courts, I think that would be enough.

MR. ROMULO: The Committee believes so.

THE PRESIDING OFFICER (Mr. Bengzon): Is the Gentleman satisfied?

MR. DAVIDE: I am already satisfied.

THE PRESIDING OFFICER (Mr. Bengzon): Could the Gentleman restate his amendment then for the benefit of the Members of the Commission so that those who would want to speak against it may do so.

MR. DAVIDE: Section 4 (1), as amended, would now read as follows: "No person shall be appointed member of the Supreme Court OR ANY LOWER COLLEGIATE COURT unless he is a natural-born citizen of the Philippines. A MEMBER OF THE SUPREME COURT MUST BE at least forty years of age, and MUST HAVE BEEN for fifteen years or more a judge or a lower court or engaged in the practice of law in the Philippines."

THE PRESIDING OFFICER (Mr. Bengzon): What the pleasure of the Committee?

MR. ROMULO: We accept the amendment.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Bacani is recognized to speak against the amendment. He has five minutes.

BISHOP BACANI: I speak against the amendment because if accepted, the amendment will, as long as it exists, forever disqualify naturalized citizens even perhaps more patriotic than natural-born citizens from occupying posts in the lower collegiate courts. Also, it is not likely that a person who is not fully assimilated will rise that high in the hierarchy of the Judiciary. So, for those two reasons, I do not accept the amendment.

VOTING

THE PRESIDING OFFICER (Mr. Bengzon): The body will now vote on the amendment.

As many as are in favor of the amendment of Commissioner Davide, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (Few Members raised their hand.)

The results show 28 votes in favor and 3 against; the amendment is approved.

The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner Davide be recognized for one last amendment.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Davide is recognized.

MR. DAVIDE: But before that, Mr. Presiding Officer, may I request a reconsideration of the approved Maambong-de los Reyes amendment on line 24, page 4 which amended the last sentence of Section 7 (5). As amended, the last sentence will read: "Rules of procedure of special courts and quasi-judicial bodies shall REMAIN VALID AND EFFECTIVE UNLESS DISAPPROVED by the Supreme Court."

I would seek for a reconsideration of the approval of that amendment reading: "REMAIN VALID AND EFFECTIVE UNLESS DISAPPROVED by the Supreme Court." After that, I will introduce a very minor amendment but its effect would be very substantive.

THE PRESIDING OFFICER (Mr. Bengzon): Is there any objection to the reconsideration proposed by Commissioner Davide? (Silence) The Chair hears none; the motion is approved.

The topic is now open for discussion.

MR. DAVIDE: The amendment is only to delete the words "VALID AND" so it will read as follows: "Rules of procedure of special courts and quasi-judicial bodies shall REMAIN EFFECTIVE UNLESS DISAPPROVED by the Supreme Court."

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. CONCEPCION: We accept the amendment.

THE PRESIDING OFFICER (Mr. Bengzon): Is there any objection from the body? (Silence) The Chair hears none; the amendment is approved.

The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, before we close the period of amendments, I ask that Commissioner Bernas be recognized for an important clarificatory question.

THE PRESIDING OFFICER (Mr. Bengzon): Is that the last one?

MR. RAMA: Yes.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Bernas is recognized.

FR. BERNAS: Mr. Presiding Officer, this has reference to page 1, Section 3 (2) and (3).

First of all, Section 3 (3) speaks of the application or operation of presidential decrees. The question I asked last Friday was: If the question is the constitutionality of presidential decrees, what kind of vote is needed? I was answered last Friday that on the matter of the constitutionality of presidential decrees, the vote needed is what is prescribed in Section 3 (2). That was the answer given to me last Friday. I understand that this morning there was a different answer. So, just for the sake of clarity, may I just propose the same question. For purposes of passing judgment on the constitutionality — not application or operation — of presidential decrees, what kind of vote is needed?

MR. CONCEPCION: That required "to declare a law on constitutionality."

FR. BERNAS: Paragraph 2?

MR. CONCEPCION: That is right.

FR. BERNAS: How about proclamation?

MR. CONCEPCION: All of those.

FR. BERNAS: All of those — proclamations, orders, instructions, ordinances, etc. If it is a question of constitutionality, it is paragraph 2.

THE PRESIDING OFFICER (Mr. Bengzon): Is the Gentleman clarified?

MR. MAAMBONG: Mr. Presiding Officer, I just want a reclarification of this matter on presidential decrees because this morning during my interpellation, it was very clear from the answer of the Committee members that presidential decrees do not have the stature or the category of a statute or a law passed by a lawmaking body. In view of the answer of the honorable Chairman, is it now clarified that presidential decrees are, after all, of the same stature and category as law, considering that in the consideration of the constitutionality or unconstitutionality thereof, what will apply now would be paragraph 2 of the section referred to by Commissioner Bernas?

THE PRESIDING OFFICER (Mr. Bengzon): Could the Committee please answer?

MR. CONCEPCION: Is the Gentleman asking a question?

MR. MAAMBONG: This morning we had an extensive discussion as to the exact categorization of a presidential

decree. From the answers of the Committee members, it was clear that presidential decrees do not have the same category as laws passed by the lawmaking body. I took that to mean that presidential decrees are lower in category than laws properly so-called or what are known as statutes.

In the answer to the interpellation of Commissioner Bernas, it now appears that to declare a law unconstitutional, we have to refer to paragraph 2 of the section referred to. In other words, taking that answer, it would now appear that presidential decrees do have the same category as statutes passed by the lawmaking body. I just want to clarify that. The Committee can answer one way or the other, and I will now sit down after the answer.

MR.: ROMULO: May I clarify because the Chairman was out at that time. Commissioner Padilla made the distinction; if the Gentleman will recall a presidential decree is not the same as a statute passed by a legislature. Therefore, the required vote challenging a presidential decree or proclamation would fall under Section 3 and not under Section 2.

MR. MAAMBONG: That is now exactly the opposite of the clarification received by Commissioner Bernas. So, I would rather give the floor to Commissioner Bernas to clarify.

FR. BERNAS: I am confused now because the Committee has conflicting answers to the questions. The Chairman has an answer different from the answer of the Vice-Chairman. So for purposes of the record, for the guidance of the Supreme Court and other courts later on, which is the answer?

MR. ROMULO: We will ask Commissioner Regalado to give the Gentleman the official version.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Regalado is recognized.

MR. REGALADO: This morning we agreed that Section 3 (2) should read as follows: "All cases involving the constitutionality of a treaty, international or executive agreement, or law shall be heard and decided by the Supreme Court en banc, and no treaty, international or executive agreement, or law may be declared unconstitutional without the concurrence of a majority plus one of ALL the members." We deleted the phrase "who actually participated when the case was submitted for decision."

Section 3 (3), on the other hand, states: "All other cases including those involving the application or operation of presidential decrees, proclamations, orders, instructions, ordinances and other regulations which under the rules of court are required to be heard en banc shall be decided with the concurrence of a majority of the members who actually participated when the case was submitted for decision." Commissioner Padilla made the distinction that insofar as constitutionality of treaties and other agreements is concerned, it must be upon the vote of a majority plus one of all the members. But with respect to decrees, it will only be majority of the members who actually participated. I think Commissioner Padilla can further clarify that.

MR. PADILLA: Mr. Presiding Officer, this morning I stated that a statute like a Republic Act or a Batas Pambansa, or even the prior Commonwealth Act and Act of the Philippine Commission is undoubtedly a statute or a law. Proclamations, presidential decrees executive orders and letters of instructions were under the Transitory Provisions of the 1973 Constitution, and were declared valid and effective as forming part of the laws of the land. They shall be effective unless amended or repealed. w

The Freedom Constitution, Proclamation No. 3 which I did not mention this morning, states that the Transitory Provisions of the 1973 Constitution shall be superseded. In other words, in my opinion there is a clear difference between a statute that has been passed by the legislative assembly and then approved by the President and a proclamation, decree, order or letter of instructions issued solely by the President especially during martial law.

I believe that a unilateral — although presidential — proclamation, decree, order or letter of instructions does not, in

my opinion, have the category of a statute that has been passed by the legislative department and approved by the President. In fact, many of these proclamations, decrees, orders and instructions issued under martial law and covered by the Transitory Provisions of the 1973 Constitution are illegal and unconstitutional, and, definitely, they were not passed by the Legislature and approved by the President. That was the distinction I made. I believe that a law should be confined to a statute like a Republic Act or a Batas Pambansa or a Commonwealth Act, but it should not be identical with, or strictly in the same class of, a statute, especially because the Transitory Provisions of the 1973 Constitution considered it a law as forming part of the laws of the land. That was the distinction I made.

FR. BERNAS: Mr. Presiding Officer, I see the distinction very clearly but that is not quite my question. My question was by what vote is the constitutionality of a presidential decree declared because paragraph (3) does not speak of constitutionality. So for purposes of clarity, I would like to propose an amendment to paragraph (3), so it would read: "All other cases including those involving the CONSTITUTIONALITY, application or operation of presidential decrees, proclamations, orders, instructions, ordinances and other regulations which under the rules of court are required to be heard en banc shall be decided with the concurrence of a majority of the members who actually participated when the case was submitted for decision."

Clearly now, the constitutionality of a presidential decree will be decided by a vote required by paragraph (3), not paragraph (2).

MR. ROMULO: The Committee accepts the amendment.

THE PRESIDING OFFICER (Mr. Bengzon): Is there any objection? (Silence) The Chair hears none; the amendment is approved

FR. BERNAS: In order to harmonize everything, I would also recommend that we go to page 3, Section 7 (2), subparagraph (a). I propose to add PRESIDENTIAL DECREE after the word "law" on line 27. So, the provision, as amended, will read: "all cases in which the constitutionality or validity of any treaty, international or executive agreement, law, PRESIDENTIAL DECREE, ordinance, executive order, proclamation or regulation is in question."

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. ROMULO: The Committee accepts the amendment.

THE PRESIDING OFFICER (Mr. Bengzon): Is there any objection? (Silence) The Chair hears none; the amendment is approved.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: For the last clarificatory questions, I ask that Commissioner Natividad be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Natividad is recognized.

MR. NATIVIDAD: Just for the last clarificatory question.

I refer to page 5, Section 12 of the committee report, which says:

No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

Suppose a decision is rendered without complying with Section 12, what is the effect?

MR. ROMULO: The effect is that the justice who does so is subject to appropriate penalties.

MR. NATIVIDAD: But the effect of the decision can be final and executory?

MR. ROMULO: That happened in the case of Air France vs. Carrascoso, where the judge was administratively reprimanded.

MR. NATIVIDAD: I am not referring to the administrative action against the judge; I am after the effect of the decision. For the record, can the decision be final and executory without complying with Section 12?

MR. ROMULO: In the case referred to, the judge was required to complete his decision.

MR. NATIVIDAD: So, we can presume that it cannot be final and executory without complying with Section 12?

MR. CONCEPCION: No, that is not the meaning.

MR. NATIVIDAD: What is the meaning?

MR. CONCEPCION: If the party does not raise that question, the decision is still a decision, and it becomes final in due course.

MR. NATIVIDAD: Without prejudice to an administrative action against the judge?

MR. CONCEPCION: Of course, definitely.

MR. NATIVIDAD: I have another question to clarify before I vote on this article.

Page 2, Section 3 (4) states:

. . . Provided, that no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc.

Suppose this happens, what is the effect of the decision, as in many cases, such as Philippine Banking Corp. vs. Louie Sy and Elcano vs. Gil. May I ask the Committee if this constitutes a legal precedent?

MR. ROMULO: Is the Gentleman asking for the effect of a decision rendered by a division which would change the doctrine or principle of law previously laid down by the Supreme Court?

MR. NATIVIDAD: Yes, in violation to this doctrine laid down here.

MR. ROMULO: Insofar as the Committee is concerned, if a decision changes a doctrine or principle of law laid down by the Supreme Court en banc or in division, it can be modified or reversed only by the court sitting en banc and, therefore, such a decision would be invalid.

MR. NATIVIDAD: If the understanding is that the decision will be invalid, I would not offer an amendment.

Thank you.

THE PRESIDING OFFICER (Mr. Bengzon): Thank you.

The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Rodrigo be recognized.

MR. RODRIGO: Before we vote on Second Reading on Committee Report No. 18, as amended, I would like to call attention to the fact that there are two blanks on page 6, lines 5 and 7, which read:

. . . until the National Assembly shall provide otherwise, the Chief Justice shall receive an annual salary of

\_\_\_\_\_ and each Associate Justice \_\_\_\_\_ pesos.

Is the Committee ready to specify the amount?

MR. ROMULO: Yes, we are just waiting for the Executive Committee to decide how much to give to the President because we would not want to recommend salaries of Supreme Court Justices more than that of the President.

THE PRESIDING OFFICER (Mr. Bengzon): The Chair, in its capacity as Chairman of the Steering Committee, inquired from the Chairman of the Executive but the Executive Chairman is also waiting. So, the Chair suggested that the Committee Chairmen of the Executive, the Legislative and the Judiciary get together on this matter.

If the body votes on Second Reading on Committee Report No. 18, the Article on the Judiciary, it is understood that the compensation aspect will have to wait until all the three committees get together and decide on an amount.

MR. RODRIGO: Thank you, Mr. Presiding Officer. That is what I wanted to clarify.

FR. BERNAS: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): What is the pleasure of Commissioner Bernas?

FR. BERNAS: Just one follow-up clarification on the question of Commissioner Natividad, Mr. Presiding Officer. The answer given by Commissioner Romulo was that a judgment is invalid.

Suppose there is no reconsideration and the decision becomes final, would not the judgment be binding only on the parties but it would not reverse the previous judgment?

MR. ROMULO: It would depend on how one views it. If it is in excess of jurisdiction, then it has no validity whatsoever. If it is not in excess of jurisdiction, then it is binding only on the part of the . . .

FR. BERNAS: In such a situation, is it in excess of jurisdiction?

MR. ROMULO: If the explicit intent of this is followed, I would say it is in excess of jurisdiction.

FR. BERNAS: Therefore, the decision on the case can be reopened anytime?

MR. ROMULO: Yes.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: I move that we close the period of amendments on the Article on the Judiciary.

THE PRESIDING OFFICER (Mr. Bengzon): Is there any objection? (Silence) The Chair hears none; the motion is approved.

#### APPROVAL OF C.R. NO. 18 ON SECOND READING

(Article on the Judiciary)

MR. RAMA: I move for a vote on Second Reading on the Article on the Judiciary with the understanding that Section 13, which has yet to be filled up, will not be included in the voting.

THE PRESIDING OFFICER (Mr. Bengzon): Section 13, on the salaries of Justices?

MR. RAMA: Yes, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): As many as are in favor of the Article on the Judiciary, as amended, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his/her hand.)

The results show 34 votes in favor and none against.

Committee Report No. 18 on the Article on the Judiciary, as amended, is approved on Second Reading. (Applause).

Thank you very much. Please do not leave; it is only 7:24 and the Floor Leader will file a motion to call on Commissioner Vicente B. Foz to sponsor the Article on the Constitutional Commissions. We suggest that we get through with the sponsorship of the Article on the Constitutional Commissions and continue the interpellations tomorrow.

The Floor Leader is recognized.

CONSIDERATION OF PROPOSED RESOLUTION NO. 468  
(Article on the Constitutional Commissions)

PERIOD OF SPONSORSHIP AND DEBATE

MR. RAMA: Mr. Presiding Officer, I move that we consider Committee Report No. 19 on Proposed Resolution No. 468, as reported out by the Committee on Constitutional Commissions and Agencies.

THE PRESIDING OFFICER (Mr. Bengzon): Is there any objection? (Silence) The Chair hears none; the motion is approved.

Consideration of Proposed Resolution No. 468 is now in order. With the permission of the body, the Secretary-General will read only the title of the proposed resolution without prejudice to inserting in the Record the whole text thereof.

THE SECRETARY-GENERAL: Proposed Resolution No. 468, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION THE COMMON PROVISIONS ON THE CONSTITUTIONAL COMMISSIONS AND THE PROVISIONS ON THE CIVIL SERVICE COMMISSION.

(The following is the whole text of the proposed resolution per C.R. No. 19.)

### **COMMITTEE REPORT NO. 19**

The Committee on Constitutional Commissions and Agencies to which were referred: Proposed Resolution No. 51, introduced by Hon. Serafin Guingona, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION ARTICLES ON THE CONSTITUTIONAL COMMISSIONS IN ORDER TO SAFEGUARD AND ENHANCE THEIR INDEPENDENCE.

Proposed Resolution No. 54, introduced by Hon. Hilario Davide, Jr., entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION REQUIRING ELECTIVE OFFICIALS TO SERVE THE FULL TERM OF OFFICE FOR WHICH THEY WERE ELECTED AND PROHIBITING THEM TO SEEK IMMEDIATE REELECTION FOR SAID OFFICE OR TO BE APPOINTED TO ANY OTHER OFFICE DURING SUCH TERM AND WITHIN TWO YEARS FOLLOWING THE EXPIRATION THEREOF, AND, FURTHER, PROHIBITING WITHIN THE SAME

PERIOD THE SPOUSE AND/OR RELATIVES BY CONSANGUINITY OR AFFINITY WITHIN THE THIRD CIVIL DEGREE OF SUCH ELECTIVE OFFICIAL TO SEEK ELECTION FOR THE OFFICE TO BE VACATED BY THE LATTER OR TO BE APPOINTED IN ANY MANNER TO ANY OFFICE EXCEPT TO AN OFFICE FOR WHICH HE HAS THE APPROPRIATE CIVIL SERVICE ELIGIBILITY AND IS QUALIFIED AND COMPETENT.

Proposed Resolution No. 108, introduced by Hon. Vicente Foz, entitled:

RESOLUTION PROVIDING THAT NO ELECTIVE OFFICIAL SHALL BE ELIGIBLE FOR APPOINTMENT TO ANY OFFICE OR POSITION DURING HIS TERM OF OFFICE, AND THAT NO CANDIDATE WHO HAS LOST IN AN ELECTION SHALL, WITHIN TWO YEARS FOLLOWING SUCH ELECTION, BE APPOINTED OR REAPPOINTED TO ANY OFFICE IN THE GOVERNMENT OR IN ANY GOVERNMENT-OWNED OR CONTROLLED CORPORATION, OR IN, ANY OF ITS SUBSIDIARIES.

Proposed Resolution No. 117, introduced by Hon. Hilario Davide, Jr., entitled:

A RESOLUTION CALLING FOR THE INCORPORATION IN THE NEW CONSTITUTION OF A PROVISION WHICH WOULD INDUCE AN ELECTIVE OFFICIAL TO ASSUME HIS POSITION WITHOUT DELAY BY SETTING ASIDE HIS ELECTION AND DISQUALIFYING HIM TO HOLD ANY PUBLIC OFFICE IF HE FAILS TO ASSUME OFFICE WITHIN THIRTY DAYS FOLLOWING THE DATE FIXED BY LAW FOR HIM TO DO SO.

Proposed Resolution No. 135, introduced by Hon. Florangel Rosario Braid, entitled:

RESOLUTION TO INCLUDE A SEPARATE ARTICLE ON THE CIVIL SERVICE TO ENSURE ITS INDEPENDENCE.

Proposed Resolution No. 139, introduced by Hon. Jose Suarez, Alberto Jamir and Jaime Tadeo, entitled:

RESOLUTION PROVIDING FOR THE SECURITY OF TENURE OF CIVIL SERVICE EMPLOYEES WHOSE QUALIFICATIONS MEET THE STANDARD OF GOOD GOVERNMENT AND WHO HAVE BEEN FOUND EFFICIENT, DESERVING AND HONEST.

Proposed Resolution No. 238, introduced by Hon. Hilario Davide, Jr., entitled:

A RESOLUTION TO STRENGTHEN THE CIVIL SERVICE COMMISSION BY INCORPORATING IN THE NEW CONSTITUTION PROVISIONS REQUIRING THAT APPOINTMENTS THERETO SHALL BE MADE FROM A LIST OF NOMINEES SUBMITTED BY VARIOUS SECTORS AND INCREASING THE QUALIFICATIONS FOR APPOINTMENT AS COMMISSIONER.

Proposed Resolution No. 240, introduced by Hon. Hilario Davide, Jr., entitled:

A RESOLUTION TO ENSURE THE DEVELOPMENT OF A STRONG CIVIL SERVICE BY CONSTITUTIONALLY MANDATING THE CIVIL SERVICE COMMISSION TO UNDERTAKE REFORMS IN VARIOUS AREAS OF CONCERNS AND INCORPORATING IN THE NEW CONSTITUTION A PROVISION GRANTING BROADER POWERS TO THE CIVIL SERVICE COMMISSION.

Proposed Resolution No. 281, introduced by Hon. Hilario Davide, Jr., entitled:

A RESOLUTION FIXING THE PERIOD WITHIN WHICH THE CIVIL SERVICE COMMISSION SHALL DECIDE CASES BROUGHT BEFORE IT AND PROVIDING FOR APPEALS THEREFROM TO THE SUPREME COURT.

Proposed Resolution No. 356, introduced by Hon. Vicente Foz, entitled:

RESOLUTION PROVIDING FOR HIGHER SALARIES FOR THE CHAIRMEN AND MEMBERS OF CONSTITUTIONAL COMMISSIONS AND PROHIBITING THE DECREASE OR INCREASE THEREOF.

Proposed Resolution No. 357, introduced by Hon. Vicente Foz, entitled:

RESOLUTION FIXING THE TEMPORARY OR ACTING AND PERMANENT APPOINTMENTS OF A CHAIRMAN OR MEMBER OF A CONSTITUTIONAL COMMISSION TO AN AGGREGATE OF NOT MORE THAN SEVEN YEARS,

has considered said resolutions and has the honor to report them back to the Constitutional Commission of 1986 with the recommendation that Proposed Resolution No. 468 prepared by the Committee, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION THE COMMON PROVISIONS ON THE CONSTITUTIONAL COMMISSIONS AND THE PROVISIONS ON THE CIVIL SERVICE COMMISSION,

be approved in substitution for Proposed Resolution Nos. 51, 54, 108, 117, 135, 139, 238, 240, 281, 356 and 357, with the Committee on Constitutional Commissions and Agencies and Hon. Guingona, Davide, Jr., Rosario Braid, Suarez and Tadeo as authors thereof.

(Sgd.) Vicente B. Foz

Chairman

Committee on Constitutional Commissions and Agencies

### **PROPOSED RESOLUTION NO. 468**

RESOLUTION TO INCORPORATE IN THE CONSTITUTION AN ARTICLE ON THE CONSTITUTIONAL COMMISSIONS.

Be it resolved by the Constitutional Commission in session assembled, To incorporate in the Constitution the following provisions:

#### **ARTICLE XII**

#### **THE CONSTITUTIONAL COMMISSIONS**

##### **A. Common Provisions**

SECTION 1. The Constitutional Commissions shall be the Civil Service Commission, the Commission on Elections and the Commission on Audit.

SECTION 2. Until otherwise provided by law, the Chairman and each of the Commissioners shall receive an annual salary of one hundred twenty thousand pesos and one hundred ten thousand pesos, respectively, which shall not be decreased or increased during their tenure.

SECTION 3. No Member of a Constitutional Commission shall, during his tenure, engage in the practice of any profession or in the management of any business, or be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies or instrumentalities, including a government-owned or controlled corporation or any of its subsidiaries.

SECTION 4. The Commissions shall enjoy fiscal autonomy. Appropriations for the Commissions once approved shall be automatically released.

SECTION 5. Each Commission shall decide by a majority vote of all its Members any case brought before it

within sixty days from the date of its submission for resolution. Unless otherwise provided by law, any decision, order or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party thirty days from receipt of a copy thereof. However, final decisions, orders or rulings of the Commission on Elections on municipal and barangay officials shall be final, inappealable and executory.

SECTION 6. The Constitutional Commissions shall appoint their officials and employees in accordance with law.

#### B. THE CIVIL SERVICE COMMISSION

SECTION 1. (1) The Civil Service embraces all branches, subdivisions, instrumentalities and agencies of Government, including government-owned or controlled corporations.

(2) Appointments in the Civil Service shall be made only according to merit and fitness to be determined as far as practicable by competitive examination.

(3) No Member of the Civil Service shall be removed, suspended or otherwise disciplined except for just causes as may be provided by law.

(4) No officer or employee in the Civil Service shall engage, directly or indirectly, in any partisan political activity.

SECTION 2. (1) The Civil Service shall be administered by an independent Civil Service Commission composed of a Chairman and two Commissioners who are natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, preferably with proven capacity for public administration, and must not have been candidates for any elective position in the election immediately preceding their appointment.

(2) The Chairman and the Commissioners shall be appointed by the President for a term of seven years without reappointment. Appointments to the Commission need no confirmation. Of those first appointed, the Chairman shall hold office for seven years, a Commissioner for five years, and another Commissioner for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor. In no case shall any Member be appointed in a temporary or acting capacity.

SECTION 3. The Civil Service Commission, as the central personnel agency of the Government, shall establish a career service, promulgate and enforce policies on personnel actions, classifying positions, prescribe conditions of employment except as to compensation and other monetary benefits which shall be provided by law, and exercise all powers and functions inherent in and incidental to human resources management, to promote morale, efficiency, and integrity in the Civil Service. It shall submit to the President and the Congress an annual report on its personnel programs, and perform such other functions as may be provided by law.

SECTION 4. Unless otherwise provided by law, no elective official shall be eligible for appointment or designation in a temporary or acting capacity to any public office or position during his term.

SECTION 5. No candidate who has lost in any election shall, within one year after such election, be appointed to any office in the Government, or any government-owned or controlled corporation or in any of its subsidiaries

SECTION 6. No officer of the Armed Forces in the active service shall, at any time, be appointed or designated in a temporary or acting capacity to a civilian position in the Government.

SECTION 7. No elective or appointive public officer or employee shall receive additional or double compensation unless specifically authorized by law nor accept without the consent of the Congress any emolument or official title of any kind from any foreign government.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Foz is recognized to sponsor the proposed

resolution.

#### SPONSORSHIP SPEECH OF COMMISSIONER FOZ

MR. FOZ: Thank you.

The Committee intends to file three separate reports, and we have, so far, filed two reports on separate provisions with the concurrence of our committee. The first report is Committee Report No. 19, embodying Proposed Resolution No. 468, which has to do with the common provisions on the three constitutional commissions; namely, the Civil Service Commission, the Commission on Elections and the Commission on Audit. The second resolution is Proposed Resolution No. 469 under Committee Report No. 20. This has to do with the provisions on the Commission on Audit. Earlier, we have instructed our committee secretary to file the committee report on a proposed resolution on the Commission on Elections. At the outset, we would like to take up with the body the common provision affecting the three constitutional commissions. We have introduced some basic changes which we believe will make for reforms in the functioning of the three constitutional commissions.

The first one is fiscal autonomy. Under this concept of fiscal autonomy, appropriations once approved shall be automatically and regularly released to the respective commissions. We will recall that a similar provision has just been approved in the Article on the Judiciary. We thought that if fiscal autonomy should be provided for the Judiciary as a means of insuring its independence, then fiscal autonomy should also be granted to the constitutional commissions in order for the constitutional bodies to perform effectively their constitutional missions. We have provided in the common provisions certain factors which we think will help insure the independence of the commissions. One of them is, of course, the fixed term of office without reappointment. The second factor is the staggered term, not only to insure continuity of the functioning of the commissions but also as a measure to minimize the opportunity of a President to appoint all members during his term of office. Another factor is that the salaries of the members of the three commissions cannot be decreased nor increased during the term of office. The fourth — again, this is a take-off from the provisions on the Judiciary — is that appointments need no confirmation. We have fixed the salaries of the members of the commissions and the minimum, as stated in our copies of the proposed resolution, is P120,000 for the chairman and P110,000 for the other members of the commissions. But personally, I think this amount should be increased in consonance with the increase being contemplated by the other committees for the President and the Vice-President, as well as for the members of the Supreme Court.

Also, in the common provisions we have provided a common period for the commissions to decide cases and a common provision for appeals to the Supreme Court. In the case of the provision on the Civil Service Commission, we have re enshrined the merit system and also the principle of political neutrality and the provision for the security of tenure of employees. These three concepts or principles — the merit system, political neutrality, and security of tenure — we believe, constitute the tripod of our civil service system.

In the case of the Civil Service Commission, we have tried to emphasize its status as the central personnel agency of the government, with all powers and functions inherent in and incidental to human resources management.

One provision concerning the civil service which we have embodied in our draft but which is not found in the present Constitution is a provision against the appointment of members of the armed forces in the active service to civilian positions in government.

I guess that is all we can say about the common provisions as well as the provisions on the Civil Service Commission.

We intend to call on Commissioner Jamir to give us some features of the provisions on the Commission on Audit,

but I guess he has left. So, I am now open to interpellations.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Foz, as you have suggested earlier, we are going to take one constitutional commission at a time, so we have scheduled the sponsorship of the common provisions and the Civil Service Commission. So, are we through with the sponsorship of the Civil Service Commission?

MR. FOZ: We are through with the sponsorship, Mr. Presiding Officer, and we are ready to answer any question.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: Nobody has registered to interpellate. So, I move for the adjournment of the session until tomorrow at nine thirty in the morning.

ADJOURNMENT OF SESSION

THE PRESIDING OFFICER (Mr. Bengzon): The session is adjourned until tomorrow at nine thirty in the morning for interpellations on the proposed article on the Civil Service Commission.

It was 7:36 p.m.

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[\*] Appeared after the roll call.

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